COMMITTEE ON FOREIGN AFFAIRS
COMMITTEE ON FOREIGN RELATIONS

Legislation on Foreign Relations Through 2005

JOINT COMMITTEE PRINT

JUNE 2009

VOLUME IV

CURRENT LEGISLATION AND
RELATED EXECUTIVE ORDERS

U.S. HOUSE OF REPRESENTATIVES

U.S. SENATE

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FOREWORD

This volume of legislation and related material is part of a five volume set of laws and related material frequently referred to by the Committees on Foreign Affairs of the House of Representatives and Foreign Relations of the Senate, amended to date and annotated to show pertinent history or cross references.

Volumes I (A and B), II (A and B), III and IV contain legislation and related material and are republished with amendments and additions on a regular basis. Volume V, which contains treaties and related material, will be revised as necessary.

We wish to express our appreciation to Larry Q. Nowels and Dianne E. Rennack of the Foreign Affairs, Defense, and Trade Division of the Congressional Research Service of the Library of Congress and Suzanne Kayne of the U.S. Government Printing Office who prepared volume IV of this year's compilation.

HOWARD L. BERMAN,
Chairman, Committee on Foreign Affairs.

JOHN F. KERRY,
Chairman, Committee on Foreign Relations.

June 15, 2009.

EXPLANATORY NOTE

The body of statutory law set out in this volume was in force, as amended, at the end of 2005.

This volume sets out "session law" as originally enacted by Congress and published by the Archivist of the United States as "slip law" and later in the series *United States Statutes at Large* (as subsequently amended, if applicable). Amendments are incorporated into the text and distinguished by a footnote. Session law is organized in this series by subject matter in a manner designed to meet the needs of the Congress.

Although laws enacted by Congress in the area of foreign relations are also codified by the Law Revision Counsel of the House of Representatives, typically in title 22 United States Code, those codifications are not positive law and are not, in most instances, the basis of further amendment by the Congress. Cross references to the United States Code are included as footnotes for the convenience of the reader.

All Executive orders and State Department delegations of authority are codified and in force as of December 31, 2005.

Corrections may be sent to Matthew C. Weed at the Library of Congress, Congressional Research Service, Washington, D.C., 20540–7460, or by e-mail at mweed@crs.loc.gov.

ABBREVIATIONS

Bevans	Treaties and Other International Agreements of the United States of America, 1776–1949, compiled under the direction of Charles I. Bevans.
CFR	Code of Federal Regulations.
EAS	Executive Agreement Series.
F.R	Federal Register.
LNTS	League of Nations Treaty Series.
I Malloy, II Malloy	Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers, 1776–1909, compiled under the direction of the United States Senate by William M. Malloy.
R.S.	Revised Statutes.
Stat	United States Statutes at Large.
TIAS	Treaties and Other International Acts Series.
TS	Treaty Series.
UNTS	United Nations Treaty Series.
U.S.C	United States Code.
UST	United States Treaties and Other International Agreements.

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NOTE.—Conventions and agreements referred to by Acts in this section may be researched according to the conventional citations to such materials or by consulting the compilation *Treaties and Other International Agreements on Fisheries, Oceanographic Resources, and Wildlife Involving the United States.* U.S. Congress, Senate. Committee on Commerce, Science, and Transportation. Prepared by the Congressional Research Service, Library of Congress. Washington, U.S. Govt. Printing Off., 1977 (95th Congress, 1st Session. Committee Print, October 1977).

1. Law of the Sea

a. Magnuson-Stevens Fishery Conservation and Management Act, as amended [1]

Partial Text of Public Law 94–265 [H.R. 200], 90 Stat. 331, approved April 13, 1976; as amended by Public Law 95–6 [Fishery Conservation Zone Transition Act; H.J. Res. 240], 91 Stat 14, approved February 1, 1977; Public Law 95–354 [H.R. 10732], 92 Stat. 519, approved August 28, 1978; Public Law 96–61 [S. 917], 93 Stat. 407, approved August 15, 1979; Public Law 96–118 [H.R. 2035], 93 Stat. 859, approved November 16, 1979; Public Law 96–470 [Congressional Reports Elimination Act of 1980; H.R. 6686], 94 Stat. 2237, approved October 19, 1980; Public Law 96–561 [American Fisheries Promotion Act; S. 2163], 94 Stat. 3275, approved December 22, 1980; Public Law 97–191 [S. 2535], 96 Stat. 107, approved June 1, 1982; Public Law 97–453 [H.R. 5002], 96 Stat. 2481, approved January 12, 1983; Public Law 98–623 [H.R. 6342], 98 Stat. 3394 at 3408, approved November 8, 1984; Public Law 99–659 [S. 991]; 100 Stat. 3607, approved November 14, 1986; Public Law 100–239 [Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987; H.R. 2598]; 101 Stat. 1778, approved January 11, 1988; Public Law 101–627 [Fishery Conservation Amendments of 1990; H.R. 2061], 104 Stat. 4436, approved November 28, 1990; Public Law 102–251 [Flower Garden Banks National Marine Sanctuary; H.R. 3866], 106 Stat. 60, approved March 9, 1992; Public Law 103–237 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–437 [U.S. Code Technical Amendments; H.R. 4777], 108 Stat. 4581, approved November 2, 1994; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of section 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; and Public Law 104–297 [Sustainable Fisheries Act; S. 39], 110 Stat. 3559, approved October 11, 1996

AN ACT To provide for the conservation and management of the fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Magnuson-Stevens Fishery Conservation and Management Act".[1]

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Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.

[1] 16 U.S.C. 1801 note. Sec. 238 of Public Law 96–561 changed the name of this Act from the "Fishery Conservation and Management Act of 1976" to the "Magnuson Fishery Conservation and Management Act of 1976", effective January 6, 1981. Sec. 238 further stipulated that all references to the Fishery Conservation and Management Act of 1976 shall be redesignated as references to the Magnuson Fishery Conservation and Management Act of 1976.

Sec. 211(a) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), subsequently amended sec. 1 to change the name from "Magnuson" to "Magnuson-Stevens", and struck out "of 1976" following "Act". Sec. 211(b) of that Act provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

TITLE I—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

Sec. 101. United States sovereign rights to fish and fishery management authority.
Sec. 102. Highly migratory species.[2]
Sec. 103. Highly migratory species.
Sec. 104. Effective date.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 201. Foreign fishing.
Sec. 202. International fishery agreements.
Sec. 203. Congressional oversight of governing international fishery agreements.
Sec. 204. Permits for foreign fishing.
Sec. 205. Import prohibitions.
Sec. 206. Large-scale driftnet fishing.[3]

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

* * * * * * *

TITLE IV—FISHERY MONITORING AND RESEARCH

* * * * * * *

SEC. 2.[4] FINDINGS, PURPOSES AND POLICY.

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2)[5] Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of

[2] Effective January 1, 1992, pursuant to sec. 103(b) and (c) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4439), the title for sec. 102 became "Highly migratory species".

[3] Sec. 107(b) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4444) struck out "Transitional provisions" and inserted in lieu thereof "Large-scale driftnet fishing".

[4] 16 U.S.C. 1801.

[5] Sec. 101(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) amended and restated para. (2), which formerly read as follows:

"(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.".

massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats,[6] and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by United States fishermen,[7] including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(8)[8] The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

(9)[9] One of the greatest long-term threats to the viability '(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

(10)[9] Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1)[10] to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights

[6] Sec. 101(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) inserted "to facilitate long-term protection of essential fish habitats," after "conservation,".

[7] Sec. 2(a) of Public Law 95–354 (92 Stat. 519) struck out "United States fishing industry" and inserted in lieu thereof "United States fishermen".

[8] Sec. 101(a) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4437) added para. (8).

[9] Sec. 101(3) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) added paras. (9) and (10).

[10] Sec. 101(c)(1) of Public Law 99–659 (100 Stat. 3707) amended and restated para. (1).

for the purposes of exploring, exploiting, conserving, and managing all fish,[11] within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources, and fishery resources in the special areas;[12]

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;[13]

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of[14] such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;[15]

(6) to encourage the development by the United States fishing industry[16] of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and[17]

(7)[18] to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

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[11] Sec. 101(b)(1) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4437) struck out "except highly migratory species".

[12] Sec. 301(a) of Public Law 102–251 (106 Stat. 62) inserted ", and fishery resources in the special areas" before the semicolon.

[13] Sec. 101(4) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) struck out "principles;" and inserted in lieu thereof "principles, including the promotion of catch and release programs in recreational fishing;".

[14] Sec. 101(b)(2) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4437) struck out "prepare, monitor, and revise" and inserted in lieu thereof "exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of".

[15] Sec. 101(5) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) struck out "and" after the semicolon at the end of subsec. (b)(5).

[16] Sec. 2(b) of Public Law 95–354 (92 Stat. 519) added "by the United States fishing industry".

[17] Sec. 233 of Public Law 96–561 added ", and to that end, to ensure that optimum yield determinations promote such development". Sec. 101(6) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) struck out "development." and inserted in lieu thereof "development in a non-wasteful manner; and".

[18] Sec. 101(7) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) added para. (7).

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of interested and affected States and citizens; considers[19] efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and[20] avoid unnecessary waste of fish;[21] and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act;[22]

(5)[23] to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or person beyond the exclusive economic zones of any nation;[22, 24]

(6)[22] to foster and maintain the diversity of fisheries in the United States; and[24]

(7)[24] to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

SEC. 3.[25] DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

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[19] Sec. 101(8)(A) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) struck out "promotes" and inserted in lieu thereof "considers".

[20] Sec. 101(8)(B) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) inserted "minimize bycatch and" after "practical measures that".

[21] Sec. 101(c)(1) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4437) inserted text beginning with "considers the effects of fishing".

[22] Sec. 101(c)(2) through (4) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4437) struck out "and" at the end of para. (4); struck out the period at the end of para. (5), and inserted text beginning with ", and to secure agreements"; and added a new para. (6).

[23] Sec. 101(c)(1) of Public Law 99–659 (100 Stat. 3707) amended and restated para. (5).

[24] Sec. 101 of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3560) struck out "and" at the end of para. (5), struck out a period at the end of para. (6) and inserted instead "; and" and added a new para. (7).

[25] 16 U.S.C. 1802. Paragraph designations in sec. 3 have been repeatedly reassigned as new paras. were added. Footnotes to this section provide only substantive amendment history.

(2)[26] The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

(3)[26] The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

(4)[26] The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(7) The term "Continental Shelf fishery resources" means the following:

CNIDARIA[27]

Bamboo Coral—Acanella spp.;
Black Coral—Antipathes spp.;
Gold Coral—Callogorgia spp.;
Precious Red Coral—Corallium spp.;
Bamboo Coral—Keratoisis spp.; and
Gold Coral—Parazoanthus spp.

CRUSTACEA

Tanner Crab—Chionoecetes tanneri;
Tanner Crab—Chionoecetes opilio;
Tanner Crab—Chionoecetes angulatus;

[26] Sec. 102(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3561) added new paras. (2) through (4) and redesignated subsequent paras.

[27] Para. (7), as redesignated from para. (4) by sec. 102(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3561) was further amended by sec. 102(2) of that Act, by striking "COELENTERATA" from the heading of the list of corals and inserting in lieu thereof "CNIDARIA", and by striking "Deep-sea Red Crab—Geryon quinquedens" and inserting in lieu thereof "Deep-sea Red Crab—Chaceon quinquedens" from the list of crustacea.

Tanner Crab—Chionoecetes bairdi;
King Crab—Paralithodes camtschatica;
King Crab—Paralithodes platypus;
King Crab—Paralithodes brevipes;
Lobster—Homarus americanus;
Dungeness Crab—Cancer magister;
California King Crab—Paralithodes californiensis;
California King Crab—Paralithodes rathbuni;
Golden King Crab—Lithodes aequispinus;
Northern Stone Crab—Lithodes maja;
Stone Crab—Menippe mercenaria; and
Deep-sea Red Crab—Chaceon quinquedens.[27]

MOLLUSKS

Red Abalone—Haliotis rufescens;
Pink Abalone—Haliotis corrugata;
Japanese Abalone—Haliotis kamtschatkana;
Queen Conch—Strombus gigas;
Surf Clam—Spisula solidissima; and
Ocean Quahog—Arctica islandica.

SPONGES

Glove Sponge—Spongia cheiris;[28]
Sheepswool Sponge—Hippiospongia lachne;
Grass Sponge—Spongia graminea; and
Yellow Sponge—Spongia barbera.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(8) The term "Council" means any Regional Fishery Management Council established under section 302.

(9)[29] The term "economic discards" means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

(10)[29] The term "essential fish habitat" means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

[28] Sec. 112(2) of Public Law 99–659 (100 Stat. 3715) struck out "Hippiospongia canaliculata" and inserted in lieu thereof "Glove Sponge—Spongia cheiris".

[29] Sec. 102(3) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3561) added paras. (9) and (10), and redesignated subsequent paras.

(11)[30] The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(12) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.[31]

(13) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(14) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(15) The term "fishing" means—

(A) The catching, taking, or harvesting of fish;

(B) The attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(16)[32] The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

(17) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(18) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(19) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

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[30] Sec. 101(a) of Public Law 99–659 (100 Stat. 3706) added para. (11) as para. (6). Sec. 101(a) also renumbered former paras. (6) and (7) as (7) and (8) and struck out former para. (8) which had defined the term "fishery conservation zone".

Sec. 101(c)(2) of that Act replaced the term "fishery conservation zone" with the term "exclusive economic zone" each time it appeared in the Act.

[31] Sec. 102(a)(2) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) struck out ", birds and highly migratory species" and inserted in lieu thereof "and birds".

[32] Sec. 102(4) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3561) added a new para. (16) and redesignated subsequent paras.

(20)[33] The term "highly migratory species" means tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (Xiphias gladius).

(21)[34] The term "individual fishing quota" means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).

(22) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(23)[35] The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers[36] or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(24) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(25)[37] The term "migratory range" means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(26) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(27)[38] The term "observer" means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

(28)[39] The term "optimum", with respect to the yield from a fishery, means the amount of fish which—

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[33] Sec. 102(a)(3) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) amended and restated para. (14), since redesignated as para. (20). It formerly defined "highly migratory species" as "species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.".

[34] Sec. 102(5) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3562) added a new para. (21) and redesignated subsequent paras.

[35] Sec. 102(a)(4) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) added a new para. (16), since redesignated as para. (23).

[36] Sec. 102(6) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3562) struck out "of one and one-half miles" and inserted in lieu thereof "of two and one-half kilometers".

[37] Sec. 102(a)(5) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) added a new para. (18), since redesignated as para. (25).

[38] Sec. 102(a)(6) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) added a new para. (20), since redesignated as para. (27).

[39] Sec. 102(7) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3562) amended and restated para. (28), as redesignated.

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

(29)[40] The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

(30)[40] The term "Pacific Insular Area" means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

(31) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(32)[41] The term "recreational fishing" means fishing for sport or pleasure.

(33)[41] The term "regulatory discards" means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

(34) The term "Secretary" means the Secretary of Commerce or his designee.

(35) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(36)[42] The term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1,

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[40] Sec. 102(8) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3562) added new paras. (29) and (30) and redesignated subsequent paras.

[41] Sec. 102(9) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3562) added new paras. (32) and (33) and redesignated subsequent paras.

[42] Sec. 301(b) of Public Law 102–251 (106 Stat. 62) added para. (36) to define "special areas," effective on the date on which the Agreement Between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, entered into force for the United States, with authority to prescribe implementing regulations effective March 9, 1992, but with no such regulations effective until the date on which the Agreement entered into force for the United States.

Sec. 405(a) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3621) provided that sec. 301(b) of Public Law 102–251 shall take effect on the date of enactment of Public Law 104–297, which would result in adding a paragraph to define "special areas". Sec. 102(10) of that Act, however, separately added language similar to that provided in Public Law 102–251 as para. (36), effective immediately, and redesignated the following paras. appropriately.

1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(37) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(38) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(39)[43] The term "tuna species" means the following:

Albacore Tuna—Thunnus alalunga;
Bigeye Tuna—Thunnus obesus;
Bluefin Tuna—Thunnus thynnus;
Skipjack Tuna—Katsuwonus pelamis; and
Yellowfin Tuna—Thunnus albacares.

(40) The term "United States", when used in a geographical context, means all the States thereof.

(41)[44] The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(42)[44] The term "United States harvested fish" means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under this Act.[45]

(43)[46] The term "vessel of the United States" means—

(A) any vessel documented under chapter 121 of title 46, United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

(44)[47] The term "vessel subject to the jurisdiction of the United States" has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

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[43] Sec. 102(a)(7) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) added para. (27), since redesignated as para. (39).

[44] Sec. 3 of Public Law 95–354 (92 Stat. 519) added new paras. (25) and (26), since redesignated as paras. (41) and (42).

[45] Sec. 102(11) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) struck out "for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented" and inserted in lieu thereof "regulated under this Act".

[46] Sec. 15(a) of Public Law 97–453 (96 Stat. 2492) amended and restated para. (43). Sec. 2 of Public Law 100–239 (101 Stat. 1778) further amended and restated para. (43).

[47] Sec. 102(12) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) added a new para. (44) and redesignated para. (44) as (45).

(45)[48] The term "waters of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

SEC. 4.[49] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) $147,000,000 for fiscal year 1996;
(2) $151,000,000 for fiscal year 1997;
(3) $155,000,000 for fiscal year 1998; and
(4) $159,000,000 for fiscal year 1999.

TITLE I—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

SEC. 101.[50] UNITED STATES SOVEREIGN RIGHTS TO FISH AND FISHERY MANAGEMENT AUTHORITY.

(a) IN THE EXCLUSIVE ECONOMIC ZONE.—Except as provided in section 102, the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone and special areas.[51]

(b) BEYOND THE EXCLUSIVE ECONOMIC ZONE.—The United States claims, and will exercise in the manner provided for in this Act, exclusive fishery management authority over the following:

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within any waters of a foreign nation.[52]

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

(3)[53] all fishery resources in the special areas.

SEC. 102.[54] HIGHLY MIGRATORY SPECIES.

The United States shall cooperate directly or through appropriate international organizations with those nations involved in

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[48] Sec. 102(a)(8) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) added a new para. (32), since redesignated as para. (45).

[49] 16 U.S.C. 1803. Sec. 103 of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) added sec. 4.

[50] 16 U.S.C. 1811. Sec. 101(b) of Public Law 99–659 (100 Stat. 3706) amended and restated sec. 101.

[51] Sec. 301(c)(1) of Public Law 102–251 (106 Stat. 62) inserted "and special areas" before the period in subsec. (a).

[52] Sec. 102(b) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4438) struck out "any foreign nation's territorial sea or exclusive economic zone (or the equivalent), to the extent that that sea or zone is recognized by the United States.", and inserted in lieu thereof "any waters of a foreign nation.".

[53] Sec. 301(c)(2) of Public Law 102–251 (106 Stat. 63) added para. (3).

[54] 16 U.S.C. 1812. Effective January 1, 1992, sec. 103 of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4439), substantially restated sec. 102. It formerly read as follows:

"SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES.

"The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, highly migratory species of fish.".

fisheries for highly migratory species with a view to ensuring conservation and shall promote the achievement of optimum yield[55] of such species throughout their range, both within and beyond the exclusive economic zone.

SEC. 103.[56] HIGHLY MIGRATORY SPECIES.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104.[57] EFFECTIVE DATE.

This title shall take effect March 1, 1977.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHING AGREEMENTS

SEC. 201.[58] FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone,[59] within the special areas,[60] or for anadromous species or Continental Shelf fishery resources beyond such zone or areas,[61] unless such foreign fishing—

(1)[62] is authorized under subsections (b) or (c) or section 204(e), or under a permit issued under section 204(d);

(2)[62] is not prohibited under subsection (f); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

(b) EXISTING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202 (b) or (c)), if such agreement—

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such

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[55] Sec. 104 of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) struck out "promoting the objective of optimum utilization" and inserted in lieu thereof "shall promote the achievement of optimum yield".

[56] 16 U.S.C. 1813.

[57] 16 U.S.C. 1811 note.

[58] 16 U.S.C. 1821.

[59] Sec. 101(c)(2) of Public Law 99–659 struck out "fishery conservation zone" and inserted in lieu thereof "exclusive economic zone" throughout this Act.

[60] Sec. 301(d)(1)(A) of Public Law 102–251 (106 Stat. 63) inserted "within the special areas,".

[61] Sec. 301(d)(1)(B) of Public Law 102–251 (106 Stat. 63) struck out "beyond the exclusive economic zone" and inserted in lieu thereof "beyond such zone or areas".

[62] Sec. 105(a)(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) amended and restated paras. (1) and (2).

foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D)[63] United States observers required under subsection (h)[64] be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

[63] Sec. 2(a)(1) of Public Law 97–453 (96 Stat. 2481) amended and restated subpara. (D). Subpara. (D) formerly read as follows:

"(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;".

[64] Sec. 105(a)(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) struck out "(i)" and inserted in lieu thereof "(h)".

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which[65] exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7); and

(D)[66] take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

(d)[67] TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery

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[65] Sec. 4(2) of Public Law 95–354 (92 Stat. 519) inserted "harvest an amount of fish which".

[66] Sec. 2(a)(2) of Public Law 97–453 (96 Stat. 2481) added subpara. (D).

[67] The text of subsec. (d) was restored to the original by sec. 104 of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4439). Previously, sec. 230 of Public Law 96–561 amended and restated subsec. (d) to read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) As used in this subsection—

"(A) The term 'base harvest' means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

"(B) The term 'harvesting season' means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

"(C) The term 'calculation factor' means, with respect to each United States fishery, 15 percent of the base harvest.

"(D) The term 'reduction factor amount' means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

"(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting season, not less than 75 percent of the calculation factor;

"(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

"(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 25 percent, but less than 50 percent, of the calculation factor.

"For purposes of this paragraph, the term 'designated preceding harvest season' means—

"(I) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

"(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

"(E) The term 'annual fishing level' for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

"(i) an amount equal to the reduction factor amount for that harvesting season; and

"(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

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subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.

(e) ALLOCATION OF ALLOWABLE LEVEL.—(1)[68] (A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from[69] the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made of each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

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"(F) The term 'United States fishery' means any fishery subject to the exclusive fishery management authority of the United States.

"(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

"(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of annual fishing levels), or

"(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

"(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season.

"(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e), may allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

"(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

"(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

then such portion or part may be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.".

[68] Sec. 2(a)(4) of Public Law 97–453 (96 Stat. 2481) amended and restated para. (1). Previously, sec. 3 of Public Law 96–61 (93 Stat. 407) amended subsec. (e) by designating the existing text as para. (1) and adding a new para. (2). In addition, sec. 231 of Public Law 96–561 (94 Stat. 3297) amended and restated the last sentence of para. (1), effective for the 1981 harvesting season and harvesting seasons thereafter.

[69] Sec. 404(2)(A) of Public Law 98–623 (98 Stat. 3408) struck out "shall determine the allocation among foreign nations of" and inserted in lieu thereof "may make allocations to foreign nations from".

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both [70] United States fish and [70] fishery products, particularly fish and fishery products for which the foreign nation has requested as allocation; [70]

(ii) [71] whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fishery exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone [59] or special areas [72] for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

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[70] Sec. 404(2)(B) of Public Law 98–623 (98 Stat. 3408) amended clause (i) by inserting "both", by striking out "or" and inserting in lieu thereof "and", and by adding the final phrase beginning with the words ", particularly fish and fishery products".

[71] Sec. 404(2)(C) of Public Law 98–623 (98 Stat. 3408) amended and restated clause (ii). It previously read as follows:

"(ii) Whether, and to what extent, such nation is cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;".

[72] Sec. 301(d)(2) of Public Law 102–251 (106 Stat. 63) inserted "or special areas".

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)[73] (A) For the purposes of this paragraph—

(i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fisherman's Protective Act of 1967 (22 U.S.C. 1978(a)).

(ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of a foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.

(D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State—

[73] Sec. 3 of Public Law 96–61 (93 Stat. 407) added para. (2).

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f)[74] RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(g)[74] PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

(1)[75] shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b) (2), (3), (4), (5), and (7).

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[74] Sec. 4(3) of Public Law 95–354 (Stat. 519) redesignated subsecs. (f) and (g) as (g) and (h), respectively, and added a new subsec. (f), requiring an annual report from the Secretary of the Treasury on allocations made to foreign nations. Subsec. (f) was subsequently repealed by sec. 139(24) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 399). Sec. 105(a)(3) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) repealed subsec. (f) again, and sec. 105(a)(4) of that Act redesignated subsecs. (g) through (j) as subsecs. (f) through (i).

[75] Sec. 4(4) of Public Law 95–354 amended para. (1) by effectively adding the text of subpara. (B).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

(h)[74, 76] FULL OBSERVER COVERAGE PROGRAM.—(1)(A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone[59] or special areas.[77]

(B)[78] The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone[79] or special areas[77] to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B)[80] in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program that is at least equal in effectiveness to the program established by the Secretary;

(C)[81] the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone or special areas[77] will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(D)[80] for reasons beyond the control of the Secretary, an observer is not available.

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[76] Sec. 236 of Public Law 96–561 (94 Stat. 3299) added subsec. (i). Sec. 237 of the same Act stated that subsec. (i) shall take effect on October 1, 1981, and shall apply to permits issued under sec. 204 of this Act after December 31, 1981.

[77] Sec. 301(d)(3) of Public Law 102–251 (106 Stat. 63) inserted "or special areas".

[78] Sec. 103(a)(2) of Public Law 99–659 (100 Stat. 3708) added subpara. (B).

[79] Sec. 101(c)(2) of Public Law 99–659 struck out "fishery conservation zone" and inserted in lieu thereof "exclusive economic zone" throughout this Act.

[80] Sec. 105(a)(5) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) redesignated subparas. (B) and (C) as subparas. (C) and (D), and added a new subpara. (B).

[81] Sec. 103(a)(2) of Public Law 99–659 (100 Stat. 3708) added subpara. (C) as subpara. (B). Sec. 105(a)(5) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) redesignated subpara. (B) as subpara. (C).

(3)[82] Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).[83]

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6)[84] If at any time the requirement set forth in paragraph (1) cannot be- met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

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[82] Sec. 2(a)(5)(A)(i) of Public Law 97–453 (96 Stat. 2482) amended and restated para. (3). It formally read as follows:

"(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act.".

[83] The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2003 (Division B of sec. 3 of Public Law 108–7; 117 Stat. 7), provided:

"FOREIGN FISHING OBSERVER FUND

"For expenses necessary to carry out the provisions of the Atlantic Tunas Convention Act of 1975, as amended (Public Law 96–339), the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (Public Law 100–627), the American Fisheries Promotion Act (Public Law 96–561) and the International Dolphin Conservation Program Act (Public Law 105–42), to be derived from the fees imposed under the foreign fishery observer program authorized by these Acts, not to exceed $1,000, to remain available until expended.".

[84] Sec. 2(a)(5)(A)(ii) of Public Law 97–453 (96 Stat. 2482) added para. (6), effective January 1, 1984.

(D) monitor the performance of observers to ensure that it meets the purposes of this Act.

(i)[74, 85] RECREATIONAL FISHING.—Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone[86] or special areas[87] and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone, areas,[88] or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 304.[89] The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

SEC. 202.[90] INTERNATIONAL FISHERY AGREEMENTS.

(a) NEGOTIATIONS.—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone[86] (or within the area that will constitute such zone after February 28, 1977) or special areas,[91] or for anadromous species or Continental Shelf fishery

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[85] Sec. 2(a)(6) of Public Law 97–453 (96 Stat. 2483) added subsec. (j), since redesignated as subsec. (i).

[86] Sec. 101(c)(2) of Public Law 99–659 struck out "fishery conservation zone" and inserted in lieu thereof "exclusive economic zone" throughout this Act.

[87] Sec. 301(d)(4)(A) of Public Law 102–251 (106 Stat. 63) inserted "or special areas".

[88] Sec. 301(d)(4)(B) of Public Law 102–251 (106 Stat. 63) inserted ", areas" after "such zone".

[89] Sec. 105(a)(6) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) struck out "305" and inserted in lieu thereof "304".

[90] 16 U.S.C. 1822. See also sec. 801 of the Fishery Conservation Amendments of 1990 (Public Law 101–627).

[91] Sec. 301(e)(1)(A) of Public Law 102–251 (106 Stat. 63) inserted "or special areas" after "February 28, 1977)".

resources beyond such zone or areas,[92] and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone[86] (or within the area that will constitute such zone after February 28, 1977) or special areas,[93] or for anadromous species or Continental Shelf fishery resources beyond such zone or areas—[94]

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 201(c) or section 204(e).[95]

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone[86] of the United States in relation to any such nation.

(e)[96] HIGHLY MIGRATORY SPECIES AGREEMENTS.—

(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved.

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

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[92] Sec. 301(e)(1)(B) of Public Law 102–251 (106 Stat. 63) struck out "such zone or area" and inserted in lieu thereof "such zone or areas" .

[93] Sec. 301(e)(2)(A) of Public Law 102–251 (106 Stat. 63) inserted "or special areas".

[94] Sec. 301(e)(2)(B) of Public Law 102–251 (106 Stat. 63) struck out "such zone or area" and inserted in lieu thereof "such zone or areas".

[95] Sec. 105(b)(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) inserted "or section 204(e)".

[96] Sec. 105(a) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4439) redesignated subsec. (e) as (f) and added a new (e).

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

(2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

(3) REPORTS.—The Secretary of State shall report to the Congress—

(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1). together with recommendations for addressing any inadequacies identified; and

(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

(4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

(5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and it[97] Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

(f)[96] NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone[86, 98] (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

[97] So in original. Should read "its".

[98] Sec. 120(a) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4459) struck out "a exclusive economic zone" and inserted in lieu thereof "an exclusive economic zone".

(g)[99] FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.—(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—

(A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

(B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;

(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the eaters in which the catch occurred; and

(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

(h)[100] BYCATCH REDUCTION AGREEMENTS.—

(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

(2) An international agreement negotiated under this subsection shall be—

(A) consistent with the policies and purposes of this Act; and

(B) subject to approval by Congress under section 203.

(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the

[99] Sec. 301(e)(3) of Public Law 102–251 (106 Stat. 63) added subsec. (g).

[100] Sec. 105(b)(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) added subsec. (h).

House of Representatives a report describing actions taken under this subsection.

SEC. 203.[101] CONGRESSIONAL OVERSIGHT OF INTERNATIONAL FISHERY AGREEMENTS.

(a) IN GENERAL.—No governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement[102] shall become effective with respect to the United States before the close of the first 120 days (excluding any days in a period for which the Congress is adjourned sine die)[103] after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement.[102] A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries,[104] and in the Senate to the Committees on Commerce, Science, and Transportation and on[105] Foreign Relations.

(c)[106] CONGRESSIONAL PROCEDURES.—

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

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[101] 16 U.S.C. 1823. Sec. 105(c)(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) struck out "**GOVERNING**" in the section catchline. See related Public Laws beginning at page 113.

Sec. 101 of Public Law 105–384 (112 Stat. 3451) provided the following:

"Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1823), the governing international fishery agreement between the Government of the United States of America and the Government of the Republic of Poland, as contained in the message to Congress from the President of the United States dated February 5, 1998, is approved as a governing international fishery agreement for the purposes of such Act and shall enter into force and effect with respect to the United States on the date of the enactment of this Act.".

[102] Sec. 105(c)(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) struck out "agreement" each place it appeared in subsec. (a) and inserted in lieu thereof "agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement".

[103] Sec. 105(c)(3) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) struck out "60 calendar days of continuous session of the Congress" and inserted in lieu thereof "120 days (excluding any days in a period for which the Congress is adjourned sine die)".

[104] Sec. 1(b)(3) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Merchant Marine and Fisheries of the House of Representatives shall be treated as referring to—

(A) the Committee on Agriculture, in the case of a provision of law relating to inspection of seafood or seafood products;

(B) the Committee on National Security, in the case of a provision of law relating to interoceanic canals, the Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine;

(C) the Committee on Resources, in the case of a provision of law relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography;

(D) the Committee on Science, in the case of a provision of law relating to marine research; and

(E) the Committee on Transportation, in the case of a provision of law relating to a matter other than a matter described in any of subparagraphs (A) through (D).

[105] Sec. 6(x)(1) of Public Law 103–437 (108 Stat. 4587) struck out "Commerce and" and inserted in lieu thereof "Commerce, Science, and Transportation and on".

[106] Sec. 105(c)(4) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) struck out subsec. (c), which had provided for the calculation of the 60-day period. Sec. 105(c)(5) of that Act further redesignated subsec. (d) as subsec. (c).

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.—For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement [107] the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives [104] or the Committee on Commerce, Science, and Transportation [108] or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the

[107] Sec. 105(c)(6) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3564) struck out "agreement" and inserted in lieu thereof "agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement".

[108] Sec. 6(x)(2) of Public Law 103–437 (108 Stat. 4587) struck out "Commerce" and inserted in lieu thereof "Commerce, Science, and Transportation".

consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from the time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

SEC. 204.[109] PERMITS FOR FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone[86] within the special areas[110] or for anadromous species or Continental Shelf fishery resources beyond such zone or areas,[111] unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNMENT INTERNATIONAL FISHERY AGREEMENTS.—

[109] 16 U.S.C. 1824.
[110] Sec. 301(f)(1) of Public Law 102–251 (106 Stat. 64) inserted "within the special areas".
[111] Sec. 301(f)(2) of Public Law 102–251 (106 Stat. 64) inserted "or areas".

(1) ELIGIBILITY.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a). No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit.[112]

(2) FORMS.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, hold[113] capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D)[114] the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;

(E)[115] the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States;

(F)[115] the ocean area in which, and the season or period during which, such fishing will be conducted; and

(G)[116] all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards,

and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the

[112] Sec. 102(1) of Public Law 99–659 (100 Stat. 3707) added this sentence.
[113] Sec. 3(1) of Public Law 97–453 (96 Stat. 2483) inserted "hold".
[114] Sec. 4(5)(A) of Public Law 95–354 (92 Stat. 520) amended and restated subpara. (D).
[115] Sec. 4(5)(B) of Public Law 95–520 (92 Stat. 520) redesignated subpara. (E) as (F) and added a new subpara. (E).
[116] Sec. 103(b)(3) of Public Law 99–659 (100 Stat. 3709) added subpara. (G).

application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3).[117] The Secretary of State[118] shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B)[119] a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

(C)[119] a copy or a summary of the application to the appropriate Council,[120]

(5) ACTION BY COUNCIL.—After receiving a copy or summary of an application under paragraph (4)(C), the Council may[121] prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—(A)[122] After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B)[122] the application, if he determines that the fishing described in the application will meet the requirements of this Act or he may disapprove all or any portion of the application.[123]

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[117] Sec. 3(2) of Public Law 97–453 (96 Stat. 2483) struck out "and shall be set forth under the name of each Council to which it will be transmitted for comment" which previously appeared at this point.

[118] Sec. 4(6) of Public Law 95–354 (92 Stat. 520) struck out "such application in the Federal Register and" and inserted in lieu thereof the words to this point beginning with "a notice of receipt".

[119] Sec. 3(3) of Public Law 97–453 (96 Stat. 2483) amended and restated subparas. (B) and (C). They previously read as follows:

"(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

"(C) a monthly summary of foreign fishing applications including a report on approval applications as described in paragraphs (6) and (7) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.".

Previously, sec. 208 of Public Law 96–470 (94 Stat. 2245) added the requirement for the summary mentioned in subpara. (C) to be provided on a monthly basis.

[120] Sec. 120(b) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4459) capitalized "council".

[121] Sec. 3(4) of Public Law 97–453 (96 Stat. 2483) struck out "After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall" and inserted in lieu thereof "After receiving a copy or summary of an application under paragraph (4)(C), the Council may".

[122] Sec. 4(7) of Public Law 95–354 (92 Stat. 520) inserted "(A)", added the words ", subject to subparagraph (B)," and added subpara. (B).

[123] Sec. 102(3) of Public Law 99–659 (100 Stat. 3707) inserted "or he may disapprove all or any portion of the application".

(B)[122] (i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by the United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) or subsection (d)[124] and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and any applicable Federal or State fishing regulations.[125]

(B) The requirement that no permit may be used by any vessel other than the fishery vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D)[126] If the permit is issued other than pursuant to an application approved under paragraph (6)(B) or subsection (d),[127] the restriction that the foreign fishing vessel may not receive at sea United States harvested fish vessels of the United States.

(E)[126] If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F)[126] Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

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[124] Sec. 105(d)(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3565) inserted "or subsection (d)".

[125] Sec. 105(d)(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3565) struck out "the regulations promulgated to implement any such plan" and inserted in lieu thereof "any applicable Federal or State fishing regulations".

[126] Sec. 4(8) of Public Law 95–354 (92 Stat. 521) redesignated subpara. (D) as (F) and added new subparas. (D) and (E).

[127] Sec. 105(d)(3) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3565) inserted "or subsection (d)".

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.[128]

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reason therefor. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10)[129] FEES.—

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12)[130] * * * [Repealed—1990]

(c) REGISTRATION PERMITS.—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing

[128] Sec. 111(b) of Public Law 96–470 (94 Stat. 2239) struck out a former subpara. (D), which previously appeared at this point and had required a copy of each application approved also be submitted to the Senate Foreign Relations Committee and the House Merchant Marine and Fisheries Committee.

[129] Sec. 106(a) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4440) amended and restated para. (10). Previously, sec. 232 of Public Law 96–561 (94 Stat. 3298) amended and restated para. (10).

[130] Sec. 106(b) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4441) repealed para. (12). Para. (12) had provided for the revocation, suspension, limiting, or denial of permits for any foreign country determined to be in violation of sec. 307 of this Act (16 U.S.C. 1857).

described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(d)[131] TRANSSHIPMENT PERMITS.—

(1) AUTHORITY TO ISSUE PERMITS.—The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who—

(A) submits an application which is approved by the Secretary under paragraph (3); and

(B) pays a fee imposed under paragraph (7).

(2) TRANSMITTAL.—Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.

(3) APPROVAL OF APPLICATION.—The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that—

(A) the transportation of fish or fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

(4) WHOLE OR PARTIAL APPROVAL.—The Secretary may approve all or any portion of an application under paragraph (3).

[131] Sec. 105(d)(4) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3565) added subsecs. (d) and (e).

(5) FAILURE TO APPROVE APPLICATION.—If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

(6) CONDITIONS AND RESTRICTIONS.—The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7), which shall be complied with by the owner and operator of the vessel for which the permit is issued.

(7) FEES.—The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

(e)[131] PACIFIC INSULAR AREAS.—

(1) NEGOTIATION OF PACIFIC INSULAR AREA FISHERY AGREEMENTS.—The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area—

(A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and

(B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.

(2) AGREEMENT TERMS AND CONDITIONS.—A Pacific Insular Area fishery agreement—

(A) shall not be considered to supersede any governing international fishery agreement currently in effect under this Act, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas;

(B) shall be negotiated and implemented consistent only with the governing international fishery agreement provisions of this title specifically made applicable in this subsection;

(C) may not be negotiated with a nation that is in violation of a governing international fishery agreement in effect under this Act;

(D) shall not be entered into if it is determined by the Governor of the applicable Pacific Insular Area with respect to agreements initiated under paragraph (1)(A), or the Western Pacific Council with respect to agreements initiated under paragraph (1)(B), that such an agreement will adversely affect the fishing activities of the indigenous people of such Pacific Insular Area;

(E) shall be valid for a period not to exceed three years and shall only become effective according to the procedures in section 203; and

(F) shall require the foreign nation and its fishing vessels to comply with the requirements of paragraphs (1), (2), (3) and (4)(A) of section 201(c), section 201(d), and section 201(h).

(3) PERMITS FOR FOREIGN FISHING.—

(A) Application for permits for foreign fishing authorized under a Pacific Insular Areas fishing agreement shall be made, considered and approved or disapproved in accordance with paragraphs (3), (4), (5), (6), (7) (A) and (B), (8), and (9) of subsection (b), and shall include any conditions and restrictions established by the Secretary in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council.

(B) If a foreign nation notifies the Secretary of State of its acceptance of the requirements of this paragraph, paragraph (2)(F), and paragraph (5), including any conditions and restrictions established under subparagraph (A), the Secretary of State shall promptly transmit such notification to the Secretary. Upon receipt of any payment required under a Pacific Insular Area fishing agreement, the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all of the requirements, conditions, and restrictions established under this subsection which apply to the fishing vessel for which the permit is issued.

(4) MARINE CONSERVATION PLANS.—

(A) Prior to entering into a Pacific Insular Area fishery agreement, the Western Pacific Council and the appropriate Governor shall develop a 3-year marine conservation plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall be consistent with any applicable fishery management plan, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects. Conservation and management objectives shall include, but not be limited to—

(i) establishment of Pacific Insular Area observer programs, approved by the Secretary in consultation with the Western Pacific Council, that provide observer coverage for foreign fishing under Pacific Insular Area fishery agreements that is at least equal in effectiveness to the program established by the Secretary under section 201(h);

(ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;

(iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;

(iv) grants to the University of Hawaii for technical assistance projects by the Pacific Island Network, such as education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and

(v) western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.

(B) In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor, with the concurrence of the Western Pacific Council, shall develop the marine conservation plan described in subparagraph (A) and submit such plan to the Secretary for approval. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop and submit the marine conservation plan described in subparagraph (A) to the Secretary for approval.

(C) If a Governor or the Western Pacific Council intends to request that the Secretary of State renew a Pacific Insular Area fishery agreement, a subsequent 3–year plan shall be submitted to the Secretary for approval by the end of the second year of the existing 3–year plan.

(5) RECIPROCAL CONDITIONS.—Except as expressly provided otherwise in this subsection, a Pacific Insular Area fishing agreement may include terms similar to the terms applicable to United States fishing vessels for access to similar fisheries in waters subject to the fisheries jurisdiction of another nation.

(6) USE OF PAYMENTS BY AMERICAN SAMOA, GUAM, NORTHERN MARIANA ISLANDS.—Any payments received by the Secretary under a Pacific Insular Area fishery agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. Amounts deposited in the Treasury of a Pacific Insular Area shall be available, without appropriation or fiscal year limitation, to the Governor of the Pacific Insular Area—

(A) to carry out the purposes of this subsection;

(B) to compensate (i) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Insular Area fishery agreement for such Pacific Insular Area, and (ii) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(A); and

(C) to implement a marine conservation plan developed and approved under paragraph (4).

(7) WESTERN PACIFIC SUSTAINABLE FISHERIES FUND.—There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments received by the Secretary under a Pacific Insular Area fishery agreement for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

(A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);

(B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(B); and

(C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies remain in the Western Pacific Sustainable Fisheries Fund after the funding requirements of subparagraphs (A) and (B) have been satisfied.

Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this Act.

(8) USE OF FINES AND PENALTIES.—In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4).

SEC. 205.[132] IMPORT PROHIBITIONS.

(a) DETERMINATIONS BY SECRETARY OF STATE.—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, including fisheries of the tuna species[133] as recognized by the United States, in accordance with[133] fishing activities of such vessels, if any, and

[132] 16 U.S.C. 1825.

[133] Effective January 1, 1992, Sec. 105(b) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4440) inserted "including fisheries of the tuna species". Sec.

Continued

under terms not more restrictive than those established under sections 201 (c) and (d) and 204(b) (7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for tuna[133] species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriated to carry out the purposes of this section.

(c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) DEFINITIONS.—As used in this section—

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed for (in which or in part) any fish.

SEC. 206.[134] LARGE-SCALE DRIFTNET FISHING.

(a) SHORT TITLE.—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the "Driftnet Act Amendments of 1990".

105(b) further struck out "traditional", that previously followed "in accordance with", struck out "highly migratory" in para. (2) and inserted in lieu thereof "tuna".

[134] 16 U.S.C. 1826. Public Law 95–6 (91 Stat. 14) added sec. 206. Sec. 107(a) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4441) amended and restated sec. 206.

(b) FINDINGS.—The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean, and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44–225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the south Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility by exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44–225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) INTERNATIONAL AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of

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See also the High Seas Driftnet Fisheries Enforcement Act (Public Law 102–582; 106 Stat. 4900 *et seq.*).

State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

(e)[135] REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries[136] of the House of Representatives a report—

(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);

(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

(3)[135] containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(4)[135] containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

(f) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(4),[137] the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

(g) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered

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[135] Sec. 105(f)(1) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3569) struck out paras. (3) and (4) of subsec. (e), and redesignated paras. (5) and (6) as paras. (3) and (4). Former paras. (3) and (4) read as follows:

"(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

"(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;".

[136] Sec. 1(b)(3) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Merchant Marine and Fisheries of the House of Representatives shall be treated as referring to—

(A) the Committee on Agriculture, in the case of a provision of law relating to inspection of seafood or seafood products;

(B) the Committee on National Security, in the case of a provision of law relating to interoceanic canals, the Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine;

(C) the Committee on Resources, in the case of a provision of law relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography;

(D) the Committee on Science, in the case of a provision of law relating to marine research; and

(E) the Committee on Transportation, in the case of a provision of law relating to a matter other than a matter described in any of subparagraphs (A) through (D).

[137] Sec. 105(f)(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3569) struck out "(e)(6)" and inserted in lieu thereof "(e)(4)".

5030, dated March 10, 1983, and reflected in this Act or other existing law.

(h) DEFINITION.—As used in this section, the term "living marine resources" includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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TITLE IV—FISHERY MONITORING AND RESEARCH [138]

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[138] Title II of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3604) amended and restated title IV, which previously related to miscellaneous provisions, including authorization of appropriations.

b. Marine Turtle Conservation Act of 2004

Public Law 108–266 [H.R. 3378], 118 Stat. 791, approved July 2, 2004

AN ACT To assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Marine Turtle Conservation Act of 2004".

SEC. 2.[2] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) marine turtle populations have declined to the point that the long-term survival of the loggerhead, green, hawksbill, Kemp's ridley, olive ridley, and leatherback turtle in the wild is in serious jeopardy;

(2) 6 of the 7 recognized species of marine turtles are listed as threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all 7 species have been included in Appendix I of CITES;

(3) because marine turtles are long-lived, late-maturing, and highly migratory, marine turtles are particularly vulnerable to the impacts of human exploitation and habitat loss;

(4) illegal international trade seriously threatens wild populations of some marine turtle species, particularly the hawksbill turtle;

(5) the challenges facing marine turtles are immense, and the resources available have not been sufficient to cope with the continued loss of nesting habitats caused by human activities and the consequent diminution of marine turtle populations;

(6) because marine turtles are flagship species for the ecosystems in which marine turtles are found, sustaining healthy populations of marine turtles provides benefits to many other species of wildlife, including many other threatened or endangered species;

(7) marine turtles are important components of the ecosystems that they inhabit, and studies of wild populations of marine turtles have provided important biological insights;

(8) changes in marine turtle populations are most reliably indicated by changes in the numbers of nests and nesting females; and

[1] 16 U.S.C. 6601 note.
[2] 16 U.S.C. 6601.

(9) the reduction, removal, or other effective addressing of the threats to the long-term viability of populations of marine turtles will require the joint commitment and effort of—

(A) countries that have within their boundaries marine turtle nesting habitats; and

(B) persons with expertise in the conservation of marine turtles.

(b) PURPOSE.—The purpose of this Act is to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries by supporting and providing financial resources for projects to conserve the nesting habitats, conserve marine turtles in those habitats, and address other threats to the survival of marine turtles.

SEC. 3.[3] DEFINITIONS.

In this Act:

(1) CITES.—The term "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249).

(2) CONSERVATION.—The term "conservation" means the use of all methods and procedures necessary to protect nesting habitats of marine turtles in foreign countries and of marine turtles in those habitats, including—

(A) protection, restoration, and management of nesting habitats;

(B) onsite research and monitoring of nesting populations, nesting habitats, annual reproduction, and species population trends;

(C) assistance in the development, implementation, and improvement of national and regional management plans for nesting habitat ranges;

(D) enforcement and implementation of CITES and laws of foreign countries to—

(i) protect and manage nesting populations and nesting habitats; and

(ii) prevent illegal trade of marine turtles;

(E) training of local law enforcement officials in the interdiction and prevention of—

(i) the illegal killing of marine turtles on nesting habitat; and

(ii) illegal trade in marine turtles;

(F) initiatives to resolve conflicts between humans and marine turtles over habitat used by marine turtles for nesting;

(G) community outreach and education; and

(H) strengthening of the ability of local communities to implement nesting population and nesting habitat conservation programs.

(3) FUND.—The term "Fund" means the Marine Turtle Conservation Fund established by section 5.

(4) MARINE TURTLE.—

(A) IN GENERAL.—The term "marine turtle" means any member of the family Cheloniidae or Dermochelyidae.

[3] 16 U.S.C. 6602.

(B) INCLUSIONS.—The term "marine turtle" includes—

(i) any part, product, egg, or offspring of a turtle described in subparagraph (A); and

(ii) a carcass of such a turtle.

(5) MULTINATIONAL SPECIES CONSERVATION FUND.—The term "Multinational Species Conservation Fund" means the fund established under the heading "multinational species conservation fund" in title I of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 4246).

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4.[4] MARINE TURTLE CONSERVATION ASSISTANCE.

(a) IN GENERAL.—Subject to the availability of funds and in consultation with other Federal officials, the Secretary shall use amounts in the Fund to provide financial assistance for projects for the conservation of marine turtles for which project proposals are approved by the Secretary in accordance with this section.

(b) PROJECT PROPOSALS.—

(1) ELIGIBLE APPLICANTS.—A proposal for a project for the conservation of marine turtles may be submitted to the Secretary by—

(A) any wildlife management authority of a foreign country that has within its boundaries marine turtle nesting habitat if the activities of the authority directly or indirectly affect marine turtle conservation; or

(B) any other person or group with the demonstrated expertise required for the conservation of marine turtles.

(2) REQUIRED ELEMENTS.—A project proposal shall include—

(A) a statement of the purposes of the project;

(B) the name of the individual with overall responsibility for the project;

(C) a description of the qualifications of the individuals that will conduct the project;

(D) a description of—

(i) methods for project implementation and outcome assessment;

(ii) staff and community management for the project; and

(iii) the logistics of the project;

(E) an estimate of the funds and time required to complete the project;

(F) evidence of support for the project by appropriate governmental entities of the countries in which the project will be conducted, if the Secretary determines that such support is required for the success of the project;

(G) information regarding the source and amount of matching funding available for the project; and

(H) any other information that the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(c) PROJECT REVIEW AND APPROVAL.—

(1) IN GENERAL.—The Secretary shall—

[4] 16 U.S.C. 6603.

(A) not later than 30 days after receiving a project proposal, provide a copy of the proposal to other Federal officials, as appropriate; and

(B) review each project proposal in a timely manner to determine whether the proposal meets the criteria specified in subsection (d).

(2) CONSULTATION; APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a project proposal, and subject to the availability of funds, the Secretary, after consulting with other Federal officials, as appropriate, shall—

(A) consult on the proposal with the government of each country in which the project is to be conducted;

(B) after taking into consideration any comments resulting from the consultation, approve or disapprove the project proposal; and

(C) provide written notification of the approval or disapproval to the person that submitted the project proposal, other Federal officials, and each country described in subparagraph (A).

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a project proposal under this section if the project will help recover and sustain viable populations of marine turtles in the wild by assisting efforts in foreign countries to implement marine turtle conservation programs.

(e) PROJECT SUSTAINABILITY.—To the maximum extent practicable, in determining whether to approve project proposals under this section, the Secretary shall give preference to conservation projects that are designed to ensure effective, long-term conservation of marine turtles and their nesting habitats.

(f) MATCHING FUNDS.—In determining whether to approve project proposals under this section, the Secretary shall give preference to projects for which matching funds are available.

(g) PROJECT REPORTING.—

(1) IN GENERAL.—Each person that receives assistance under this section for a project shall submit to the Secretary periodic reports (at such intervals as the Secretary may require) that include all information that the Secretary, after consultation with other government officials, determines is necessary to evaluate the progress and success of the project for the purposes of ensuring positive results, assessing problems, and fostering improvements.

(2) AVAILABILITY TO THE PUBLIC.—Reports under paragraph (1), and any other documents relating to projects for which financial assistance is provided under this Act, shall be made available to the public.

SEC. 5.[5] MARINE TURTLE CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the Multinational Species Conservation Fund a separate account to be known as the "Marine Turtle Conservation Fund", consisting of—

(1) amounts transferred to the Secretary of the Treasury for deposit into the Fund under subsection (e);

(2) amounts appropriated to the Fund under section 6; and

[5] 16 U.S.C. 6604.

(3) any interest earned on investment of amounts in the Fund under subsection (c).

(b) EXPENDITURES FROM FUND.—

(1) IN GENERAL.—Subject to paragraph (2), on request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary, without further appropriation, such amounts as the Secretary determines are necessary to carry out section 4.

(2) ADMINISTRATIVE EXPENSES.—Of the amounts in the account available for each fiscal year, the Secretary may expend not more than 3 percent, or up to $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this Act.

(c) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(d) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(e) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations to provide assistance under section 4. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit in the Fund.

SEC. 6.[6] ADVISORY GROUP.

(a) IN GENERAL.—To assist in carrying out this Act, the Secretary may convene an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of marine turtles.

(b) PUBLIC PARTICIPATION.—

(1) MEETINGS.—The Advisory Group shall—

[6] 16 U.S.C. 6605.

(A) ensure that each meeting of the advisory group is open to the public; and

(B) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(3) MINUTES.—Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public.

(c) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory group.

SEC. 7.[7] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Fund $5,000,000 for each of fiscal years 2005 through 2009.

SEC. 8.[8] REPORT TO CONGRESS.

Not later than October 1, 2005, the Secretary shall submit to the Congress a report on the results and effectiveness of the program carried out under this Act, including recommendations concerning how this Act might be improved and whether the Fund should be continued in the future.

[7] 16 U.S.C. 6606.
[8] 16 U.S.C. 6607.

c. Shark Finning Prohibition Act

Public Law 106–557 [H.R. 5461], 114 Stat. 2772, approved December 21, 2000

AN ACT To amend the Magnuson-Stevens Fishery Conservation and Management Act to eliminate the wasteful and unsportsmanlike practice of shark finning.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Shark Finning Prohibition Act".

SEC. 2.[1] PURPOSE.

The purpose of this Act is to eliminate shark-finning by addressing the problem comprehensively at both the national and international levels.

SEC. 3.[2] PROHIBITION ON REMOVING SHARK FIN AND DISCARDING SHARK CARCASS AT SEA. * * *

SEC. 4.[1] REGULATIONS.

No later than 180 days after the date of the enactment of this Act, the Secretary of Commerce shall promulgate regulations implementing the provisions of section 3076(1)(P) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)(P)), as added by section 3 of this Act.

SEC. 5.[1] INTERNATIONAL NEGOTIATIONS.

The Secretary of Commerce, acting through the Secretary of State, shall—

(1) initiate discussions as soon as possible for the purpose of developing bilateral or multilateral agreements with other nations for the prohibition on shark-finning;

(2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in shark-finning, for the purposes of—

(A) collecting information on the nature and extent of shark-finning by such persons and the landing or transshipment of shark fins through foreign ports; and

(B) entering into bilateral and multilateral treaties with such countries to protect such species;

(3) seek agreements calling for an international ban on shark-finning and other fishing practices adversely affecting these species through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate regional fishery management bodies;

(4) initiate the amendment of any existing international treaty for the protection and conservation of species of sharks

[1] 16 U.S.C. 1822 note.

[2] Sec. 3 amends sec. 307(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)).

to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section;

(5) urge other governments involved in fishing for or importation of shark or shark products to fulfill their obligations to collect biological data, such as stock abundance and by-catch levels, as well as trade data, on shark species as called for in the 1995 Resolution on Cooperation with FAO with Regard to study on the Status of Sharks and By-Catch of Shark Species; and

(6) urge other governments to prepare and submit their respective National Plan of Action for the Conservation and Management of Sharks to the 2001 session of the FAO Committee on Fisheries, as set forth in the International Plan of Action for the Conservation and Management of Sharks.

SEC. 6.[1] REPORT TO CONGRESS.

The Secretary of Commerce, in consultation with the Secretary of State, shall provide to Congress, by not later than 1 year after the date of the enactment of this Act, and every year thereafter, a report which—

(1) includes a list that identifies nations whose vessels conduct shark-finning and details the extent of the international trade in shark fins, including estimates of value and information on harvesting of shark fins, and landings or transshipment of shark fins through foreign ports;

(2) describes the efforts taken to carry out this Act, and evaluates the progress of those efforts;

(3) sets forth a plan of action to adopt international measures for the conservation of sharks; and

(4) includes recommendations for measures to ensure that United States actions are consistent with national, international, and regional obligations relating to shark populations, including those listed under the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

SEC. 7.[1] RESEARCH.

The Secretary of Commerce, subject to the availability of appropriations authorized by section 10, shall establish a research program for Pacific and Atlantic sharks to engage in the following data collection and research:

(1) The collection of data to support stock assessments of shark populations subject to incidental or directed harvesting by commercial vessels, giving priority to species according to vulnerability of the species to fishing gear and fishing mortality, and its population status.

(2) Research to identify fishing gear and practices that prevent or minimize incidental catch of sharks in commercial and recreational fishing.

(3) Research on fishing methods that will ensure maximum likelihood of survival of captured sharks after release.

(4) Research on methods for releasing sharks from fishing gear that minimize risk of injury to fishing vessel operators and crews.

(5) Research on methods to maximize the utilization of, and funding to develop the market for, sharks not taken in violation of a fishing management plan approved under section 303 or section 307(1)(P) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853, 1857(1)(P)).

(6) Research on the nature and extent of the harvest of sharks and shark fins by foreign fleets and the international trade in shark fins and other shark products.

SEC. 8.[1] WESTERN PACIFIC LONGLINE FISHERIES COOPERATIVE RESEARCH PROGRAM.

The National Marine Fisheries Service, in consultation with the Western Pacific Fisheries Management Council, shall initiate a cooperative research program with the commercial longlining industry to carry out activities consistent with this Act, including research described in section 7 of this Act. The service may initiate such shark cooperative research programs upon the request of any other fishery management council.

SEC. 9.[1] SHARK-FINNING DEFINED.

In this Act, the term "shark-finning" means the taking of a shark, removing the fin or fins (whether or not including the tail) of a shark, and returning the remainder of the shark to the sea.

SEC. 10.[1] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Commerce for fiscal years 2001 through 2005 such sums as are necessary to carry out this Act.

d. Yukon River Salmon Act of 2000

Partial text of Public Law 106–450 [H.R. 1651], 114 Stat. 1941, approved November 7, 2000; as amended by Public Law 108–219 [H.R. 2584], 118 Stat. 615, approved April 13, 2004

AN ACT To amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXTENSION OF PERIOD FOR REIMBURSEMENT UNDER FISHERMEN'S PROTECTIVE ACT OF 1967 [1]

* * * * * * *

TITLE II—YUKON RIVER SALMON

SEC. 201.[2] SHORT TITLE.

This title may be cited as the "Yukon River Salmon Act of 2000".

SEC. 202.[3] YUKON RIVER SALMON PANEL.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There shall be a Yukon River Salmon Panel (in this title referred to as the "Panel").

(2) FUNCTIONS.—The Panel shall—

(A) advise the Secretary of State regarding the negotiation of any international agreement with Canada relating to management of salmon stocks originating from the Yukon River in Canada;

(B) advise the Secretary of the Interior regarding restoration and enhancement of such salmon stocks; and

(C) perform other functions relating to conservation and management of such salmon stocks as authorized by this or any other title.

(3) DESIGNATION AS UNITED STATES REPRESENTATIVES ON BILATERAL BODY.—The Secretary of State may designate the members of the Panel to be the United States representatives on any successor to the panel established by the interim agreement for the conservation of salmon stocks originating from the Yukon River in Canada agreed to through an exchange of notes between the Government of the United States and the Government of Canada on February 3, 1995, if authorized by any agreement establishing such successor.

(b) MEMBERSHIP.—

[1] Title I amends the Fishermen's Protective Act of 1967.
[2] 16 U.S.C. 5701 note.
[3] 16 U.S.C. 5721.

(1) IN GENERAL.—The Panel shall be comprised of six members, as follows:

(A) One member who is an official of the United States Government with expertise in salmon conservation and management, who shall be appointed by the Secretary of State.

(B) One member who is an official of the State of Alaska with expertise in salmon conservation and management, who shall be appointed by the Governor of Alaska.

(C) Four members who are knowledgeable and experienced with regard to the salmon fisheries on the Yukon River, who shall be appointed by the Secretary of State in accordance with paragraph (2).

(2) APPOINTEES FROM ALASKA.—

(A) The Secretary of State shall appoint the members under paragraph (1)(C) from a list of at least three individuals nominated for each position by the Governor of Alaska.

(B) In making the nominations, the Governor of Alaska may consider suggestions for nominations provided by organizations with expertise in Yukon River salmon fisheries.

(C) The Governor of Alaska may make appropriate nominations to allow for appointment of, and the Secretary of State shall appoint, under paragraph (1)(C)—

(i) at least one member who is qualified to represent the interests of Lower Yukon River fishing districts; and

(ii) at least one member who is qualified to represent the interests of Upper Yukon River fishing districts.

(D) At least one of the members appointed under paragraph (1)(C) shall be an Alaska Native.

(3) ALTERNATES.—

(A) The Secretary of State may designate an alternate Panel member for each Panel member the Secretary appoints under paragraphs (1)(A) and (C), who meets the same qualifications, to serve in the absence of the Panel member.

(B) The Governor of the State of Alaska may designate an alternative Panel member for the Panel member appointed under subsection (b)(1)(B), who meets the same qualifications, to serve in the absence of that Panel member.

(c) TERM LENGTH.—Panel members and alternate Panel members shall serve 4-year terms. Any individual appointed to fill a vacancy occurring before the expiration of any term shall be appointed for the remainder of that term.

(d) REAPPOINTMENT.—Panel members and alternate Panel members shall be eligible for reappointment.

(e) DECISIONS.—Decisions of the Panel shall be made by the consensus of the Panel members appointed under subparagraphs (B) and (C) of subsection (b)(1).

(f) CONSULTATIONS.—In carrying out their functions, Panel members may consult with such other interested parties as they consider appropriate.

SEC. 203.[4] ADVISORY COMMITTEE.

(a) APPOINTMENTS.—The Governor of Alaska may establish and appoint an advisory committee of not less than eight, but not more than 12, individuals who are knowledgeable and experienced with regard to the salmon fisheries on the Yukon River. At least two of the advisory committee members shall be Alaska Natives. Members of the advisory committee may attend all meetings of the Panel, and shall be given the opportunity to examine and be heard on any matter under consideration by the Panel.

(b) COMPENSATION.—The members of such advisory committee shall receive no compensation for their services.

(c) TERM LENGTH.—Members of such advisory committee shall serve 2-year terms. Any individual appointed to fill a vacancy occurring before the expiration of any term shall be appointed for the remainder of that term.

(d) REAPPOINTMENT.—Members of such advisory committee shall be eligible for reappointment.

SEC. 204.[5] EXEMPTION.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel or to an advisory committee established under section 203.

SEC. 205.[6] AUTHORITY AND RESPONSIBILITY.

(a) RESPONSIBLE MANAGEMENT ENTITY.—The State of Alaska Department of Fish and Game shall be the responsible management entity for the United States for the purposes of any agreement with Canada regarding management of salmon stocks originating from the Yukon River in Canada.

(b) EFFECT OF DESIGNATION.—The designation under subsection (a) shall not be considered to expand, diminish, or otherwise change the management authority of the State of Alaska or the Federal Government with respect to fishery resources.

(c) RECOMMENDATIONS OF PANEL.—In addition to recommendations made by the Panel to the responsible management entities in accordance with any agreement with Canada regarding management of salmon stocks originating from the Yukon River in Canada, the Panel may make recommendations concerning the conservation and management of salmon originating in the Yukon River to the Department of the Interior, the Department of Commerce, the Department of State, the North Pacific Fishery Management Council, and other Federal or State entities as appropriate. Recommendations by the Panel shall be advisory in nature.

[4] 16 U.S.C. 5722.
[5] 16 U.S.C. 5723.
[6] 16 U.S.C. 5724.

SEC. 206.[7] ADMINISTRATIVE MATTERS.

(a) COMPENSATION.—Panel members and alternate Panel members who are not State or Federal employees shall receive compensation at the daily rate of GS–15 of the General Schedule when engaged in the actual performance of duties.

(b) TRAVEL AND OTHER NECESSARY EXPENSES.—Travel and other necessary expenses shall be paid by the Secretary of the Interior for all Panel members, alternate Panel members, and members of any advisory committee established under section 203 when engaged in the actual performance of duties.

(c) TREATMENT AS FEDERAL EMPLOYEES.—Except for officials of the United States Government, all Panel members, alternate Panel members, and members of any advisory committee established under section 203 shall not be considered to be Federal employees while engaged in the actual performance of duties, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 71 of title 28, United States Code.

SEC. 207.[8] YUKON RIVER SALMON STOCK RESTORATION AND ENHANCEMENT PROJECTS.

(a) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary of Commerce, may carry out projects to restore or enhance salmon stocks originating from the Yukon River in Canada and the United States.

(b) COOPERATION WITH CANADA.—If there is in effect an agreement between the Government of the United States and the Government of Canada for the conservation of salmon stocks originating from the Yukon River in Canada that includes provisions governing projects authorized under this section, then—

(1) projects under this section shall be carried out in accordance with that agreement; and

(2) amounts available for projects under this section—

(A) shall be expended in accordance with the agreement; and

(B) may be deposited in any joint account established by the agreement to fund such projects.

SEC. 208.[9] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of the Interior to carry out this title $4,000,000 for each of fiscal years 2004 through 2008,[10] of which—

(1) such sums as are necessary shall be available each fiscal year for travel expenses of Panel members, alternate Panel members, United States members of the Joint Technical Committee established by paragraph C.2 of the memorandum of understanding concerning the Pacific Salmon Treaty between the Government of the United States and the Government of Canada (recorded January 28, 1985), and members of an advisory committee established and appointed under section 203, in accordance with Federal Travel Regulations and sections

[7] 16 U.S.C. 5725.
[8] 16 U.S.C. 5726.
[9] 16 U.S.C. 5727
[10] Sec. 303 of Public Law 108–219 (118 Stat. 616) struck out "2000, 2001, 2002, and 2003" and inserted in lieu thereof "2004 through 2008".

5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code;

(2) such sums as are necessary shall be available for the United States share of expenses incurred by the Joint Technical Committee and any panel established by any agreement between the Government of the United States and the Government of Canada for restoration and enhancement of salmon originating in Canada;

(3) up to 3,000,000 shall be available each fiscal year for activities by the Department of the Interior and the Department of Commerce for survey, restoration, and enhancement activities related to salmon stocks originating from the Yukon River in Canada, of which up to $1,200,000 shall be available each fiscal year for Yukon River salmon stock restoration and enhancement projects under section 207(b); and

(4) $600,000 shall be available each fiscal year for cooperative salmon research and management projects in the portion of the Yukon River drainage located in the United States that are recommended by the Panel.

TITLE III—FISHERY INFORMATION ACQUISITION [11]

* * * * * * *

TITLE IV—MISCELLANEOUS

* * * * * * *

[11] Title III is cited as the "Fisheries Survey Vessel Authorization Act of 2000".

e. Sustainable Fisheries Act

Partial text of Public Law 104–297 [S. 39], 110 Stat. 3559, approved October 11, 1996

AN ACT To amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Sustainable Fisheries Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows: * * *

SEC. 2. AMENDMENT OF MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

TITLE I—CONSERVATION AND MANAGEMENT

* * * * * * *

SEC. 105. FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS.

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) ATLANTIC HERRING TRANSSHIPMENT.—Within 30 days of receiving an application, the Secretary shall, under section 204(d) of the Magnuson Fishery Conservation and Management Act,[2] as amended by this Act, issue permits to up to fourteen Canadian transport vessels that are not equipped for fish harvesting or processing, for the transshipment, within the boundaries of the State of Maine or within the portion of the exclusive economic zone east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State, of Atlantic herring harvested by United States fishermen within the area described and used solely in sardine processing. In issuing a permit pursuant

[1] 16 U.S.C. 1801 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

to this subsection, the Secretary shall provide a waiver under section 201(h)(2)(C) of the Magnuson Fishery Conservation and Management Act,[2] as amended by this Act: *Provided,* That such vessels comply with Federal or State monitoring and reporting requirements for the Atlantic herring fishery, including the stationing of United States observers aboard such vessels, if necessary.

(f) * * *

(g) RUSSIAN FISHING IN THE BERING SEA.—No later than September 30, 1997, the North Pacific Fishery Management Council, in consultation with the North Pacific and Bering Sea Advisory Body, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing the institutional structures in Russia pertaining to stock assessment, management, and enforcement for fishery harvests in the Bering Sea, and recommendations for improving coordination between the United States and Russia for managing and conserving Bering Sea fishery resources of mutual concern.

* * * * * * *

f. Fishery Conservation Amendments of 1990

Partial text of Public Law 101–627 [H.R. 2061], 104 Stat. 4436, approved November 28, 1990; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To authorize appropriations to carry out the Magnuson-Stevens Fishery Conservation and Management Act[1] through fiscal year 1993, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NOTE.—This Act amended the Magnuson-Stevens Fishery Conservation and Management Act,[1] the Atlantic Tunas Convention Act of 1975, the Fishermen's Protective Act of 1967, the Anadromous Fish Conservation Act, the Interjurisdictional Fisheries Act of 1986, Central, Western, and South Pacific Fisheries Development Act, the Fish and Seafood Promotion Act of 1986, the Act of August 11, 1939, and the Marine Mammal Protection Act of 1972. Title VIII, relating to negotiations on the export or import of anadromous fish or anadromous fish products, is presented here. Title IX, the Dolphin Protection Consumer Information Act, may be found at page 251.

SHORT TITLE; TABLE OF CONTENTS

SECTION 1.[2] (a) SHORT TITLE.—The Act may be cited as the "Fishery Conservation Amendments of 1990".

(b) TABLE OF CONTENTS.—* * *

* * * * * * *

[1] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[2] 16 U.S.C. 1801 note.

TITLE VIII—MISCELLANEOUS

CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

SEC. 801.[3] (a) NEGOTIATIONS.—Within 60 days after the date of enactment of this act, the Secretary of States shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested—

(1) within the jurisdiction of a nation having naturally occurring or artificially established anadromous fish populations of the same species as the imported or export product; or

(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

(b) ISSUANCE OF CERTIFICATES.—For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which—

(1) is the nation having jurisdiction over the vessel or other means by which the fish or fish product was harvested; and

(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

(c) BILATERAL OR MULTILATERAL AGREEMENTS.—Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of $1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

(d) REGULATIONS.—The Secretary of Commerce shall, within 180 days after the date of enactment of this Act, promulgate regulations providing for—

(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States;

(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadromous fish products is not unduly disrupted.

(e) REPORT REQUIRED.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days

[3] 16 U.S.C. 1822 note.

after the date of enactment of this Act, submit to the Congress a report—

(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

(2) identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary for the adoption of such restrictions.

(f) CERTIFICATION.—If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in unlawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(1)).

* * * * * * *

g. Fishery Conservation Zone Transition Act, as amended

Partial text of Public Law 95–6, [H.J. Res. 240], 91 Stat. 14, approved February 21, 1977; as amended by Public Law 95–8 [H.R. 3753], 91 Stat. 18, approved March 3, 1977; Public Law 95–73 [H.R. 5638], 91 Stat. 283, approved July 26, 1977; Public Law 95–219 [H.R. 9794], 91 Stat. 1613, approved December 28, 1977; Public Law 95–314 [H.R. 12571], 92 Stat. 376, approved July 1, 1978; Public Law 97–212 [H.R. 3816], 96 Stat. 143 at 148, approved June 30, 1982; Public Law 98–44 [S. 625], 97 Stat. 216, approved July 12, 1983; Public Law 98–364 [H.R. 4997], 98 Stat. 440 at 442, approved July 17, 1984; and Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

JOINT RESOLUTION To give congressional approval to certain governing international fishery agreements negotiated in accordance with the Magnuson-Stevens Fishery Conservation and Management Act,[1] and for other purposes.

Whereas the Government of the United States of America and the Governments of the People's Republic of Bulgaria, the Socialist Republic of Romania, the Republic of China, the German Democratic Republic, the Union of Soviet Socialist Republics, and the Polish People's Republic have signed governing international fishery agreements for the conservation, optimum utilization, and rational management of fisheries subject to the exclusive fishery management jurisdiction of the United States under the Magnuson-Stevens Fishery Conservation and Management Act[1] (Public Law 94–265) (hereinafter referred to as the "Act"); and

Whereas the Act provides that after February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless (among other exceptions and requirements) such foreign fishing is authorized and conducted pursuant to a governing international fishery agreement; and

Whereas the Act also provides that no governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international agreement; and

Whereas the Act further provides that Congress may prohibit the entering into force and effect of any governing international fishery agreement by enactment of a joint resolution originating in either House of Congress during such 60-day period; and

[1] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

Whereas, the sixty-day period will not elapse with respect to any governing international fishery agreement, referred to in the first clause of this preamble, before March 1, 1977, the date on which the fishery conservation zone of the United States takes effect; and

Whereas early congressional action on these governing international fishery agreements is necessary in order that fishing vessels of the foreign nations concerned may be permitted to fish in the fishery conservation zone after February 28, 1977, in compliance with such Act; and

Whereas these governing international fishery agreements substantially comply with the requirements relating to such agreements contained in section 201(c) of the Act: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the "Fishery Conservation Zone Transition Act".[2]

SEC. 2.[3] CONGRESSIONAL APPROVAL OF CERTAIN GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a)[4] Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act,[1] the governing international fishery agreement between the Government of the United States of America and—

(1) the Government of the People's Republic of Bulgaria Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 14, 1974;

(2) the Government of the Socialist Republic of Romania Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(3) the Government of the Republic of China Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(4) the Government of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(5) the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(6) the Government of the Polish People's Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 16, 1976;

[2] 16 U.S.C. 1801 note.
[3] 16 U.S.C. 1823 note.
[4] Sec. 10(a) of Public Law 97–212 (96 Stat. 148) added the subsec. designation "(a)" and a new subsec. (b).

(7)[5, 6] the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977;

(8)[5] the Government of Japan Concerning Fisheries Off the Coasts of the United States (for 1977), as contained in the message to Congress from the President of the United States dated February 21, 1977;

(9)[5, 7] the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977;

(10)[5, 7] the Government of Spain Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977; and

(11)[8] the Government of Mexico Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated October 7, 1977;

is hereby approved by the Congress as a governing international fishery agreement for purposes of the Magnuson-Stevens Fishery Conservation and Management Act.[1] Each such agreement referred to in paragraphs (1) through (6) shall enter into force and effect with respect to the United States on the date of the enactment of this joint resolution, and each such agreement referred to in paragraphs (7) through (11) shall enter into force and effect with respect to the United States on February 27, 1977.[9]

(b)[4] Notwithstanding such section 203—

(1) the governing international fishery agreement referred to the subsection (a)(5), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 11,

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[5] Public Law 95–8 (91 Stat. 18) added paras. (7), (8), (9), and (10).

[6] Sec. 106 of Public Law 98–364 (98 Stat. 442) provided the following:

"SEC. 106. Notwithstanding any provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and upon certification by the Secretary of State to the President of the Senate and the Speaker of the House of Representatives that a new governing international fishery agreement in conformity with such Act has been negotiated by the United States and the European Economic Community, the existing governing international fishery agreement referred to in section 2(a)(7) of the Fishery Conservation Zone Transition Act (16 U.S.C. 1823, note) may be extended or reinstated, as the case may be, and may be in force and effect with respect to the United States, for the period of time ending on the earlier of (1) the effective date of the new governing international fishery agreement, or (2) September 30, 1984.".

[7] Sec. 10(b) of Public Law 97–212 (96 Stat. 148) provided the following:

"(b) Notwithstanding any provision of the Act entitled 'An Act for the conservation and management of the fisheries, and for other purposes', dated April 13, 1976 (16 U.S.C. 1810 *et seq.*), the governing international fishery agreements referred to in section 2(a) (9) and (10) of the Fishery Conservation Zone Transition Act shall be extended, and shall be in force and effect with respect to the United States, for the period of time ending on—

"(1) the deadline for completion of Congressional review, pursuant to section 203(a) of such 1976 Act, of any new governing international fishery agreement signed, on or before July 31, 1982, by the United States and the respective foreign government that is a party to the agreement in question; or

"(2) July 31, 1982, if the United States and the respective foreign government that is a party to the agreement in question fail to sign a new governing international fishery agreement on or before that date.".

[8] Sec. 1 of Public Law 95–219 (91 Stat. 1613) added para. (11).

[9] Public Law 95–8 (91 Stat. 18) amended and restated this sentence in order to reflect the additions of paras. (7) through (10). Public Law 95–219 (91 Stat. 1613) further amended this sentence in order to reflect the addition of para. (11).

1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976;

(2) the governing international fishery agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs, as contained in the message to the House of Representatives and the Senate from the Secretary of State dated June 15, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of the Act of 1976; and

(3) the governing international fishery agreement referred to in subsection (a)(6), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated June 21, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976.

Each such governing international fishery agreement shall enter into force and effect with respect to the United States on July 1, 1982.

(c)[10] Notwithstanding such section 203—

(1) the governing international fishery agreement referred to in subsection (a)(5), as extended until December 31, 1985,[11] pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 8, 1984,[12] is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976;

(2) the governing international fishery agreement referred to in subsection (a)(6), as extended until December 31, 1985,[11] pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 8, 1984,[12] is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976; and

(3) the governing international fishery agreement referred to in subsection (a)(4), as contained in the message to the House of Representatives and the Senate from the President of the United States dated May 3, 1983, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976.

The government international fishery agreements referred to in paragraphs (1) and (2) shall enter into force and effect with respect to the United States on July 1, 1984; and the governing international fishery agreement referred to in paragraph (3)[13] shall

[10] Sec. 105 of Public Law 98–44 (97 Stat. 217) added subsec. (c).

[11] Sec. 105 of Public Law 98–364 (98 Stat. 442) struck out "July 1, 1984" and inserted in lieu thereof "December 31, 1985".

[12] Sec. 105 of Public Law 98–364 (98 Stat. 442) struck out "May 3, 1983" and inserted in lieu thereof "May 8, 1984".

[13] Sec. 105 of Public Law 98–364 (98 Stat. 442) struck out "Each such governing international fishery agreement" and inserted in lieu thereof "The government international fishery agreements referred to in paragraphs (1) and (2) shall enter into force and effect with respect to the United States on July 1, 1984; and the governing international fishery agreement referred to in paragraph (3)".

enter into force and effect with respect to the United States on July 1, 1983.

* * * * * * *

SEC. 4. REPEAL OF NORTHWEST ATLANTIC FISHERIES ACT OF 1950.

The Northwest Atlantic Fisheries Act of 1950 (16 U.S.C. 981–991) is repealed as of March 1, 1977.

SEC. 5.[14] RECIPROCAL FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND CANADA.

(a)[15] CONGRESSIONAL APPROVAL.—The Congress hereby approves the Reciprocal Fisheries Agreement for 1978 between the Government of the United States and the Government of Canada (hereinafter in this section referred to as the "Agreement") as contained in the message to Congress from the President of the United States dated May 1, 1978. The Agreement shall be in force and effect with respect to the United States from January 1, 1978, until such later date in 1978 as may be determined pursuant to the terms of the Agreement.

(b) APPLICATION.—During the period when the Agreement is in force and effect with respect to the United States—

(1) vessels and nationals of Canada may fish within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, but only pursuant to, and in accordance with, the provisions of the Agreement; and

(2) title II of the Magnuson-Stevens Fishery Conservation and Management Act[1] (relating to foreign fishing and international fishery agreements) and section 307 of such Act of 1976 (relating to prohibited acts) shall not apply with respect to fishing within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, by vessels and nationals of Canada which is pursuant to, and in accordance with, the provisions of the Agreement.

(c) FISHING STATISTICS.—(1) Any person who—

(A) owns or operates any fishing vessel which—

(i) is a vessel of the United States, and

(ii) engages in fishing to which the Agreement applies; or

(B) directly or indirectly receives, or may receive, fish to which the Agreement applies in the course of a commercial activity in quantities determined by the Secretary to be sufficient to assist in the carrying out of this paragraph,

shall submit to the Secretary such statistics (including, but not limited to, catch data) regarding such fishing or such receipt of fish as are necessary to fulfill the obligations of the United States under article XIII of the Agreement. The Secretary, after consultation with the Secretary of State, shall issue such regulations as are

[14] 16 U.S.C. 1823 note. Public Law 95–73 (91 Stat. 283) added sec. 5.

[15] Public Law 95–314 (92 Stat. 376) amended and restated subsec. (a). Former subsec. (a) concerned congressional approval for a 1977 Reciprocal Fisheries Agreement between the United States and Canada.

necessary and appropriate to carry out the purposes of this paragraph. Section 303(d) of the Magnuson-Stevens Fishery Conservation and Management Act [1] (relating to the confidentiality of statistics) shall apply with respect to all statistics submitted under this paragraph.

(2) Any violation of paragraph (1), or of any regulation issued pursuant to paragraph (1), by any person shall be deemed to be an act prohibited by section 307 of the Magnuson-Stevens Fishery Conservation and Management Act.[1] Any person who commits any such violation shall be liable to the United States for a civil penalty as provided for in section 308 of such Act of 1976. Sections 309 (relating to criminal offenses) and 310 (relating to civil forfeiture) of such Act of 1976 shall not apply with respect to any such violation.

(d) DEFINITIONS.—As used in this section, the terms "anadromous species", "Continental Shelf fishery resources", "fishing conservation zone",[16] "fishing", "fishing vessel", "Secretary", and "vessel of the United States" shall have the same respective meanings as are given to such terms in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act.[1]

[16] Sec. 101(c)(2) of Public Law 99–659 (100 Stat. 3707) struck out "exclusive economic zone" and inserted in lieu thereof "fishery conservation zone".

h. Deep Seabed Hard Mineral Resources Act

Public Law 96–283 [H.R. 2759], 94 Stat. 553, approved June 28, 1980; as amended by Public Law 97–416 [H.R. 6120], 96 Stat. 2084, approved January 4, 1983; Public Law 98–623 [H.R. 6342], 98 Stat. 3394 at 3408, approved November 8, 1984; Public Law 99–507 [H.R. 4212], 100 Stat. 1847, approved October 21, 1986; Public Law 101–178 [H.R. 2120], 103 Stat. 1297, approved November 28, 1989; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; and Public Law 107–273 [H.R. 2215], 116 Stat. 1758, approved November 2, 2002

AN ACT To establish an interim procedure for the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Deep Seabed Hard Mineral Resources Act".

SEC. 2.[2] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the United States' requirements for hard minerals to satisfy national industrial needs will continue to expand and the demand for such minerals will increasingly exceed the available domestic sources of supply;

(2) in the case of certain hard minerals, the United States is dependent upon foreign sources of supply and the acquisition of such minerals from foreign sources is a significant factor in the national balance-of-payments position;

(3) the present and future national interest of the United States requires the availability of hard mineral resources which is independent of the export policies of foreign nations;

(4) there is an alternate source of supply, which is significant in relation to national needs, of certain hard minerals, including nickel, copper, cobalt, and manganese, contained in the nodules existing in great abundance on the deep seabed;

(5) the nations of the world, including the United States, will benefit if the hard mineral resources of the deep seabed beyond limits of national jurisdiction can be developed and made available for their use;

(6) in particular, future access to the nickel, copper, cobalt, and manganese resources of the deep seabed will be important to the industrial needs of the nations of the world, both developed and developing;

[1] 30 U.S.C. 1401 note.
[2] 30 U.S.C. 1401.

(7) on December 17, 1970, the United States supported (by affirmative vote) the United Nations General Assembly Resolution 2749 (XXV) declaring inter alia the principle that the mineral resources of the deep seabed are the common heritage of mankind, with the expectation that this principle would be legally defined under the terms of a comprehensive international Law of the Sea Treaty yet to be agreed upon;

(8) it is in the national interest of the United States and other nations to encourage a widely acceptable Law of the Sea Treaty, which will provide a new legal order for the oceans covering a broad range of ocean interests, including exploration for and commercial recovery of hard mineral resources of the deep seabed;

(9) the negotiations to conclude such a Treaty and establish the international regime governing the exercise of rights over, and exploration of, the resources of the deep seabed, referred to in General Assembly Resolution 2749 (XXV) are in progress but may not be concluded in the near future;

(10) even if such negotiations are completed promptly, much time will elapse before such an international regime is established and in operation;

(11) development of technology required for the exploration and recovery of hard mineral resources of the deep seabed will require substantial investment for many years before commercial production can occur, and must proceed at this time if deep seabed minerals are to be available when needed;

(12) it is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas subject to a duty of reasonable regard to the interests of other states in their exercise of those and other freedoms recognized by general principles of international law;

(13) pending a Law of the Sea Treaty, and in the absence of agreement among states on applicable principles of international law, the uncertainty among potential investors as to the future legal regime is likely to discourage or prevent the investments necessary to develop deep seabed mining technology;

(14) pending a Law of the Sea Treaty, the protection of the marine environment from damage caused by exploration or recovery of hard mineral resources of the deep seabed depends upon the enactment of suitable interim national legislation;

(15) a Law of the Sea Treaty is likely to establish financial arrangements which obligate the United States or United States citizens to make payments to an international organization with respect to exploration or recovery of the hard mineral resources of the deep seabed; and

(16) legislation is required to establish an interim legal regime under which technology can be developed and the exploration and recovery of the hard mineral resources of the deep seabed can take place until such time as a Law of the Sea Treaty enters into force with respect to the United States.

(b) PURPOSES.—The Congress declares that the purposes of this Act are—

(1) to encourage the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) pending the ratification by, and entering into force with respect to, the United States of such a Treaty, to provide for the establishment of an international revenue-sharing fund the proceeds of which shall be used for sharing the international community pursuant to such Treaty;

(3) to establish, pending the ratification by, and entering into force with respect to, the United States of such a Treaty, an interim program to regulate the exploration for the commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(4) to accelerate the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assure that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea; and

(5) to encourage the continued development of technology necessary to recover the hard mineral resources of the deep seabed.

SEC. 3.[3] INTERNATIONAL OBJECTIVES OF THIS ACT.

(a) DISCLAIMER OF EXTRATERRITORIAL SOVEREIGNTY.—By the enactment of this Act, the United States—

(1) exercises its jurisdiction over United States citizens and vessels, and foreign persons and vessels otherwise subject to its jurisdiction, in the exercise of the high seas freedom to engage in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in accordance with generally accepted principles of international law recognized by the United States; but

(2) does not thereby assert sovereignty of sovereign or exclusive rights or jurisdiction over, or the ownership of, any areas or resources in the deep seabed.

(b) SECRETARY OF STATE.—(1) The Secretary of State is encouraged to negotiate successfully a comprehensive Law of the Sea Treaty which, among other things, provides assured and nondiscriminatory access to the hard mineral resources of the deep seabed for all nations, gives legal definition to the principle that the resources of the deep seabed are the common heritage of mankind, and provides for the establishment of requirements for the protection of the quality of the environment as stringent as those promulgated pursuant to this Act.

(2) Until such a Treaty is concluded, the Secretary of State is encouraged to promote any international actions necessary to adequately protect the environment from adverse impacts which may result from any exploration for and commercial recovery of hard

[3] 30 U.S.C. 1402.

mineral resources of the deep seabed carried out by persons not subject to this Act.

SEC. 4.[4] DEFINITIONS.

For purposes of this Act, the term—

(1) "commercial recovery" means—

(A) any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(B) if such recovered hard mineral resource will be processed at sea, such processing; and

(C) if the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(2) "Continental Shelf" means—

(A) the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(B) the selected and subsoil of similar submarine areas adjacent to the coast of islands;

(3) "controlling interest", for purposes of paragraph 14(C) of this section, means a director or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(4) "deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(A) the Continental Shelf of any nation; and

(B) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(5) "exploration" means—

(A) any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) the nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) the environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(B) the taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication, and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

[4] 30 U.S.C. 1403.

(6) "hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals at least one of which contains, manganese, nickel, cobalt, or copper;

(7) "international agreement" means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(8) "licensee" means the holder of a license issued under title I of this Act to engage in exploration;

(9) "permittee" means the holder of a permit issued under title I of this Act to engage in commercial recovery;

(10) "person" means any United States citizen, any individual, and any other corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(11) "reciprocating state" means any foreign nation designated as such by the Administration under section 118;

(12) "Administrator" means the administrator of the National Oceanic and Atmospheric Administration;

(13) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(14) "United States citizen" means—

(A) any individual who is a citizen of the United States;

(B) any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(C) any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in subparagraph (A) or (B).

TITLE I—REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

SEC. 101.[5] PROHIBITED ACTIVITIES BY UNITED STATES CITIZENS.

(a) PROHIBITED ACTIVITIES AND EXCEPTIONS.—(1) No United States citizen may engage in any exploration or commercial recovery unless authorized to do so under—

(A) a license or a permit issued under this title;

(B) a license, permit, or equivalent authorization issued by a reciprocating state; or

(C) an international agreement which is in force with respect to the United States.

(2) The prohibitions of this subsection shall not apply to any of the following activities:

[5] 30 U.S.C. 1411.

(A) Scientific research, including that concerning hard mineral resources.

(B) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment.

(C) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction, or testing is conducted on shore, or does not involve the recovery of any incidental hard mineral resources.

(D) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under this title, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement.

(E) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(b) EXISTING EXPLORATION.—(1) Subsection (a)(1)(A) shall not be deemed to prohibit any United States citizen who is engaged in exploration before the effective date of this Act from continuing to engage in such exploration—

(A) if such citizen applies for a license under section 103(a) with respect to such exploration within such reasonable period of time, after the date on which initial regulations to implement section 103(a) are issued, as the Administrator shall prescribe; and

(B) until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of the application for, or issuance of, such license.

(2) Notwithstanding paragraph (1), if the President by Executive order determines that immediate suspension of exploration activities is necessary for the reasons set forth in section 106(a)(2)(B) or the Administrator determines that immediate suspension of activities is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, the Administrator is authorized, notwithstanding any other requirement of this Act, to issue an emergency order requiring any United States citizen who is engaged in exploration before the effective date of this Act to immediately suspend exploration activities. The issuance of such emergency order is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(3) The timely filing of any application for a license under paragraph (1)(A) shall entitle the applicant to priority of right for the issuance of such license under section 103(b). In any case in which more than one application referred to in paragraph (1) is filed based on exploration plans required by section 103(a)(2) which refer to all or part of the same deep seabed area, the Administrator shall, in taking action on such applications, apply principles of equity which take into consideration, among other things, the date on

which the applicants or predecessors in interest, or component organizations thereof, commenced exploration activities and the continuity and extent of such exploration and amount of funds expended with respect to such exploration.

(c) INTERFERENCE.—No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the United States to the licensee or permittee under this Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. United States citizens shall exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

SEC. 102.[6] LICENSES FOR EXPLORATION AND PERMITS FOR COMMERCIAL RECOVERY.

(a) AUTHORITY TO ISSUE.—Subject to the provisions of this Act, the Administrator shall issue to applicants who are eligible therefor licenses for exploration and permits for commercial recovery.

(b) NATURE OF LICENSES AND PERMITS.—(1) A license or permit issued under this title shall authorize the holder thereof to engage in exploration or commercial recovery, as the case may be, consistent with the provisions of this Act, the regulations issued by the Administrator to implement the provisions of this Act, and the specific terms, conditions, and restrictions applied to the license or permit by the Administrator.

(2) Any license or permit issued under this title shall be exclusive with respect to the holder thereof as against any other United States legal entity organized or existing under the laws of, any reciprocating state.

(3) A valid existing license shall entitle the holder, if otherwise eligible under the provisions of this Act and regulations issued under this Act, to a permit for commercial recovery. Such a permit recognizes the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of this Act.

(4) In the event of interference with the exploration or commercial recovery activities of a licensee or permittee by nationals of other states, the Secretary of State shall use all peaceful means to resolve the controversy by negotiation, conciliation, arbitration, or resort to agreed tribunals.

(c) RESTRICTIONS.—(1) The Administrator may not issue—

(A) any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(B) any license or permit the exploration plan or recovery plan of which, submitted pursuant to section 103(a)(2), would apply to an area to which applies, or would conflict with, (i)

[6] 30 U.S.C. 1412.

any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under section 103(b), (ii) any exploration plan or recovery plan associated with any existing license or permit, or (iii) any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to this title;

(C) a permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to other than the licensee for such area;

(D) any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1983;

(E) any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit, (i) the applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant, or (ii) a license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106; or

(F) a license or permit, or approve the transfer of a license or permit, except to a United States citizen.

(2) No permittee may use any vessel for the commercial recovery of hard mineral resources or for the processing at sea at hard mineral resources recovered under the permit issued to the permittee unless the vessel is documented under the laws of the United States.

(3) Each permittee shall use at least one vessel documented under the laws of the United States for the transportation from each mining site of hard mineral resources recovered under the permit issued to the permittee.

(4) For purposes of the shipping laws of the United States, any vessel documented under the laws of the United States and used in the commercial recovery, processing, or transportation from any mining site of hard mineral resources recovered under a permit issued under this title shall be deemed to be used in, and used in an essential service in, the foreign commerce of foreign trade of the United States, as defined in section 905(a) of the Merchant Marine Act, 1936, and shall be deemed to be a vessel as defined in section 1101(b) of that Act.

(5) Except as otherwise provided in this paragraph, the processing on land of hard mineral resources recovered pursuant to a permit shall be conducted within the United States; *Provided,* That the President does not determine that such restrictions contravene the overriding national interests of the United States. The Administrator may allow the processing of hard mineral resources at a place other than within the United States if he finds, after opportunity for an agency hearing, that—

(A) the processing of the quantity concerned of such resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of a permittee; and

(B) satisfactory assurances have been given by the permittee that such resource, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

SEC. 103.[7] LICENSE AND PERMIT APPLICATIONS, REVIEW, AND CERTIFICATION.

(a) APPLICATIONS.—(1) Any United States citizen may apply to the Administrator for the issuance of transfer of a license for exploration or a permit for commercial recovery.

(2)(A) Applications for issuance or transfer of license for exploration and permits for commercial recovery shall be made in such form and manner as the Administrator shall prescribe in general and uniform regulations and shall contain such relevant financial, technical, and environmental information as the Administrator may by regulations require as being necessary and appropriate for carrying out the provisions of this title. In accordance with such regulations, each applicant for the issuance of a license shall submit an exploration plan as described in subparagraph (B), and each applicant for a permit shall submit a recovery plan as described in subparagraph (C).

(B) The exploration plan for a license shall set forth the activities proposed to be carried out during the period of the license, describe the area to be explored, and include the intended exploration schedule and methods to be used, the development and testing of systems for commercial recovery to take place under the terms of the license, an estimated schedule of expenditures, measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery, and such other information as is necessary and appropriate to carry out the provisions of this title. The area set forth in an exploration plan shall be of sufficient size to allow for intensive exploration.

(C) The recovery plan for a permit shall set forth the activities proposed to be carried out during the period of the permit, and shall include the intended schedule of commercial recovery, environmental safeguards and monitoring systems, details of the area or areas proposed for commercial recovery, a resource assessment thereof, the methods and technology to be used for commercial recovery and processing, the methods to be used for disposal of wastes from recovery and processing, and such other information as is necessary and appropriate to carry out the provisions of this title.

(D) The applicant shall select the size and location of the area of the exploration plan or recovery plan, which area shall be approved unless the Administrator finds that—

(i) the area is not a logical mining unit; or

[7] 30 U.S.C. 1413.

(ii) commercial recovery activities in the proposed location would result in a significant adverse impact on the quality of the environment which cannot be avoided by the imposition of reasonable restrictions.

(E) For purposes of subparagraph (D), "logical mining unit" means—

(i) in the case of a license for exploration, an area of the deep seabed which can be explored under the license in an efficient economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan; or

(ii) in the case of a permit, an area of the deep seabed—

(I) in which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(II) which is not larger than is necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(III) in relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(b) PRIORITY OF RIGHT FOR ISSUANCE.—Subject to section 101(b), priority of right for the issuance of licenses to applicants shall be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under subsection (a)(2) of this section are filed with the Administrator. Priority of right shall not be lost in the case of any application filed which is in substantial but not full compliance with such requirements if the applicant thereafter brings the application into conformity with such requirements within such reasonable period of time as the Administrator shall prescribe in regulations.

(c) ELIGIBILITY FOR CERTIFICATION.—Before the Administrator may certify any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with other departments and agencies pursuant to subsection (e) of this section, that—

(1) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will be financially responsible to meet all obligations which may be required of a licensee or permittee to engage in the exploration or commercial recovery proposed in the application;

(2) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will have the technological capability to engage in such exploration or commercial recovery;

(3) the applicant has satisfactorily fulfilled all obligations under any license or permit previously issued or transferred to the applicant under this Act; and

(4) the proposed exploration plan or recovery plan of the applicant meets the requirements of this Act and the regulations issued under this Act.

(d) ANTITRUST REVIEW.—(1) Whenever the Administrator receives any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator shall transmit promptly a complete copy of such application to the Attorney General of the United States and the Federal Trade Commission.

(2) The Attorney General and the Federal Trade Commission shall conduct such antitrust review of the application as they deem appropriate and shall, if they deem appropriate, advise the Administrator of the likely effects of such issuance or transfer on competition.

(3) The Attorney General and the Federal Trade Commission may make any recommendations they deem advisable to avoid any action upon such application by the Administrator which would create or maintain a situation inconsistent with the antitrust laws. Such recommendations may include, without limitation, the denial of issuance or transfer of the license or permit or issuance or transfer upon such terms and conditions as may be appropriate.

(4) Any advice or recommendation submitted by the Attorney General or the Federal Trade Commission pursuant to this subsection shall be submitted within 90 days after receipt by them of the application. The Administrator shall not issue or transfer the license or permit during that 90-day period, except upon written confirmation by the Attorney General and the Federal Trade Commission that neither intends to submit any further advice or recommendation with respect to the application.

(5) If the Administrator decides to issue or transfer the license or permit with respect to which denial of the issuance or transfer of the license or permit has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer the license or permit without imposing those terms and conditions recommended by the Attorney General or the Federal Trade Commission as appropriate to prevent any situation inconsistent with the antitrust laws, the Administrator shall, prior to or upon issuance or transfer of the license or permit, notify the Attorney General and the Federal Trade Commission of the reasons for such decision.

(6) The issuance or transfer of a license or permit under this title shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(7) As used in this subsection, the term "antitrust laws" means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1–7); sections 73 through 76[8] of the Act of August 27, 1894

[8] Sec. 14102(c)(2)(E) of Public Law 107–273 (116 Stat. 1921) struck out "77" and inserted in lieu thereof "76".

(commonly known as the Wilson Tariff Act; 15 U.S.C. 8–11); the Clayton Act (15 U.S.C. 12 *et seq.*); the Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13–13b and 21a); and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

(e) OTHER FEDERAL AGENCIES.—The Administrator shall provide by regulation for full consultation and cooperation, prior to certification of an application for the issuance or transfer of any license for exploration or permit for commercial recovery and prior to the issuance or transfer of such a license or permit, with other Federal agencies or departments which have programs or activities within their statutory responsibilities which would be affected by the activities proposed in the application for the issuance or transfer of a license or permit. Not later than 30 days after the date of enactment of this Act, the heads of any Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the recovery or processing of hard mineral resources shall transmit to the Administrator written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law. To the extent possible, such agencies shall cooperate to reduce the number of separate actions required to satisfy the statutory responsibilities of these agencies. The Administrator shall transmit to each such agency or department a complete copy of each application and each such agency or department, based on its legal responsibilities and authorities, may, not later than 60 days after receipt of the application, recommend certification of the application, issuance or transfer of the license or permit, or denial of such certification, issuance, or transfer. In any case in which an agency or department recommends such a denial, it shall set forth in detail the manner in which the area of responsibility and shall indicate how the application may be amended, or how terms, conditions, or restrictions might be added to the license or permit, to assure compliance with such law or regulation.

(f) REVIEW PERIOD.—All time periods for the review of an application for issuance or transfer of a license or permit established pursuant to this section shall, to the maximum extent practicable, run concurrently from the date on which the application is received by the Administrator.

(g) APPLICATION CERTIFICATION.—Upon making the applicable determinations and findings required in sections 101, 102, and this section with respect to any applicant for the issuance or transfer of a license or a permit and the exploration or commercial recovery proposed by such applicant, after completion of procedures for receiving the application required by this Act, and upon payment by the applicant of the fee required under section 104, the Administrator shall certify the application for the issuance or transfer of the license or permit. The Administrator, to the maximum extent possible, shall endeavor to complete certification action on the application within 100 days after its submission. If final certification or denial of certification has not occurred within 100 days after submission of the application, the Administrator shall inform the

applicant in writing of the then pending unresolved issues, the Administrator's efforts to resolve them, and an estimate of the time required to do so.

SEC. 104.[9] LICENSE AND PERMIT FEES.

No application for the issuance or transfer of a license for exploration or permit for commercial recovery shall be certified unless the applicant pays to the Administrator a reasonable administrative fee which shall be deposited into miscellaneous receipts of the Treasury. The amount of the administrative fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred in reviewing and processing the application.

SEC. 105.[10] LICENSE AND PERMIT TERMS, CONDITIONS, AND RESTRICTIONS; ISSUANCE AND TRANSFER OF LICENSES AND PERMITS.

(a) ELIGIBILITY FOR ISSUANCE OR TRANSFER OF LICENSE OR PERMIT.—Before issuing or transferring a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with interested departments and agencies pursuant to section 103(e), and upon considering public comments received with respect to the license or permit, that the exploration or commercial recovery proposed in the application—

(1) will not unreasonably interfere with the exercise of the freedoms of the high seas by other states, as recognized under general principles of international law;

(2) will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States;

(3) will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict;

(4) cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable environmental impact statement prepared pursuant to section 109(c) or 109(d); and

(5) will not pose an inordinate threat to the safety of life and property at sea.

(b) ISSUANCE AND TRANSFER OF LICENSES AND PERMITS WITH TERMS, CONDITIONS, AND RESTRICTIONS.—(1) Within 180 days after certification of any application for the issuance or transfer of a license or permit under section 103(g), the Administrator shall propose terms and conditions for, and restrictions on, the exploration or commercial recovery proposed in the application which are consistent with the provisions of this Act and regulations issued under this Act. If additional time is needed, the Administrator shall notify the applicant in writing of the reasons for the delay and indicate the approximate date on which the proposed terms, conditions, and restrictions will be completed. The Administrator shall provide to each applicant a written statement of the proposed terms, conditions, and restrictions. Such terms, conditions, and restrictions shall be generally specified in regulations with general criteria and

[9] 30 U.S.C. 1414.
[10] 30 U.S.C. 1415.

standards to be used in establishing such terms, conditions and restrictions for a license or permit and shall be uniform in all licenses or permits, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea.

(2) After preparation and consideration of the final environmental impact statement pursuant to section 109(d) on the proposed issuance of a license or permit and subject to the other provisions of this Act, the Administrator shall issue to the applicant the license or permit with the terms, conditions, and restrictions incorporated therein.

(3) The licensee or permittee to whom a license or permit is issued or transferred shall be deemed to have accepted the terms, conditions, and restrictions in the license or permit if the licensee or permittee does not notify the Administrator within 60 days after receipt of the license or permit of each term, condition, and restriction with which the licensee or permittee takes exception. The licensee or permittee, may, in addition to such objections as may be raised under applicable provisions of law, object to any term, condition, or restriction on the ground that the term, condition, or restriction is inconsistent with the Act or the regulations promulgated thereunder. If, after the Administrator takes final action on these objections, the licensee or permittee demonstrates that a dispute remains on a material issue of fact, the licensee or permittee is entitled to a decision on record after the opportunity for an agency hearing pursuant to sections 556 and 557 of title 5, United States Code. Any such decision made by the Administrator shall be subject to judicial review as provided in chapter 7 of title 5, United States Code.

(c) MODIFICATION AND REVISION OF TERMS, CONDITIONS, AND RESTRICTIONS.—(1) After the issuance or transfer of any license or permit under subsection (b), the Administrator, after consultation with interested agencies and the licensee or permittee, may modify any term, condition, or restriction in such license or point—

(A) to avoid unreasonable interference with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law;

(B) if relevant data and other information (including, but not limited to, data resulting from exploration or commercial recovery activities under the license or permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea and if such modification is consistent with the regulations issued to carry out section 109(b);

(C) to avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(D) to avoid any situation which may reasonably be expected to lead to a breach of international peace in writing by the President.

(2) During the term of a license or a permit, the licensee or permittee may submit to the Administrator an application for a revision of the license or permit or the exploration plan or recovery plan associated with the license or permit. The Administrator shall approve such application upon a finding in writing that the revision will comply with the requirements of this Act and the regulations issued under this Act.

(3) The Administrator shall establish, by regulation, guidelines for a determination of the scale or extent of a proposed modification or revision for which any or all license or permit application requirements and procedures, including a public hearing, shall apply. Any increase in the size of the area, or any change in the location of an area, to which an exploration plan or a recovery plan applies, except an incidental increase or change, must be made by application for another license or permit.

(4) The procedures set forth in subsection (b)(3) of this section shall apply with respect to any modification under this subsection in the same manner, and to the same extent, as if such modification were an initial term, condition, or restriction proposed by the Administrator.

(d) PRIOR CONSULTATIONS.—Prior to making a determination to issue, transfer, modify, or renew a license or permit under this section, the Administrator shall consult with any affected Regional Fishery Management Council established pursuant to section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852),[11] if the activities undertaken pursuant to such license or permit could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

SEC. 106.[12] DENIAL OF CERTIFICATION OF APPLICATIONS AND OF ISSUANCE, TRANSFER, SUSPENSION, AND REVOCATION OF LICENSES AND PERMITS; SUSPENSION AND MODIFICATION OF ACTIVITIES.

(a) DENIAL, SUSPENSION, MODIFICATION, AND REVOCATION.—(1) The Administration may deny certification of an application for the issuance or transfer of, and may deny the issuance or transfer of, a license for exploration or permit for commercial recovery if the Administrator finds that the applicant, or the activities proposed to be undertaken by the applicant, do not meet the requirements set forth in section 103(c), section 105(a), or in any other provision of this Act, or any regulation issued under this Act, for the issuance or transfer of a license or permit.

(2) The Administrator may—

(A) in addition to, or in lieu of, the imposition of any civil penalty under section 302(a), or in addition to the imposition of any fine under section 303, suspend or revoke any license or permit issued under this Act, or suspend or modify any particular activities under such a license or permit, if the licensee

[11] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[12] 30 U.S.C. 1416.

or permittee, as the case may be, substantially fails to comply with any provision of this Act, any regulation issued under this Act, or any term, condition, or restriction of the license or permit; and

(B) suspend or modify particular activities under any license or permit, if the President determines that such suspension or modification is necessary (i) to avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States, or (ii) to avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(3) No action may be taken by the Administrator to deny issuance or transfer of or to revoke any license or permit or, except as provided in subsection (c), to suspend any license or permit or suspend or modify particular activities under a license or permit, unless the Administrator—

(A) publishes in the Federal Register and gives the applicant, licensee, or permittee, as the case may be, written notice of the intention of the Administrator to deny the issuance or transfer of or to suspend, modify, or revoke the license or permit and the reason therefor; and

(B) if the reason for the proposed denial, suspension, modification, or revocation is a deficiency which the applicant, licensee, or permittee can correct, affords the applicant, licensee, or permittee a reasonable time, but not more than 180 days from the date of the notice or such longer period as the Administrator may establish for good cause shown, to correct such deficiency.

(4) The Administrator shall deny issuance or transfer of, or suspend or revoke, any license or permit or order the suspension or modification of particular activities under a license or permit—

(A) on the thirtieth day after the date of the notice given to the applicant, licensee, or permittee under paragraph (3)(A) unless before such day the applicant, licensee, or permittee requests a review of the proposed denial, suspension, modification, or revocation; or

(B) on the last day of the period established under paragraph (3)(B) in which the applicant, licensee, or permittee must correct a deficiency, if such correction has not been made before such day.

(b) ADMINISTRATIVE REVIEW OF PROPOSED DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION.—Any applicant, licensee, or permittee, as the case may be, who makes a timely request under subsection (a) for review of a denial of issuance or transfer, or a suspension or revocation, or a license for exploration or permit for commercial recovery, or a suspension or modification of particular activities under such a license or permit, is entitled to an adjudication on the record after an opportunity for an agency hearing with respect to such denial or suspension, revocation, or modification.

(c) EFFECT ON ACTIVITIES; EMERGENCY ORDERS.—The issuance of any notice of proposed suspension or revocation of a license for exploration or permit for commercial recovery or proposed suspension

or modification of particular activities under such a license or permit shall not affect the continuation of exploration or commercial recovery activities by the licensee or permittee. The provisions of paragraphs (3) and (4) of subsection (a) and the first sentence of this subsection shall not apply when the President determines by Executive order that an immediate suspension of a license for exploration or permit for commercial recovery, or immediate suspension or modification of particular activities under such a license or permit, is necessary for the reasons set forth in subsection (a)(2)(B), or the Administrator determines that an immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, and the Administrator issues an emergency order requiring such immediate suspension.

(d) JUDICIAL REVIEW.—Any determination of the Administrator, after any appropriate administrative review under subsection (b), to certify or deny certification of an application for the issuance or transfer of, or to issue, deny issuance of, transfer, deny the transfer of, modify, renew, suspend, or revoke any license for exploration or permit for commercial recovery, or suspend or modify particular activities under such a license or permit, or any immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, pursuant to subsection (c), is subject to judicial review as provided in chapter 7 of title 5, United States Code.

SEC. 107.[13] DURATION OF LICENSES AND PERMITS.

(a) DURATION OF A LICENSE.—Each license for exploration shall be issued for a period of 10 years. If the license has substantially complied with the license and the exploration plan associated therewith and has requested extensions of the license, the Administrator shall extend the license on terms, conditions, and restrictions consistent with this Act and the regulations issued under this Act for periods of not more than 5 years each.

(b) DURATION OF A PERMIT.—Each permit for commercial recovery shall be issued for a term of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The permit of any permittee who is not recovering hard mineral resources in commercial quantities at the end of 10 years shall be terminated; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, unavoidable delays in construction, major unanticipated vessel repairs that prevent the permittee from conducting commercial recovery activities during an annual period, or other circumstances beyond the control of the permittee, extend the 10-year period, but not beyond the initial 20-year term of the permit.

[13] 30 U.S.C. 1417.

SEC. 108.[14] DILIGENCE REQUIREMENTS.

(a) IN GENERAL.—The exploration plan or recovery plan and the terms, conditions, and restrictions of each, license and permit issued under this title shall be designed to assure diligent development. Each licensee shall pursue diligently the activities described in the exploration plan of the licensee, and each permittee shall pursue diligently the activities described in the recovery plan of the permittee.

(b) EXPENDITURES.—Each license shall require such periodic reasonable expenditures for exploration by the licensee as the Administrator shall establish, taking into account the size of the area of the deep seabed to which the exploration plan associated with the license applies and the amount of funds which is estimated by the Administrator to be required for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. Such required expenditures shall not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(c) COMMERCIAL RECOVERY.—Once commercial recovery is achieved, the Administrator shall, within reasonable limits and taking into consideration all relevant factors, require the permittee to maintain commercial recovery throughout the period of the permit; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, or other circumstances beyond the control of the permittee, authorize the temporary suspension of commercial recovery activities. The duration of such a suspension shall not exceed one year at any one time, unless the Administrator determines that conditions justify an extension of the suspension.

SEC. 109.[15] PROTECTION OF THE ENVIRONMENT.

(a) ENVIRONMENT ASSESSMENT.—(1) DEEP OCEAN MINING ENVIRONMENTAL STUDY (DOMES).—The Administrator shall expand and accelerate the program assessing the effects on the environment from exploration and commercial recovery activities, including sea-based processing and the disposal at sea of processing wastes, so as to provide an assessment, as accurate as practicable, of environmental impacts of such activities for the implementation of subsections (b), (c), and (d).

(2) SUPPORTING OCEAN RESEARCH.—The Administrator also shall conduct a continuing program of ocean research to support environmental assessment activity through the period of exploration and commercial recovery authorized by this Act. The program shall include the development, acceleration, and expansion, as appropriate, of studies of the ecological, and physical aspects of the deep seabed in general areas of the ocean where exploration and commercial development under the authority of this Act are likely to occur, including, but not limited to—

(A) natural diversity of the deep seabed biota;

(B) life histories of major benthic, midwater, and surface organism most likely to be affected by commercial recovery activities;

[14] 30 U.S.C. 1418.
[15] 30 U.S.C. 1419.

(C) long- and short-term effects of commercial recovery on the deep seabed biota; and

(D) assessment of the effects of seabased processing activities.

Within 160 days after the date of enactment of this Act, the Administrator shall prepare a plan to carry out the program described in this subsection, including necessary funding levels for the next five fiscal years, and shall submit the plan to the Congress.

(b) TERMS, CONDITIONS, AND RESTRICTIONS.—Each license and permit issued under this title shall contain such terms, conditions, and restrictions, established by the Administrator, which prescribe the actions the license or permittee shall take in the conduct of exploration and commercial recovery activities to assure protection of the environment. The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Before establishing such terms, conditions, and restrictions, the Administrator shall consult with the Administrator of the Environmental Protection Agency, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating, concerning such terms, conditions, and restrictions, and the Administrator shall take into account and give due consideration to the information contained in each final environmental impact statement prepared with respect to such license or permit pursuant to subsection (d).

(c) PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.—(1) If the Administrator, in consultation with the Administrator of the Environmental Protection Agency and with assistance of other appropriate Federal agencies, determines that a programmatic environmental impact statement is required, the Administrator shall, as soon as practicable after the enactment of this act, with respect to the areas of the oceans in which any United States citizen is expected to undertake exploration and commercial recovery under the authority of this Act—

(A) prepare and publish draft programmatic environmental impact statements which assess the environmental impacts of exploration and commercial recovery in such areas;

(B) afford all interested parties a reasonable time after such dates of publication to submit comments to the Administrator on such draft statements; and

(C) thereafter prepare (giving full consideration to all comments submitted under subparagraph (B)) and publish final programmatic environmental impact statements regarding such areas.

(2) With respect to the area of the oceans in which exploration and commercial recovery by any United States citizen will likely first occur under the authority of this Act, the Administrator shall prepare a draft and final programmatic environmental impact statement as required under paragraph (1), except that—

(A) the draft programmatic environmental impact statement shall be prepared and published as soon as practicable but not later than 270 days (or such longer period as the Administrator may establish for good cause shown) after the date of enactment of this Act; and

(B) the final programmatic environmental impact statement shall be prepared and published within 180 days (or such longer period as the Administrator may establish for good cause shown) after the date on which the draft statement is published.

(d) ENVIRONMENTAL IMPACT STATEMENTS ON ISSUANCE OF LICENSES AND PERMITS.—The issuance of, but not the certification of an application for, any license or permit under this title shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969. In preparing an environmental impact statement pursuant to this subsection, the Administrator shall consult with the agency heads referred to in subsection (b) and shall take into account, and give due consideration to, the relevant information contained in any applicable studies and any other environmental impact statement prepared pursuant to this section. Each draft environmental impact statement prepared pursuant to this subsection shall be published, with the terms, conditions, and restrictions proposed pursuant to section 105(d), within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the application for the license or permit concerned is certified by the Administrator. Each final environmental impact statement shall be published 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the draft environmental impact statement is published.

(e) EFFECT ON OTHER LAW.—For the purposes of this Act, any vessel or other floating craft engaged in commercial recovery or exploration shall not be deemed to be "a vessel or other floating craft" under section 502(12)(B) of the Clean Water Act and any discharge of a pollutant from such vessel or other floating craft shall be subject to the Clean Water Act.

(f) STABLE REFERENCE AREAS.—

(1) Within one year after the enactment of this Act the Secretary of State shall, in cooperation with the Administrator and as part of the international consultations pursuant to subsection 118(f), negotiate with all nations that are identified in such subsection for the purpose of establishing international stable reference areas in which no mining shall take place: *Provided, however,* That this subsection shall not be construed as requiring any substantial withdrawal of deep seabed areas from deep seabed mining authorized by this Act.

(2) Nothing in this Act shall be construed as authorizing the United States to unilaterally establish such reference area or areas nor shall the United States recognize the unilateral claim to such reference area or areas by any State.

(3) Within four years after the enactment of this Act, the Secretary of State shall submit a report to Congress on the

progress of establishing such stable reference areas, including the designation of appropriate zones to insure a representative and stable biota of the deep seabed.

(4) For purposes of this section "stable reference areas" shall mean an area or areas of the deep seabed to be used as a reference zone or zones for purposes of resource evaluation and environmental assessment of deep seabed mining in which no mining will occur.

SEC. 110.[16] CONSERVATION OF NATURAL RESOURCES.

For the purpose of conservation of natural resources, each license and permit issued under this title shall contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license or permit applies. In establishing these terms, conditions, and restrictions, the Administrator shall consider the state of the technology, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration or commercial recovery activities, economic and resource data, and the national need for hard mineral resources. As used in this Act, the term "conservation of natural resources" is not intended to grant, imply, or create any inference of production controls or price regulation, in particular those which would affect the volume of production, prices, profits, markets, or the decision of which minerals or metals are to be recovered, except as such efforts may be incidental to actions taken pursuant to this section.

SEC. 111.[17] PREVENTION OF INTERFERENCE WITH OTHER USES OF THE HIGH SEAS.

Each license and permit issued under this title shall include such restrictions as may be necessary and appropriate to ensure that exploration or commercial recovery activities conducted by the licensee or permittee do not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

SEC. 112.[18] SAFETY OF LIFE AND PROPERTY AT SEA.

(a) CONDITIONS REGARDING VESSELS.—The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, shall require in any license or permit issued under this title, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license or permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning, and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea.

(b) APPLICABILITY OF OTHER LAWS.—Notwithstanding any other provision of law, any vessel described in subsection (a) shall be subject to the provisions of the International Voyage Load Line Act of 1973, and to the provisions of titles 52 and 53 of the Revised Statutes and all Acts amendatory thereof or supplementary thereto.

[16] 30 U.S.C. 1420.
[17] 30 U.S.C. 1421.
[18] 30 U.S.C. 1422.

SEC. 113.[19] RECORDS, AUDITS, AND PUBLIC DISCLOSURE.

(a) RECORDS AND AUDITS.—(1) Each licensee and permittee shall keep such records, consistent with standard accounting principles, as the Administrator shall by regulation prescribe. Such records shall include information which will fully disclose expenditures for exploration and commercial recovery, including processing of hard mineral resources, and such other information as will facilitate an effective audit of such expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verify the expenditures referred to in paragraph (1).

(b) SUBMISSION OF DATA AND INFORMATION.—Each licensee and permittee shall be required to submit to the Administrator such data or other information as the Administrator may reasonably need for purposes of making determinations with respect to the issuance, revocation, modification, or suspension of any license or permit; compliance with the reporting requirement contained in section 309; and evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

(c) PUBLIC DISCLOSURE.—Copies of any document, report, communication, or other record maintained or received by the Administrator containing data or information required under this title shall be made available to any person upon any request which (1) reasonably describes such record and (2) is made in accordance with rules adopted by the Administrator stating the time, place, fees (if any, not to exceed the direct cost of the services rendered), and procedures to be followed, except that neither the Administrator nor any other officer or employee of the United States may disclose any data or information knowingly and willingly required under this title the disclosure of which is prohibited by section 1905 of title 18, United States Code. Any officer or employee of the United States who discloses data or information in violation of this subsection shall be subject to the penalties set forth in section 303(b) of this Act.

SEC. 114.[20] MONITORING OF ACTIVITIES OF LICENSEES AND PERMITTEES.

Each license and permit issued under this title shall require the licensee or permittee—

(1) to allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee or permittee in exploration or commercial recovery activities (A) to monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license or permit, and (B) to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

[19] 30 U.S.C. 1423.
[20] 30 U.S.C. 1424.

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

(3) to monitor the environmental effects of the exploration and commercial recovery activities in accordance with guidelines issued by the Administrator and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

SEC. 115.[21] RELINQUISHMENT, SURRENDER, AND TRANSFER OF LICENSES AND PERMITS.

(a) RELINQUISHMENT AND SURRENDER.—Any licensee or permittee may at any time, without penalty—

(1) surrender to the Administrator a license or a permit issued to the licensee or permittee; or

(2) relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

Any licensee or permittee who surrenders a license or permit, or relinquishes any such right, shall remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under such license or permit.

(b) TRANSFER.—Any license or permit, upon written request of the licensee or permittee, may be transferred by the Administrator; except that no such transfer may occur unless the proposed transferee is a United States citizen and until the Administrator determines that (1) the proposed transfer is in the public interest, and (2) the proposed transferee and the exploration or commercial recovery activities the transferee proposes to conduct meet the requirements of this Act and regulations issued under this Act.

SEC. 116.[22] PUBLIC NOTICE AND HEARINGS.

(a) REQUIRED PROCEDURES.—The Administrator may issue regulations to carry out this Act, establish and significantly modify terms, conditions, and restrictions in licenses and permits issued under this title, and issue or transfer licenses and permits under this title, only after public notice and opportunity for comment and hearings in accordance with the following:

(1) The Administrator shall publish in the Federal Register notice of all applications for licenses and permits, all proposals to issue or transfer licenses and permits, all regulations implementing this Act, and terms, conditions, and restrictions on licenses and permits, and all proposals to significantly modify licenses and permits. Interested persons shall be permitted to examine the materials relevant to any of these actions, and shall have at least 60 days after publication of such notice to submit written comments to the Administrator.

(2) The Administrator shall hold a public hearing in an appropriate location and may employ such additional methods as

[21] 30 U.S.C. 1425.
[22] 30 U.S.C. 1426.

the Administrator deems appropriate to inform interested persons about each action specified in paragraph (1) and to invite their comments thereon.

(b) ADJUDICATORY HEARING.—If the Administrator determines that there exists one or more specific and material factual issues which require resolution by formal process, as least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5, United States Code. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to take any action referred to in subsection (a). Hearings held pursuant to this section shall be consolidated insofar as practicable with hearings held by other agencies.

SEC. 117.[23] CIVIL ACTIONS.

(a) EQUITABLE RELIEF.—Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on that person's behalf in the United States District Court for the District of Columbia—

(1) against any person who is alleged to be in violation of any provision of this Act or any condition of a license or permit issued under this title; or

(2) against the Administrator when there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary.

if the person bringing the action has a valid legal interest which is or may be adversely affected by such alleged violation or failure to perform. In suits brought under this subsection, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the provisions of this Act, or any term, condition, or restriction of a license or permit issued under this title, or to order the Administration to perform such act or duty.

(b) NOTICE.—No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to the alleged violation in a court of the United States; except that in any such civil action, any person having a valid legal interest which is or may be adversely affected by the alleged violation may intervene; or

(2) under subsection (a)(2) of this section, prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(c) COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation, including reasonable attorney and expert witness

[23] 30 U.S.C. 1427.

fees, to any party whenever the court determines that such an award is appropriate.

(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall restrict the rights which any person or class of persons may have under other law to seek enforcement or to seek any other relief. All vessel safety and environmental requirements of or under this Act shall be in addition to other requirements of law.

SEC. 118.[24] RECIPROCATING STATES.

(a) DESIGNATION.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, may designate any foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation—

(1) regulates the conduct of its citizens and other persons subject to its jurisdiction engaged in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in a manner compatible with that provided in this Act and the regulations issued under this act, which includes adequate measures for the protection of the environment, the conservation of natural resources, and the safety of life and property at sea, and includes effective enforcement provisions;

(2) recognizes licenses and permits issued under this title to the extent that such nation, under its laws, (A) prohibits any person from engaging in exploration or commercial recovery which conflicts with that authorized under any such license or permit and (B) complies with the date for issuance of licenses and the effective date for permits provided in section 102(c)(1)(D) of this Act;

(3) recognizes, under its procedures, priorities of right, consistent with those provided in this Act and the regulations issued under this Act, for applications for licenses for exploration or permits for commercial recovery, which applications are made either under its procedures or under this Act; and

(4) provides an interim legal framework for exploration and commercial recovery which does not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

(b) EFFECT OF DESIGNATION.—No license or permit shall be issued under this title permitting any exploration or commercial recovery which will conflict with any license, permit, or equivalent authorization issued by any foreign nation which is designated as a reciprocating state under subsection (a).

(c) NOTIFICATION.—Upon receipt of any application for a license or permit under this title, the Administrator shall immediately notify all reciprocating states of such application. The notification shall include those portions of the exploration plan or recovery plan submitted with respect to the application, or a summary thereof, and any other appropriate information not required to be withheld from public disclosure by section 113(c).

(d) REVOCATION OF RECIPROCATING STATE STATUS.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall revoke the

[24] 30 U.S.C. 1428.

designation of a foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation no longer complies with the requirements of subsection (a). At the request of any holder of a license, permit, or equivalent authorization of such foreign nation, who obtained the license, permit, or equivalent authorization while such foreign nation was a reciprocating state, the Administrator, in consultation with the Secretary of State, may decide to recognize the license, permit, or equivalent authorization for purposes of subsection (b).

(e) AUTHORIZATION.—The President is authorized to negotiate agreements with foreign nations necessary to implement this section.

(f) INTERNATIONAL CONSULTATIONS.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall consult with foreign nations which enact, or are preparing to enact, domestic legislation establishing an interim legal framework for exploration and commercial recovery of hard mineral resources. Such consultations shall be carried out with a view to facilitating the designation of such nations as reciprocating states and, as necessary, the negotiation of agreements with foreign nations authorized by subsection (e). In addition, the Administrator shall provide such foreign nations with information on environmental impacts of exploration and commercial recovery activities, and shall provide any technical assistance requested in designating regulatory measures to protect the environment.

TITLE II—TRANSITION TO INTERNATIONAL AGREEMENT

SEC. 201.[25] DECLARATION OF CONGRESSIONAL INTENT.

It is the intent of Congress—

(1) that any international agreement to which the United States becomes a party should, in addition to promoting other national oceans objectives—

(A) provide assured and nondiscriminatory access, under reasonable terms and conditions, to the hard mineral resources of the deep seabed for United States citizens, and

(B) provide security of tenure by recognizing the rights of United States citizens who have undertaken exploration or commercial recovery under title I before such agreement enters into force with respect to the United States to continue their operations under terms, conditions, and restrictions which do not impose significant new economic burdens upon such citizens with respect to such operations with the effect of preventing the continuation of such operations on a viable economic basis;

(2) that the extent to which any such international agreement conforms to the provisions of paragraph (1) should be determined by the totality of the provisions of such agreement, including, but not limited to, the practical implications for the security of investments of any discretionary powers granted to

[25] 30 U.S.C. 1441.

an international regulatory body, the structures and decision-making procedures of such body, the availability of impartial and effective procedures for the settlement of disputes, and any features that tend to discriminate against exploration and commercial recovery activities undertaken by United States citizens; and

(3) that this Act should be transitional pending—

(A) the adoption of an international agreement at the Third United Nations Conference on the Law of the Sea, and the entering into force of such agreement, or portions thereof, with respect to the United States, or

(B) if such adoption is not forthcoming, the negotiation of a multilateral or other treaty concerning the deep seabed, and the entering into force of such treaty with respect to the United States.

SEC. 202.[26] EFFECT OF INTERNATIONAL AGREEMENT.

If an international agreement enters into force with respect to the United States, any provision of title I, this title, or title III, and any regulation issued under any such provision, which is not inconsistent with such international agreement shall continue in effect with respect to United States citizens. In the implementation of such international agreement the Administrator, in consultation with the Secretary of State, shall make every effort, to the maximum extent practicable consistent with the provisions of that agreement, to provide for the continued operation of exploration and commercial recovery activities undertaken by United States citizens prior to entry into force of the agreement. The Administrator shall submit to the Congress, within one year after the date of such entry into force, a report on the actions taken by the Administrator under this section, which report shall include, but not be limited to—

(1) a description of the status of deep seabed mining operations of United States citizens under the international agreement; and

(2) an assessment of whether United States citizens who were engaged in exploration or commercial recovery on the date such agreement entered into force have been permitted to continue their operations.

SEC. 203.[27] PROTECTION OF INTERIM INVESTMENTS.

In order to further the objectives set forth in section 201, the Administrator, not more than one year after the date of enactment of this Act—

(1) shall submit to the Congress proposed legislation necessary for the United States to implement a system for the protection of interim investments that has been adopted as part of an international agreement and any resolution relating to such international agreement; or

(2) if a system for the protection of interim investments has not been so adopted, shall report to the Congress on the status of negotiations relating to the establishment of such a system.

[26] 30 U.S.C. 1442.
[27] 30 U.S.C. 1443.

SEC. 204.[28] DISCLAIMER OF OBLIGATIONS TO PAY COMPENSATION.

Sections 201 and 202 of this Act do not create or express any legal or moral obligation on the part of the United States Government to compensate any person for any impairment of the value of that person's investment in any operation for exploration or commercial recovery under title I which might occur in connection with the entering into force of an international agreement with respect to the United States.

TITLE III—ENFORCEMENT AND MISCELLANEOUS PROVISIONS

SEC. 301.[29] PROHIBITED ACTS.

It is unlawful for any person who is a United States citizen, or a foreign national on board a vessel documented or numbered under the laws of the United States, or subject to the jurisdiction of the United States under a reciprocating state agreement negotiated under section 118(e)—

(1) to violate any provision of this act, any regulation issued under this Act, or any term, condition, or restriction of any license or permit issued to such person under this Act;

(2) to engage in exploration or commercial recovery after the revocation, or during the period of suspension, of an applicable license or permit issued under this Act, to engage in a particular exploration or commercial recovery activity during the period such activity has been suspended under this Act, or to fail to modify a particular exploration or commercial recovery activity for which modification was required under this Act;

(3) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of this Act, as provided in sections 114 and 304, to board a vessel documented or numbered under the laws of the United States, or any vessel for which such boarding is authorized by a treaty or executive agreement, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this Act or any regulation, term, condition, or restriction referred to in paragraph (1);

(4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (3);

(5) to resist a lawful arrest for any act prohibited by this section;

(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any hard mineral resource recovered, processed, or retained in violation of this Act or any regulation, term, condition, or restriction referred to in paragraph (1); or

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of any other person subject to this section knowing that such other person has committed any act prohibited by this section.

[28] 30 U.S.C. 1444.
[29] 30 U.S.C. 1461.

SEC. 302.[30] CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTY.—Any person subject to section 301 who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed any act prohibited by section 301 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Administrator by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, any history or prior offenses, good faith demonstrated in attempting to achieve timely compliance after being cited for the violation, and other matters as justice may require.

(b) REVIEW OF CIVIL PENALTY.—Any person subject to section 301 against whom a civil penalty is assessed under subsection (a) may obtain review thereof in an appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record which the particular violation was found and such penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence as provided in section 706(2)(E) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person subject to section 301 fails to pay a civil penalty assessed against such person after the penalty has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the civil penalty assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) COMPROMISE OR OTHER ACTION BY THE ADMINISTRATOR.—The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section unless an action brought under subsection (b) or (c) is pending in a court of the United States.

SEC. 303.[31] CRIMINAL OFFENSE.

(a) OFFENSE.—A person subject to section 301 is guilty of an offense if such person willfully and knowingly commits any act prohibited by section 301.

(b) PUNISHMENT.—Any offense described in paragraphs (1), (2), and (6) of section 301 is punishable by a fine of not more than

[30] 30 U.S.C. 1462.
[31] 30 U.S.C. 1463.

$75,000 for each day during which the violation continues. Any offense described in paragraphs (3), (4), (5), and (7) of section 301 is punishable by a fine of not more than $75,000 or imprisonment for not more than six months, or both. If, in the commission of any offense, the person subject to the jurisdiction of the United States uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any such Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than ten years, or both.

SEC. 304.[32] ENFORCEMENT.

(a) RESPONSIBILITY.—Subject to the other provisions of this subsection, the Administrator shall enforce the provisions of this Act. The Secretary of the department in which the Coast Guard is operating shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this Act as are authorized under other provisions of law and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of the provisions of this Act. The Secretary of the department in which the Coast Guard is operating shall have the exclusive responsibility for enforcement measures which affect the safety of life and property at sea. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b). While providing such assistance, these officers and employees shall be under the control, authority, and supervision of the Coast Guard. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) POWERS OF AUTHORIZED OFFICERS.—To enforce this Act on board any vessel subject to the provisions of the Act, any officer who is authorized by the Administrator or by the Secretary of the department in which the Coast Guard is operating may—

(1) board and inspect any vessel which is subject to the provisions of this Act;

(2) search any such vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this Act;

(3) arrest any person subject to section 301 if the officer has reasonable cause to believe that the person has committed a criminal offense under section 303;

(4) seize any such vessel together with it gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act if such seizure is necessary to prevent evasion of the enforcement of this Act;

[32] 30 U.S.C. 1464.

(5) seize any hard mineral resource recovered or processed in violation of any provision of this Act;

(6) seize any other evidence related to any violation of any provision of this Act;

(7) execute any warrant or other process issued by any court of competent jurisdiction; and

(8) exercise any other lawful authority.

(c) DEFINITION.—For purposes of this section, the term "provisions of this Act" or "provision of this Act" means (1) any provision of title I or II or this title, (2) any regulation issued under title I, title II, or this title, and (3) any term, condition, or restriction of any license or permit issued under title I.

(d) PROPRIETARY INFORMATION.—Proprietary and privileged information seized or maintained under this title concerning a person or vessel engaged in exploration or commercial recovery shall not be made available for general or public use or inspection. The Administrator and the Secretary of the department in which the Coast Guard is operating shall issue regulations to insure the confidentiality of privileged and proprietary information.

SEC. 305.[33] LIABILITY OF VESSELS.

Any vessel documented or numbered under the laws of the United States (except a public vessel engaged in noncommercial activities) which is used in any violation of this Act, any regulation issued under this Act, or any term, condition, or restriction of any license or permit issued under title I shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof.

SEC. 306.[34] CIVIL FORFEITURES.

(a) IN GENERAL.—Any vessel subject to the provisions of sections 304 and 305, including its gear, furniture, appurtenances, stores, and cargo, which is used, in any manner, in connection with or as a result of the commission of any act prohibited by section 301 and any hard mineral resource which is recovered, processed, or retained, in any manner, in connection with or as a result of any such act, shall be subject to forfeiture to the United States. All or part of such vessel, and all such hard mineral resources, may be forfeited to the United States pursuant to a civil proceeding under this section. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a vessel or cargo for violation of the customs laws, and the disposition of the vessel, cargo, or 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 section insofar as such provisions of law are applicable and not inconsistent with this Act.

(b) JURISDICTION OF COURTS.—Any district court of the United States which has jurisdiction under section 307 shall have jurisdiction, upon application by the Attorney General on behalf of the

[33] 30 U.S.C. 1465.
[34] 30 U.S.C. 1466.

United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d).

(d) PROCEDURE.—Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 307 shall stay the execution of such process, or discharge any property seized pursuant to such process, upon the receipt of a satisfactory bond or other security from any person subject to section 301 claiming such property. Such bond or other security shall be conditioned upon such person (1) delivering such property to the appropriate court upon order thereof, without any impairment of its value; or (2) paying the monetary value of such property pursuant to any order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, it shall be a rebuttable presumption that all hard mineral resources found on board a vessel subject to the provisions of sections 304 and 305 which is seized in connection with an act prohibited by section 301 were recovered, processed, or retained in violation of this Act.

SEC. 307.[35] JURISDICTION OF COURTS.

The district of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. These courts may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

SEC. 308.[36] REGULATIONS.

(a) PROPOSED REGULATIONS.—Not later than 270 days after the date of enactment of this Act, the Administrator shall solicit the views of the agency heads referred to in section 109(b) and of interested persons, and issue, in accordance with section 553 of title 5, United States Code, such proposed regulations as are required by or are necessary and appropriate to implement titles I and II and this title. The Administrator shall hold at least one public hearing on such proposed regulations.

(b) FINAL REGULATIONS.—Not later than 180 days after the date on which proposed regulations are issued pursuant to subsection (a), the Administrator shall solicit the views of the agency heads referred to in section 109(b) and of interested persons, consider the

[35] 30 U.S.C. 1467.
[36] 30 U.S.C. 1468.

comments received during the public hearing required in subsection (a) and any written comments on the proposed regulations received by the Administrator, and issue, in accordance with section 553 of title 5, United States Code, such regulations as are required by or are necessary and appropriate to implement titles I and II and this title.

(c) AMENDMENTS.—The Administrator may at any time amend regulations issued pursuant to subsection (b) as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources within the meaning of section 110, protection of the environment, and the safety of life and property at sea. Such amended regulations shall apply to all exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this Act; except that any such amended regulations which provide for conservation of natural resources shall apply to exploration or commercial recovery conducted under an existing license or permit during the present term of such license or permit only if the Administration determines that such amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulation under this subsection shall be made on the record after an opportunity for an agency hearing.

(d) CONSISTENCY.—This Act and the regulations issued under this Act shall not be deemed to supersede any other Federal laws or treaties or regulations issued thereunder.

SEC. 309.[37] BIENNIAL REPORT.

(a) SUBMISSION ON REPORTS.—The Administrator shall submit to the Congress—

(1) not later than December 31, 1981, a report on the administration of this Act during the period beginning on the date of enactment of this Act and ending September 30, 1981; and

(2) not later than December 31 of each second year thereafter, a report on the administration of this Act during the two fiscal years preceding the date on which the report is required to be filed.

(b) CONTENTS.—Each report filed pursuant to subsection (a) shall include, but be limited to, the following information with respect to the reporting period:

(1) Licenses and permits issued, modified, revised, suspended, revoked, relinquished, surrendered, or transferred, denials of certifications of applications for the issuance or transfer of licenses and permits; denials or issuance or transfer of licenses and permits; and required suspensions and modifications of activities under licenses and permits.

(2) A description and evaluation of the exploration and commercial recovery activities undertaken, including, but not limited to, information setting forth the quantities of hard mineral resources recovered and the disposition of such resources.

(3) An assessment of the environmental impacts, including a description and estimate of any damage caused by any adverse

[37] 30 U.S.C. 1469.

effects on the quality of the environment resulting from such activities.

(4) The number and description of all civil and criminal proceedings, including citations, instituted under this title, and the current status of such proceedings.

(5) Such recommendations as the Administrator deems appropriate for amending this Act to further fulfill its purposes.

SEC. 310.[38] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator, for purposes of carrying out the provisions of titles I and II and this title, such sums as may be necessary for the fiscal years ending September 30, 1981, and September 30, 1982, and $1,469,000 for the fiscal year ending September 30, 1983, $2,150,000 for the fiscal year ending September 30, 1984, $1,500,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986, $1,500,000 for each of the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989, and $1,525,000 for each of the fiscal years 1990, 1991, 1992, 1993, and 1994.[39]

SEC. 311.[40] SEVERABILITY.

If any provision of this Act or any application thereof is held invalid, the validity of the remainder of the Act, or any other application, shall not be affected thereby.

TITLE IV—TAX

SEC. 401. SHORT TITLE.

This title may be cited as the "Deep Seabed Hard Mineral Removal Tax Act of 1979".

SEC. 402.[41] IMPOSITION OF TAX ON REMOVAL OF HARD MINERAL RESOURCES FROM DEEP SEABED. * * *

SEC. 403.[42] ESTABLISHMENT OF DEEP SEABED REVENUE SHARING TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Deep Seabed Revenue Sharing Trust Fund" ((hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—

(1) IN GENERAL.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury to be equivalent to the amounts of the taxes received in the

[38] 30 U.S.C. 1470.

[39] Public Law 97–416 (96 Stat. 2084), added authorizations for fiscal years 1983 and 1984. Sec. 403 of Public Law 98–623 (98 Stat. 3408) added authorizations for fiscal years 1985 and 1986. Public Law 99–507 (100 Stat. 1847) added authorizations for fiscal years 1987, 1988, and 1989. Public Law 101–178 (103 Stat. 1297) added authorizations for fiscal years 1990 through 1994.

[40] 30 U.S.C. 1471.

[41] Sec. 402 amended ch. 36 of the Internal Revenue Code of 1954 [now Internal Revenue Code of 1986, pursuant to sec. 2 of Public Law 99–514] (relating to certain other excise taxes), by adding new secs. 4495 through 4498, title 26, effective January 1, 1980.

[42] 30 U.S.C. 1472.

Treasury under section 4495 of the Internal Revenue Code of 1986.[43]

(2) METHOD OF TRANSFER.—The amounts appropriated by paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amount required to be transferred.

(c) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and to report to the Congress for the fiscal year ending September 30, 1980, and each fiscal year thereafter on the financial condition and the results of the operations of the Trust Fund during the preceding year and on its expected condition and operations during the fiscal year and the next five fiscal years after the fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—

(A) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Trust Fund may be sold by the Secretary at the market price.

(C) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) EXPENDITURES FROM TRUST FUND.—If an international deep seabed treaty is ratified by and in effect with respect to the United States on or before the date ten years after the date of the enactment of this Act, amounts in the Trust Fund shall be available, as provided by appropriations Acts, for making contributions required under such treaty for purposes of the sharing among nations of the revenues from deep seabed mining. Nothing in this subsection shall be deemed to authorize any program or other activity not otherwise authorized by law.

(e) USE OF FUNDS.—If an international deep seabed treaty is not in effect with respect to the United States on or before the date ten years after the date of the enactment of this Act, amounts in the Trust Fund shall be available for such purposes as Congress may hereafter provide by law.

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[43] Sec. 2 of the Tax Reform Act of 1986 (Public Law 99–514; 100 Stat. 2095) struck out "Internal Revenue Code of 1954" and inserted in lieu thereof "Internal Revenue Code of 1986", wherever it is cited in any law.

(f) INTERNATIONAL DEEP SEABED TREATY.—For purposes of this section, the term "international deep seabed treaty" has the meaning given to such term by section 4498(b) of the Internal Revenue Code of 1986.[43]

SEC. 404.[44] ACT NOT TO AFFECT TAX OR CUSTOMS OR TARIFF TREATMENT OF DEEP SEABED MINING.

Except as otherwise provided in section 402, nothing in this Act shall affect the application of the Internal Revenue Code of 1986.[43] Nothing in this Act shall affect the application of the customs or tariff laws of the United States.

[44] 30 U.S.C. 1473.

i. Establishment of Exclusive Economic Zone of the United States

Proclamation 5030, March 10, 1983, 48 F.R. 10605 [1]

Whereas the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

Whereas international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

Whereas the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

[1] 16 U.S.C. 1453 note.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rule of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

j. Establishment of Territorial Sea of the United States

Proclamation 5928, December 27, 1988, 54 F.R. 777 [1]

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

The territorial sea of the united States henceforth extends to 12 miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the united States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits.

Nothing in this Proclamation:

(a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or

(b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, in the year of our Lord nineteen and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

[1] 43 U.S.C. 1331 note.

k. Establishment of Contiguous Zone of the United States

Proclamation 7219, September 2, 1999, 64 F.R. 48701 [1]

International law recognizes that coastal nations may establish zones contiguous to their territorial seas, known as contiguous zones.

The contiguous zone of the United States is a zone contiguous to the territorial sea of the United States, in which the United States may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea, and to punish infringement of the above laws and regulations committed within its territory or territorial sea.

Extension of the contiguous zone of the United States to the limits permitted by international law will advance the law enforcement and public health interests of the United States. Moreover, this extension is an important step in preventing the removal of cultural heritage found within 24 nautical miles of the baseline.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution of the United States, and in accordance with international law, do hereby proclaim the extension of the contiguous zone of the United States of America, including the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty, as follows:

The contiguous zone of the United States extends to 24 nautical miles from the baselines of the United States determined in accordance with international law, but in no case within the territorial sea of another nation.

In accordance with international law, reflected in the applicable provisions of the 1982 Convention on the Law of the Sea, within the contiguous zone of the United States the ships and aircraft of all countries enjoy the high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft, and submarine cables and pipelines, and compatible with the other provisions of international law reflected in the 1982 Convention on the Law of the Sea.

Nothing in this proclamation:

(a) amends existing Federal or State law;

(b) amends or otherwise alters the rights and duties of the United States or other nations in the Exclusive Economic Zone of the United States established by Proclamation 5030 of March 10, 1983 [16 U.S.C. 1453 note]; or

[1] 43 U.S.C. 1331 note.

(c) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

l. Governing International Fishery Agreements

(1) Governing International Fisheries Agreement With Poland

Partial text of Public Law 105–384 [H.R. 3461], 112 Stat. 3451, approved November 13, 1998

AN ACT To approve a governing international fishery agreement between the United States and the Republic of Poland, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH POLAND

SEC. 101.[1] GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH POLAND.

Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1823), the governing international fishery agreement between the Government of the United States of America and the Government of the Republic of Poland, as contained in the message to Congress from the President of the United States dated February 5, 1998, is approved as a governing international fishery agreement for the purposes of such Act and shall enter into force and effect with respect to the United States on the date of the enactment of this Act.

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[1] 16 U.S.C. 1823 note.

(2) Governing International Fisheries Agreement With Russian Federation

Partial text of Public Law 103–206 [H.R. 2150], 108 Stat. 2419, approved December 20, 1993; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To authorize appropriations for fiscal year 1994 for the United States Coast Guard, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE VII—MISCELLANEOUS FISHERY PROVISIONS

SEC. 701.[1] GOVERNING INTERNATIONAL FISHERIES AGREEMENT.

The Agreement between the Government of the United States of America and the Government of the Russian Federation on Mutual Fisheries Relations which was entered into on May 31, 1988, and which expired by its terms on October 28, 1993, may be brought into force again for the United States through an exchange of notes between the United States of America and the Russian Federation and may remain in force and effect on the part of the United States until May 1, 1994, and may be amended or extended by a subsequent agreement to which section 203 of the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1823) applies.

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SEC. 703. INTERNATIONAL FISHERY CONSERVATION IN THE CENTRAL BERING SEA.

It is the sense of the Congress that—

(1) the United States should take appropriate measures to conserve the resources of the Doughnut Hole, a small enclave of international waters in the central Bering Sea, encircled by the Exclusive Economic Zones of the United States and the Russian Federation;

(2) the United States should continue its pursuit of an international agreement, consistent with its rights as a coastal state, to ensure proper management for future commercial viability of these natural resources;

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(3) the United States, working closely with the Russian Federation should, in accordance with international law and through multilateral consultations or through other means, promote effective international programs for the implementation and enforcement of regulations of the fisheries by those nations that fish in the Doughnut Hole;

(4) the United States nonetheless should be mindful of its management responsibility in this regard and of its rights in accordance with international law to fully utilize the stock within its own exclusive economic zone;

(5) the United States should accept as an urgent duty the need to conserve for future generations the Aleutian Basin pollock stock and should carry out that duty by taking all necessary measures, in accordance with international law; and

(6) the United States should foster further multilateral cooperation leading to international consensus on management of the Doughnut Hole resources through the fullest use of diplomatic channels and appropriate domestic and international law and should explore all other available options and means for conservation and management of these living marine resources.

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(3) Governing International Fishery Agreement With Estonia

Partial text of Public Law 102–587 [H.R. 5617], 106 Stat. 5039, approved November 4, 1992; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To provide Congressional approval of a Governing International Fishery Agreement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Oceans Act of 1992".

TITLE I—APPROVAL OF GOVERNING INTERNATIONAL FISHERY AGREEMENT

SEC. 1001.[2] APPROVAL OF AGREEMENT.

Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1823),[3] the governing international fishery agreement between the Government of the United States of America and the Government of the Republic of Estonia, as contained in the message to Congress from the President of the United States dated June 24, 1992, is approved by the Congress as a governing international fishery agreement for the purposes of such Act and shall enter into force and effect with respect to the United States on the date of enactment of this title.

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[1] 16 U.S.C. 1431 note.
[2] 16 U.S.C. 1823 note.
[3] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(4) Governing International Fishery Agreement with Japan

Partial text of Public Law 101–224 [National Oceanic and Atmospheric Administration Ocean and Coastal Programs Authorization Act of 1989; H.R. 1668], 103 Stat. 1905, approved December 12, 1989; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 7.[1] INTERNATIONAL FISHERY AGREEMENT.

Notwithstanding any provision of the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1801 et seq.), the governing international fishery agreement entered into between the Government of the United States and the Government of Japan, as contained in the Message to Congress from the President of the United States dated October 30, 1989, is approved by the Congress and shall enter into force and effect with respect to the United States on the date of the enactment of this Act.

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(5) Governing International Fishery Agreement with Soviet Union

Partial text of Public Law 100–629 [H.R. 4919], 102 Stat. 3287, approved November 7, 1988; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To approve the governing international fishery agreement between the United States and the Union of the Soviet Socialist Republics, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SOVIET UNION FISHING AGREEMENT.

That notwithstanding any provision of the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1801 et seq.), the governing international fishery agreement entered into between the Government of the United States and the Government of the Union of the Soviet Socialist Republics, as contained in the Message to Congress from the President of the United States dated June 22, 1988, is approved by the Congress and shall enter into force and effect with respect to the United States on the date of the enactment of this Act.

* * * * * * *

SEC. 5.[1] NORTH PACIFIC AND BERING SEA FISHERIES ADVISORY BODY.

(a) IN GENERAL.—The Secretary of State shall establish an advisory body on the fisheries of the North Pacific and the Bering Sea, which shall advise the United States representative to the International Consultative Committee created in accordance with Article XIV of the governing international fishery agreement entered into between the United States and the Union of Soviet Socialist Republics, as contained in the Message to Congress from the President of the United States dated June 22, 1988.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The advisory body established pursuant to this section shall consist of 12 members, as follows:

(A) The Director of the Department of Fisheries of the State of Washington.

(B) The Commission of the Department of Fish and Game of the State of Alaska.

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(C) Five members appointed by the Secretary of State from among persons nominated by the Governor of Alaska on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

(D) Five members appointed by the Secretary of State from among persons nominated by the Governor of Washington on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

(2) NOMINATIONS.—The Governor of Alaska and the Governor of Washington shall each nominate 10 persons for purposes of paragraph (1).

(c) PAY.—Members of the advisory body established pursuant to this section shall receive no pay by reason of their service as members of the advisory body.

(d) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to an advisory body established pursuant to this section.

SEC. 6.[3] USE OF VESSEL IDENTIFICATION EQUIPMENT.

(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section 201(c)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries[4] of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act on the results of their compliance with subsection (a).

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[3] 16 U.S.C. 1821 note.

[4] Sec. 1(b)(3) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Merchant Marine and Fisheries of the House of Representatives shall be treated as referring to—

(A) the Committee on Agriculture, in the case of a provision of law relating to inspection of seafood or seafood products;

(B) the Committee on National Security, in the case of a provision of law relating to interoceanic canals, the Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine;

(C) the Committee on Resources, in the case of a provision of law relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography;

(D) the Committee on Science, in the case of a provision of law relating to marine research; and

(E) the Committee on Transportation, in the case of a provision of law relating to a matter other than a matter described in any of subparagraphs (A) through (D).

(6) Governing International Fishery Agreement with German Democratic Republic

Partial text of Public Law 100–350 [H.R. 4621], 102 Stat. 660, approved June 27, 1988; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To provide Congressional approval of the Governing International Fishery Agreement between the United States and the Government of the German Democratic Republic.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] APPROVAL OF GIFA WITH GERMAN DEMOCRATIC REPUBLIC.

That notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1823), the extension of the governing international fishery agreement between the Government of the United States of American and the Government of the German Democratic Republic, as contained in the message to Congress from the President of the United States, dated May 3, 1988—

(1) is approved by Congress as a governing international fishery agreement for the purposes of such Act; and

(2) shall enter into force and effect with respect to the United States on the date of enactment of this Act.

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(7) Governing International Fishery Agreement with Japan Concerning Fisheries Off the Coasts of the United States

Title I of Public Law 100–220 [United States-Japan Fishery Agreement Approval Act of 1987; H.R. 3674], 101 Stat. 1458, approved December 29, 1987; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To provide congressional approval of the Governing International Fishery Agreements between the United States and Japan; to implement the provisions of Annex V to the International Convention for the Prevention of Pollution from Ships, 1973; to reauthorize the National Sea Grant College Program Act; to improve efforts to monitor, assess, and reduce the adverse impacts of driftnets; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—APPROVAL OF GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH JAPAN

SEC. 1001.[1] APPROVAL OF AGREEMENT.

Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1823), the governing international fishery agreement between the Government of the United States of America and the Government of Japan Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated November 17, 1987—

(1) is approved by Congress as a governing international fishery agreement for purposes of such Act, and

(2) shall enter into force and effect with respect to the United States on the date of the enactment of this Act.

[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(8) Governing International Fishery Agreement with South Korea

Partial text of Public Law 100–66 [United States-Korea Fishery Agreement; Sea Grant College Fellowship Program; H.R. 2480], 101 Stat. 384, approved July 10, 1987; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To extend temporarily the governing international fishery agreement between the United States and the Republic of Korea, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] EXTENSION OF GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES AND SOUTH KOREA.

Notwithstanding any provision of the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1801 *et seq.*), the governing international fishery agreement entered into between the Government of the United States and the Government of the Republic of Korea on July 26, 1982, shall remain in force and effect with respect to the United States until the closing date of the sixty-day period referred to in section 203(a) of such Act that applies with respect to any new governing international fishery agreement between the United States and the Republic of Korea that is transmitted to the Congress under section 203(a) after May 1, 1987, or November 1, 1987, whichever is earlier.

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(9) Governing International Fishery Agreements with Iceland and the European Economic Community

Title I of Public Law 98–623 [H.R. 6342], 98 Stat. 3394, approved November 8, 1984; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To approve governing international fishery agreements with Iceland and the EEC; to establish national standards for artificial reefs; to implement the Convention on the Conservation of Antarctic Marine Living Resources; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—APPROVAL OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS WITH ICELAND AND THE EEC [1]

Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act [2] (16 U.S.C. 1823)—

(1) the governing international fishery agreement between the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated August 27, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act, and may enter into force with respect to the United States in accordance with the terms of Article XIX of the agreement after the date of the enactment of this title, upon signature of the agreement by both parties; and

(2) the governing international fishery agreement between the Government of the United States and the Government of the Republic of Iceland Concerning Fisheries off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 28, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act, and may enter into force with respect to the United States in accordance with the terms of Article XVI of the agreement after the date of the enactment of this title.

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(10) Governing International Fishery Agreements with Japan and Spain

Title IV of Public Law 97–389 [H.R. 3942], 96 Stat. 1949, at 1954, approved December 29, 1982; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To amend the Commercial Fisheries Research and Development Act of 1964.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fisheries Amendments of 1982".

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TITLE IV—GOVERNING INTERNATIONAL FISHERY AGREEMENTS

SEC. 401.[1] Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Japan pursuant to the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1801 et seq.) signed at Washington on September 10, 1982, is approved, and shall become effective on January 1, 1983.

SEC. 402.[1] Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Spain pursuant to the Magnuson-Stevens Fishery Conservation and Management Act[2] (16 U.S.C. 1801 et seq.) signed on July 29, 1982, is approved.

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(11) Governing International Fishery Agreement With Portugal

Partial text of Public Law 96–561 [Salmon and Steelhead Conservation and Enhancement Act of 1980; S. 2163], 94 Stat. 3275 at 3287, approved December 22, 1980; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

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SEC. 145.[1] GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH PORTUGAL.

Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act,[2] the governing international fishery agreement between the Government of the United States of America and the Government of Portugal Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated December 1, 1980—

(1) is hereby approved by Congress as a governing international fishery agreement for the purposes of such Act of 1976; and

(2) shall enter into force and effect with respect to the United States on the date of the enactment of this title.

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[1] 16 U.S.C. 1823 note.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

2. Marine Pollution

a. Oil Pollution Act of 1990

Partial text of Public Law 101–380 [H.R. 1465], 104 Stat. 484, approved August 18, 1990

AN ACT To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Oil Pollution Act of 1990".

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TITLE III—INTERNATIONAL OIL POLLUTION PREVENTION AND REMOVAL

SEC. 3001. SENSE OF CONGRESS REGARDING PARTICIPATION IN INTERNATIONAL REGIME.

It is the sense of the Congress that it is in the best interests of the United States to participate in an international oil pollution liability and compensation regime that is at least as effective as Federal and State laws in preventing incidents and in guaranteeing full and prompt compensation for damages resulting from incidents.

SEC. 3002. UNITED STATES-CANADA GREAT LAKES OIL SPILL COOPERATION.

(a) REVIEW.—The Secretary of State shall review relevant international agreements and treaties with the Government of Canada, including the Great Lakes Water Quality Agreement, to determine whether amendments or additional international agreements are necessary to—

(1) prevent discharges of oil on the Great Lakes;

(2) ensure an immediate and effective removal of oil on the Great Lakes; and

(3) fully compensate those who are injured by a discharge of oil on the Great Lakes.

(b) CONSULTATION.—In carrying out this section, the Secretary of State shall consult with the Department of Transportation, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Great Lakes States, the International Joint Commission, and other appropriate agencies.

(c) REPORT.—The Secretary of State shall submit a report to the Congress on the results of the review under this section within 6 months after the date of the enactment of this Act.

[1] 33 U.S.C. 2701 note.

SEC. 3003. UNITED STATES-CANADA LAKE CHAMPLAIN OIL SPILL COOPERATION.

(a) REVIEW.—The Secretary of State shall review relevant international agreements and treaties with the Government of Canada, to determine whether amendments or additional international agreements are necessary to—

(1) prevent discharges of oil on Lake Champlain;

(2) ensure an immediate and effective removal of oil on Lake Champlain; and

(3) fully compensate those who are injured by a discharge of oil on Lake Champlain.

(b) CONSULTATION.—In carrying out this section, the Secretary of State shall consult with the Department of Transportation, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the States of Vermont and New York, the International Joint Commission, and other appropriate agencies.

(c) REPORT.—The Secretary of State shall submit a report to the Congress on the results of the review under this section within 6 months after the date of the enactment of this Act.

SEC. 3004. INTERNATIONAL INVENTORY OF REMOVAL EQUIPMENT AND PERSONNEL.

The President shall encourage appropriate international organizations to establish an international inventory of spill removal equipment and personnel.

SEC. 3005. NEGOTIATIONS WITH CANADA CONCERNING TUG ESCORTS IN PUGET SOUND.

Congress urges the Secretary of State to enter into negotiations with the Government of Canada to ensure that tugboat escorts are required for all tank vessels with a capacity over 40,000 deadweight tons in the Strait of Juan de Fuca and in Haro Strait.

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b. Act to Prevent Pollution from Ships

Public Law 96–478 [H.R. 6665], 94 Stat. 2297, approved October 21, 1980; as amended by Public Law 100–220 [United States-Japan Fishery Agreement Approval Act of 1987; H.R. 3674], 101 Stat. 1458, approved December 29, 1987; Public Law 101–225 [Coast Guard Authorization Act of 1989; H.R. 2459], 103 Stat. 1908, approved December 12, 1989; Public Law 101–380 [Oil Pollution Act of 1990; H.R. 1465], 104 Stat. 484, approved August 18, 1990; Public Law 102–241 [Coast Guard Authorization Act, Fiscal Year 1992; H.R. 1776], 105 Stat. 2208, approved December 19, 1991; Public Law 103–160 [National Defense Authorization Act for Fiscal Year 1994; H.R. 2401], 107 Stat. 1547, approved November 30, 1993; Public Law 104–201 [National Defense Authorization Act for Fiscal Year 1997; H.R. 3230], 110 Stat. 2422, approved September 23, 1996; Public Law 104–227 [Antarctic Science, Tourism, and Conservation Act of 1996; H.R. 3060], 110 Stat. 3034, approved October 2, 1996; Public Law 104–324 [Coast Guard Authorization Act of 1996; S. 1004], 110 Stat. 3901, approved October 19, 1996; and Public Law 105–261 [Strom Thurmond National Defense Authorization Act of Fiscal Year 1999; H.R. 3616], 112 Stat. 1920, approved October 17, 1998

AN ACT To implement the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Act to Prevent Pollution from Ships".

SEC. 2.[1] (a)[2] Unless the context indicates otherwise, as used in this Act—

(1)[3] "Antarctica" means the area south of 60 degrees south latitude;

(2)[3] "Antarctic Protocol" means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, and includes any future amendments thereto which have entered into force;

(3)[3] "MARPOL Protocol" means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention;

(4)[3] "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States;[4]

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[1] 33 U.S.C. 1901.

[2] Sec. 2101 of Public Law 100–220 (101 Stat. 1460) inserted "(a)" after "SEC. 2.", and amended the text of subsec. (a)(1) (as redesignated) that previously read as follows:

"(1) 'MARPOL Protocol' means the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London on February 17, 1978. This Protocol incorporates and modifies the International Convention for the Prevention of Pollution from Ships, 1973, done at London on November 2, 1973;".

[3] Sec. 201(a) of Public Law 104–227 (110 Stat. 3042) redesignated paras. (1) through (10) as paras. (3) through (12), and added new paras. (1) and (2).

[4] Sec. 2101(3) of Public Law 100–220 (101 Stat. 1460) inserted the words to this point beginning with "Annexes I".

(5)[3] "discharge" and "garbage"[5] and "harmful substance" and "incident" shall have the meanings provided in the Convention;

(6)[3] "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a ship or terminal, but does not include a person who, without participating in the management or operation of a ship or terminal, holds indicia of ownership primarily to protect a security interest in the ship or terminal;

(7)[3] "operator" means—

(A) in the case of a ship, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(B) in the case of a terminal, any person, except the owner, responsible for the operation of the terminal by agreement with the owner;

(8)[3] "person" means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body;

(9)[3] "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(10)[3] "ship" means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms;[6]

(11)[3,6] "submersible" means a submarine, or any other vessel designed to operate under water; and

(12)[3,6] "terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

(b)[7] For purposes of this Act, the requirements of Annex V shall apply to the navigable waters of the United States, as well as to all other waters and vessels over which the United States has jurisdiction.

(c)[8] For the purposes of this Act, the requirements of Annex IV to the Antarctic Protocol shall apply in Antarctica to all vessels over which the United States has jurisdiction.

SEC. 3.[9] (a)[10] This Act shall apply—

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[5] Sec. 2101(4) of Public Law 100–220 (101 Stat. 1460) inserted "and 'garbage' ".

[6] Sec. 1003(f) of Public Law 103–160 (107 Stat. 1748) struck out "and" at the end of para. (10), originally enacted as para (8); redesignated the following para., now para. 12; and added a new para. (9), now para. (11).

[7] Sec. 2101(5) of Public Law 100–220 (101 Stat. 1461) added subsec. (b).

[8] Sec. 201(a)(3) of Public Law 104–227 (110 Stat. 3042) added subsec. (c).

[9] 33 U.S.C. 1902.

[10] Secs. 2102 of Public Law 100–220 (101 Stat. 1461) amended and restated subsecs. (a) through (c), which previously read as follows:

"SEC. 3. (a) This Act applies to—

"(1) a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

"(2) a ship registered in or of the nationality of a country party to the MARPOL Protocol, or one operated under the authority of a country party to the MARPOL Protocol, while in the navigable waters of the United States; and

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(1) to a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

(2) with respect to Annexes I and II to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters of the United States;

(3) with respect to the requirements of Annex V to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters or the exclusive economic zone of the United States; and

(4) with respect to regulations prescribed under section 6 of this Act, any port or terminal in the United States

(b)[10] (1) Except as provided in paragraph (2), this Act shall not apply to—

(A) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

(B) any other ship specifically excluded by the MARPOL Protocol or the Antarctic Protocol.[11]

(2)(A) Notwithstanding any provision of the MARPOL Protocol, and subject to subparagraph (B) of this paragraph, the requirements of Annex V to the Convention shall apply as follows:[12]

(i)[12] After December 31, 1993, to all ships referred to in paragraph (1)(A) of this subsection other than those owned or operated by the Department of the Navy.

(ii)[12] Except as provided in subsection (c) of this section, after December 31, 1998, to all ships referred to paragraph (1)(A) of this subsection other than submersibles owned or operated by the Department of the Navy.

(iii)[12] Except as provided in subsection (c) of this section, after December 31, 2008, to all ships referred to in paragraph (1)(A) of this subsection.

(B) This paragraph shall not apply during time of war or declared national emergency.

(c)[10, 13] DISCHARGES IN SPECIAL AREAS.—(1) Except as provided in paragraphs (2) and (3), not later than[14] December 31, 2000, all surface ships owned or operated by the Department of the Navy, and not later than December 31, 2008, all submersibles owned or operated by the Department of the Navy, shall comply with the

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"(3) a ship registered in or of the nationality of a country not a party to the MARPOL Protocol, under subsection (c) of this section, while in the navigable waters of the United States.

"(b) This Act does not apply to—

"(1) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

"(2) any other ship specifically excluded by the MARPOL Protocol.

"(c) The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol to ensure that their treatment is not more favorable than that accorded ships of parties to the MARPOL Protocol.".

[11] Sec. 201(b) of Public Law 104–227 (110 Stat. 3042) inserted "or the Antarctic Protocol".

[12] Sec. 1003(a) of Public Law 103–160 (107 Stat. 1745) struck out "after 5 years after the effective date of this paragraph to a ship referred to in paragraph (1)(A)." and inserted in lieu thereof "as follows" and clauses (i) through (iii).

[13] Sec. 1003(b)(2) of Public Law 103–160 (107 Stat. 1746) added subsec. (c).

[14] Sec. 324(a)(1) of Public Law 104–201 (110 Stat. 2480) struck out "Not later than" and inserted in lieu thereof "Except as provided in paragraphs (2) and (3), not later than".

special area requirements of Regulation 5 of Annex V to the Convention.

(2)[15] (A) Subject to subparagraph (B), any ship described in subparagraph (C) may discharge, without regard to the special area requirements of Regulation 5 of Annex V to the Convention, the following non-plastic, non-floating garbage:

(i) A slurry of seawater, paper, cardboard, or food waste that is capable of passing through a screen with openings no larger than 12 millimeters in diameter.

(ii) Metal and glass that have been shredded and bagged so as to ensure negative buoyancy.

(iii)[16] With regard to a submersible, nonplastic garbage that has been compacted and weighted to ensure negative buoyancy.

(B)(i) Garbage described in subparagraph (A)(i) may not be discharged within 3 nautical miles of land.

(ii) Garbage described in clauses (ii) and (iii) of subparagraph (A)[16] may not be discharged within 12 nautical miles of land.

(C) This paragraph applies to any ship that is owned or operated by the Department of the Navy that, as determined by the Secretary of the Navy—

(i) has unique military design, construction, manning, or operating requirements; and

(ii) cannot fully comply with the special area requirements of Regulation 5 of Annex V to the Convention because compliance is not technologically feasible or would impair the operations or operational capability of the ship.

(3)[15] (A) Not later than December 31, 2000, the Secretary of the Navy shall prescribe and publish in the Federal Register standards to ensure that each ship described in subparagraph (B) is, to the maximum extent practicable without impairing the operations or operational capabilities of the ship, operated in a manner that is consistent with the special area requirements of Regulation 5 of Annex V to the Convention.

(B) Subparagraph (A) applies to surface ships that are owned or operated by the Department of the Navy that the Secretary plans to decommission during the period beginning on January 1, 2001, and ending on December 31, 2005.

(C) At the same time that the Secretary publishes standards under subparagraph (A), the Secretary shall publish in the Federal Register a list of the ships covered by subparagraph (B).

(d)[17] The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol, including regulations conforming to and giving effect to the requirements of Annex V as they apply under subsection (a) of section 3, to ensure that their treatment is not more favorable than that accorded ships to parties to the MARPOL Protocol.

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[15] Sec. 324(a)(2) of Public Law 104–201 (110 Stat. 2480) struck out paras. (2), (3), and (4), and added new paras. (2) and (3).

[16] Sec. 326(a) of Public Law 105–261 (112 Stat. 1965) added clause (iii) and struck out "subparagraph (A)(ii)" and inserted in lieu thereof "clauses (ii) and (iii) of subparagraph (A)".

[17] Sec. 1003(b)(1) of Public Law 103–160 (107 Stat. 1746) redesignated this subsection from subsec. (c) to subsec. (d).

(e)[18] COMPLIANCE BY EXCLUDED VESSELS.—(1) The Secretary of the Navy shall develop and, as appropriate, support the development of technologies and practices for solid waste management aboard ships owned or operated by the Department of the Navy, including technologies and practices for the reduction of the waste stream generated aboard such ships, that are necessary to ensure the compliance of such ships with Annex V to the Convention on or before the dates referred to in subsections (b)(2)(A) and (c)(1) of this section.

(2) Notwithstanding any effective date of the application of this section to a ship, the provisions of Annex V to the Convention with respect to the disposal of plastic shall apply to ships equipped with plastic processors required for the long-term collection and storage of plastic aboard ships of the Navy upon the installation of such processors in such ships.

(3) Except when necessary for the purpose of securing the safety of the ship, the health of the ship's personnel, or saving life at sea, it shall be a violation of this Act for a ship referred to in subsection (b)(1)(A) of this section that is owned or operated by the Department of the Navy:

(A) With regard to a submersible, to discharge buoyant garbage or[19] plastic.

(B) With regard to a surface ship, to discharge plastic contaminated by food during the last 3 days before the ship enters port.

(C) With regard to a surface ship, to discharge plastic, except plastic that is contaminated by food, during the last 20 days before the ship enters port.

(4) The Secretary of Defense shall publish in the Federal Register:

(A)[20] Each year, the amount and nature of the discharges in special areas, not otherwise authorized under this Act, during the preceding year from ships referred to in subsection (b)(1)(A) of this section owned or operated by the Department of the Navy.

(B) Beginning on October 1, 1996, and each year thereafter until October 1, 1998, a list of the names of such ships equipped with plastic processors pursuant to section 1003(e) of the National Defense Authorization Act for Fiscal Year 1994.

(f)[21] WAIVER AUTHORITY.—The President may waive the effective dates of the requirements set forth in subsection (c) of this section and in subsection 1003(e) of the National Defense Authorization Act for Fiscal Year 1994 if the President determines it to be in the paramount interest of the United States to do so. Any such waiver shall be for a period not in excess of one year. The President shall submit to the Congress each January a report on all waivers from

[18] Sec. 1003(c) of Public Law 103–160 (107 Stat. 1746) added subsec. (e).

[19] Sec. 326(b) of Public Law 105–261 (112 Stat. 1965) struck out "garbage that contains more than the minimum amount practicable of".

[20] Sec. 324(d) of Public Law 104–201 (110 Stat. 2481) amended and restated subpara. (A). It formerly read as follows:

"(A) Beginning on October 1, 1994, and each year thereafter until October 1, 2000, the amount and nature of the discharges in special areas, not otherwise authorized under Annex V to the Convention, during the preceding year from ships referred to in subsection (b)(1)(A) of this section owned or operated by the Department of the Navy.".

[21] Sec. 1003(d) of Public Law 103–160 (107 Stat. 1747) added subsec. (f).

the requirements of this section granted during the preceding calendar year, together with the reasons for granting such waivers.

(g)[22] The heads of Federal departments and agencies shall prescribe standards applicable to ships excluded from this Act by subsection (b)(1) of this section and for which they are responsible. Standards prescribed under this subsection shall ensure, so far as is reasonable and practicable without impairing the operations or operational capabilities of such ships, that such ships act in a manner consistent with the MARPOL Protocol.

SEC. 4.[23] (a) Unless otherwise specified in this Act,[24] the Secretary shall administer and enforce the MARPOL Protocol, Annex IV to the Antarctic Protocol,[25] and this Act. In the administration and enforcement of the MARPOL Protocol and this Act, Annexes I and II of the Convention apply[24] only to seagoing ships.

(b)(1)[26] The Secretary shall prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol, Annex IV to the Antarctic Protocol,[25] or this Act.

(2)[26] The Secretary of the department in which the Coast Guard is operating shall—

(A)[27] prescribe regulations which—

(i) require certain ships described in section 3(a)(1) to maintain refuse record books and shipboard management plans, and to display placards which notify the crew and passengers of the requirements of Annex V to the Convention and of Annex IV to the Antarctic Protocol;[25] and

(ii) specify the ships described in section 3(a)(1) to which the regulations apply;

(B) seek an international agreement or international agreements which apply requirements equivalent to those described in subparagraph (A)(i) to all vessel subject to Annex V to the Convention; and

(C) within 2 years after the effective date of this paragraph, report to the Congress—

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[22] Sec. 1003(b)(1) of Public Law 103–160 (107 Stat. 1746) redesignated this subsection from subsec. (d) to subsec. (g).

[23] 33 U.S.C. 1903. Public Law 102–388 (106 Stat. 1542) provided the following: "That notwithstanding any other provision of law, the Secretary of State shall communicate to the Government of Panama, within three months of the enactment of this section, the dissatisfaction of the Government of the United States concerning inadequate compliance by Panama with the enforcement provisions of Annex V of the International Convention for the Prevention of Pollution from ships (MARPOL 73/78), and the Secretary of State and the Secretary of Transportation, in consultation with the Commandant of the Coast Guard, shall further provide no later than March 15, 1993, a written report to the Congress describing and assessing (1) the actions taken by the Government of Panama since August 1, 1992, to investigate and, where appropriate, penalize Panamanian flag ships which have been reported by other nations to have violated the provisions of Annex V of MARPOL 73/78, (2) any efforts taken by the Government of Panama to ensure improved compliance with the provisions of Annex V of MARPOL 73/78 on the part of Panamanian flag ships, and (3) the actions by the Government of the United States in the implementation of its new enforcement policy for Annex V of MARPOL 73/78, including penalty actions taken against foreign flag vessels by the coast Guard for violations by those vessels occurring within the exclusive economic zone of the United States.".

[24] Sec. 2107(a) of Public Law 100–220 (101 Stat. 1464) struck out "herein" and inserted in lieu thereof "in this Act", and struck out "MARPOL Protocol shall be applicable" and inserted in lieu thereof "Convention apply".

[25] Sec. 201(c) of Public Law 104–227 (110 Stat. 3042) inserted ", Annex IV to the Antarctic Protocol,".

[26] Sec. 2107 of Public Law 100–220 (101 Stat. 1464) inserted "(1)" after "(b)", and added a new subpara. (2).

[27] Sec. 201(c)(3) of Public Law 104–227 (110 Stat. 3042) struck out "within 1 year after the effective date of this paragraph," at the beginning of subpara. (A).

(i) regarding activities of the Secretary under subparagraph (B); and

(ii) if the Secretary has not obtained agreements pursuant to subparagraph (B) regarding the desirability of applying the requirements described in subparagraph (A)(i) to all vessels described in section 3(a) which call at United States ports.

(c) The Secretary may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the MARPOL Protocol, this Act, or the regulations thereunder.

SEC. 5.[28] (a) The Secretary shall designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol. A certificate required by the MARPOL Protocol shall not be issued to a ship which is registered in or of the nationality of a country which is not a party to the MARPOL Protocol.

(b) A certificate issued by a country which is a party to the MARPOL Protocol has the same validity as a certificate issued by the Secretary under the authority of the MARPOL Protocol.

(c) A ship required by the MARPOL Protocol to have a certificate—

(1) shall carry a valid certificate onboard in the manner prescribed by the authority issuing the certificate; and

(2) is subject to inspection while in a port or terminal under the jurisdiction of the United States.

(d) An inspection conducted under subsection (c)(2) of this section is limited to verifying whether or not a valid certificate is onboard, unless clear grounds exist which reasonably indicate that the condition of the ship or its equipment does not substantially agree with the particulars of its certificate. This section shall not limit the authority of any official or employee of the United States under any other treaty, law, or regulation to board and inspect a ship or its equipment.

(e) In addition to the penalties prescribed in section 9 of the Act, a ship required by the MARPOL Protocol to have a certificate—

(1) which does not have a valid certificate onboard; or

(2) whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate onboard;

shall be detained by order of the Secretary at the port or terminal where the violation is discovered until, in the opinion of the Secretary, the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment. The detention order may authorize the ship to proceed to the nearest appropriate available shipyard rather than remaining at the place where the violation was discovered.

(f) If a ship is under a detention order under this section, the Secretary of the Treasury, upon the request of the Secretary, may refuse or revoke—

(1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or

[28] 33 U.S.C. 1904.

(2) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. 313) or section 442 of the Tariff Act of 1930, as amended (19 U.S.C. 1443).

(g) A person whose ship is subject to a detention order under this section may petition the Secretary, in the manner prescribed by regulation, to review the detention order. Upon receipt of a petition under this subsection, the Secretary shall affirm, modify, or withdraw the detention order within the time prescribed by regulation.

(h) A ship unreasonably detained or delayed by the Secretary acting under the authority of this Act is entitled to compensation for any loss or damage suffered thereby.

SEC. 6.[29] (a)(1)[30] The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall establish regulations setting criteria for determining the adequacy of a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances[30] and shall establish procedures whereby a person in charge of a port or terminal may request the Secretary to certify that the port's or terminal's facilities for receiving the residues and mixtures containing oil or noxious liquid substance from seagoing ships are adequate.

(2)[31] The Secretary, after consulting with appropriate Federal agencies, shall establish regulations setting criteria for determining the adequacy of reception facilities for garbage at a port or terminal, and stating such additional measures and requirements as are appropriate to ensure such adequacy. Persons in charge of ports and terminals shall provide reception facilities, or ensure that such facilities are available, for receiving garbage in accordance with those regulations.

(b) In determining the adequacy of reception facilities required by the MARPOL Protocol or the Antarctic Protocol[32] at a port or terminal, and in establishing regulations under subsection (a) of this section,[33] the Secretary may consider, among other things, the number and types of ships or[33] seagoing ships using the port or terminal, including their principal trades.

(c)(1)[34] If reception facilities of a port or terminal meet the requirements of Annex I and Annex II[35] to the Convention and the regulations prescribed under subsection (a)(1), the Secretary shall,

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[29] 33 U.S.C. 1905

[30] Sec. 2103 of Public Law 100–220 (101 Stat. 1461) inserted "(1)" after "(a)" and struck out "reception facilities of a port or terminal" and inserted in lieu thereof "a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances".

[31] Sec. 2103(a) of Public Law 100–220 (101 Stat. 1461) added para. 2.

[32] Sec. 201(d)(1) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol".

[33] Sec. 2103(b) of Public Law 100–220 (101 Stat. 1462) inserted "and in establishing regulations under subsection (a) of this section," and inserted "ships or".

[34] Sec. 2103(c) of Public Law 100–220 (101 Stat. 1462) amended and restated subsec. (c), which previously read as follows:

"(c) If, upon inspection, reception facilities of a port or terminal are adequate to meet the requirements of the MARPOL Protocol and the regulations established hereunder, the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant. A certificate issued under this subsection—

"(1) is valid until suspended or revoked by the Secretary for cause or because of changed conditions; and

"(2) shall be available for inspection upon the request of the master, other person in charge, or agent of a seagoing ship using or intending to use the port or terminal.

"The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by him in the manner prescribed by regulation.".

[35] Sec. 201(1) of Public Law 101–224 (103 Stat. 1910) struck out "Annex V" and inserted in lieu thereof "Annex I and Annex II".

after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant.

(2)[36] (A) Subject to subparagraph (B), if reception facilities of a port or terminal meet the requirements of Annex V to the Convention and the regulations prescribed under subsection (a)(2), the Secretary may, after consultation with appropriate Federal agencies, issue a certificate to that effect to the person in charge of the port or terminal.

(B)[36] The Secretary may not issue a certificate attesting to the adequacy of reception facilities under this paragraph unless, prior to the issuance of the certificate, the Secretary conducts an inspection of the reception facilities of the port or terminal that is the subject of the certificate.

(C)[36] The Secretary may, with respect to certificates issued under this paragraph prior to the date of enactment of the Coast Guard Authorization Act of 1996, prescribe by regulation differing periods of validity for such certificates.

(3) A certificate issued under this subsection—

(A)[37] is valid for the 5-year period beginning on the date of issuance of the certificate, except that if—

(i) the charge for operation of the port or terminal is transferred to a person or entity other than the person or entity that is the operator on the date of issuance of the certificate—

(I) the certificate shall expire on the date that is 30 days after the date of the transfer; and

(II) the new operator shall be required to submit an application for a certificate before a certificate may be issued for the port or terminal; or

(ii) the certificate is suspended or revoked by the Secretary, the certificate shall cease to be valid; and

(B) shall be available for inspection upon the request of the master, other person in charge, or agent of a ship using or intending to use the port or terminal.

(4) The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by the Secretary in the manner prescribed by regulation.

(d)[38] (1) The Secretary shall maintain a list of ports or terminals with respect to which a certificate issued under this section—

(A) is in effect; or

(B) has been revoked or suspended.

(2) The Secretary shall make the list referred to in paragraph (1) available to the general public.

(e)(1)[39] Except in the case of force majeure, the Secretary shall deny entry to a seagoing ship required by the Convention or the Antarctic Protocol[40] to retain onboard while at sea, residues and mixtures containing oil or noxious liquid substances, if—

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[36] Sec. 801(a) of Public Law 104–324 (110 Stat. 3943) struck out "(2) If"; inserted in lieu thereof "(2)(A) Subject to subparagraph (B), if"; and added subparas. (B) and (C).

[37] Sec. 801(a)(3) of Public Law 104–324 (110 Stat. 3944) amended and restated subpara. (A).

[38] Sec. 801(a)(4) of Public Law 104–324 (110 Stat. 3944) amended and restated subsec. (d).

[39] Sec. 2103(d) of Public Law 100–220 (101 Stat. 1462) inserted "(1)" after "(e)"; redesignated paras. (1) and (2) as subparas. (A) and (B); struck out "the MARPOL Protocol" and inserted in lieu thereof "Annexes I and II of the Convention"; and added a new subpara. (2).

[40] Sec. 201(d)(2) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol".

(A)[39] the port or terminal is one required by Annexes I and II of the Convention[39] or Article 9 of Annex IV to the Antarctic Protocol[41] or regulations hereunder to have adequate reception facilities; and

(B)[39] the port or terminal does not hold a valid certificate issued by the Secretary under this section.

(2)[39] The Secretary may deny the entry of a ship to a port or terminal required by regulations issued under this section to provide adequate reception facilities for garbage if the port or terminal is not in compliance with those regulations.

(f)(1)[42] The Secretary is authorized to conduct surveys of existing reception facilities in the United States to determine measures needed to comply with MARPOL Protocol or the Antarctic Protocol.[43]

(2)[42] (A) Not later than 18 months after the date of enactment of the Coast Guard Authorization Act of 1996, the Secretary shall promulgate regulations that require the operator of each port or terminal that is subject to any requirement of the MARPOL Protocol relating to reception facilities to post a placard in a location that can easily be seen by port and terminal users. The placard shall state, at a minimum, that a user of a reception facilities of the port or terminal should report to the Secretary any inadequacy of the reception facility.

SEC. 7.[44] (a) The master, person in charge, owner, charterer, manager, or operator of a ship involved in an incident shall report the incident in the manner prescribed by Article 8 of the Convention in accordance with regulations promulgated by the Secretary for that purpose.

(b) The master or person in charge of—

(1) a ship of United States registry or nationality, or operated under the authority of the United States, wherever located;

(2) another ship while in the navigable waters of the United States; or

(3) a sea port or oil handling facility subject to the jurisdiction of the United States, shall report a discharge, probable discharge, or presence of oil in the manner prescribed by Article 4 of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (adopted at London, November 30, 1990), in accordance with regulations promulgated by the Secretary for that purpose.

SEC. 8.[45] (a) It is unlawful to act in violation of the MARPOL Protocol, Annex IV to the Antarctic Protocol,[46] this Act, or the regulations issued thereunder. The Secretary shall cooperate with

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[41] Sec. 201(d)(3) of Public Law 104–227 (110 Stat. 3043) inserted "or Article 9 of Annex IV to the Antarctic Protocol".

[42] Sec. 801(b) of Public Law 104–324 (110 Stat. 3944) added para. designation "(1)" and added a new para. (2), with subpara. designation "(A)", though there is no subpara. (B).

[43] Sec. 201(d)(4) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol".

[44] 33 U.S.C. 1906. Sec. 39 of Public Law 102–241 (105 Stat. 2225) amended and restated sec. 7.

[45] 33 U.S.C. 1907.

[46] Sec. 201(e)(1) of Public Law 104–227 (110 Stat. 3043) inserted "Annex IV to the Antarctic Protocol,".

other parties to the MARPOL Protocol or to the Antarctic Protocol[47] in the detection of violations and in enforcement of the MARPOL Protocol and Annex IV to the Antarctic Protocol.[48] The Secretary shall use all appropriate and practical measures of detection and environmental monitoring, and shall establish adequate procedures for reporting violations and accumulating evidence.

(b) Upon receipt of evidence that a violation has occurred, the Secretary shall cause the matter to be investigated. In any investigation under this section the Secretary may issue subpenas to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Upon completion of the investigation, the Secretary shall take the action required by the MARPOL Protocol or the Antarctic Protocol[49] and whatever further action he considers appropriate under the circumstances. If the initial evidence was provided by a party to the MARPOL Protocol or the Antarctic Protocol,[49] the Secretary, acting through the Secretary of State, shall inform that party of the action taken or proposed.

(c)(1)[50] This subsection applies to inspection relating to possible violations of Annex I or Annex II to the Convention, of Article 3 or Article 4 of Annex IV to the Antarctic Protocol,[51] or of this Act[52] by any seagoing ship referred to in section 3(a)(2) of this Act.

(2)[50] While at a port or terminal subject to the jurisdiction of the United States, a ship to which the MARPOL Protocol or the Antarctic Protocol[53] applies may be inspected by the Secretary—

(A)[50] to verify whether or not the ship has discharged a harmful substance in violation of the MARPOL Protocol, Annex IV to the Antarctic Protocol,[54] or this Act; or

(B)[50] to comply with a request from a party to the MARPOL Protocol or the Antarctic Protocol[55] for an investigation as to whether the ship may have discharged a harmful substance anywhere in violation of the MARPOL Protocol or Annex IV to the Antarctic Protocol.[56] An investigation may be undertaken under this clause only when the requesting party has furnished sufficient evidence to allow the Secretary reasonably to believe that a discharge has occurred.

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[47] Sec. 201(e)(2)(A) of Public Law 104–227 (110 Stat. 3043) inserted "or to the Antarctic Protocol".

[48] Sec. 201(e)(2)(B) of Public Law 104–227 (110 Stat. 3043) inserted "and Annex IV to the Antarctic Protocol".

[49] Sec. 201(e)(3) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol".

[50] Sec. 2104(a) of Public Law 100–220 (101 Stat. 1462) amended subsec. (c) by adding a new para. (1); redesignating the former first paragraph of subsec. (c) as para. (2), and redesignating the former paras. (1) and (2) as (A) and (B), respectively.

[51] Sec. 201(e)(4) of Public Law 104–227 (110 Stat. 3043) inserted ", of Article 3 or Article 4 of Annex IV to the Antarctic Protocol,".

[52] Sec. 201(2) of Public Law 101–225 (103 Stat. 1910) inserted "or of this Act".

[53] Sec. 201(e)(5) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol" after "which the MARPOL Protocol".

[54] Sec. 201(e)(6) of Public Law 104–227 (110 Stat. 3043) inserted ", Annex IV to the Antarctic Protocol,".

[55] Sec. 201(e)(7)(A) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol".

[56] Sec. 201(e)(7)(B) of Public Law 104–227 (110 Stat. 3043) inserted "or Annex IV to the Antarctic Protocol".

If an inspection under this subsection indicates that a violation has occurred, the investigating officer shall forward a report to the Secretary for appropriate action. The[57] Secretary shall undertake to notify the master of the ship concerned and, acting in coordination with the Secretary of State, shall take any additional action required by Article 6 of the Convention.

(d)(1)[58] The Secretary may inspect a ship referred to in section 3(a)(3) of this Act to verify whether the ship has disposed of garbage in violation of Annex V to the Convention, Article 5 of Annex IV to the Antarctic Protocol,[59] or this Act.

(2) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake enforcement action under section 9 of this Act.

(e)(1)[58] The Secretary may inspect at any time a ship of United States registry or nationality or operating under the authority of the United States to which the MARPOL Protocol or the Antarctic Protocol[60] applies to verify whether the ship has discharged a harmful substance or disposed of garbage in violation of those Protocols[61] or this Act.

(2) If an inspection under this subsection indicates that a violation of the MARPOL Protocol, of Annex IV to the Antarctic Protocol,[62] or of this Act[63] has occurred, the Secretary may undertake enforcement action under section 9 of this Act.

(f)[58] Remedies and requirements of this Act supplement and neither amend nor repeal any other provisions of law, except as expressly provided in this Act. Nothing in this Act shall limit, deny, amend, modify, or repeal any other remedy available to the United States or any other person, except as expressly provided in this Act.

SEC. 9.[64] (a) A person who knowingly violates the MARPOL Protocol,, Annex IV to the Antarctic Protocol,[65] this Act, or the regulations issued thereunder commits a class D felony.[66] In the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to conviction.[67]

(b) A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol,, Annex IV to the Antarctic Protocol,[65] this Act, or the regulations issued thereunder

[57] Sec. 2104(a) of Public Law 100–220 (101 Stat. 1462) struck out "If a report made under this subsection involves a ship, other than one of United States registry or nationality or one operated under the authority of the United States, the" and inserted in lieu thereof "The".

[58] Sec. 2104(b) of Public Law 100–220 (101 Stat. 1463) redesignated former subsec. "(d)" as subsec. "(f)" and added new subsecs. "(d)" and "(e)".

[59] Sec. 201(e)(8) of Public Law 104–227 (110 Stat. 3043) inserted ", Article 5 of Annex IV to the Antarctic Protocol,".

[60] Sec. 201(e)(9)(A) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol".

[61] Sec. 201(e)(9)(B) of Public Law 104–227 (110 Stat. 3043) struck out "that Protocol" and inserted in lieu thereof "those Protocols".

[62] Sec. 201(e)(10) of Public Law 104–227 (110 Stat. 3043) inserted ", of Annex IV to the Antarctic Protocol,".

[63] Sec. 201(3) of Public Law 101–225 (103 Stat. 1910) inserted "or of this Act".

[64] 33 U.S.C. 1908.

[65] Sec. 201(f) of Public Law 104–227 (110 Stat. 3043) inserted ", Annex IV to the Antarctic Protocol," (resulting in a double comma).

[66] Sec. 4302(n) of the Oil Pollution Act of 1990 (Public Law 101–380; 104 Stat. 539) struck out "shall, for each violation, be fined not more than $50,000 or be imprisoned for not more than 5 years, or both." and inserted in lieu thereof "commits a class D felony.".

[67] Sec. 2105(a)(1) of Public Law 100–220 (101 Stat. 1463) added this sentence.

shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation; or

(2) make a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol,, Annex IV to the Antarctic Protocol,[65] this Act, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation.

Each day of a continuing violation shall constitute a separate violation. The amount of the civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require. An amount equal to not more than ½ of such penalties may be paid by the Secretary to the person giving information leading to the assessment of such penalties.[68]

(c) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to assessment or which has been assessed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States for collection in any appropriate district court of the United States.

(d) A ship operated in violation of the MARPOL Protocol,, Annex IV to the Antarctic Protocol,[65] this Act, or the regulations thereunder is liable in rem for any fine imposed under subsection (a) or civil penalty assessed pursuant to subsection (b), and may be proceeded against in the United States district court of any district in which the ship may be found.

(e) If any ship subject to the MARPOL Protocol, Annex IV to the Antarctic Protocol,[69] or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke—

(1) the clearance required by section 4197 of the Revised Statutes of the United States as amended (46 U.S.C. 91); or

(2) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. 313) or section 443 of the Tariff Act 1930, as amended (19 U.S.C. 1443).

Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

(f) Notwithstanding subsection (a), (b), or (d) of this section, if the violation is by a ship registered in or of the nationality of a country party to the MARPOL Protocol or the Antarctic Protocol,[70] or one operated under the authority of a country party to the MARPOL

[68] Sec. 2105(a)(2) of Public Law 100–220 (101 Stat. 1463) added this sentence.

[69] Sec. 201(f)(5) of Public Law 104–227 (110 Stat. 3043) inserted ", Annex IV to the Antarctic Protocol," after "MARPOL Protocol".

[70] Sec. 201(f)(6) of Public Law 104–227 (110 Stat. 3043) inserted "or the Antarctic Protocol".

Protocol or the Antarctic Protocol,[70] the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the ships of the ship's registry or nationality, or under whose authority the ship is operating[71] for appropriate action, rather than taking the actions required or authorized by this section.

SEC. 10.[72] (a) A proposed amendment to the MARPOL Protocol received by the United States from the Secretary-General of the International Maritime Organization[73] pursuant to Article VI of the MARPOL Protocol, may be accepted on behalf of the United States by the President following the advice and consent of the Senate, except as provided for in subsection (b) of this section.

(b) A proposed amendment to Annex I, II, or V to the Convention, appendices to those Annexes, or Protocol I of the Convention,[74] received by the United States from the Secretary-General of the International Maritime Organization[73] pursuant to Article VI of the MARPOL Protocol, may be the subject of appropriate action on behalf of the United States by the Secretary of State following consultation with the Secretary, who shall inform the Secretary of State as to what action he considers appropriate at least 30 days prior to the expiration of the period specified in Article VI of the MARPOL Protocol during which objection may be made to any amendment received.

(c) Following consultation with the Secretary, the Secretary of State may make a declaration that the United States does not accept an amendment proposed pursuant to Article VI of the MARPOL Protocol.

SEC. 11.[75] (a) Except as provided in subsection (b) of this section, any person having an interest which is, or can be, adversely affected, may bring an action on his own behalf—

(1) against any person alleged to be in violation of the provisions of this Act, or regulations issued hereunder;

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary;

(3) against the Secretary of the Treasury where there is alleged a failure of the Secretary of the Treasury to take action under section 9(e) of this Act.

(b) No action may be commenced under subsection (a) of this section—

(1) prior to 60 days after the plaintiff has given notice, in writing and under oath, to the alleged violator, the Secretary concerned, and the Attorney General; or

(2) if the Secretary has commenced enforcement or penalty action with respect to the alleged violation and is conducting such procedures diligently.

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[71] Sec. 2105(b) of Public Law 100–220 (101 Stat. 1463) struck out "to that country" and inserted in lieu thereof "to the government of the country of the ships of the ship's registry or nationality, or under whose authority the ship is operating".

[72] 33 U.S.C. 1909.

[73] Sec. 2106 of Public Law 100–220 (101 Stat. 1463) struck out "Inter-Governmental Maritime Consultative Organization" and inserted in lieu thereof "International Maritime Organization".

[74] Sec. 2106(2) of Public Law 100–220 (101 Stat. 1463) struck out "Annex I or II, appendices to the Annexes, or Protocol I of the MARPOL Protocol," and inserted in lieu thereof "Annex I, II, or V to the Convention, appendices to those Annexes, or Protocol I of the Convention,".

[75] 33 U.S.C. 1910.

(c) Any suit brought under this section shall be brought—

(1) in a case concerning an onshore facility or port, in the United States district court for the judicial district where the onshore facility or port is located;

(2) in a case concerning an offshore facility or offshore structure under the jurisdiction of the United States, in the United States district court for the judicial district nearest the offshore facility or offshore structure;

(3) in a case concerning a ship, in the United States district court for any judicial district wherein the ship or its owner or operator may be found; or

(4) in any case, in the District Court for the District of Columbia.

(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party including the Federal Government.

(e) In any action brought under this section, if the Secretary or Attorney General are not parties of record, the United States, through the Attorney General, shall have the right to intervene.

SEC. 12. On the effective date of this Act—

(a) the Oil Pollution Act, 1961, as amended (75 Stat. 402; 33 U.S.C. 1001 *et seq.*) is repealed. Any criminal or civil penalty proceeding under that Act for a violation which occurred prior to the effective date of this Act may be initiated or continued to conclusion as though that Act had not been repealed; and

(b) the Oil Pollution Act Amendments of 1973 (87 Stat. 428, Public Law 93–119) are repealed.

SEC. 13.[76] * * *

SEC. 14.[77] (a) Except as provided in subsection (b) of this section, this Act is effective upon the date of enactment, or on the date the MARPOL Protocol becomes effective as to the United States, whichever is later.[78]

(b) The Secretary and the heads of Federal departments shall have the authority to issue regulations, standards, and certifications under sections 3(c), 3(d), 4(b), 5(a), 6(a), 6(c), and 6(f) effective on the date of enactment of this Act. Section 13(a)(2) is effective upon the date of enactment of this Act.

(c) Any rights or liabilities existing on the effective date of this Act shall not be affected by this enactment. Any regulations or procedures promulgated or effected pursuant to the Oil Pollution Act, 1961, as amended, remain in effect until modified or superseded by regulations promulgated under the authority of the MARPOL Protocol or this Act.

SEC. 15.[79] Nothing in this Act shall be construed as limiting, diminishing, or otherwise restricting any of the authority of the Secretary under the Port and Tanker Safety Act of 1978 (Public Law 95–474).

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[76] Sec. 13 amended sec. 4417a of the Revised Statutes of the United States (46 U.S.C. 391a), and sec. 311(b)(3) of the Federal Water Pollution Control Act.

[77] 33 U.S.C. 1901 note.

[78] This Act became effective, except as provided in Sec. 14(b), on October 2, 1983, at which time the MARPOL Protocol became effective as to the United States.

[79] 33 U.S.C. 1911.

SEC. 16.[80] * * *

SEC. 17.[81] Any action taken under this Act shall be taken in accordance with international law.

[80] Sec. 16 amended sec. 4 of the Act of 1950 (16 U.S.C. 742c(c)).
[81] 33 U.S.C. 1912. Sec. 2108 of Public Law 100–220 (101 Stat. 1464) added sec. 17.

c. Deepwater Port Act of 1974

Partial text of Public Law 93–627 [H.R. 10701], 88 Stat. 2126, approved January 3, 1975; as amended by Public Law 98–419 [Deepwater Port Act Amendments of 1984; S. 1546], 98 Stat. 1607, approved September 25, 1984; Public Law 104–66 [Federal Reports Elimination and Sunset Act of 1995; S. 790], 109 Stat. 707, approved December 21, 1995; Public Law 104–324 [Deepwater Port Modernization Act; S. 1004], 110 Stat. 3901, approved October 19, 1996; Public Law 107–295 [Maritime Transportation Security Act of 2002; S. 1214], 116 Stat. 2064, approved November 25, 2002; and Public Law 109–58 [Energy Policy Act of 2005; H.R. 6], 119 Stat. 544, approved August 8, 2005

AN ACT To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coast of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act of 1974".

DECLARATION OF POLICY

Sec. 2.[1] (a) It is declared to be the purposes of the Congress in this Act to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports;[2]

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law;[2]

(5)[2] promote the construction and operation of deepwater ports as a safe and effective means of importing oil or natural gas[3] into the United States and transporting oil or natural gas[3] from the outer continental shelf while minimizing tanker traffic and the risks attendant thereto; and

(6)[2] promote oil or natural gas[3] production on the outer continental shelf by affording an economic and safe means of transportation of outer continental shelf oil or natural gas[3] to the United States mainland.

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[1] 33 U.S.C. 1501.

[2] Sec. 502(b) of the Deepwater Port Modernization Act (title V of Public Law 104–324; 110 Stat. 3925) struck out "and" at the end of para. (3); replaced the period at the end of para. (4) with a semicolon; and added new paras. (5) and (6).

[3] Sec. 106(a)(1) of Public Law 107–295 (116 Stat. 2086) inserted "or natural gas".

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

DEFINITIONS

Sec. 3.[4] As used in this Act, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9(a)(2) of this Act;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5(c)(2) (A) or (B);

(3)[5] "application" means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;

(4)[5] "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(5)[5] "coastal environment" means the navigable waters (including the lands therein and thereunder and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildfish and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(6)[5] "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(7)[5] "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and

[4] 33 U.S.C. 1502.

[5] Sec. 2(a) of Public Law 98–419 (98 Stat. 1607) amended and restated para. (3), originally enacted as para. (4). Sec. 503(a) of the Deepwater Port Modernization Act (title V of Public Law 104–324; 110 Stat. 3926) struck out para. (3) and redesignated remaining paras. as (3) through (18). Former para. (3) read as follows:

"(3) 'antitrust laws' includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*), and sections 73 and 74 of the Act of August 27, 1894, as amended;".

bulkheading, and alterations, modifications, or additions to the deepwater port;

(8)[5] "control" means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(9)[5, 6] "deepwater port"—

(A) means any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in section 23, and for other uses not inconsistent with the purposes of this Act, including transportation of oil or natural gas from the United States outer continental shelf;

(B) includes all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark;

(C) in the case of a structure used or intended for such use with respect to natural gas, includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for construction and operation as part of a deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities; and

(D) shall be considered a 'new source' for purposes of the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(10)[5] "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this Act;

(11)[5] "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this Act;

(12)[5] "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(13)[6] "natural gas" means either natural gas unmixed, or any mixture of natural or artificial gas, including compressed

[6] Sec. 106(b) of Public Law 107–295 (116 Stat. 2086) amended and restated para. (9); redesignated paras. (13) through (18) as paras. (14) through (19); and added a new para. (13).

Previously, sec. 503(b) of the Deepwater Port Modernization Act (title V of Public Law 104–324; 110 Stat. 3926) amended para. (9).

or liquefied natural gas, natural gas liquids, liquified petroleum gas and condensate recovered from natural gas;[7]

(14)[5,6] "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15)[5,6] "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16)[5,6] "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

(17)[5,6] "Secretary" means the Secretary of Transportation;

(18)[5,6] "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; and

(19)[5,6] "vessel" means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

* * * * * * *

MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

Sec. 10.[8] (a) Subject to recognized principles of international law and the provision of adequate opportunities for public involvement,[9] the Secretary shall prescribe and enforce procedures, either by regulation (for basic standards and conditions) or by the licensee's operations manual, with respect to[10] rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with the applicable regulations. The licensee shall pay the cost of such marking.

(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense, the Secretary shall designate a zone of appropriate size around and

[7] Sec. 321(b) of Public Law 109–58 (119 Stat. 694) inserted ", natural gas liquids, liquified petroleum gas and condensate recovered from natural gas".

[8] 33 U.S.C. 1509.

[9] Sec. 508(1) of the Deepwater Port Modernization Act (title V of Public Law 104–324; 110 Stat. 3927) inserted "and the provision of adequate opportunities for public involvement".

[10] Sec. 508(2) of the Deepwater Port Modernization Act (title V of Public Law 104–324; 110 Stat. 3927) struck out "shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to," and inserted in lieu thereof "shall prescribe and enforce procedures, either by regulation (for basic standards and conditions) or by the licensee's operations manual, with respect to".

including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 5(c) of this Act, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto.

INTERNATIONAL AGREEMENTS

Sec. 11.[11] The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

* * * * * * *

RELATIONSHIP TO OTHER LAWS

Sec. 19.[12] (a)(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(3)[13] The Secretary of State shall notify the government of each foreign state having vessels registered under its authority or flying its flag which may call at or otherwise utilize a deepwater port but which do not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing

[11] 33 U.S.C. 1510.

[12] 33 U.S.C. 1518.

[13] Sec. 5(a) of Public Law 98–419 (98 Stat. 1609) added para. (3), and sec. 5(c) of that Act provided, in part, that "[T]he Secretary of State shall make the first series of notification referred to in section 19(a)(3) of the Deepwater Port Act of 1974, as added by subsection (a) of this section, prior to the thirtieth day following the date of enactment of this Act" [enacted September 25, 1984].

a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such state that, absent its objection, its vessels will be subject to the jurisdiction of the United States whenever they—

(A) are calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from government of foreign states in response to notifications made under this paragraph.

(b) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c)[14] (1) The jurisdiction of the United States shall apply to vessels of the United States and persons on board such vessels. The jurisdiction of the United States shall also apply to vessels, and person on board such vessels, registered in or flying the flags of foreign states, whenever such vessels are—

(A) calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port, and are engaged in activities connected, associated, or potentially interfering with the use and operations of the deepwater port.

The jurisdiction of the United States under this paragraph shall not, however, apply to vessels registered in or flying the flag of any foreign state that has objected to the application of such jurisdiction.

(2) Except in a situation involving force majeure, a licensee shall not permit a vessel registered in or flying the flag of a foreign state to call at or otherwise utilize a deepwater port licensed under this Act unless—

(A)(i) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessels registered in or flying the

[14] Sec. 5(b) of Public Law 98–419 (98 Stat. 1609) amended and restated subsec. (c), effective ninety days after the enactment of that Act (enacted September 25, 1984). Subsec. (c) formerly read as follows:

"(c) Except in a situation involving force majeure, a license of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.".

flag of that state and persons on board such vessels in accordance with the provisions of paragraph (1) of this subsection, while the vessel is located within the safety zone, or

(ii) the foreign states has not objected to the application of the jurisdiction of the United States to any vessel, or persons on board such vessel, while the vessel is located within the safety zone; and

(B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(3) For purposes of paragraph (2)(A)(ii) of this subsection, a licensee shall not be obliged to prohibit a call at or use of a deepwater port by a vessel registered in or flying the flag of an objecting state unless the licensee has been informed by the Secretary of State as required by subsection (a)(3) of this section.

(d) The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this Act, but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance this laws applicable to merchandise imported into the customs territory of the United States.

(e) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose.

(f) Section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462) is amended by deleting the words "as of the effective date of this Act" in the first sentence thereof and inserting in lieu thereof the words ", now in effect or hereafter adopted, amended, or repealed".

Sec. 20.[15] * * * [Repealed—1995]

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NEGOTIATIONS WITH CANADA AND MEXICO

Sec. 22.[16] The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

[15] Formerly at 33 U.S.C. 1519. Sec. 1121(a) of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66; 109 Stat. 707) repealed sec. 20, which had required that the Secretary of Commerce report to Congress annually on the administration of various deepwater port activities.

[16] 33 U.S.C. 1521.

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreements, and the matters about which more information is needed, together with his recommendations for further action.

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d. Intervention on the High Seas Act

Public Law 93–248 [S. 1070], 88 Stat. 8, approved February 5, 1974; as amended by Public Law 95–302 [S. 2380], 92 Stat. 344, approved June 26, 1978; Public Law 97–164 [Federal Courts Improvement Act of 1982; H.R. 4482], 96 Stat. 25 at 49, approved April 2, 1982; Public Law 101–380 [Oil Pollution Act of 1990; H.R. 1465], 104 Stat. 484, approved August 18, 1990; and Public Law 102–572 [Court of Federal Claims Technical and Procedural Improvements Act of 1992; S. 1569], 106 Stat. 4516, approved October 29, 1992

AN ACT To implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intervention on the High Seas Act".

Sec. 2.[2] As used in this Act—

(1) "a substance other than convention oil" means those oils, noxious substances, liquefied gases, and radioactive substances—

(A) enumerated in the protocol, or

(B) otherwise determined to be hazardous under section 4(a);

(2) "convention" means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto;

(3) "convention oil" means crude oil, fuel oil, diesel oil, and lubricating oil;

(4) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(5) "ship" means—

(A) a seagoing vessel of any type whatsoever, and

(B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

(6) "protocol" means the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil, 1973, including annexes thereto; and

(7) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

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[1] See boxnote, page 2.

[2] 33 U.S.C. 1471. Sec. 1(1) of Public Law 95–302 (92 Stat. 344) amended and restated sec. 2. As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the Protocol referred to in para. (6) became effective for the United States.

Sec. 3.[3] Whenever a ship collision, standing, or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by convention oil or of the sea or atmosphere by a substance other than convention oil[4] which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 10, without liability for any damage to the owners or operators of the ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the convention, the protocol[5] and this Act, to prevent, mitigate, or eliminate the danger.

Sec. 4.[6] (a)[7] The Secretary, after consultation with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, shall determine when a substance other than those enumerated in the protocol is liable to create a hazard to human health, to harm living resources, to damage amenities, or to interfere with other legitimate uses of the sea.

(b)[7] In determining whether there is grave and imminent danger or major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States, directly threatened or affected including but not limited to, human health,[8] fish, shellfish, and other living marine resources, wildlife, coastal zone, and estuarine activities, and public and private shorelines and beaches.

Sec. 5.[9] Upon a determination under section 3 of this Act of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may—

(1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;

(2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and

(3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

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[3] 33 U.S.C. 1472.

[4] Sec. 1(2)(A) of Public Law 95–302 (92 Stat. 344) struck out "oil" and inserted in lieu thereof "convention oil or of the sea or atmosphere by a substance other than convention oil". As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[5] Sec. 1(2)(B) of Public Law 95–302 (92 Stat. 344) struck out "Convention" and inserted in lieu thereof "convention, the protocol". As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[6] 33 U.S.C. 1473.

[7] Sec. 1(3) of Public Law 95–302 (92 Stat. 344) designated the existing text of sec. 4 as subsec. (b) and added a new subsec. (a). As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[8] Sec. 1(3) of Public Law 95–302 (92 Stat. 344) inserted "human health,". As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[9] 33 U.S.C. 1474.

Sec. 6.[10] Before taking any measure under section 5 of this Act, the Secretary shall—

(1) consult, through the Secretary of State, with other countries affected by the marine casualty, and particularly with the flag countries of any ship involved;

(2) notify without delay the Administrator of the Environmental Protection Agency and any other persons, known to the Secretary, or of whom he later becomes aware, who have interests which can reasonably be expected to be affected by any proposed measures; and

(3) consider any views submitted in response to the consultation or notification required by subsections (1) and (2) of this section.

Sec. 7.[11] In cases of extreme urgency requiring measures to be taken immediately, the Secretary may take those measures rendered necessary by the urgency of the situation without the prior consultation or notification as required by section 6 of this Act or without the continuation of consultations already begun.

Sec. 8.[12] (a) Measures directed or conducted under this Act shall be proportionate to the damage, actual or threatened, to the coastline or related interests of the United States and may not go beyond what is reasonably necessary to prevent, mitigate, or eliminate that damage.

(b) In considering whether measures are proportionate to the damage the Secretary shall, among other things consider—

(1) the extent and probability of imminent damage if those measures are not taken;

(2) the likelihood of effectiveness of those measures; and

(3) the extent of the damage which may be caused by those measures.

Sec. 9.[13] In the direction and conduct of measures under this Act the Secretary shall use his best endeavors to—

(1) assure the avoidance of risk to human life;

(2) render all possible aid to distressed persons, including facilitating repatriation of ships' crews; and

(3) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

Sec. 10.[14] (a) The United States shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in section 3.

(b) Actions against the United States seeking compensation for any excessive measures may be brought in the United States Court of Federal Claims,[15] in any district court of the United States, and

[10] 33 U.S.C. 1475.
[11] 33 U.S.C. 1476.
[12] 33 U.S.C. 1477.
[13] 33 U.S.C. 1478.
[14] 33 U.S.C. 1479.
[15] Sec. 902(b)(1) of Public Law 102–572 (106 Stat. 4516) provided that any reference in any Federal law or any document to the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims". Previously, sec. 161(6) of the Federal Courts Improvement Act (Public Law 97–164; 96 Stat. 49) struck out "United States Court of Claims" and inserted in lieu thereof "United States Claims Court".

in those courts enumerated in section 460 of title 28, United States Code. For purposes of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii, and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

(c)[16] With respect to intervention for a substance identified pursuant to section 4(a), the United States has the burden of establishing that, under the circumstances present at the time of the intervention, the substance could reasonably pose a grave and imminent danger analogous to that posed by a substance enumerated in the protocol.

Sec. 11.[17] The Secretary of State shall notify without delay foreign states concerned, the Secretary-General of the Inter-Governmental Maritime Consultative organization, and persons affected by measures taken under this Act.

Sec. 12.[18] (a) A person commits a class A misdemeanor if that person—[19]

(1) willfully violates a provision of this Act or a regulation issued thereunder; or

(2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this Act; or

(3) willfully obstructs any person who is acting in compliance with an order or direction under this Act.[20]

(b) In a criminal proceeding for an offense under paragraph (1) or (2) of subsection (a) of this section it shall be a defense for the accused to prove that he used all due diligence to comply with any order or direction or that he had reasonable cause to believe that compliance would have resulted in serious risk to human life.

Sec. 13.[21] (a) The Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, may nominate individuals to the list of experts provided for in article III of the Convention and article II of the protocol and may propose amendments to the list of substances other than convention oil in accordance with article III of the protocol.[22]

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[16] Sec. 1(4) of Public Law 95–302 (92 Stat. 345) added subsec. (c). As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

[17] 33 U.S.C. 1480.

[18] 33 U.S.C. 1481.

[19] Sec. 4302(l)(1) of the Oil Pollution Act of 1990 (Public Law 101–380; 104 Stat. 539) struck out "Any person who" and inserted in lieu thereof "A person commits a class A misdemeanor if that person".

[20] Sec. 4302(l)(2) of the Oil Pollution Act of 1990 (Public Law 101–380; 104 Stat. 539) struck out ", shall be fined not more than $10,000 or imprisoned not more than one year, or both" in para. (3).

[21] 33 U.S.C. 1482.

[22] Sec. 1(5)(A) of Public Law 95–302 (92 Stat. 345) added the words to this point beginning with "and article II of the protocol * * *". As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

(b) The Secretary of State, in consultation with the Secretary, shall designate or nominate, as appropriate and necessary, the negotiators, conciliators, or arbitrators provided for by the convention and the protocol.[23]

(c)[23] The President may accept amendments to the list of substances other than convention oil in accordance with article III of the protocol.

Sec. 14.[24] No measures may be taken under authority of this Act against any warship or other ship owned or operated by a country and used, for the time being, only on Government noncommercial service.

Sec. 15.[25] This Act shall be interpreted and administered in a manner consistent with the convention, the protocol,[26] and other international law. Except as specifically provided, nothing in this Act may be interpreted to prejudice any otherwise applicable right, duty, privilege, or immunity or deprive any country or person of any remedy otherwise applicable.

Sec. 16.[27] The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this Act.

Sec. 17.[28] The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.

Sec. 18.[29] This Act shall be effective upon the date of enactment, or upon the date the convention becomes effective as to the United States, whichever is later.

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[23] Sec. 1(5) of Public Law 95–302 (92 Stat. 345) struck out "annexes thereto" and inserted in lieu thereof "protocol" in subsec. (b) and added a new subsec. (c). As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

[24] 33 U.S.C. 1483.

[25] 33 U.S.C. 1484.

[26] Sec. 2(6) of Public Law 95–302 (92 Stat. 345) inserted ", the protocol,". As provided in sec. 2 of Public Law 95–302, this amendment did not become effective until March 30, 1983, when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

[27] 33 U.S.C. 1485.

[28] 33 U.S.C. 1486. Sec. 2001 of the Oil Pollution Act of 1990 (Public Law 101–380; 104 Stat. 506) amended and restated sec. 17. It formerly read as follows:

"The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.".

[29] 33 U.S.C. 1487.

e. Coral Reef Protection

Executive Order 13089, June 11, 1998, 63 F.R. 32701, 16 U.S.C. 6401 note

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the Clean Water Act of 1977, as amended (33 U.S.C. 1251, *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*), National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*), National Marine Sanctuaries Act, (16 U.S.C. 1431, *et seq.*), National Park Service Organic Act (16 U.S.C. 1, *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment, it is hereby ordered as follows:

Section 1. *Definitions.* (a) "U.S. coral reef ecosystems" means those species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including reef systems in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean.

(b) "U.S. Coral Reef Initiative" is an existing partnership between Federal agencies and State, territorial, commonwealth, and local governments, nongovernmental organizations, and commercial interests to design and implement additional management, education, monitoring, research, and restoration efforts to conserve coral reef ecosystems for the use and enjoyment of future generations. The existing U.S. Islands Coral Reef Initiative strategy covers approximately 95 percent of U.S. coral reef ecosystems and is a key element of the overall U.S. Coral Reef Initiative.

(c) "International Coral Reef Initiative" is an existing partnership, founded by the United States in 1994, of governments, intergovernmental organizations, multilateral development banks, nongovernmental organizations, scientists, and the private sector whose purpose is to mobilize governments and other interested parties whose coordinated, vigorous, and effective actions are required to address the threats to the world's coral reefs.

Sec. 2. *Policy.* (a) All Federal agencies whose actions may affect U.S. coral reef ecosystems shall: (a) identify their actions that may affect U.S. coral reef ecosystems; (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and (c) to the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems.

(b) Exceptions to this section may be allowed under terms prescribed by the heads of Federal agencies:

(1) during time of war or national emergency;

(2) when necessary for reasons of national security, as determined by the President;

(3) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or

(4) in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of force majeure caused by stress of weather or other act of God.

Sec. 3. *Federal Agency Responsibilities.* In furtherance of section 2 of this order, Federal agencies whose actions affect U.S. coral reef ecosystems, shall, subject to the availability of appropriations, provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to, measures reducing impacts from pollution, sedimentation, and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

Sec. 4. *U.S. Coral Reef Task Force.* The Secretary of the Interior and the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall co-chair a U.S. Coral Reef Task Force ("Task Force"), whose members shall include, but not be limited to, the Administrator of the Environmental Protection Agency, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Secretary of Transportation, the Director of the National Science Foundation, the Administrator of the Agency for International Development, and the Administrator of the National Aeronautics and Space Administration. The Task Force shall oversee implementation of the policy and Federal agency responsibilities set forth in this order, and shall guide and support activities under the U.S. Coral Reef Initiative ("CRI"). All Federal agencies whose actions may affect U.S. coral reef ecosystems shall review their participation in the CRI and the strategies developed under it, including strategies and plans of State, territorial, commonwealth, and local governments, and, to the extent feasible, shall enhance Federal participation and support of such strategies and plans. The Task Force shall work in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

Sec. 5. *Duties of the U.S. Coral Reef Task Force.* (a) *Coral Reef Mapping and Monitoring.* The Task Force, in cooperation with State, territory, commonwealth, and local government partners, shall coordinate a comprehensive program to map and monitor U.S. coral reefs. Such programs shall include, but not be limited to, territories and commonwealths, special marine protected areas such as National Marine Sanctuaries, National Estuarine Research Reserves, National Parks, National Wildlife Refuges, and other entities having significant coral reef resources. To the extent feasible,

remote sensing capabilities shall be developed and applied to this program and local communities should be engaged in the design and conduct of programs.

(b) *Research.* The Task Force shall develop and implement, with the scientific community, research aimed at identifying the major causes and consequences of degradation of coral reef ecosystems. This research shall include fundamental scientific research to provide a sound framework for the restoration and conservation of coral reef ecosystems worldwide. To the extent feasible, existing and planned environmental monitoring and mapping programs should be linked with scientific research activities. This Executive order shall not interfere with the normal conduct of scientific studies on coral reef ecosystems.

(c) *Conservation, Mitigation, and Restoration.* The Task Force, in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community and commercial interests, shall develop, recommend, and seek or secure implementation of measures necessary to reduce and mitigate coral reef ecosystem degradation and to restore damaged coral reefs. These measures shall include solutions to problems such as land-based sources of water pollution, sedimentation, detrimental alteration of salinity or temperature, over-fishing, over-use, collection of coral reef species, and direct destruction caused by activities such as recreational and commercial vessel traffic and treasure salvage. In developing these measures, the Task Force shall review existing legislation to determine whether additional legislation is necessary to complement the policy objectives of this order and shall recommend such legislation if appropriate. The Task Force shall further evaluate existing navigational aids, including charts, maps, day markers, and beacons to determine if the designation of the location of specific coral reefs should be enhanced through the use, revision, or improvement of such aids.

(d) *International Cooperation.* The Secretary of State and the Administrator of the Agency for International Development, in cooperation with other members of the Coral Reef Task Force and drawing upon their expertise, shall assess the U.S. role in international trade and protection of coral reef species and implement appropriate strategies and actions to promote conservation and sustainable use of coral reef resources worldwide. Such actions shall include expanded collaboration with other International Coral Reef Initiative ("ICRI") partners, especially governments, to implement the ICRI through its Framework for Action and the Global Coral Reef Monitoring Network at regional, national, and local levels.

Sec. 6. This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

3. Tuna Conventions

a. Tuna Conventions Act of 1950, as amended

Public Law 81–764 [S. 2633], 64 Stat. 777, approved September 7, 1950; as amended by Public Law 87–814 [S. 2568], 76 Stat. 923, approved October 15, 1962; Public Law 92–471 [H.R. 9501], 86 Stat. 784, approved October 9, 1972; Public Law 102–523 [International Dolphin Conservation Act of 1992; H.R. 5419], 106 Stat. 3425, approved October 26, 1992; Public Law 105–42 [International Dolphin Conservation Program Act; H.R. 408], 111 Stat. 1122, approved August 15, 1997; and Public Law 106–562 [H.R. 1653], 114 Stat. 2794, approved December 23, 2000

AN ACT To give effect to the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City, January 25, 1949,[1] by the United States of America and the United Mexican States, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949,[2] by the United States of America and the Republic of Costa Rica, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tuna Conventions Act of 1950".

Sec. 2.[3] 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 3 of this Act;

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

[1] Terminated February 5, 1965.
[2] 1 UST 230; TIAS 2040; 80 UNTS 3.
[3] 16 U.S.C. 951.

(e)[4] "United States" shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

Sec. 3.[5] 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, United States Code, and chapter 171 of title 28, United States Code.[6] 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;[7]

(c)[8] at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and[7]

(d)[7] at least one shall be chosen from a nongovernmental conservation organization.

SEC. 4.[9] 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

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[4] Public Law 87–814 struck out a definition of "enforcement agency" and inserted in lieu thereof a definition of "United States".

[5] 16 U.S.C. 952.

[6] Sec. 302 of Public Law 106–562 (114 Stat. 2806) added this sentence.

[7] Sec. 3(a)(1) of the International Dolphin Conservation Act of 1992 (Public Law 102–523; 106 Stat. 3433), struck out "and" at the end of subsec. (b); struck out a period at the end of subsec. (c), and inserted in lieu thereof "; and"; and added subsec. (d).

[8] Sec. 7(a) of Public Law 105–42 (111 Stat. 1137) amended and restated subsec. (c). It previously read as follows:

"(c) at least one shall be an officer of the United States Fish and Wildlife Service; and".

In a transfer of functions pursuant to Reorganization Plan No. 4 of 1970 (35 F.R. 15627; 84 Stat. 2090), effective October 3, 1970, "Department of Commerce" has been substituted in lieu of "United States Fish and Wildlife Service" in the United States Code.

[9] 16 U.S.C. 953. Sec. 7(b) of Public Law 105–42 (111 Stat. 1137) amended and restated sec. 4. It previously read as follows:

"**Sec. 4.** 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.".

Previously, Sec. 3(a)(2) of the International Dolphin Conservation Act of 1992 (Public Law 102–523; 106 Stat. 3433) had amended sec. 4.

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.

Sec. 5.[10] * * * [Repealed—1972]

Sec. 6.[11] (a) 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 the Interior,[12] 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 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 the Interior,[12] 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)[13] 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 the Interior[14] upon approval of such recommendations by the Secretary of State and the Secretary of the Interior.[14] The

[10] Formerly at 16 U.S.C. 954. Repealed by Public Law 92–471 (86 Stat. 784).

[11] 16 U.S.C. 955.

[12] In a transfer of functions pursuant to Reorganization Plan No. 4 of 1970 (35 F.R. 15627; 84 Stat. 2090), effective October 3, 1970, "Secretary of Commerce" was substituted in lieu of "Secretary of the Interior" in the U.S. Code. In this Act, Public Law 87–814 (76 Stat. 923) struck out "head of the enforcement agency" and inserted in lieu thereof "Secretary of the Interior".

[13] Public Law 87–814 (76 Stat. 923) added subsec. (c).

[14] In a transfer of functions pursuant to Reorganization Plan No. 4 of 1970 (35 F.R. 15627; 84 Stat. 2090), effective October 3, 1970, "Secretary of Commerce" was substituted in lieu of "Secretary of the Interior" in the U.S. Code.

Secretary of the Interior[14] 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 the Interior[14] 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 the Interior[14] 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 Act; and such other measures incidental thereto as the Secretary of the Interior[14] may deem necessary to implement the recommendations of the commission: *Provided,* That upon the promulgation of any such regulations the Secretary of the Interior[14] 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 conversation 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 the Interior,[14] 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 the Interior[14] 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.

Sec. 7.[15] Any person authorized to carry out enforcement activities under this Act and any person authorized by the commission 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 Act to be made, kept, or furnished.

Sec. 8.[16] (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 6 of this Act 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 Act 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 vessels or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this Act, 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 4 of this Act, 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 4 of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary of the Interior[14] shall require proof

[15] 16 U.S.C. 956. Public Law 87–814 (76 Stat. 923) substituted provisions respecting inspection of returns, records, or other reports for provisions authorizing a fine not exceeding $1,000 and proceeds for injunction against fishing for or possession of 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.

[16] 16 U.S.C. 957. Public Law 87–814 (76 Stat. 923) substituted provisions respecting violations, fines, and forfeitures and applications of related laws for respecting enforcement of the Act.

satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 of this Act.

(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 Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

Sec. 9.[17] (a) 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) 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) 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.

Sec. 10.[18] (a) The judges of the United States district courts and United States Commissioners[19] 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 Act and the regulations issued pursuant thereto.

(b) Enforcement of the provisions of this Act and the regulations issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of the

[17] 16 U.S.C. 958.

[18] 16 U.S.C. 959. Sec. 5 of Public Law 87–814 (76 Stat. 925) amended and restated sec. 10.

[19] Now referred to as "magistrates" per the Federal Magistrates Act (Public Law 90–578; 82 Stat. 1107).

Interior,[20] and the United States Bureau of Customs. In addition, the Secretary of the Interior[14] 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 those purposes.

(c) 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 Act.

(d) 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 Act 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 Act or the regulations issued thereunder, then to arrest such person.

(e) Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this Act 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 the Interior.[14]

(f) Notwithstanding the provisions of section 2464 of title 28 of the United States Code, 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 cause. 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.

[20] In a transfer of functions pursuant to Reorganization Plan No. 4 of 1970 (35 F.R. 15627; 84 Stat. 2090), effective October 3, 1970, "Department of Commerce" was substituted in lieu of "Department of the Interior" in the U.S. Code.

Sec. 11.[21] None of the prohibitions contained in this Act 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.

Sec. 12.[22] 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 Act, 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, the Travel Expense Act of 1949, or section 10 of the Act of March 3, 1933 (U.S.C., title 5, sec. 73b);

(c) printing and binding without regard to section 11 of the Act of March 1, 1919 (U.S.C., title 44, sec. 111), or section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5);

(d) stenographic and other services by contract, if deemed necessary, without regard to section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5); and

(e) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats and research vessels.

Sec. 13. If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

Sec. 14. This Act 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 in which case this Act shall take effect immediately.

SEC. 15.[23] REDUCTION OF BYCATCH IN THE 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 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;

[21] 16 U.S.C. 960.
[22] 16 U.S.C. 961.
[23] 16 U.S.C. 962. Sec. 7(c) of Public Law 105–42 (111 Stat. 1138) added sec. 15.

(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.

b. Pacific Albacore Tuna Treaty

Partial text of Public Law 108–219 [H.R. 2584], 118 Stat. 615, approved April 13, 2004

AN ACT To provide for the conveyance to the Utrok Atoll local government of a decommissioned National Oceanic and Atmospheric Administration ship, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE IV—PACIFIC ALBACORE TUNA TREATY

SEC. 401.[1] IMPLEMENTATION.

(a) IN GENERAL.—Notwithstanding anything to the contrary in section 201, 204, or 307(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821, 1824, and 1857(2)), foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.

(b) REGULATIONS.—The Secretary of Commerce, with the concurrence of the Secretary of State, may

(1) promulgate regulations necessary to discharge the obligations of the United States under the Treaty and itsAnnexes; and

(2) provide for the application of any such regulation to any person or vessel subject to the jurisdiction of the United States, wherever that person or vessel may be located.

(c) ENFORCEMENT.—

(1) IN GENERAL.—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall be enforced as if subsection (a) were a provision of that Act. Any reference in the Magnuson-Stevens Fishery Conservationand Management Act (16 U.S.C. 1801 *et seq.*) to "this Act" or to any provision of that Act, shall be considered to be a reference to that Act as it would be in effect if subsection (a) were a provision of that Act.

(2) REGULATIONS.—The regulations promulgated under subsection (b), shall be enforced as if—

(A) subsection (a) were a provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*); and

[1] 16 U.S.C. 1821 note.

(B) the regulations were promulgated under that Act.

* * * * * * *

c. South Pacific Tuna Act of 1988

Public Law 100–330 [S. 1989], 102 Stat. 591, approved June 7, 1988; as amended by Public Law 100–350 [H.R. 4621], 102 Stat. 660, approved June 27, 1988; Public Law 102–523 [International Dolphin Conservation Act of 1992; H.R. 5419], 106 Stat. 3425, approved October 26, 1992; Public Law 104–43 [Fisheries Act of 1995; H.R. 716], 109 Stat. 366, approved November 3, 1995; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; and Public Law 108–219 [H.R. 2584], 118 Stat. 615, approved April 13, 2004

AN ACT To implement the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "South Pacific Tuna Act of 1988".

SEC. 2.[1] DEFINITIONS.

As used in this Act—

(1) The term "Administrator" means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States Government.

(2) The term "Authorized Officer" means any officer who is authorized by the Secretary, or the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an enforcement agreement with the Secretary under section 10(a) of this Act.

(3) The term "Authorized Party Officer" means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

(4) The term "applicable national law" means any provision of law of a Pacific Island Party which is described in paragraph 1(a) of Annex I of the Treaty.

(5) The term "Closed Area" means any of the closed areas identified in Schedule 2 of Annex I of the Treaty.

(6) The term "fishing" means—

(A) searching for, catching, taking, or harvesting fish;

(B) attempting to search for, catch, take, or harvest fish;

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish;

(D) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

[1] 16 U.S.C. 973.

(E) any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or

(F) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

(7) The term "fishing vessel" or "vessel" means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, and which is documented under the laws of the United States.

(8) The term "Licensing Area" means all waters in the Treaty Area except for—

(A) those waters subject to the jurisdiction of the United States in accordance with international law;

(B) those waters within Closed Areas; and

(C) those waters within Limited Areas closed to fishing.

(9) The term "licensing period" means the period of validity of licenses issued in accordance with the Treaty.

(10) The term "Limited Area" means any area so identified in Schedule 3 of Annex I of the Treaty.

(11) The term "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer, and master.

(12) The term "Pacific Island Party" means a Pacific Island nation which is a party to the Treaty.

(13) The term "Party" means a nation which is a party to the Treaty.

(14) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(15) The term "Secretary" means the Secretary of Commerce, or the designee of the Secretary of Commerce.

(16) The term "State" means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(17) The term "Treaty" means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements.

(18) The term "Treaty Area" means the area so described in paragraph 1(k) of Article 1 of the Treaty.

SEC. 3.[2] APPLICATION TO OTHER LAWS.

The seizure by a Pacific Island Party of a vessel of the United States shall not be determined to be a seizure described in section

[2] 16 U.S.C. 973a.

205(a)(4)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1825(a)(4)(C))[3] or section 2 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1972) if the seizure is found by the Secretary of State to be in accordance with the provisions of the Treaty.

SEC. 4.[4] REGULATIONS.

The Secretary of Commerce, with the concurrence of the Secretary of State and after consultation with the Secretary of the department in which the Coast Guard is operating, shall issue regulations as may be necessary to carry out the purposes and objectives of the Treaty and this Act. These regulations shall be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located.

SEC. 5.[5] PROHIBITED ACTS.

(a) Except as provided in section 6 of this Act, it is unlawful for any person subject to the jurisdiction of the United States—

(1) to violate any provision of this Act or any regulation or order issued pursuant to this Act;

(2) to use a vessel for fishing in violation of an applicable national law;

(3) who has entered into a fishing arrangement under paragraph 3 of Article 3 of the Treaty, to violate the terms and conditions of such fishing arrangement if the Secretary of State has decided under section 18 of this Act that Article 4 and paragraph 6 of Article 5 of the Treaty shall apply to the arrangement;

(4) to use a vessel for fishing in any Limited Area in violation of any requirement in Schedule 3 of Annex I of the Treaty;

(5) to use a vessel for fishing in any Closed Area;

(6) to falsify any information required to be reported, notified, communicated, or recorded pursuant to a requirement of this Act, or to fail to submit any required information, or to fail to report to the Secretary immediately any change in circumstances which has the effect of rendering any such information false, incomplete, or misleading;

(7) to intentionally destroy evidence which could be used to determine if a violation of this Act or the Treaty has occurred;

(8) to refuse to permit any Authorized Officer or Authorized Party Officer to board a fishing vessel for purposes of conducting a search or inspection in connection with the enforcement of this Act or the Treaty;

(9) to refuse to comply with the instructions of an Authorized Officer or Authorized Party Officer relating to fishing activities under the Treaty;

(10) to forcibly assault, resist, oppose, impede, intimidate, or interfere with—

[3] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[4] 16 U.S.C. 973b.

[5] 16 U.S.C. 973c.

(A) any Authorized Officer or Authorized Party Officer in the conduct of a search or inspection in connection with the enforcement of this Act or the Treaty; or

(B) an observer in the conduct of observer duties under the Treaty;

(11) to resist a lawful arrest for any act prohibited by this section;

(12) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; or

(13) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or the Treaty, with the knowledge that the fish were so taken or retained.

(b) Except as provided in section 6 of this Act, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area—

(1) to use a vessel to fish unless validly licensed as required by the Administrator;

(2) to use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental by-catch;

(3) to use a vessel for fishing by any method other than the purse-seine method;

(4) to use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license;

(5) to operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels;

(6) to use a vessel to fish in a manner inconsistent with an order issued by the Secretary under section 11 of this Act; or

(7) except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use an aircraft in association with the fishing activities of a vessel unless it is identified in the license application for the vessel, or any amendment thereto.

SEC. 6.[6] EXCEPTIONS.

(a) The prohibitions of section 5 of this Act and the licensing requirements of section 9 of this Act shall not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline method in the high seas areas of the Treaty area.[7]

(b) The prohibitions of section 5 (a)(4), (a)(5), and (b)(3) of this Act shall not apply to fishing under the terms and conditions of an arrangement which has been reached under paragraph 3 of Article

[6] 16 U.S.C. 973d.

[7] Sec. 402 of Public Law 108–219 (118 Stat. 617) struck out "outside of the 200 nautical mile fisheries zones of the Pacific Island Parties." and inserted in lieu thereof "or to fishing by vessels using the longline method in the high seas areas of the Treaty area."

3 of the Treaty and which, pursuant to a decision by the Secretary of State under section 18 of this Act, is covered by Article 4 and paragraph 6 of Article 5 of the Treaty.

SEC. 7.[8] CRIMINAL OFFENSES.

(a) A person is guilty of a criminal offense if he or she commits any act prohibited by section 5(a) (8), (10), (11), or (12) of this Act.

(b) Any offense described in subsection (a) of this section is punishable by a fine of not more than $50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any Authorized Officer, Authorized Party Officer, or observer under the Treaty in the conduct of their duties, or places any such Authorized Officer, Authorized Party Officer, or observer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than 10 years, or both.

(c) The district courts of the United States shall have jurisdiction over any offense described in this section.

SEC. 8.[9] CIVIL PENALTIES.

(a) Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 5 of this Act, shall be liable to the United States Code for a civil penalty. Before issuing a notice of violation, the Secretary shall consult with the Secretary of State. The amount of the civil penalty shall be determined in accordance with considerations set forth in the Treaty and shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. Except for those acts prohibited by section 5(a) (4), (5), (7), (8), (10), (11), and (12), and section 5(b) (1), (2), (3), and (7) of this Act, the amount of the civil penalty shall not exceed $250,000 for each violation. Upon written notice, the Secretary of State shall have the right to participate in any proceeding initiated to assess a civil penalty for violation of this Act.

(b) Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of the order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General of the United States, and the appropriate United States Attorney. The Secretary shall promptly file in the court a certified copy of the record upon which the violation was found or the penalty imposed. The findings and order of the Secretary shall be set aside or modified by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) Except as provided in subsection (g) of this section, if any person fails to pay an assessment of a civil penalty after it has become

[8] 16 U.S.C. 973e.
[9] 16 U.S.C. 973f.

a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States.

(d) Except as provided in subsection (g) of this section, a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5 of this Act shall be liable in rem for any civil penalty assessed for the violation under section 8 of this Act and may be proceeded against in any district court of the United States having jurisdiction thereof. The penalty shall constitute a maritime lien on the vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) The Secretary, after consultation with the Secretary of State, may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon a person pursuant to this subsection, the district court of the United States for any district in which the person is found, resides, or transacts business, upon application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(g) If a vessel used in a violation of section 5(a) (1), (2), (3), (4), (5), (6), (7), (8), (9), or (13) or section 5(b) of this Act for which a civil penalty has been assessed—

(1) had a valid license under the Treasury at the time of the violation, and

(2) within 60 days after the penalty assessment has become final, leaves and remains outside of the Licensing Area, all Limited Areas closed to fishing, and all Closed Areas until the final penalty has been paid,

there shall be no referral to the Attorney General under subsection (c) of this section or in rem action under subsection (d) of this section in connection with such civil penalty.

SEC. 9.[10] LICENSES.

(a) Licenses to fish in the Licensing Area, to be issued by the Administrator in accordance with the Treaty, may be requested from the Secretary by operators of vessels, under procedures established by the Secretary. The license application shall designate an agent for the service of legal process to be located in Port Moresby, Papua New Guinea. The applicant shall ensure that the designated agent

[10] 16 U.S.C. 973g.

for service of process, acting on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty and will, within 21 days after notification, travel if necessary for this purpose to any Pacific Island Party at no expense to that Party.

(b) Except as provided in subsections (e), (f), and (g) of this section, the Secretary shall forward a vessel license application to the Secretary of State for transmittal to the Administrator whenever such application is in accordance with application procedures established by the Secretary, includes a complete application form as required by Annex II of the Treaty, and is accompanied by the required license fee.

(c)(1) In the initial year of implementation, fees for the first 40 vessel licenses shall be at least $50,000 each, for any 10 vessel licenses in addition to the first 40 shall be $60,000 each, and for vessel licenses in addition to the first 50 shall be in accordance with Annex II of the Treaty.

(2) After such initial year, fees for vessel licenses shall be paid in accordance with fee schedules established under Annex II of the Treaty and published by the Secretary.

(d) Licenses shall be valid for the licensing period specified by the Administrator.

(e) The Secretary may establish a system of allocating licenses in the event more applications are received than there are licenses available.

(f) For the initial year of implementation, license fees totaling at least $1,750,000 must be received by the Secretary before any license applications will be forwarded to the Secretary of State for transmittal to the Administrator.

(g) The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator for one of the following reasons:

(1) where the application is not in accordance with the Treaty or the procedures established by the Secretary;

(2) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

(3) where the owner or charterer has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance;

(4) where the owner or charterer has not paid any penalty which has become final, assessed by the Secretary in accordance with this Act.

(h)[11] Notwithstanding the requirements of—

(1) section 1 of the Act of August 26, 1983 (97 Stat. 587; 46 U.S.C. 12108);

(2) the general permit issued on December 1, 1980, to the American Tunaboat Association under section 104(h)(1) of the Marine Mammal Protection Act (16 U.S.C. 1374(h)(1)); and

(3) sections 104(h)(2) and 306(a) of the Marine Mammal Protection Act (16 U.S.C. 1374(h)(2) and 1416(a))—

[11] Sec. 801 of Public Law 104–43 (109 Stat. 395) added subsec. (h).

any vessel documented under the laws of the United States as of the date of enactment of the Fisheries Act of 1995 for which a license has been issued under subsection (a) may fish for tuna in the Treaty Area, including those waters subject to the jurisdiction of the United States in accordance with international law, subject to the provisions of the treaty and this Act, provided that no such vessel fishing in the Treaty Area intentionally deploys a purse seine net to encircle any dolphin or other marine mammal in the course of fishing under the provisions of the Treaty or this Act.

SEC. 10.[12] ENFORCEMENT.

(a) The provisions of this Act shall be enforced by the Secretary in cooperation with the Secretary of State. The Secretary, after consultation with the Secretary of State, may by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency and of any State agency in the performance of these duties.

(b)(1) The Secretary shall, at the request of a Pacific Island Party made to the Secretary of State, fully investigate any alleged infringement of the Treaty involving a vessel of the United States, and report as soon as practicable, and in any case within 2 months, to that Party through the Secretary of State on any action taken or proposed by the Secretary in regard to the alleged infringement.

(2) Upon commencement of an investigation under paragraph (1) of this subsection, the Secretary shall notify the operator of any vessel concerned regarding—

(A) the nature of the investigation;

(B) the right of the operator to submit comments, information, or evidence bearing on the investigation and to receive, upon the operator's timely written request to the Secretary, an opportunity to present such comments, information, or evidence orally to the Secretary or the Secretary's representative within 30 days after receipt of such notification.

(c)(1) Prior to instituting any legal proceedings under this Act for any action which involves an alleged infringement of the Treaty in waters within the jurisdiction of a Pacific Island Party, the Secretary, through the Secretary of State, shall notify the Pacific Island Party in accordance with paragraph 8 of Article 4 of the Treaty that the proceedings will be instituted. Such notice shall include a statement of the facts believed to show an infringement of the Treaty and the nature of the proposed proceedings, including any proposed charges and any proposed penalties. The Secretary shall not institute such proceedings if the Pacific Island Party objects within 30 days after the effective date of the notice under Article 10 of the Treaty.

(2) The Pacific Island Party exercising jurisdiction over the waters involved in such a legal proceeding shall be promptly notified by the Secretary, through the Secretary of State, concerning the outcome of the proceeding.

(d)(1) Any Authorized Officer may—

(A) with or without a warrant or other process—

[12] 16 U.S.C. 973h.

(i) arrest any person, if he has reasonable cause to believe that the person has committed any act subject to prosecution under section 7 of this Act;

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act; or

(iii) seize samples of fish or items for evidence (other than the vessel or its fishing gear or equipment) related to any violation of any provision of this Act;

(iv) order a vessel into the most convenient port of the United States for investigation when an investigation has been requested by a Pacific Island Party in accordance with the Treaty and when such an order is necessary to gather information for such an investigation;

(B) execute any warrant or other process issued by any court of competent jurisdiction;

(C) exercise any other lawful authority; and

(D) investigate alleged violations of the Treaty to the same extent authorized to investigate alleged violations of this Act.

(2) To the extent possible, Authorized Officers shall exercise their powers under paragraph (1)(A) (ii), (iii), and (iv) of this subsection so as not to interfere unduly with the lawful operation of the vessel.

(3) Nothing in this Act shall be construed to limit the enforcement of this or other applicable Federal laws under section 89 of title 14, United States Code.

(e) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act.

SEC. 11.[13] FINDINGS BY THE SECRETARY.

(a) Following any investigation conducted in accordance with section 10(b) of this Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel which has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding—

(1) that the fishing vessel—

(A) while fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, such fishing is not authorized to be conducted in the Licensing Area without a license;

(B) was involved in any incident in which an Authorized Officer, Authorized Party Officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding, or subjected to physical intimidation or physical interference in the performance of duties as authorized by this Act or the Treaty;

(C) has not made full payment within 60 days of any amount due as a result of a final judgment or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

[13] 16 U.S.C. 973i.

(D) was not represented by an agent for service of process in accordance with the Treaty; or

(2) that there is probable cause to believe that the fishing vessel—

(A) was used in violation of section 5 (a)(4), (a)(5), (b)(2), or (b)(3) of this Act;

(B) used an aircraft in violation of section 5(b)(7); or

(C) was involved in an incident in which section 5(a)(7) was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made under paragraph 7 of Article 5 of the Treaty that a Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of such Pacific Island Party, the Secretary shall order the vessel to leave such waters until the Secretary of State notifies the Secretary that such order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under subsection (a)(1) (C) or (D) of this section as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) No order issued in accordance with this section is subject to judicial review.

(e) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including permanent or temporary injunction, to enforce any order issued by the Secretary under this section.

SEC. 12.[14] REPORTING.

(a) Holders of licenses shall comply with the reporting requirements of part 4 of Annex I to the Treaty.

(b) Information provided by license holders in Schedules 5 and 6 of Annex I of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested under the Freedom of Information Act, unless disclosure is required under court order or unless the information is essential for an enforcement action under section 5, 10(b), 10(c), or 11 of this Act, or any other proper law enforcement action.

SEC. 13.[15] CLOSED AREA STOWAGE REQUIREMENTS.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured.

[14] 16 U.S.C. 973j.
[15] 16 U.S.C. 973k.

SEC. 14.[16] OBSERVERS.

(a) The operator and each member of the crew of a vessel shall allow and assist any individual identified as an observer under the Treaty by the Pacific Island Parties—

(1) to board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary;

(2) without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel which the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas which may be used to hold, process, weigh, and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area;

(3) to disembark at the point and time notified by the Pacific Island Parties to the Secretary; and

(4) to carry out observer duties safely.

(b) The operator shall provide any such observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation, and medical facilities of such reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

(c) The operator of any vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any individual so authorized by the Pacific Island Parties to have full access to any place where such fish is unloaded, to remove samples, and to gather any other information relating to fisheries in the Licensing Area.

SEC. 15.[17] TECHNICAL ASSISTANCE.

The United States tuna industry shall provide $250,000 annually in technical assistance, including provision of assistance by technicians, in response to requests coordinated through the Administrator. The Secretary of State shall designate an entity to coordinate the provision of such technical assistance as provided by the United States tuna industry and to provide an annual report to the Secretary of State regarding the provision of such technical assistance.

SEC. 16.[18] ARBITRATION.

In the event of a dispute requiring the establishment of an arbitral tribunal under Article 6 of the Treaty, the Secretary of State, in consultation with the Secretary, shall appoint the arbitrator to be appointed by the United States under paragraph 3 of that Article, and shall represent the United States in reaching agreement under such paragraph with each Pacific Island Party involved concerning the appointment of the presiding arbitrator of the tribunal.

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[16] 16 U.S.C. 973*l*.
[17] 16 U.S.C. 973m.
[18] 16 U.S.C. 973n.

SEC. 17.[19] DISPOSITION OF FEES, PENALTIES, FORFEITURES, AND OTHER MONEYS.

To the extent required by Article 4 of the Treaty, an amount equivalent to the total value of any fine, penalty, or other amount collected as a result of any action, judicial or otherwise, taken pursuant to sections 7 and 8 of this Act shall be paid by the United States through the Secretary of State to the Administrator as soon as reasonably possible following the date that such amount is collected.

SEC. 18.[20] ADDITIONAL AGREEMENTS.

Within 30 days after the Secretary of State's receipt of notice from a Pacific Island Party that it has concluded an arrangement pursuant to paragraph 3 of Article 3 of the Treaty, the Secretary of State shall consult with the Secretary concerning whether the procedures of Article 4 and paragraph 6 of Article 5 of the Treaty should be made applicable to such arrangement. At the conclusion of the consultations the Pacific Island Party and all other persons agreeing to the arrangement shall be notified by the Secretary of State of the resulting decision.

SEC. 19.[21] SECRETARY OF STATE TO ACT FOR THE UNITED STATES.

The Secretary of State is authorized to receive on behalf of the United States reports, requests, and other communications from the Administrator and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, after consultations with the Secretary, may accept or reject, on behalf of the United States, changes or amendments to Annex I of the Treaty and its Schedules and Annex II to the Treaty and its Schedules.

SEC. 20.[22] AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated for fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002[23] such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this Act including—

(1) for fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002,[23] an amount not to exceed $350,000 annually to the Department of Commerce for administrative expenses; and

(2) for fiscal years 1988, 1989, 1990, 1991, and 1992, an amount not to exceed $50,000 annually to the Department of State for administrative expenses.

(b) Funds appropriated for the purposes of the Treaty may be used notwithstanding any of the provisions of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or of any appropriations Act that imposes restrictions on the maintenance or use of cash transfer assistance, which are inconsistent with the provisions of the Treaty.

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[19] 16 U.S.C. 973o.
[20] 16 U.S.C. 973p.
[21] 16 U.S.C. 973q.
[22] 16 U.S.C. 973r.
[23] Sec. 3(b) of Public Law 102–523 (106 Stat. 3433) struck out "1988, 1989, 1990, 1991, and 1992" each place it appeared in sec. 20, and inserted in lieu thereof "1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002".

SEC. 21.[24] **EFFECTIVE DATE.**

(a) Except as provided in subsection (b) of this section, this Act shall be effective on the date on which the Treaty enters into force for the United States.

(b)(1) The authority to promulgate regulations pursuant to this Act shall be effective on the date of enactment of this Act.

(2) Any regulation promulgated pursuant to this Act shall not be effective before the date on which the Treaty enters into force for the United States.

[24] 16 U.S.C. 973 note.

d. Eastern Pacific Ocean Tuna Licensing Act of 1984

Public Law 98–445 [H.R. 5147], 98 Stat. 1715, approved October 4, 1984; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To implement the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, March 15, 1983.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Eastern Pacific Tuna Licensing Act of 1984".

SEC. 2.[1] DEFINITIONS.

As used in this Act—

(1) The term "Agreement" means the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, March 15, 1983.

(2) The term "Agreement Area" means the area within a perimeter determined as follows: From the point on the mainland where the parallel of 40 degrees north latitude intersects the coast westward along the parallel of 40 degrees north latitude to 40 degrees north latitude by 125 degrees west longitude to 20 degrees north latitude by 125 degrees west longitude, thence southerly along the meridian of 125 degrees west longitude to 20 degrees north latitude by 125 degrees west longitude, thence easterly along the parallel of 20 degrees north latitude to 20 degrees latitude by 120 degrees west longitude, thence southerly along the meridian of 120 degrees west longitude to 5 degrees north latitude by 120 degrees west longitude, thence easterly along the parallel of 5 degrees north latitude to 5 degrees north latitude by 110 degrees west longitude, thence southerly along the meridian of 110 degrees west longitude to 10 degrees south latitude by 110 degrees west longitude, thence easterly along the parallel of 10 degrees south latitude to 10 degrees south latitude by 90 degrees west longitude, thence southerly along the meridian of 90 degrees west longitude to 30 degrees south latitude by 90 degrees west longitude, thence easterly along the parallel of 30 degrees south latitude to the point on the mainland where the parallel intersects the coast; but the Agreement Area does not include the zones within twelve nautical miles of the baseline from which the breadth of territorial sea is measured and the zones within two hundred nautical miles of the baselines of Coastal States not signatories to the Agreement, measured from the same baseline.

(3) The term "designated species of tuna" means yellowfin tuna, Thunnus albacares (Bonnaterre, 1788); bigeye tuna,

[1] 16 U.S.C. 972.

Thunnus obesus (Lowe, 1839); albacore tuna, Thunnus alalunga (Bonnaterre, 1788); northern bluefin tuna, Thunnus thynnus (Linnaeus, 1758): southern bluefin tuna, Thunnus maccoyil (Castelnau, 1872); skipjack tuna, Katsuwonus pelamis (Linnaeus 1578); black skipjack, Euthynnus Lineatus (Kishinouye 1920); kawakawa, Euthynnus affinis (Cantor, 1849); bullet tuna, Auxis rochei (Risso, 1810), frigate tuna, Ausix (Lacepede, 1800); eastern Pacific bonito, Sarda chiliensis (Cuvier in Cuvier and Valenciennes, 1831); and Indo-Pacific bonito, Sarda orientalis (Temminck and Schlegel, 1844).

(4) The term "Council" means the body consisting of the representatives from each Contracting Party to the Agreement which is a Coastal State of the eastern Pacific Ocean or a member of the Inter-American Tropical Tuna Commission at the time of entry into force of the Agreement.

SEC. 3.[2] UNITED STATES REPRESENTATION ON THE COUNCIL.

(a) The Secretary of State—

(1) shall appoint a United States representative to the Council; and

(2) may appoint not more than three alternate United States representatives to the Council.

(b) An individual is not eligible for appointment as, or to serve as, the United States representative under subsection (a)(1) unless the individual is an officer or employee of the United States Government.

(c) An individual is not entitled to compensation for serving as the United States representative or an alternate United States representative.

(d) While away from home or a regular place of business in the performance of service as the United States representative or an alternate United States representative, an individual is entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as individuals employed intermittently in Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

SEC. 4.[3] SECRETARY OF STATE TO ACT FOR THE UNITED STATES.

The Secretary of State shall receive, on behalf of the United States Government, reports, requests, recommendations and other communications of the Council, and, in consultation with the Secretary of Commerce, shall act directly thereon or by reference to the appropriate authorities.

SEC. 5.[4] APPLICATION TO OTHER LAWS.

(a) Notwithstanding section 4 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1874), such Act applies with respect to a seizure by a Contracting Party to the Agreement of a vessel of the United States within the Agreement Area for violation of the Agreement if the Secretary of State determines that the violation is not of such seriousness as to diminish the effectiveness of the Agreement.

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[2] 16 U.S.C. 972a.
[3] 16 U.S.C. 972b.
[4] 16 U.S.C. 972c.

(b) The seizure by a Contracting Party to the Agreement of a vessel of the United States shall not be considered to be a seizure described in section 205(a)(4)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1825(a)(4)(C))[5] if the seizure is consistent with the Agreement.

SEC. 6.[6] DISPOSITION OF FEES.

All fees accruing to the United States under Article III Of the Agreement shall be deposited into the Treasury of the United States.

SEC. 7.[7] REGULATIONS.

The Secretary of Commerce, in cooperation with the Secretary of State of the department in which the Coast Guard is operating, shall issue such regulations as may be necessary to carry out the purposes and objectives of the Agreement and this Act. Regulations may be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located. Regulations concerning the conservation of a designated species of tuna may be issued only to implement conservation recommendations made by the Council under Article 3(D) of the Agreement.

SEC. 8.[8] PROHIBITED ACTS.

(a) It is unlawful for any person subject to the jurisdiction of the United States—

(1) to engage in fishing for a designated species of tuna within the Agreement Area unless issued a license under the Agreement authorizing such fishing;

(2) to engage in fishing for a designated species of tuna within the Agreement area in contravention of regulations promulgated by the Secretary of the Commerce under the Agreement:

(3) knowingly to ship, transport, purchase, sell, offer for sale, export, or have in custody, possession, or control any designated species of tuna taken or retained in violation of regulations issued under section 7;

(4) to fail to make, keep, or furnish any catch return, statistical record, or other report required by regulations issued under section 7;

(5) being a person in charge of a vessel of the United States, to fail to stop upon being hailed by an authorized official of the United States, or to refuse to permit officials of the United States to board the vessel or inspect its catch, equipment, books, documents, records, or other articles, or to question individuals on board; or

(6) to import from any country, in violation of any regulation issued under section 7, any designated species of tuna.

(b) Any person who is convicted of violating—

(1) subsection (a)(1), (a)(2), (a)(3) shall be fined or assessed a civil penalty not more than $25,000, and for a subsequent

[5] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[6] 16 U.S.C. 972d.

[7] 16 U.S.C. 972e.

[8] 16 U.S.C. 972f.

violation shall be fined or assessed a civil penalty not more than $50,000;

(2) subsection (a)(4) or (a)(5) shall be fined or assessed a civil penalty not more than $5,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than $5,000; or

(3) subsection (a)(6) shall be fined or assessed a civil penalty not more than $100,000.

(c) All designated species of tuna taken or retained in violation of subsection (a) (1), (2), (3), or (6), or the monetary value thereof, is subject to forfeiture.

(d) 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 this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

SEC. 9.[9] ENFORCEMENT.

(a) The judges of the United States district courts and United States magistrates 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 Act and the regulations issued under section 7.

(b) The enforcement of this Act and the regulations issued under section 7 shall be the joint responsibility of the department in which the Coast Guard is operating, the 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 under this section. When so designated, such officers and employees may function as Federal law enforcement agents for these purposes.

(c) An individual authorized to carry out enforcement activities under this section has power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

(d) An individual so authorized to carry out enforcement activities under this section has power—

(1) with or without a warrant or other process, to arrest any person 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 Act or the regulations issued under section 7;

(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 the search he has reasonable cause to believe that such vessel or any individual on board is engaging in operations in violation of this Act or any regulation issued thereunder to arrest such person.

(e) An individual authorized to enforce this Act may seize, whenever or wherever lawfully found, all species of designated tuna

[9] 16 U.S.C. 972g.

taken or retained in violation of this Act or the regulations issued under section 7. Any species so seized may be disposed of pursuant to the order of a court of competent jurisdiction, under subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of Commerce.

(f) Notwithstanding the provisions of section 2464 of title 28, United States Code, 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 species of designated tuna seized if the process has been levied, on receiving from the claimant of the species 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 species seized, if condemned, without impairment in value or, in the discretion of the court, to pay the 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 species 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.

SEC. 10.[10] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years after fiscal year 1984 such sums as may be necessary to carry out this Act.

[10] 16 U.S.C. 972h.

e. Atlantic Tunas Convention Act of 1975, Appropriation Authorization

Partial text of Public Law 96–339 [S. 2549], 94 Stat. 1069, approved September 4, 1980; as amended by Public Law 104–43 [Fisheries Act of 1995; H.R. 716], 109 Stat. 366, approved November 3, 1995; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; and Public Law 105–384 [H.R. 3461], 112 Stat. 3451, approved November 13, 1998

AN ACT To authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ATLANTIC TUNAS CONVENTION ACT OF 1975.

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SEC. 2.[1] OBSERVER PROGRAM REGARDING CERTAIN FOREIGN FISHING.

(a) DEFINITIONS.—As used in this section—

(1) The term "Act of 1976" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).[2]

(2) The term "billfish" means any species of marlin, spearfish, sailfish or swordfish.

(3) The term "Secretary" means the Secretary of Commerce.

(b) OBSERVER PROGRAM.—The Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel—

(1) is in waters that are within—

(A) the fishery conservation zone[3] established under section 101 of the Act of 1976, and

(B) the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas; and

(2) is taking or attempting to take any species of fish if such taking or attempting to take may result in the incidental taking of billfish.

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[1] 16 U.S.C. 1827.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[3] Sec. 101(c)(2) of Public Law 99–659 (100 Stat. 3707) amended generally sec. 101 of the Magnuson-Stevens Fishery Conservation and Management Act, which established the fishery conservation zone. Sec. 101, amended, relates to United States sovereign rights to fish and fishery management authority within the "exclusive economic zone".

The Secretary may acquire observers for such program through contract with qualified private persons.

(c) FUNCTIONS OF OBSERVERS.—United States observers, while aboard foreign fishing vessels as required under subsection (b), shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out this section.

(d) FISH.—There is imposed for each year after 1980 on the owner or operator or each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) during that year which may result in the incidental taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a). The fees imposed under this subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited in the Fund established by subsection (e).

(e) FUND.—There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this section.[4] The Fund shall consist of the fees deposited into it as required under subsection (d). All payments made by the Secretary to carry out this section shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) PROHIBITED ACTS.—(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies—

(A) to violate any regulation issued under subsection (g);

(B) to refuse to pay the fee imposed under subsection (d) after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976.

(g) REGULATIONS.—The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

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[4] The Department of Commerce Appropriations Act, 2003 (title II of Division B Public Law 108–7; 117 Stat. 76), provided:

"FOREIGN FISHING OBSERVER FUND

"For expenses necessary to carry out the provisions of the Atlantic Tunas Convention Act of 1975, as amended (Public Law 96–339), the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (Public Law 100–627) , the American Fisheries Promotion Act (Public Law 96–561) and the International Dolphin Conservation Program Act (Public Law 105–42), to be derived from the fees imposed under the foreign fishery observer program authorized by these Acts, not to exceed $1,000, to remain available until expended.".

SEC. 3.[5] **RESEARCH ON ATLANTIC HIGHLY MIGRATORY SPECIES.**

(a)[6] BIENNIAL REPORT ON BLUEFIN TUNA.—The Secretary of Commerce shall prepare, for each biennial period commencing with the period covering calendar years 1981 and 1982, and submit to the Congress a report setting forth, with respect to such biennial period—

(1) the level of taking of bluefin tuna by United States fishermen in the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas;

(2) the status of bluefin tuna stocks within such Convention area and the trends in their population level; and

(3) related information resulting from the implementation of the observer program under section 2 of this Act.

The report required under this section shall be submitted to the Congress within sixty days after the close of the biennial period covered by the report.[7]

(b)[8] HIGHLY MIGRATORY SPECIES RESEARCH AND MONITORING.—

(1) Within 6 months after the date of enactment of the Atlantic Tunas Convention Authorization Act of 1995, the Secretary of Commerce, in cooperation with the advisory committee established under section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) and in consultation with the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas (referred to elsewhere in this section as the "Commission") and the Secretary of State, shall develop and implement a comprehensive research and monitoring program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species that shall—

(A) identify and define the range of stocks of highly migratory species in the Atlantic Ocean, including Atlantic bluefin tuna; and

(B) provide for appropriate participation by nations which are members of the Commission.

(2) The program shall provide for, but not be limited to—

(A) statistically designed cooperative tagging studies;

(B) genetic and biochemical stock analyses;

(C) population censuses carried out through aerial surveys of fishing grounds and known migration areas;

(D) adequate observer coverage and port sampling of commercial and recreational fishing activity;

(E) collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landing reports for charter operations

[5] 16 U.S.C. 971i. Sec. 302(b)(1) of the Atlantic Tunas Convention Authorization Act of 1995 (Public Law 104–43; 109 Stat. 382) amended and restated the section catchline, which formerly read: "**REPORTS REGARDING BLUEFIN TUNA.**".

[6] Sec. 302(b)(3) of Public Law 104–43 (109 Stat. 382) inserted subsec. designation and subsec. heading.

[7] Sec. 302(b)(2) of Public Law 104–43 (109 Stat. 382) struck out a sentence at this point that read: "There are authorized to be appropriated such sums as may be necessary to carry out this section.".

[8] Sec. 302(b)(4) of Public Law 104–43 (109 Stat. 382) added subsec. (b).

and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;

(F) studies of the life history parameters of Atlantic bluefin tuna and other highly migratory species;

(G) integration of data from all sources and the preparation of data bases to support management decisions; and

(H) other research as necessary.

(3) In developing a program under this section, the Secretary shall—

(A) ensure that personnel and resources of each regional research center shall have substantial participation in the stock assessments and monitoring of highly migratory species that occur in the region;

(B) provide for comparable monitoring of all United States fishermen to which the Atlantic Tunas Convention Act of 1975[9] applies with respect to effort and species composition of catch and discards;

(C) consult with relevant Federal and State agencies, scientific and technical experts, commercial and recreational fishermen, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan; and

(D) through the Secretary of State, encourage other member nations to adopt a similar program.

[9] Sec. 202(b)(2) of Public Law 105–384 (112 Stat. 3453) inserted "of 1975".

f. Atlantic Tunas Convention Act of 1975, as amended

Public Law 94–70 [H.R. 5522], 89 Stat. 385, approved August 5, 1975; as amended by Public Law 94–265 [Fishery Conservation and Management Act of 1976; H.R. 200], 90 Stat. 331 at 361, approved April 13, 1976; Public Law 95–33 [H.R. 6205], 91 Stat. 173, approved May 26, 1977; Public Law 96–339 [S. 2549], 94 Stat. 1069, approved September 4, 1980; Public Law 98–44 [S. 625], 97 Stat. 216, approved July 12, 1983; Public Law 99–659 [S. 991], 100 Stat 3706, approved November 14, 1986; Public Law 101–627 [Fishery Conservation Amendments of 1990; H.R. 2061], 104 Stat. 4436, approved November 28, 1990; Public Law 104–43 [Fisheries Act of 1995; H.R. 716], 109 Stat. 366, approved November 3, 1995; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; Public Law 105–384 [H.R. 3461], 112 Stat. 3451, approved November 13, 1998; Public Law 106–562 [H.R. 1653], 114 Stat. 2794, approved December 23, 2000; and Public Law 107–372 [Hydrographic Services Improvement Act Amendments of 2002; H.R. 4883], 116 Stat. 3078, approved December 19, 2002

AN ACT To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966,[1] by the United States of America and other countries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Atlantic Tunas Convention Act of 1975".

DEFINITIONS

SEC. 2.[2] For the purpose of this Act—

(1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3)[3] The term "conservation recommendation" means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section 5(a) of this Act.

(4)[3] The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(5)[3,4] The term "exclusive economic zone" means an exclusive economic zone as defined in section 3 of the Magnuson-

[1] 20 UST 2887; see boxnote page 3.

[2] 16 U.S.C. 971.

[3] Sec. 303(1) of Public Law 104–43 (109 Stat. 384) redesignated paras. (3) through (10) as paras. (4) through (11), respectively, and added a new para. (3).

[4] Sec. 303(2) of Public Law 104–43 (109 Stat. 384) struck out para. (5), as redesignated, and inserted a new para. (4) (resulting in two para. (4)). Subsequently, sec. 202(b)(1)(A) of Public Law 105–384 (112 Stat. 3452) redesignated the second para. (4) as para. (5). Para. (5), as struck out by Public Law 104–43, formerly read as follows:

Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).[5]

(6)[3] The term "fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.

(7)[3] the term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

(8)[3] The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

(9)[3] The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(10)[3] The term "Secretary" means the Secretary of Commerce.

(11)[3] The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

COMMISSIONERS

SEC. 3.[6] (a)(1)[7] The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner

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"(5) The term 'fisheries zone' means the waters included within a zone contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is two hundred nautical miles from the baseline from which the territorial sea is measured; or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.".

Sec. 303(3) of Public Law 104–43 (109 Stat. 384) struck out "fisheries zone" throughout this Act, and inserted in lieu thereof "exclusive economic zone".

[5] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

Subsequently, sec. 202(b)(1)(F) of Public Law 105–384 (112 Stat. 3453) struck out "Magnuson Fishery" each place it appeared in sec. 2 and inserted in lieu thereof "Magnuson-Stevens Fishery".

[6] 16 U.S.C. 971a.

[7] Sec. 201(a) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4459) inserted para. designation (1), and added new paras. (2) and (3).

Sec. 201(b) and sec. 202 of that Act also provided the following:

"(b) APPLICATION TO CURRENT COMMISSIONERS.—(1) Paragraph (2) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, shall not apply to reappointment of an individual as a United States Commissioner of the International Commission for the Conservation of Atlantic Tunas (hereinafter in this title referred to as a 'Commissioner') if that individual is serving in that position on the date of enactment of this Act.

"(2) An individual serving a term as a Commissioner on the date of enactment of this Act shall not, by reason of that term of service, be ineligible under paragraph (3)(B) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, for reappointment as a Commissioner.

"TERMINATION OF CURRENT TERMS AND COMPLETION OF PENDING APPOINTMENTS

"SEC. 202. The term as Commissioner of each individual serving in that position on the date of enactment of this Act shall terminate March 1, 1991. Not later than that date, the President shall complete appointment (or reappointment) of individuals to serve as Commissioners on and after that date.".

shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. 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, United States Code, and chapter 171 of title 28, United States Code.[8] The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(2)[7] Of the Commissioners appointed under paragraph (1) who are not governmental employees—

(A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

(B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(3)[7] (A) The term of a Commissioner shall be three years.

(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section 4 of this Act, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

(d)[9] (1) The Secretary of States shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

ADVISORY COMMITTEE

SEC. 4.[10] (a)[11] There is established an advisory committee which shall be composed of—

[8] Sec. 303 of Public Law 106–562 (114 Stat. 2806) added this sentence.

[9] Sec. 203 of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4459) added subsec. (d).

[10] 16 U.S.C. 971b.

[11] Sec. 304 of Public Law 104–43 (109 Stat. 384) added subsec. designation "(a)" and added subsec. (b).

(1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and

(2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)).[12]

Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment.[13] Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.[14]

(b)[11] (1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.

(2) The advisory committee shall elect a Chairman for a 2-year term from among its members.

(3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

(4)(A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.

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[12] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

Subsequently, sec. 202(b)(1)(F) of Public Law 105–384 (112 Stat. 3453) struck out "Magnuson Fishery" each place it appeared in sec. 4 and inserted in lieu thereof "Magnuson-Stevens Fishery".

[13] Sec. 1(1)(C) of Public Law 96–339 (94 Stat. 1069) amended and restated sec. 4 to this point. This amendment added to the membership of the advisory committee the chairmen of the various Fishery Management Councils.

[14] Sec. 204 of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4460) amended and restated this sentence.

(B) The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

(5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.),[12] and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.

(6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SPECIES WORKING GROUPS

SEC. 4A.[15] The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than seven members of the advisory committee and no more than four scientific or technical personnel, as considered necessary by the Commissioner.

SECRETARY OF STATE TO ACT FOR THE UNITED STATES

SEC. 5.[16] (a) The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections.

[15] 16 U.S.C. 971b–1. Sec. 205 of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4460) added sec. 4A.

[16] 16 U.S.C. 971c.

The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

(b) The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or exclusive economic zone[17] of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or tribunal of a foreign country.

ADMINISTRATION

SEC. 6.[18] (a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the

[17] Sec. 303(3) of Public Law 104–43 (109 Stat. 384) struck out "fisheries zone" throughout this Act, and inserted in lieu thereof "exclusive economic zone".

Subsequently, sec. 202(b)(1)(B) of Public Law 105–384 (112 Stat. 3452) provided an identical amendment to subsec. (b) by striking out "fisheries zone" and inserting in lieu thereof "exclusive economic zone".

[18] 16 U.S.C. 971d. Sec. 634 of H.R. 5548, as enacted by sec. 1(a)(2) of Public Law 106–553 (114 Stat. 2762), provided the following:

"SEC. 634. None of the funds provided in this or any previous Act, or hereinafter made available to the Department of Commerce shall be available to issue or renew, for any fishing vessel, any general or harpoon category fishing permit for Atlantic bluefin tuna that would allow the vessel—

"(1) to use an aircraft to locate, or otherwise assist in fishing for, catching, or possessing Atlantic bluefin tuna; or

"(2) to fish for, catch, or possessing Atlantic bluefin tuna located by the use of an aircraft.".

government of any party to the Convention. In addition, the secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone,[18] or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Civil Service Commission.[19]

(b) Enforcement activities at sea under the provisions of this Act for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c)[20] (1)(A)[21] Upon favorable action by the Secretary of State under section 5(a) of this act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(B)[21] Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

(C)[21] Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).[22]

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[19] In a transfer of functions pursuant to Reorganization Plan No. 2 of 1978 (43 F.R. 36037; 92 Stat. 3783), effective January 1, 1979, as provided in Executive Order 12107 (44 F.R. 1055; December 28, 1978), "Director of the Office of Personnel Management" has been substituted for "Civil Service Commission" in the U.S. Code.

[20] Sec. 305(1) of Public Law 104–43 (109 Stat. 385) amended sec. 6(c) by inserting "AND OTHER MEASURES" in the caption. Sec. 6(c) of this Act, however, does not have subsection captions, and so this amendment cannot be executed. In the U.S. Code at 16 U.S.C. 971d(c), the subsection caption is amended to read "Regulations and other measures to carry out Commission recommendations".

[21] Sec. 206(a) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4461) added subpara. designation (A), and added new subparas. (B) and (C).

[22] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) 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, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. 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 shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) select for regulation one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;

(C) establish one or more open or closed seasons as to each such area;

(D) limit 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;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels of persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;[23]

Subsequently, sec. 202(b)(1)(F) of Public Law 105–384 (112 Stat. 3453) struck out "Magnuson Fishery" each place it appeared in sec. 6 and inserted in lieu thereof "Magnuson-Stevens Fishery".

[23] Sec. 206(b) of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4461) struck out "; and" and inserted in lieu thereof a semicolon at the end of subpara.

Continued

(I)[23] require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

(J)[23] require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

(K)[23] impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level[24] to the United States agreed to pursuant to a recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States 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 Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) 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 Convention 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 Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary, with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary 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.

(6)[25] IDENTIFICATION AND NOTIFICATION.—

(H); struck out subpara. (I) and inserted a new subpara. (I); and added new subparas. (J) and (K).

[24] Sec. 305(2) of Public Law 104–43 (109 Stat. 385) inserted "or fishing mortality level".

[25] Sec. 305(3) of Public Law 104–43 (109 Stat. 385) added new paras. (6) and (7).

(A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall—

(i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;

(ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and

(iii) publish a list of those Nations identified under clause (i).[26]

(B)[26] In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.

(7)[25] CONSULTATION.—Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will—

(A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;

(B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and

(C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.

(d)[27] (1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) of the Magnuson-Stevens Fishery Conservation and Management Act)[22] in the Convention area.

(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest

[26] Sec. 202(b)(1)(C) of Public Law 105–384 (112 Stat. 3452) stuck out "subparagraph (A)", and inserted in lieu thereof "clause (i)", and designated the final sentence of subpara. (A) as subpara. (B).

[27] Sec. 207 of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4461) amended and restated subsec. (d).

levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.

VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

SEC. 7.[28] (a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this Act and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6 (c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish 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 6 (c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 (c) or (d) of this Act.

(e)[29] The civil penalty and permit sanctions of section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16

[28] 16 U.S.C. 971e.

[29] Sec. 306 of Public Law 104–43 (109 Stat. 385) amended and restated subsec. (e).

U.S.C. 1858)[30] are hereby made applicable to violations of this section as if they were violations of section 307 of that Act.

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

(g) 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 Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

ENFORCEMENT

SEC. 8.[31] (a) Any person authorized in accordance with the provisions of this Act to enforce a provision of this Act and the regulations issued thereunder may—

(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this Act or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

(2) arrest, with or without a warrant, any person who violates the provisions of this Act or any regulation issued thereunder in his presence or view;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this Act or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

(b) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 5(b) of this Act for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for

[30] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

Subsequently, sec. 202(b)(1)(F) of Public Law 105–384 (112 Stat. 3453) struck out "Magnuson Fishery" and inserted in lieu thereof "Magnuson-Stevens Fishery".

[31] 16 U.S.C. 971f.

arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

(c) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshall 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 cause. 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 at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

COOPERATION: COMMISSION'S FUNCTIONS NOT RESTRAINED BY THIS ACT OR STATE LAWS

SEC. 9.[32] (a) The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

(b) All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

(c) None of the prohibitions deriving from this Act, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

(d)(1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this Act to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State—

[32] 16 U.S.C. 971g.

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this Act, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this Act, or (ii) are not effectively enforced.

If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this act within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such regulations.

(e) To insure that the purposes of subsection (d) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) applies or may apply and the extent to which such laws and regulations are enforced.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10.[33] (a) IN GENERAL.—There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention, the following sums:

(1) For each of fiscal years 2003 and 2004, $5,480,000.

(2) For each of fiscal years 2005 and 2006, $5,495,000.

(b) ALLOCATION.—Of amounts available under this section for each fiscal year—

(1) $150,000 are authorized for the advisory committee established under section 4 and the species working groups established under section 4A; and

(2) $4,240,000 are authorized for research activities under this Act and the Act of September 4, 1980 (16 U.S.C. 971i).

ANNUAL REPORT

SEC. 11.[34] Not later than April 1, 1996, and annually thereafter, the Secretary shall prepare and transmit to the Committee on Resources of the House of Representatives and the Committee on

[33] 16 U.S.C. 971h. Sec. 304 of the Fisheries Conservation Act of 2002 (title III of Public Law 107–372; 116 Stat. 3096) amended and restated sec. 10. Previously, Public Law 95–33 (91 Stat. 173) extended the authorization through fiscal year 1980. Sec. 1(2) of Public Law 96–339 (94 Stat. 1069) further extended the authorization of appropriations through fiscal year 1983. Sec. 101 of Public Law 98–44 (97 Stat. 216) extended the authorization of appropriations through fiscal year 1986. Sec. 404 of Public Law 99–659 (100 Stat. 3737) extended the authorization through fiscal year 1989. Sec. 208 of the Fishery Conservation Amendments of 1990 (Public Law 101–627; 104 Stat. 4462) further amended and restated sec. 10, extending the authorization of appropriations through fiscal year 1993. Sec. 307 of the Atlantic Tunas Convention Authorization Act of 1995 (Public Law 104–43; 109 Stat. 386) further amended and restated sec. 10, extending the authorization of appropriations through fiscal year 1998. Sec. 202(a) of Public Law 105–384 (112 Stat. 3452) further extended the authorization of appropriations through fiscal year 2001.

[34] Sec. 308 of Public Law 104–43 (109 Stat. 386) added this second sec. 11, and a new sec. 12. Subsequently, sec. 202(b)(1)(E) of Public Law 105–384 (112 Stat. 3453) amended the style of the heading and designation for secs. 11 and 12 so as to conform to the style of the headings

Continued

Commerce, Science, and Transportation of the Senate a report, that—

(1) details for the previous 10-year period the catches and exports to the United States of highly migratory species (including tunas, swordfish, marlin and sharks) from Nations fishing on Atlantic stocks of such species that are subject to management by the Commission;

(2) identifies those fishing Nations whose harvests are inconsistent with conservation and management recommendations of the Commission;

(3) describes reporting requirements established by the Secretary to ensure that imported fish products are in compliance with all international management measures, including minimum size requirements, established by the Commission and other international fishery organizations to which the United States is a party; and

(4) describes actions taken by the Secretary under section 6.

SAVINGS CLAUSE

SEC. 12.[34] Nothing in this Act shall have the effect of diminishing the rights and obligations of any Nation under Article VIII(3) of the Convention.

SEPARABILITY

SEC. 13.[35] If any provision of this Act or the application of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

and designations of the other sections in the Act. Sec. 202(b)(1)(D) of Public Law 105–384 (112 Stat. 3452) further redesignated the first sec. 11 as sec. 13.

[35] 16 U.S.C. 971 note. Sec. 202(b)(1)(D) of Public Law 105–384 (112 Stat. 3452) redesignated the first sec. 11 as sec. 13.

4. Fisheries Act of 1995

Partial text of Public Law 104–43 [H.R. 716], 109 Stat. 366, approved November 3, 1995; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; Public Law 104–297 [Sustainable Fisheries Act; S. 39], 110 Stat. 3559, approved October 11, 1996; Public Law 105–384 [H.R. 3461], 112 Stat. 3451, approved November 13, 1998; Public Law 106–562 [H.R. 1653], 114 Stat. 2794, approved December 23, 2000; and Public Law 107–372 [Hydrographic Services Improvement Act Amendments of 2002; H.R. 4883], 116 Stat. 3077, approved December 19, 2002

AN ACT To amend the Fishermen's Protective Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Fisheries Act of 1995".

SEC. 2. TABLE OF CONTENTS. * * *

TITLE I—HIGH SEAS FISHING COMPLIANCE

SEC. 101.[1] SHORT TITLE.

This title may be cited as the "High Seas Fishing Compliance Act of 1995".

SEC. 102.[2] PURPOSE.

It is the purpose of this Act—

(1) to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993; and

(2) to establish a system of permitting, reporting, and regulation for vessels of the United States fishing on the high seas.

SEC. 103.[3] DEFINITIONS.

As used in this Act—

(1) The term "Agreement" means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993.

(2) The term "FAO" means the Food and Agriculture Organization of the United Nations.

(3) The term "high seas" means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any

[1] 16 U.S.C. 5501 note.
[2] 16 U.S.C. 5501.
[3] 16 U.S.C. 5502.

nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

(4) The term "high seas fishing vessel" means any vessel of the United States or subject to the jurisdiction of the United States[4] used or intended for use—

(A) on the high seas;

(B) for the purpose of the commercial exploitation of living marine resources; and

(C) as a harvesting vessel, as a mother ship, or as any other support vessel directly engaged in a fishing operation.

(5) The term "international conservation and management measures" means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

(6) The term "length" means—

(A) for any high seas fishing vessel built after July 18, 1982, 96 percent of the total length on a waterline at 85 percent of the least molded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that is greater, except that in ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline; and

(B) for any high seas fishing vessel built before July 18, 1982, registered length as entered on the vessel's documentation.

(7) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(8) The term "Secretary" means the Secretary of Commerce.

(9) The term "vessel of the United States" means—

(A) a vessel documented under chapter 121 of title 46, United States Code, or numbered in accordance with chapter 123 of title 46, United States Code;

(B) a vessel owned in whole or part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

[4] Sec. 305 of Public Law 106–562 (114 Stat. 2807) inserted "or subject to the jurisdiction of the United States".

(iv) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with article 92 of the 1982 United Nations Convention on the Law of the Sea and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of the United States law; and

(C) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

(10) The terms "vessel subject to the jurisdiction of the United States" and "vessel without nationality" have the same meaning as in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. 1903(c)).

SEC. 104.[5] PERMITTING.

(a) IN GENERAL.—No high seas fishing vessel shall engage in harvesting operations on the high seas unless the vessel has on board a valid permit issued under this section.

(b) ELIGIBILITY.—

(1) Any vessel of the United States is eligible to receive a permit under this section, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and

(A) the foreign nation suspended such authorization because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(B) the foreign nation, within the last three years preceding application for a permit under this section, withdrew such authorization because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restriction in paragraph (1) does not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Secretary demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel.

(3) The restriction in paragraph (1) does not apply if the Secretary makes a determination that issuing a permit would not subvert the purposes of the Agreement.

(4) The Secretary may not issue a permit to a vessel unless the Secretary is satisfied that the United States will be able

[5] 16 U.S.C. 5503.

to exercise effectively its responsibilities under the Agreement with respect to that vessel.

(c) APPLICATION.—

(1) The owner or operator of a high seas fishing vessel may apply for a permit under this section by completing an application form prescribed by the Secretary.

(2) The application form shall contain—

(A) the vessel's name, previous names (if known), official numbers, and port of record;

(B) the vessel's previous flags (if any);

(C) the vessel's International Radio Call Sign (if any);

(D) the names and addresses of the vessel's owners and operators;

(E) where and when the vessel was built;

(F) the type of vessel;

(G) the vessel's length; and

(H) any other information the Secretary requires for the purposes of implementing the Agreement.

(d) CONDITIONS.—The Secretary shall establish such conditions and restrictions on each permit issued under this section as are necessary and appropriate to carry out the obligations of the United States under the Agreement, including but not limited to the following:

(1) The vessel shall be marked in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, or with regulations issued under section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855);[6] and

(2) The permit holder shall report such information as the Secretary by regulation requires, including area of fishing operations and catch statistics. The Secretary shall promulgate regulations concerning conditions under which information submitted under this paragraph may be released.

(e) FEES.—

(1) The Secretary shall by regulation establish the level of fees to be charged for permits issued under this section. The amount of any fee charged for a permit issued under this section shall not exceed the administrative costs incurred in issuing such permits. The permitting fee may be in addition to any fee required under any regional permitting regime applicable to high seas fishing vessels.

(2) The fees authorized by paragraph (1) shall be collected and credited to the Operations, Research and Facilities account of the National Oceanic and Atmospheric Administration. Fees collected under this subsection shall be available for the necessary expenses of the National Oceanic and Atmospheric Administration in implementing this Act, and shall remain available until expended.

[6] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(f) DURATION.—A permit issued under this section is valid for 5 years. A permit issued under this section is void in the event the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.

SEC. 105.[7] RESPONSIBILITIES OF THE SECRETARY.

(a) RECORD.—The Secretary shall maintain an automated file or record of high seas fishing vessels issued permits under section 104, including all information submitted under section 104(c)(2).

(b) INFORMATION TO FAO.—The Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall—

(1) make available to FAO information contained in the record maintained under subsection (a);

(2) promptly notify FAO of changes in such information;

(3) promptly notify FAO of additions to or deletions from the record, and the reason for any deletion;

(4) convey to FAO information relating to any permit granted under section 104(b)(3), including the vessel's identity, owner or operator, and factors relevant to the Secretary's determination to issue the permit;

(5) report promptly to FAO all relevant information regarding any activities of high seas fishing vessels that undermine the effectiveness of international conservation and management measures, including the identity of the vessels and any sanctions imposed; and

(6) provide the FAO a summary of evidence regarding any activities of foreign vessels that undermine the effectiveness of international conservation and management measures.

(c) INFORMATION TO FLAG NATIONS.—If the Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, has reasonable grounds to believe that a foreign vessel has engaged in activities undermining the effectiveness of international conservation and management measures, the Secretary shall—

(1) provide to the flag nation information, including appropriate evidentiary material, relating to those activities; and

(2) when such foreign vessel is voluntarily in a United States port, promptly notify the flag nation and, if requested by the flag nation, make arrangements to undertake such lawful investigatory measures as may be considered necessary to establish whether the vessel has been used contrary to the provisions of the Agreement.

(d) REGULATIONS.—The Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the purposes of the Agreement and this title. The Secretary shall coordinate such regulations with any other entities regulating high seas fishing vessels, in order to minimize duplication of permit application and reporting requirements. To the extent practicable, such regulations shall also be consistent

[7] 16 U.S.C. 5504.

with regulations implementing fishery management plans under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).[6]

(e) NOTICE OF INTERNATIONAL CONSERVATION AND MANAGEMENT MEASURES.—The Secretary, in consultation with the Secretary of State, shall publish in the Federal Register, from time to time, a notice listing international conservation and management measures recognized by the United States.

SEC. 106.[8] UNLAWFUL ACTIVITIES.

It is unlawful for any person subject to the jurisdiction of the United States—

(1) to use a high seas fishing vessel on the high seas in contravention of international conservation and management measures described in section 105(e);

(2) to use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under section 104;

(3) to use a high seas fishing vessel in violation of the conditions or restrictions of a permit issued under section 104;

(4) to falsify any information required to be reported, communicated, or recorded pursuant to this title or any regulation issued under this title, or to fail to submit in a timely fashion any required information, or to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering any such information false, incomplete, or misleading;

(5) to refuse to permit an authorized officer to board a high seas fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this title or any regulation issued under this title;

(6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection described in paragraph (5);

(7) to resist a lawful arrest or detention for any act prohibited by this section;

(8) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section;

(9) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any living marine resource taken or retained in violation of this title or any regulation or permit issued under this title; or

(10) to violate any provision of this title or any regulation or permit issued under this title.

SEC. 107.[9] ENFORCEMENT PROVISIONS.

(a) DUTIES OF SECRETARIES.—This title shall be enforced by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may by

[8] 16 U.S.C. 5505.
[9] 16 U.S.C. 5506.

agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, or of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under this section may (if the agreement so provides), authorize officers to enforce the provisions of this title or any regulation or permit issued under this title.

(b) DISTRICT COURT JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii.

(c) POWERS OF ENFORCEMENT OFFICERS.—

(1) Any officer who is authorized under subsection (a) to enforce the provisions of this title may—

(A) with or without a warrant or other process—

(i) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by paragraph (6), (7), (8), or (9) of section 106;

(ii) board, and search or inspect, any high seas fishing vessel;

(iii) seize any high seas fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this title or any regulation or permit issued under this title;

(iv) seize any living marine resource (wherever found) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 106;

(v) seize any other evidence related to any violation of any provision of this title or any regulation or permit issued under this title;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

(d) ISSUANCE OF CITATIONS.—If any authorized officer finds that a high seas fishing vessel is operating or has been operated in violation of any provision of this title, such officer may issue a citation

to the owner or operator of such vessel in lieu of proceeding under subsection (c). If a permit has been issued pursuant to this title for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(e) LIABILITY FOR COSTS.—Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any living marine resource or other property seized in connection with the violation.

SEC. 108.[10] CIVIL PENALTIES AND PERMIT SANCTIONS.

(a) CIVIL PENALTIES.—

(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 106 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(b) PERMIT SANCTIONS.—

(1) In any case in which—

(A) a vessel of the United States has been used in the commission of an act prohibited under section 106;

(B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under section 104 has acted in violation of section 106; or

(C) any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued to or applied for by such vessel or person under this title, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on such permit.

[10] 16 U.S.C. 5507.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a high seas fishing vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer. The Secretary may waive or compromise a sanction in the case of a transfer pursuant to court order.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

(c) HEARING.—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under subsection (a) or against whose vessel a permit sanction is imposed under subsection (b) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such penalty or sanction. The Secretary shall promptly file in such court a certified copy of the record upon which such penalty or sanction was imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(e) COLLECTION.—

(1) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(2) A high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 106 shall be liable in rem for any civil penalty assessed for such violation under subsection (a) and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

SEC. 109.[11] CRIMINAL OFFENSES.

(a) OFFENSES.—A person is guilty of an offense if the person commits any act prohibited by paragraph (6), (7), (8), or (9) of section 106.

(b) PUNISHMENT.—Any offense described in subsection (a) is a class A misdemeanor punishable by a fine under title 18, United States Code, or imprisonment for not more than one year, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any authorized officer, or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18, United States Code, or imprisonment for not more than 10 years, or both.

SEC. 110.[12] FORFEITURES.

(a) IN GENERAL.—Any high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any living marine resources (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 106 (other than an act for which the issuance of a citation under section 107 is a sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such living marine resources (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) JURISDICTION OF DISTRICT COURTS.—Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to

[11] 16 U.S.C. 5508.
[12] 16 U.S.C. 5509.

the United States, which has not previously been seized pursuant to this title or for which security has not previously been obtained. The provisions of the customs laws relating to—

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, unless such provisions are inconsistent with the purposes, policy, and provisions of this title.

(d) PROCEDURE.—

(1) Any officer authorized to serve any process in rem that is issued by a court under section 107(b) shall—

(A) stay the execution of such process; or

(B) discharge any living marine resources seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any living marine resources seized pursuant to this title may be sold, subject to the approval of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, all living marine resources found on board a high seas fishing vessel and which are seized in connection with an act prohibited by section 106 are presumed to have been taken or retained in violation of this title, but the presumption can be rebutted by an appropriate showing of evidence to the contrary.

SEC. 111.[13] EFFECTIVE DATE.

This title shall take effect 120 days after the date of enactment of this Act.

TITLE II—IMPLEMENTATION OF CONVENTION ON FUTURE MULTILATERAL COOPERATION IN THE NORTHWEST ATLANTIC FISHERIES

SEC. 201.[14] SHORT TITLE.

This title may be cited as the "Northwest Atlantic Fisheries Convention Act of 1995".

[13] 16 U.S.C. 5501 note.
[14] 16 U.S.C. 5601 note.

SEC. 202.[15] REPRESENTATION OF UNITED STATES UNDER CONVENTION.

(a) COMMISSIONERS.—

(1) APPOINTMENTS, GENERALLY.—The Secretary shall appoint not more than 3 individuals to serve as the representatives of the United States on the General Council and the Fisheries Commission, who shall each—

(A) be known as a "United States Commissioner to the Northwest Atlantic Fisheries Organization"; and

(B) serve at the pleasure of the Secretary.

(2) REQUIREMENTS FOR APPOINTMENTS.—

(A) The Secretary shall ensure that of the individuals serving as Commissioners—

(i) at least 1 is appointed from among representatives of the commercial fishing industry;

(ii) 1 (but no more than 1) is an official of the Government; and

(iii) 1, other than the individual appointed under clause (ii), is a voting member of the New England Fishery Management Council.

(B) The Secretary may not appoint as a Commissioner an individual unless the individual is knowledgeable and experienced concerning the fishery resources to which the Convention applies.

(3) TERMS.—

(A) The term of an individual appointed as a Commissioner—

(i) shall be specified by the Secretary at the time of appointment; and

(ii) may not exceed 4 years.

(B) An individual who is not a Government official may not serve more than 2 consecutive terms as a Commissioner.

(b) ALTERNATE COMMISSIONERS.—

(1) APPOINTMENT.—The Secretary may, for any anticipated absence of a duly appointed Commissioner at a meeting of the General Council or the Fisheries Commission, designate an individual to serve as an Alternate Commissioner.

(2) FUNCTIONS.—An Alternate Commissioner may exercise all powers and perform all duties of the Commissioner for whom the Alternate Commissioner is designated, at any meeting of the General Council or the Fisheries Commission for which the Alternate Commissioner is designated.

(c) REPRESENTATIVES.—

(1) APPOINTMENT.—The Secretary shall appoint not more than 3 individuals to serve as the representatives of the United States on the Scientific Council, who shall each be known as a "United States Representative to the Northwest Atlantic Fisheries Organization Scientific Council".

(2) ELIGIBILITY FOR APPOINTMENT.—

(A) The Secretary may not appoint an individual as a Representative unless the individual is knowledgeable and

[15] 16 U.S.C. 5601.

experienced concerning the scientific issues dealt with by the Scientific Council.

(B) The Secretary shall appoint as a Representative at least 1 individual who is an official of the Government.

(3) TERM.—An individual appointed as a Representative—

(A) shall serve for a term of not to exceed 4 years, as specified by the Secretary at the time of appointment;

(B) may be reappointed; and

(C) shall serve at the pleasure of the Secretary.

(d) ALTERNATE REPRESENTATIVES.—

(1) APPOINTMENT.—The Secretary may, for any anticipated absence of a duly appointed Representative at a meeting of the Scientific Council, designate an individual to serve as an Alternate Representative.

(2) FUNCTIONS.—An Alternate Representative may exercise all powers and perform all duties of the Representative for whom the Alternate Representative is designated, at any meeting of the Scientific Council for which the Alternate Representative is designated.

(e) EXPERTS AND ADVISERS.—The Commissioners, Alternate Commissioners, Representatives, and Alternate Representatives may be accompanied at meetings of the Organization by experts and advisers.

(f) COORDINATION AND CONSULTATION.—

(1) IN GENERAL.—In carrying out their functions under the Convention, Commissioners, Alternate Commissioners, Representatives, and Alternate Representatives shall—

(A) coordinate with the appropriate Regional Fishery Management Councils established by section 302 of the Magnuson-Stevens Act (16 U.S.C. 1852);[16] and

(B) consult with the committee established under section 208.

(2) RELATIONSHIP TO OTHER LAW.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to coordination and consultations under this subsection.

SEC. 203.[17] REQUESTS FOR SCIENTIFIC ADVICE.

(a) RESTRICTION.—The Representatives may not make a request or specification described in subsection (b) (1) or (2), respectively, unless the Representatives have first—

(1) consulted with the appropriate Regional Fishery Management Councils; and

(2) received the consent of the Commissioners for that action.

(b) REQUESTS AND TERMS OF REFERENCE DESCRIBED.—The requests and specifications referred to in subsection (a) are, respectively—

[16] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[17] 16 U.S.C. 5602.

(1) any request, under Article VII(1) of the Convention, that the Scientific Council consider and report on a question pertaining to the scientific basis for the management and conservation of fishery resources in waters under the jurisdiction of the United States within the Convention Area; and

(2) any specification, under Article VIII(2) of the Convention, of the terms of reference for the consideration of a question referred to the Scientific Council pursuant to Article VII(1) of the Convention.

SEC. 204.[18] AUTHORITIES OF SECRETARY OF STATE WITH RESPECT TO CONVENTION.

The Secretary of State may, on behalf of the Government of the United States—

(1) receive and transmit reports, requests, recommendations, proposals, and other communications of and to the Organization and its subsidiary organs;

(2) object, or withdraw an objection, to the proposal of the Fisheries Commission;

(3) give or withdraw notice of intent not to be bound by a measure of the Fisheries Commission;

(4) object or withdraw an objection to an amendment to the Convention; and

(5) act upon, or refer to any other appropriate authority, any other communication referred to in paragraph (1).

SEC. 205.[19] INTERAGENCY COOPERATION.

(a) AUTHORITIES OF SECRETARY.—In carrying out the provisions of the Convention and this title, the Secretary may arrange for cooperation with other agencies of the United States, the States, the New England and the Mid-Atlantic Fishery Management Councils, and private institutions and organizations.

(b) OTHER AGENCIES.—The head of any Federal agency may—

(1) cooperate in the conduct of scientific and other programs, and furnish facilities and personnel, for the purposes of assisting the Organization in carrying out its duties under the Convention; and

(2) accept reimbursement from the Organization for providing such services, facilities, and personnel.

SEC. 206.[20] RULEMAKING.

The Secretary shall promulgate regulations as may be necessary to carry out the purposes and objectives of the Convention and this title. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located.

SEC. 207.[21] PROHIBITED ACTS AND PENALTIES.

(a) PROHIBITION.—It is unlawful for any person or vessel that is subject to the jurisdiction of the United States—

[18] 16 U.S.C. 5603.
[19] 16 U.S.C. 5604.
[20] 16 U.S.C. 5605.
[21] 16 U.S.C. 5606.

(1) to violate any regulation issued under this title or any measure that is legally binding on the United States under the Convention;

(2) to refuse to permit any authorized enforcement officer to board a fishing vessel that is subject to the person's control for purposes of conducting any search or inspection in connection with the enforcement of this title, any regulation issued under this title, or any measure that is legally binding on the United States under the Convention;

(3) forcibly to assault, resist, oppose, impede, intimidate, or interfere with any authorized enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this section; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that the other person has committed an act prohibited by this section.

(b) CIVIL PENALTY.—Any person who commits any act that is unlawful under subsection (a) shall be liable to the United States for a civil penalty, or may be subject to a permit sanction, under section 308 of the Magnuson-Stevens Act (16 U.S.C. 1858).[16]

(c) CRIMINAL PENALTY.—Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) shall be guilty of an offense punishable under section 309(b) of the Magnuson-Stevens Act (16 U.S.C. 1859(b)).[16]

(d) CIVIL FORFEITURES.—

(1) IN GENERAL.—Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act that is unlawful under subsection (a), and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act that is unlawful under subsection (a), shall be subject to seizure and forfeiture as provided in section 310 of the Magnuson-Stevens Act (16 U.S.C. 1860).[16]

(2) DISPOSAL OF FISH.—Any fish seized pursuant to this title may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations issued by the Secretary.

(e) ENFORCEMENT.—The Secretary and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this title and shall have the authority specified in section[22] 311 (a), (b)(1), and (c) of the Magnuson-Stevens Act (16 U.S.C. 1861 (a), (b)(1), and (c))[16] for that purpose.

(f) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

[22] Sec. 201(b)(1) of Public Law 105–384 (112 Stat. 3451) struck out "sections" and inserted in lieu thereof "section".

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interests of justice.

SEC. 208.[23] CONSULTATIVE COMMITTEE.

(a) ESTABLISHMENT.—The Secretary of State and the Secretary, shall jointly establish a consultative committee to advise the Secretaries on issues related to the Convention.

(b) MEMBERSHIP.—

(1) The membership of the Committee shall include representatives from the New England and Mid-Atlantic Fishery Management Councils, the States represented on those Councils, the Atlantic States Marine Fisheries Commission, the fishing industry, the seafood processing industry, and others knowledgeable and experienced in the conservation and management of fisheries in the Northwest Atlantic Ocean.

(2) TERMS AND REAPPOINTMENT.—Each member of the consultative committee shall serve for a term of two years and shall be eligible for reappointment.

(c) DUTIES OF THE COMMITTEE.—Members of the consultative committee may attend—

(1) all public meetings of the General Council or the Fisheries Commission;

(2) any other meetings to which they are invited by the General Council or the Fisheries Commission; and

(3) all nonexecutive meetings of the United States Commissioners.

(d) RELATIONSHIP TO OTHER LAW.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the consultative committee established under this section.

SEC. 209.[24] ADMINISTRATIVE MATTERS.

(a) PROHIBITION ON COMPENSATION.—A person shall not receive any compensation from the Government by reason of any service of the person as—

(1) a Commissioner, Alternate Commissioner, Representative, or Alternative Representative;

(2) an expert or adviser authorized under section 202(e); or

(3) a member of the consultative committee established by section 208.

(b) TRAVEL AND EXPENSES.—The Secretary of State shall, subject to the availability of appropriations, pay all necessary travel and other expenses of persons described in subsection (a)(1) and of not more than six experts and advisers authorized under section 202(e) with respect to their actual performance of their official duties pursuant to this title, in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(c) STATUS AS FEDERAL EMPLOYEES.—A person shall not be considered to be a Federal employee by reason of any service of the person in a capacity described in subsection (a), except for purposes of injury compensation and tort claims liability under chapter 81

[23] 16 U.S.C. 5607.
[24] 16 U.S.C. 5608.

of title 5, United States Code, and chapter 171[25] of title 28, United States Code, respectively.

SEC. 210.[26] DEFINITIONS.

In this title the following definitions apply:

(1) AUTHORIZED ENFORCEMENT OFFICER.—The term "authorized enforcement officer" means a person authorized to enforce this title, any regulation issued under this title, or any measure that is legally binding on the United States under the Convention.

(2) COMMISSIONER.—The term "Commissioner" means a United States Commissioner to the Northwest Atlantic Fisheries Organization appointed under section 202(a).

(3) CONVENTION.—The term "Convention" means the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, done at Ottawa on October 24, 1978.

(4) FISHERIES COMMISSION.—The term "Fisheries Commission" means the Fisheries Commission provided for by Articles II, XI, XII, XIII, and XIV of the Convention.

(5) GENERAL COUNCIL.—The term "General Council" means the General Council provided for by Article II, III, IV, and V of the Convention.

(6) MAGNUSON-STEVENS ACT.—The term "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).[27]

(7) ORGANIZATION.—The term "Organization" means the Northwest Atlantic Fisheries Organization provided for by Article II of the Convention.

(8) PERSON.—The term "person" means any individual (whether or not a citizen or national of the United States), and any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State).

(9) REPRESENTATIVE.—The term "Representative" means a United States Representative to the Northwest Atlantic Fisheries Scientific Council appointed under section 202(c).

(10) SCIENTIFIC COUNCIL.—The term "Scientific Council" means the Scientific Council provided for by Articles II, VI, VII, VIII, IX, and X of the Convention.

(11) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

SEC. 211.[28] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title, including use for payment as the United States contribution to the

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[25] Sec. 201(b)(2) of Public Law 105–384 (112 Stat. 3451) struck out "chapter 17" and inserted in lieu thereof "chapter 171".

[26] 16 U.S.C. 5609.

[27] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

Subsequently, sec. 201(b)(3) of Public Law 105–384 (112 Stat. 3451) effectively made the same amendment by striking out "the Magnuson Fishery" and inserting in lieu thereof "the Magnuson-Stevens Fishery".

[28] 16 U.S.C. 5610.

Organization as provided in Article XVI of the Convention, $500,000 for each fiscal year through fiscal year 2006.[29]

SEC. 212.[30] ANNUAL REPORT.

The Secretary shall annually report to the Congress on the activities of the Fisheries Commission, the General Council, the Scientific Council, and the consultative committee established under section 208.

SEC. 213.[31] QUOTA ALLOCATION PRACTICE.

(a) IN GENERAL.—The Secretary of Commerce, acting through the Secretary of State, shall promptly seek to establish a new practice for allocating quotas under the Convention that—

(1) is predictable and transparent;

(2) provides fishing opportunities for all members of the Organization; and

(3) is consistent with the Straddling Fish Stocks Agreement.

(b) REPORT.—The Secretary of Commerce shall include in annual reports under section 212—

(1) a description of the results of negotiations held pursuant to subsection (a);

(2) an identification of barriers to achieving such a new allocation practice; and

(3) recommendations for any further legislation that is necessary to achieve such a new practice.

(c) DEFINITION.—In this section the term "Straddling Fish Stocks Agreement" means the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

TITLE III—ATLANTIC TUNAS CONVENTION ACT

SEC. 301.[32] SHORT TITLE.

This title may be cited as the "Atlantic Tunas Convention Authorization Act of 1995".

SEC. 302. RESEARCH AND MONITORING ACTIVITIES.

(a) REPORT TO CONGRESS.—The Secretary of Commerce shall, within 90 days after the date of enactment of this Act, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives—

(1) identifying current governmental and nongovernmental research and monitoring activities on Atlantic bluefin tuna and other highly migratory species;

(2) describing the personnel and budgetary resources allocated to such activities; and

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[29] Sec. 201(a) of Public Law 105–384 (112 Stat. 3451) struck out the authorization of appropriations for fiscal years 1995 through 1998 and inserted in lieu thereof the authorization of appropriations through fiscal year 2001.

Subsequently, sec. 305 of the Fisheries Conservation Act of 2002 (title III of Public Law 107–372; 116 Stat. 3096) struck out "2001" and inserted in lieu thereof "2006".

[30] 16 U.S.C. 5611. Sec. 201(c) of Public Law 105–384 (112 Stat. 3452) added sec. 212.

[31] 16 U.S.C. 5612. Sec. 201(d) of Public Law 105–384 (112 Stat. 3452) added sec. 213.

[32] 16 U.S.C. 971 note.

(3) explaining how each activity contributes to the conservation and management of Atlantic bluefin tuna and other highly migratory species.

(b)[33] RESEARCH AND MONITORING PROGRAM.—Section 3 of the Act of September 4, 1980 (16 U.S.C. 971i) is amended—* * *

* * * * * * *[34]

SEC. 309. MANAGEMENT OF ATLANTIC YELLOWFIN TUNA.

(a) Not later than 90 days after the date of the enactment of this Act, the Secretary of Commerce in accordance with this section shall publish a preliminary determination of the level of the United States recreational and commercial catch of Atlantic yellowfin tuna on an annual basis since 1980. The Secretary shall publish a preliminary determination in the Federal Register for comment for a period not to exceed 60 days. The Secretary shall publish a final determination not later than 140 days from the date of the enactment of this section.

(b) Not later than July 1, 1997,[35] the Secretary of Commerce shall implement the recommendations of the International Commission for the Conservation of Atlantic Tunas regarding yellowfin tuna made pursuant to Article VIII of the International Convention for the Conservation of Atlantic Tunas and acted upon favorably by the Secretary of State under section 5(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971c(a)).

SEC. 310. STUDY OF BLUEFIN TUNA REGULATIONS.

Not later than 270 days after the date of enactment of this Act, the Secretary of Commerce shall submit to the Committee on Commerce, Science and Transportation of the Senate and to the Committee on Resources of the House of Representatives a report on the historic rationale, effectiveness, and biological and economic efficiency of existing bluefin tuna regulations for United States Atlantic fisheries. Specifically, the biological rationale for each regional and category allocation, including directed and incidental categories, should be described in light of the average size, age, and maturity of bluefin tuna caught in each fishery and the effect of this harvest on stock rebuilding and sustainable yield. The report should examine the history and evaluate the level of wasteful discarding, and evaluate the effectiveness of non-quota regulations at constraining harvests within regions. Further, comments should be provided on levels of participation in specific fisheries in terms of vessels and trips, enforcement implications, and the importance of monitoring information provided by these allocations on the precision of the stock assessment estimates.

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[33] The Act of September 4, 1980—Atlantic Tunas Convention Act of 1975, Appropriation Authorization—may be found at page 194.

[34] Secs. 303 through 308 of this Act amended the Atlantic Tunas Convention Act of 1975.

[35] Sec. 406 of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3621) struck out "July 1, 1996" and inserted in lieu thereof " July 1, 1997".

SEC. 311. SENSE OF THE CONGRESS WITH RESPECT TO ICCAT NEGOTIATIONS.

(a) SHARING OF CONSERVATION BURDEN.—It is the sense of the Congress that in future negotiations of the International Commission for the Conservation of Atlantic Tunas (hereafter in this section referred to as "ICCAT"), the Secretary of Commerce shall ensure that the conservation actions recommended by international commissions and implemented by the Secretary for United States commercial and recreational fishermen provide fair and equitable sharing of the conservation burden among all contracting harvesters in negotiations with those commissions.

(b) ENFORCEMENT PROVISIONS.—It is further the sense of the Congress that, during 1995 ICCAT negotiations on swordfish and other Highly Migratory Species managed by ICCAT, the Congress encourages the United States Commissioners to add enforcement provisions similar to those applicable to bluefin tuna.

(c) ENHANCED MONITORING.—It is further the sense of the Congress that the National Oceanic and Atmospheric Administration and the United States Customs Service should enhance monitoring activities to ascertain what specific stocks are being imported into the United States and the country of origin.

(d) MULTILATERAL ENFORCEMENT PROCESS.—It is further the sense of the Congress that the United States Commissioners should pursue as a priority the establishment and implementation prior to December 31, 1996, an effective multilateral process that will enable ICCAT nations to enforce the conservation recommendations of the Commission.

TITLE IV—FISHERMEN'S PROTECTIVE ACT

SEC. 401.[36] FINDINGS.

The Congress finds that—

(1) customary international law and the United Nations Convention on the Law of the Sea guarantee the right of passage, including innocent passage, to vessels through the waters commonly referred to as the "Inside Passage" off the Pacific Coast of Canada;

(2) in 1994 Canada required all commercial fishing vessels of the United States to pay 1,500 Canadian dollars to obtain a "license which authorizes transit" through the Inside Passage;

(3) this action was inconsistent with international law, including the United Nations Convention on the Law of the Sea, and, in particular, Article 26 of that Convention, which specifically prohibits such fees, and threatened the safety of United States commercial fishermen who sought to avoid the fee by traveling in less protected waters;

(4) the Fishermen's Protective Act of 1967 provides for the reimbursement of vessel owners who are forced to pay a license fee to secure the release of a vessel which has been seized, but does not permit reimbursement of a fee paid by the owner in advance in order to prevent a seizure;

(5) Canada required that the license fee be paid in person in 2 ports on the Pacific Coast of Canada, or in advance by mail;

[36] 22 U.S.C. 1980a note.

(6) significant expense and delay was incurred by commercial fishing vessels of the United States that had to travel from the point of seizure back to one of those ports in order to pay the license fee required by Canada, and the costs of that travel and delay cannot be reimbursed under the Fishermen's Protective Act;

(7) the Fishermen's Protective Act of 1967 should be amended to permit vessel owners to be reimbursed for fees required by a foreign government to be paid in advance in order to navigate in the waters of that foreign country if the United States considers that fee to be inconsistent with international law;

(8) the Secretary of State should seek to recover from Canada any amounts paid by the United States to reimburse vessel owners who paid the transit license fee;

(9) the United States should review its current policy with respect to anchorage by commercial fishing vessels of Canada in waters of the United States off Alaska, including waters in and near the Dixon Entrance, and should accord such vessels the same treatment that commercial fishing vessels of the United States are accorded for anchorage in the waters of Canada off British Columbia;

(10) the President should ensure that, consistent with international law, the United States Coast Guard has available adequate resources in the Pacific Northwest and Alaska to provide for the safety of United States citizens, the enforcement of United States law, and to protect the rights of the United States and keep the peace among vessels operating in disputed waters;

(11) the President should continue to review all agreements between the United States and Canada to identify other actions that may be taken to convince Canada that any reinstatement of the transit license fee would be against Canada's long-term interests, and should immediately implement any actions which the President deems appropriate if Canada reinstates the fee;

(12) the President should continue to convey to Canada in the strongest terms that the United States will not now, nor at any time in the future, tolerate any action by Canada which would impede or otherwise restrict the right of passage of vessels of the United States in a manner inconsistent with international law; and

(13) the United States should continue its efforts to seek expeditious agreement with Canada on appropriate fishery conservation and management measures that can be implemented through the Pacific Salmon Treaty to address issues of mutual concern.

SEC. 402. AMENDMENT TO THE FISHERMEN'S PROTECTIVE ACT OF 1967.

(a) * * *

(b) * * *

(c) Notwithstanding any other provision of law, the Secretary of State shall reimburse the owner of any vessel of the United States for costs incurred due to the seizure of such vessel in 1994 by Canada on the basis of a claim to jurisdiction over sedentary species

which was not recognized by the United States at the time of such seizure. Any such reimbursement shall cover, in addition to amounts reimbursable under section 3 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1973), legal fees and travel costs incurred by the owner of any such vessel that were necessary to secure the prompt release of the vessel and crew. Total reimbursements under this subsection may not exceed $25,000 and may be made available from the unobligated balances of previously appropriated funds remaining in the Fishermen's Protective Fund established under section 9 of the Fishermen's Protective Act (22 U.S.C. 1979).

SEC. 403.[37] **REAUTHORIZATION.** * * *

SEC. 404. TECHNICAL CORRECTIONS.

(a)(1) Section 15(a) of Public Law 103-238 is amended by striking "April 1, 1994," and inserting "May 1, 1994.".

(2) The amendment made by paragraph (1) shall be effective on and after April 30, 1994.

(b) * * *

TITLE V—FISHERIES ENFORCEMENT IN CENTRAL SEA OF OKHOTSK

SEC. 501.[38] **SHORT TITLE.**

This title may be cited as the "Sea of Okhotsk Fisheries Enforcement Act of 1995".

SEC. 502.[39] **FISHING PROHIBITION.** * * *

TITLE VI—DRIFTNET MORATORIUM

SEC. 601.[40] **SHORT TITLE.**

This title may be cited as the "High Seas Driftnet Fishing Moratorium Protection Act".

SEC. 602.[41] **FINDINGS.**

The Congress finds that—

(1) Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the exclusive economic zone of any nation, including the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV, Public Law 100–220), the Driftnet Act Amendments of 1990 (Public Law 101–627), and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102–582);

(2) the United States is a party to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention;

(3) the General Assembly of the United Nations has adopted three resolutions and three decisions which established and reaffirm a global moratorium on large-scale driftnet fishing on

[37] Sec. 403 amended sec. 7 of the Fishermen's Protective Act.
[38] 16 U.S.C. 1823 note.
[39] Sec. 502 amended the Central Bering Sea Fisheries Enforcement Act of 1992.
[40] 16 U.S.C. 1801 note.
[41] 16 U.S.C. 1826d note.

the high seas, beginning with Resolution 44/225 in 1989 and most recently in Decision 48/445 in 1993;

(4) the General Assembly of the United Nations adopted these resolutions and decisions at the request of the United States and other concerned nations;

(5) the best scientific information demonstrates the wastefulness and potentially destructive impacts of large-scale driftnet fishing on living marine resources and seabirds; and

(6) Resolution 46/215 of the United Nations General Assembly calls on all nations, both individually and collectively, to prevent large-scale driftnet fishing on the high seas.

SEC. 603.[42] PROHIBITION.

The United States, or any agency or official acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas, as such moratorium is expressed in Resolution 46/215 of the United Nations General Assembly.

SEC. 604.[43] NEGOTIATIONS.

The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations.

SEC. 605.[44] CERTIFICATION.

The Secretary of State shall determine in writing prior to the signing or provisional application by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 603 will not be violated if such agreement is signed or provisionally applied.

SEC. 606.[45] ENFORCEMENT.

The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction of the United States, to the fullest extent permitted under international law.

TITLE VII—YUKON RIVER SALMON ACT

SEC. 701.[46] SHORT TITLE.

This title may be cited as the "Yukon River Salmon Act of 1995".

[42] 16 U.S.C. 1826d.
[43] 16 U.S.C. 1826e.
[44] 16 U.S.C. 1826f.
[45] 16 U.S.C. 1826g.
[46] 16 U.S.C. 5701 note.

SEC. 702.[47] PURPOSES.

It is the purpose of this title—

(1) to implement the interim agreement for the conservation of salmon stocks originating from the Yukon River in Canada agreed to through an exchange of notes between the Government of the United States and the Government of Canada on February 3, 1995;

(2) to provide for representation by the United States on the Yukon River Panel established under such agreement; and

(3) to authorize to be appropriated sums necessary to carry out the responsibilities of the United States under such agreement.

SEC. 703.[48] DEFINITIONS.

As used in this title—

(1) The term "Agreement" means the interim agreement for the conservation of salmon stocks originating from the Yukon River in Canada agreed to through an exchange of notes between the Government of the United States and the Government of Canada on February 3, 1995.

(2) The term "Panel" means the Yukon River Panel established by the Agreement.

(3) The term "Yukon River Joint Technical Committee" means the technical committee established by paragraph C.2 of the Memorandum of Understanding concerning the Pacific Salmon Treaty between the Government of the United States and the Government of Canada recorded January 28, 1985.

SEC. 704.[49] PANEL.

(a) REPRESENTATION.—The United States shall be represented on the Panel by six individuals, of whom—

(1) one shall be an official of the United States Government with expertise in salmon conservation and management;

(2) one shall be an official of the State of Alaska with expertise in salmon conservation and management; and

(3) four shall be knowledgeable and experienced with regard to the salmon fisheries on the Yukon River.

(b) APPOINTMENTS.—Panel members shall be appointed as follows:

(1) The Panel member described in subsection (a)(1) shall be appointed by the Secretary of State.

(2) The Panel member described in subsection (a)(2) shall be appointed by the Governor of Alaska.

(3) The Panel members described in subsection (a)(3) shall be appointed by the Secretary of State from a list of at least 3 individuals nominated for each position by the Governor of Alaska. The Governor of Alaska may consider suggestions for nominations provided by organizations with expertise in Yukon River salmon fisheries. The Governor of Alaska may make appropriate nominations to allow for, and the Secretary of State shall appoint, at least one member under subsection (a)(3) who is qualified to represent the interests of Lower Yukon River

[47] 16 U.S.C. 5701.
[48] 16 U.S.C. 5702.
[49] 16 U.S.C. 5703.

fishing districts, and at least one member who is qualified to represent the interests of Upper Yukon River fishing districts. At least one of the Panel members under subsection (a)(3) shall be an Alaska Native.

(c) ALTERNATES.—The Secretary of State may designate an alternate Panel member for each Panel member the Secretary appoints under subsections (b) (1) and (3), who meets the same qualifications, to serve in the absence of the Panel member. The Governor of the State of Alaska may designate an alternative Panel member for the Panel member appointed under subsection (b)(2), who meets the same qualifications, to serve in the absence of that Panel member.

(d) TERM LENGTH.—Panel members and alternate Panel members shall serve four-year terms. Any individual appointed to fill a vacancy occurring before the expiration of any term shall be appointed for the remainder of that term.

(e) REAPPOINTMENT.—Panel members and alternate Panel members shall be eligible for reappointment.

(f) DECISIONS.—Decisions by the United States section of the Panel shall be made by the consensus of the Panel members appointed under paragraphs (2) and (3) of subsection (a).

(g) CONSULTATION.—In carrying out their functions under the Agreement, Panel members may consult with such other interested parties as they consider appropriate.

SEC. 705.[50] ADVISORY COMMITTEE.

(a) APPOINTMENTS.—The Governor of Alaska may appoint an Advisory Committee of not less than eight, but not more than twelve, individuals who are knowledgeable and experienced with regard to the salmon fisheries on the Yukon River. At least 2 of the Advisory Committee members shall be Alaska Natives. Members of the Advisory Committee may attend all meetings of the United States section of the Panel, and shall be given the opportunity to examine and be heard on any matter under consideration by the United States section of the Panel.

(b) COMPENSATION.—The members of such Advisory Committee shall receive no compensation for their services.

(c) TERM LENGTH.—Advisory Committee members shall serve two-year terms. Any individual appointed to fill a vacancy occurring before the expiration of any term shall be appointed for the remainder of that term.

(d) REAPPOINTMENT.—Advisory Committee members shall be eligible for reappointment.

SEC. 706.[51] EXEMPTION.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel, the Yukon River Joint Technical Committee, or the Advisory Committee created under section 705 of this title.

[50] 16 U.S.C. 5704.
[51] 16 U.S.C. 5705.

SEC. 707.[52] AUTHORITY AND RESPONSIBILITY.

(a) RESPONSIBLE MANAGEMENT ENTITY.—The State of Alaska Department of Fish and Game shall be the responsible management entity for the United States for the purposes of the Agreement.

(b) EFFECT OF DESIGNATION.—The designation under subsection (a) shall not be considered to expand, diminish, or change the management authority of the State of Alaska or the Federal Government with respect to fishery resources.

(c) RECOMMENDATIONS OF PANEL.—In addition to recommendations made by the Panel to the responsible management entities in accordance with the Agreement, the Panel may make recommendations concerning the conservation and management of salmon originating in the Yukon River to the Department of the Interior, Department of Commerce, Department of State, North Pacific Fishery Management Council, and other Federal or State entities as appropriate. Recommendations by the Panel shall be advisory in nature.

SEC. 708.[53] CONTINUATION OF AGREEMENT.

In the event that the Treaty between Canada and the United States of America concerning Pacific Salmon, signed at Ottawa, January 28, 1985, terminates prior to the termination of the Agreement, and the functions of the Panel are assumed by the "Yukon River Salmon Commission" referenced in the Agreement, the provisions of this title which apply to the Panel shall thereafter apply to the Yukon River Salmon Commission, and the other provisions of this title shall remain in effect.

SEC. 709.[54] ADMINISTRATIVE MATTERS.

(a) Panel members and alternate Panel members who are not State or Federal employees shall receive compensation at the daily rate of GS–15 of the General Schedule when engaged in the actual performance of duties.

(b) Travel and other necessary expenses shall be paid for all Panel members, alternate Panel members, United States members of the Joint Technical Committee, and members of the Advisory Committee when engaged in the actual performance of duties.

(c) Except for officials of the United States Government, individuals described in subsection (b) shall not be considered to be Federal employees while engaged in the actual performance of duties, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 71 of title 28, United States Code.

SEC. 710.[55] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $4,000,000 for each fiscal year for carrying out the purposes and provisions of the Agreement and this title including—

(1) necessary travel expenses of Panel members, alternate Panel members, United States members of the Joint Technical Committee, and members of the Advisory Committee in accordance with Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code;

[52] 16 U.S.C. 5706.
[53] 16 U.S.C. 5707.
[54] 16 U.S.C. 5708.
[55] 16 U.S.C. 5709.

(2) the United States share of the joint expenses of the Panel and the Joint Technical Committee: *Provided,* That Panel members and alternate Panel members shall not, with respect to commitments concerning the United States share of the joint expenses, be subject to section 262(b) of title 22, United States Code, insofar as it limits the authority of United States representatives to international organizations with respect to such commitments;

(3) not more than $3,000,000 for each fiscal year to the Department of the Interior and to the Department of Commerce for survey, restoration, and enhancement activities related to Yukon River salmon; and

(4) $400,000 in each of fiscal years 1996, 1997, 1998, and 1999 to be contributed to the Yukon River Restoration and Enhancement Fund and used in accordance with the Agreement.

TITLE VIII—MISCELLANEOUS

SEC. 801. SOUTH PACIFIC TUNA AMENDMENT.

Section 9 of the South Pacific Tuna Act of 1988 (16 U.S.C. 973g) is amended by adding at the end thereof the following: * * *

SEC. 802.[56] FOREIGN FISHING FOR ATLANTIC HERRING AND ATLANTIC MACKEREL.

Notwithstanding any other provision of law—

(1) no allocation may be made to any foreign nation or vessel under section 201 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)[57] in any fishery for which there is not a fishery management plan implemented in accordance with that Act; and

(2) the Secretary of Commerce may not approve the portion of any permit application submitted under section 204(b) of the Act which proposes fishing by a foreign vessel for Atlantic mackerel or Atlantic herring unless—

(A) the appropriate regional fishery management council recommends under section 204(b)(5) of that Act that the Secretary approve such fishing, and

(B) the Secretary of Commerce includes in the permit any conditions or restrictions recommended by the appropriate regional fishery management council with respect to such fishing.

[56] 16 U.S.C. 1821 note.

[57] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

5. Dolphins

a. International Dolphin Conservation Program

Title III of Public Law 92–522 [Marine Mammal Protection Act of 1972; H.R. 10420], 86 Stat. 1027, approved October 21, 1972; as amended by Public Law 102–523 [International Dolphin Conservation Act of 1992; H.R. 5419], 106 Stat. 3425, approved October 26, 1992; and Public Law 105–42 [International Dolphin Conservation Program Act; H.R. 408], 111 Stat. 1122, approved August 15, 1997

AN ACT To protect marine mammals, to establish a Marine Mammal Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

* * * * * * *

TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM [1]

SEC. 301.[2] FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds the following:

(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

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[1] Sec. 2(a) of the International Dolphin Conservation Act of 1992 (Public Law 102–523; 106 Stat. 3425) added title III. Sec. 6(a) of Public Law 105–42 (111 Stat. 1129) amended the heading of title III, which previously read as follows: "GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES".

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(a) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under sec. 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

[2] 16 U.S.C. 1411.

(4)[3] Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.

(b) POLICY.—It is the policy of the United States to—

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

(2)[4] support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

(3)[4] ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;

(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals

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[3] Sec. 6(b)(1) of Public Law 105–42 (111 Stat. 1129) amended and restated para. (4), which previously read as following:

"(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery.".

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(b)(1) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

[4] Sec. 6(b)(2) of Public Law 105–42 (111 Stat. 1129) struck out paras. (2) and (3) and inserted in lieu thereof new paras. (2) and (3). Paras. (2) and (3) previously read as follows:

"(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

"(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;".

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(b)(2) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

SEC. 302.[5] INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.

The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires—

(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

(4) that if a dolphin mortality limit is exceeded under—

(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

(5) a scientific review and assessment to be conducted in calendar year 1998 to—

(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

(B) as appropriate, consider recommendations for meeting these objectives;

(6) a scientific review and assessment to be conducted in calendar year 2000—

(A) to review the stocks covered under paragraph (3); and

(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

[5] 16 U.S.C. 1412. Sec. 6(c) of Public Law 105–42 (111 Stat. 1130) struck out sec. 302 and inserted in lieu thereof a new sec. 302.

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(c) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

SEC. 303.[6] REGULATORY AUTHORITY OF THE SECRETARY.

(a) REGULATIONS.—

(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), by vessels of the United States participating in the International Dolphin Conservation Program.

(B) Regulations issued under this section shall include provisions—

(i) requiring observers on each vessel;

(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;

(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

(vi) banning the use of explosive devices in all purse seine operations;

(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual

[6] 16 U.S.C. 1413. Sec. 6(c) of Public Law 105–42 (111 Stat. 1130) struck out sec. 303 and inserted in lieu thereof a new sec. 303.

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(c) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

(c) EMERGENCY REGULATIONS.—

(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall—

(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United

States Commissioners to the Inter-American Tropical Tuna Commission.

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for the duration of the applicable fishing year; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

SEC. 304.[7] RESEARCH.

(a) REQUIRED RESEARCH.—

(1) IN GENERAL.—The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address

[7] 16 U.S.C. 1414a. Sec. 6(c) of Public Law 105–42 (111 Stat. 1130) struck out sec. 304 and inserted in lieu thereof a new sec. 304.

the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

(2) POPULATION ABUNDANCE SURVEYS.—The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

(3) STRESS STUDIES.—The stress studies under this subsection shall include—

(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

(4) REPORT.—No later than 90 days after publishing the finding under subsection (g)(2) of the Dolphin Protection Consumer Information Act, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

(b) OTHER RESEARCH.—

(1) IN GENERAL.—In addition to conducting the research described in subsection (a), the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

(2) SPECIFIC AREAS OF RESEARCH.—Research carried out under paragraph (1) may include—

(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin

tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a):

(A) $4,000,000 for fiscal year 1998.

(B) $3,000,000 for fiscal year 1999.

(C) $4,000,000 for fiscal year 2000.

(D) $1,000,000 for fiscal year 2001.

(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section $3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

SEC. 305.[8] REPORTS BY THE SECRETARY.

Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

(1) results of research conducted pursuant to section 304;

(2) a description of the status and trends of stocks of tuna;

(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;

(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

(7) any other information deemed relevant by the Secretary.

SEC. 306.[9] PERMITS.

(a) IN GENERAL.—

(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the

[8] 16 U.S.C. 1415. Sec. 6(c) of Public Law 105–42 (111 Stat. 1130) struck out sec. 305 and inserted in lieu thereof a new sec. 305.

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(c) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

[9] 16 U.S.C. 1416. Sec. 6(c) of Public Law 105–42 (111 Stat. 1130) struck out sec. 306 and inserted in lieu thereof a new sec. 306.

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(c) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine

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United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) PERMIT SANCTIONS.—

(1) In any case in which—

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue, the Secretary may—

(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.

SEC. 307.[10] PROHIBITIONS.

(a) IN GENERAL.—It is unlawful—

(1)[11] for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the international Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(2)[12] except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the

[10] 16 U.S.C. 1417.

[11] Sec. 6(d) of Public Law 105–42 (111 Stat. 1136) amended and restated para. (1), which previously read as follows:

"(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;".

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(d) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

[12] Sec. 6(d)(1) of Public Law 105–42 (111 Stat. 1136) amended and restated para. (2), which previously read as follows:

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eastern tropical Pacific Ocean except in accordance with this title and regulations issued pursuant to this title; and

(3)[13] for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);

(4) for any person to violate any regulation promulgated under this title;

(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with the enforcement of this title; and

(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).

(b) PENALTIES.—

(1) CIVIL PENALTY.—A person that knowingly and willfully violates subsection (a) (1), (2), (3), (4), or (5) shall be subject to a civil penalty under section 105(a).

(2) CRIMINAL PENALTY.—A person that knowingly and willfully violates subsection (a)(5) or[14] (a)(6) shall be subject to a criminal penalty under section 105(b).

(c)[15] CIVIL FORFEITURES.—Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair

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"(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except—

"(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;

"(B) in accordance with a recommendation that is approved under section 302(c)(2); or

"(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 306(a)), notwithstanding any agreement under section 302 with a country that is not a major purse seine tuna fishing country (as that term is defined in section 306(c));".

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(d)(1) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

[13] Sec. 6(d) of Public Law 105–42 (111 Stat. 1136) amended and restated para. (3), which previously read as follows:

"(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 305(b) (1) or (2);".

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(d) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

[14] Sec. 6(d)(2) of Public Law 105–42 (111 Stat. 1136) inserted "(a)(5) or".

[15] Sec. 6(d)(3) of Public Law 105–42 (111 Stat. 1137) struck out subsec. (d) which previously appeared after subsec. (c).

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(d)(3) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 310 of the Magnuson-Stevens Fishery Conservation and Management Act.[16]

SEC. 308.[17] * * * [Repealed—1997]

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

[16] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[17] Sec. 6(e) of Public Law 105–42 (111 Stat. 1137) repealed sec. 308 which had provided for the authorization of appropriations for 1993 through 1998.

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 6(e) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998; the Secretary of State made the certification on March 3, 1999.

b. International Dolphin Conservation Program Act

Partial text of Public Law 105–42 [H.R. 408], 111 Stat. 1122, approved August 15, 1977

AN ACT To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "International Dolphin Conservation Program Act".

(b) REFERENCES TO MARINE MAMMAL PROTECTION ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 2.[1] PURPOSES AND FINDINGS.

(a) PURPOSES.—The purposes of this Act are—

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

(b) FINDINGS.—The Congress finds that—

(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

(2) the provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

[1] 16 U.S.C. 1361 note. For the most part, this Act amends the Marine Mammal Protection Act of 1972 (Public Law 92–522) and the Dolphin Protection Consumer Information Act (Public Law 101–627).

(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality.

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c. International Dolphin Conservation Act of 1992

Public Law 102–523 [H.R. 5419], 106 Stat. 3425, approved October 26, 1992

AN ACT To amend the Marine Mammal Protection Act of 1972 to authorize the Secretary of State to enter into international agreements to establish a global moratorium to prohibit harvesting of tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals, and for other purposes.

NOTE.—This Public Law consisted entirely of amendments to other laws. Sec. 2 added a new Title III to the Marine Mammal Protection Act of 1972 (Public Law 92–522; 16 U.S.C. 1361 *et seq.*), relating to a global moratorium to prohibit certain tuna harvesting practices. Sec. 3 amended the Tunas Conventions Act of 1950 and the South Pacific Tuna Act of 1988.

d. Dolphin Protection Consumer Information Act

Title IX of Public Law 101–627 [Fishery Conservation Amendments of 1990; H.R. 2061] 104 Stat. 4436 at 4465, approved November 28, 1990; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; and Public Law 105–42 [International Dolphin Conservation Program Act; H.R. 408], 111 Stat. 1122, approved August 15, 1997

AN ACT To authorize appropriations to carry out the Magnuson-Stevens Fishery Conservation and Management Act[1] through fiscal year 1993, and for other purposes.

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TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION

DOLPHIN PROTECTION

SEC. 901.[2] (a) SHORT TITLE.—This section may be cited as the "Dolphin Protection Consumer Information Act".

(b) FINDINGS.—The Congress finds that—

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;

(2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and

(3) consumers would like to know if the tuna they purchase is falsely labeled as the effect of harvesting of the tuna on dolphins.

(c) DEFINITIONS.—For purposes of this section—

(1) the terms "driftnet" and "driftnet fishing" have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);

(2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America;

[1] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[2] 16 U.S.C. 1385.

(3) the term "label" means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;

(4) the term "Secretary" means the Secretary of Commerce; and

(5) the term "tuna product" means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d)[3] LABELING STANDARD.—

(1) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term 'dolphin safe' or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested—

(A) on the high seas by a vessel engaged in driftnet fishing;

(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets—

(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

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[3] Sec. 5(a) of Public Law 105–42 (111 Stat. 1125) amended and restated subsec. (d).

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 5(a) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under sec. 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998, and the Secretary of State made the certification on March 3, 1999.

(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h);

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee;

(II) a representative of the Inter-American Tropical Tuna Commission; or

(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h); and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this Act.

(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

(C) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine

mammals other than the mark developed under subparagraph (A) unless—

(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f); and

(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

(E) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) willingly and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.

(e) ENFORCEMENT.—Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed $100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.

(f)[4] REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

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[4] Sec. 5(b) of Public Law 105–42 (111 Stat. 1127) amended and restated subsec. (f), which previously read as follows:

"(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after the date of the enactment of this Act, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d).".

Sec. 8 of Public Law 105–42 (111 Stat. 1139) provided that the amendment made by sec. 5(b) would become effective upon certification by the Secretary of Commerce that sufficient funding is available to complete the first year of the study required under sec. 304(a) of the Marine Mammal Protection Act of 1972 and the study has commenced; and certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

The Secretary of Commerce made the certification referred to in sec. 8 on July 27, 1998, and the Secretary of State made the certification on March 3, 1999.

(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.

(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).

(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

(7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph.

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.

(g)[5] SECRETARIAL FINDINGS.—(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The

[5] Sec. 5(c) of Public Law 105–42 (111 Stat. 1128) struck out subsecs. (g), (h), and (i), and inserted in lieu thereof new subsecs. (g) and (h). Subsec. (g) amended sec. 101(a)(2) of the Marine Mammal Protection Act of 1972. Subsecs. (h) and (i) previously read as follows:

"(h) NEGOTIATIONS.—The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

"(i) EFFECTIVE DATE.—Subsections (d) and (e) shall take effect 6 months after the date of the enactment of this Act.".

finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(h)[5] CERTIFICATION BY CAPTAIN AND OBSERVER.—

(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) The certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing—

(A) before the effective date of the initial finding by the Secretary under subsection (g)(1);

(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2), where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

(C) after the effective date of the finding under subsection (g)(2), where such finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any such depleted stock.

6. North Pacific Anadromous Stocks Act of 1992

Partial text of Public Law 102–567 [National Oceanic and Atmospheric Administration Authorization Act of 1992, H.R. 2130], 106 Stat. 4270 at 4309, approved October 29, 1992; as amended by Public Law 104–43 [Fisheries Act of 1995; H.R. 716], 109 Stat. 366, approved November 3, 1995; and Public Law 106–562 [H.R. 1653], 114 Stat. 2784, approved December 23, 2005

AN ACT To authorize appropriations for the National Oceanic and Atmospheric Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE VIII—NORTH PACIFIC ANADROMOUS STOCKS CONVENTION

SEC. 801.[1] SHORT TITLE.

This title may be cited as the "North Pacific Anadromous Stocks Act of 1992".

SEC. 802.[2] PURPOSE.

It is the purpose of this title to implement the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed in Moscow, February 11, 1992.

SEC. 803.[3] DEFINITIONS.

As used in this title, the term—

(1) "Anadromous stocks" means stocks of species listed in the Annex to the Convention that migrate into the Convention area.

(2) "Anadromous fish" means fish of the species listed in the Annex to the Convention that migrate into the Convention area.

(3) "Authorized officer" means a law enforcement official authorized to enforce this title under section 809(a).

(4) "Commission" means the North Pacific Anadromous Fish Commission provided for by article VIII of the Convention.

(5) "Convention" means the Convention for the Conservation of Anadromous Stocks of the North Pacific Ocean, signed in Moscow, February 11, 1992.

(6) "Convention area" means the waters of the North Pacific Ocean and its adjacent seas, north of 33 degrees North Latitude, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

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[1] 16 U.S.C. 5001 note. See also the North Pacific Anadromous Stocks Convention Act of 1992 (title VIII of Public Law 102–587; 106 Stat. 5098).
[2] 16 U.S.C. 5001.
[3] 16 U.S.C. 5002.

(7) "Directed fishing" means fishing targeted at a particular species or stock of fish.

(8) "Ecologically related species" means living marine species which are associated with anadromous stocks found in the Convention area, including, but not restricted to, both predators and prey of anadromous fish.

(9) "Enforcement officer" means a law enforcement official authorized by any Party to enforce this title.

(10) "Exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this title, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(11) "Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(12) "Fishing" means—

(A) the catching, taking, or harvesting of fish, or any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(B) any operation at sea in preparation for or in direct support of any activity described in subparagraph (A).

(13) "Fishing vessel" means—

(A) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area;

(B) any vessel outfitted to engage in any activity described in subparagraph (A);

(C)[4] any vessel supporting a vessel described in subparagraph (A) or (B).

(14) "Incidental taking" means catching, taking, or harvesting a species or stock of fish while conducting directed fishing for another species or stock of fish.

(15) "Party" means Canada, Japan, the Russian Federation, the United States, and any other nation that may accede to the Convention.

(16) "Secretary" means the Secretary of State.

(17) "United States Section" means the United States Commissioners of the Commission.

SEC. 804.[5] UNITED STATES COMMISSIONERS.

(a) COMMISSIONERS.—The United States shall be represented on the Commission by not more than three United States Commissioners to be appointed by and serve at the pleasure of the President. Each United States Commissioner shall be appointed for a term of office not to exceed 4 years, but is eligible for reappointment. 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, United States Code, and chapter 171 of title 28, United States Code.[6] Of the Commissioners—

[4] Sec. 404(b) of Public Law 104–43 (109 Stat. 391) amended and restated subpara. (C).
[5] 16 U.S.C. 5003.
[6] Sec. 304(b) of Public Law 106–562 (114 Stat. 2807) inserted this sentence.

(1) one shall be an official of the United States Government;
(2) one shall be a resident of the State of Alaska; and
(3) one shall be a resident of the State of Washington.

An individual is not eligible for appointment under paragraph (2) or (3) as a Commissioner unless the individual is knowledgeable or experienced concerning the anadromous stocks and ecologically related species of the North Pacific Ocean.

(b)[7] ALTERNATE COMMISSIONERS.—The Secretary, in consultation with the Secretary of Commerce, may designate from time to time Alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise all designated powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

(c) UNITED STATES SECTION.—The United States Section, in consultation with the Advisory Panel established in section 805, shall identify and recommend to the Commission research needs and priorities for anadromous stocks and ecologically related species subject to the Convention, and oversee the United States research programs involving such fisheries, stocks, and species.

(d) COMPENSATION.—United States Commissioners and Alternate United States Commissioners shall receive no compensation for their services as Commissioners and Alternate Commissioners.

SEC. 805.[8] ADVISORY PANEL.

(a) ESTABLISHMENT OF PANEL.—An Advisory Panel to the United States Section is established. The Advisory Panel shall be composed of the following:

(1) The Commissioner of the Alaska Department of Fish and Game.

(2) The Director of the Washington Department of Fisheries.

(3) One representative of the Pacific States Marine Fisheries Commission, designated by the Executive Director of that commission.

(4)[7] Eleven members (six of whom shall be residents of the State of Alaska and five of whom shall be residents of the State of Washington), appointed by the Secretary, in consultation with the Secretary of Commerce, from among a slate of 12 persons nominated by the Governor of Alaska and a slate of 10 persons nominated by the Governor of Washington.

(b) QUALIFICATIONS.—Persons appointed to the Advisory Panel shall be individuals who are knowledgeable or experienced concerning anadromous stocks and ecologically related species. In submitting a slate of nominees pursuant to subsection (a)(4), the Governors of Alaska and Washington shall seek to represent the broad range of parties interested in anadromous stocks and ecologically related species, and at a minimum shall include on each slate at least one representative of commercial salmon fishing interests and

[7] The functions vested in the Secretary of State by secs. 804(b), 805(a)(4), 806, 807(a), 807(b), and 813 of this Act were delegated to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs (Department of State Public Notice 1743 of December 11, 1992; 57 F.R. 61468).

[8] 16 U.S.C. 5004.

of environmental interests concerned with protection of living marine resources.

(c) LIMITATION ON SERVICE.—Any person appointed to the Advisory Panel pursuant to subsection (a)(4) shall serve for a term not to exceed 4 years, and may not serve more than two consecutive terms.

(d) FUNCTIONS.—The Advisory Panel shall be invited to all nonexecutive meetings of the United States Section and at such meetings shall be granted the opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section.

(e) COMPENSATION AND EXPENSES.—The members of the Advisory Panel shall receive no compensation or travel expenses for their services as such members.

SEC. 806.[7, 9] COMMISSION RECOMMENDATIONS.

The Secretary,[6] with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article IX of the Convention.

SEC. 807.[10] ADMINISTRATION AND ENFORCEMENT OF CONVENTION.

(a)[7] RESPONSIBILITIES.—The Secretary of Commerce shall be responsible for administering provisions of the Convention, this title, and regulations issued under this title. The Secretary, in consultation with the Secretary of Commerce and the Secretary of Transportation, shall be responsible for coordinating the participation of the United States in the Commission.

(b)[7] CONSULTATION AND COOPERATION.—In carrying out such functions, the Secretary of Commerce—

(1) shall, in consultation with the Secretary of Transportation and the United States Section, issue such regulations as may be necessary to carry out the purposes and objectives of the Convention and this title; and

(2) may, with the concurrence of the Secretary, cooperate with the authorized officials of the government of any Party.

SEC. 808.[11] COOPERATION WITH OTHER AGENCIES.

(a) IN GENERAL.—Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

(b) FUNCTIONS OF SECRETARY OF COMMERCE.—In carrying out the provisions of the Convention and this title, the Secretary of Commerce may arrange for cooperation with agencies of the United States, the States, private institutions and organizations, and agencies of the government of any Party, to conduct scientific and other programs, and may execute such memoranda as may be necessary to reflect such agreements.

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[9] 16 U.S.C. 5005.
[10] 16 U.S.C. 5006.
[11] 16 U.S.C. 5007.

SEC. 809.[12] **ENFORCEMENT PROVISIONS.**

(a) DUTIES OF SECRETARIES OF COMMERCE AND TRANSPORTATION.—This title shall be enforced by the Secretary of Commerce and the Secretary of Transportation. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under the preceding sentence may (if the agreement so provides), authorize officers to enforce the provisions of the Convention, this title, and regulations issued under this title. Any such agreement or contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) DISTRICT COURT JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title.

(c) POWERS OF ENFORCEMENT OFFICERS.—Authorized officers may, shoreward of the outer boundary of the exclusive economic zone, or during hot pursuit from the zone—

(1) with or without a warrant or other process—

(A) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by section 810;

(B) board, and search or inspect, any fishing vessel subject to the provisions of the Convention and this title;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of the Convention, this title, or regulations issued under this title;

(D) seize any fish (wherever found) taken or retained in violation of any provision referred to in subparagraph (C);

(E) seize any other evidence related to any violation of any provision referred to in subparagraph (C);

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(d) ADDITIONAL POWERS.—(1) An authorized officer may in the Convention area—

(A) board a vessel of any Party that reasonably can be believed to be engaged in directed fishing for, incidental taking of, or processing of anadromous fish, and, without warrant or process, inspect equipment, logs, documents, catch, and other articles, and question persons, on board the vessel, for the purpose of carrying out the provisions of the Convention, this title, or any regulation issued under this title; and

[12] 16 U.S.C. 5008.

(B) If any such vessel or person on board is actually engaged in operations in violation of any such provision, or there is reasonable ground to believe any person or vessel was obviously so engaged before the boarding of such vessel by the authorized officer, arrest or seize such person or vessel and further investigate the circumstance if necessary.

If an authorized officer, after boarding and investigation, has reasonable cause to believe that any such fishing vessel or person engaged in operations in violation of any provision referred to in subparagraph (A), the officer shall deliver the vessel or person as promptly as practicable to the enforcement officers of the appropriate Party, in accordance with the provisions of the Convention.

(2) When requested by the appropriate authorities of a Party, an authorized officer may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary, for the prosecution by that Party of any violation of the provisions of the Convention or any law of that Party relating to the enforcement thereof.

SEC. 810.[13] UNLAWFUL ACTIVITIES.

It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States—

(1) to fish for any anadromous fish in the Convention area;

(2) to retain on board any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(3) to fail to return immediately to the sea any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(4) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any anadromous fish taken or retained in violation of the Convention, this title, or any regulation issued under this title;

(5) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this title, or any regulation issued under this title;

(6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (5);

(7) to resist a lawful arrest or detection for any act prohibited by this section;

(8) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section; or

(9) to violate any provision of the Convention, this title, or any regulation issued under this title.

[13] 16 U.S.C. 5009.

SEC. 811.[14] **PENALTIES.**

(a) CIVIL PENALTIES.—(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 810 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary of Commerce, or the Secretary's designee, by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary of Commerce shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary of Commerce, the matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 810 shall be liable in rem for any civil penalty assessed for such violation under paragraph (1) and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(5) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(6) For the purposes of conducting any hearing under this section, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are

[14] 16 U.S.C. 5010.

paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) OFFENSES.—(1) A person is guilty of an offense if the person commits any act prohibited by section 810 (5), (6), (7), or (8).

(2) Any offense described in paragraph (1) is a class A misdemeanor punishable by a fine under title 18, United States code, or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any enforcement officer, or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18, United States Code, or imprisonment for not more than 10 years, or both.

(c) FORFEITURE.—(1) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or a fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 810 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(2) Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

(3) if a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this title or for which security has not previously been obtained. The provisions of the customs laws relating to—

(A) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(B) the disposition of such property or the proceeds from the sale thereof; and

(C) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, unless such provisions are inconsistent with the purposes, policy, and provisions of this title.

(4)(A) Any officer authorized to serve any process in rem that is issued by a court having jurisdiction under section 809(b) shall—

(i) stay the execution of such process; or

(ii) discharge any fish seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be

conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(B) Any fish seized pursuant to this title may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 810 were taken or retained in violation of the Convention and this title.

SEC. 812.[15] FUNDING REQUIREMENTS.

(a) AUTHORIZATION.—There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this title, including—

(1) necessary travel expenses of the United States Commissioners or Alternate Commissioners; and

(2) the United States' share of the joint expenses of the Commission.

(b) RESEARCH.—Such funds as shall be made available to the Secretary of Commerce for research and related activities shall be expended to carry out the program of the Commission in accordance with the recommendations of the United States Section and to carry out other research and observer programs pursuant to the Convention.

SEC. 813.[7, 16] DISPOSITION OF PROPERTY.

The Secretary shall dispose of any United States property held by the International North Pacific Fisheries Commission on the date of its termination in a manner that would further the purposes of this title.

SEC. 814.[17] REPEAL OF THE NORTH PACIFIC FISHERIES ACT OF 1954.

The Act of August 12, 1954 (16 U.S.C. 1021–1035) is repealed.

[15] 16 U.S.C. 5011.
[16] 16 U.S.C. 5012.
[17] The North Pacific Fisheries Act of 1954 (Public Law 83–579; 16 U.S.C. 1021–1035) gave effect to the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo, May 9, 1952.

7. Driftnet Fishing

a. High Seas Driftnet Fisheries Enforcement Act

Partial text of Public Law 102–582 [H.R. 2152], 106 Stat. 4900, approved November 2, 1992; as amended by Public Law 104–43 [Fisheries Act of 1995; H.R. 716], 109 Stat. 366, approved November 3, 1995; and Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To enhance the effectiveness of the United Nations international driftnet fishery conservation program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "High Seas Driftnet Fisheries Enforcement Act".

SEC. 2.[2] FINDINGS AND POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) Large-scale driftnet fishing on the high seas is highly destructive to the living marine resources and ocean ecosystems of the world's oceans, including anadromous fish and other living marine resources of the United States.

(2) The cumulative effects of large-scale driftnet fishing pose a significant threat to the marine ecosystem, and slow-reproducing species like marine mammals, sharks, and seabirds may require many years to recover.

(3) Members of the international community have reviewed the best available scientific data on the impacts of large-scale pelagic driftnet fishing, and have failed to conclude that this practice has no significant adverse impacts which threaten the conservation and sustainable management of living marine resources.

(4) The United Nations, via General Assembly Resolutions numbered 44–225, 45–197, and most recently 46–215 (adopted on December 20, 1991), has called for a worldwide moratorium on all high seas driftnet fishing by December 31, 1992, in all the world's oceans, including enclosed seas and semi-enclosed seas.

(5) The United Nations has commended the unilateral, regional, and international efforts undertaken by members of the international community and international organizations to implement and support the objectives of the General Assembly resolutions.

[1] 16 U.S.C. 1801 note.
[2] 16 U.S.C. 1826a note.

(6) Operative paragraph (4) of United Nations General Assembly Resolution numbered 46–215 specifically "encourages all members of the international community to take measures individually and collectively to prevent large-scale pelagic driftnet fishing operations on the high seas of the world's oceans and seas".

(7) The United States, in section 307(1)(M) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)(M)),[3] has specifically prohibited the practice of large-scale driftnet fishing by United States nationals and vessels both within the exclusive economic zone of the United States and beyond the exclusive economic zone of any nation.

(8) The Senate, through Senate Resolution 396 of the One Hundredth Congress (approved on March 18, 1988), has called for a moratorium on fishing in the Central Bering Sea and the United States has taken concrete steps to implement such moratorium through international negotiations.

(9) Despite the continued evidence of a decline in the fishery resources of the Bering Sea and the multiyear cooperative negotiations undertaken by the United States, the Russian Federation, Japan, and other concerned fishing nations, some nations refuse to agree to measures to reduce or eliminate unregulated fishing practices in the waters of the Bering Sea beyond the exclusive economic zones of the United States and the Russian Federation.

(10) In order to ensure that the global moratorium on large-scale driftnet fishing called for in United Nations General Assembly Resolution numbered 46–215 takes effect by December 31, 1992, and that unregulated fishing practices in the waters of the Central Bering Sea are reduced or eliminated, the United States should take the actions described in this Act and encourage other nations to take similar action.

(b) POLICY.—It is the stated policy of the United States to—

(1) implement United Nations General Assembly Resolution numbered 46–215, approved unanimously on December 20, 1991, which calls for an immediate cessation to further expansion of large-scale driftnet fishing, a 50 percent reduction in existing large-scale driftnet fishing effort by June 30, 1992, and a global moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation by December 31, 1992;

(2) bring about a moratorium on fishing in the Central Bering Sea, or an international conservation and management agreement to which the United States and the Russian Federation are parties that regulates fishing in the Central Bering Sea; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or

[3] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

vessels fishing beyond the exclusive economic zone of any nation.

TITLE I—HIGH SEAS LARGE-SCALE DRIFTNET FISHING

SEC. 101.[4] DENIAL OF PORT PRIVILEGES AND SANCTIONS FOR HIGH SEAS LARGE-SCALE DRIFTNET FISHING.

(a) DENIAL OF PORT PRIVILEGES.—

(1) PUBLICATION OF LIST.—Not later than 30 days after the date of enactment of this Act and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, in accordance with recognized principles of international law—

(A) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.

(3) NOTIFICATION OF NATION.—Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

(b) SANCTIONS.—

(1) IDENTIFICATIONS.—

(A) INITIAL IDENTIFICATIONS.—Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

(B) ADDITIONAL IDENTIFICATIONS.—At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

[4] 16 U.S.C. 1826a.

(2) CONSULTATIONS.—Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) PROHIBITION ON IMPORTS OF FISH AND FISH PRODUCTS AND SPORT FISHING EQUIPMENT.—

(A) PROHIBITION.—The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A); or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within ninety days, shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of the Internal Revenue Code of 1986 (26 U.S.C. 4162)) from that nation.

(B) IMPLEMENTATION OF PROHIBITION.—With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is forty-five days after the date on which the Secretary has received the direction from the President.

(C) PUBLIC NOTICE OF PROHIBITION.—Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) ADDITIONAL ECONOMIC SANCTIONS.—

(A) DETERMINATION OF EFFECTIVENESS OF SANCTIONS.—Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether—

(i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation; or

(ii) that nation has retaliated against the United States as a result of that prohibition.

(B) CERTIFICATION.—The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) EFFECT OF CERTIFICATION.—Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)), as amended by this Act.

SEC. 102.[5] DURATION OF DENIAL OF PORT PRIVILEGES AND SANCTIONS.

Any denial of port privileges or sanction under section 101 with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

SEC. 103. REQUIREMENTS UNDER MARINE MAMMAL PROTECTION ACT OF 1972.

Section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended—

(1) in subparagraph (E)(i) by striking "July 1, 1992" and inserting in lieu thereof "January 1, 1993"; and

(2) in the last sentence by inserting ", except that, until January 1, 1994, the term 'driftnet' does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community" immediately after "(16 U.S.C. 1822 note)".

SEC. 104.[6] DEFINITIONS.

In this title, the following definitions apply:

(1) FISH AND FISH PRODUCTS.—The term "fish and fish products" means any aquatic species (including marine mammals and plants) and all products thereof exported from a nation, whether or not taken by fishing vessels of that nation or packed, processed, or otherwise prepared for export in that nation or within the jurisdiction thereof.

(2) LARGE-SCALE DRIFTNET FISHING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(B) EXCEPTION.—Until January 1, 1994, the term "large-scale driftnet fishing" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3) LARGE-SCALE DRIFTNET FISHING VESSEL.—The term "large-scale driftnet fishing vessel" means any vessel which is—

(A) used for, equipped to be used for, or of a type which is normally used for large-scale driftnet fishing; or

[5] 16 U.S.C. 1826b.
[6] 16 U.S.C. 1826c.

(B) used for aiding or assisting one or more vessels at sea in the performance of large-scale driftnet fishing, including preparation, supply, storage, refrigeration, transportation, or processing.

TITLE II—FISHERIES CONSERVATION PROGRAMS

SEC. 201.[7] IMPORT RESTRICTIONS UNDER FISHERMEN'S PROTECTIVE ACT OF 1967. * * *

SEC. 202.[8] ENFORCEMENT.

(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense shall enter into an agreement under section 311(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a))[9] in order to make more effective the enforcement of domestic laws and international agreements that conserve and manage the living marine resources of the United States.

(b) TERMS.—The agreement entered into under subsection (a) shall include—

(1) procedures for identifying and providing the location of vessels that are in violation of domestic laws or international agreements to conserve and manage the living marine resources of the United States;

(2) requirements for the use of the surveillance capabilities of the Department of Defense; and

(3) procedures for communicating vessel locations to the Secretary of Commerce and the Coast Guard.

SEC. 203. TRADE NEGOTIATIONS AND THE ENVIRONMENT.

It is the sense of the Congress that the President, in carrying out multilateral, bilateral, and regional trade negotiations, should seek to—

(1) address environmental issues related to the negotiations;

(2) modify articles of the General Agreement on Tariffs and Trade (referred to in this section as "GATT") to take into consideration the national environmental laws of the GATT Contracting Parties and international environmental treaties;

(3) secure a working party on trade and the environment within GATT as soon as possible;

(4) take an active role in developing trade policies that make GATT more responsive to national and international environmental concerns;

(5) include Federal agencies with environmental expertise during the negotiations to determine the impact of the proposed trade agreements on national environmental law; and

(6) periodically consult with interested parties concerning the progress of the negotiations.

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[7] Sec. 201 amended sec. 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978).

[8] 16 U.S.C. 1861 note.

[9] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

TITLE III—FISHERIES ENFORCEMENT IN CENTRAL BERING SEA

SEC. 301.[10] SHORT TITLE.

This title may be cited as the "Central Bering Sea Fisheries Enforcement Act of 1992".

SEC. 302.[10] PROHIBITION APPLICABLE TO UNITED STATES VESSELS AND NATIONALS.

(a) PROHIBITION.—Vessels and nationals of the United States are prohibited from conducting fishing operations in the Central Bering Sea and the Central Sea of Okhotsk,[11] except where such fishing operations are conducted in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

(b) CIVIL PENALTIES AND PERMIT SANCTIONS.—A violation of this section shall be subject to civil penalties and permit sanctions under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858).[9]

SEC. 303.[10] PORT PRIVILEGES DENIAL FOR FISHING IN CENTRAL BERING SEA.

(a) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, after December 31, 1992, in accordance with recognized principles of international law—

(1) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any fishing vessel documented under the laws of a nation that is included on a list published under subsection (b); and

(2) deny entry of such fishing vessel to any place in the United States and to the navigable waters of the United States.

(b) PUBLICATION OF LIST.—Not later than forty-five days after the date of enactment of this Act, the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall publish in the Federal Register a list of nations whose nationals or vessels conduct fishing operations in the Central Bering Sea, except where such fishing operations are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties. The Secretary shall publish as an addendum to the list the name of each vessel documented under the laws of each listed nation which conducts fishing operations in the Central Bering Sea. A revised list shall be published whenever the list is no longer accurate, except that a nation may not be removed from the list unless—

(1) the nationals and vessels of that nation have not conducted fishing operations in the Central Bering Sea for the previous ninety days and the nation has committed, through a bilateral agreement with the United States or in any other

[10] 16 U.S.C. 1823 note.

[11] Sec. 502(a) of the Sea of Okhotsk Fisheries Enforcement Act of 1995 (title V of the Fisheries Act of 1995; Public Law 104–43; 109 Stat. 391) inserted "and the Central Sea of Okhotsk".

manner acceptable to the Secretary of Commerce, not to permit its nationals or vessels to resume such fishing operations; or

(2) the nationals and vessels of that nation are conducting fishing operations in the Central Bering Sea that are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

(c) NOTIFICATION OF NATION.—Before the publication of a list of nations under subsection (b), the Secretary of State shall notify each nation included on that list and explain the requirement to deny the port privileges of fishing vessels of that nation under subsection (a) as a result of such publication.

SEC. 304.[10] DURATION OF PORT PRIVILEGES DENIAL.

Any denial of port privileges under section 303 with respect to any fishing vessel of a nation shall remain in effect until such nation is no longer listed under section 303(b).

SEC. 305.[10] RESTRICTION ON FISHING IN UNITED STATES EXCLUSIVE ECONOMIC ZONE.

(a) REGULATIONS.—Within one hundred and eighty days after the date of enactment of this Act, after notice and public comment, the Secretary of Commerce shall issue regulations, under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)[9] and any other applicable law, to prohibit—

(1) any permitted fishing vessel from catching, taking, or harvesting fish in a fishery under the geographical authority of the North Pacific Fishery Management Council if such vessel is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b);

(2) any processing facility from receiving any fish caught, taken, or harvested in a fishery under the geographical authority of the North Pacific Fishery Management Council if such facility is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b); and

(3) any permitted fishing vessel from delivering fish caught, taken, or harvested in a fishery under the geographic authority of the North Pacific Fishery Management Council to a processing facility that is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b).

(b) REQUIREMENT FOR SUBMISSION OF DOCUMENTS.—The Secretary of Commerce shall require under any regulations issued under subsection (a) the submission of any affidavits, financial statements, corporate agreements, and other documents that the Secretary of Commerce determines, after notice and public comment, are necessary to ensure that all vessels and processing facilities are in compliance with this section.

(c) APPEALS; DURATION OF PROHIBITIONS.—The regulations issued under subsection (a) shall—

(1) establish procedures for a person to appeal a decision to impose a prohibition under subsection (a) on a vessel or processing facility owned or controlled by that person; and

(2) specify procedures for the removal of any prohibition imposed on a vessel or processing facility under subsection (a)—

(A) upon publication of a revised list under section 303(b), and a revised addendum which does not include a fishing vessel owned or controlled by the person who also owns or controls the vessel or facility to which the prohibition applies; or

(B) on the date that is ninety days after such person terminates ownership and control in fishing vessels that are listed on the addendum under section 303(b).

SEC. 306.[10] DEFINITIONS.

In this title, the following definitions apply:

(1) CENTRAL BERING SEA.—The term "Central Bering Sea" means the central Bering Sea area which is more than two hundred nautical miles seaward of the baselines from which the breadth of the territorial seas of the United States and the Russian Federation are measured.

(2)[12] CENTRAL SEA OF OKHOTSK.—The term "Central Sea of Okhotsk" means the Central Sea of Okhotsk area which is more than two hundred nautical miles seaward of the baseline from which the breadth of the territorial sea of the Russian Federation is measured.

(3)[12] FISHING VESSEL.—The term "fishing vessel" means any vessel which is used for—

(A) catching, taking, or harvesting fish; or

(B) aiding or assisting one or more vessels at sea in the performance of fishing operations, including preparation, supply, storage, refrigeration, transportation, or processing.

(4)[12] OWNS OR CONTROLS.—When used in reference to a vessel or processing facility—

(A) the term "owns" means holding legal title to the vessel or processing facility; and

(B) the term "controls" includes an absolute right to direct the business of the person owning the vessel or processing facility, to limit the actions of or replace the chief executive officer (by whatever title), a majority of the board of directors, or any general partner (as applicable) of such person, to direct the transfer or operations of the vessel or processing facility, or otherwise to exercise authority over the business of such person, but the term does not include the right simply to participate in those activities of such person or the right to receive a financial return, such as interest or the equivalent of interest, on a loan or other financing obligation.

(5)[12] PERMITTED FISHING VESSEL.—The term "permitted fishing vessel" means any fishing vessel that is subject to a permit issued by the Secretary of Commerce under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).[9]

[12] Sec. 502(b) of Public Law 104–43 (109 Stat. 391) redesignated paras. (2) through (6) as paras. (3) through (7), respectively, and added a new para. (2).

(6)[12] PERSON.—The term "person" means any individual (whether or not a citizen of the United States), any corporation, partnership, association, cooperative, or other entity (whether or not organized under the laws of any State), and any State, local, or foreign government, or any entity of such government or the Federal Government.

(7)[12] PROCESSING FACILITY.—The term "processing facility" means any fish processing establishment or fish processing vessel that receives unprocessed fish.

SEC. 307.[10] TERMINATION.

This title shall cease to have force and effect after the date that is seven years after the date of enactment of this Act, except that any proceeding with respect to violations of section 302 occurring prior to such termination date shall be conducted as if that section were still in effect.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. INTERMEDIARY NATIONS INVOLVED IN EXPORT OF CERTAIN TUNA PRODUCTS.

(a) INTERMEDIARY NATION DEFINED.—Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended by redesignating paragraphs (5) through (14) as paragraphs (6) through (15), respectively, and by inserting immediately after paragraph (4) the following new paragraph:

"(5) The term 'intermediary nation' means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B).".

(b) EMBARGO ON IMPORTS FROM INTERMEDIARY NATIONS.—Section 101(a)(2)(C) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)(C)) is amended to read as follows:

"(C) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);".

SEC. 402. AUTHORITY TO EXTEND REEMPLOYMENT RIGHTS.

For purposes of employee rights and entitlements conferred by or pursuant to subchapter IV of chapter 35 of title 5, United States Code, the Secretary of State may, notwithstanding any other law or regulation, extend the reemployment rights of an employee of the United States who, as of January 1, 1992, was serving with the Intergovernmental Panel on Climate Change. Such extension may be made for two years, and may be further extended for one year, if the Secretary of State determines that such service is in the national interest and is necessary to facilitate the activities of the Intergovernmental Panel on Climate Change or any successor organization.

* * * * * * *

b. Driftnet Impact Monitoring, Assessment, and Control

Title IV of Public Law 100–220 [United States-Japan Fishery Agreement Approval Act of 1987; H.R. 3674], 100 Stat. 1458, approved December 29, 1987; as amended by Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT To provide congressional approval of the Governing International Fishery Agreements between the United States and Japan; to implement the provisions of Annex V to the International Convention for the Prevention of Pollution from Ships, 1973; to reauthorize the National Sea Grant College Program Act; to improve efforts to monitor, assess, and reduce the adverse impacts of driftnets; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE IV—DRIFTNET IMPACT MONITORING, ASSESSMENT, AND CONTROL

SEC. 4001.[1] SHORT TITLE.

This title may be cited as the "Driftnet Impact Monitoring, Assessment, and Control Act of 1987."

SEC. 4002. FINDINGS

The Congress finds that—

(1) the use of long plastic driftnets is a fishing technique that may result in the entanglement and death of enormous numbers of target and nontarget marine resources in the waters of the North Pacific Ocean, including the Bering Sea;

(2) there is a pressing need for detailed and reliable information on the number of marine resources that become entangled and die in actively fished driftnets and in driftnets that are lost, abandoned, or discarded; and

(3) increased efforts are necessary to monitor, assess, and reduce the adverse impacts of driftnets.

SEC. 4003. DEFINITIONS.

As used in this title—

(1) DRIFTNET.—The term "driftnet" means a gillnet composed of a panel of plastic webbing one and one-half miles or more in length.

(2) DRIFTNET FISHING.—The term "driftnet fishing" means a fish-harvesting method in which a driftnet is placed in water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

[1] 16 U.S.C. 1822 note. See also sec. 206 of the Magnuson-Stevens Fishery Conservation and Management Act, as amended.

(3) EXCLUSIVE ECONOMIC ZONE OF THE UNITED STATES.—The term "exclusive economic zone of the United States" means the zone defined in section 3(6) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(b)).[2]

(4) MARINE RESOURCES.—The term "marine resources" includes fish, shellfish, marine mammals, seabirds, and other forms of marine life or waterfowl.

(5) MARINE RESOURCES OF THE UNITED STATES.—The term "marine resources of the United States" means—

(A) marine resources found in, or which breed within, areas subject to the jurisdiction of the United States, including the exclusive economic zone of the United States; and

(B) species of fish, wherever found, that spawn in the fresh or estuarine waters of the United States.

(6) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

SEC. 4004. MONITORING AGREEMENTS

(a) NEGOTIATIONS.—The Secretary, through the Secretary of State and in consultation with the Secretary of the Interior, shall immediately initiate, negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed and retrieved, discarded, or lost by the foreign government's driftnet fishing vessels. Such agreements shall provide for—

(1) the use of a sufficient number of vessels from which scientists of the United States and the foreign governments may observe and gather reliable information; and

(2) appropriate methods of sharing equally the costs associated with such activities.

(b) REPORT.—The Secretary, in consultation with the Secretary of State, shall provide to the Congress not later than 1 year after the date of enactment of this Act a full report on the results of negotiations under this section.

SEC. 4005. IMPACT REPORT.

(a) IN GENERAL.—The Secretary shall provide to the Congress within 1 year after the date of the enactment of this Act, and at such other times thereafter as the Secretary considers appropriate, a report identifying the nature, extent, and effects of driftnet fishing in waters of the North Pacific Ocean on marine resources of the United States. The report shall include the best available information on—

(1) the number and flag state of vessels involved;

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(2) the areas fished;

(3) the length, width, and mesh size of driftnets used;

(4) the number of marine resources of the United States killed by such fishing;

(5) the effect of seabird mortality, as determined by the Secretary of the Interior, on seabird populations; and

(6) any other information the Secretary considers appropriate.

(b) INFORMATION FROM FOREIGN GOVERNMENTS.—The Secretary, through the Secretary of State, shall—

(1) request relevant foreign governments to provide the information described in subsection (a), and

(2) include in a report under this section the information so provided and an evaluation of the adequacy and reliability of such information.

SEC. 4006. ENFORCEMENT AGREEMENTS.

(a) NEGOTIATIONS.—The Secretary shall immediately initiate, through the Secretary of State and in consultation with the Secretary of the Department in which the Coast Guard is operating negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for effective enforcement of laws, regulations, and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels. Such agreements shall include measures for—

(1) the effective monitoring and detection of violations;

(2) the collection and presentation of such evidence of violations as may be necessary for the successful prosecution of such violations by the responsible authorities;

(3) reporting to the United States of penalties imposed by the foreign governments for violations; and

(4) appropriate methods for sharing equally the costs associated with such activities.

(b) CERTIFICATION FOR PURPOSES OF FISHERMEN'S PROTECTIVE ACT OF 1967.—If the Secretary, in consultation with the Secretary of State, determines that a foreign government has failed, within 18 months after the date of the enactment of this Act, to enter into and implement an agreement under subsection (a) or section 4004(a) that is adequate, the Secretary shall certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

SEC. 4007. EVALUATIONS AND RECOMMENDATIONS.

(a) MARKING, REGISTRY, AND IDENTIFICATION SYSTEM.—The Secretary shall evaluate, in consultation with officials of other Federal agencies and such other persons as may be appropriate, the feasibility of and develop recommendations for the establishment of a driftnet marking, registry, and identification system to provide a reliable method for the determination of the origin by vessel, of lost, discarded, or abandoned driftnets and fragments of driftnets.

In conducting such evaluation, the Secretary shall consider the adequacy of existing driftnet identification systems of foreign nations and the extent to which these systems achieve the objectives of this title.

(b) ALTERNATIVE DRIFTNET MATERIALS.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the use of alternative materials in driftnets for the purpose of increasing the rate of decomposition of driftnets that are discarded or lost at sea.

(c) DRIFTNET BOUNTY SYSTEM.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of and develop appropriate recommendations for the implementation of a driftnet bounty system to pay persons who retrieve from the exclusive economic zone and deposit with the Secretary lost, abandoned, and discarded driftnet and other plastic fishing material.

(d) DRIFTNET FISHING VESSEL TRACKING SYSTEM.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the establishment of a cooperative driftnet fishing vessel tracking system to facilitate efforts to monitor the location of driftnet fishing vessels.

(e) REPORT.—The Secretary shall transmit to the Congress not later than 18 months after the date of the enactment of this Act a report setting forth—

(1) the evaluations and recommendations developed under subsections (a), (b), (c), and (d);

(2) the most effective and appropriate means of implementing such recommendations;

(3) any need for further research and development efforts and the estimated cost and time required for completion of such efforts; and

(4) any need for legislation to provide authority to carry out such recommendations.

SEC. 4008. CONSTRUCTION WITH OTHER LAWS.

This title shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in existing law on the date of the enactment of this Act.

SEC. 4009. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Commerce and the Department of State, such sums as may be necessary to carry out the purposes of this title.

8. Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 [1]

Partial text of Public Law 101–646 [H.R. 5390] 104 Stat. 4761, approved November 29, 1990; as amended by Public Law 104–332 [H.R. 4283] 110 Stat. 4091, approved October 26, 1996

AN ACT To prevent and control infestations of the coastal inland waters of the United States by the zebra mussel and other nonindigenous aquatic nuisance species, to reauthorize the National Sea Grant College Program, and for other purposes.

TITLE I—AQUATIC NUISANCE PREVENTION AND CONTROL

Subtitle A—General Provisions

SECTION 1001.[2] SHORT TITLE.

This title may be cited as the "Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990".

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Subtitle C—Prevention and Control of Aquatic Nuisance Species

* * * * * * *

SEC. 1206.[3] INTERNATIONAL COOPERATION.

(a) ADVICE.—The Task Force [4] shall provide timely advice to the Secretary of State concerning aquatic nuisance species that infest waters shared with other countries.

(b) NEGOTIATIONS.—The Secretary of State, in consultation with the Task Force, is encouraged to initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, monitoring, research, education, and control programs related to aquatic nuisance species infesting shared water resources.

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Subtitle E—Cooperative Environmental Analyses

SEC. 1401.[5] ENVIRONMENTAL IMPACT ANALYSES.

The Secretary of State, in consultation with the Council on Environmental Quality, is encouraged to enter into negotiations with

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[1] This Act was originally enrolled and printed in its entirety in quotation marks. Sec. 2(h) of the National Invasive Species Act of 1996 (Public Law 104–332; 110 Stat. 4091) struck out the quotation marks in titles I, II, and IV.

[2] 16 U.S.C. 4701 note.

[3] 16 U.S.C. 4726.

[4] The Aquatic Nuisance Species Task Force, as established by sec. 1201 of this Act, is directed largely to matters within the United States. See 16 U.S.C. 4721.

[5] 16 U.S.C. 4751.

the governments of Canada and Mexico to provide for reciprocal environmental impact analyses of major Federal actions which have significant transboundary effects on the quality of the human environment in the United States, Canada, and Mexico.

* * * * * * *

9. Negotiation of International Agreements for the Conservation of Sea Turtles

Partial text of Public Law 101–162 [Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990; H.R. 2991], 103 Stat. 988 at 1037, approved November 21, 1989

AN ACT Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1990, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1990, and for other purposes, namely:

* * * * * * *

TITLE VI—GENERAL PROVISIONS

* * * * * * *

SEC. 609.[1] (a) The Secretary of State, in consultation with the Secretary of Commerce, shall, with respect to those species of sea turtles the conservation of which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of such species of sea turtles;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which, as determined by the Secretary of Commerce, may affect adversely such species of sea turtles, for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species of sea turtles;

(3) encourage such other agreements to promote the purposes of this section with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of such species of sea turtles;

(4) initiate the amendment of any existing international treaty for the protection and conservation of such species of sea turtles to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section; and

(5) provide to the Congress by not later than one year after the date of enactment of this section—

[1] 16 U.S.C. 1537 note.

(A) a list of each nation which conducts commercial shrimp fishing operations within the geographic range of distribution of such sea turtles;

(B) a list of each nation which conducts commercial shrimp fishing operations which may affect adversely such species of sea turtles; and

(C) a full report on—

(i) the results of his efforts under this section; and

(ii) the status of measures taken by each nation listed pursuant to paragraph (A) or (B) to protect and conserve such sea turtles.

(b)(1) IN GENERAL.—The importation of shrimp or products from shrimp which have been harvested with commercial fishing technology which may affect adversely such species of sea turtles shall be prohibited not later than May 1, 1991, except as provided in paragraph (2).

(2)[2] CERTIFICATION PROCEDURE.—The ban on importation of shrimp or products from shrimp pursuant to paragraph (1) shall not apply if the President shall determine and certify to the Congress not later than May 1, 1991, and annually thereafter that—

(A) the government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

(B) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or

(C) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.

* * * * * * *

[2] Authority to issue this determination is delegated to the Department of State (Presidential memorandum of December 19, 1990; 56 F.R. 357).

In Public Notice 5077, effective April 28, 2005 (70 F.R. 25156), the State Department certified that 13 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 24 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under sec. 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2005, pursuant to sec. 609.

See also Office of the U.S. Trade Representative, "WTO Dispute Settlement Proceeding Regarding Section 609 of Public Law 101–162," Docket No. WTO/D–12, 62 F.R. 13934.

See also 50 CFR Parts 217 and 227.

10. Whales

a. Wildlife Sanctuary for Humpback Whales [1]

Public Law 99–630 [H.J. Res. 67], 100 Stat. 3514, approved November 7, 1986

JOINT RESOLUTION Calling for a wildlife sanctuary for humpback whales in the West Indies.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President shall, in concert with the International Whaling Commission, seek a treaty or other appropriate international agreement establishing a wildlife sanctuary for humpback whales in the West Indies, in the area encompassing the Turks Islands, Mouchoir Passage, Silver Bank Passage, Navidad Bank, and such additional areas in the West Indies as may be necessary to ensure the protection of the breeding grounds of the humpback whales.

[1] 16 U.S.C. 916 note.

b. Whaling Convention Act of 1949 [1]

Public Law 81–676 [S. 2080], 64 Stat. 421, approved August 9, 1950

AN ACT To authorize the regulation of whaling and to give effect to the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946,[2] by the United States of America and certain other governments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1.[3] That this Act may be cited as the "Whaling Convention Act of 1949".

Sec. 2.[4] When used in this Act—

(a) Convention: The word "Convention" means the International Convention for the Regulation of Whaling signed at Washington under the date of December 2, 1946, by the United States of America and certain other governments.

(b) Commission: The word "Commission" means the International Whaling Commission established by article III of the convention.

(c) United States Commissioner: The words "United States Commissioner" mean the member of the International Whaling Commission representing the United States of America appointed pursuant to article III of the convention and section 3 of this Act.

(d) Person: The word "person" denotes every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(e) Vessel: The word "vessel" denotes every kind, type, or description of water craft or contrivance subject to the jurisdiction of the United States used, or capable of being used, as a means of transportation.

(f) Factory ship: The words "factory ship" mean a vessel in which or on which whales are treated or processed, whether wholly or in part.

(g) Land station: The words "land station" mean a factory on the land at which whales are treated or processed, whether wholly or in part.

(h) Whale catcher: The words "whale catcher" mean a vessel used for the purposes of hunting, killing, taking, towing, holding onto, or scouting for whales.

(i) Whale products: The words "whale products" mean any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

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[1] See also sec. 405 of the Department of State Authorization Act, Fiscal Years 1980 and 1981 (Public Law 96–60; 93 Stat. 403), which urged the International Whaling Commission to agree to a moratorium on the commercial killing of whales. The section also called upon specific countries to comply voluntarily with a moratorium. For complete text, see *Legislation on Foreign Relations Through 2005*, vol. II–A.

[2] 62 Stat. 1716: TIAS 1849: 4 Bevans 248; 161 UNTS 62.

[3] 16 U.S.C. 916 note.

[4] 16 U.S.C. 916.

(j) Whaling: The word "whaling" means the scouting for, hunting, killing, taking, towing, holding onto, and flensing of whales, and the possession, treatment, or processing of whales or of whale products.

(k) Regulations of the Commission: The words "regulations of the Commission" mean the whaling regulations in the schedule annexed to and constituting a part of the convention in their original forms or as modified, revised, or amended by the Commission from time to time, in pursuance of article V of the convention.

(l) Regulations of the Secretary of Commerce:[5] The words "regulations of the Secretary of Commerce" means such regulations as may be issued by the Secretary of Commerce, from time to time, in accordance with sections 11 and 12 of this Act.

Sec. 3.[6] (a) The United States Commissioner shall be appointed by the President, on the concurrent recommendations of the Secretary of State and the Secretary of Commerce, and shall serve at the pleasure of the President.

(b) The President may appoint a Deputy United States Commissioner, on the concurrent recommendations of the Secretary of State and the Secretary of Commerce. The Deputy United States Commissioner shall serve at the pleasure of the President and shall be the principal technical adviser to the United States Commissioner, and shall be empowered to perform the duties of the Commissioner in case of the death, resignation, absence, or illness of the Commissioner.

(c) The United States Commissioner and Deputy Commissioner, although officers of the United States Government, shall receive no compensation for their services.

Sec. 4.[7] The Secretary of State is authorized, with the concurrence of the Secretary of Commerce, to present or withdraw any objections on behalf of the United States Government to such regulations or amendments of the schedule to the convention as are adopted by the Commission and submitted to the United States Government in accordance with article V of the convention. The Secretary of State is further authorized to receive on behalf of the United States Government reports, requests, recommendations, and other communications of the Commission, and to act thereon either directly or by reference to the appropriate authority.

Sec. 5.[8] (a) It shall be unlawful for any person subject to the jurisdiction of the United States (1) to engage in whaling in violation of the convention or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of Commerce; (2) to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any whale or whale products taken or processed in violation of the convention, or of any regulation of the Commission, or

[5] Reorganization Plan No. 4 of 1970 (35 F.R. 15627; 84 Stat. 2090) struck out "Secretary of the Interior" and inserted in lieu thereof "Secretary of Commerce".

[6] 16 U.S.C. 916a.

[7] 16 U.S.C. 916b.

[8] 16 U.S.C. 916c. Sec. 403 of Public Law 107–372 (116 Stat. 3102) provided:

"Notwithstanding any provision of law, the use of a vessel to tow a whale taken in a traditional subsistence whale hunt permitted by Federal law and conducted in waters off the coast of Alaska is authorized, if such towing is performed upon a request for emergency assistance made by a subsistence whale hunting organization formally recognized by an agency of the United States Government, or made by a member of such an organization, to prevent the loss of a whale.".

of this Act, or of any regulation of the Secretary of Commerce; (3) to fail to make, keep, submit, or furnish any record or report required of him by the convention, or by any regulation of the Commission, or by any regulation of the Secretary of Commerce, or to refuse to permit any officer authorized to enforce the convention, the regulations of the Commission, this Act, and the regulations of the Secretary of Commerce, to inspect such record or report at any reasonable time.

(b) It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to do any act prohibited or to fail to do any act required by the convention, or by this Act, or by any regulation adopted by the Commission, or by any regulation of the Secretary of Commerce.

Sec. 6.[9] (a) No person shall engage in whaling without first having obtained an appropriate license or scientific permit. Such licenses shall be issued by the Secretary of Commerce or such officer or the Department of the Interior as may be designated by him: *Provided,* That the Secretary, in his discretion and by appropriate regulation, may waive the payment of any license fee or the requirement that a license first be obtained, in connection with the salvage of any "Dauhval" or unclaimed dead whale found floating or stranded.

(b) The following licenses and fees shall be required for each calendar year or any fraction thereof and shall be nontransferable except under such conditions as may be prescribed by the Secretary:

(1) Land-station license for primary processing of whales, $250.

(2) Land-station license for secondary processing of parts of whales delivered to it by a land station licensed as a primary processor, $100.

(3) Factory-ship license for primary processing of whales delivered by whaler catchers, $250.

(4) License for any vessel used exclusively for transporting whale products from a factory ship to a port during the whaling season, $100.

(5) Whale-catcher license, $100.

(c) All moneys derived from the issuance of whaling licenses shall be covered into the Treasury of the United States, and no license fee shall be refunded by reason of the failure of any person to whom a license has been issued to utilize the facility in whaling for which such license was issued.

(d) Any person, in making application for a license to operate a whale catcher, must furnish evidence or affidavit satisfactory to the Secretary of Commerce that, in addition to conforming to other applicable laws and regulations, (1) the whale catcher is adequately equipped and competently manned to engage in whaling in accordance with the provisions of the convention, the regulations of the Commission, and the regulations of the Secretary of Commerce; (2) gunners and crews will be compensated on some basis that does not depend primarily on the number of whales taken; and (3) no bonuses or other partial remuneration with relation to the number

[9] 16 U.S.C. 916d.

of whales taken shall be paid to gunners and crews in respect of the taking of any whales, the taking of which is prohibited.

(e) Any person, in making application for a license to operate a land station or a factory ship must furnish evidence or affidavits to the satisfaction of the Secretary of Commerce that, in addition to conforming to other applicable laws and regulations, such land station or factory ship is adequately equipped to comply with provisions of the convention, of the regulations of the Commission, and of the regulations of the Secretary of Commerce with respect to the processing of whales or the manufacture of whale products.

Sec. 7.[10] Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the convention or by any regulation of the Commission, or by this Act, or by a regulation of the Secretary of Commerce, or any person who furnishes a false return, record, or report, upon conviction, shall be subject to such fine as may be imposed by the court not to exceed $500, and shall in addition be prohibited from whaling, processing, or possessing whales, and whale products from the date of conviction until such time as any delinquent return, record, or report shall have been submitted or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 8 of this Act shall not be invoked for failure to comply with requirements respecting returns, records, and reports.

Sec. 8.[11] Except as to violations defined in clause 3 of subsection (a) of section (5) of this Act, any person violating any provision of the convention, or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of Commerce upon conviction, shall be fined not more than $10,000 or be imprisoned not more than one year, or both. In addition the court may prohibit such person from whaling for such period of time as it may determine, and may order forfeited, in whole or in part, the whales taken by such person in whaling during the season, or the whale products derived therefrom or the monetary value thereof. Such forfeited whales or whale products shall be disposed of in accordance with the direction of the court.

Sec. 9.[12] (a) Any duly authorized enforcement officer or employee of the Department of Commerce;[13] any Coast Guard officer; any United States marshal or deputy United States marshal; any customs officer; and any other person authorized to enforce the provisions of the convention, the regulations of the Commission, this Act, and the regulations of the Secretary of Commerce, shall have power, without warrant or other process but subject to the provisions of the convention, to arrest any person subject to the jurisdiction of the United States committing in his presence or view a violation of the convention or of this Act, or of the regulations of the Commission, or of the regulations of the Secretary of Commerce

[10] 16 U.S.C. 916e.
[11] 16 U.S.C. 916f.
[12] 16 U.S.C. 916g.
[13] Reorganization Plan No. 4 of 1970 (35 F.R. 15627; 84 Stat. 2090) struck out "United States Fish and Wildlife Service of the Department of the Interior" and inserted in lieu thereof "Department of Commerce",

and to take such person immediately for examination before a justice or judge or any other official designated in section 3041 of title 18 of the United States Code; and shall have power, without warrant or other process, to search any vessel subject to the jurisdiction of the United States or land station when he has reasonable cause to believe that such vessel or land station is engaged in whaling in violation of the provisions of the convention or this Act, or the regulations of the Commission, or the regulations of the Secretary of Commerce. Any person authorized to enforce the provisions of the convention, this Act, the regulations of the Commission, or the regulations of the Secretary of Commerce shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this Act, and shall have power with a search warrant to search any vessel, person, or place at any time. The judges of the United States district courts and the United States magistrates [14] may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to the provisions of the convention, any person authorized to enforce the convention, this Act, the regulations of the Commission, and the regulations of the Secretary of Commerce may seize, whenever and wherever lawfully found, all whales or whale products taken, processed, or possessed contrary to the provisions of the convention, of this Act, of the regulations of the Commission, or of the regulations of the Secretary of Commerce.

Any property so seized shall not be disposed of except pursuant to the order of a court of competent jurisdiction or the provisions of subsection (b) of this section, or, if perishable, in the manner prescribed by regulations of the Secretary of Commerce.

(b) notwithstanding the provisions of section 2464 of title 28 of the United States Code, 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 property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation for double the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction, conditioned to deliver the property 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 cause. 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.

[14] Sec. 402 of Public Law 90–578 (82 Stat. 1118; October 17, 1968) struck out "United States commissioners" and inserted in lieu thereof "United States magistrates". Sec. 402 further provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under sec. 631 of Title 28 as soon as the first United States magistrate assumes office within that district or on October 17, 1971, whichever is earlier. See Applicable Law note under sec. 631 of Title 28: Judiciary and Judicial Procedure.

Sec. 10.[15] (a) In order to avoid duplication in scientific and other programs, the Secretary of State, with the concurrence of the agency, institution, or organization concerned, may direct the United States Commissioner to arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the convention.

(b) All agencies of the Federal Government are authorized, on request of the Commission, to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the Commission in the performance of its duties as prescribed by the convention.

Sec. 11.[16] Nothing contained in this Act shall prevent the taking of whales and the conducting of biological experiments at any time for purposes of scientific investigation in accordance with scientific permits and regulations issued by the Secretary of Commerce or shall prevent the Commission from discharging its duties as prescribed by the convention.

Sec. 12.[17] (a) The Secretary of Commerce is authorized and directed to administer and enforce all of the provisions of this Act and regulations issued pursuant thereto and all of the provisions of the convention and of the regulations of the Commission, except to the extent otherwise provided for in this Act, in the convention, or in the regulations of the Commission. In carrying out such functions he is authorized to adopt such regulations as may be necessary to carry out the purposes and objectives of the convention, the regulations of the Commission, this Act, and with the concurrence of the Secretary of State, to cooperate with the duly authorized officials of the government of any party to the convention.

(b) Enforcement activities under the provisions of this Act relating to vessels engaged in whaling and subject to the jurisdiction of the United States primarily shall be the responsibility of the Secretary of the Treasury in cooperation with the Secretary of Commerce.

(c) The Secretary of Commerce may authorize officers and employees of the coastal States of the United States to enforce the provisions of the convention, or of the regulations of the Commission, or of this Act, or of the regulations of the Secretary of Commerce. When so authorized such officers and employees may function as Federal law-enforcement officers for the purposes of this Act.

Sec. 13.[18] Regulations of the Commission approved and effective in accordance with section 4 of this Act and article V of the convention shall be submitted for appropriate action or publication in the Federal Register by the Secretary of Commerce and shall become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations and the provisions of article V of the convention.

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[15] 16 U.S.C. 916h.
[16] 16 U.S.C. 916i.
[17] 16 U.S.C. 916j.
[18] 16 U.S.C. 916k.

Sec. 14.[19] 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 the convention and of this Act, including (1) contributions to the Commission for the United States share of any joint expenses of the Commission agreed by the United States and any of the other contracting governments, and (2) the expenses of the United States Commissioner and his staff, including (a) personal services in the District of Columbia and elsewhere, without regard to the civil service laws and the Classification Act of 1923, as amended;[20] (b) travel expenses without regard to the Travel Expense Act of 1949[21] and section 73b of Title 5;[22] (c) transportation of things, communication services; (d) rent of offices; (e) printing and binding without regard to section 111 of Title 44[23] and section 5 of Title 41; (f) stenographic and other services by contract, if deemed necessary, without regard to section 5 of Title 41; (g) supplies and materials; (h) equipment; (i) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats, and research vessels.

Sec. 15. If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

Sec. 16. The Whaling Treaty Act of May 1, 1936 (49 Stat. 1246; 16 U.S.C. 901–915), is hereby repealed and the Secretary of Commerce is authorized to refund any part of a license fee paid under said Act that is in excess of the license fee required under this Act.

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[19] 16 U.S.C. 916*l*.

[20] Sec. 1202 of the Classification Act of 1949 (63 Stat. 972) repealed the Classification Act of 1923. Sec. 1106 of such Act provided that wherever reference was made to the Classification Act of 1923 it should be deemed a reference to the Classification Act of 1949. The Classification Act of 1949 is now covered by ch. 51 and subch. III of ch. 53 of title 5, Government Organization and Employees.

[21] The Travel Expense Act of 1949 is now covered by sec. 5701 *et seq.* of title 5.

[22] Sec. 73b of title 5 is now covered by sec. 5731 of title 5.

[23] Sec. 111 of title 44 is now covered by sec. 501 of title 44: Public Printing and Documents.

11. R.M.S. Titanic Maritime Memorial Act of 1986

Public Law 99–513 [S. 2048], 100 Stat. 2082, approved October 21, 1986

AN ACT To encourage international efforts to designate the shipwreck of the R.M.S. Titanic as an international maritime memorial and to provide for reasonable research, exploration, and, if appropriate, salvage activities with respect to the shipwreck.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "R.M.S. Titanic Maritime Memorial Act of 1986".

SEC. 2.[2] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the R.M.S. Titanic, the oceanliner which sank on her maiden voyage after striking an iceberg on April 14, 1912, should be designated as an international maritime memorial to the men, women, and children who perished aboard her;

(2) the recent discovery of the R.M.S. Titanic, lying more than twelve thousand feet beneath the ocean surface, demonstrates the practical applications of ocean science and engineering;

(3) the R.M.S. Titanic, well preserved in the cold, oxygen-poor waters of the deep North Atlantic Ocean, is of major national and international cultural and historical significance, and merits appropriate international protection; and

(4) the R.M.S. Titanic represents a special opportunity for deep ocean scientific research and exploration.

(b) PURPOSE.—The Congress declares that the purposes of this Act are—

(1) to encourage international efforts to designate the R.M.S. Titanic as an international maritime memorial to those who lost their lives aboard here in 1912;

(2) to direct the United States to enter into negotiations with other interested nations to establish an international agreement which will provide for the designation of the R.M.S. Titanic as an international maritime memorial, and protect the scientific, cultural, and historical significance of the R.M.S. Titanic;

(3) to encourage, in those negotiations or in other fora, the development and implementation of international guidelines for conducting research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic; and

[1] 16 U.S.C. 450rr note.
[2] 16 U.S.C. 450rr.

(4) to express the sense of the United States Congress that, pending such international agreement or guidelines, no person should physically alter, disturb, or salvage the R.M.S. Titanic in any research or exploratory activities which are conducted.

SEC. 3.[3] DEFINITIONS.

For the purposes of this Act, the term—

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA);

(b) "person" means any individual (whether or not a citizen or national of the United State), any corporation, partnership, association, or other entity (whether or not organized, or existing under the law of any State), and any Federal, State, local, or foreign government or any entity of any such government;

(c) "R.M.S. Titanic" means the shipwrecked vessel R.M.S. Titanic, her cargo or other contents, including those items which are scattered on the ocean floor in her vicinity; and

(d) "Secretary" means the Secretary of State.

SEC. 4.[4] COMMENDATION.

The Congress of the United States highly commends the members of the joint international expedition which discovered the R.M.S. Titanic.

SEC. 5.[5] INTERNATIONAL GUIDELINES.

(a) The Administrator is directed to enter into consultation with the United Kingdom, France, Canada, and other interested nations to develop international guidelines for research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic, which—

(1) are consistent with its national and international scientific, cultural, and historical significance and the purposes of this Act; and

(2) promote the safety of individuals involved in such operations.

(b) In carrying out subsection (a), the Administrator shall consult with the Secretary and shall promote full participation by other interested Federal agencies, academic and research institutions, and members of the public.

SEC. 6.[6] INTERNATIONAL AGREEMENT.

(a) The Secretary is directed to enter into negotiations with the United Kingdom, France, Canada, and other interested nations to develop an international agreement which provides for—

(1) the designation of the R.M.S. Titanic as an international maritime memorial; and

(2) research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic consistent with the international guidelines developed pursuant to section 5 and the purposes of this Act.

(b) In carrying out the requirements of subsection (a), the Secretary shall consult with the Administrator, who shall provide research and technical assistance to the Secretary.

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[3] 16 U.S.C. 450rr–1.
[4] 16 U.S.C. 450rr–2.
[5] 16 U.S.C. 450rr–3.
[6] 16 U.S.C. 450rr–4.

(c) The Secretary and the Administrator shall report semiannually to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives[7] and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate on the progress of the negotiations and consultations.

(d) Upon adoption of an international agreement as described in subsection (a), the Secretary shall provide notification of the agreement and recommendations for legislation to implement the agreement to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives[7] and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate.

SEC. 7.[8] SENSE OF CONGRESS REGARDING CONDUCT OF FUTURE ACTIVITIES.

It is the sense of Congress that research and limited exploration activities concerning the R.M.S. Titanic should continue for the purpose of enhancing public knowledge of its scientific, cultural, and historical significance: *Provided,* That, pending adoption of the international agreement described in section 6(a) or implementation of the international guidelines described in section 5, no person should conduct any such research or exploration activity which would physically alter, disturb, or salvage the R.M.S. Titanic.

SEC. 8.[9] DISCLAIMER OF EXTRATERRITORIAL SOVEREIGNTY.

By enactment of this Act, the United States does not assert sovereignty, or sovereign or exclusive rights or jurisdiction over,or the ownership of, any marine areas or the R.M.S. Titanic.

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[7] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

Sec. 1(b)(3) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Merchant Marine and Fisheries of the House of Representatives shall be treated as referring to—

(A) the Committee on Agriculture, in the case of a provision of law relating to inspection of seafood or seafood products;

(B) the Committee on National Security, in the case of a provision of law relating to interoceanic canals, the Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine;

(C) the Committee on Resources, in the case of a provision of law relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography;

(D) the Committee on Science, in the case of a provision of law relating to marine research; and

(E) the Committee on Transportation, in the case of a provision of law relating to a matter other than a matter described in any of subparagraphs (A) through (D).

[8] 16 U.S.C. 450rr–5.

[9] 16 U.S.C. 450rr–6.

12. Salmon

a. Pacific Salmon Treaty Act of 1985

Public Law 99–5 [H.R. 1093], 99 Stat. 7, approved March 15, 1985; as amended by Public Law 102–251 [Flower Garden Banks National Marine Sanctuary; H.R. 3866], 106 Stat. 60, approved March 9, 1992; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; Public Law 106–113 [Consolidated Appropriations Act, 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999; and Public Law 106–554 [Consolidated Appropriations Act, 2001; H.R. 4942], 114 Stat. 2762, approved December 21, 2000

AN ACT To give effect to the Treaty Between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Pacific Salmon Treaty Act of 1985".

SEC. 2.[1] DEFINITIONS.

As used in this title, unless the context otherwise requires, the term—

(a) "Commission" means the Pacific Salmon Commission established by the Treaty;

(b) "enhancement" means manmade improvements to natural habitats, or the application of artificial fish culture technology, that will lead to the increase of salmon stocks;

(c) "Magnuson-Stevens Act" means the Act entitled "the Magnuson-Stevens Fishery Conservation and Management Act," as approved April 13, 1976, and as later amended (16 U.S.C. section 1801 et seq.);[2]

(d) "Panel" means any of the Panels established by the Treaty;

(e) "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State);

(f) "salmon" means any anadromous species of the family Salmonidae and genus Oncorhynchus, commonly known as Pacific salmon, including but not limited to:

Popular names	Scientific name
Chinook or King Salmon	Oncorhynchus tshawytscha
Coho or Silver Salmon	Oncorhynchus kisutch
Pink or Humpback Salmon	Oncorhynchus gorbuscha

[1] 16 U.S.C. 3631.

[2] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

Chum or Dog Salmon	Oncorhynchus keta
Sockeye or Red Salmon	Oncorhynchus nerka

and shall also include Steelhead (Salmo gairdneri);

(g) "Secretary" means the Secretary of Commerce;

(h)[3] "Special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(i)[3] "Treaty" means the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985;

(j)[3] "treaty Indian tribe" means any of the federally recognized Indian tribes of the Columbia River basin, Washington coast or Puget Sound areas having reserved fishing rights to salmon stocks subject to the Treaty under treaties with the United States Government; and

(k)[3] "United States Section" means the four United States Commissioners appointed by the President pursuant to this title.

SEC. 3.[4] UNITED STATES SECTION.

(a) COMMISSIONERS.—The United States shall be represented on the Commission by four United States Commissioners who are knowledgeable or experienced concerning Pacific salmon, to be appointed by and serve at the pleasure of the President. Of these, one shall be an official of the United States Government who shall be a nonvoting member of the United States Section; one shall be a resident of the State of Alaska and shall be appointed from a list of at least six qualified individuals nominated by the Governor of that State; one shall be a resident of the States of Oregon, or Washington and shall be appointed from a list of at least six qualified individuals nominated by the Governors of those States; and one shall be appointed from a list of at least six qualified individuals nominated by the treaty Indian tribes of the States of Idaho, Oregon or Washington. Two of the initial appointments shall be for two-year terms; all other appointments shall be for four-year terms. Each Commissioner is eligible for reappointment. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Unless otherwise agreed, the chairmanship of the United States Section shall rotate annually among all four members with the order of rotation determined by lot at the first meeting.

(b) ALTERNATE COMMISSIONERS.—The Secretary of State, in consultation with the Secretary and the Secretary of the Interior, shall

[3] Sec. 306(a) of Public Law 102–251 (106 Stat. 66) redesignated subsecs. (h) through (j) as subsecs. (i) through (k) and added a new subsec. (h).

[4] 16 U.S.C. 3632.

designate an Alternate Commissioner for each Commissioner from the respective lists referred to in section 3(a), and may designate an Alternate Commissioner for the Federal Commissioner. In the absence of a Commissioner, the Alternate Commissioner may exercise all functions of such Commissioner at any meeting of the Commission or of the United States Section. Alternate Commissioners are eligible for reappointment and may attend all meetings of the United States Section.

(c) SOUTHERN PANEL.—The United States shall be represented on the southern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Oregon, with salmon fishery management responsibility and expertise;

(3) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(4) two shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise; and

(5) one shall be appointed from the commercial or recreational sector who is knowledgeable and experienced in the salmon fisheries for which the southern Panel is responsible.

(d) NORTHERN PANEL.—The United States shall be represented on the northern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and

(3) four shall be individuals knowledgeable and experienced in the salmon fisheries for which the northern Panel is responsible.

(e) FRASER RIVER PANEL.—The United States shall be represented on the Fraser River Panel by four Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(3) one shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise for the fisheries for which the Fraser River Panel is responsible; and

(4) one shall be appointed from the commercial sector of the salmon fishing industry concerned with fisheries for which the Fraser River Panel is responsible.

(f)[5] The United States shall be represented on the Transboundary Panel by seven panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and

[5] Sec. 144(c)(5) of H.R. 5666, as enacted into law by sec. 1(a)(4) of Public Law 106–554 (114 Stat. 2762) redesignated subsecs. (f) through (h) as subsecs. (g) through (i), and added a new subsec. (f).

(3) five shall be individuals knowledgeable and experienced in the salmon fisheries for which the Transboundary Panel is responsible.

(g)[5] PANEL APPOINTMENTS.—Panel members described in subsections (c)(2), (c)(3), (d)(2), and (e)(2) shall be appointed by the Governor of the applicable State. Panel members described in subsections (c)(4) and (e)(3) shall be appointed by the Secretary of the Interior from lists of nominations provided by the appropriate treaty Indian tribes. All other Panel members shall be appointed by the Secretary: *Provided,* That at least one member of the northern Panel shall be a voting member of the North Pacific Fishery Management Council, at least one member of the southern Panel shall be a voting member of the Pacific Fishery Management Council; and the Panel members described in subsections (c)(5), (d)(3), and (e)(4) shall be appointed from lists of nominations provided by the Governors of the applicable States. For the northern, southern, and Fraser River panels, the appointing authorities[6] listed above may also designate an alternate Panel member, meeting the same qualifications and having the same term of office, to serve in the absence of a Panel member appointed under this subsection. Panel members and alternate Panel members, other than the southern Panel member described in subsection (c)(5), shall serve four-year terms; except that the Secretary of State shall designate one-half of the initial appointments to each Panel as serving two-year terms. The southern Panel member described in subsection (c)(5) and the corresponding alternate shall each be appointed for one-year terms; the first such member shall be appointed from the commercial sector and an alternate shall be appointed from the recreational sector, with the alternate succeeding to the member position in the subsequent year; thereafter the member and alternate positions shall rotate between the commercial and recreational sectors on an annual basis. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Panel members and alternates shall be eligible for reappointment and may attend all meetings of the relevant United States Panel Section.

(h)[5] VOTING REQUIREMENTS.—(1) Except as provided in paragraph (2), the[7] United States Section shall operate with the objective of attaining consensus decisions in the development and exercise of its single vote within the Commission. A decision of the United States Section shall be taken when there is no dissenting vote.

(2)[8] A decision of the United States Section with respect to any salmon fishery regime covered by chapter 1 or 2 (except paragraph 4 of chapter 2) of Annex IV to the Pacific Salmon Treaty of 1985

[6] Sec. 144(c)(5)C) of H.R. 5666, as enacted into law by sec. 1(a)(4) of Public Law 106–554 (114 Stat. 2762) struck out "The appointing authorities" and inserted in lieu thereof "For the northern, southern, and Fraser River panels, the appointing authorities".

[7] Sec. 623(c)(1) of H.R. 3421, as enacted into law by sec. 1000(a)(1) of Public Law 106–113 (113 Stat. 1501), struck out "The" and inserted in lieu thereof "Except as provided in paragraph (2), the".

[8] Sec. 623(c)(2) of H.R. 3421, as enacted into law by sec. 1000(a)(1) of Public Law 106–113 (113 Stat. 1501), redesignated paras. (2) through (7) as paras. (3) through (8), and added a new para. (2).

shall be taken upon the affirmative vote of the United States Commissioner appointed from the list submitted by the Governor of Alaska pursuant to subsection (a). A decision of the United States Section with respect to any salmon fishery regime covered by chapter 4, 5 (except paragraph 2(b) of chapter 5), or 6 of the Pacific Salmon Treaty of 1985 shall be taken upon the affirmative vote of both the United States Commissioner appointed from the list submitted by the Governors of Washington and Oregon pursuant to subsection (a) and the United States Commissioner appointed from the list submitted by the treaty Indian tribes of the State of Idaho, Oregon, or Washington pursuant to subsection (a). Before a decision of the United States Section is made under this paragraph, the voting Commissioner or Commissioners shall consult with the Commissioner who is an official of the United States Government under subsection (a)[9]

(3)[8] All decisions and recommendations of the United States Section of the northern, southern, and transboundary[10] Panels shall require the concurring vote of a majority of the United States Panel members present and voting, except that decisions and recommendations of the southern Panel shall require the concurring vote of the members designated in subsections (c)(2) and (c)(3) and one of those members designated in subsection (c)(4).

(4)[8] All decisions and recommendations of the United States Section of the Fraser River Panel shall require the concurring vote of all United States Panel members present and voting, except that orders referred to in article VI(6) of the Treaty may be agreed to on the basis of a majority, provided that the Panel members representing the State and Tribal fishery management authorities concur.

(5)[8] All decisions and recommendations of any joint Panel shall require the concurring votes of each Panel under the voting rules specified in paragraphs (2) and (3).

(6)[8] To assist in the resolution of disputes affecting decisions of the United States Section or of the United States Panel sections, a three-person Conciliation Board may be established. The members of the Conciliation Board shall be selected by the United States Section as follows; each non-Federal Commissioner shall submit a list of no fewer than three qualified nominees; one person shall be selected from each list by consensus decision of the Federal Commissioner and the other two non-Federal Commissioners. The Conciliation Board shall operate under such bylaws as may be established by the United States Section.

(7)[8] In any matter where the Fraser River Panel is unable to act because the United States Fraser River Panel members have been unable to reach a decision in accordance with paragraph (3) of this subsection, and upon a determination by the Chairman of the subsection, and upon a determination by the Chairman of the United States Section that an action of the Panel is required, the United States Section shall act for the United States Panel members in the Fraser River Panel.

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[9] So in original. A period probably should appear at this point.

[10] Sec. 144(c)(5)(D) of H.R. 5666, as enacted into law by sec. 1(a)(4) of Public Law 106–554 (114 Stat. 2762) struck out "northern and southern" and inserted in lieu thereof "northern, southern, and transboundary".

(8)[8] In any matter where the Secretary of State determines that the United States is in jeopardy of not fulfilling its international obligations under the Treaty, the Secretary of State shall so certify to the United States Section. Such certification shall include the reasons for such determination and shall specify the date by which a decision by the United States Section is desired. If the United States Section has not reached a decision by the date specified, the Secretary of State, after consultation with the Secretary and the Secretary of the Interior, shall report on the matter to the President.

(i)[5] CONSULTATION.—In carrying out their functions under the Treaty, the Commissioners and Panel members may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply.

SEC. 4.[11] AUTHORITY AND RESPONSIBILITY.

(a) The Secretary of State is authorized to—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of and to the Commission and Panels;

(2) in consultation with the Secretary and the Secretary of the Interior, approve, disapprove, object to, or withdraw objections to fishery regimes, including enhancement programs and Fraser River Panel regulations proposed in accordance with the Treaty, on the condition that the United States shall be obligated to carry out such regimes or regulations only to the extent that funds are made available for such purposes in appropriation Acts; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed fishery regime or Fraser River Panel regulation.

(b) Recommendations of the Commission on fishery regimes or Fraser River Panel regulations approved by the Secretary of State pursuant to subsection (a)(2) shall be forwarded immediately to the States of Alaska, Oregon, Washington, and Idaho and to the treaty Indian tribes, as appropriate. In the exercise of their general fishery management authority, the States and treaty Indian tribes may adopt corresponding laws, regulations, or orders within their respective jurisdictions.

(c) In cooperation with the appropriate Regional Fishery Management Councils, States and treaty Indian tribes, the Secretary shall prepare, as appropriate, all statements, reports, and information required by the Treaty and submit such documents to the Secretary of State, who shall transmit them to the Commission.

SEC. 5.[12] INTERAGENCY COOPERATION.

(a) In carrying out the provisions of the treaty and this title, the Secretary, in consultation with the Secretary of the Interior, may arrange for cooperation with agencies of the United States, the States, treaty Indian tribes, private institutions and organizations,

[11] 16 U.S.C. 3633.
[12] 16 U.S.C. 3634.

and may execute such memoranda as may be necessary to reflect such agreements.

(b) Agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Commission and Panels in carrying out their responsibilities under the Treaty. Such agencies may accept reimbursement from the Commission for providing such services, facilities, and personnel.

SEC. 6.[13] PREEMPTION.

If any State or treaty Indian tribe has taken any action, or omitted to take any action, the results of which place the United States in jeopardy of not fulfilling its international obligations under the Treaty, or any fishery regime or Fraser River Panel regulation adopted thereunder, the Secretary shall inform the State or tribe of the manner in which the action or inaction places the United States in jeopardy of not fulfilling its international obligations under the Treaty, of any remedial action which would relieve this concern, and of the intention to promulgate Federal regulations if such remedial actions are not undertaken within fifteen days unless an earlier action is required to avoid violation of United States Treaty obligations. Should United States action be required to meet Treaty obligations to Canada in respect to treaty Indian fisheries conducted in terminal areas subject to the continuing jurisdiction of a United States district court, such action shall be taken within the framework of such court jurisdiction. Otherwise, regulations may be promulgated by the Secretary pursuant to section 7(a) of this title which shall supersede any State or treaty Indian tribal law, regulation or order determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty. Timely notice of all such determinations shall be disseminated by electronic media and shall be published in local newspapers in the major fishing ports affected and in the Federal Register. In order to enable the United States to fulfill its obligations under article IV(7) of the Treaty, the States of Alaska, Idaho, Oregon and Washington and the treaty Indian tribes shall advise the Secretary of all pertinent laws or regulations pertaining to the harvest of Pacific salmon, together, with such amendments thereto as may be adopted from time to time.

SEC. 7.[14] RULEMAKING.

(a) The Secretary, in consultation with the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating and the appropriate Regional Fishery Management Council, shall promulgate such regulations as may be necessary to carry out the United States international obligations under the Treaty and this title, pursuant to section 6, as well as conforming amendatory regulations applicable to the United States Exclusive Economic Zone and special areas.[15] Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located. Such regulations as are necessary and appropriate to carry out obligations

[13] 16 U.S.C. 3635.
[14] 16 U.S.C. 3636.
[15] Sec. 306(b) of Public Law 102–251 (106 Stat. 66) inserted "and special areas".

of the United States under the Treaty involving a foreign affairs function, and as such shall not be subject to sections 4 through 8 of the Administrative Procedure Act (5 U.S.C. 553–557), or the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(b) The Secretary, in cooperation with the Regional Fishery Management Councils, States, and treaty Indian tribes, may promulgate regulations applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with, fishery regimes and Fraser River Panel regulations adopted under the Treaty. Such regulations shall not discriminate between residents of different States.

(c) Regulations promulgated by the Secretary under this title shall be subject to judicial review by the district courts of the United States to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code; except that section 705 of such title is not applicable, and the appropriate court shall only set aside any such regulation on a ground specified in section 706(2 (A), (B), (C) or (D) of such title. A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

SEC. 8.[16] PROHIBITED ACTS AND PENALTIES.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States—

(1) to violate any provision of this title, or of any regulation adopted hereunder, or of any Fraser River Panel regulation approved by the United States under the Treaty;

(2) to refuse to permit any officer authorized to enforce the provisions of this title to broad a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this title;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this title; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) Any person who commits any act that is unlawful under subsection (a) of this section be liable to the United States for a civil penalty as provided by section 308 of the Magnuson-Stevens Act (16 U.S.C. 1858).

(c) Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) of this section shall be guilty of an offense punishable as provided by section 309(b) of the Magnuson-Stevens Act (16 U.S.C. 1859(b)).

[16] 16 U.S.C. 3637.

(d)(1) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act which is prohibited under subsection (a) of this section, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act which is prohibited by subsection (a) of this section, shall be subject to forfeiture as provided by section 310 of the Magnuson-Stevens Act (16 U.S.C. 1860).

(2) Any fish seized pursuant to this title may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulation of the Secretary.

(e) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall enforce the provisions of this title and shall have the authority provided by subsections 311 (a), (b)(1), and (c) of the Magnuson-Stevens Act (16 U.S.C. 1861 (a), (b)(1), and (c)).

(f) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

SEC. 9.[17] GENERAL STANDARDS.

All actions taken under section 3(g), 4, 6, and 7 shall—

(a) take into account the best scientific information available;

(b) result in measures necessary and appropriate for the conservation, management, utilization and development of the Pacific salmon resource, with due consideration of social and economic concerns; and

(c) be consistent with United States obligations under the Treaty, domestic Indian treaties and other applicable law.

SEC. 10.[18] ADVISORY COMMITTEE.

(a) The United States Section shall appoint an advisory committee of not less than twelve but not more than twenty members who are knowledgeable and experienced with respect to fisheries subject to the Treaty. One-half the membership of the committee shall be residents of the State of Alaska and one member shall be a resident of the State of Idaho. Each member shall serve a term of two years and shall be eligible for reappointment.

(b) Members of the advisory committee may attend all public meetings of the Commission and Panels and all nonexecutive sessions of the United States Section and United States Panel sections. At nonexecutive meetings of the United States Section and United States Panel sections, members of the advisory committee shall be given the opportunity to examine and to be heard on any nonadministrative matter under consideration.

(c) The members of the advisory committee shall receive no compensation for their services as such members.

[17] 16 U.S.C. 3638.
[18] 16 U.S.C. 3639.

(d) The Chairman of the United States Section shall call a meeting of the advisory committee at least one time each year.

SEC. 11.[19] ADMINISTRATIVE MATTERS.

(a) Commissioners and Alternate Commissioners who are not State or Federal employees shall receive compensation at the daily rate of GS–18 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(b) Panel Members and Alternate Panel Members who are not State or Federal employees shall receive compensation at the daily rate of GS–16 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(c) Travel and other necessary expenses shall be paid for all United States Commissioners, Alternate Commissioners, Panel Members, Alternate Panel Members, members of the Joint Technical Committee, and members of the Advisory Committee when engaged in the actual performance of duties for the United States Section or for the Commission.

(d) Except for officials of the United States Government, such individuals shall not be considered to be Federal employees while engaged in the actual performance of duties for the United States Section or for the Commission, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 71 of title 28, United States Code,

SEC. 12.[20] AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this title including—

(a) necessary travel expenses of the Commissioners, Panel members, alternate Commissioners, alternate Panel members, United States members of joint technical committees established under article IV of the Treaty, and advisory committee members in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code;

(b) the United States share of the joint expenses of the Commission. *Provided,* That the United States Commissioners and Panel members and alternates shall not, with respect to commitments concerning the United States share of the joint expenses of the Organization, be subject to section 262b of title 22, United States Code, insofar as it limits the authority of United States representatives to international organizations with respect to such commitments;

(c) amounts for research, enhancement, and other activities necessary to carry out the purposes of the Treaty and this title; and

[19] 16 U.S.C. 3640.
[20] 16 U.S.C. 3641.

(d) such amounts as may be due to settle accounts upon termination of the International Pacific Salmon Fisheries Commission.

SEC. 13. REPEALER.

The Sockeye Salmon or Pink Salmon Fishing Act of July 29, 1947 (16 U.S.C. 776–776f), as amended by the Act of July 11, 1957, sections 1–3, is repealed, effective December 31, 1985. The Secretary of State[21] shall dispose of any United States property held by the International Pacific Salmon Fisheries Commission on the date of its termination in a manner which would further the purposes of this title.

SEC. 14.[22] SAVINGS.

This title shall not be interpreted or applied so as to affect or modify rights established in existing Indian treaties and other existing Federal laws, including the Order entered in Confederated Tribes and Bands of the Yakima Indian Nation v. Baldrige, Civil No. 80–342 (WD WASH.). This section shall not be interpreted or applied so as to affect or modify any rights or obligations of the United States pursuant to the Treaty.

SEC. 15.[23] RESTRICTION ON SPENDING AUTHORITY.

New spending authority or authority to enter into contracts provided in this Act shall be effective only to such extent, or in such amounts, as are provided in advance in appropriation Acts.

[21] 16 U.S.C. 3642, beginning at "The Secretary of State".
[22] 16 U.S.C. 3643.
[23] 16 U.S.C. 3644.

b. Atlantic Salmon Convention Act of 1982

Title III of Public Law 97–389 [H.R. 3942], 96 Stat. 1949 at 1951, approved December 29, 1982; as amended by Public Law 98–44 [S. 625], 97 Stat. 216, approved July 12, 1983

AN ACT To amend the Commercial Fisheries Research and Development Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fisheries Amendments of 1982".

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TITLE III—NORTH ATLANTIC SALMON TREATY

SEC. 301.[1] This title may be cited as the "Atlantic Salmon Convention Act of 1982".

SEC. 302.[2] As used in this title, the term—

(1) "Act of 1976" means the Act entitled "An Act to provide for the conservation and management of the fisheries, and for other purposes", approved April 13, 1976 (16 U.S.C. 1801 et seq.);

(2) "Commission" means any of the Commissions of the Organization that are established by the Convention;

(3) "Commissioner" means a United States Commissioner appointed under section 403 of this title;

(4) "Convention" means the Convention for the Conservation of Salmon in the North Atlantic Ocean, signed at Reykjavik, Iceland, on March 2, 1982;

(5) "Council" means the Council established by the Convention;

(6) "fishing" has the same meaning as such term has in section 3(10) of the Act of 1976 (16 U.S.C. 1802(10));

(7) "Organization" means the North Atlantic Salmon Conservation Organization established under the Convention;

(8) "person" has the same meaning as such term has in section 3(19) of the Act of 1976 (16 U.S.C. 1802(19)); and

(9) "salmon" means all species of salmon which migrate in or into the waters of the Atlantic Ocean north of 36 degrees north latitude.

SEC. 303.[3] (a) The United States shall be represented on the Council and Commissions by three United States Commissioners to be appointed by the President to serve at his pleasure. Of such Commissioners, one shall be an official of the United States Government, and two shall be individuals (not officials of the United

[1] 16 U.S.C. 3601 note.
[2] 16 U.S.C. 3601.
[3] 16 U.S.C. 3602.

States Government) who are knowledgeable or experienced concerning the conservation and management of salmon of United States origin.

(b) The Secretary of State, in consultation with the Secretary of Commerce and the Secretary of the Interior, may designate alternate United States Commissioners. In the absence of a Commissioner appointed under subsection (a) of this section, an alternate Commissioner may exercise at any meeting of the Organization, the Council, or any Commission all functions of such Commissioner.

(c) Individuals who serve as Commissioners and alternate Commissioners shall not receive any compensation for such service. Such individuals shall not[4] 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, United States Code, and chapter 171 of title 28, United States Code.

(d) In carrying out their functions under the Convention, the Commissioners may consult with the appropriate Regional Fishery Management Councils established by section 302 of the Act of 1976 (16 U.S.C. 1852), and may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to consultations described in this subsection.

SEC. 304.[5] (a) The Secretary of State may—

(1) receive, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of the Organization and its subsidiary organs;

(2) with the concurrence of the Secretary of Commerce and the Secretary of the Interior, approve, object to, or withdraw objections to regulatory measures proposed in accordance with the Convention; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed regulatory measure.

(b) If the concurrence required under subsection (a)(2) of this section has not been obtained by the Secretary of State—

(1) regarding the approval of, or the objection to, a proposed regulatory measure within forty-five days after the measure was received on behalf of the United States; or

(2) regarding the withdrawal of an objection of the United States to a proposed regulatory measure within forty-five days after such withdrawal is proposed by the Secretary of State;

the Secretary of State shall submit the matter in disagreement, together with a statement of the opposing positions, to the President for timely disposition.

SEC. 305.[6] (a) The Secretary of Commerce, in cooperation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations pursuant to section 553 of title 5, United States Code, as may be necessary to carry out the purposes and objectives of the

[4] Sec. 102(1) of Public Law 98–44 (97 Stat. 216) added the word "not".
[5] 16 U.S.C. 3603.
[6] 16 U.S.C. 3604.

Convention and this title, and to implement regulatory measures that are binding on the United States under the Convention. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located.

(b) The Secretary of Commerce, in cooperation with the Secretary of the Interior, shall prepare all statements, reports, and notifications required by articles 14 and 15 of the Convention and submit such documents to the Secretary of State for transmission to the Organization.

SEC. 306.[7] (a) In carrying out the provisions of the Convention, the Secretary of Commerce, in consultation with the Secretary of the Interior, may arrange for the cooperation of agencies of the United States and the States, and of private institutions and organizations.

(b) Appropriate agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Organization in carrying out its duties under the Convention. Such agencies may accept reimbursement from the Organization for providing such services, facilities, and personnel.

SEC. 307.[8] (a) It is unlawful for any person, or any vessel, subject to the jurisdiction of the United States—

(1) to conduct directed fishing for salmon in waters seaward of twelve miles from the baselines from which the breadths of territorial seas are measured, in waters of the Atlantic Ocean north of 36 degrees north latitude; or

(2) to violate any provision of the Convention or this title, or of any regulation promulgated under this title.

(b) Any person who commits any act that is unlawful under subsection (a) of this section shall—

(1) be liable to the United States for a civil penalty under section 308 of the Act of 1976 (16 U.S.C. 1858) to the same extent as if such act were an act prohibited under section 307 of the Act of 1976 (16 U.S.C. 1857); and

(2) be guilty of an offense under section 309 of the Act of 1976 (16 U.S.C. 1859) to the same extent as if such act were an act prohibited by section 307(1) (D), (E), (F), or (H) of the Act of 1976 (16 U.S.C. 1857(1) (D), (E), (F), or (H)).

(c)[9] Any vessel used, and any fish (or the fair market value thereof) taken or retained in any manner, in connection with or as the result of the commission of an act which is unlawful under subsection (a) of this section shall be subject to civil forfeiture under section 310 of the Act of 1976 (16 U.S.C. 1860) to the same extent as if such vessel was used in, or such fish was taken or retained in connection with or as the result of, the commission of an act prohibited by section 307 of the Act of 1976 (16 U.S.C. 1857).

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[7] 16 U.S.C. 3605.
[8] 16 U.S.C. 3606.
[9] Sec. 102(2) of Public Law 98–44 (97 Stat. 216) amended and restated subsec. (c).

SEC. 308.[10] The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this title and any regulation issued under this title. For purposes of such enforcement, such provisions and regulations shall be considered to be provisions of the Act of 1976 to which section 311 (a), (b), (c), and (d) of the Act of 1976 (16 U.S.C. 1861 (a), (b), (c), and (d), respectively) apply.

SEC. 309.[11] There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this title, including—

(1) necessary travel expenses of the Commissioners and alternate Commissioners in accordance with the Federal Travel Regulation and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

(2) the United States contribution to the Organization as provided in Article 16 of the Convention, not to exceed $50,000 for fiscal year 1983, and not to exceed, for each succeeding fiscal year, the amount assessed by the Organization for the United States for such year.

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[10] 16 U.S.C. 3607.
[11] 16 U.S.C. 3608.

13. Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund and Southern Boundary Restoration and Enhancement Fund

Partial text of H.R. 3421, as enacted into law by Sec. 1000(a)(1) of Public Law 106–113 [Consolidated Appropriations Act, 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999; as amended by Public Law 106–553 [Federal Funding, Fiscal Year 2001; H.R. 4942], 114 Stat. 2762, approved December 21, 2000

A BILL Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2000, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2000, and for other purposes, namely:

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SEC. 623.[1] (a) NORTHERN FUND AND SOUTHERN FUND.—

(1) As provided in the June 30, 1999, Agreement of the United States and Canada on the Treaty Between the Government of the United States and the Government of Canada Concerning Pacific Salmon, 1985 (hereafter referred to as the "1999 Pacific Salmon Treaty Agreement") there are hereby established a Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund (hereafter referred to as the "Northern Fund") and a Southern Boundary Restoration and Enhancement Fund (hereafter referred to as the "Southern Fund") to be held by the Pacific Salmon Commission. The Northern Fund and Southern Fund shall be invested in interest bearing accounts, bonds, securities, or other investments in order to achieve the highest annual yield consistent with protecting the principal of each Fund.[2] Income from investments made pursuant to this paragraph shall be available until expended, without appropriation or fiscal year limitation, for programs and activities relating to salmon restoration and enhancement, salmon research, the conservation of salmon habitat, and implementation of the Pacific Salmon Treaty and related agreements. Amounts provided by grants under this subsection may be held in interest bearing accounts prior to the disbursement of such funds for program purposes, and any interest earned may be retained for program purposes without further appropriation. The Northern Fund and Southern Fund are subject to the laws governing Federal appropriations and

[1] 116 U.S.C. 3645.

[2] Sec. 628 of H.R. 5548, as enacted into law by Public Law 106–553 (114 Stat. 2762) struck out "The Northern Fund and Southern Fund shall each receive $10,000,000 of the amounts authorized by this section.".

funds and to unrestricted circulars of the Office of Management and Budget. Recipients of amounts from either Fund shall keep separate accounts and such records as are reasonably necessary to disclose the use of the funds as well as to facilitate effective audits.

(2) FUND MANAGEMENT.—

(A) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Northern Fund pursuant to paragraph (1) shall be administered by a Northern Fund Committee, which shall be comprised of three representatives of the Government of Canada, and three representatives of the United States. The three United States representatives shall be the United States Commissioner and Alternate Commissioner appointed (or designated) from a list submitted by the Governor of Alaska for appointment to the Pacific Salmon Commission and the Regional Administrator of the National Marine Fisheries Service for the Alaska Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area from Cape Caution, Canada to Cape Suckling, Alaska may be approved for funding by the Northern Fund Committee.

(B) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Southern Fund pursuant to paragraph (1) shall be administered by a Southern Fund Committee, which shall be comprised of three representatives of Canada and three representatives of the United States. The United States representatives shall be appointed by the Secretary of Commerce: one shall be selected from a list of three qualified individuals submitted by the Governors of the States of Washington and Oregon; one shall be selected from a list of three qualified individuals submitted by the treaty Indian tribes (as defined by the Secretary of Commerce); and one shall be the Regional Administrator of the National Marine Fisheries Service for the Northwest Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area south of Cape Caution, Canada may be approved for funding by the Southern Fund Committee.

(b) PACIFIC SALMON TREATY IMPLEMENTATION.—(1) None of the funds authorized by this section for implementation of the 1999 Pacific Salmon Treaty Agreement shall be made available until each of the following conditions to the 1999 Pacific Salmon Treaty Agreement has been fulfilled—

(A) stipulations are revised and court orders requested as set forth in the letter of understanding of the United States negotiators dated June 22, 1999. If such orders are not requested by December 31, 1999, this condition shall be considered unfulfilled; and

(B) a determination is made that—

(i) the entry by the United States into the 1999 Pacific Salmon Treaty Agreement;

(ii) the conduct of the Alaskan fisheries pursuant to the 1999 Pacific Salmon Treaty Agreement, without further clarification or modification of the management regimes contained therein; and

(iii) the decision by the North Pacific Fisheries Management Council to continue to defer its management authority over salmon to the State of Alaska are not likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93–205, as amended, in any fishery subject to the Pacific Salmon Treaty.

(2) If the requests for orders in subparagraph (1)(A) are withdrawn after December 31, 1999, or if such orders are not entered by March 1, 2000, amounts in the Northern Fund and the Southern Fund shall be transferred to the general fund of the United States Treasury.

(3) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce shall determine whether Southern United States fisheries are likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93–205, as amended, before the Secretary of Commerce may initiate or reinitiate consultation on Alaska fisheries under such Act.

(4) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce may not initiate or reinitiate consultation on Alaska fisheries under section 7 of Public Law 93–205, as amended, until—

(A) the Pacific Salmon Commission has had a reasonable opportunity to implement the provisions of the 1999 Pacific Salmon Treaty Agreement, including the harvest responses pursuant to paragraph 9, chapter 3 of Annex IV to the Pacific Salmon Treaty; and

(B) he determines, in consultation with the United States Section of the Pacific Salmon Commission, that implementation actions under the 1999 Agreement will not return escapements as expeditiously as possible to maximum sustainable yield or other biologically-based escapement objectives agreed to by the Pacific Salmon Commission.

(5) The Secretary of Commerce shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives of his intent to initiate or reinitiate consultation on Alaska fisheries.

(6)(A) For purposes of this section, "Alaska fisheries" means all directed Pacific salmon fisheries off the coast of Alaska that are subject to the Pacific Salmon Treaty.

(B) For purposes of this section, "Southern United States fisheries" means all directed Pacific salmon fisheries in Washington, Oregon, and the Snake River basin of Idaho that are subject to the Pacific Salmon Treaty.

(c) IMPROVED SALMON MANAGEMENT. * * *[3]

[3] Subsec. (c) amends the Pacific Salmon Treaty Act of 1985 (Public Law 99–5).

(d)(1)[4] PACIFIC SALMON TREATY.—

(A) For capitalizing the Northern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of $75,000,000.

(B) For capitalizing the Southern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of $65,000,000.

(C) To provide economic adjustment assistance to fishermen pursuant to the 1999 Pacific Salmon Treaty Agreement, there is authorized to be appropriated in fiscal years 2000, 2001, and 2002 a total of $30,000,000.

(2) PACIFIC COASTAL SALMON RECOVERY.—

(A) For salmon habitat restoration, salmon stock enhancement, and salmon research, including the construction of salmon research and related facilities, there is authorized to be appropriated for each of fiscal years 2000, 2001, 2002, and 2003, $90,000,000 to the States of Alaska, Washington, Oregon, and California. Amounts appropriated pursuant to this subparagraph shall be made available as direct payments. The State of Alaska may allocate a portion of any funds it receives under this subsection to eligible activities outside Alaska.

(B) For salmon habitat restoration, salmon stock enhancement, salmon research, and supplementation activities, there is authorized to be appropriated in each of fiscal years 2000, 2001, 2002, and 2003, $10,000,000 to be divided between the Pacific Coastal tribes (as defined by the Secretary of Commerce) and the Columbia River tribes (as defined by the Secretary of Commerce).

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[4] Sec. 628 of H.R. 5548, as enacted into law by Public Law 106–553 (114 Stat. 2762), struck out subsec. (d) and inserted in lieu thereof a new subsec. (d). Subsec. (d) previously provided the authorization for appropriations for fiscal year 2000.

14. Antarctic Marine Living Resources Convention Act of 1984 [1]

Title III of Public Law 98–623 [H.R. 6342], 98 Stat. 3394 at 3398, approved November 8, 1984

AN ACT To approve governing international fishery agreements with Iceland and the EEC; to establish national standards for artificial reefs; to implement the Convention on the Conservation of Antarctic Marine Living Resources; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

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TITLE III—ANTARCTIC MARINE LIVING RESOURCES CONVENTION

SEC. 301.[2] SHORT TITLE.

This title may be cited as the "Antarctic Marine Living Resources Convention Act of 1984".

SEC. 302.[3] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Convention of the Conservation of Antarctic Marine Living Resources establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources;

(2) the Convention incorporates an innovative ecosystem approach to the management of Antarctic marine living resources, including standards designed to ensure the health of the individual populations and species and to maintain the health of the Antarctic marine ecosystem as a whole;

(3) the Convention serves important United States environmental and resource management interests;

(4) the Convention represents an important contribution to United States long term legal and political objectives of maintenance of Antarctica as an area of peaceful international cooperation;

(5) United States basic and directed research programs concerning the marine living resources of the Antarctic are essential to achieve the United States goal of effective implementation of the objectives of the Convention; and

(6) the United States has important security, economic, and environmental interest in developing and maintaining a fleet of ice-breaking vessels capable of operating effectively in the heavy ice regions of Antarctica.

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[1] See also legislation relating to Antarctica and environment, beginning at page 626.
[2] 16 U.S.C. 2431 note.
[3] 16 U.S.C 2431.

(b) PURPOSE.—The purpose of this title is to provide the legislative authority necessary to implement, with respect to the United States, the Convention on the Conservation of Antarctic Marine Living Resources.

SEC. 303.[4] DEFINITIONS.

For purposes of this title—

(1) ANTARCTIC CONVERGENCE.—The term "Antarctic Convergence" means a line joining the following points along the parallels of latitude and meridians of longitude: 50 degrees south, 0 degrees; 50 degrees south, 30 degrees east; 45 degrees south, 30 degrees east; 45 degrees south, 80 degrees east; 55 degrees south, 80 degrees east; 55 degrees south, 150 degrees east; 60 degrees south, 150 degrees east; 60 degrees south; 50 degrees west; 50 degrees south, 50 degrees west; and 50 degrees south, 0 degrees.

(2) ANTARCTIC MARINE LIVING RESOURCES.—The term "Antarctic marine living resources" means the population of finfish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.

(3) COMMISSION.—The term "Commission" means the Commission for the Conservation of Antarctic Marine Living Resources established pursuant to article VII of the Convention.

(4) CONVENTION.—The term "Convention" means the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980, and entered into forces with respect to the United States on April 7, 1982.

(5) HARVESTING OR OTHER ASSOCIATED ACTIVITIES.—The terms "harvesting" and "harvesting or other associated activities" mean—

(A) the harassing, molesting, harming, pursuing, hunting, shooting, wounding, killing, trapping, or capturing of Antarctic marine living resources;

(B) attempting to engage in any activity set forth in subparagraph (A);

(C) any other activity which can reasonably be expected to result in any activity described in subparagraph (A); and

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

(6) HARVEST.—The term "harvest" means to engage in harvesting or other associated activities.

(7) IMPORT.—The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing constitutes an importation within the meaning of the customs laws of the United States.

(8) PERSON.—The term "person" means an individual, partnership, corporation, trust, association, and any other entity subject to the jurisdiction of the United States.

[4] 16 U.S.C. 2432.

(9) SCIENTIFIC COMMITTEE.—The term "Scientific Committee" means the Scientific Committee for the Conservation of Antarctic Marine Living Resources established pursuant to article IV of the Convention.

(10) VESSEL OF THE UNITED STATES.—The term "vessel of the United States" means—

(A) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title:

(B) a vessel owned in whole or in part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) a corporation created under the laws of the United States or any state, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas; and

(C) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas.

(11) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—The term "vessel subject to the jurisdiction of the United States" includes a vessel without nationality or a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of Article 6 of the 1958 Convention on the High Seas.

SEC. 304.[5] REPRESENTATIVES.

(a) REPRESENTATIVE TO THE COMMISSION.—The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, shall appoint an officer or employee of the United States as the United States representative to the Commission.

(b) REPRESENTATIVE TO THE SCIENTIFIC COMMITTEE.—The Secretary of Commerce and the Director of the National Science Foundation, with the concurrence of the Secretary of State, shall designate the United States representative to the Scientific Committee.

(c) COMPENSATION.—The United States representatives to the Commission and the Scientific Committee shall receive no additional compensation by reason of their services as such representatives.

[5] 16 U.S.C. 2433.

SEC. 305.[6] CONSERVATION MEASURES; SYSTEM OF OBSERVATION AND INSPECTION.

(a) CONSERVATION MEASURES.—(1) The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, is authorized—

(A) to decide on behalf of the United States whether the United States is unable to accept or can no longer accept a conservation measure adopted by Commission pursuant to Article IX of the Convention, and

(B) to notify the Commission of any such decision in accordance with Article IX of the Convention.

(2) The Secretary of State shall—

(A) publish in the Federal Register, if practicable, timely notice of each proposed decision under paragraph (1) and invite written public comment regarding it; and

(B) publish in the Federal Register notice of each notification made to the Commission under paragraph (1).

(b) SYSTEM OF OBSERVATION AND INSPECTION.—The Secretary of State, with the concurrence of the Secretary of Commerce, the Director of the National Science Foundation and the Secretary of the department in which the Coast Guard is operating, is authorized to agree on behalf of the United States to the establishment of a system of observation and inspection, and to interim arrangements pending establishment of such a system, pursuant to Article XXIV of the Convention.

(c) COMMUNICATIONS FROM THE COMMISSION.—The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, and other communications from the Commission and to take appropriate action on them, either directly or by reference to the appropriate authority.

SEC. 306.[7] UNLAWFUL ACTIVITIES.

It is unlawful for any person—

(1) to engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States pursuant to Article IX of the Convention;

(2) to violate any regulation promulgated under this title;

(3) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of, any Antarctic marine living resource (or part or product thereof) which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States pursuant to Article IX of the Convention or in violation of any regulation promulgated under this title, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource (or part or product thereof);

(4) to refuse to permit any authorized officer or employee of the United States to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for purposes of conducting any search or inspection in connection with

[6] 16 U.S.C. 2434.
[7] 16 U.S.C. 2435.

the enforcement of the Convention, this title, or any regulations promulgated under this title;

(5) to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in the conduct of any search or inspection described in paragraph (4);

(6) to resist a lawful arrest or detention for any act prohibited by this section; or

(7) to interfere with, delay, or prevent by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section.

SEC. 307.[8] REGULATIONS.

The Secretary of Commerce, after consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, and the heads of other appropriate departments or agencies of the United States, shall promulgate such regulations as are necessary and appropriate to implement the provisions of this title.

SEC. 308.[9] CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTIES.—(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with subsection (b), to have committed any act prohibited by section 306 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $5,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed $10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this subsection. The amount of any civil penalty shall be assessed by the Secretary of Commerce by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the person committing the violation, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require, to the extent that such information is reasonably available to the Secretary.

(2) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section, until such time as the matter is referred to the Attorney General under subsection (c) of this section.

(b) HEARINGS.—Hearings for the assessment of civilian penalties under subsection (a) shall be conducted in accordance with section 554 of title 5, United States Code. For the purposes of conducting any such hearing, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer

[8] 16 U.S.C. 2436.
[9] 16 U.S.C. 2437.

oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General of the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly refer the matter to the Attorney General of the United States, who shall file in such court a certified copy of the record upon which the violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The court shall set aside the findings and order of the Secretary if the findings and order are found to be unsupported by substantial evidence, as provided in section 706(2)(E) of title 5, United States Code.

(d) RECOVERY OF CIVIL PENALTIES.—The Attorney General of the United States may seek to recover in any appropriate district court of the United States (1) any civil penalty imposed under this section that has become a final and unappealable order and has been referred to the Attorney General by the Secretary of Commerce or (2) any final judgment rendered under this section in favor of the United States by an appropriate court.

(e) PENALTIES UNDER OTHER LAWS.—The assessment of a civil penalty under subsection (a) for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

SEC. 309.[10] CRIMINAL OFFENSES.

(a) OFFENSES.—A person is guilty of an offense if that person commits any act prohibited by paragraph (4), (5), (6), or (7) of section 306.

(b) PUNISHMENT.—Any offense described in subsection (a) is punishable by a fine of $50,000 or imprisonment for not more than ten years, or both.

(c) OFFENSES UNDER OTHER LAWS.—A conviction under subsection (a) for any act shall not be deemed to preclude a conviction for such act under any other law.

[10] 16 U.S.C. 2438.

SEC. 310.[11] **ENFORCEMENT.**

(a) RESPONSIBILITY.—The provisions of this title shall be enforced by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other department or agency of the United States in the performance of such duties.

(b) POWERS OF AUTHORIZED OFFICERS AND EMPLOYEES.—Any officer or employee of the United States who is authorized (by the Secretary of Commerce, the Secretary of the department in which the Coast Guard is operating, or the head of any department or agency of the United States which has entered into an agreement with either Secretary under subsection (a)) to enforce the provisions of this title and of any regulation promulgated under this title may, in enforcing such provisions—

(1) secure, execute, and serve and order, warrant, subpoena, or other process, which is issued under the authority of the United States;

(2) search without warrant any person, place, vehicle or aircraft subject to the jurisdiction of the United States where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 306;

(3) with or without a warrant board and search or inspect any vessel of the United States or vessel subject to the jurisdiction of the United States;

(4) seize without warrant—

(A) any evidentiary item where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 306;

(B) any Antarctic marine living resources (or part or product thereof) with respect to which such an act is committed,

(C) any vessel of the United States (including its gear, furniture, appurtenances, stores, and cargo), any vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stores, and cargo), and any vehicle, aircraft, or other means of transportation subject to the jurisdiction of the United States used in connection with such an act, and

(D) any guns, traps, nets, or equipment used in connection with such an act;

(5) offer and pay rewards for services or information which may lead to the apprehension of persons violating such provisions;

(6) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;

[11] 16 U.S.C. 2439.

(7) in coordination with the Secretary of the Treasury, detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States;

(8) make an arrest with or without a warrant with respect to any act prohibited by paragraph (4), (5), (6), or (7) of section 306 if such officer or employee has reasonable grounds to believe that the person to be arrested is committing such act in his or her presence or view or has committed such act;

(9) exercise enforcement powers conferred on such officer or employee under a system of observation and inspection, or interim arrangements pending the establishment of such system, which the Secretary of State has agreed to on behalf of the United States pursuant to section 305(b); and

(10) exercise any other authority which such officer or employee is permitted by law to exercise.

(c) SEIZURE.—Subject to the succeeding provision of this subsection, any property or item seized pursuant to subsection (b) shall be held by any officer or employee of the United States, who is authorized by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, pending the disposition of civil or criminal proceedings concerning the violation relating to the property or item, or the institution of an action in rem for the forfeiture of such property or item. Such authorized officer or employee may, upon the order of a court of competent jurisdiction, either release such seized property or item to the world or destroy such property or item, when the cost of maintenance of the property or item pending the disposition of the case is greater than the legitimate market value of the property or item. Such authorized officer or employee and all officers or employees acting by or under his or her direction shall be indemnified from any penalties or actions for damages for so releasing or destroying such property or item. Such authorized officer or employee may, in lieu of holding such property or item, permit the owner or consignee thereof to post a bond or other satisfactory surety.

(d) FORFEITURE.—(1) Any Antarctic marine living resources (or part or product thereof) with respect to which an act prohibited by section 306 is committed, any vessel of the United States (including its gear, furniture, appurtenances, stores, and cargo), vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stores, and cargo), or vessel, vehicle, or aircraft or other means of transportation subject to the jurisdiction of the United States, which is used in connection with an act prohibited by section 306, and all guns, traps, nets, and other equipment used in connection with such act, shall be subject to forfeiture to the United States.

(2) Upon the forfeiture to the United States of any property or item described in paragraph (1), or upon the abandonment or waiver of any claim to any such property or item, it shall be disposed by the Secretary of Commerce, or the Secretary of the department in which the Coast Guard is operating, as the case may be, in such a manner, consistent with the purposes of this title, as may be prescribed by regulations.

(e) APPLICATION OF CUSTOMS LAWS.—All provisions of law relating to the seizure, forfeiture, and condemnation of property (including vessels) for violation of the customs laws, the disposition of such property of the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, and the compromise of claims, under the provisions of this title, insofar as such provisions of law are applicable and not inconsistent with the provisions of this title; except that all powers, rights, and duties conferred or imposed by the customs law upon any officer or employee of the Customs Service may, for the purposes of this title, also be exercised or performed by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, or by such officers or employees of the United States as each Secretary may designate.

SEC. 311.[12] JURISDICTION OF COURTS.

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title or of any regulation promulgated under this title.

SEC. 312.[13] FEDERAL AGENCY COOPERATION.

(a) RESPONSIBILITIES.—(1) For the purpose of carrying out the policies and objectives of the Convention or to implement any decision of the Commission—

(A) the Director of the National Science Foundation, in consultation with the Secretary of State and the heads of other appropriate departments and agencies of the United States, shall continue to support basic research investigations of the Antarctic marine ecosystem as a part of the United States Antarctic Program;

(B) the Secretary of Commerce, in consultation with the Director of the National Science Foundation, the Secretary of State and the heads of other appropriate Federal agencies, shall design and conduct the program of directed scientific research as set forth in paragraph 2 supplemental to and coordinated with the United States Antarctic Program; and

(C) the Secretary of Commerce and the Director of the National Science Foundation, in consultation with the Secretary of State, may furnish facilities and personnel to the Commission in order to assist the Commission in carrying out its functions.

(2)(A) The Secretary of Commerce, in consultation with the Secretary of State, the Director of the National Science Foundation, and other appropriate Federal officials, shall prepare a plan, which shall be updated annually, for conducting the directed research program required under paragraph (1)(B) for each period of three consecutive fiscal years occurring during the period beginning on October 1, 1985, and ending on September 30, 1991. The Plan shall—

(i) describe priority directed research needs for the implementation of the Convention;

[12] 16 U.S.C. 2440.
[13] 16 U.S.C. 2441.

(ii) identify which of those needs are to be fulfilled by the United States; and

(iii) specify the design of the research referred to in paragraph (1)(B) and the funds, personnel, and facilities required for the research, including, in particular, the need for and cost of enhanced ship capacity.

(B) In preparing the plan referred to in subparagraph (A), the Secretary of Commerce shall take into account, in addition to any other matters the Secretary considers appropriate, the possibilities of securing productive results, the minimization of duplication, and the methods for monitoring and evaluating a project.

(C) The Secretary of Commerce shall submit to the Congress each year the plan required under subparagraph (A). That part of the plan covering fiscal years 1986 through 1988 shall be submitted not later than October 1, 1985. That part of the plan covering each 3-fiscal-year period thereafter shall be submitted not later than the February 1 occurring before the beginning of the first fiscal year covered by that part of the plan.

(b) CONSULTATION WITH OTHER AGENCIES.—In carrying out their functions under this section, the Secretary of State, the Secretary of Commerce, and the Director of the National Science Foundation shall consult, as appropriate, with the Marine Mammal Commission and with other departments and agencies of the United States.

(c) ICEBREAKING.—The Department of Transportation shall facilitate planning for the design, procurement, maintenance, deployment, and operation of icebreakers needed to provide a platform for Antarctic research. All funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, shall be allocated to the United States Coast Guard.

SEC. 313.[14] RELATIONSHIP TO EXISTING TREATIES AND STATUTES.

(a) IN GENERAL.—Nothing in this Act shall be construed as contravening or superseding (1) the provisions of any international treaty, convention, or agreement, if such treaty, convention or agreement is in force with respect to the United States on the date of the enactment of this title, or (2) the provisions of any statute which implements any such treaty, convention, or agreement. Nothing in this title shall be construed as contravening or superseding the provisions of any statute enacted before the date of the enactment of this title which may otherwise apply to Antarctic marine living resources.

(b) APPLICATION OF MORE RESTRICTIVE PROVISIONS.—Nothing in this section shall be construed to prevent the application of provisions of the Convention, conservation measures adopted by the Commission pursuant to article IX of the Convention, or regulations promulgated under this title, which are more restrictive than the provisions of, measures adopted under, or regulations promulgated under, the treaties or statutes described in subsection (a).

[14] 16 U.S.C. 2442.

SEC. 314.[15] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for carrying out the provisions of this title, including, but not limited to—

(1) necessary travel expenses of the United States representatives referred to in section 304, alternate United States representatives, and authorized advisers and experts, in accordance with sections 5701 through 5708, 5731, and 5733 of title 5 United States Code, and the regulations issued under those sections;

(2) The United States contribution to the budget of the Commission as provided in article XIX of the Convention; and

(3) the directed research program and the furnishing of facilities and personnel to the Commission referred to in section 312.

SEC. 315.[16] SEVERABILITY.

If any provision of this title or the application of this title to any person or circumstance is held invalid, neither the remainder of this title nor the application of that provision to other persons or circumstances shall be affected thereby.

[15] 16 U.S.C. 2443.
[16] 16 U.S.C. 2444.

15. American Fisheries Promotion Act

Partial text of Public Law 96–561 [S. 2163], 94 Stat. 3275 at 3287, approved December 22, 1980

AN ACT To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE II—PROMOTION OF AMERICAN FISHERIES

SEC. 201.[1] SHORT TITLE

This title may be cited as the "American Fisheries Promotion Act".

* * * * * * *

SEC. 211.[2] UNITED STATES FISHERY TRADE OFFICERS.

(a) APPOINTMENT.—For purposes of carrying out export promotion and other fishery development responsibilities, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") shall appoint not fewer than six officers who shall serve aboard to promote United States fishing interests. These officers shall be knowledgeable about the United States fishing industry, preferably with experience derived from the harvesting, processing, or marketing sectors of the industry or from the administration of fisheries programs. Such officers, who shall be employees of the Department of Commerce, shall have the designation of fishery trade officers.

(b) ASSIGNMENT.—Upon the request of the Secretary, the Secretary of State shall officially assign fishery trade officers to such diplomatic missions of the United States as the Secretary designates (three of which shall be those in Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

(c) FUNCTIONS OF FISHERY TRADE OFFICERS.—The functions of fishery trade officers appointed under subsection (a) shall be—

(1) to increase the effectiveness of United States fishery export promotion efforts through such activities as the coordination of market development efforts and the provision of services and facilities for exporters of United States fishery products;

[1] 16 U.S.C. 1801 note.
[2] 15 U.S.C. 1511b.

(2) to develop, maintain, and make available to interested persons listings of (A) trade, government, and other organizations that are concerned with, or have an interest in, international trade in United States fishery products, and (B) United States fishery products available for such trade;

(3) to prepare quarterly reports regarding (A) the supply, demand, and prices of each United States fishery product exported, or for which there may be export potential, to the foreign nation or area concerned, and (B) the trade barriers or incentives of such nation or area that affect imports of such products;

(4) to prepare weekly statements regarding the prices for each fishery product for which there may be United States export potential to the foreign nation or area concerned; and

(5) to carry out such other functions as the Secretary may require.

(d) ADMINISTRATION.—The Secretary of State and the Secretary shall enter into cooperative arrangements concerning the provision of office space, equipment, facilities, clerical services, and such other administrative support as may be required for fishery trade officers and their families.

* * * * * * *

16. Endangered Species Act of 1973, as amended

Partial text of Public Law 93–205 [S. 1983], 87 Stat. 884, approved December 28, 1973; as amended by Public Law 94–359 [S. 229], 90 Stat. 911, approved July 12, 1976; Public Law 95–632 [Endangered Species Act Amendments of 1978; S. 2899], 92 Stat. 3751, approved November 10, 1978; Public Law 96–159 [S. 1143], 93 Stat. 1225, approved December 28, 1979; Public Law 97–304 [Endangered Species Act Amendments of 1982; H.R. 6133], 96 Stat. 1411, approved October 13, 1982; Public Law 99–659 [S. 991], 100 Stat. 3706, approved November 14, 1986; Public Law 100–478 [H.R. 1467], 102 Stat. 2306, approved October 7, 1988; and Public Law 100–653 [H.R. 4030], 102 Stat. 3825, approved November 14, 1988

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".[1]

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[1] 16 U.S.C. 1531 note. Sec. 301 of Public Law 102–251 extensively amended the Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94–265; 16 U.S.C. 1801 *et seq.*), including providing a new definition of "special areas" in sec. 3(24), redesignated as sec. 3(36) by sec. 405(a) of Public Law 104–297, as follows:

"The term 'special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of American and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

Sec. 305 of Public Law 102–251 (106 Stat. 66) further provided that "The special areas defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(24)), shall be considered places that are subject to the jurisdiction of the United States for the purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).".

[2] Sec. 6 of Public Law 96–159 (93 Stat. 1228) added sec. 8A.

FINDINGS, PURPOSES, AND POLICY

Sec. 2.[3] (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Oceans;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and[4]

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and convention set forth in subsection (a) of this section.

(c) POLICY.—(1)[5] It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

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[3] 16 U.S.C. 1531.

[4] Sec. 1013(a) of Public Law 100–478 (102 Stat. 2315) struck out the period following "agreements" and inserted in lieu thereof "; and".

[5] Sec. 9(a) of Public Law 97–304 (96 Stat. 1426) inserted the para. designation "(1)" and a new para. (2).

(2)[5] It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resources issues in concert with conservation of endangered species.

DEFINITIONS

Sec. 3.[6] For the purposes of this Act—

(1)[7] The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2)[7] The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the propose of facilitating such buying and selling: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.[8]

(3)[7] The terms "conserve", "conserving," and "conservation" mean to use and the use of all methods and procedures which are necessary to being any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressure within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4)[7] The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)[9] (A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

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[6] 16 U.S.C. 1532.

[7] Sec. 2 of Public Law 95–632 (92 Stat. 3751) redesignated paras. (1), (2), and (3) as (2), (3), and (4) respectively, and added a new para. (1).

[8] Sec. 5 of Public Law 94–359 (90 Stat. 913) added this proviso.

[9] Sec. 2 of Public Law 95–632 (92 Stat. 3721) redesignated paras. (4), (5), (6), and (7) as paras. (6), (8), (9), and (10), respectively, and added new paras. (5) and (7).

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6)[9] The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7)[9] The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8)[9] The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.start here

(9)[9] The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10)[9] The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11)[10] * * * [Repealed—1982]

(12)[11] The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(13)[11, 12] The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality,

[10] Sec. 4(b) of Public Law 97–304 (96 Stat. 1420) repealed para. (11), which defined the term "irresolvable conflict". Originally, sec. 2 of Public Law 95–632 (92 Stat. 2752) added para. (11), which was subsequently amended by sec. 2 of Public Law 96–159 (93 Stat. 1225).

[11] Sec. 2 of Public Law 95–632 (92 Stat. 2752) redesignated paras. (8) through (16) as paras. (13) through (21) and added new paras. (11) and (12).

[12] Sec. 1001 of Public Law 100–478 (102 Stat. 2306) amended and restated para. (13) and inserted "also" before "means the Secretary of Agriculture" in para. (15). Para. (13) previously read as follows:

or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14)[11] The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15)[11] The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also[12] means the Secretary of Agriculture.

(16)[11, 13] The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17)[11] The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18)[11] The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

(19)[11] The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.

(20)[11] The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21)[11] The term "United States" when used in a geographical context, includes all States.

* * * * * * *

INTERNATIONAL COOPERATION

Sec. 8.[14] (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of

"The term 'person' means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.".

[13] Sec. 2(5) of Public Law 95–632 (92 Stat. 3752) amended and restated para. (16), as redesignated.

[14] 16 U.S.C. 1537.

any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife and plants [15] including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants [15] in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants [15] and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants; [15] and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) [16] * * * [Repealed—1979]

CONVENTION IMPLEMENTATION

Sec. 8A.[17] (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

[15] Sec. 5 of Public Law 96–159 (93 Stat. 1228) inserted the reference to plants.

[16] Sec. 5(4) of Public Law 96–159 (93 Stat. 1228) repealed subsec. (e), which had concerned implementation of the Convention. See sec. 8A of this Act.

[17] 16 U.S.C. 1537a. Sec. 6 of Public Law 96–159 (93 Stat. 1228) added sec. 8A.

(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c)(1)[18] SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2)[18] The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d)[19] RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.—If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries[20] of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e)[21] WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—(1) The Secretary of the Interior (hereinafter in this subsection referred to as the "Secretary"), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the "Western Convention"). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State, shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State

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[18] Sec 5(1) of Public Law 97–304 (96 Stat. 1421) added the para. designation "(1)" and a new para. (2).

[19] Sec. 5(2) of Public Law 97–304 (96 Stat. 1421) amended and restated subsec. (d). Previously, subsec. (d) had established an International Convention Advisory Commission.

[20] Sec. 1(b)(3) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Merchant Marine and Fisheries of the House of Representatives shall be treated as referring to—

(A) the Committee on Agriculture, in the case of a provision of law relating to inspection of seafood or seafood products;

(B) the Committee on National Security, in the case of a provision of law relating to interoceanic canals, the Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine;

(C) the Committee on Resources, in the case of a provision of law relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography;

(D) the Committee on Science, in the case of a provision of law relating to marine research; and

(E) the Committee on Transportation, in the case of a provision of law relating to a matter other than those listed above.

[21] Sec. 5(3) of Public Law 97–304 (96 Stat. 1421) amended and restated subsec. (e).

agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

PROHIBITED ACTS

Sec. 9.[22] (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in section 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

[22] 16 U.S.C. 1538.

(A) import any such species into, or export any such species from, the United States;

(B)[23] remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(C)[23] deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D)[23] sell or offer for sale in interstate or foreign commerce any such species; or

(E)[23] violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1)[24] SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided,* That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttal presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)[24] (A) The provisions of subsection (a)(1) shall not apply to—[25]

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by

[23] Sec. 9(b)(1) of Public Law 97–304 (96 Stat. 1426) redesignated existing subparas. (B), (C), and (D), as (C), (D), and (E), respectively, and added a new subpara. (B). Subsequently, sec. 5(4) of Public Law 96–159 (93 Stat. 1228) amended and restated subpara. (B), which was further amended by sec. 1006 of Public Law 100–478 (102 Stat. 2308), which added the text following "Federal jurisdiction;" to the end of the subpara.

[24] Sec. 4 of Public Law 95–632 (92 Stat. 3760) inserted the para. designation "(1)" and added a new para. (2). Subsequently, sec. 9(b)(2) of Public Law 97–304 (96 Stat. 1426) amended and restated para. (1).

[25] Sec. 9(b)(3) of Public Law 97–304 (96 Stat. 1427) struck out "This section shall not apply to" and inserted in lieu thereof "The provisions of subsection (a)(1) shall not apply to".

regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d)[26] IMPORTS AND EXPORTS.—

(1) IN GENERAL.—It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants;[27] or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) REQUIREMENTS.—Any person required to obtain permission under paragraph (1) of this subsection shall—

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[26] Sec. 2301 of Public Law 100–478 (102 Stat. 2321) amended and restated subsec. (d). Previously, subsec. (d) read as follows:

"(d) IMPORTS AND EXPORTS.—(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

"(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

"(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

"(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

"(C) file such reports as the Secretary may require.

"(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.".

[27] Sec. 905 of Public Law 100–653 (102 Stat. 3835) inserted the reference to plants.

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory.

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OR AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED.—In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purpose of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose, of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day

before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

Sec. 10.[28] (a)[29] PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purposes of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of

[28] 16 U.S.C. 1539.

[29] Sec. 6(1) of Public Law 97–304 (96 Stat. 1422) amended and restated subsec. (a). It formerly read as follows:

"(a) PERMITS.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.".

this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish, or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit

which is made under this section.[30] Each notice shall invite the submission from interested parties, within thirty days after the date of notice, of[31] written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.[32] Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplish in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or

[30] Sec. 3(1) of Public Law 94–359 (90 Stat. 912) struck out "subsection" and inserted in lieu thereof "section".

[31] Sec. 1013(b) of Public Law 100–478 (102 Stat. 2315) struck out "notice," and inserted in lieu thereof "notice, of".

[32] Sec. 3(2) of Public Law 94–359 (90 Stat. 912) added the words to this point beginning with "; except that such thirty-day period".

other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing,[33] beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)[34] (1) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial[35] etching or engraving of designs upon, or the substantial[35] carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.[36]

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, and pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

[33] Sec. 1013(c) of Public Law 100–478 struck out "lacking" and inserted in lieu thereof "lacing".
[34] Sec. 2 of Public Law 94–359 (90 Stat. 911) added subsec. (f).
[35] Sec. 6(3) of Public Law 97–304 (96 Stat. 1423) inserted "substantial".
[36] Sec. 6(3) of Public Law 97–304 (96 Stat. 1423) added this sentence.

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8);[37] and

(D) and term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect and such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions with may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

[37] Sec. 7(1) of Public Law 96–159 (93 Stat. 1230) inserted "unless such exemption is renewed under paragraph (8)".

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)[38] (A)(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a six-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous[39] certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D)[40] No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.[41]

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[38] Sec. 7(2) of Public Law 96–159 (93 Stat. 1230) added para. (8). As enrolled, subpara. (A) has no clause (ii). Subsequently, Public Law 100–478 (102 Stat. 2314) amended and restated para. 8(A), which previously read as follows:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.".

Sec. 18 of Public Law 103–238 (108 Stat. 559) provided the following:

"SEC. 18. SCRIMSHAW EXEMPTIONS.

"Notwithstanding any other provision of law, any valid certification of exemption renewed by the Secretary (or deemed to be renewed) under section 10(f)(8) of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)(8)) for any person holding such a certificate with respect to the possession of pre-Act finished scrimshaw products or raw material for such products shall remain valid for a period not to exceed 5 years beginning on the date of enactment of this Act." [April 30, 1994].

[39] Sec. 1011(b) of Public Law 100–478 (102 Stat. 2314) struck out "original" and inserted in lieu thereof "previous".

[40] Sec. 1011(c) of Public Law 100–478 (102 Stat. 2314) added subpara. (D).

[41] Sec. 1011(d) of Public Law 100–478 (102 Stat. 2314) struck out subpara. (9), as added by sec. 6(3)(B) of Public Law 97–304 (96 Stat. 1423). Subpara. (9) had required the Secretary to conduct a review of the effectiveness of the regulations prescribed pursuant to sec. 10(f)(5). In addition, subpara. (9) required that:

"The Secretary shall submit a report of such review to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on the Environment and Public Works of the Senate and make it available to the general public. Based on such review, the Secretary shall, on or before October 1, 1983, propose and adopt such revisions to such regulations as he deems necessary and appropriate to carry out this paragraph. Upon publication of such revised regulations, the Secretary may renew for a further period

Continued

(g)[42] In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h)[43] CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article[44] which—

(A)[45] is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraphs (1) (A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraphs (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

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of not to exceed three years any certificate of exemption previously renewed under paragraph (8) of this subsection, subject to such new terms and conditions as are necessary and appropriate under the revised regulations; except that any certificate of exemption that would, but for this clause, expire on or after the date of enactment of this paragraph and before the date of the adoption of such regulations may be extended until such time after the date of adoption as may be necessary for purposes of applying such regulations to the certificate. Notwithstanding the foregoing, however, no person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless such person has been issued a valid certificate of exemption by the Secretary under this subsection and unless such product or the raw material for such product was held by such person on the date of the enactment of this paragraph.".

[42] Sec. 2 of Public Law 94–359 (90 Stat. 912) added subsec. (g).

[43] Sec. 5 of Public Law 95–632 (92 Stat. 3760) added subsec. (h).

[44] Sec. 6(4)(A)(i) of Public Law 97–304 (96 Stat. 1424) struck out the parenthetical phrase "(other than scrimshaw)", which previously appeared at this point.

[45] Sec. 6(4)(A)(ii) of Public Law 97–304 (96 Stat. 1424) amended and restated subpara. (A) It formerly read as follows:

"(A) was made before 1830;".

may, before the close of the one-year period beginning on such date of enactment, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i)[46] NONCOMMERCIAL TRANSSHIPMENTS.—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j)[47] EXPERIMENTAL POPULATIONS.—(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under

[46] Sec. 6(5) of Public Law 97–304 (96 Stat. 1424) amended and restated subsec. (i), as added by sec. 5 of Public Law 95–632 (92 Stat. 3760).

[47] Sec. 6(6) of Public Law 97–304 (96 Stat. 1424) added subsec. (j).

subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

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ENDANGERED PLANTS

Sec. 12.[48] The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or the threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

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[48] 16 U.S.C. 1541.

17. Marine Mammal Protection Act of 1972, as amended

Partial text of Public Law 92–522 [H.R. 10420], 86 Stat. 1027, approved October 21, 1972; as amended by Public Law 93–205 [Endangered Species Act of 1973; S. 1983], 87 Stat. 884, approved December 28, 1973; Public Law 95–136 [S. 1522], 91 Stat. 1167, approved October 18, 1977; Public Law 95–316 [H.R. 10730], 92 Stat. 380, approved July 10, 1978; Public Law 97–58 [H.R. 40841], 95 Stat. 979, approved October 9, 1981; Public Law 97–389 [Fisheries Amendments Act of 1982; H.R. 3942], 96 Stat. 1949 at 1951, approved December 29, 1982; Public Law 98–364 [H.R. 4997], 98 Stat. 440, approved July 17, 1984; Public Law 99–659 [S. 991], 100 Stat. 3706, approved November 14, 1986; Public Law 100–711 [Marine Mammal Protection Act Amendments of 1988; H.R. 4189], 102 Stat. 4755, approved November 23, 1988; Public Law 101–627 [Fishery Conservation Amendments of 1990—Dolphin Protection Consumer Information Act; H.R. 2061] 104 Stat. 4436, approved November 28, 1990; Public Law 102–251 [Flower Garden Banks National Marine Sanctuary; H.R. 3866], 106 Stat. 60, approved March 9, 1992; Public Law 102–523 [International Dolphin Conservation Act of 1992; H.R. 5419], 106 Stat. 3425, approved October 26, 1992; Public Law 102–582 [High Seas Driftnet Fisheries Enforcement Act; H.R. 2152], 106 Stat. 4900, approved November 2, 1992; Public Law 102–587 [Oceans Act of 1992; H.R. 5617], 106 Stat. 5039, approved November 4, 1992; Public Law 103–238 [Marine Mammal Protection Act Amendments of 1994; S. 1636], 108 Stat. 532, approved April 30, 1994; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; Public Law 104–297 [Sustainable Fisheries Act; S. 39], 110 Stat. 3559, approved October 11, 1996; Public Law 105–18 [H.R. 1871], 111 Stat. 158, approved June 12, 1997; Public Law 105–42 [International Dolphin Conservation Program Act; H.R. 408], 111 Stat. 1122, approved August 15, 1997; Public Law 106–555 [Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000; H.R. 2903], 114 Stat. 2765, approved December 21, 2000; and Public Law 108–136 [National Defense Authorization Act for Fiscal Year 2004; H.R. 1588], 117 Stat. 1392, approved November 24, 2003

AN ACT To protect marine mammals; to establish a Marine Mammal Commission; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

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FINDINGS AND DECLARATION OF POLICY[1]

Sec. 2.[2] The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including[3] the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals and their habitats[4] is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest

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[1] Sec. 602 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 985), contained the following sense of the Congress expressing its concern over the continuing destruction of marine mammals:

"SEC. 602. It is the sense of the Congress that the President should convey to all countries having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of these marine mammals (highlighted by the recent slaughter of dolphins in the Sea of Japan by Japanese fishermen) and should encourage such countries—

"(1) to join in international discussions with other such countries in order to advance general understanding of cetacean life and thereby facilitate an effective use of the living marine resources of the world which does not jeopardize the natural balance of the aquatic environment;

"(2) to participate in an exchange of information with the National Marine Fisheries Service of the United States Department of Commerce, including cooperation in studies of—

"(A) the impact of cetaceans on ecologically related human foodstuffs, and

"(B) alternative methods of dealing with cetacean problems as they occur;

"(3) to cooperate in establishing an international cetacean commission to advance understanding of cetacean life and to insure the effective conservation and protection of cetaceans on a global scale; and

"(4) to adopt comprehensive marine mammal protection legislation.".

[2] 16 U.S.C. 1361.

[3] Sec. 3(1) of Public Law 103–238 (108 Stat. 532) inserted "essential habitats, including".

[4] Sec. 3(2) of Public Law 103–238 (108 Stat. 532) inserted "and their habitats".

extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the[5] carrying capacity of the habitat.

DEFINITIONS

Sec. 3.[6] For the purposes of this Act—

(1)[7] The term "depletion" or "depleted" means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under the Endangered Species Act of 1973,[8] determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(2) The terms "conservation" and "management" means the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population.[9] Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term "district court of the United States" includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term "humane" in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

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[5] Sec. 1(b)(1) of Public Law 97–58 (95 Stat. 979) struck out "optimum" which previously appeared at this point.

[6] 16 U.S.C. 1362.

[7] Sec. 1(b)(2)(A) of Public Law 97–58 (95 Stat. 979) amended and restated para. (1).

[8] Formerly referred to the Endangered Species Conservation Act of 1969; amended by sec. 13(e)(1) of Public Law 93–205 (87 Stat. 903).

[9] Sec. 1(b)(2)(B) of Public Law 97–58 (95 Stat. 979) struck out "the optimum carrying capacity of their habitat" and inserted in lieu thereof "their optimum sustainable population".

(5)[10] The term "intermediary nation" means a nation that exports yellowfin tuna or yellowfin tuna products to the united States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B).

(6)[10] The term "marine mammal" means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this chapter, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7)[10] The term "marine mammal product" means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8)[10] The term "moratorium" means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this chapter.

(9)[10] The term "optimum sustainable population" means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity[11] of the habitat and the health of the ecosystem of which they form a constituent element.

(10)[10] The term "person" includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11)[10] The term "population stock" or "stock" means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)[10] (A)[12] Except as provided in subparagraph (B), the term "Secretary" means—

(i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

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[10] Sec. 401(a) of Public Law 102–582 (106 Stat. 4909) redesignated paras. (5) through (14) as paras. (6) through (15) and added a new para. (5).

[11] Public Law 97–58 (95 Stat. 979) struck out "optimum carrying capacity" and inserted in lieu thereof "carrying capacity".

[12] Sec. 3004(b) of Public Law 102–587 (106 Stat. 5067) added subpara. designation (A) to para. (11) (redesignated as para. (12)), added new subpara. (B), and redesignated former text as clauses. See also sec. 24(a) of Public Law 103–238 (108 Stat. 565) relating to the amendment, wherein the amendment is deemed to be applicable to sec. 3(12).

(B) in section 118 and title IV[13] (other than section 408)[14] the term "Secretary" means the Secretary of Commerce.

(13)[10] The term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14)[10] The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.[15]

(15)[10, 16] The term "waters under the jurisdiction of the United States" means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(16)[17] The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(17)[17] The term "competent regional organization"—

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[13] Sec. 24(a)(2) of Public Law 103–238 (108 Stat. 565) struck out "in title III" and inserted in lieu thereof "in section 118 and title IV".

[14] Sec. 202(b) of Public Law 106–555 (114 Stat. 2768) inserted "(other than section 408)".

[15] Public Law 97–58 (95 Stat. 979) struck out "the Canal zone, the possession of the United States, and the Trust Territory of the Pacific Islands" and inserted in lieu thereof "the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands".

[16] Sec. 304 of Public Law 102–251 (106 Stat. 65) amended and restated para. (15). Sec. 405(b)(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3621) subsequently repealed sec. 304 of Public Law 102–251, and sec. 405(b)(3) of that Act amended and restated para. (15) anew. The amended para. added the clause in subpara. (C), beginning with "except that this subparagraph".

[17] Sec. 2(c) of Public Law 102–523 (106 Stat. 3432) added paras. (16) and (17), originally as paras. (15) and (16), as redesignated by sec. 16(a)(2) of Public Law 103–238 (108 Stat. 559). Public Law 102–523 also added a para. (17) that defined "intermediary nation". Sec. 16(a)(1) of Public Law 103–238 struck out para. (17).

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)[18] (A) The term "harassment" means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B)[19] In the case of a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note) or a scientific research activity conducted by or on behalf of the Federal Government consistent with section 104(c)(3), the term "harassment" means—

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

(C)[19] The term "Level A harassment" means harassment described in subparagraph (A)(i) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(i).

(D)[19] The term "Level B harassment" means harassment described in subparagraph (A)(ii) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(ii).

(19)[18] The term "strategic stock" means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or

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[18] Sec. 12 of Public Law 103–238 (108 Stat. 557) added paras. (18) through (27).

[19] Sec. 139(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1433) struck out subparas. (B) and (C) and inserted in lieu thereof subparas. (B) through (D). Subparas. (B) and (C) previously read as follows:

"(B) The term 'Level A harassment' means harassment described in subparagraph (A)(i).

"(C) The term 'Level B harassment' means harassment described in subparagraph (A)(ii).".

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this Act.

(20)[18] The term "potential biological removal level" means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21)[18] The term "Regional Fishery Management Council" means a Regional Fishery Management Council established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act.[20]

(22)[18] The term "bona fide research" means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23)[18] The term "Alaska Native organization" means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24)[18] The term "take reduction plan" means a plan developed under section 118.

(25)[18] The term "take reduction team" means a team established under section 118.

(26)[18] The term "net productivity rate" means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27)[18] The term "minimum population estimate" means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(28)[21] The term "International Dolphin Conservation Program" means the international program established by the agreement signed in La Jolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

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[20] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[21] Sec. 3 of Public Law 105–42 (111 Stat. 1123) added paras. (28) and (29).

(29)[21] The term "Declaration of Panama" means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

Sec. 101.[22] (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1)[23] Consistent with the provisions of section 104, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 104(c)(5), may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 104(c)(5), which is consistent with the purposes and policies of section 2 of this Act. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103, or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103.[24] Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103.[25] In any event it shall be the immediate goal that the incidental kill or incidental serious

[22] 16 U.S.C. 1371.

[23] Sec. 4(a)(1) of Public Law 103–238 (108 Stat. 532) amended and restated para. (1). It had been amended previously by sec. 5(c) of Public Law 100–711 (102 Stat. 4769).

[24] Sec. 4(a)(2) of Public Law 103–238 (108 Stat. 533) inserted "or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103".

[25] Sec. 4(a)(1) of Public Law 105–42 (111 Stat. 1123) added this sentence.

injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortally and serious injury rate.[26] The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.

For purposes of applying the preceding sentence, the Secretary—

(A) Shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;[27]

(B)[28] in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for

[26] Sec. 101(1)(A) of Public Law 97–58 (95 Stat. 979) amended and restated para. (2) up to this point. Subsequently, sec. 4(a)(2) of Public Law 105–42 (111 Stat. 1123) struck out "; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable" which previously appeared at this point.

[27] Sec. 4(a) of Public Law 100–711 (102 Stat. 4765) struck out "and" which previously appeared at this point.

[28] Sec. 4(b)(1) of Public Law 105–42 (111 Stat. 1123) struck out subpara. (B) and inserted in lieu thereof a new subpara. (B). Previously, subpara. (B) had been amended by sec. 101 of Public Law 98–364 (98 Stat. 440), by sec. 4(a)(2) of Public Law 100–711 (102 Stat. 4765), and by sec. 4(a)(2) of Public Law 100–711 (102 Stat. 4765).

any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C)[29] shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D)[29] shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E)[29] shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect; and[27]

(F)[29] (i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993,[30] and

[29] Sec. 4(b) of Public Law 105–42 (111 Stat. 1124) redesignated subparas. (C), (D), and (E) as subparas. (D), (E), and (F), and added a new subpara. (C). Sec. 4(a)(3) of Public Law 100–711 (102 Stat. 4766) added subparas. (D) and (E), as redesignated. Sec. 901(h) of the Dolphin Protection Consumer Information Act (title IX of Public Law 101–627; 104 Stat. 4467) added subpara. (F), as redesignated. Previously, sec. 401(b) of Public Law 102–582 (106 Stat. 4909) amended and restated subpara. (D), as redesignated.

[30] Sec. 103(1) of Public Law 102–582 (106 Stat. 4903) struck out "July 1, 1992" and inserted in lieu thereof "January 1, 1993".

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet any on the high seas after July 1, 1991.

For purpose of subparagraph (F),[31] the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term "driftnet" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.[32]

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such determinations, must be assured that the taking of such marine mammals is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however,* That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes,[33] or enhancing the survival or recovery of a species or stock[34] as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection,[35] during the moratorium no permit may be issued for the taking of any marine mammal

[31] Sec. 4(b)(4) of Public Law 105–42 (111 Stat. 1124) struck out "subparagraph (E)" and inserted in lieu thereof "subparagraph (F)".

[32] Sec. 103(2) of Public Law 102–582 (106 Stat. 4903) inserted text to this point beginning with "except that, until January 1, 1994,".

[33] Sec. 4(a)(3)(A) of Public Law 103–238 (108 Stat. 533) inserted ", photography for educational or commercial purposes,".

[34] Sec. 5(e)(1) of Public Law 100–711 (102 Stat. 4771) inserted "or enhancing the survival or recovery of a species or stock".

[35] Sec. 4(a)(3)(B) of Public Law 103–238 (108 Stat. 533) inserted "or as provided for under paragraph (5) of this subsection,".

which[36] has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)[37] (A) Except as provided in subparagraphs (B) and (C), the provisions of this Act shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property, so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973, the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this Act.

(5)(A)(i)[38] Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region

[36] Sec. 101(1)(B) of Public Law 97–58 (95 Stat. 980) struck out "is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or" which previously appeared at this point.

[37] Sec. 101(1)(C) of Public Law 97–58 (95 Stat. 980) added para. (4). Subsequently, para. (4) was amended and restated by sec. 411 of Public Law 99–659 (100 Stat. 3741), and further amended and restated by sec. 4(a)(4) of Public Law 103–238 (108 Stat. 533).

[38] Sec. 319(c)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1434) inserted "(i)" after "(5)(A)", redesignated clauses (i) and (ii) and subclauses (I) and (II) as subclauses (I) and (II) and items (aa) and (bb), respectively, and added new clauses (ii) and (iii).

of small numbers of marine mammals of a species or population stock[39] if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(I)[38] finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact[40] on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949 (16 U.S.C. 916 *et seq.*), pursuant to section 112(c);[41] and

(II)[38] prescribes regulations setting forth—

(aa)[38] permissible methods of taking pursuant to such activity, and other means of effecting the last practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance; and on the availability of such species or stock for substance uses;[42] and

(bb)[38] requirements pertaining to the monitoring and reporting of such taking.

(ii)[38] For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), a determination of 'least practicable adverse impact on such species or stock' under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii)[38] Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

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[39] Sec. 411 of Public Law 99–659 (100 Stat. 3741) struck out "that is not depleted" at this point.

[40] Sec. 411 of Public Law 99–659 (100 Stat. 3741) struck out "its habitat, and" and inserted in lieu thereof "will not have an unmitigable adverse impact".

[41] Sec. 411 of Public Law 99–659 (100 Stat. 3741) inserted "or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949 (16 U.S.C. 916 *et seq.*), pursuant to section 112(c)".

[42] Sec. 411 of Public Law 99–659 (100 Stat. 3741) inserted "and on the availability of such species or stock for substance uses".

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)[43] (i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f) or pursuant to a cooperative agreement under section 119.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119, and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or

[43] Sec. 4(a)(5) of Public Law 103–238 (108 Stat. 533) added subparas. (D) and (E).

stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this Act for taking by harassment that occurs in compliance with such authorization.

(vi)[44] For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), a determination of "least practicable adverse impact on such species or stock" under clause (i)(I) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(vii)[44] Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(E)[43] (i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)),[45] while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

[44] Sec. 319(c)(2) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1435) added clauses (vi) and (vii).

[45] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 118, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 shall not be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99–625; 100 Stat. 3500).

(F)[46] Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined

[46] Sec. 319(c)(3) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1435) added subpara. (F).

in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) shall not be subject to the following requirements:

(i) In subparagraph (A), "within a specified geographical region" and "within that region of small numbers".

(ii) In subparagraph (B), "within a specified geographical region" and "within one or more regions".

(iii) In subparagraph (D), "within a specific geographic region", "of small numbers", and "within that region".

(6)[47] (A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) "Native inhabitant of Russia, Canada, or Greenland" means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) "cultural exchange" means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

* * * * * * *

(e)[48] ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

[47] Sec. 4(a)(6) of Public Law 103–238 (108 Stat. 536) added para. (6).
[48] Sec. 4(c) of Public Law 105–42 (111 Stat. 1124) added subsec. (e).

(f)[49] EXEMPTION OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.—(1) The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of this Act, if the Secretary determines that it is necessary for national defense.

(2) An exemption granted under this subsection—

(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and

(B) shall not be effective for more than 2 years.

(3)(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after—

(i) conferring with the Secretary of Commerce, the Secretary of the Interior, or both as appropriate; and

(ii) making a new determination that the additional exemption is necessary for national defense.

(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.

(4) Not later than 30 days after issuing an exemption under paragraph (1) or an additional exemption under paragraph (3), the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate notice describing the exemption and the reasons therefor. The notice may be provided in classified form if the Secretary of Defense determines that use of the classified form is necessary for reasons of national security.

PROHIBITIONS

Sec. 102.[50, 51] (a) Except as provided in sections 101, 103, 104, 109, 111, 113, 114, and 118 of this title and title IV, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

[49] Sec. 319(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1434) added subsec. (f).

[50] 16 U.S.C. 1372.

[51] Sec. 3(a)(1)(A) of Public Law 97–58 (95 Stat. 981) inserted the reference to sec. 109. Sec. 2(b) of Public Law 100–711 (102 Stat. 4763) inserted the reference to sec. 114. Sec. 3004(a)(1) of Public Law 102–587 (106 Stat. 5067) inserted the reference to title III, as subsequently amended by sec. 13(c) of Public Law 103–238 (108 Stat. 558) to refer to title IV, to correspond with the redesignation of title III to title IV, relating to marine mammal health and stranding response. Sec. 13(c) of that Act also added the reference to sec. 118 and title IV. In a redundant amendment, sec. 24(c)(9) of that Act struck out "title III" and inserted in lieu thereof "title IV".

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States to take or import[52] marine mammals or marine mammal products; and

(3)[53] for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

(4)[53] for any person to transport, purchase, sell, export, or offer to purchase, sell, or export[54] any marine mammal or marine mammal product—[55]

(A)[56] that is taken in violation of this Act; or

(B)[56] for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under subsection 104(c); and

(5)[53] for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock,[57] issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock;[58] or

(4) taken in a manner deemed inhumane by the Secretary.

Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.[59]

(c) It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this title; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

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[52] Sec. 5(a)(1) of Public Law 103–238 (108 Stat. 537) struck out "for any purpose in any way connected with the taking or importation of" and inserted in lieu thereof "to take or import".

[53] Sec. 3(a)(1) of Public Law 97–58 (95 Stat. 981) redesignated para. (4) as para. (5), struck out existing para. (3), and added new paras. (3) and (4).

[54] Sec. 5(a)(2)(A) of Public Law 103–238 (108 Stat. 537) struck out "or offer to purchase or sell" and inserted in lieu thereof "export, or offer to purchase, sell, or export".

[55] Sec. 5(a)(2)(B) of Public Law 103–238 (108 Stat. 537) struck out "product; and" and inserted in lieu thereof "product—".

[56] Sec. 5(a)(2)(C) of Public Law 103–238 (108 Stat. 537) added subparas. (A) and (B).

[57] Sec. 5(e)(2) of Public Law 100–711 (102 Stat. 4771) struck out "research" and inserted in lieu thereof "research, or for enhancing the survival or recovery of a species or stock,".

[58] Sec. 3(a)(2) of Public Law 97–58 (95 Stat. 981) struck out "or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973" which had previously appeared at this point.

[59] Sec. 5(b) of Public Law 100–711 (102 Stat. 4769) added this sentence.

(A) the importation in to the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Subsection (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted,[60] or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) This Act shall not apply with respect to any marine mammal taken before the effective date of this Act, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f)[61] It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

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INTERNATIONAL PROGRAM

Sec. 108.[62] (a) The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2)[63] initiate—

(A)[63] negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the

[60] Sec. 3(a)(3) of Public Law 97–58 (95 Stat. 981) struck out "or endangered" which previously appeared at this point.
[61] Sec. 4 of Public Law 95–136 (91 Stat. 1167) added subsec. (f).
[62] 16 U.S.C. 1378.
[63] Sec. 4(b) of Public Law 100–711 (102 Stat. 4766) redesignated the original text of para. (2) as subpara. (A) and added a new subpara. (B).

Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;[64]

(B)[63] discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of locating and catching yellowfin tuna which do not involve the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate;[64]

(C)[64] negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

(D)[64] discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

[64] Sec. 4(e) of Public Law 105–42 (111 Stat. 1125) struck out "and" at the end of subpara. (A), struck out a period at the end of subpara. (B) and inserted in lieu thereof a semicolon, and added subparas. (C) and (D).

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act a full report on the results of his efforts under this section.

(b)(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957,[65] as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act, or both, to make the Convention and this Act consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

(c)[66] The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B), as well as any proposals for further action to achieve the

[65] 8 UST 2283; TIAS 3948.
[66] Sec. 4(c) of Public Law 100–711 (102 Stat. 4767) added subsec. (c).

purposes of that subsection, in the report required under section 103(f) of this title.

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APPLICATION TO OTHER TREATIES AND CONVENTIONS

Sec. 113.[67] (a) The provisions of this title shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this title in order to effect essential compliance with the regulatory provisions of this chapter so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 105 of this title may not apply to such persons.

(b) Not later than 1 year after April 30, 1994, the Secretary of the Interior shall, in consultation with the contracting parties, initiate a review of the effectiveness of the Agreement on the Conservation of Polar Bears, as provided for in Article IX of the Agreement, and establish a process by which future reviews shall be conducted.

(c) The Secretary of the Interior, in consultation with the Secretary of State and the Marine Mammal Commission, shall review the effectiveness of United States implementation of the Agreement on the Conservation of Polar Bears, particularly with respect to the habitat protection mandates contained in Article II. The Secretary shall report the results of this review to the Committee on Merchant Marine and Fisheries of the House of Representatives[68] and the Committee on Commerce, Science, and Transportation of the Senate not later than April 1, 1995.

(d) Not later than 6 months after April 30, 1994, the Secretary of the Interior, acting through the Secretary of State and in consultation with the Marine Mammal Commission and the State of Alaska, shall consult with the appropriate officials of the Russian

[67] 16 U.S.C. 1383. Sec. 7(b) of Public Law 103–238 (108 Stat. 542) added subsec. designation "(a)", and added new subsecs. (b), (c), and (d).

[68] H. Res. 6, 104th Cong., January 4, 1995 abolished the House Committee on Merchant Marine and Fisheries and gave its jurisdiction to the Committee on Transportation and Infrastructure, Committee on National Security, and Committee on Resources.

Subsequently, sec. 1(b)(3) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Merchant Marine and Fisheries of the House of Representatives shall be treated as referring to—

(A) the Committee on Agriculture, in the case of a provision of law relating to inspection of seafood or seafood products;

(B) the Committee on National Security, in the case of a provision of law relating to interoceanic canals, the Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine;

(C) the Committee on Resources, in the case of a provision of law relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography;

(D) the Committee on Science, in the case of a provision of law relating to marine research; and

(E) the Committee on Transportation, in the case of a provision of law relating to a matter other than a matter described in any of subparagraphs (A) through (D).

Federation on the development and implementation of enhanced cooperative research and management programs for the conservation of polar bears in Alaska and Russia. The Secretary shall report the results of this consultation and provide periodic progress reports on the research and management programs to the Committee on Merchant Marine and Fisheries of the House of Representatives[68] and the Committee on Commerce, Science and Transportation of the Senate.

* * * * * * *

TITLE II—MARINE MAMMAL COMMISSION

ESTABLISHMENT OF COMMISSION

Sec. 201.[69] (a) There is hereby established the Marine Mammal Commission (hereafter referred to in this title as the "Commission").

(b)(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate.[70] The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences.[71] No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of this term until his successor has taken office.

(c) The President shall designate a Chairman of the Commission (hereafter referred to in this title as the "Chairman") from among its members.

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[69] 16 U.S.C. 1401.

[70] Sec. 202 of Public Law 97–389 (96 Stat. 1961) amended and restated this sentence.

[71] Sec. 103(a) of Public Law 98–364 (98 Stat. 441) struck out the second sentence in para. (1) and inserted in lieu thereof text to this point beginning with "The President shall make * * *". The struck out sentence read as follows: "The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals.".

(d) Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. The Executive Director Shall have such duties as the Chairman may assign.

DUTIES OF COMMISSION

Sec. 202.[72] (a) The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949, the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966;[73]

(2) conduct a continuing review of the condition of the stocks of marine mammals of methods for their protection and conservation, or humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this Act, and of all applications for permits for scientific research, public display, or enhancing the survival or recovery of a species or stock;[74]

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals.

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title as may be appropriate with regard to marine mammals; and

[72] 16 U.S.C. 1402.
[73] 80 Stat. 1091; 16 U.S.C. 1151 note.
[74] Sec. 5(e)(4) of Public Law 100–711 (102 Stat. 4771) inserted “, public display, or enhancing the survival or recovery of a species or stock”.

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

(b) The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 204, before submission to Congress, to the Secretary for comment.[75]

(c) The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of title 5, United States Code.

(d) Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

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COMMISSION REPORTS

Sec. 204.[76] The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 202 of this Act together with the responses made to these recommendations.

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AUTHORIZATION OF APPROPRIATIONS

Sec. 207.[77] There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this title, $1,500,000 for fiscal year 1994, $1,550,000 for fiscal year 1995, $1,600,000 for fiscal year 1996, $1,650,000 for fiscal year 1997, $1,700,000 for fiscal year 1998, and $1,750,000 for fiscal year 1999.

[75] Sec. 6(1) of Public Law 97–58 (95 Stat. 987) struck out a general reference to reports and recommendations of the Commission and inserted in lieu thereof the reference to the report required under sec. 204.

[76] 16 U.S.C. 1404.

[77] Sec. 3 of Public Law 95–136 (91 Stat. 1167) amended and restated sec. 207. Subsequently, sec. 207 was amended by sec. 4 of Public Law 95–316 (92 Stat. 381), and further amended and restated by sec. 9(b) of Public Law 103–238 (108 Stat. 543).

TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM[78]

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[78] Sec. 2(a) of the International Dolphin Conservation Act of 1992 (Public Law 102–523; 106 Stat. 3425) added title III. Sec. 6(a) of Public Law 105–42 (111 Stat. 1129) amended the heading of title III, which previously read as follows: "GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES".

The text of title III can be found on page 236 of this volume.

18. Fishermen's Protective Act of 1967, as amended [1]

Public Law 83–680 [H.R. 9584], 68 Stat. 883, approved August 27, 1954; as amended by Public Law 90–482 [S. 2261], 82 Stat. 729, approved August 12, 1968; Public Law 92–219 [H.R. 3304], 85 Stat. 286, approved December 23, 1971; Public Law 92–569 [H.R. 7117], 86 Stat. 182, approved October 26, 1972; Public Law 92–594 [S. 3545], 86 Stat. 1313, approved October 27, 1972; Public Law 94–265 [Fishery Conservation and Management Act of 1976; H.R. 200], 90 Stat. 331 at 360, approved April 13, 1976; Public Law 94–273 [Fiscal Year Adjustment Act; S. 2445], 90 Stat. 375 at 377, approved April 21, 1976; Public Law 95–194 [S. 1184], 91 Stat. 1413, approved November 18, 1977; Public Law 95–376 [H.R. 10878], 92 Stat. 714, approved September 18, 1978; Public Law 95–541 [Antarctic Conservation Act of 1978; H.R. 7749], 92 Stat. 2048, approved October 28, 1978; Public Law 96–61 [S. 917], 96 Stat. 407, approved August 15, 1979; Public Law 96–289 [H.R. 6614], 94 Stat. 605, approved June 28, 1980; Public Law 96–561 [American Fisheries Promotion Act; S. 2163], 94 Stat. 3275 at 3301, approved December 22, 1980; Public Law 97–68 [S. 1191], 95 Stat. 1040, approved October 26, 1981; Public Law 98–364 [H.R. 4997], 98 Stat. 440 at 444, approved July 17, 1984; Public Law 99–659 [S. 991], 100 Stat. 3706; approved November 14, 1986; Public Law 100–151 [H.R. 2893], 101 Stat. 884, approved November 3, 1987; Public Law 100–350 [H.R. 4621], 102 Stat. 660, approved June 27, 1988; Public Law 100–711 [Mammal Protection Act Amendments of 1988; H.R. 4189], 102 Stat. 4755 at 4772, approved November 23, 1988; Public Law 101–627 [Fishery Conservation Amendments of 1990; H.R. 2061], 104 Stat. 4436, approved November 28, 1990; Public Law 102–582 [High Seas Driftnet Fisheries Enforcement Act; H.R. 2152], 106 Stat. 4900, approved November 2, 1992; Public Law 104–43 [Fisheries Act of 1995; H.R. 716], 109 Stat. 366, approved November 3, 1995; Public Law 104–208 [Department of Commerce and Related Agencies Appropriations Act; title II of sec. 101(a) of title I of Public Law 104–208; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; Public Law 106–36 [Miscellaneous Trade and Technical Corrections Act of 1999; H.R. 435], 113 Stat. 127, approved June 25, 1999; Public Law 106–450 [Fishermen's Protective Act Amendments of 2000; H.R. 1651], 114 Stat. 1941, approved November 7, 2000; Public Law 107–228 [Foreign Relations Authorization Act, Fiscal Year 2003; H.R. 1646], 116 Stat. 1350, approved September 30, 2002; and Public Law 108–219 [H.R. 2584], 118 Stat. 615, approved April 13, 2004

AN ACT To protect the rights of vessels of the United States on the high seas and in territorial waters of foreign countries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of this Act [2] the term "vessel of the United States" shall mean any private vessel documented or certificated under the laws of the United States. Notwithstanding any other law, the documentation or certification of any such vessel shall not be considered to be affected, for the purposes of this Act, in any manner or to any extent if at any time during any voyage for the purpose of fishing beyond the fishery conservation zone (as defined in section 3(8) of the Magnuson-Stevens Fishery Conservation and Management Act

[1] Public Law 90–482 (92 Stat. 729) provided that this Act may be cited as the "Fishermen's Protective Act of 1967".
[2] 22 U.S.C. 1971.

(16 U.S.C. 1802(8)),[3] the vessel is commanded by other than a citizen of the United States.[4]

Sec. 2.[5] If—

(1)[6] any vessel of the United States is seized by a foreign country on the basis of claims to jurisdiction that are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States;

(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

(A) are unrelated to fishery conservation and management,

(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Magnuson-Stevens Fishery Conservation and Management Act),[7] or

(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

the Secretary of State, unless there is clear and convincing credible evidence that the seizure did not meet the requirements under

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[3] Now the "exclusive economic zone". For definition, see sec. 3(6) of the Magnuson-Stevens Fishery Conservation and Management Act. See also Presidential Proclamation No. 5030 (48 F.R. 10605).

Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[4] Sec. 14 of Public Law 95–541 (92 Stat. 2057) added this sentence.

[5] 22 U.S.C. 1972. Sec. 403(a) of the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94–265; 90 Stat. 360) amended and restated sec. 2. The amendments made by Sec. 403 became effective on March 1, 1977. Sec. 2 formerly read as follows:

"**Sec. 2.** In any case where—

"(a) a vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; and

"(b) there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall as soon as practicable take such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country to secure the release of such vessel and crew, and to immediately ascertain the amount of any fine, fee, or other direct charge which may be reimbursable under section 3(a).".

[6] Sec. 303(a)(1) of Public Law 98–364 (98 Stat. 444) amended and restated para. (1), which formerly read as follows:

"(1) any vessel of the United States is seized by a foreign country on the basis of claims by territorial waters or the high seas which are not recognized by the United States; or".

Sec. 303(c) of Public law 98–364 further stated that this amendment would apply with respect to seizures made after April 1, 1983, by foreign countries of vessels of the United States.

[7] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

paragraph (1) or (2), as the case may be, shall immediately take such steps as are necessary—[8]

(i) for the protection of such vessel and for the health and welfare of its crew;

(ii) to secure the release of such vessel and its crew; and

(iii) to determine the amount of any fine, license fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.

Sec. 3.[9] (a) In any case where a vessel of the United States is seized by a foreign country under the conditions of section 2 and a fine, license fee, registration fee, or any other direct charge[9] must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of State in the amount certified by him[10] as being the amount of the fine, license fee, registration fee, or any other direct charge actually paid. For purposes of this section, the term "other direct charge" means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.[11] Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 9.

(b)[9] The Secretary of State shall make a determination and[12] certification under subsection (a) of this section as soon as possible after he is notified pursuant to section 2(b) of the amounts of the fines, fees, and other direct charges which were paid by the owners to secure the release of their vessel and crew. The amount of reimbursement made by the Secretary of State[12] to the owners of any vessel under subsection (a) of this section shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be. Any such lien shall terminate on the ninetieth day after the date on which the Secretary of State[12] reimburses the owners under this section unless before such ninetieth day the United States initiates action to enforce the lien.

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[8] Sec. 303(a)(2) of Public Law 98–364 (98 Stat. 444) struck out "and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—" and inserted in lieu thereof the text to this point after "(D)".

Sec. 303(c) of Public Law 98–364 further stated that this amendment would apply with respect to seizures made after April 1, 1983, by foreign countries of vessels of the United States.

[9] 22 U.S.C. 1973. Public Law 90–482 (92 Stat. 729) inserted "license fee, registration fee, or any other direct charge." Public Law 92–569 (100 Stat. 3706) redesignated sec. 3 as sec. 3(a), added the last sentence, and added a new subsec. (b).

Public Law 92–569 also provided:

"SEC. 6. The amendment made by this Act shall apply with respect to seizures of vessels of the United States occurring on or after the date of the enactment of this Act; except that reimbursements under section 3 of the Fishermen's Protective Act of 1967 (as in effect before such date of enactment) may be made from the fund established by the amendment made by section 5 of this Act with respect to any seizure of a vessel occurring before such date of enactment and after December 31, 1970, if no reimbursement was made before such date of enactment.".

[10] Sec. 302(a)(1) of Public Law 98–364 (98 Stat. 444) struck out "Secretary of the Treasury in the amount certified to him by the Secretary of State" and inserted in lieu thereof "Secretary of State in the amount certified by him".

[11] Sec. 403(a)(2) of the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94–265; 90 Stat. 360) added this sentence. This amendment applies to seizures of vessels of the United States occurring on or after December 31, 1974.

[12] Sec. 302(a)(2) of Public Law 98–364 (98 Stat. 444) inserted "determination and", and struck out "Secretary of the Treasury" and inserted in lieu thereof "Secretary of State".

Sec. 4.[13] The provisions of this Act shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of any applicable convention or treaty, if that treaty or convention was made with advice and consent to the Senate and was in force and effect for the United States and the seizing country at the time of the seizure.[14]

Sec. 5.[15] (a) The Secretary of State shall—

(1) immediately notify a foreign country of—

(A) any reimbursement made by him[16] under section 3 as a result of the seizure of a vessel of the United States by such country;

(B) any payment made pursuant to section 7 in connection with such seizure, and

(2) take such action as he deems appropriate to make and collect claims against such foreign country for the amounts so reimbursed and payments so made.

(b) If a foreign country fails or refuses to make payment in full on any claim made under subsection (a)(2) of this section within one hundred and twenty days after the date on which such country is notified pursuant to subsection (a)(1) of this section, the Secretary of State shall transfer an amount equal to such unpaid claim or unpaid portion thereof from any funds appropriated by Congress and programed for the current fiscal year for assistance to the government of such country under the Foreign Assistance Act of 1961 unless the President[17] certifies to the Congress that it

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[13] 22 U.S.C. 1974.

[14] Sec. 303(b) of Public Law 98–364 (98 Stat. 444) struck out "any fishery convention or treaty to which the United States is a party." and inserted in lieu thereof "any applicable convention or treaty, if that treaty or convention was made with advice and consent to the Senate and was in force and effect for the United States and the seizing country at the time of the seizure.". Sec. 303(c) of Public Law 98–364 further stated that this amendment would apply with respect to seizures made after April 1, 1983, by foreign countries of vessels of the United States.

[15] 22 U.S.C. 1975. Public Law 92–569 amended and restated sec. 5. Previously, sec. 5 read as follows:

"The Secretary of State shall take such action as he may deem appropriate to make and collect claims against a foreign country for amounts expended by the United States under the provisions of this Act (including payments made pursuant to section 7) because of the seizure of a vessel of the United States by such country. If such country fails or refuses to make payment in full within one hundred and twenty days after receiving notice of any such claim of the United States, the Secretary of State shall withhold, pending such payment, an amount equal to such unpaid claim from any funds programed for the current fiscal year for assistance to the government of such country (as shown in materials concerning such fiscal year presented to the Congress in connection with its consideration of amendments to the Foreign Assistance Act of 1961). Amounts withheld under this section shall not constitute satisfaction of any such claim of the United States against each foreign country.".

Public Law 92–569 (86 Stat. 182) also provided:

"SEC. 6. The amendment made by this Act shall apply with respect to seizures of vessels of the United States occurring on or after the date of the enactment of this Act; except that reimbursements under section 3 of the Fishermen's Protective Act of 1967 (as in effect before such date of enactment) may be made from the fund established by the amendment made by section 5 of this Act with respect to any seizure of a vessel occurring before such date of enactment and after December 31, 1970, if no reimbursement was made before such date of enactment.".

Previously, Public Law 90–482 (82 Stat. 729) amended and restated sec. 5.

[16] Sec. 302(b) of Public Law 98–364 (98 Stat. 444) struck out "Secretary of the Treasury" and inserted in lieu thereof "him".

[17] Executive Order 11772 (March 21, 1974; 39 F.R. 10879) provided the following:

"DELEGATING CERTAIN AUTHORITY OF THE PRESIDENT TO THE SECRETARY OF STATE

"By virtue of the authority vested in me by the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1971, *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, the Secretary of State is hereby designated and empowered to exercise, without ratification, or other action of the President, the function conferred

Continued

is in the national interest not to do so in the particular instance (and if such funds are insufficient to cover such claim, transfer shall be made from any funds so appropriated and programed for the next and any succeeding fiscal year) to (1) the Fishermen's Protective Fund established pursuant to section 9 if the amount is transferred with respect to an unpaid claim for a reimbursement made under section 3, or (2) the separate account established in the Treasury of the United States pursuant to section 7(c) if the amount is transferred with respect to an unpaid claim for a payment made under section 7(a). Amounts transferred under this section shall not constitute satisfaction of any such claim of the United States against such foreign country.

Sec. 6.[18] There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act.

Sec. 7.[19] (a) The Secretary, upon receipt of an application filed with him at any time after the effective date of this section by the owner of any vessel of the United States which is documented or certificated as a commercial fishing vessel, shall enter into an agreement with such owner subject to the provisions of this section and such other terms and conditions as the Secretary deems appropriate. Such agreement shall provide that, if said vessel is seized by a foreign country and detained under the conditions of section 2 of this Act, the Secretary shall guarantee—

(1) the owner of such vessel for all actual costs, except those covered by section 3 of this Act, incurred by the owner during the seizure and detention period and as a direct result thereof, as determined by the Secretary, resulting (A) from any damage to, or destruction of, such vessel, or its fishing gear or other equipment, (B) from the loss of confiscation of such vessel, gear, or equipment, or (C) from dockage fees or utilities;

(2) the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel and confiscated or spoiled during the period of detention; and

(3) the owner of such vessel and its crew for not to exceed 50 per centum of the gross income lost as a direct result of such seizure and detention, as determined by the Secretary of

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upon the President by Section 5(b) of the Fishermen's Protective Act of 1967, as amended, of certifying to the Congress that it is in the national interest not to transfer to the Fishermen's Protective Fund or to the separate account established under the Act, pursuant to that Section, amounts appropriated by the Congress and programmed for assistance under the Foreign Assistance Act of 1961.".

Authority vested in the President in sec. 5(b), delegated to the Secretary of State by Executive Order 12772, was further delegated to the Under Secretary of State for Political Affairs by Delegation of Authority No. 193 (Public Notice 1555; 57 F.R. 2298; January 7, 1992), as amended by Delegation of Authority No. 193–1 (Public Notice 1576; 57 F.R. 6635; February 5, 1992).

[18] 22 U.S.C. 1976.

[19] 22 U.S.C. 1977. Public Law 90–482 (82 Stat. 729) added sec. 7.

Sec. 5502 of Public Law 102–587 (106 Stat. 5085) provided the following:

"SEC. 5502. TREATMENT OF CERTAIN SEIZED FISHING VESSELS UNDER FISHERMEN'S PROTECTIVE ACT OF 1967.

"(a) Notwithstanding another law, each of the vessels described in subsection (b) of this section is deemed to have been covered by an agreement, beginning August 13, 1992, and ending September 29, 1992, with the Secretary of State under section 7 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977).

"(b) The vessels referred to in subsection (a) are the following:

"(1) THE KANAOLA (United States official number 923848).

"(2) THE MANA LOA (United States official number 919649).

"(3) THE MANA OLA (United States official number 902605).

"(4) THE MANA IKI (United States official number 906800).".

State,[20] based on the value of the average catch per day's fishing during the three most recent calendar years immediately preceding such seizure and detention of the vessel seized, or, if such experience is not available, then of all commercial fishing vessels of the United States engaged in the same fishery as that of the type and size of the seized vessel.

(b) Payments made by the Secretary under paragraphs (2) and (3) of subsection (a) of this section shall be distributed by the Secretary in accordance with the usual practices and procedures of the particular segment of the United States commercial fishing industry to which the seized vessel belongs relative to the sale of fish caught and the distribution of the proceeds of such sale.

(c) The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section.[21] All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. Those fees not currently needed for payments under this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all revenues accruing from such deposits or investments shall be credited to such separate account.[22] If a transfer of funds is made to the separate account under section 5(b)(2) with respect to an unpaid claim and such claim is later paid, the amount so paid shall be covered into the Treasury as miscellaneous receipts.[23] All payments under this section shall be made first out of such fees so long as they are available, and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

(d) All determinations made under this section shall be final. No payment under this section shall be made with respect to any losses covered by any policy of insurance or other provision of law.

(e)[24] The provisions of this section shall be effective until October 1, 2008; except that payments may be made under this section

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[20] Sec. 209 of Public Law 107–228 (116 Stat. 1364) struck out "Secretary of Commerce" and inserted in lieu thereof "Secretary of State". Previously, sec. 102(b) of Public Law 106–450 (114 Stat. 1941) struck out "Secretary of the Interior" and inserted in lieu thereof "Secretary of Commerce".

[21] Sec. 403(a) of Public Law 104–43 (109 Stat. 390) struck out a sentence which previously appeared at this point and read: "The amount fixed by the Secretary shall be predicated upon at least 33⅓ per centum of the contribution by the Government.".

[22] Sec. 1 of Public Law 97–68 (95 Stat. 1040) added this sentence.

[23] Sec. 4 of Public Law 92–569 (86 Stat. 1183) added this sentence.

Public Law 92–569 (October 26, 1972) also provided:

"SEC. 6. The amendment made by this Act shall apply with respect to seizures of vessels of the United States occurring on or after the date of the enactment of this Act; except that reimbursements under section 3 of the Fishermen's Protective Act of 1967 (as in effect before such date of enactment) may be made from the fund established by the amendment made by section 5 of this Act with respect to any seizure of a vessel occurring before such date of enactment and after December 31, 1970, if no reimbursement was made before such date of enactment.".

[24] Sec. 1 of Public Law 95–376 (92 Stat. 714) extended the date from October 1, 1977, to October 1, 1981, and added the text beginning with "except that * * *". The date was further extended to October 1, 1984, by sec. 1(2) of Public Law 97–68 (95 Stat. 1040); to October 1, 1987, by sec. 301 of Public Law 98–364 (98 Stat. 444); to October 1, 1988, by sec. 2 of Public Law 100–151 (101 Stat. 884); to October 1, 1989, by sec. 2 of Public Law 100–350 (102 Stat. 660);

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only to such extent and in such amounts as are provided in advance in appropriation Acts.

(f) For the purposes of this section—

(1) the term "Secretary" means the Secretary of State.[25]

(2) the term "owner" includes any charterer of a commercial fishing vessel.

Sec. 8.[26] (a)(1)[27] When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

(2)[27] When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

(3)[28] in administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall—

(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

(C) Promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B).

(4)[27, 29] Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States

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to October 1, 1993 by sec. 301 of Public Law 101–627 (104 Stat. 4462); to October 1, 2000, by sec. 403(b) of Public Law 104–43 (109 Stat. 390); to October 1, 2003, by sec. 102(a) of Public Law 106–450 (114 Stat. 1941); and to October 1, 2008 by sec. 302 of Public Law 108–219 (118 Stat. 616).

[25] Sec. 408 of Public Law 99–659 (100 Stat. 3740) struck out "Secretary of Commerce" and inserted in lieu thereof "Secretary of State". Previously, Public Law 92–594 (86 Stat. 1313) struck out "Secretary of the Interior" and inserted in lieu thereof "Secretary of Commerce".

[26] 22 U.S.C. 1978. Public Law 92–219 added sec. 8. Popularly referred to as the "Pelly Amendment".

[27] Sec. 2(1) of Public Law 95–376 (92 Stat. 714) added the paragraph designation "(1)", struck out the last sentence of subsec. (a), and added new paras. (2) and (3). Subsequently, sec. 3(6) of Public Law 96–61 (93 Stat. 408) redesignated para. (3) as para. (4).

[28] Sec. 3(b) of Public Law 96–61 (93 Stat. 408) added para. (3).

[29] The President issued a memorandum for the Secretary of the Treasury on August 2, 1994 (59 F.R. 40463), which stated:

"Pursuant to the authority vested in me by the Constitution and under section 8(a)(4) of the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1978(a)(4)), I decided on April 11, 1994, to prohibit the bringing or importation into the United States of fish and wildlife products of Taiwan. I hereby direct you, in consultation with the Secretary of the Interior, to prohibit the importation of fish or wildlife, as defined in 16 U.S.C. 3371 and 50 CFR 10.12, and their parts and products, of Taiwan to which but for these prohibitions, the import declaration requirements in 50 CFR 14.61 would apply. These prohibitions do not apply to those articles described in 50 CFR 14.62, which are excepted from the import declaration requirements. The prohibited articles include but are not limited to: (a) reptile leather shoes, handbags, and other reptile leather articles and products; (b) jewelry made from coral, mussel shells, and bone; (c) edible frogs' legs; (d) live goldfish and tropical fish for the aquarium trade; and (e) bird feathers, down, and specimens. These import prohibitions shall apply to fish or wildlife and their parts and products as described above that are exported to the United States after 10 days from the date of the publication of this memorandum and shall remain in effect until such time as I determine.".

of any products from the offending country for any duration[30] as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in section 2(8) of the Uruguay Round Agreements Act) or the multilateral trade agreements (as defined in section 2(4) of that Act).[31]

(b) Within sixty days following certification by the Secretary of Commerce, or the Secretary of the Interior,[32] the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products or wildlife products[33] of the offending country, or if such prohibition does not cover all fish products or wildlife products[33] of the offending country, the President shall inform the Congress of the reasons therefore.

(c) It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any products[34] prohibited by the Secretary of the Treasury pursuant to this section.

(d)[35] After making a certification to the President under subsection (a), the Secretary of Commerce or the Secretary of the Interior, as the case may be, shall periodically review the activities of the nationals of the offending country to determine if the reasons for which the certification was made no longer prevail. Upon determining that such reasons no longer prevail, the Secretary concerned shall terminate the certification and publish notice thereof, together with a statement of the facts on which such determination is based, in the Federal Register.

(e)[35] (1) Any person violating the provisions of this section shall be fined not more than $10,000 for the first violation, and not more than $25,000 for each subsequent violation.

(2) All products[34] brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) 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 section, insofar as such provisions of law are applicable and not inconsistent with this section.

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[30] Sec. 201(a)(1) of Public Law 102–582 (106 Stat. 4904) struck out "fish products (if the certification is made under paragraph (1)) or wildlife products (if the certification is made under paragraph (2)) from the offending country for such duration" and inserted in lieu thereof "any products from the offending country for any duration".

[31] Sec. 1002(d) of Public Law 106–36 (113 Stat. 133) struck out "General Agreement on Tariffs and Trade" and inserted in lieu thereof "World Trade Organization (as defined in section 2(8) of the Uruguay Round Agreements Act) or the multilateral trade agreements (as defined in section 2(4) of that Act)".

[32] Sec. 2(2)(A) of Public Law 95–376 (92 Stat. 714) added the reference to the Secretary of the Interior.

[33] Sec. 2 of Public Law 95–376 (92 Stat. 714) inserted "or wildlife products".

[34] Sec. 201(a) of Public Law 102–582 (106 Stat. 4904) struck out "fish products or wildlife products" and inserted in lieu thereof "products". Previously, sec. 2 of Public Law 95–376 (92 Stat. 714) inserted "or wildlife products".

[35] Sec. 3(b) of Public Law 96–61 (93 Stat. 408) redesignated subsecs. (d) through (g) as subsecs. (e) through (h), respectively, and added a new subsec. (d).

(f)[35] (1) Enforcement of the provisions of this section prohibiting the bringing or importation of products[34] into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United Stats commissioners 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 act and regulations issued thereunder.

(3) 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 section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder.

(B) with or without a warrant or other process, to search any vessel or other conveyance[36] 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 this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all products[37] brought or imported into the United States in violation of this section or the regulations issued thereunder. Products[38] so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health, Education, and Welfare.

(g)[35] The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of the Interior[39] are each authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(h)[35] As used in this section—

(1) The term "person" means any individual, partnership, corporation, or association.

(2)[40] The term "United States" means the several States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and every other territory and possession of the United States.

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[36] Sec. 2(5)(B) of Public Law 95–376 (92 Stat. 714) inserted "or other conveyance".

[37] Sec. 201(a)(4)(B)(i) of Public Law 102–582 (106 Stat. 4904) struck out "fish products and wildlife products" and inserted in lieu thereof "products". Previously, sec. 2(5)(C) of Public Law 95–376 (92 Stat. 714) amended this sentence.

[38] Sec. 201(a)(4)(B)(ii) of Public Law 102–582 (106 Stat. 4904) struck out "Fish products and wildlife products" and inserted in lieu thereof "Products".

[39] Sec. 2(6) of Public Law 95–376 (92 Stat. 714) added references to the Secretary of Commerce and the Secretary of the Interior.

[40] Sec. 201(b)(1) of Public Law 102–582 (106 Stat. 4904) amended and restated para. (2).

(3) The term "international fishery conservation program" means any ban, restriction, regulation, or other measure in effect[41] pursuant to a bilateral or[42] multilateral agreement which is in force with respect to the United States,[43] the purpose of which is to conserve or protect the living resources of the sea, including marine mammals.[44]

(4)[45] The term "international program for endangered or threatened species" means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

(5)[46] The term "taking", as used with respect to animals to which an international program for endangered or threatened species applies, means to—

(A) harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or

(B) attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Sec. 9.[47] There is created a Fishermen's Protective Fund which shall be used by the Secretary of State[48] to reimburse owners of vessels for amounts determined and certified by him[48] under section 3. The amount of any claim or portion thereof collected by the Secretary of State from any foreign country pursuant to section 5(a) shall be deposited in the fund and shall be available for the purpose of reimbursing vessel owners under section 3; except that if a transfer to the fund was made pursuant to section 5(b)(1) with respect to any such claim, an amount from the fund equal to the amount so collected shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fund (1) the sum of $3,000,000 to provide initial capital, and (2) such additional sums as may be necessary from time to time to supplement the fund in order to meet the requirements of the fund.

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[41] Sec. 2(7)(A) of Public Law 95–376 (92 Stat. 715) struck out "in force" and inserted in lieu thereof "in effect".

[42] Sec. 201(b)(2)(A) of Public Law 102–582 (106 Stat. 4904) inserted "bilateral or".

[43] Sec. 2(7)(B) of Public Law 95–376 (92 Stat. 715) struck out "to which the United States is a signatory party" and inserted in lieu thereof "which is in force with respect to the United States".

[44] Sec. 201(b)(2)(B) of Public Law 102–582 (106 Stat. 4904) inserted ", including marine mammals".

[45] Sec. 2(7)(C) of Public Law 95–376 (92 Stat. 715) added para. (4), originally as para. (5). Subsequently, sec. 201(b)(3) of Public Law 102–582 (106 Stat. 4905) struck out para. (4), which defined fish products, and para. (6), which defined wildlife products, and redesignated para. (5) as para. (4).

[46] Sec. 2(7)(C) of Public Law 95–376 (92 Stat. 715) added para. (5), originally as para. (7). Subsequently, sec. 201(b) of Public Law 102–582 (106 Stat. 4900) amended and restated para. (7) and redesignated it as para. (5).

[47] 22 U.S.C. 1979. Sec. 5 of Public Law 92–569 (86 Stat. 1183) added sec. 9.

Public Law 92–569 (86 Stat. 182) also provided:

"SEC. 6. The amendment made by this Act shall apply with respect to seizures of vessels of the United States occurring on or after the date of the enactment of this Act; except that reimbursements under section 3 of the Fishermen's Protective Act of 1967 (as in effect before such date of enactment) may be made from the fund established by the amendment made by section 5 of this Act with respect to any seizure of a vessel occurring before such date of enactment and after December 31, 1970, if no reimbursement was made before such date of enactment.".

[48] Sec. 302(c) of Public Law 98–364 (98 Stat. 444) struck out "Secretary of the Treasury" and inserted in lieu thereof "Secretary of State", and struck out "certified to him by the Secretary of State" and inserted in lieu thereof "determined and certified by him".

Sec. 10.[49] (a) For purposes of this section—

(1) The terms "fishery," "fishery conservation zone,"[50] "fishing," "fishing vessel," "Secretary," and "vessel of the United States" shall each have the same respective meaning as is given to such terms in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act[51] (16 U.S.C. 1802).

(2) The term "fishing gear" means any equipment or appurtenance which is necessary for the carrying out of fishing operations by a fishing vessel, whether or not such equipment or appurtenance is attached to such vessel.

(3) The term "fund" means the Fishing Vessel and Gear Damage Compensation Fund established under subsection (f).

(4)[52] The term "resulting economic loss" means the gross income, as estimated by the Secretary, that a fishing vessel owner or operator who is eligible for compensation under this section for damage to, loss of, or destruction of, a fishing vessel or the fishing gear used with such vessel will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the vessel or gear, or both, are repaired or replaced and available for use.

(b) Subject to the provisions of this section, the owner or operator (hereinafter referred to as the "vessel owner") of any fishing vessel which is a vessel of the United States is eligible for monetary compensation under this section for any damage to, loss of, or destruction of such vessel, or any fishing gear used with such vessel, or both, and for any resulting economic loss[53] if the damage, loss, or destruction—

(1) in the case of such vessel—

(A) occurs when such vessel is engaged in any fishery subject to the exclusive fishery management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act,[54] and

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[49] 22 U.S.C. 1980. Sec. 10, as added by Public Law 95–194 (91 Stat. 1413), was amended and restated by sec. 3(a) of Public Law 95–376 (92 Stat. 715). Note also sec. 3 (b) and (c) of Public Law 95–376 which provided:

"(b) The amendment made by subsection (a) shall take effect January 1, 1979.

"(c) Nothing in the amendment made by subsection (a) shall be construed as affecting in any manner or to any extent any loan made under section 10 of the Fishermen's Protective Act of 1967 (as in effect before January 1, 1979), and, for purposes of the consideration by the Secretary of Commerce of any application for a loan under such section which was filed, but not acted on, before January 1, 1979, the amendment made by subsection (a) shall not be deemed to have been enacted.".

[50] The term "fishery conservation zone" originally was defined in sec. 3(8) of the Magnuson Fishery Conservation and Management Act of 1976. Public Law 99–659 struck out para. 8, changed any reference to "fishery conservation zone" in that Act to be a reference to "exclusive economic zone", and provided a definition of "exclusive economic zone" in para. 6. See note 3.

[51] Sec. 238(b) of Public Law 96–561 struck out "Fishery Conservation and Management Act of 1976" and inserted in lieu thereof "Magnuson Fishery Conservation and Management Act of 1976". Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

[52] Sec. 241(1) of Public Law 96–561 (94 Stat. 3301) added para. (4).

[53] Sec. 241(2)(A) of Public Law 96–561 (94 Stat. 3301) inserted "and for any resulting economic loss".

[54] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

(B) is attributable to any vessel (or its crew or fishing gear) other than a vessel of the United States; or

(2) in the case of such fishing gear—

(A) occurs when such fishing gear is being used for fishing in any fishery subject to such exclusive management authority; and

(B)[55] is attributable to any other vessel, whether or not such vessel is a vessel of the United States.

For purposes of subparagraph (B), there shall be a rebuttable presumption that any damage, loss, or destruction of fishing gear is attributable to another vessel.

(c) A vessel owner is not eligible for compensation under this section with respect to fishing vessel or fishing gear damage, loss, or destruction, and resulting economic loss[56] unless such owner—

(1) makes application to the Secretary for compensation under this section within 90 days[57] after the day on which the damage, loss, or destruction occurred or was first noticed by the owner;

(2) pays upon making such application a reasonable administrative fee which the Secretary shall deposit into the fund;

(3) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the fishery vessel or fishing gear concerned;

(4) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the location of, the fishing gear concerned; and

(5) is in compliance with such other regulations as may be prescribed by the Secretary to carry out this section.

(d)(1) Application for compensation under this section shall be made in such form and manner, and include such documentation and other evidence relating to the cause and extent of the damage, loss or destruction, and resulting economic loss,[58] claimed, as the Secretary shall prescribe by regulation. The Secretary shall promptly, but not later than sixty days after receipt of an application, consider, and issue and initial determination with respect to, the application.

(2)[59] The amount of compensation awarded to any vessel owner under this section shall be—

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[55] Sec. 241(2)(B) of Public Law 96–561 (94 Stat. 3301) amended and restated subpara. (B). It formerly read as follows:

"(B) is attributable to (i) any other vessel, whether such vessel is a vessel of the United States, or (ii) an act of God.".

[56] Sec. 241(3) of Public Law 96–561 (94 Stat. 3302) inserted ", and resulting economic loss".

[57] Sec. 4(b) of Public Law 96–289 (94 Stat. 606) extended the period of time permitted for making an application for compensation from 60 to 90.

[58] Sec. 241(4)(A) of Public Law 96–561 (94 Stat. 3302) inserted ", and resulting economic loss,".

[59] Sec. 241(4)(B) of Public Law 96–561 (96 Stat. 3302) amended and restated para. (2). It formerly read as follows:

"(2) The amount of compensation awarded to any vessel owner under this section shall be—

"(A) determined on the basis of the depreciated replacement cost, or the repair cost, which-ever cost is less, of the fishing vessel or fishing gear concerned;

"(B) proportionally reduced to the extent that evidence indicates that negligence by the vessel owner contributed to the cause or extent of the damage, loss, or destruction; and

"(C) reduce by the amount of compensation, if any, which the vessel owner has received or will receive with respect to the damage, loss, or destruction through insurance, pursuant to any other provision of law, or otherwise.".

(A) the depreciated replacement cost, or the repair cost, whichever cost is less, of the fishing vessel or the fishing gear concerned; and

(B) 25 percent of any resulting economic loss.

Any amount determined pursuant to subparagraph (A) or (B) shall be reduced to the extent that evidence indicates that negligence by the vessel owner or operator contributed to the cause or the extent of the damage, loss, or destruction and shall be further reduced by the amount of compensation, if any, that the vessel owner or operator has received or will receive with respect to the damage, loss, destruction, or resulting economic loss through insurance, pursuant to any other provision of law, or otherwise.

(3) The initial determination made by the Secretary under paragraph (1) with respect to any application shall—

(A) if the application is disapproved, set forth the reasons therefore; or

(B) if the application is approved, set forth the amount of compensation to which the applicant is entitled and the basis on which such amount was determined.

(4) Any vessel owner who is aggrieved by any decision of the Secretary contained in the initial determination of the Secretary regarding such owner's application may, within thirty days after the date of issue of the initial determination, petition the Secretary for a review of the decision. If petition of review is not made to the Secretary within such thirty-day period regarding the initial determination, the initial determination shall be deemed to be the final determination on the application. Before undertaking any such review, the secretary shall provide to the vessel owner opportunity to submit additional written or oral evidence relating to the decision. After review the Secretary shall issue a final determination with respect to the application.

(5) If compensation is awarded under the final determination on any application, the Secretary shall promptly pay from the fund to such owner the amount of compensation stated in the final determination. Upon the acceptance of such payment by the vessel owner, the United States shall be subrogated to all rights of the vessel owner with respect to which the payment is made.

(e) In addition to any fee imposed under section 204(b)(10) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10))[54] with respect to any foreign fishing vessel for any year after 1978, the Secretary shall impose a surcharge in an amount not to exceed 20 percent of the amount of the fee imposed under such section for such year. The failure to pay any surcharge imposed under this subsection with respect to any foreign fishing vessel shall be treated by the Secretary as a failure to pay the fee for such vessel under such section 204(b)(10).

(f)(1) There is established in the Treasury of the United States the Fishing Vessel and Gear Damage Compensation Fund. The fund shall be available without fiscal year limitation as a revolving fund for the purposes of administering, and paying compensation awarded under, this section.

(2) The fund shall consist of—

(A) all sums recovered by the United States in the exercise of rights subrogated to it under subsection (d)(5);

(B) all administrative fees collected under subsection (c)(2);

(C) all surcharges collected under subsection (e);

(D) revenues received from deposits or investments made under the last sentence of this paragraph; and

(E) any revenue acquired through the issuance of obligations under paragraph (3).

Sums may be expended from the fund only to such extent and in such amounts as are provided in advance in appropriation Acts. Sums in the fund which are not currently needed for the purpose of paying such awards shall be kept on deposit or invested in obligations of, or guaranteed by the United States.

(3) Whenever the amount in the fund is not sufficient to pay compensation under this section, the Secretary may issue, in an amount not to exceed $5,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notices or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United State of comparable maturities during the month preceding the issuance of such notices or other obligations. Moneys obtained by the Secretary under this paragraph shall be deposited in the fund and redemptions of any such notices or other obligations shall be made from the fund. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The Secretary of the Treasury may sell any such notices or other obligations at such times and prices and upon such terms and conditions as he shall determine. All purchases, redemptions, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation under this section is guilty of a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than $25,000, or by imprisonment for not more than one year, or both.

SEC. 11.[60] (a) In any case on or after June 15, 1994, in which a vessel of the United States exercising its right of passage is charged a fee by the government of a foreign country to engage in transit passage between points in the United States (including a point in the exclusive economic zone or in an area over which jurisdiction is in dispute), and such fee is regarded by the United States as being inconsistent with international law, the Secretary of State shall, subject to the availability of appropriated funds, reimburse the vessel owner for the amount of any such fee paid under protest.

[60] 22 U.S.C. 1980a. Sec. 402(a) of the Fisheries Act of 1995 (Public Law 104–43; 109 Stat. 389) added sec. 11. See also sec. 401 and sec. 402(c) of that Act.

(b) In seeking such reimbursement, the vessel owner shall provide, together with such other information as the Secretary of State may require—

(1) a copy of the receipt for payment;

(2) an affidavit attesting that the owner or the owner's agent paid the fee under protest; and

(3) a copy of the vessel's certificate of documentation.

(c) Requests for reimbursement shall be made to the Secretary of State within 120 days after the date of payment of the fee, or within 90 days after the date of enactment of this section, whichever is later.

(d) Such funds as may be necessary to meet the requirements of this section may be made available from the unobligated balance of previously appropriated funds remaining in the Fishermen's Protective Fund established under section 9. To the extent that requests for reimbursement under this section exceed such funds, there are authorized to be appropriated such sums as may be needed for reimbursements authorized under subsection (a), which shall be deposited in the Fishermen's Protective Fund established under section 9.

(e) The Secretary of State shall take such action as the Secretary deems appropriate to make and collect claims against the foreign country imposing such fee for any amounts reimbursed under this section.

(f) For purposes of this section, the term "owner" includes any charterer of a vessel of the United States.

SEC. 12.[61] (a) If the Secretary of State finds that the government of any nation imposes conditions on the operation or transit of United States fishing vessels which the United States regards as being inconsistent with international law or an international agreement, the Secretary of State shall certify that fact to the President.

(b) Upon receipt of a certification under subsection (a), the President shall direct the heads of Federal agencies to impose similar conditions on the operation or transit of fishing vessels registered under the laws of the nation which has imposed conditions on United States fishing vessels.

(c) For the purposes of this section, the term 'fishing vessel' has the meaning given that term in section 2101(11a) of title 46, United States Code.

(d) It is the sense of the Congress that any action taken by any Federal agency under subsection (b) should be commensurate with any conditions certified by the Secretary of State under subsection (a).

NOTE.—Sec. 240 of Public Law 96–561, effective December 22, 1980 (94 Stat. 3300; 22 U.S.C. 1980 note), also provided the following:

[61] 22 U.S.C. 1980b. Sec. 402(b) of the Fisheries Act of 1995 (Public Law 104–43; 109 Stat. 390) added sec. 12.

"SEC. 240. APPLICATIONS AND FILINGS FOR COMPENSATION FOR CERTAIN FISHING VESSEL AND GEAR DAMAGE.

"(a) IN GENERAL.—If—

"(1) any owner or operator of a fishing vessel who suffered, after September 17, 1978, and before the date of the enactment of this title, damage to, or loss or destruction of, such vessel or fishing gear used with such vessel, but did not apply for compensation therefore under section 10 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980) within the 60-day period prescribed in subsection (c)(1) of such section; or

"(2) any commercial fisherman who suffered, after September 17, 1978, and before the date of the enactment of this title, damages compensable under title IV of the Outer Continental Shelf Lands Act of 1978 (43 U.S.C. 1841 *et seq.*), but who did not timely file a claim therefor within the 60-day period prescribed in section 405(a) of such Act;

such owner or operator may make application for compensation with respect to such damages, loss or destruction under such section 10, and such commercial fisherman may file a claim for, compensation for such damages under such title IV, to the Secretary of Commerce, within the 60-day period beginning on the date of the enactment of this title.

"(b) SPECIAL PROVISIONS.—(1) Notwithstanding any other provision of law—

"(A) any application or filing timely made under subsection (a) shall be treated by the Secretary of Commerce as an application timely made under such section 10(c)(1), or as a filing timely made under such section 405(a), as the case may be, with respect to the damage, loss, or destruction claimed; and

"(B) any claim for fishing gear loss that was pending on June 1, 1980, before the United States-Union of Soviet Socialist Republic Fisheries Claims Board or the American-Spanish Fisheries Board shall be treated by the Secretary of Commerce as a timely application made, on the date of the enactment of this title, under such section 10(c)(1) for compensation for such loss.

"(2)" * * *

L. ENERGY, NATURAL RESOURCES, AND ENVIRONMENT

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1. Energy Policy Act of 2005

Partial text of Public Law 109–58 [H.R. 6], 119 Stat. 594, approved August 8, 2005

AN ACT To ensure jobs for our future with secure, affordable, and reliable energy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Energy Policy Act of 2005".

(b) TABLE OF CONTENTS.—* * *

* * * * * * *

TITLE VI—NUCLEAR MATTERS

* * * * * * *

SUBTITLE B—GENERAL NUCLEAR MATTERS

* * * * * * *

SEC. 632. PROHIBITION ON NUCLEAR EXPORTS TO COUNTRIES THAT SPONSOR TERRORISM.

(a) IN GENERAL.—Section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended—* * *[2]

(b)[3] APPLICABILITY TO EXPORTS APPROVED FOR TRANSFER BUT NOT TRANSFERRED.—Subsection b. of section 129 of Atomic Energy Act of 1954, as added by subsection (a) of this section, shall apply with respect to exports that have been approved for transfer as of the date of the enactment of this Act but have not yet been transferred as of that date.

* * * * * * *

SEC. 635.[4] PROHIBITION ON ASSUMPTION BY UNITED STATES GOVERNMENT OF LIABILITY FOR CERTAIN FOREIGN INCIDENTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the

[1] 42 U.S.C. 15801 note.

[2] For the Atomic Energy Act of 1954 and other legislation relating to nuclear nonproliferation, see *Legislation on Foreign Relations Through 2005*, vol. II–B.

[3] 42 U.S.C. 2158 note.

[4] 42 U.S.C. 16012.

United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear incidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism). This section shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.

(b) DEFINITIONS.—The terms used in this section shall have the same meaning as those terms have under section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), unless otherwise expressly provided in this section.

* * * * * * *

TITLE IX—RESEARCH AND DEVELOPMENT

* * * * * * *

SUBTITLE H—INTERNATIONAL COOPERATION

SEC. 985.[5] WESTERN HEMISPHERE ENERGY COOPERATION.

(a) PROGRAM.—The Secretary shall carry out a program to promote cooperation on energy issues with countries of the Western Hemisphere.

(b) ACTIVITIES.—Under the program, the Secretary shall fund activities to work with countries of the Western Hemisphere to—

(1) increase the production of energy supplies;

(2) improve energy efficiency; and

(3) assist in the development and transfer of energy supply and efficiency technologies that would have a beneficial impact on world energy markets.

(c) PARTICIPATION BY INSTITUTIONS OF HIGHER EDUCATION.—To the extent practicable, the Secretary shall carry out the program under this section with the participation of institutions of higher education so as to take advantage of the acceptance of institutions of higher education by countries of the Western Hemisphere as sources of unbiased technical and policy expertise when assisting the Secretary in—

(1) evaluating new technologies;

(2) resolving technical issues;

(3) working with those countries in the development of new policies; and

[5] 42 U.S.C. 16341.

(4) training policymakers, particularly in the case of institutions of higher education that involve the participation of minority students, such as—

(A) Hispanic-serving institutions; and

(B) part B institutions.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2007;

(2) $13,000,000 for fiscal year 2008; and

(3) $16,000,000 for fiscal year 2009.

SEC. 986. COOPERATION BETWEEN UNITED STATES AND ISRAEL.

(a) FINDINGS.—Congress finds that—

(1) on February 1, 1996, the United States and Israel signed the agreement entitled "Agreement between the Department of Energy of the United States of America and the Ministry of Energy and Infrastructure of Israel Concerning Energy Cooperation" (referred to in this section as the "Agreement"), to establish a framework for collaboration between the United States and Israel in energy research and development activities;

(2) the Agreement entered into force in February 2000;

(3) in February 2005, the Agreement was automatically renewed for 1 additional 5-year period pursuant to Article X of the Agreement; and

(4) under the Agreement, the United States and Israel may cooperate in energy research and development in a variety of alternative and advanced energy sectors.

(b) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate and the Committee on Energy and Commerce and the Committee on International Relations of the House of Representatives a report that describes—

(1) the ways in which the United States and Israel have cooperated on energy research and development activities under the Agreement;

(2) projects initiated pursuant to the Agreement; and

(3) plans for future cooperation and joint projects under the Agreement.

(c) SENSE OF CONGRESS.—It is the sense of Congress that energy cooperation between the Governments of the United States and Israel is mutually beneficial in the development of energy technology.

SEC. 986A.[6] INTERNATIONAL ENERGY TRAINING.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Commerce, the Secretary of the Interior, and Secretary of State, and the Federal Energy Regulatory Commission, shall coordinate training and outreach efforts for international commercial energy markets in countries with developing and restructuring economies.

[6] 42 U.S.C. 16342.

(b) COMPONENTS.—The training and outreach efforts referred to in subsection (a) may include—

(1) production-related fiscal regimes;
(2) grid and network issues;
(3) energy user and demand side response;
(4) international trade of energy; and
(5) international transportation of energy.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,500,000 for each of fiscal years 2007 through 2010.

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TITLE XIV—MISCELLANEOUS

* * * * * * *

SUBTITLE B—SET AMERICA FREE

SEC. 1421. SHORT TITLE.

This subtitle may be cited as the "Set America Free Act of 2005" or the "SAFE Act".

SEC. 1422. PURPOSE.

The purpose of this subtitle is to establish a United States commission to make recommendations for a coordinated and comprehensive North American energy policy that will achieve energy self-sufficiency by 2025 within the three contiguous North American nation area of Canada, Mexico, and the United States.

SEC. 1423. UNITED STATES COMMISSION ON NORTH AMERICAN ENERGY FREEDOM.

(a) ESTABLISHMENT.—There is hereby established the United States Commission on North American Energy Freedom (in this subtitle referred to as the "Commission"). The Federal Advisory Committee Act (5 U.S.C. App.), except sections 3, 7, and 12, does not apply to the Commission.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 16 members appointed by the President from among individuals described in paragraph (2) who are knowledgeable on energy issues, including oil and gas exploration and production, crude oil refining, oil and gas pipelines, electricity production and transmission, coal, unconventional hydrocarbon resources, fuel cells, motor vehicle power systems, nuclear energy, renewable energy, biofuels, energy efficiency, and energy conservation. The membership of the Commission shall be balanced by area of expertise to the extent consistent with maintaining the highest level of expertise on the Commission. Members of the Commission may be citizens of Canada, Mexico, or the United States, and the President shall ensure that citizens of all three nations are appointed to the Commission.

(2) NOMINATIONS.—The President shall appoint the members of the Commission within 60 days after the effective date of this Act, including individuals nominated as follows:

(A) Four members shall be appointed from amongst individuals independently determined by the President to be qualified for appointment.

(B) Four members shall be appointed from a list of eight individuals who shall be nominated by the majority leader of the Senate in consultation with the chairman of the Committee on Energy and Natural Resources of the Senate.

(C) Four members shall be appointed from a list of eight individuals who shall be nominated by the Speaker of the House of Representatives in consultation with the chairmen of the Committees on Energy and Commerce and Resources of the House of Representatives.

(D) Two members shall be appointed from a list of four individuals who shall be nominated by the minority leader of the Senate in consultation with the ranking Member of the Committee on Energy and Natural Resources of the Senate.

(E) Two members shall be appointed from a list of four individuals who shall be nominated by the minority leader of the House in consultation with the ranking Members of the Committees on Energy and Commerce and Resources of the House of Representatives.

(3) CHAIRMAN.—The chairman of the Commission shall be selected by the President. The chairman of the Commission shall be responsible for—

(A) the assignment of duties and responsibilities among staff personnel and their continuing supervision; and

(B) the use and expenditure of funds available to the Commission.

(4) VACANCIES.—Any vacancy on the Commission shall be filled in the same manner as the original incumbent was appointed.

(c) RESOURCES.—In carrying out its functions under this section, the Commission—

(1) is authorized to secure directly from any Federal agency or department any information it deems necessary to carry out its functions under this Act, and each such agency or department is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information (other than information described in section 552(b)(1)(A) of title 5, United States Code) to the Commission, upon the request of the Commission;

(2) may enter into contracts, subject to the availability of appropriations for contracting, and employ such staff experts and consultants as may be necessary to carry out the duties of the Commission, as provided by section 3109 of title 5, United States Code; and

(3) shall establish a multidisciplinary science and technical advisory panel of experts in the field of energy to assist the Commission in preparing its report, including ensuring that the scientific and technical information considered by the Commission is based on the best scientific and technical information available.

(d) STAFFING.—The chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary for the Commission to perform its duties. The executive director shall be compensated at a rate not to exceed the rate payable for Level IV of the Executive Schedule under chapter 5136 of title 5, United States Code. The chairman shall select staff from among qualified citizens of Canada, Mexico, and the United States of America.

(e) MEETINGS.—

(1) ADMINISTRATION.—All meetings of the Commission shall be open to the public, except that a meeting or any portion of it may be closed to the public if it concerns matters or information described in section 552b(c) of title 5, United States Code. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before it.

(2) NOTICE; MINUTES; PUBLIC AVAILABILITY OF DOCUMENTS.—

(A) NOTICE.—All open meetings of the Commission shall be preceded by timely public notice in the Federal Register of the time, place, and subject of the meeting.

(B) MINUTES.—Minutes of each meeting shall be kept and shall contain a record of the people present, a description of the discussion that occurred, and copies of all statements filed. Subject to section 552 of title 5, United States Code, the minutes and records of all meetings and other documents that were made available to or prepared for the Commission shall be available for public inspection and copying at a single location in the offices of the Commission.

(3) INITIAL MEETING.—The Commission shall hold its first meeting within 30 days after all 16 members have been appointed.

(f) REPORT.—Within 12 months after the effective date of this Act, the Commission shall submit to Congress and the President a final report of its findings and recommendations regarding North American energy freedom.

(g) ADMINISTRATIVE PROCEDURE FOR REPORT AND REVIEW.—Chapter 5 and chapter 7 of title 5, United States Code, do not apply to the preparation, review, or submission of the report required by subsection (f).

(h) TERMINATION.—The Commission shall cease to exist 90 days after the date on which it submits its final report.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this chapter a total of $10,000,000 for the 2 fiscal-year period beginning with fiscal year 2005, such sums to remain available until expended.

SEC. 1424. NORTH AMERICAN ENERGY FREEDOM POLICY.

Within 90 days after receiving and considering the report and recommendations of the Commission under section 1423, the President shall submit to Congress a statement of proposals to implement or respond to the Commission's recommendations for a coordinated, comprehensive, and long-range national policy to achieve North American energy freedom by 2025.

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TITLE XVIII—STUDIES

* * * * * * *

SEC. 1807.[7] REPORT ON ENERGY INTEGRATION WITH LATIN AMERICA.

The Secretary shall submit an annual report to the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Energy and Natural Resources of the Senate concerning the status of energy export development in Latin America and efforts by the Secretary and other departments and agencies of the United States to promote energy integration with Latin America. The report shall contain a detailed analysis of the status of energy export development in Mexico and a description of all significant efforts by the Secretary and other departments and agencies to promote a constructive relationship with Mexico regarding the development of that nation's energy capacity. In particular this report shall outline efforts the Secretary and other departments and agencies have made to ensure that regulatory approval and oversight of United States/Mexico border projects that result in the expansion of Mexican energy capacity are effectively coordinated across departments and with the Mexican government.

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SEC. 1837. NATIONAL SECURITY REVIEW OF INTERNATIONAL ENERGY REQUIREMENTS.

(a) STUDY.—The Secretary, in consultation with the Secretary of Defense and Secretary of Homeland Security, shall conduct a study of the growing energy requirements of the People's Republic of China and the implications of such growth on the political, strategic, economic, or national security interests of the United States, including—

(1) an assessment of the type, nationality, and location of energy assets that have been sought for investment by entities located in the People's Republic of China;

(2) an assessment of the extent to which investment in energy assets by entities located in the People's Republic ofChina has been on market-based terms and free from subsidies from the People's Republic of China;

(3) an assessment of the effect of investment in energy assets by entities located in the People's Republic of China on the control by the United States of dual-use and export-controlled technologies, including the effect on current and future access

[7] 42 U.S.C. 16521.

to foreign and domestic sources of rare earth elements used to produce such technologies;

(4) an assessment of the relationship between the Government of the People's Republic of China and energy-related businesses located in the People's Republic of China;

(5) an assessment of the impact on the world energy market of the common practice of entities located in the People's Republic of China of removing the energy assets owned or controlled by such entities from the competitive market, with emphasis on the effect if such practice expands along with the growth in energy consumption of the People's Republic of China;

(6) an examination of the United States energy policy and foreign policy as it relates to ensuring a competitive global energy market;

(7) an examination of the relationship between the United States and the People's Republic of China as it relates topursuing energy interests in a manner that avoids conflicts; and

(8) a comparison of the appropriate laws and regulations of other nations to determine whether a United States company would be permitted to purchase, acquire, merge, or otherwise establish a joint relationship with an entity whose primary place of business is in that other nation, including the laws and regulations of the People's Republic of China.

(b) REPORT AND RECOMMENDATIONS.—Not later than 120 days after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Defense, shall report to the President and the Congress on the findings of the study described in subsection (a) and any recommendations the Secretaries consider appropriate.

2. Energy Policy Act of 1992

Partial text of Public Law 102–486 [H.R. 776], 106 Stat. 2776, approved October 24, 1992; as amended by Public Law 109–58 [Energy Policy Act of 2005; H.R. 6], 119 Stat. 594, approved August 8, 2005

AN ACT To provide for improved energy efficiency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Energy Policy Act of 1992".

(b) TABLE OF CONTENTS.— * * *

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TITLE IX—UNITED STATES ENRICHMENT CORPORATION

* * * * * * *

SEC. 903. RESTRICTIONS ON NUCLEAR EXPORTS.

(a) FURTHER RESTRICTIONS.—

(1) IN GENERAL.—Chapter 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2151 et seq.) is amended by adding at the end the following new section: * * *[2]

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Chairman of the Nuclear Regulatory Commission, after consulting with other relevant agencies, shall submit to the Congress a report detailing the current disposition of previous United States exports of highly enriched uranium, including—

(A) their location;

(B) whether they are irradiated;

(C) whether they have been used for the purpose stated in their export license; and

(D) whether they have been used for an alternative purpose and, if so, whether such alternative purpose has been explicitly approved by the Commission.

(2) EXPORTS TO EURATOM.—To the maximum extent possible, the report required by paragraph (1) shall include—

(A) exports of highly enriched uranium to EURATOM; and

(B) subsequent retransfers of such material within EURATOM, without regard to the extent of United States control over such retransfers.

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[1] 42 U.S.C. 13201 note.

[2] For the Atomic Energy Act of 1954 and other legislation relating to nuclear nonproliferation, see *Legislation on Foreign Relations Through 2005*, vol. II–B.

SEC. 904.[3] SEVERABILITY.

If any provision of this title, or the amendments made by this title, or the application of any provision to any entity, person, or circumstance, is for any reason adjudged by a court of competent jurisdiction to be invalid, the remainder of this title, and the amendments made by this title, or its application shall not be affected.

* * * * * * *

TITLE XII—RENEWABLE ENERGY

SEC. 1201.[4] PURPOSES.

The purposes of this title are to promote—

(1) increases in the production and utilization of energy from renewable energy resources;

(2) further advances of renewable energy technologies; and

(3) exports of United States renewable energy technologies and services.

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SEC. 1203.[5] RENEWABLE ENERGY EXPORT TECHNOLOGY TRAINING.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, through the Agency for International Development, shall establish a program for the training of individuals from developing countries in the operation and maintenance of renewable energy and energy efficiency technologies in accordance with this section. The Secretary and the Administrator of the Agency for International Development shall, within one year after the date of enactment of this Act, enter into a written agreement to carry out this program.

(b) PURPOSE.—The purpose of the program established under this section shall be to train appropriate persons in the system design, operation, and maintenance of renewable energy and energy efficiency equipment manufactured in the United States, including equipment for water pumping, heating and purification, and the production of electric power in remote areas.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $6,000,000 for each of the fiscal years 1994, 1995, and 1996, to carry out this section.

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SEC. 1207.[6] DUTIES OF INTERAGENCY WORKING GROUP ON RENEWABLE ENERGY AND ENERGY EFFICIENCY EXPORTS.— * * *

SEC. 1208.[6] STUDY OF EXPORT PROMOTION PRACTICES.— * * *

SEC. 1209.[7] DATA SYSTEM AND ENERGY TECHNOLOGY EVALUATION.

The Secretary of Commerce, in his or her role as a member of the interagency working group established under section 256 of the Energy Policy and Conservation Act (42 U.S.C. 6276), shall—

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[3] 42 U.S.C. 2297 note.
[4] 42 U.S.C. 13311.
[5] 42 U.S.C. 13312.
[6] Secs. 1207 and 1208 amended sec. 256 of the Energy Policy and Conservation Act (42 U.S.C. 6276).
[7] 42 U.S.C. 13315.

(1) develop a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, that will provide information on the specific energy technology needs of foreign countries, and the technical and economic competitiveness of various renewable energy and energy efficiency products and technologies;

(2) make such information available to industry, Federal and multilateral lending agencies, nongovernmental organizations, host-country and donor-agency officials, and such others as the Secretary of Commerce considers necessary; and

(3) prepare and transmit to the Congress not later than June 1, 1993, and biennially thereafter, a comprehensive report evaluating the full range of energy and environmental technologies necessary to meet the energy needs of foreign countries, including—

(A) information on the specific energy needs of foreign countries;

(B) an inventory of United States technologies and services to meet those needs;

(C) an update on the status of ongoing bilateral and multilateral programs which promote United States exports of renewable energy and energy efficiency products and technologies; and

(D) an evaluation of current programs (and recommendations for future programs) that develop and promote energy efficiency and sustainable use of indigenous renewable energy resources in foreign countries to reduce the generation of greenhouse gases.

SEC. 1210. OUTREACH.

(a) OUTREACH.—The interagency working group established under section 256(d)(1)(A) of the Energy Policy and Conservation Act and the Secretary of Commerce shall select one individual who is experienced in renewable energy and energy efficiency products and technologies to be assigned by the Secretary of Commerce to an office of the United States and Foreign Commercial Service in the Pacific Rim, and one such individual to be assigned by the Secretary of Commerce to an office of the United States and Foreign Commercial Service in the Caribbean Basin, for the sole purpose of providing information concerning domestic renewable energy and energy efficiency products, technologies, and industries to territories, foreign governments, industries, and other appropriate persons.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for the purposes of this section $500,000 for each of the fiscal years 1993 and 1994, and such sums as may be necessary for fiscal year 1995.

SEC. 1211.[8] INNOVATIVE RENEWABLE ENERGY TECHNOLOGY TRANSFER PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, through the Agency for International Development, and in consultation with the other members of the interagency working group established under section 256(d) of Energy Policy and Conservation Act (in this section referred to as the "interagency working group"), shall establish a renewable energy technology transfer program to carry out the purposes described in subsection (b). Within 150 days after the date of the enactment of this Act, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) PURPOSES OF THE PROGRAM.—The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States renewable energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States renewable energy technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from renewable resources;

(4) develop markets for United States renewable energy technologies to be utilized in meeting the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of renewable energy technology projects in foreign countries;

[8] 42 U.S.C. 13316.

(8) assist foreign countries in meeting their energy needs through the use of renewable energy in an environmentally acceptable manner, consistent with sustainable development policies; and

(9) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) IDENTIFICATION.—Pursuant to the agreements required by subsection (a), the Secretary, through the Agency for International Development, and after consultation with the interagency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after the date of the enactment of this Act, and periodically thereafter.

(d) FINANCIAL MECHANISMS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States renewable energy technologies, and services related thereto, in developing countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-United States funding that is available to the project; and

(B) utilized to assist United States firms in the development of innovative financing packages for renewable energy technology projects that utilize other financial assistance programs available through the Federal Government.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) SOLICITATIONS FOR PROJECT PROPOSALS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, within one year after the date of the enactment of this Act, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) which propose to utilize a United States renewable energy technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE–PS01–90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States renewable energy technology, including services related thereto, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) ASSISTANCE TO UNITED STATES FIRMS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) OTHER PROGRAM REQUIREMENTS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the working group, shall—

(1) establish eligibility criteria for host countries;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) SELECTION OF PROJECTS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e), select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes stated in section 1201(b);

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will make greater use of indigenous renewable energy resources.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced. Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(i) UNITED STATES-ASIA ENVIRONMENTAL PARTNERSHIP.—Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) BUY AMERICA.—In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a), shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) REPORTS TO CONGRESS.—The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce renewable energy technologies into foreign countries.

(l) DEFINITIONS.—For purposes of this section—

(1) the term "host country" means a foreign country which is—

(A) the participant in or the site of the proposed renewable energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country.

(2) the term "developing country" includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(m) AUTHORIZATION FOR PROGRAM.—There are authorized to be appropriated to the Secretary to carry out the program required by this section, $100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

SEC. 1212.[9] RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—

(1)[10] For electric energy generated and sold by a qualified renewable energy facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility.

(2)[10] The amount of such payment made to any such owner or operator shall be as determined under subsection (e).

(3)[10] Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment.[11]

(4)[10](A) Subject to subparagraph (B), if there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities for a fiscal year, the Secretary shall assign—

(i) 60 percent of appropriated funds for the fiscal year to facilities that use solar, wind, ocean (including tidal, wave, current, and thermal), geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity; and

(ii) 40 percent of appropriated funds for the fiscal year to other projects.

(B) After submitting to Congress an explanation of the reasons for the alteration, the Secretary may alter the percentage requirements of subparagraph (A).

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—For purposes of this section, a qualified renewable energy facility is a facility which is owned by a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States, or the District of Columbia, or a political subdivision thereof, an Indian tribal government or subdivision thereof, or a Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)),[12] and which generates electric energy

[9] 42 U.S.C. 13317.

[10] Sec. 202(a) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 651) designated each of the first three sentences of subsec. (a) as paras. (1), (2), and (3), struck out the fourth sentence of subsec. (a), and added para. (4). The fourth sentence of subsec. (a) previously read as follows: "Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish."

[11] Sec. 202(a)(3) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 651) struck out "and which satisfies such other requirements as the Secretary deems necessary" which previously appeared at this point.

[12] Sec. 202(b)(1) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 651) struck out "a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision), by any corporation or association which is wholly owned, directly or indirectly, by one or more of the foregoing, or by a nonprofit electrical cooperative"

for sale in, or affecting, interstate commerce using solar, wind, biomass, landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal),[13] or geothermal energy, except that—

(1) the burning of municipal solid waste shall not be treated as using biomass energy; and

(2) geothermal energy shall not include energy produced from a dry steam geothermal reservoir which has—

(A) no mobile liquid in its natural state;

(B) steam quality of 95 percent water; and

(C) an enthalpy for the total produced fluid greater than or equal to 1200 Btu/lb (British thermal units per pound).

(c) ELIGIBILITY WINDOW.—Payments may be made under this section only for electricity generated from a qualified renewable energy facility first used before October 1, 2016.[14]

(d) PAYMENT PERIOD.—A qualified renewable energy facility may receive payments under this section for a 10-fiscal year period. Such period shall begin with the fiscal year in which electricity generated from the facility is first eligible for such payments, or in which the Secretary determines that all necessary Federal and State authorizations have been obtained to begin construction of the facility.[15]

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Incentive payments made by the Secretary under this section to the owner or operator of any qualified renewable energy facility shall be based on the number of kilowatt hours of electricity generated by the facility through the use of solar, wind, biomass, landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal),[16] or geothermal energy during the payment period referred to in subsection (d). For any facility, the amount of such payment shall be 1.5 cents per kilowatt hour, adjusted as provided in paragraph (2).

(2) ADJUSTMENTS.—The amount of the payment made to any person under this subsection as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in the provisions of section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 1993 shall be substituted for calendar year 1979.

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and inserted in lieu thereof "a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States, or the District of Columbia, or a political subdivision thereof, an Indian tribal government or subdivision thereof, or a Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602))".

[13] Sec. 202(b)(2) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 651) inserted "landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal),".

[14] Sec. 202(c) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 651) struck out "during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section" and inserted in lieu thereof "before October 1, 2016".

[15] Sec. 202(d) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 651) inserted ", or in which the Secretary determines that all necessary Federal and State authorizations have been obtained to begin construction of the facility".

[16] Sec. 202(e) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 651) inserted "landfill gas, livestock methane, ocean (including tidal, wave, current, and thermal),".

(f) SUNSET.—No payment may be made under this section to any facility after September 30, 2026,[17] and no payment may be made under this section to any facility after a payment has been made with respect to such facility for a 10-fiscal year period.

(g)[18] AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2026, to remain available until expended.

TITLE XIII—COAL

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SUBTITLE C—OTHER COAL PROVISIONS

SEC. 1331.[19] CLEAN COAL TECHNOLOGY EXPORT PROMOTION AND INTERAGENCY COORDINATION.

(a) ESTABLISHMENT.—There shall be established within the Trade Promotion Coordinating Committee (established by the President on May 23, 1990) a Clean Coal Technology Subgroup (in this subtitle referred to as the "CCT Subgroup") to focus interagency efforts on clean coal technologies. The CCT Subgroup shall seek to expand the export and use of clean coal technologies, particularly in those countries which can benefit from gains in the efficiency of, and the control of environmental emissions from, coal utilization.

(b) MEMBERSHIP.—The CCT Subgroup shall include 1 member from each agency represented on the Energy, Environment, and Infrastructure Working Group of the Trade Promotion Coordinating Committee as of the date of enactment of this Act. The Secretary shall serve as chair of the CCT Subgroup and shall be responsible for ensuring that the functions of the CCT Subgroup are carried out through its member agencies.

(c) CONSULTATION.—(1) In carrying out this section, the CCT Subgroup shall consult with representatives from the United States coal industry, representatives of railroads and other transportation industries, organizations representing workers, the electric utility industry, manufacturers of equipment utilizing clean coal technology, members of organizations formed to further the goals of environmental protection or to promote the development and use of clean coal technologies that are developed, manufactured, or controlled by United States firms, and other appropriate interested members of the public.

(2) The CCT Subgroup shall maintain ongoing liaison with other elements of the Trade Promotion Coordinating Committee relating to clean coal technologies or regions where these technologies could be important, including Eastern Europe, Asia, and the Pacific.

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[17] Sec. 202(f) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 652) struck out "the expiration of the 20-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section" and inserted in lieu thereof "September 30, 2026".

[18] Sec. 202(g) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 652) struck out subsec. (g) and inserted in lieu thereof a new subsec. (g). Subsec. (g) previously read as follows: "(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 1993, 1994, and 1995 such sums as may be necessary to carry out the purposes of this section.".

[19] 42 U.S.C. 13361.

(d) DUTIES.—The Secretary, acting through the CCT Subgroup, shall—

(1) facilitate the establishment of technical training for the consideration, planning, construction, and operation of clean coal technologies by end users and international development personnel;

(2) facilitate the establishment of and, where practicable, cause to be established, consistent with the goals and objectives stated in section 1301(a), within existing departments and agencies—

(A) financial assistance programs (including grants, loan guarantees, and no interest and low interest loans) to support prefeasibility and feasibility studies for projects that will utilize clean coal technologies; and

(B) loan guarantee programs, grants, and no interest and low interest loans designed to facilitate access to capital and credit in order to finance such clean coal technology projects;

(3) develop and ensure the execution of programs, including the establishment of financial incentives, to encourage and support private sector efforts in exports of clean coal technologies that are developed, manufactured, or controlled by United States firms;

(4) encourage the training in, and understanding of, clean coal technologies by representatives of foreign companies or countries intending to use coal or clean coal technologies by providing technical or financial support for training programs, workshops, and other educational programs sponsored by United States firms;

(5) educate loan officers and other officers of international lending institutions, commercial and energy attaches of the United States, and such other personnel as the CCT Subgroup considers appropriate, for the purposes of providing information about clean coal technologies to foreign governments or potential project sponsors of clean coal technology projects;

(6) develop policies and practices to be conducted by commercial and energy attaches of the United States, and such other personnel as the CCT Subgroup considers appropriate, in order to promote the exports of clean coal technologies to those countries interested in or intending to utilize coal resources;

(7) augment budgets for trade and development programs supported by Federal agencies for the purpose of financially supporting prefeasibility or feasibility studies for projects in foreign countries that will utilize clean coal technologies;

(8) review ongoing clean coal technology projects and review and advise Federal agencies on the approval of planned clean coal technology projects which are sponsored abroad by any Federal agency to determine whether such projects are consistent with the overall goals and objectives of this section;

(9) coordinate the activities of the appropriate Federal agencies in order to ensure that Federal clean coal technology export promotion policies are implemented in a timely fashion;

(10) work with CCT Subgroup member agencies to develop an overall strategy for promoting clean coal technology exports,

including setting goals and allocating specific responsibilities among member agencies, consistent with applicable statutes; and

(11) coordinate with multilateral institutions to ensure that United States technologies are properly represented in their projects.

(e) DATA AND INFORMATION.—(1) The CCT Subgroup, consistent with other applicable provisions of law, shall ensure the development of a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, relating to the availability of clean coal technologies and the potential need for such technologies, particularly in developing countries and countries making the transition from nonmarket to market economies.

(2) The Secretary, acting through the CCT Subgroup, shall assess and prioritize foreign markets that have the most potential for the export of clean coal technologies that are developed, manufactured, or controlled by United States firms. Such assessment shall include—

(A) an analysis of the financing requirements for clean coal technology projects in foreign countries and whether such projects are dependent upon financial assistance from foreign countries or multilateral institutions;

(B) the availability of other fuel or energy resources that may be available to meet the energy requirements intended to be met by the clean coal technology projects;

(C) the priority of environmental considerations in the selection of such projects;

(D) the technical competence of those entities likely to be involved in the planning and operation of such projects;

(E) an objective comparison of the environmental, energy, and economic performance of each clean coal technology relative to conventional technologies;

(F) a list of United States vendors of clean coal technologies; and

(G) answers to commonly asked questions about clean coal technologies,[20]

The Secretary, acting through the CCT Subgroup, shall make such information available to the House of Representatives and the Senate, and to the appropriate committees of each House of Congress, industry, Federal and international financing organizations, nongovernmental organizations, potential customers abroad, governments of countries where such clean coal technologies might be used, and such others as the CCT Subgroup considers appropriate.

(f) REPORT.—Within 180 days after the Secretary submits the report to the Congress as required by section 409 of Public Law 101–549, the Secretary, acting through the CCT Subgroup, shall provide to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a plan which details actions to be taken in order to address those recommendations and findings made in the report submitted pursuant

[20] As enrolled. Should probably be a period.

to section 409 of Public Law 101–549. As a part of the plan required by this subsection, the Secretary, acting through the CCT Subgroup, shall specifically address the adequacy of financial assistance available from Federal departments and agencies and international financing organizations to aid in the financing of prefeasibility and feasibility studies and projects that would use a clean coal technology in developing countries and countries making the transition from nonmarket to market economies.

SEC. 1332.[21] INNOVATIVE CLEAN COAL TECHNOLOGY TRANSFER PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, through the Agency for International Development, and in consultation with the other members of the CCT Subgroup, shall establish a clean coal technology transfer program to carry out the purposes described in subsection (b). Within 150 days after the date of enactment of this Act, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate United States agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) PURPOSES OF THE PROGRAM.—The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from coal resources;

(4) develop markets for United States technologies and, where appropriate, United States coal resources to be utilized in meeting the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;

[21] 42 U.S.C. 13362.

(6) provide for the accelerated deployment of United States technologies that will serve to introduce into foreign countries United States technologies intended to use coal resources in a more efficient, cost-effective, and environmentally acceptable manner;

(7) serve to ensure the introduction of United States firms and expertise in foreign countries;

(8) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of clean coal technology projects in foreign countries;

(9) assist foreign countries in meeting their energy needs through the use of coal in an environmentally acceptable manner, consistent with sustainable development policies; and

(10) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) IDENTIFICATION.—Pursuant to the agreements required by subsection (a), the Secretary, through the Agency for International Development, and after consultation with the CCT Subgroup, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after the date of enactment of this Act, and periodically thereafter.

(d) FINANCIAL MECHANISMS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States clean coal technologies, and services related thereto, in developing countries and countries making the transition from nonmarket to market economies;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects, including—

(i) financing the incremental costs of a clean coal technology project attributable only to expenditures to prevent or abate emissions;

(ii) providing the difference between the costs of a conventional energy project in the host country and a comparable project that would utilize a clean coal technology capable of achieving greater efficiency of energy products and improved environmental emissions compared to such conventional project; and

(iii) such other forms of financial assistance as the Secretary, through the Agency for International Development, considers appropriate.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-United States funding that is available to the project; and

(B) utilized to assist United States firms to develop innovative financing packages for clean coal technology projects that seek to utilize other financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) SOLICITATIONS FOR PROJECT PROPOSALS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, within one year after the date of enactment of this Act, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) which propose to utilize a United States technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE–PS01–90FE62271 Clean Coal Technology IV as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States clean coal technology, including services related thereto, and, where appropriate, United States coal resources, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) ASSISTANCE TO UNITED STATES FIRMS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) OTHER PROGRAM REQUIREMENTS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) SELECTION OF PROJECTS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e), select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the goals and objectives stated in section 1301(a);[22]

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will increase the overall efficiency of the utilization of coal, including energy conversion efficiency and, where applicable, production of products derived from coal.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

[22] See 42 U.S.C. 13331.

(i) UNITED STATES-ASIA ENVIRONMENTAL PARTNERSHIP.—Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) BUY AMERICA.—In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a), shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) REPORTS TO CONGRESS.—The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce clean coal technologies into foreign countries.

(l) DEFINITION.—For purposes of this section, the term "host country" means a foreign country which is—

(1) the participant in or the site of the proposed clean coal technology project; and

(2) either—

(A) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(B) a developing country or country with an economy in transition from a nonmarket to a market economy.

(m) AUTHORIZATION FOR PROGRAM.—There are authorized to be appropriated to the Secretary to carry out the program required by this section, $100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

SEC. 1333.[23] CONVENTIONAL COAL TECHNOLOGY TRANSFER.

If the Secretary determines that the utilization of a clean coal technology is not practicable for a proposed project and that a United States conventional coal technology would constitute a substantial improvement in efficiency, costs, and environmental performance relative to the technology being used in a developing country or country making the transition from nonmarket to market economies, with significant indigenous coal resources, such technology shall, for purposes of sections 1321 and 1322, be considered a clean coal technology. In the case of combustion technologies, only the retrofit, repowering, or replacement of a conventional technology shall constitute a substantial improvement for purposes of this section. In carrying out this section, the Secretary

[23] 42 U.S.C. 13363.

shall give highest priority to promoting the most environmentally sound and energy efficient technologies.

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SEC. 1338.[24] COAL EXPORTS.

(a) PLAN.—Within 180 days after the date of enactment of this Act, the Secretary of Commerce, in cooperation with the Secretary and other appropriate Federal agencies, shall submit to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a plan for expanding exports of coal mined in the United States.

(b) PLAN CONTENTS.—The plan submitted under subsection (a) shall include—

(1) a description of the location, size, and projected growth in potential export markets for coal mined in the United States;

(2) the identification by country of the foreign trade barriers to the export of coal mined in the United States, including foreign coal production and utilization subsidies, tax treatment, labor practices, tariffs, quotas, and other nontariff barriers;

(3) recommendations and a plan for addressing any such trade barriers;

(4) an evaluation of existing infrastructure in the United States and any new infrastructure requirements in the United States to support an expansion of exports of coal mined in the United States, including ports, vessels, rail lines, and any other supporting infrastructure; and

(5) an assessment of environmental implications of coal exports and the identification of export opportunities for blending coal mined in the United States with coal indigenous to other countries to enhance energy efficiency and environmental performance.

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SEC. 1341.[25] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for carrying out this subtitle, other than section 1322,[26] such sums as may be necessary for fiscal years 1993 through 1998.

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TITLE XVI—GLOBAL CLIMATE CHANGE

SEC. 1601.[27] REPORT.

Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report to the Congress that includes an assessment of—

(1) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of stabilizing the generation of greenhouse gases in the United States by the year 2005;

[24] 42 U.S.C. 13367.
[25] 42 U.S.C. 13370.
[26] As enrolled. Should read "section 1332,".
[27] 42 U.S.C. 13381.

(2) the recommendations made in chapter 9 of the 1991 National Academy of Sciences report entitled "Policy Implications of Greenhouse Warming", including an analysis of the benefits and costs of each recommendation;

(3) the extent to which the United States is responding, compared with other countries, to the recommendations made in chapter 9 of the 1991 National Academy of Sciences report;

(4) the feasibility of reducing the generation of greenhouse gases;

(5) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of achieving a 20 percent reduction from 1988 levels in the generation of carbon dioxide by the year 2005 as recommended by the 1988 Toronto Scientific World Conference on the Changing Atmosphere;

(6) the potential economic, energy, social, environmental, and competitive implications, including implications for jobs, of implementing the policies necessary to enable the United States to comply with any obligations under the United Nations Framework Convention on Climate Change or subsequent international agreements.

SEC. 1602.[28] LEAST-COST ENERGY STRATEGY.

(a) STRATEGY.—The first National Energy Policy Plan (in this title referred to as the "Plan") under section 801 of the Department of Energy Organization Act (42 U.S.C. 7321) prepared and required to be submitted by the President to Congress after February 1, 1993, and each subsequent such Plan, shall include a least-cost energy strategy prepared by the Secretary. In developing the least-cost energy strategy, the Secretary shall take into consideration the economic, energy, social, environmental, and competitive costs and benefits, including costs and benefits for jobs, of his choices. Such strategy shall also take into account the report required under section 1601 and relevant Federal, State, and local requirements. Such strategy shall be designed to achieve to the maximum extent practicable and at least-cost to the Nation—

(1) the energy production, utilization, and energy conservation priorities of subsection (d);

(2) the stabilization and eventual reduction in the generation of greenhouse gases;

(3) an increase in the efficiency of the Nation's total energy use by 30 percent over 1988 levels by the year 2010;

(4) an increase in the percentage of energy derived from renewable resources by 75 percent over 1988 levels by the year 2005; and

(5) a reduction in the Nation's oil consumption from the 1990 level of approximately 40 percent of total energy use to 35 percent by the year 2005.

(b) ADDITIONAL CONTENTS.—The least-cost energy strategy shall also include—

[28] 42 U.S.C. 13382.

(1) a comprehensive inventory of available energy and energy efficiency resources and their projected costs, taking into account all costs of production, transportation, distribution, and utilization of such resources, including—

(A) coal, clean coal technologies, coal seam methane, and underground coal gasification;

(B) energy efficiency, including existing technologies for increased efficiency in production, transportation, distribution, and utilization of energy, and other technologies that are anticipated to be available through further research and development; and

(C) other energy resources, such as renewable energy, solar energy, nuclear fission, fusion, geothermal, biomass, fuel cells, hydropower, and natural gas;

(2) a proposed two-year program for ensuring adequate supplies of the energy and energy efficiency resources and technologies described in paragraph (1), and an identification of administrative actions that can be undertaken within existing Federal authority to ensure their adequate supply;

(3) estimates of life-cycle costs for existing energy production facilities;

(4) basecase forecasts of short-term and long-term national energy needs under low and high case assumptions of economic growth; and

(5) an identification of all applicable Federal authorities needed to achieve the purposes of this section, and of any inadequacies in those authorities.

(c) SECRETARIAL CONSIDERATION.—In developing the least-cost energy strategy, the Secretary shall give full consideration to—

(1) the relative costs of each energy and energy efficiency resource based upon a comparison of all direct and quantifiable net costs for the resource over its available life, including the cost of production, transportation, distribution, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply; and

(2) the economic, energy, social, environmental, and competitive consequences resulting from the establishment of any particular order of Federal priority as determined under subsection (d).

(d) PRIORITIES.—The least-cost energy strategy shall identify Federal priorities, including policies that—

(1) implement standards for more efficient use of fossil fuels;

(2) increase the energy efficiency of existing technologies;

(3) encourage technologies, including clean coal technologies, that generate lower levels of greenhouse gases;

(4) promote the use of renewable energy resources, including solar, geothermal, sustainable biomass, hydropower, and wind power;

(5) affect the development and consumption of energy and energy efficiency resources and electricity through tax policy;

(6) encourage investment in energy efficient equipment and technologies; and

(7) encourage the development of energy technologies, such as advanced nuclear fission and nuclear fusion, that produce energy without greenhouse gases as a byproduct, and encourage the deployment of nuclear electric generating capacity.

(e) ASSUMPTIONS.—The Secretary shall include in the least-cost energy strategy an identification of all of the assumptions used in developing the strategy and priorities thereunder, and the reasons for such assumptions.

(f) PREFERENCE.—When comparing an energy efficiency resource to an energy resource, a higher priority shall be assigned to the energy efficiency resource whenever all direct and quantifiable net costs for the resource over its available life are equal to the estimated cost of the energy resource.

(g) PUBLIC REVIEW AND COMMENT.—The Secretary shall provide for a period of public review and comment of the least-cost energy strategy, for a period of at least 30 days, to be completed at least 60 days before the issuance of such strategy. The Secretary shall also provide for public review and comment before the issuance of any update to the least-cost energy strategy required under this section.

SEC. 1603.[29] DIRECTOR OF CLIMATE PROTECTION.

Within 6 months after the date of the enactment of this Act, the Secretary shall establish, within the Department of Energy, a Director of Climate Protection (in this section referred to as the "Director"). The Director shall—

(1) in the absence of the Secretary, serve as the Secretary's representative for interagency and multilateral policy discussions of global climate change, including the activities of the Committee on Earth and Environmental Sciences as established by the Global Change Research Act of 1990 (Public Law 101–606) and the Policy Coordinating Committee Working Group on Climate Change;

(2) monitor, in cooperation with other Federal agencies, domestic and international policies for their effects on the generation of greenhouse gases; and

(3) have the authority to participate in the planning activities of relevant Department of Energy programs.

SEC. 1604.[30] ASSESSMENT OF ALTERNATIVE POLICY MECHANISMS FOR ADDRESSING GREENHOUSE GAS EMISSIONS.

Not later than 18 months after the date of the enactment of this Act, the Secretary shall transmit a report to Congress containing a comparative assessment of alternative policy mechanisms for reducing the generation of greenhouse gases. Such assessment shall include a short-run and long-run analysis of the social, economic, energy, environmental, competitive, and agricultural costs and benefits, including costs and benefits for jobs and competition, and the practicality of each of the following policy mechanisms:

(1) Various systems for controlling the generation of greenhouse gases, including caps for the generation of greenhouse gases from major sources and emissions trading programs.

[29] 42 U.S.C. 13383.
[30] 42 U.S.C. 13384.

(2) Federal standards for energy efficiency for major sources of greenhouse gases, including efficiency standards for power plants, industrial processes, automobile fuel economy, appliances, and buildings, and for emissions of methane.

(3) Various Federal and voluntary incentives programs.

SEC. 1605.[31] NATIONAL INVENTORY AND VOLUNTARY REPORTING OF GREENHOUSE GASES.

(a) NATIONAL INVENTORY.—Not later than one year after the date of the enactment of this Act, the Secretary, through the Energy Information Administration, shall develop, based on data available to, and obtained by, the Energy Information Administration, an inventory of the national aggregate emissions of each greenhouse gas for each calendar year of the baseline period of 1987 through 1990. The Administrator of the Energy Information Administration shall annually update and analyze such inventory using available data. This subsection does not provide any new data collection authority.

(b) VOLUNTARY REPORTING.—

(1) ISSUANCE OF GUIDELINES.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall, after opportunity for public comment, issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases. Such guidelines shall establish procedures for the accurate voluntary reporting of information on—

(A) greenhouse gas emissions—

(i) for the baseline period of 1987 through 1990; and

(ii) for subsequent calendar years on an annual basis;

(B) annual reductions of greenhouse gas emissions and carbon fixation achieved through any measures, including fuel switching, forest management practices, tree planting, use of renewable energy, manufacture or use of vehicles with reduced greenhouse gas emissions, appliance efficiency, energy efficiency, methane recovery, cogeneration, chlorofluorocarbon capture and replacement, and power plant heat rate improvement;

(C) reductions in greenhouse gas emissions achieved as a result of—

(i) voluntary reductions;

(ii) plant or facility closings; and

(iii) State or Federal requirements; and

(D) an aggregate calculation of greenhouse gas emissions by each reporting entity.

Such guidelines shall also establish procedures for taking into account the differential radiative activity and atmospheric lifetimes of each greenhouse gas.

(2) REPORTING PROCEDURES.—The Administrator of the Energy Information Administration shall develop forms for voluntary reporting under the guidelines established under paragraph (1), and shall make such forms available to entities wishing to report such information. Persons reporting under this subsection shall certify the accuracy of the information reported.

[31] 42 U.S.C. 13385.

(3) CONFIDENTIALITY.—Trade secret and commercial or financial information that is privileged or confidential shall be protected as provided in section 552(b)(4) of title 5, United States Code.

(4) ESTABLISHMENT OF DATA BASE.—Not later than 18 months after the date of the enactment of this Act, the Secretary, through the Administrator of the Energy Information Administration, shall establish a data base comprised of information voluntarily reported under this subsection. Such information may be used by the reporting entity to demonstrate achieved reductions of greenhouse gases.

(c) CONSULTATION.—In carrying out this section, the Secretary shall consult, as appropriate, with the Administrator of the Environmental Protection Agency.

SEC. 1606. REPEAL.

Title III of the Energy Security Act (42 U.S.C. 7361 et seq.) is hereby repealed.

SEC. 1607.[32] CONFORMING AMENDMENT.

The Secretary, through the Trade Promotion Coordinating Council, shall develop policies and programs to encourage the export and promotion of domestic energy resource technologies, including renewable energy, energy efficiency, and clean coal technologies, to developing countries.

SEC. 1608.[33] INNOVATIVE ENVIRONMENTAL TECHNOLOGY TRANSFER PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, through the Agency for International Development, and in consultation with the interagency working group established under section 256(d) of the Energy Policy and Conservation Act (in this section referred to as the "interagency working group", shall establish a technology transfer program to carry out the purposes described in subsection (b). Within 150 days after the date of the enactment of this Act, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) PURPOSES OF THE PROGRAM.—The purposes of the technology transfer program under this section are to—

[32] 42 U.S.C. 13386.
[33] 42 U.S.C. 13387.

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from technologies that substantially reduce environmental pollutants, including greenhouse gases;

(4) develop markets for United States technologies, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, that meet the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of technologies or services that substantially reduce environmental pollutants, including greenhouse gases; and

(8) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) IDENTIFICATION.—Pursuant to the agreements required by subsection (a), the Secretary, through the Agency for International Development, and after consultation with the interagency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries that substantially reduce environmental pollutants, including greenhouse gases, and shall identify a list of such projects within 240 days after the date of the enactment of this Act, and periodically thereafter.

(d) FINANCIAL MECHANISMS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases in foreign countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-Federal funding that may be available for the project; and

(B) utilized in conjunction with financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) SOLICITATIONS FOR PROJECT PROPOSALS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, within one year after the date of the enactment of this Act, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) which propose to utilize a United States technology or service. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE–PS01–90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States technology, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) ASSISTANCE TO UNITED STATES FIRMS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) OTHER PROGRAM REQUIREMENTS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) ELIGIBLE TECHNOLOGIES.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall prepare a list of eligible technologies and services under this section. In preparing such a list, the Secretary shall consider fuel cell powerplants, aeroderivitive gas turbines and catalytic combustion technologies for aeroderivitive gas turbines, ocean thermal energy conversion technology, anaerobic digester and storage tanks, and other renewable energy and energy efficiency technologies.

(i) SELECTION OF PROJECTS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e), select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes of this section;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology or service for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet the following criteria:

(A) It will reduce environmental emissions, including greenhouse gases, to an extent greater than required by applicable provisions of law.

(B) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

(C) It will increase the overall efficiency of energy use.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet these criteria.

(j) UNITED STATES-ASIA ENVIRONMENTAL PARTNERSHIP.—Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(k) BUY AMERICA.—In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a), shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(l) REPORT TO CONGRESS.—The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce innovative energy technologies, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, into foreign countries.

(m) DEFINITIONS.—For purposes of this section—

(1) the term "host country" means a foreign country which is—

(A) the participant in or the site of the proposed innovative energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country; and

(2) the term "developing country" includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(n) AUTHORIZATION FOR PROGRAM.—There are authorized to be appropriated to the Secretary to carry out the program required by this section, $100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

SEC. 1609.[34] GLOBAL CLIMATE CHANGE RESPONSE FUND.

(a) ESTABLISHMENT OF THE FUND.—The Secretary of the Treasury, in consultation with the Secretary of State, shall establish a Global Climate Change Response Fund to act as a mechanism for United States contributions to assist global efforts in mitigating and adapting to global climate change.

(b) RESTRICTIONS ON DEPOSITS.—No deposits shall be made to the Global Climate Change Response Fund until the United States has ratified the United Nations Framework Convention on Climate Change.

[34] 42 U.S.C. 13388.

(c) USE OF THE FUND.—Moneys deposited into the Fund shall be used by the President, to the extent authorized and appropriated under section 302 of the Foreign Assistance Act of 1961, solely for contributions to a financial mechanism negotiated pursuant to the United Nations Framework Convention on Climate Change, including all protocols or agreements related thereto.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for deposit in the Fund to carry out the purposes of this section, $50,000,000 for fiscal year 1994 and such sums as may be necessary for fiscal years 1995 and 1996.

SEC. 1610.[35] GREENHOUSE GAS INTENSITY REDUCING STRATEGIES.

(a) DEFINITIONS.—In this section:

(1) ADVISORY COMMITTEE.—The term "Advisory Committee" means the Climate Change Technology Advisory Committee established under subsection (f)(1).

(2) CARBON SEQUESTRATION.—The term "carbon sequestration" means the capture of carbon dioxide through terrestrial, geological, biological, or other means, which prevents the release of carbon dioxide into the atmosphere.

(3) COMMITTEE.—The term "Committee" means the Committee on Climate Change Technology established under subsection (b)(1).

(4) DEVELOPING COUNTRY.—The term "developing country" has the meaning given the term in section 1608(m).

(5) GREENHOUSE GAS.—The term "greenhouse gas" means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons; and

(F) sulfur hexafluoride.

(6) GREENHOUSE GAS INTENSITY.—The term "greenhouse gas intensity" means the ratio of greenhouse gas emissions to economic output.

(7) NATIONAL LABORATORY.—The term "National Laboratory" has the meaning given the term in section 3(3) of the Energy Policy Act of 2005.

(b) COMMITTEE ON CLIMATE CHANGE TECHNOLOGY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the President shall establish a Committee on Climate Change Technology to—

(A) integrate current Federal climate reports; and

(B) coordinate Federal climate change technology activities and programs carried out in furtherance of the strategy developed under subsection (c)(1).

(2) MEMBERSHIP.—The Committee shall be composed of at least 7 members, including—

(A) the Secretary, who shall chair the Committee;

(B) the Secretary of Commerce;

(C) the Chairman of the Council on Environmental Quality;

[35] 42 U.S.C. 13389. Sec. 1601 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1109) added sec. 1610.

(D) the Secretary of Agriculture;

(E) the Administrator of the Environmental Protection Agency;

(F) the Secretary of Transportation;

(G) the Director of the Office of Science and Technology Policy; and

(H) other representatives as may be determined by the President.

(3) STAFF.—The members of the Committee shall provide such personnel as are necessary to enable the Committee to perform its duties.

(c) NATIONAL CLIMATE CHANGE TECHNOLOGY POLICY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Committee shall, based on applicable Federal climate reports, submit to the Secretary and the President a national strategy to promote the deployment and commercialization of greenhouse gas intensity reducing technologies and practices developed through research and development programs conducted by the National Laboratories, other Federal research facilities, institutions of higher education, and the private sector.

(2) UPDATES.—The Committee shall—

(A) at the time of submission of the strategy to the President under paragraph (1), also make the strategy available to the public; and

(B) update the strategy every 5 years, or more frequently as the Committee determines to be necessary.

(d) CLIMATE CHANGE TECHNOLOGY PROGRAM.—Not later than 180 days after the date on which the Committee is established under subsection (b)(1), the Secretary, in consultation with the Committee, shall establish within the Department of Energy the Climate Change Technology Program to—

(1) assist the Committee in the interagency coordination of climate change technology research, development, demonstration, and deployment to reduce greenhouse gas intensity; and

(2) carry out the programs authorized under this section.

(e) TECHNOLOGY INVENTORY.—

(1) IN GENERAL.—The Secretary shall conduct and make public an inventory and evaluation of greenhouse gas intensity reducing technologies that have been developed, or are under development, by the National Laboratories, other Federal research facilities, institutions of higher education, and the private sector to determine which technologies are suitable for commercialization and deployment.

(2) REPORT.—Not later than 180 days after the completion of the inventory under paragraph (1), the Secretary shall submit to Congress a report that includes the results of the completed inventory and any recommendations of the Secretary.

(3) USE.—The Secretary shall use the results of the inventory as guidance in the commercialization and deployment of greenhouse gas intensity reducing technologies.

(4) UPDATED INVENTORY.—The Secretary shall—

(A) periodically update the inventory under paragraph (1), including when determined necessary by the Committee; and

(B) make the updated inventory available to the public.

(f) CLIMATE CHANGE TECHNOLOGY ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Secretary, in consultation with the Committee, may establish under section 624 of the Department of Energy Organization Act (42 U.S.C. 7234) a Climate Change Technology Advisory Committee to identify statutory, regulatory, economic, and other barriers to the commercialization and deployment of greenhouse gas intensity reducing technologies and practices in the United States.

(2) COMPOSITION.—The Advisory Committee shall be composed of the following members, to be appointed by the Secretary, in consultation with the Committee:

(A) 1 representative shall be appointed from each National Laboratory.

(B) 3 members shall be representatives of energy-producing trade organizations.

(C) 3 members shall represent energy-intensive trade organizations.

(D) 3 members shall represent groups that represent end-use energy and other consumers.

(E) 3 members shall be employees of the Federal Government who are experts in energy technology, intellectual property, and tax.

(F) 3 members shall be representatives of institutions of higher education with expertise in energy technology development that are recommended by the National Academy of Engineering.

(3) REPORT.—Not later than 1 year after the date of enactment of this section and annually thereafter, the Advisory Committee shall submit to the Committee a report that describes—

(A) the findings of the Advisory Committee; and

(B) any recommendations of the Advisory Committee for the removal or reduction of barriers to commercialization, deployment, and increasing the use of greenhouse gas intensity reducing technologies and practices.

(g) GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGY DEPLOYMENT.—

(1) IN GENERAL.—Based on the strategy developed under subsection (c)(1), the technology inventory conducted under subsection (e)(1), the greenhouse gas intensity reducing technology study report submitted under subsection (e)(2), and reports under subsection (f)(3), if any, the Committee shall develop recommendations that would provide for the removal of domestic barriers to the commercialization and deployment of greenhouse gas intensity reducing technologies and practices.

(2) REQUIREMENTS.—In developing the recommendations under paragraph (1), the Committee shall consider in the aggregate—

(A) the cost-effectiveness of the technology;

(B) fiscal and regulatory barriers;

(C) statutory and other barriers; and

(D) intellectual property issues.

(3) DEMONSTRATION PROJECTS.—In developing recommendations under paragraph (1), the Committee may identify the need for climate change technology demonstration projects.

(4) REPORT.—Not later than 18 months after the date of enactment of this section, the Committee shall submit to the President and Congress a report that—

(A) identifies, based on the report submitted under subsection (f)(3), any barriers to, and commercial risks associated with, the deployment of greenhouse gas intensity reducing technologies; and

(B) includes a plan for carrying out demonstration projects.

(5) UPDATES.—The Committee shall—

(A) at the time of submission of the report to Congress under paragraph (4), also make the report available to the public; and

(B) update the report every 5 years, or more frequently as the Committee determines to be necessary.

(h) PROCEDURES FOR CALCULATING, MONITORING, AND ANALYZING GREENHOUSE GAS INTENSITY.—The Secretary, in collaboration with the Committee and the National Institute of Standards and Technology, and after public notice and opportunity for comment, shall develop standards and best practices for calculating, monitoring, and analyzing greenhouse gas intensity.

(i) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, support demonstration projects that—

(A) increase the reduction of the greenhouse gas intensity to levels below that which would be achieved by technologies being used in the United States as of the date of enactment of this section;

(B) maximize the potential return on Federal investment;

(C) demonstrate distinct roles in public-private partnerships;

(D) produce a large-scale reduction of greenhouse gas intensity if commercialization occurred; and

(E) support a diversified portfolio to mitigate the uncertainty associated with a single technology.

(2) COST SHARING.—In supporting a demonstration project under this subsection, the Secretary shall require cost-sharing in accordance with section 988 of the Energy Policy Act of 2005.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(j) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.—In carrying out greenhouse gas intensity reduction research and technology deployment activities under this subtitle, the Secretary may enter into cooperative research and development agreements under

section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

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TITLE XXX—MISCELLANEOUS

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SUBTITLE B—OTHER MISCELLANEOUS PROVISIONS

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SEC. 3019. STRATEGIC DIVERSIFICATION.

The Office of Barter within the United States Department of Commerce and the Interagency Group on Countertrade shall within six months from the date of enactment report to the President and the Congress on the feasibility of using barter, countertrade and other self-liquidating finance methods to facilitate the strategic diversification of United States oil imports through cooperation with the former Soviet Union in the development of its energy resources. The report shall consider among other relevant topics the feasibility of trading American grown food for Soviet produced oil, minerals or energy.

SEC. 3020.[36] CONSULTATIVE COMMISSION ON WESTERN HEMISPHERE ENERGY AND ENVIRONMENT.

(a) FINDINGS.—The Congress finds that—

(1) there is growing mutual economic interdependence among the countries of the Western Hemisphere;

(2) energy and environmental issues are intrinsically linked and must be considered together when formulating policy on the broader issue of sustainable economic development for the Western Hemisphere as a whole;

(3) when developing their respective energy infrastructures, countries in the Western Hemisphere must consider existing and emerging environmental constraints, and do so in a way that results in sustainable long-term economic growth;

(4) the coordination of respective national energy and environmental policies of the governments of the Western Hemisphere could be substantially improved through regular consultation among these countries;

(5) the development, production and consumption of energy can affect environmental quality, and the environmental consequences of energy-related activities are not confined within national boundaries, but are regional and global in scope;

(6) although the Western Hemisphere is richly endowed with indigenous energy resources, an insufficient energy supply would severely constrain future opportunities for sustainable economic development and growth in each of these member countries; and

(7) the energy markets of the United States are linked with those in other countries of the Western Hemisphere and the world.

[36] 42 U.S.C. 13555.

(b) DEFINITION.—For purposes of this section, the term "Commission" means the Consultative Commission on Western Hemisphere Energy and Environment.

(c) NEGOTIATIONS.—The President is authorized to direct the United States representative to the Organization of American States to initiate negotiations with the Organization of American States for the establishment of a Consultative Commission on Western Hemisphere Energy and Environment under the auspices of the Organization of American States.

(d) THE COMMISSION.—In the course of the negotiations, the following shall be pursued:

(1) OBJECTIVES.—The objectives of the Commission shall be—

(A) to evaluate from the viewpoint of the Western Hemisphere as a whole the energy and environmental situations, trends, and policies of the countries of the participating governments necessary to support sustainable economic development;

(B) to recommend to the participating governments actions, policies, and institutional arrangements that will enhance cooperation and policy coordination among their respective countries in the future development and use of indigenous energy resources and technologies, and in the future development and implementation of measures to protect the environment of the Western Hemisphere; and

(C) to recommend to the participating governments actions and policies that will enhance energy and environmental cooperation and coordination among the countries of the Western Hemisphere and the world.

(2) COMPOSITION OF THE COMMISSION.—The Commission shall include representatives of—

(A) the respective foreign energy and environmental ministries or departments of the participating governments;

(B) the parliamentary or legislative bodies with legislative responsibilities for energy and environmental matters; and

(C) other governmental and non-governmental observers appointed by the heads of each participating government on the basis of their experience and expertise.

(3) SECRETARIAT.—A small secretariat shall be chosen by the participating governments for their expertise in the areas of energy and the environment.

(4) SUNSET PROVISION.—The Commission's authority—

(A) shall terminate five years from the date of the agreement under which it was created; and

(B) may be extended for a five-year term at the expiration of the previous term by agreement of the participating governments.

(e) REPORT.—The President shall, within one year after the date of enactment of this Act, report to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of

Representatives,[37] and to the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate, on the progress toward the establishment of the Commission and achievement of the purposes of this section.

* * * * * * *

[37] Sec. 1(a)(4) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Energy and Commerce of the House of Representatives shall be treated as referring to the Committee on Commerce of the House of Representatives. Sec. 1(c)(1) of that Act (110 Stat. 187) further provided that any reference in any provision of law enacted before January 4, 1995 to the House Committee on Energy and Commerce shall be treated as referring to (1) the Committee on Agriculture in the case of a provision relating to inspection of seafood or seafood products; (2) the Committee on Banking and Financial Services in the case of a provision relating to bank capital markets activities or depository institution securities; or (3) the Committee on Transportation and Infrastructure in the case of a provision relating to railroads and railway labor issues.

Sec. 1(a)(5) of that Act, furthermore, provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

3. Energy Emergency Preparedness Act of 1982

Partial text of Public Law 97–229 [S. 2332], 96 Stat. 248, approved August 3, 1982

AN ACT To amend the Energy Policy and Conservation Act to extend certain authorities relating to the International Energy Program, to provide for the Nation's energy emergency preparedness, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short Title.

This action may be cited as the "Energy Emergency Preparedness Act of 1982".

NOTE.—Secs. 2 through 5 of this Act consist, for the most part, of amendments to the Energy Policy and Conservation Act. Portions of these amendments have been incorporated into that Act at the appropriate places.

* * * * * * *

SEC. 6.[1] Reports to Congress on Petroleum Supply Interruptions.

(a) IMPACT ANALYSIS.—(1) Secretary of Energy shall analyze the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during any substantial reduction in the amount of petroleum products available to the United States. In making such analysis, the Secretary of Energy may consult with the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, and the heads of other appropriate Federal agencies. Such analysis shall—

(A) examine the equity and efficiency of such reliance,

(B) distinguish between the impacts of such reliance on various categories of business (including small business and agriculture) and on households of different income levels,

(C) specify the nature and administration of monetary and fiscal policies that would be followed including emergency tax cuts, emergency block grants, and emergency supplements to income maintenance programs, and

(D) describe the likely impact on the distribution of petroleum products of State and local laws and regulations (including emergency authorities) affecting the distribution of petroleum products.

[1] 42 U.S.C. 6245 note.

Such analysis shall include projections of the effect of the petroleum supply reduction on the price of motor gasoline, home heating, oil, and diesel fuel, and on Federal tax revenues, Federal royalty receipts, and State and local tax revenues.

(2) Within one year after the date of the enactment of this Act, the Secretary of Energy shall submit a report to the Congress and the President containing the analysis required by this subsection, including a detailed step-by-step description of the procedures by which the policies specified in paragraph (1)(C) would be accomplished in an emergency, along with such recommendations as the Secretary of Energy deems appropriate.

(b) STRATEGIC PETROLEUM RESERVE DRAWDOWN AND DISTRIBUTION REPORT.—The President shall prepare and transmit to the Congress, at the time he transmits the drawdown plan pursuant to section 4(c), a report[2] containing—

(1) a description of the foreseeable situations (including selective and general embargoes, sabotage, war, act of God, or accident) which could result in a severe energy supply interruption or obligations of the United States arising under the international energy program necessitating distributions from the Strategic Petroleum Reserve, and

(2) a description of the strategy or alternative strategies of distribution which could reasonably be used to respond to each situation described under paragraph (1), together with the theory and justification underlying each such strategy.

The description of each strategy under paragraph (2) shall include an explanation of the methods which would likely be used to determine the price and distribution of petroleum products from the Reserve in any such distribution, and an explanation of the disposition of revenues arising from sales of any such petroleum products under the strategy.

(c) REGIONAL RESERVE REPORT.—The President or his delegate shall submit to the Congress no later than December 31, 1982, a report regarding the actions taken to comply with the provisions of section 157 of the Energy Policy and Conservation Act (42 U.S.C. 6237). Such report shall include an analysis of the economic benefits and costs of establishing Regional Petroleum Reserves, including—

(1) an assessment of the ability to transport petroleum products to refiners, distributors, and end users within the regions specified in section 157(a) of such Act;

(2) the comparative costs of creating and operating Regional Petroleum Reserves for such regions as compared to the costs of continuing current plans for the Strategic Petroleum Reserve; and

(3) a list of potential sites for Regional Petroleum Reserves.

(d) STRATEGIC ALCOHOL FUEL RESERVE REPORT.—The Secretary of Energy shall, in consultation with the Secretary of Agriculture, prepare and transmit to the Congress no later than December 31, 1982, a study of the potential for establishing a Strategic Alcohol Fuel Reserve.

[2] Such report was due on December 1, 1982.

(e) MEANING OF TERMS.—As used in this section, the terms "international emergency program", "petroleum product", "Reserve", "severe energy supply interruption", and "Strategic Petroleum Reserve" have the meanings given such terms in sections 3 and 152 of the Energy Policy and Conservation Act (42 U.S.C. 6202 and 6232).

4. Energy Policy and Conservation Act

Partial text of Public Law 94–163 [S. 622], 89 Stat. 871, approved December 22, 1975; as amended by Public Law 95–619 [H.R. 5037], 92 Stat. 3206, approved November 9, 1978; Public Law 96–30 [S. 1371], 93 Stat. 80, approved June 30, 1979; Public Law 96–94 [H.R. 5506], 93 Stat. 720, approved October 31, 1979; Public Law 96–102 [S. 1030], 93 Stat. 749, approved November 5, 1979; Public Law 96–133 [S. 1871], 93 Stat. 1053, approved November 30, 1979; Public Law 97–5 [H.R. 2166], 95 Stat. 7, approved March 13, 1981; Public Law 97–50 [S. 1475], 95 Stat. 957, approved September 30, 1981; Public Law 97–163 [S. 1937], 96 Stat. 24, approved April 1, 1982; Public Law 97–190 [S. 2575], 96 Stat. 106, approved June 1, 1982; Public Law 97–217 [S. 2651], 96 Stat. 196, approved July 19, 1982; Public Law 97–229 [S. 2332], 96 Stat. 248, approved August 3, 1982; Public Law 98–239 [H.R. 4194], 98 Stat. 93, approved March 20, 1984; Public Law 98–370 [H.R. 3169], 98 Stat. 1211, approved July 18, 1984; Public Law 98–454 [H.R. 5561], 98 Stat. 1732 at 1736, approved October 5, 1984; Public Law 99–58 [H.R. 1699], 99 Stat. 102, approved July 2, 1985; Public Law 101–218 [Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989; S. 488], 103 Stat. 1859, approved December 11, 1989; Public Law 101–383 [Energy Policy and Conservation Act Amendments of 1990; S. 2088], 104 Stat. 727, approved September 15, 1990; Public Law 102–486 [Energy Policy Act of 1992; H.R. 776], 106 Stat. 2776, approved October 24, 1992; Public Law 104–66 [Federal Reports Elimination and Sunset Act of 1995; S. 790], 109 Stat. 707, approved December 21, 1995; Public Law 104–306 [H.R. 4083], 110 Stat. 3810, approved October 14, 1996; Public Law 105–177 [H.R. 2472], 112 Stat. 105, approved June 1, 1998; Public Law 105–388 [Energy Conservation Reauthorization Act of 1998; S. 417], 112 Stat. 3477, approved November 13, 1998; Public Law 106–469 [Energy Act of 2000; H.R. 2884], 114 Stat. 2029, approved November 9, 2000; and Public Law 108–7 [Consolidated Appropriations Resolution, 2003; H.J. Res. 2], 117 Stat. 11, approved February 20, 2003

AN ACT To increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Policy and Conservation Act".

* * * * * * *

STATEMENT OF PURPOSES

SEC. 2.[1] The purposes of this Act are—

(1) to grant specific[2] authority to the President[2] to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

[1] 42 U.S.C. 6201.

[2] Sec. 102(1) of Public Law 106–469 (114 Stat. 2029) struck out "standby" which appeared after "specific" and struck out ", subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and" which appeared after "President".

(3) to increase the supply of fossil fuels in the United States, through price incentives and production requirements;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources;[3]

(7) to provide a means for verification of energy data to assure the reliability of energy data; and[3]

(8)[3] to conserve water by improving the water efficiency of certain plumbing products and appliances.

DEFINITIONS

SEC. 3.[4] As used in this Act:

(1) The term "Secretary" means the Secretary of Energy.[5]

(2) The term "person" includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company and (C) the government and any agency of the United States or any State or political subdivision thereof.

(3) The term "petroleum product" means crude oil residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

(4) The term "State" means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands,[6] or any territory or possession of the United States.

(5) The term "United States" when used in the geographical sense means all of the States and the Outer Continental Shelf.

(6) The term "Outer Continental Shelf" has the same meaning as such term has under section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(7) The term "international energy program" means the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including (A) the annex entitled "Emergency Reserves", (B) any amendment to such Agreement which includes another nation as a party to such Agreement, and (C) any technical or clerical amendment to such Agreement.

(8) The term "severe energy supply interruption" means a national energy supply shortage which the President determines—

(A) is, or is likely to be, of significant scope and duration, and of an emergency nature;

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[3] Sec. 123(a) of the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 2817) struck out "and" at the end of para. (6), struck out a period at the end of para. (7), inserted in lieu thereof "; and", and added new para. (8).

[4] 42 U.S.C. 6202.

[5] Sec. 691(a) of Public Law 95–619 (92 Stat. 3288) struck out "Administrator of the Federal Energy Administration" and inserted in lieu thereof "Secretary of Energy".

[6] Sec. 601(f) of Public Law 98–454 (98 Stat. 1736) added the reference to the Trust Territory of the Pacific Islands to the definition of "State".

(B) may cause major adverse impact on national safety or the national economy; and

(C)[7] results, or is likely to result, from (i) an interruption in the supply of imported petroleum products, (ii) an interruption in the supply of domestic petroleum products, or (iii) sabotage or an act of God.

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TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

* * * * * * *

DOMESTIC USE OF ENERGY SUPPLIES AND RELATED MATERIALS AND EQUIPMENT

SEC. 103.[8] (a) The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this Act, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials of equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

(b)(1) The President shall exercise the authority provided for in subsection (a) to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and purposes of this Act.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country or destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this Act.

(c) In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979[9] (but without regard to the phrase "and to reduce the serious inflationary impact of foreign demand" in section 3(2)(C) of such Act), impose such restrictions as

[7] Sec. 3(a) of Public Law 101–383 (104 Stat. 727) added clause designations (i) and (iii), and added a new clause (ii).

[8] 42 U.S.C. 6212.

[9] 50 U.S.C. App. 2401 note. Sec. 22(b) of Public Law 96–72 (93 Stat. 535) struck out a reference to the Export Administration Act of 1969 (which expired on September 30, 1979) and inserted the reference to the Export Administration Act of 1979.

specified in any rule under subsection (a) on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

(d) Any finding by the President pursuant to subsection (a) or (b) and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency or transportation with persons or the government of a foreign state,

(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

(e)(1) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c), the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this Act, to any violation of such restrictions.

(f) The President shall submit quarterly reports to the Congress concerning the administration of this section and any findings made pursuant to subsection (a) or (b).

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TITLE II—STANDBY ENERGY AUTHORITIES

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PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

INTERNATIONAL OIL ALLOCATION

SEC. 251.[10] (a) The President may, by rule, require that persons engaged in producing, transporting, refining, distributing, or storing petroleum products, take such action as he determines to be necessary for implementation of the obligations of the United States under chapters III and IV of the international energy program insofar as such obligations relate to the international allocation of petroleum products. Allocation under such rule shall be in such amounts and at such prices as are specified in (or determined

[10] 42 U.S.C. 6271.

in a manner prescribed by) such rule. Such rule may apply to any petroleum product owned or controlled by any person described in the first sentence of this subsection who is subject to the jurisdiction of the United States, including any petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States. Subject to subsection (b)(2), such a rule shall remain in effect until amended or rescinded by the President.

(b)(1) No rule under subsection (a) may take effect unless the President—

(A) has transmitted such rule to the Congress;

(B) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the international energy program; and

(C) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

(2) No rule under subsection (b) may be put into effect or remain in effect after the expiration of 12 months after the date such rule was transmitted to Congress under paragraph (1)(A).

(c)(1) Any rule under this section shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973.[11]

(2) No officer or agency of the United States shall have any authority, other than authority under this section, to require that petroleum products be allocated to other countries for the purpose of implementation of the obligations of the United States under the international energy program.

(d) Neither section 103 of this Act nor section 28(u) of the Mineral Leasing Act of 1920[12] shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.

(e)[13] No rule under this section may be put into effect unless—

(1) an international energy supply emergency, as defined in the first sentence of section 252(k)(1),[14] is in effect; and

(2) the allocation of available oil referred to in chapter III of the international energy program has been activated pursuant to chapter IV of such program.

INTERNATIONAL VOLUNTARY AGREEMENTS[15]

SEC. 252.[16] (a) Effective 90 days after the date of enactment of this Act, the requirements of this section shall be the sole procedures applicable to—

[11] 15 U.S.C. 753.

[12] 30 U.S.C. 185.

[13] Sec. 2(b)(1) of the Energy Emergency Preparedness Act of 1982 (Public Law 97–229; 96 Stat. 248) added subsec. (e).

[14] Sec. 1(3) of Public Law 105–177 (112 Stat. 105) struck out "252(l)(1)" and inserted in lieu thereof "252(k)(1)".

[15] Sec. 3 of Public Law 96–133 (93 Stat. 1053) required the Secretary of Energy to submit a report to the appropriate committees of Congress by April 2, 1980, concerning the actions taken by the Secretary of Energy, Secretary of State, the Attorney General, and the Chairman of the Federal Trade Commission to carry out the provisions of this section.

[16] 42 U.S.C. 6272.

(1) the development or carrying out of voluntary agreements and plans of action to implement the international emergency response provisions,[17] and

(2) the availability of immunity from the antitrust laws with respect to the development or carrying out of such voluntary agreements and plans of action.

(b) The Secretary,[18] with the approval of the Attorney General after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the international emergency response provisions.[17]

(c) The standards and procedures prescribed under subsection (b) shall include the following requirements:

(1)(A)(i) Except as provided in clause (ii) of (iii) of this subparagraph, meetings held to develop or carry out a voluntary agreement or plan of action under this subsection shall permit attendance by representatives of committees of Congress and interested persons, including all interested segments of the petroleum industry, consumers, and the public; shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency with respect to meetings to carry out a voluntary agreement or to develop or carry out a plan of action) the public; and shall be initiated and chaired by a regular full-time Federal employee.

(ii) Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons and need not be initiated and chaired by a regular full-time Federal employee.

(iii) The President, in consultation with the Secretary,[18] the Secretary of State, and the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons or the attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or carry out a voluntary agreement or plan of action under this section unless a regular full-time Federal employee is present.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary[18] may impose.

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[17] Sec. 1(3) of Public Law 105–177 (112 Stat. 105) struck out "allocation and information provisions of the international energy program" and inserted in lieu thereof "international emergency response provisions".

[18] Sec. 691(a) of Public Law 95–619 (92 Stat. 3288) struck out "Administrator" and inserted in lieu thereof "Secretary".

(3) A full and complete record and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary,[18] and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5, United States Code; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on ground other than the grounds specified in section 552 (b)(1), (b)(3), or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary,[18] and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.[19]

(d)(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary,[18] shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (j).

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented; except that during an international energy supply emergency, the Secretary,[18] subject to approval of the Attorney

[19] Sec. 2 of Public Law 96–133 (93 Stat. 1053) added this sentence.

General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3). Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e).

(3) A plan of action may not be approved by the Attorney General under this subsection unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of[20] circumstances known at the time of approval.[20]

(e)(1) The Attorney General and the Federal Trade Commission shall monitor the development and carrying out of voluntary agreements and plans of action authorized under this section in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of this part.

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary,[18] may[21] promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

(3) Persons developing or carrying out voluntary agreements and plans of action authorized pursuant to this section shall maintain such records as are required by rules promulgated under paragraph (2). The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe such rules as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by the antitrust laws or the Antitrust Civil Process Act; and wherever any such law refers to "the purposes of this Act" or like terms, the reference shall be understood to include this section.

(f)(1) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or carry out a voluntary agreement or plan of action by persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products, provided that such actions were not taken for the purpose of injuring competition that—

(A) such actions were taken—

[20] Sec. 1(4)(B) of Public Law 105–177 (112 Stat. 105) struck out "known" that had appeared after "in light of", and inserted in lieu thereof "known at the time of approval".

[21] Sec. 1(4)(C) of Public Law 105–177 (112 Stat. 105) struck out "shall" and inserted in lieu thereof "may".

(i) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(ii) to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section, and

(B) such persons complied with the requirements of this section and the rules promulgated hereunder.

(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense provided in this subsection shall be available only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved voluntary agreement or[22] plan of action.

(3) Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(g) No provision of this section shall be construed as granting immunity for, or as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any act or practice which occurred prior to the date of enactment of this Act or subsequent to its expiration or repeal.

(h)[23] Section 708 of the Defense Production Act of 1950 shall not apply to any agreement or action undertaken for the purpose of developing or carrying out—

(1) the international energy program; or

(2) any allocation, price control, or similar program with respect to petroleum products under this Act.

(i) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at such intervals as are appropriate based on significant developments and issues, reports[24] on the impact on competition and on small business of actions authorized by this section.

(j)[25] In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(k) As used in this section and section 254:

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[22] Sec. 1(4)(D) of Public Law 105–177 (112 Stat. 105) inserted "voluntary agreement or".

[23] Sec. 1(4)(E) of Public Law 105–177 (112 Stat. 105) amended and restated subsec. (h). It previous read as follows:

"(h) Upon the expiration of the 90-day period which begins on the date of enactment of this Act, the provisions of sections 708 and 708A (other than 708A(o)) of the Defense Production Act of 1950 shall not apply to any agreement or action undertaken for the purpose of developing or carrying out (1) the international energy program, or (2) any allocation, price control, or similar program with respect to petroleum products under this Act or under the Emergency Petroleum Allocation Act of 1973. For purposes of section 708A(o) of the Defense Production Act of 1950, the effective date of the provisions of this Act which relate to international voluntary agreements to carry out the International Energy Program shall be deemed to be 90 days after the date of enactment of this Act.".

[24] Sec. 1091(g) of Public Law 104–66 (109 Stat. 722) struck out ", at least once every 6 months, a report" and inserted in lieu thereof ", at such intervals as are appropriate based on significant developments and issues, reports".

[25] Sec. 104(c) of Public Law 99–58 (99 Stat. 105) repealed a previous subsec. (j), which had terminated the authority granted by this section on June 30, 1985.

(1) The term "international energy supply emergency" means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under subparagraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2)[26] The term "international emergency response provisions" means—

(A) the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in the program; and

(B) the emergency response measures adopted by the Governing Board of the International Energy Agency (including the July 11, 1984, decision by the Governing Board on "Stocks and Supply Disruptions") for—

(i) the coordinated drawdown of stocks of petroleum products held or controlled by governments; and

(ii) complementary actions taken by governments during an existing or impending international oil supply disruption.

(l)[27] The antitrust defense under subsection (f) shall not extend to the international allocation of petroleum products unless allocation is required by chapters III and IV of the international energy program during an international energy supply emergency.

(m)[28] (1) With respect to any plan of action approved by the Attorney General after the date of enactment of the Energy Policy and Conservation Amendments Act of 1985—

(A) the defenses under subsection (f) and (j) shall be applicable to Type 1 activities (as that term is defined in the international Energy Agency Emergency Management Manual, dated December 1982 only if—

(i) The Secretary has transmitted such plan of action to the Congress; and

(ii)(I) 90 calendar days of continuous session have elapsed since receipt by the Congress of such transmittal; or

[26] Sec. 1(4)(F) of Public Law 105–177 (112 Stat. 105) amended and restated para. (2). It previous read as follows:

"(2) The term 'allocation and information provisions of the international energy program' means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such a program.".

[27] Sec. 1(4)(G) of Public Law 107–177 (112 Stat. 106) amended and restated subsec. (l). Subsec. (l), as added by sec. 2(b)(2) of the Energy Emergency Preparedness Act of 1982 (Public Law 97–229; 96 Stat. 248), previously read as follows:

"(l) The authority granted by this section shall apply only to the development or carrying out of voluntary agreements and plans of action to implement chapters III, IV, and V of the international energy program.".

[28] Sec. 105 of the Energy Policy and Conservation Amendments Act of 1985 (Public Law 99–58; 99 Stat. 105) added subsecs. (m) and (n).

(II) within 90 calendar days of continuous session after receipt of such transmittal, either House of the Congress has disapproved a joint resolution of disapproval pursuant to subsection (n); and

(B) such defenses shall not be applicable to Type 1 activities if there has been enacted, in accordance with subsection (n), a joint resolution of disapproval.

(2) The Secretary may withdraw the plan of action at any time prior to adoption of a joint resolution described in subsection (n)(3) by either House of Congress.

(3) For the purpose of this subsection—

(A) continuity of session is broken only by an adjournment of the Congress sine die at the end of the second session of Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

(n)[28] (1)(A) The application of defenses under subsections (f) and (j) for Type 1 activities with respect to any plan of action transmitted to Congress as described in subsection (m)(1)(A)(i) shall be disapproved if a joint resolution of disapproval has been enacted into law during the 90-day period of continuous session after which such transmission was received by the Congress. For the purpose of this subsection, the term "joint resolution" means only a joint resolution of either House of the Congress as described in paragraph (3).

(B) After receipt by the Congress of such plan of action, a joint resolution of disapproval may be introduced in either House of the Congress. Upon introduction in the Senate, the joint resolution shall be referred in the Senate immediately to the Committee on Energy and Natural Resources of the Senate.

(2) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by paragraph (3); it supersedes outer rules only to the extent that is inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(3) The joint resolution disapproving the transmission under subsection (m) shall read as follows after the resolving clause: "That the Congress of the United States disapproves the availability of the defenses pursuant to section 252(f) and (j) of the Energy Policy and Conservation Act with respect to Type 1 activities under the plan of action submitted to the Congress by the Secretary of Energy on .", the blank space therein being filled with the date and year of receipt by the Congress of the plan of action transmitted as described in subsection (m).

(4)(A) If the Committee on Energy and Natural Resources of the Senate has not reported a joint resolution referred to it under this

subsection at the end of 20 calendar days of continuous session after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other joint resolution which has been referred to the committee with respect to such plan of action.

(B) A motion to discharge shall be highly privileged (except that it may not be made after the Committee on Energy and Natural Resources has reported a joint resolution with respect to the plan of action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the joint resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other joint resolution with respect to the same transmission.

(5)(A) When the Committee on Energy and Natural Resources of the Senate has reported or has been discharged from further consideration of a joint resolution, it shall be in order at any time thereafter within the 90-day period following receipt by the Congress of the plan of action (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such joint resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider a vote by which the motion was agreed to or disagreed to.

(B) Debate on the joint resolution shall be limited to not more than 10 hours and final action on the joint resolution shall occur immediately following conclusion of such debate. A motion further to limit debate shall not be debatable. A motion to recommit such a joint resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such a joint resolution was agreed to or disagreed to.

(6)(A) Motions to postpone made with respect to the discharge from committee or consideration of a joint resolution, shall be decided without debate.

(B) Appeals from the decision of the Chair relation to the application of rules of the Senate to the procedures relating to a joint resolution shall be decided without debate.

ADVISORY COMMITTEES

SEC. 253.[29] (a) To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall

[29] 42 U.S.C. 6273.

be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974[30] (whether or not such Act or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(b) A verbatim transcript shall be kept of such advisory committee meetings, and shall be deposited with the Attorney General and the Federal Trade Commission. Such transcript shall be made available for public inspection and copying in accordance with section 552 of title 5, United States Code, except that matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), and so much of (b)(4) as relates to trade secrets, or pursuant to a determination under subsection (c).

(c) The President, after consultation with the Secretary of State, the Federal Trade Commission, the Attorney General, and the Secretary[18] may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,[31]

(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act of 1974,[30]

(3) the requirement under subsection (a) of this section that meetings be open to the public, and

(4) the second sentence of subsection (b);

If the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension relates solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5, United States Code. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

EXCHANGE OF INFORMATION

SEC. 254.[32] (a)(1) Except as provided in subsections (b) and (c), the Secretary,[18] after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

[30] 15 U.S.C. 776.
[31] 5 U.S.C. App. 1.
[32] 42 U.S.C. 6274.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any such information or data which is geological or geophysical information or a trade secret or commercial or financial information to which section 552 (b)(9) or (b)(4) of title 5, United States Code, applies shall, prior to such transmittal, be aggregated, accumulated, or otherwise reported in such manner as to avoid, to the fullest extent feasible, identification of any person from whom the United States obtained such information or data, and in the case of geological or geophysical information, a competitive disadvantage to such person.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, during an international energy supply emergency, any such information or data with respect to the international allocation of petroleum products may be made available to the International Energy Agency if otherwise authorized to be made available to such Agency by paragraph (1) of this subsection.

(ii) Subparagraph (A) shall not apply to information described in subparagraph (A) (other than geological or geophysical information) if the President certifies, after opportunity for presentation of views by interested persons, that the International Energy Agency has adopted and is implementing security measures which assure that such information will not be disclosed by such Agency or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained such information or data.

(3)(A) Within 90 days after the date of enactment of this Act, and periodically thereafter, the President shall review the operation of this section and shall determine whether other signatory nations to the international energy program are transmitting information and data to the International Energy Agency in substantial compliance with such program. If the President determines that other nations are not so complying paragraph (2)(B)(ii) shall not apply until he determines other nations are so complying.

(B) Any person who believes he has been or will be damaged by the transmittal of information or data pursuant to this section shall have the right to petition the President and to request changes in procedures which will protect such person from any competitive damage.

(b) If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or by inconsistent with United States national security interests, he may require that such data or information not be transmitted.

(c) Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary [18] to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary [18] has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory

authority for the collection, gathering, or obtaining of such information and data shall consider the purposes for which such information and data were collected, gathered, and obtained, the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

(d) For the purposes of carrying out the obligations of the United States under this international energy program, the authority to collect data granted by sections 11 and 13 of the Energy Supply and Environmental Coordination Act and the Federal Energy Administration Act of 1974 respectfully, shall continue in full force and effect without regard to the provisions of such Acts relating to their expiration.

(e) The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974;

(2) section 14(b) of the Federal Energy Administration Act of 1974;

(3) section 12 of the Export Administration Act of 1979;[33]

(4) section 9 of title 13, United States Code;

(5) section 1 of the Act of January 27, 1938 (15 U.S.C. 176(a)); and

(6) section 1905 of title 18, United States Code.

RELATIONSHIP OF THIS TITLE TO THE INTERNATIONAL ENERGY AGREEMENT

SEC. 255.[34] The purpose of the Congress in enacting this title is to provide standby energy emergency authority to deal with energy shortage conditions and to minimize economic dislocations and adverse impacts on employment. While the authorities contained in this title may, to the extent authorized by this title, be used to carry out obligations incurred by the United States in connection with the International Energy Program, this title shall not be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program.

DOMESTIC RENEWABLE ENERGY INDUSTRY AND RELATED SERVICE INDUSTRIES

SEC. 256.[35] (a) It is the purpose of this section to implement the responsibilities of the United States under chapter VII of the international energy program with respect to development of alternative energy by facilitating the overall abilities of the domestic renewable energy industry and related service industries to create new markets.

[33] Sec. 22(b) of Public Law 96–72 (93 Stat. 535) struck out "section 7 of the Export Administration Act of 1969" and inserted in lieu thereof "section 12 of the Export Administration Act of 1979.".

[34] 42 U.S.C. 6275.

[35] 42 U.S.C. 6276. Sec. 2 of Public Law 98–370 (98 Stat. 1211) added sec. 256.

(b)(1) Before the later of—

(A) 6 months after the date of the enactment of this section, and

(B) May 31, 1985,

the Secretary of Commerce shall conduct an evaluation regarding the domestic renewable energy industry and related service industries and submit a report of his findings to the Congress.

(2) Such evaluation shall include—

(A) an assessment of the technical and commercial status of the domestic renewable energy industry and related service industries in domestic and foreign markets;

(B) an assessment of the Federal Government's activities affecting commerce in the domestic renewable energy industry and related service industries and in consolidating and coordinating such activities within the Federal Government; and

(C) an assessment of the aspects of the domestic renewable energy industry and related service industries in which improvements must be made to increase the international commercialization of such industry.

(c)(1) On the basis of the evaluation under subsection (b), the Secretary of Commerce shall, consistent with existing law, establish a program for enhancing commerce in renewable energy technologies and consolidating or coordinating existing activities for such purpose.

(2) Such program shall provide for—

(A) the broadening of the participation by the domestic renewable energy industry and related service industries in such activities;

(B) the promotion of the domestic renewable energy industry and related service industries on a worldwide basis;

(C) the participation by the Federal Government and the domestic renewable energy industry and related service industries in international standard-setting activities; and

(D) the establishment of an information program under which—

(i) technical information about the domestic renewable energy industry and related service industries shall be provided to appropriate public and private officials engaged in commerce, and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others,[36] and

(ii) marketing information about export and export financing opportunities[37] shall be available to the domestic renewable energy industry and related service industries.

(3) Necessary funds required for carrying out such program shall be requested in connection with fiscal years beginning after September 30, 1984.

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[36] Sec. 7(a)(1) of Public Law 101–218 (103 Stat. 1867) inserted "and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others,".

[37] Sec. 7(a)(2) of Public Law 101–218 (103 Stat. 1867) struck out "export opportunities" and inserted in lieu thereof "export and export financing opportunities".

(d)[38] INTERAGENCY WORKING GROUP.—

(1)[39] ESTABLISHMENT.—(A) There shall be established an interagency working group that, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting exports of renewable energy and energy efficiency products and services. The interagency working group shall establish a program to inform foreign countries of the benefits of policies that would increase energy efficiency or would allow facilities that use renewable energy to compete effectively with producers of energy from nonrenewable sources.

(B) There shall be established an Interagency Working Subgroup on Renewable Energy and an Interagency Working Subgroup on Energy Efficiency that shall, in consultation with representative industry groups, nonprofit organizations, and relevant Federal agencies, make recommendations to coordinate the actions and programs of the Federal Government to promote the export of domestic renewable energy and energy efficiency products and services, respectively.

(C) The Secretary of Energy, or the Secretary's designee, shall chair the interagency working group and each subgroup established under this paragraph. The Administrator of the Agency for International Development and the Secretary of Commerce, or their designees, shall be members of both subgroups established under this paragraph. The Secretary shall provide staff for carrying out the functions of the interagency working group and each subgroup established under this paragraph. The heads of appropriate agencies may detail such personnel and may furnish such services to such group and subgroups, with or without reimbursement, as may be necessary to carry out their functions.

(2) DUTIES OF THE INTERAGENCY WORKING SUBGROUPS.—(A) The interagency working subgroups established under paragraph (1)(B), through the member agencies of the interagency working group, shall promote the development and application in foreign countries of renewable energy and energy efficiency products and services, respectively, that—

(i) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, wind, small-scale hydroelectric, solar, geothermal, and other renewable energy and energy efficiency products and services; and

(ii) use hybrid fossil-renewable energy systems.

(B) In addition, the interagency working subgroups shall explore mechanisms for assisting domestic firms, particularly

[38] Sec. 1207(a) of Public Law 102–486 (106 Stat. 2962) amended and restated subsec. (d). It formerly read as follows:

"(d) There shall be established an interagency working group which, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting commerce in renewable energy products and related services. The Secretary of Energy shall be the chairman of such group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working group, with or without reimbursement, as may be necessary to carry out its functions.".

[39] See also secs. 1209 through 1211 of the Energy Policy Act (Public Law 102–486; 106 Stat. 2964–69).

small businesses, with the export of their renewable energy and energy efficiency products and services and with the identification of potential projects.

(3) TRAINING AND ASSISTANCE.—The interagency working subgroups shall encourage the member agencies of the interagency working group to—

(A) provide technical training and education for international development personnel and local users in their own country;

(B) provide financial and technical assistance to nonprofit institutions that support the marketing and export efforts of domestic companies that provide renewable energy and energy efficiency products and services;

(C) develop environmentally sustainable renewable energy and energy efficiency projects in foreign countries;

(D) provide technical assistance and training materials to loan officers of the World Bank, international lending institutions, commercial and energy attaches at embassies of the United States and other appropriate personnel in order to provide information about renewable energy and energy efficiency products and services to foreign governments or other potential project sponsors;

(E) support, through financial incentives, private sector efforts to commercialize and export renewable energy and energy efficiency products and services; and

(F) augment budgets for trade and development programs in order to support pre-feasibility or feasibility studies for projects that utilize renewable energy and energy efficiency products and services.

(4)[40] The interagency working group shall conduct a study of subsidies, incentives, and policies that foreign countries use to promote exports of their own renewable energy and energy efficiency technologies and products. Such study shall also identify foreign trade barriers to the import of renewable energy and energy efficiency technologies and products produced in the United States. The interagency working group shall report to the appropriate committees of the House of Representatives and the Senate the results of such study within 18 months after the date of the enactment of the Energy Policy Act of 1992.

(e)[41] The interagency working group established under subsection (d) of this section shall annually report to Congress, describing the actions of each agency represented by a member of the working group taken during the previous fiscal year to achieve the purposes of such working group and of this section. Such report shall describe the exports of renewable energy technology that have occurred as a result of such agency actions.

(f)[41] (1) The interagency working group shall—

[40] Sec. 1208 of Public Law 102–486 (106 Stat. 2964) added para. (4).
[41] Sec. 7(c) of Public Law 101–218 (103 Stat. 1867) added subsecs. (e) through (h).

(A) establish, in consultation with representatives of affected industries, a plan to increase United States exports of renewable energy and energy efficiency[42] technologies, and include in such plan recommended guidelines for agencies that are represented on the working group with respect to the financing of, or other actions they can take within their programs to promote, exports of such renewable energy and energy efficiency[42] technologies;

(B) develop, in consultation with representatives of affected industries, recommended administrative guidelines for Federal export loan programs to simplify application by firms seeking export assistance for renewable energy and energy efficiency[42] technologies from agencies implementing such programs; and

(C) recommend specific renewable energy and energy efficiency[42] technology markets for primary emphasis by Federal export loan programs, development programs, and private sector assistance programs.

(2) The interagency working group shall include a description of the plan established under paragraph (1)(A) in no later than the second report submitted under subsection (e) of this section, and shall include in subsequent reports a description of any modifications to such plan and of the progress in implementing the plan.

(h)[43, 44] AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to implement this part, to remain available until expended.

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PART C—ENERGY EMERGENCY PREPAREDNESS[45] * * * [REPEALED—2000]

TITLE V—GENERAL PROVISIONS

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PROHIBITED ACTS

SEC. 524.[46] It shall be unlawful for any person—

(1) to violate any provision of title I or title II of this Act or this title (other than any provision of such titles which amend another law).

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[42] Sec. 1207(b) of Public Law 102–486 (106 Stat. 2963) inserted "and energy efficiency".

[43] Sec. 1207(c) of Public Law 102–486 (106 Stat. 2963) repealed subsec. (g), as added by sec. 7(c) of Public Law 101–218 (103 Stat. 1867), which had defined "renewable energy" as including "energy efficiency to the extent it is a part of a renewable energy system or technology.".

[44] Sec. 339(b)(1) of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 278) amended and restated subsec. (h).

Previously, sec. 104(2) of Public Law 106–469 (114 Stat. 2033) had amended and restated subsec. (h) providing for the authorization of appropriations from fiscal year 2000 through fiscal year 2003.

Previous to that, sec. 1(3) of Public Law 104–306 (110 Stat. 3810) added the authorization of appropriations for fiscal year 1997.

Previous to that, sec. 1207(d) of Public Law 102–486 (106 Stat. 2963) amended and restated subsec. (h) providing the authorization of appropriations from fiscal year 1993 through fiscal year 1995.

The original text of subsec. (h) provided the authorization of appropriations from fiscal year 1991 through fiscal year 1993.

[45] Sec. 104(3) of the Energy Act of 2000 (Public Law 106–469; 114 Stat. 2033) repealed Part C, including sec. 271 that provided Congressional findings, policy, and purposes, and sec. 272 that provided for preparation for petroleum supply interruptions.

[46] 42 U.S.C. 6394.

(2) to violate any rule, regulation, or order issued pursuant to any provision of section 383 of this Act; or

(3) to fail to comply with any provision prescribed in, or pursuant to, an energy conservation contingency plan which is in effect.

ENFORCEMENT

SEC. 525.[47] (a) Whoever violates section 524 shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) Whoever willfully violates section 524 shall be fined not more than $10,000 for each violation.

(c) Any person who knowingly and willfully violates section 524 with respect to the sale, offer of sale, or distribution in commerce of a product or commodity after having been subjected to a civil penalty for a prior violation of section 524 with respect to the sale, offer of sale, or distribution in commerce of such product or commodity shall be fined not more than $50,000 or imprisoned not more than 6 months, or both.

(d) Whenever it appears to any officer or agency of the United States in whom is vested, or to whom is delegated, authority under this Act that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 524, such officer or agency may request the Attorney General to bring an action in an appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any rule, regulation, or order described in section 524.

(e)(1) Any person suffering legal wrong because of any act or practice arising out of any violation of any provision of this Act described in paragraph (2), may bring an action in an appropriate district court of the United States without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

(2) The provisions of this Act referred to in paragraph (1) are as follows:

(A) Section 202 (relating to energy conservation plans).

(B) Section 251 (relating to international oil allocation).

(C) Section 252 (relating to international voluntary agreements).

(D) Section 253 (relating to advisory committees).

(E) Section 254 (relating to international exchange of information).

(F) Section 521 (relating to prohibition on certain actions).

EFFECT ON OTHER LAWS

SEC. 526.[48] No State law or State program in effect on the date of enactment of this Act, or which may become effective thereafter,

[47] 42 U.S.C. 6395.
[48] 42 U.S.C. 6396.

shall be superseded by any provision of title I or II of this Act (other than any provision of such title which amends another law) or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with such provision, rule, regulation, or order.

* * * * * * *

EXPIRATION

SEC. 531.[49] * * * [Repealed—1985]

PART C—CONGRESSIONAL REVIEW

PROCEDURE FOR CONGRESSIONAL REVIEW OF PRESIDENTIAL REQUESTS TO IMPLEMENT CERTAIN AUTHORITIES

SEC. 551.[50] (a) For purposes of this section, the term "energy action" means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

(b) The President shall transmit any energy action (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any energy action is received by the appropriate officers of each House, for purposes of this section such energy action shall be deemed to have been transmitted on the first succeeding day on which both Houses are in session.

(c)(1) Except as provided in paragraph (2) of this subsection, if energy action is transmitted to the Houses of Congress, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such action is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such action.

(2) An energy action described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such action.

(d) For the purpose of subsection (c) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(e) Under provisions contained in an energy action, a provision of such an action may take effect on a date later than the date on

[49] Sec. 104(c)(3) of the Energy Policy and Conservation Amendments Act of 1985 (Public Law 99–58; 99 Stat. 105) repealed sec. 531 (42 U.S.C. 6401). It formerly read as follows:

"Except as otherwise provided in title I or title II, all authority under any provision of title I or title II (other than a provision of either such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, June 30, 1985, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1985.".

[50] 42 U.S.C. 6421.

which such action otherwise takes effect pursuant to the provisions of this section.

(f)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term "resolution" means only a resolution of either House of Congress described in subparagraph (A) or (B) of this paragraph.

(A) A resolution the matter after the resolving clause of which is as follows: "That the _____ does not object to the energy action numbered _____ submitted to the Congress on _____, 19____.", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy action.

(B) A resolution the matter after the resolving clause of which is as follows: "That the _____ does not favor the energy action numbered _____ transmitted to Congress on _____, 19____.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

(3) A resolution once introduced with respect to an energy action shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy action which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge

the committee be made with respect to any other resolution with respect to the same energy action.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(i) to offer an amendment in the nature of a substitute consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(B) of this subsection with respect to the same action; or

(ii) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy action, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

EXPEDITED PROCEDURE FOR CONGRESSIONAL CONSIDERATION OF CERTAIN AUTHORITIES

SEC. 552.[51] (a) Any contingency plan transmitted to the Congress pursuant to section 201(a)(1) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

[51] 42 U.S.C. 6422.

(b)(1)[52] No such energy conservation[52] contingency plan may be considered approved for purposes of section 201(b) of this Act unless between the date of transmittal and the end of the first period of 60 calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in subsection (d)(2)(A).

(2)[52] (A) Subject to subparagraph (B), any such rationing contingency plan shall be considered approved for purposes of section 201(d) only if such plan is not disapproved by a resolution described in subsection (d)(2)(B)(i) which passes each House of the Congress during the 30-calendar-day period of continuous session after the plan is transmitted to such Houses and which thereafter becomes law.

(B) A rationing contingency plan may be considered approved prior to the expiration of the 30-calendar-day period after such plan is transmitted if a resolution described in subsection (d)(2)(B)(ii) is passed by each House of the Congress and thereafter becomes law.

(c) For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the calendar-day period involved.[53]

(d)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this section; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2)(A)[54] For purposes of applying this section with respect to any energy conservation contingency plan,[54] the term "resolution" means only a resolution of either House of Congress the matter after the resolving clauses of which is as follows: "That the _____ approves the energy conservation,[55] contingency plan numbered _____ submitted to the Congress on _____, 19____.", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy conservation[55] contingency plan.

(B)[54] For purposes of applying this subsection with respect to any rationing contingency plan (other than pursuant to section

[52] Sec. 103(b)(2)(A) of Public Law 96–102 (93 Stat. 753) added the para. designation "(1)", inserted "energy conservation", and added para. (2).

[53] Sec. 103(b)(2)(B) of Public Law 96–102 (93 Stat. 753) struck out "60-calendar-day period" and inserted in lieu thereof "calendar-day period involved".

[54] Sec. 103(b)(2)(C) of Public Law 96–102 (93 Stat. 753) added the subpara. designation "(A)", amended the words to this point in subpara. (A), and added subpara. (B).

[55] Sec. 105(a)(4) of Public Law 96–102 (93 Stat. 756) inserted "energy conservation".

201(d)(2)(B), the term "resolution" means only a joint resolution described in clause (i) or (ii) of this subparagraph with respect to such plan.

(i) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States disapproves the rationing contingency plan transmitted to the Congress , 19 .", the blank spaces therein appropriately filled.

(ii) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States does not object to the rationing contingency plan transmitted to the Congress , 19 .", the blank spaces therein appropriately filled.

(3) A resolution once introduced with respect to a contingency plan shall immediately be referred to a committee (and all resolutions with respect to the same contingency plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a contingency plan has been referred has not reported it at the end of 20 calendar days after its referral in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan,[56] it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such contingency plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same contingency plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. Except to the extent provided in paragraph (7)(A), an amendment[57] to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same contingency plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereunder in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall

[56] Sec. 103(b)(2)(D) of Public Law 96–102 (93 Stat. 754) inserted the words to this point beginning with "in the case of any energy * * *".

[57] Sec. 103(b)(2)(E) of Public Law 96–102 (93 Stat. 754) struck out "An amendment" and inserted in lieu thereof "Except to the extent provided in paragraph (7)(A), an amendment".

not be debatable. An amendment to the motion[58] shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. Except to the extent provided in paragraph (7)(B),[59] an amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(7)[60] With respect to any rationing contingency plan—

(A) In the consideration of any motion to discharge any committee from further consideration of any resolution on any such plan, it shall be in order after debate allowed for under paragraph (4)(B) to offer an amendment in the nature of a substitute for such motion—

(i) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable. Debate on such an amendment shall be limited to not more than 1 hour, which shall be divided equally between those favoring and those opposing the amendment.

(B) In the consideration of any resolution on any such plan which has been reported by a committee, it shall be in order at any time during the debate allowed for under paragraph (5)(B) to offer an amendment in the nature of a substitute for such resolution—

[58] Sec. 5(a)(16) of the Energy Conservation Reauthorization Act of 1998 (Public Law 105–388; 112 Stat. 3479) struck out "notion" and inserted in lieu thereof "motion".

[59] Sec. 103(b)(2)(E) and (F) of Public Law 96–102 (93 Stat. 754) inserted "Except to the extent provided in paragraph (7)(B),".

[60] Sec. 103(b)(2)(G) of Public Law 96–102 (93 Stat. 754) added para. (7).

(i) consisting of the text of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of the text of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable.

(C) If one House receives from the other House a resolution with respect to a rationing contingency plan, then the following procedure applies:

(i) the resolution of the other House with respect to such plan shall not be referred to a committee;

(ii) in the case of a resolution of the first House with respect to such plan—

(I) the procedure with respect to that or other resolutions of such House with respect to such plan shall be the same as if no resolution from the other House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the first House with respect to such plan a resolution from the other House with respect to such plan which has the same effect shall be automatically substituted for the resolution of the first House.

(D) Notwithstanding any of the preceding provisions of this subsection, if a House has approved a resolution with respect to a rationing contingency plan, then it shall not be in order to consider in that House any other resolution under this section with respect to the approval of such plan.

5. Alaska National Interests Land Conservation Act

Partial text of Public Law 96–487 [H.R. 39], 94 Stat. 2371, approved December 2, 1980; as amended by Public Law 101–380 [Oil Pollution Act of 1990, H.R. 1465], 104 Stat. 484, approved August 18, 1990

AN ACT To provide for the designation and conservation of certain public lands in the State of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] This Act may be cited as the "Alaska National Interest Lands Conservation Act."

* * * * * * *

TITLE X—FEDERAL NORTH SLOPE LANDS STUDIES, OIL AND GAS LEASING PROGRAM AND MINERAL ASSESSMENTS

* * * * * * *

WILDLIFE RESOURCES PORTION OF STUDY AND IMPACT OF POTENTIAL OIL SPILLS IN THE ARCTIC OCEAN[2]

SEC. 1005. (a)[2] The Secretary[3] shall work closely with the State of Alaska and Native Village and Regional Corporations in evaluating the impact of oil and gas exploration, development, production, and transportation, and other human activities on the wildlife resources of these lands, including impacts on the Arctic and Porcupine caribou herds, polar bear, muskox, grizzly bear, wolf, wolverine, seabirds, shore birds, and migratory waterfowl. In addition, the Secretary shall consult with the appropriate agencies of the Government of Canada in evaluating such impacts particularly with respect to the Porcupine caribou herd.

(b)[2] (1) The Congress finds that—

(A) Canada had discovered commercial quantities of oil and gas in the Amalagak regions of the Northwest territory;

(B) Canada is exploring alternatives for transporting the oil from the Amalagak field to markets in Asia and the Far East;

(C) one of the options the Canadian Government is exploring involves transshipment of oil from the Amalagak field across the Beaufort Sea to tankers which would transport the oil overseas;

(D) the tankers would traverse the American Exclusive Economic Zone through the Beaufort Sea into the Chuckchi Sea and then through the Bering Straits;

[1] 16 U.S.C. 3101 note.

[2] 16 U.S.C. 3145. Sec. 8302 of Public Law 101–380 (104 Stat. 572) restated the catchline, inserted subsec. designation "(a)", and added subsecs. (b) through (d).

[3] Secretary of the Interior.

(E) the Beaufort and Chuckchi Seas are vital to Alaska's Native people, providing them with subsistence in the form of walrus, seals, fish, and whales;

(F) the Secretary of the Interior has conducted Outer Continental Shelf lease sales in the Beaufort and Chuckchi Seas and oil and gas exploration is ongoing;

(G) an oil spill in the Arctic Ocean, if not properly contained and cleaned up, could have significant impacts on the indigenous people of Alaska's North Slope and on the Arctic environment; and

(H) there are no international contingency plans involving our two governments concerning containment and cleanup of an oil spill in the Arctic Ocean.

(2)(A) The Secretary of the Interior, in consultation with the Governor of Alaska, shall conduct a study of the issues of recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean.

(B) The Secretary shall, no later than January 31, 1991, transmit a report to the Congress on the findings and conclusions reached as the result of the study carried out under this subsection.

(c)[2] The Congress calls upon the Secretary of State, in consultation with the Secretary of the Interior, the Secretary of Transportation, and the Governor of Alaska, to begin negotiations with the Foreign Minister of Canada regarding a treaty dealing with the complex issues of recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean.

(d)[2] The Secretary of State shall report to the Congress on the Secretary's efforts pursuant to this section no later than June 1, 1991.

* * * * * * *

6. Negotiations With Canada Concerning the Alaska Pipeline

Partial text of Public Law 93–153 [S. 1081], 87 Stat. 576 at 588, approved November 16, 1973

AN ACT To amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE III—NEGOTIATIONS WITH CANADA

Sec. 301.[1] The President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine—

(a) the willingness of the Government of Canada to permit the construction of pipelines or other transportation systems across Canadian territory for the transport of natural gas and oil from Alaska's North Slope to markets in the United States, including the use of tankers by way of the Northwest Passage;

(b) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the Governments of Canada and the United States and any party or parties involved with the construction, operation, and maintenance of pipelines or other transportation systems for the transport of such natural gas or oil;

(c) the terms and conditions under which pipelines or other transportation systems could be constructed across Canadian territory;

(d) the desirability of undertaking joint studies and investigations designed to insure protection of the environment, reduce legal and regulatory uncertainty, and insure that the respective energy requirements of the people of Canada and of the United States are adequately met;

(e) the quantity of such oil and natural gas from the North Slope of Alaska for which the Government of Canada would guarantee transit; and

(f) the feasibility, consistent with the needs of other sections of the United States, of acquiring additional energy from other sources that would make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area.

The President shall report to the House and Senate Committees on Interior and Insular Affairs the actions taken, the progress achieved, the areas of disagreement, and the matters about which

[1] 43 U.S.C. 1651 note.

more information is needed, together with his recommendations for further action.

* * * * * * *

7. Environment and Natural Resources

a. Environment and Natural Resources in Foreign Assistance

(1) The Foreign Assistance Act of 1961, as amended [1]

Partial text of Public Law 87–195 [S. 1983], 75 Stat. 424, approved September 4, 1961, as amended

AN ACT To promote the foreign policy, security, and general welfare of the United States by assisting people of the world in their efforts toward economic development and internal and external security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Foreign Assistance Act of 1961".

PART I

Chapter 1—Policy; Development Assistance Authorizations

* * * * * * *

Sec. 117.[2] **Environment and Natural Resources.**—(a) The Congress finds that if current trends in the degradation of natural resources in developing countries continue, they will severely undermine the best efforts to meet basic human needs, to achieve sustained economic growth, and to prevent international tension and conflict. The Congress also finds that the world faces enormous, urgent, and complex problems, with respect to natural resources, which require new forms of cooperation between the United States and developing countries to prevent such problems from becoming unmanageable. It is, therefore, in the economic and security interests of the United States to provide leadership both in thoroughly reassessing policies relating to natural resources and the environment, and in cooperating extensively with developing countries in order to achieve environmentally sound development.

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[1] For complete text of the Foreign Assistance Act of 1961, as amended, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

[2] 22 U.S.C. 2151p. Sec. 113 of Public Law 95–88 (91 Stat. 537) added sec. 117, originally as sec. 118. Subsequently, sec. 110 of Public Law 95–424 (92 Stat. 948), sec. 122 of Public Law 96–53 (93 Stat. 948), and sec. 307 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1533) amended sec. 118. Sec. 301(1) of Public Law 99–529 (100 Stat. 3014) redesignated sec. 118 as sec. 117, resulting in the creation of two secs. 117. Sec. 301(2) of Public Law 99–529 further deleted sec. 117(d) which dealt with tropical forests. Sec. 301(3) of Public Law 99–529 further added a new sec. 118 entitled "Tropical Forests".

Prior to the amendments made by Public Law 99–529, sec. 118 read as follows:

"**Sec. 118. Environment and Natural Resources**.—(a) The President is authorized to furnish assistance under this part for developing and strengthening the capacity of less developed countries to protect and manage their environment and natural resources. Special efforts shall be made to maintain and where possible restore the land, vegetation, water, wildlife and other resources upon which depend economic growth and human well-being especially that of the poor.

"(b) In carrying out programs under this chapter, the President shall take into consideration the environmental consequence of development actions.".

(b) In order to address the serious problems described in subsection (a), the President is authorized to furnish assistance under this part for developing and strengthening the capacity of developing countries to protect and manage their environment and natural resources. Special efforts shall be made to maintain and where possible to restore the land, vegetation, water, wildlife, and other resources upon which depend economic growth and human well-being, especially of the poor.

(c)(1) The President, in implementing programs and projects under this chapter and chapter 10 of this part,[3] shall take fully into account the impact of such programs and projects upon the environment and natural resources of developing countries. Subject to such procedures as the President considers appropriate, the President shall require all agencies and officials responsible for programs or projects under this chapter—

(A) to prepare and take fully into account an environmental impact statement for any program or project under this chapter significantly affecting the environment of the global commons outside the jurisdiction of any country, the environment of the United States, or other aspects of the environment which the President may specify; and

(B) to prepare and take fully into account an environmental assessment of any proposed program or project under this chapter significantly affecting the environment of any foreign country.

Such agencies and officials should, where appropriate, use local technical resources in preparing environmental impact statements and environmental assessments pursuant to this subsection.

(2) The President may establish exceptions from the requirements of this subsection for emergency conditions and for cases in which compliance with those requirements would be seriously detrimental to the foreign policy interests of the United States.

Sec. 118.[4] Tropical Forests.

(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

(2) can result in desertification and destabilization of the earth's climate.

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[3] Sec. 562 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2026), added a new chapter 10 to part I of this Act, providing for long-term development in sub-Saharan Africa, and made a conforming amendment by inserting "and chapter 10 of this part".

[4] 22 U.S.C. 2151p–1. Sec. 301(3) of Public Law 99–529 (100 Stat. 3014) added sec. 118. See also footnote 2.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

(1) Place a high priority on conservation and sustainable management of tropical forests.

(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

(3) To the fullest extent feasible, support projects and activities—

(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

(B) which help developing countries identify and implement alternatives to colonizing forested areas.

(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance of degradation; and

(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

(14) Deny assistance under this chapter for—

(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber

harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

(C) The colonization of forest lands.

(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

(d) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.

Sec. 119.[5] **Renewable and Unconventional Energy Technologies.** * * * [Repealed—1980]

Sec. 119.[6] **Endangered Species.**—(a)[7] The Congress finds the survival of many animal and plant species is endangered by overhunting, by the presence of toxic chemicals in water, air and soil,

[5] Sec. 304(g) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3147) repealed sec. 119, as added by Public Law 95–88 (91 Stat. 528), and amended by sec. 111 of the International Development and Food Assistance Act of 1978 (92 Stat. 948), and by sec. 107 of the International Development Cooperation Act of 1979 (93 Stat. 362). See also sec. 106 of this Act for text concerning energy technologies, *Legislation on Foreign Relations Through 2005*, vol. I–A.

[6] 22 U.S.C. 2151q.

[7] Sec. 702 of the International Environment Protection Act of 1983 (title VII of the Department of State Authorization Act, Fiscal Years 1984 and 1985, Public Law 98–164; 97 Stat. 1045) added paras. (a) and (b).

and by the destruction of habitats. The Congress further finds that the extinction of animal and plant species is an irreparable loss with potentially serious environmental and economic consequences for developing and developed countries alike. Accordingly, the preservation of animal and plant species through the regulation of the hunting and trade in endangered species, through limitations on the pollution of natural ecosystems, and through the protection of wildlife habitats should be an important objective of the United States development assistance.

(b)[7] In order to preserve biological diversity, the President is authorized to furnish assistance under this part, notwithstanding section 660,[8] to assist countries in protecting and maintaining wildlife habitats and in developing sound wildlife management and plant conservation programs. Special efforts should be made to establish and maintain wildlife sanctuaries, reserves, and parks; to enact and enforce anti-poaching measures; and to identify, study, and catalog animal and plant species, especially in tropical environments.

(c)[9] FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

(d)[9] COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

(1) the actions necessary in that country to conserve biological diversity, and

(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

(e)[9] LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

(f)[9] PVOS AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

(g)[9] ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

[8] Sec. 533(d)(4)(A) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167; 103 Stat. 1227) inserted "notwithstanding section 660".

[9] Sec. 302 of Public Law 99–529 (100 Stat. 3017) added paras. (c) through (h).

(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide, subject to obtaining the necessary appropriations, additional assistance necessary for the establishment and maintenance of such protected areas;

(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

(h)[9] ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.

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Chapter 7—Debt-For-Nature Exchanges [10]

Sec. 461.[11] **Definition.**—For purpose of this chapter, the term "debt-for-nature exchange" means the cancellation or redemption of the foreign debt of the government of a country in exchange for—

(1) that government's making available local currencies (including through the issuance of bonds) which are used only for eligible projects involving the conservation or protection of the environment in that country (as described in section 463); [12] or

(2) that government's financial resource or policy commitment to take certain specified actions to ensure the restoration, protection, or sustainable use of natural resources within that country; or

(3) a combination of assets and actions under both paragraphs (1) and (2).

Sec. 462.[13] **Assistance for Commercial Debt Exchanges.**—(a) The Administrator of the Agency for International Development is authorized to furnish assistance, in the form of grants on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible country which will be canceled or redeemed under the terms of an agreement with that government as part of a debt-for-nature exchange.

(b) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in subsection (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

Sec. 463.[14] **Eligible Projects.**—(a) The Administrator of the Agency for International Development shall seek to ensure that debt-for-nature exchanges under this chapter support one or more of the following activities by either the host government, a local private conservation group, or a combination thereof:

(1) restoration, protection, or sustainable use of the world's oceans and atmosphere;

(2) restoration, protection, or sustainable use of diverse animal and plant species;

(3) establishment, restoration, protection, and maintenance of parks and reserves;

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[10] Sec. 604 of the International Development and Food Assistance Act of 1978 (Public Law 95–424; 92 Stat. 961) repealed ch. 7, as enacted in the Foreign Assistance Act of 1966 (Public Law 89–583) and titled: "Joint Commissions on Rural Development". Sec. 711 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521) added this new ch. 7.

[11] 22 U.S.C. 2281. As enacted by the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521), all sections in ch. 7 are misnumbered, Should read "Sec. 471".

[12] All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521). Reference should read "section 473".

[13] 22 U.S.C. 2282. As enacted by the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521), all sections in ch. 7 are misnumbered, Should read "Sec. 472".

[14] 22 U.S.C. 2283. As enacted by the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521), all sections in ch. 7 are misnumbered, Should read "Sec. 473".

(4) development and implementation of sound systems of natural resource management;

(5) development and support of local conservation programs;

(6) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

(7) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

(8) design and implementation of sound programs of land and ecosystem management; and

(9) promotion of regenerative approaches in farming, forestry, fishing, and watershed management.

(b)(1) In cooperation with nongovernmental organizations, the Administrator of the Agency for International Development shall seek to identify those areas, which because of an imminent threat, are in particular need of immediate attention to prevent the loss of unique biological life or valuable ecosystem.

(2) The Administrator of the Agency for International Development shall encourage as many eligible countries as possible to propose such exchanges with the purpose of demonstrating to a large number of governments the feasibility and benefits of sustainable development.

Sec. 464.[15] **Eligible Countries.**—In order for a foreign country to be eligible to participate in a debt-for-nature exchange under this chapter, the Administrator of the Agency for International Development shall determine that—

(1) the host country is fully committed to the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange;

(2) a long-term plan has been prepared by the host country, or private conservation group, which adequately provides for the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange or that such a plan will be prepared in a timely manner; and

(3) there is a government agency or a local nongovernmental organization, or combination thereof, in the host country with the capability, commitment, and record of environmental concern to oversee the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange.

Sec. 465.[16] **Terms and Conditions.**—(a) The terms and conditions for making grants under this chapter shall be deemed to be fulfilled upon final approval by the Administrator of the Agency for International Development of the debt-for-nature exchange, a certification by the nongovernmental organization that the host government has accepted the terms of the exchange, and that an

[15] 22 U.S.C. 2284. As enacted by the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521), all sections in ch. 7 are misnumbered, Should read "Sec. 474".

[16] 22 U.S.C. 2285. As enacted by the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521), all sections in ch. 7 are misnumbered, Should read "Sec. 475".

agreement has been reached to cancel the commercial debt in an agreed upon fashion.

(b) Grants made under this section are intended to complement, and not substitute for, assistance otherwise available to a foreign country under this Act or any other provision of law.

(c) The United States Government is prohibited from accepting title or interest in any land in a foreign country as a condition on the debt exchange.

Sec. 466.[17] **Pilot Program for Sub-Saharan Africa.**—(a) The Administrator of the Agency for International Development, in cooperation with nongovernmental conservation organizations, shall invite the government of each country in sub-Saharan Africa to submit a list of those areas of severely degraded national resources which threaten human survival and well-being and the opportunity for future economic growth or those areas of biological or ecological importance within the territory of that country.

(b) The Administrator of the Agency for International Development shall assess the list submitted by each country under subsection (a) and shall seek to reach agreement with the host country for the restoration and future sustainable use of those areas.

(c)(1) The Administrator of the Agency for International Development is authorized to make grants, on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible sub-Saharan country in exchange for commitments by that government to restore natural resources identified by the host country under subsection (a) or for commitments to develop plans for sustainable use of such resources.

(2) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in section (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

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CHAPTER 11—SUPPORT FOR THE ECONOMIC AND DEMOCRATIC DEVELOPMENT OF THE INDEPENDENT STATES OF THE FORMER SOVIET UNION

SEC. 498.[18] **ASSISTANCE FOR THE INDEPENDENT STATES.**

The President is authorized to provide assistance to the independent states of the former Soviet Union under this chapter for the following activities: * * *

(9)[19] ENERGY EFFICIENCY AND PRODUCTION.—Promoting market-based pricing policies and the transfer of technologies that

[17] 22 U.S.C. 2286. As enacted by the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2521), all sections in ch. 7 are misnumbered, Should read "Sec. 476".

[18] 22 U.S.C. 2295.

[19] Sec. 4(a)(2) of Public Law 107–246 (116 Stat. 1514) redesignated para. (8) as para. (9), resulting in two para. (9).

reduce energy wastage and harmful emissions; supporting developmentally sound capital energy projects that utilize United States advanced coal technologies; and promoting efficient production, use, and transportation of oil, gas, coal, and other sources of energy.

(9) CIVILIAN NUCLEAR REACTOR SAFETY.—Implementing—

(A) a program of short-term safety upgrade of civilian nuclear power plants, including the training of power plant personnel, implementation of improved procedures for nuclear power plant operation, the development of effective and independent regulatory authorities, and cost-effective hardware upgrades; and

(B) a program to retire those civilian nuclear power plants whose capacity could be more cost-effectively replaced through energy efficiency.

(10) ENVIRONMENT.—Enhancing the human and natural environment and conserving environmental resources, including through—

(A) facilitation of the adoption of environmentally-sound policies and technologies, environmental restoration, and sustainable use of natural resources;

(B) promotion of the provision of environmental technology, education, and training by United States businesses, not-for-profit organizations, and institutions of higher education; and

(C) promotion of cooperative research efforts to validate and improve environmental monitoring of protracted radiation exposure.

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SEC. 498A.[20] CRITERIA FOR ASSISTANCE TO GOVERNMENTS OF THE INDEPENDENT STATES.

(a)[21] IN GENERAL.—In providing assistance under this chapter for the government of any independent state of the former Soviet Union, the President shall take into account not only relative need but also the extent to which that independent state is acting to—
* * *

(7) take constructive actions to protect the international environment, prevent significant transborder pollution, and promote sustainable use of natural resources;

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PART II

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Chapter 2—Military Assistance

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[20] 22 U.S.C. 2295a.

[21] Sec. 2(c) of Executive Order 12884 of December 1, 1993 (58 F.R. 64099), delegated to the Coordinator (as established in sec. 102 of the FREEDOM Support Act; 22 U.S.C. 5812) those functions conferred upon the President in secs. 498A(a), 498B(c), and 498B(g).

Sec. 518. Natural Resources and Wildlife Management. * * * [Repealed—1996][22]

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[22] Sec. 104(b)(2)(B) of Public Law 104–164 (110 Stat. 1427) repealed sec. 518 which had been added by sec. 533(f) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2015). Sec. 518 had authorized the transfer of nonlethal excess defense articles and small arms to friendly countries, international organizations, and private and voluntary organizations for the purposes of sec. 119 of this Act.

(2) Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 [1]

Partial text of Public Law 108–199 [Division D of the Consolidated Appropriations Act, 2005; H.R. 2673], 118 Stat. 3, approved January 23, 2003

AN ACT Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS, 2004

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TITLE V—GENERAL PROVISIONS

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ENVIRONMENT PROGRAMS

SEC. 555. (a) FUNDING.—Of the funds appropriated under the heading "Development Assistance", not less than $155,000,000 shall be made available for programs and activities which directly protect biodiversity, including forests, in developing countries, of which $1,500,000 should be made available to improve the capacity of indigenous groups and local environmental organizations and law enforcement agencies to protect the biodiversity of indigenous reserves in the Amazon Basin region of Brazil, which amount shall be in addition to the amount requested in this Act for assistance for Brazil for fiscal year 2004: Provided, That not later than 1 year after enactment of this Act, the Secretary of State, in coordination with the Administrator of the United States Agency for International Development and other appropriate departments and agencies, and after consultation with appropriate governments and nongovernmental organizations, shall submit to the Committees on Appropriations a strategy for biodiversity conservation in the Amazon Basin region of South America: Provided further, That of the funds appropriated under the headings "Development Assistance" and "Andean Counterdrug Initiative", funds shall be made available in fiscal year 2004 to develop the strategy described in the previous proviso: Provided further, That of the funds appropriated by this Act, not less than $180,000,000 shall be made available to support policies and programs in developing countries that directly: (1) promote a wide range of energy conservation, energy efficiency

[1] For additional text of this Act, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

and clean energy programs and activities, including the transfer of clean and environmentally sustainable energy technologies; (2) measure, monitor, and reduce greenhouse gas emissions; (3) increase carbon sequestration activities; and (4) enhance climate change mitigation and adaptation programs.

(b) CLIMATE CHANGE REPORT.—Not later than 45 days after the date on which the President's fiscal year 2005 budget request is submitted to Congress, the President shall submit a report to the Committees on Appropriations describing in detail the following—

(1) all Federal agency obligations and expenditures, domestic and international, for climate change programs and activities in fiscal year 2004, including an accounting of expenditures by agency with each agency identifying climate change activities and associated costs by line item as presented in the President's Budget Appendix; and

(2) all fiscal year 2003 obligations and estimated expenditures, fiscal year 2004 estimated expenditures and estimated obligations, and fiscal year 2005 requested funds by the United States Agency for International Development, by country and central program, for each of the following: (i) to promote the transfer and deployment of a wide range of United States clean energy and energy efficiency technologies; (ii) to assist in the measurement, monitoring, reporting, verification, and reduction of greenhouse gas emissions; (iii) to promote carbon capture and sequestration measures; (iv) to help meet such countries' responsibilities under the Framework Convention on Climate Change; and (v) to develop assessments of the vulnerability to impacts of climate change and mitigation and adaptation response strategies.

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(3) Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 [1]

Partial text of Public Law 102–391 [H.R. 5368], 106 Stat. 1633, approved October 6, 1992

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1993, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1993, and for other purposes, namely:

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TITLE V—GENERAL PROVISIONS

* * * * * * *

ENVIRONMENT

SEC. 532.[2] (a) It is the policy of the United States that sustainable economic growth must be predicated on the sustainable management of natural resources. The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank (MDB) to continue to promote vigorously the environmental and energy initiatives established in section 533(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513).[3] The Secretary of the Treasury, in cooperation with the Secretary of State, shall also undertake direct, bilateral discussions with appropriate officials of the governments of the member nations of the Organization for Economic Cooperation and Development with a goal of building greater international support for the environmental goals established in subsection (d) of this section. The Secretary of the Treasury shall submit a report to the Committees on Appropriations by March 1, 1993, which describes the progress of these bilateral discussions.

(b) The Secretary of the Treasury shall, not later than March 1, 1993, submit a report to the Congress containing the same information as requested in section 533(b) of Public Law 101–513.

(c)(1) In furtherance of the policies contained in section 533(a) of Public Law 101–513 and section 1308 of the International Development and Finance Act of 1989 (Public Law 101–240), and as a

[1] For partial text of this Act, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

[2] Originally codified at 22 U.S.C. 262*l*. It was omitted from the U.S. Code when it was not repeated in subsequent appropriation acts. Similar language was first enacted as sec. 540 of the Foreign Assistance Appropriations Act, 1986.

[3] For text of sec. 533, see page 487.

basis for measuring more effectively progress by the MDBs toward improved environmental performance, the Secretary of the Treasury shall instruct the United States Executive Directors of the MDBs to encourage each MDB, at a minimum, to meet the benchmarks established in paragraph (2) in the areas of sustainable energy development, forest conservation, forced displacement of populations, and environmental impact assessment. On March 1, 1993 and March 1, 1994, the Secretary of the Treasury shall submit a report to the Congress describing in detail the progress being made by the MDBs in meeting these benchmarks.

(2) For the purposes of paragraph (1), benchmarks are as follows:

(A) In the area of sustainable energy development—

(i) all loans in the energy sector should be based on, or support development of, "least-cost" integrated resource plans. Such plans shall include analyses of possible end-use energy efficiency measures and nonconventional renewable energy options, and such plans shall reflect the quantifiable environmental costs of proposed energy developments;

(ii) a substantial portion of loans and grants in the energy, industry, and transportation sectors shall be devoted to end-use energy efficiency improvements and nonconventional renewable energy development; and

(iii) all organizational units within the MDBs should create staff positions in a management role in end-use efficiency and renewable energy, which positions shall be staffed by individuals with professional experience in program design and management and educational degrees in relevant technical disciplines.

(B) In the area of forest conservation—

(i) forestry loans should not support commercial logging in relatively undisturbed primary forests, nor should loans result in any significant loss of tropical forests;

(ii) forestry loans should not be disbursed until legal, economic, land tenure, and other policy conditions needed to ensure sustainability are in place;

(iii) loans should not support mineral, petroleum, or other industrial development in, or construction or upgrading of roads through, relatively undisturbed primary forests unless adequate safeguards and monitoring systems, developed in consultation with local populations, are already in place to prevent degradation of the surrounding forests;

(iv) loans should be consistent with and support the needs and rights of indigenous peoples and other long-term forest inhabitants and should not be made to countries which have shown an unwillingness to resolve fairly the territorial claims of such people; and

(v) support for protection of biological diversity, in close consultation with local communities, should be increased to account for a larger proportion of MDB lending.

(C) In the area of forced displacement of populations—

(i) the World Bank, Inter-American Development Bank, and Asian Development Bank should maintain a listing,

available to the Secretary of the Treasury, of all ongoing projects involving forced displacement of populations, including the number of people displaced and a report on the status of the implementation of their resettlement policy guidelines for each such project, and obtain agreements with borrowers to ensure that all ongoing projects involving forced displacement will be in full compliance with their resettlement policy guidelines by mid-1993; and

(ii) the African Development Bank should adopt and implement policy guidelines on forced displacement similar to such guidelines of the other MDBs.

(D) In the area of procedures for environmental impact assessment (EIA)—

(i) each MDB should require that draft and final EIA reports be made available to the public in borrowing and donor countries and that the public be offered timely opportunities for comment on the EIA process, including initial scoping sessions, review of EIA categories assigned to individual projects, and opportunities to comment on draft and final EIA reports;

(ii) each MDB should apply EIA requirements to all sector loans and develop and apply the methodology for environmental assessment of structural adjustment loans;

(iii) each MDB should require that the EIA process include analyses of the potential impacts of proposed projects on the global environment; and

(iv) each MDB should require the head of the appropriate environmental unit, rather than project officers, determine the appropriate type of environmental analysis required under the bank's EIA procedures.

(d) The Administrator of the Agency for International Development shall instruct all Agency missions and bureaus to continue to implement all elements of the "Global Warming Initiative" as defined in, and which may continue under, the authorities of sections 533(c) (1) through (4) of Public Law 101–513. The Initiative shall continue to emphasize the need to reduce emissions of greenhouse gases through strategies consistent with continued economic development, such as forest conservation, end-use energy efficiency, least-cost energy planning, and renewable energy development. The Administrator shall direct Agency mission directors to incorporate these strategies in their country programs.

(e) Of the funds appropriated by this Act under the headings in title II of this Act under "Agency for International Development", not less than $650,000,000 shall be made available for environment and energy activities, including funds earmarked under section 533 of this Act, including the following—

(1) Not less than $20,000,000 of the aggregate of the funds appropriated to carry out the provisions of sections 103 through 106 and chapter 10 of part I of the Foreign Assistance Act of 1961 shall be made available for biological diversity activities, of which $5,000,000 shall be made available for the Parks in Peril project pursuant to the authority of section 119(b) of that Act; $1,500,000 shall be for the National Science Foundation's international biological diversity program;

$750,000 shall be for the Neotropical Bird Conservation Initiative of the National Fish and Wildlife Foundation; and up to $2,000,000 shall be for Project Noah;

(2) Not less than $15,000,000 of the funds appropriated for the Development Assistance Fund and to carry out the provisions of chapter 10 of part I of the Foreign Assistance Act of 1961 shall be made available to support replicable renewable energy projects, and the Agency for International Development shall initiate at least five significant new activities in renewable energy during fiscal year 1993;

(3) Not less than $7,000,000 of the funds appropriated for the Development Assistance Fund and to carry out the provisions of chapter 10 of part I of the Foreign Assistance Act of 1961 shall be made available for assistance in support of elephant conservation and preservation;

(4) Not less than $25,000,000 of the funds appropriated for the Development Assistance Fund shall be made available for the Office of Energy of the Agency for International Development; and

(5) Up to $50,000,000 of the funds appropriated to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be made available to carry out the "Forests for the Future Initiative" and to achieve a Global Forest Agreement.

(f) Of the funds appropriated by this Act to carry out the provisions of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, the Agency for International Development should, to the extent feasible and inclusive of funds earmarked under subsection (e) of this section, target assistance for the following activities:

(1) $50,000,000 for projects associated with the Global Environment Facility;

(2) a total of $10,000,000 for CORECT, the Environmental Technology Export Council, and the International Fund for Renewable Energy Efficiency; and

(3) $55,000,000 for activities consistent with the Global Warming Initiative.

(g) Funds appropriated by this Act or any subsequent Act for the Development Assistance Fund and the Development Fund for Africa may be used for expenses (including related support costs) relating to the environment and energy sectors, of individuals detailed to or employed by the Agency for International Development, particularly those involved with the "Global Warning Initiative" described in this subsection.

(h) Of the funds appropriated by this Act to carry out the provisions of section 23 of the Arms Export Control Act, not less than $15,000,000 shall be made available to countries in Africa for programs which support conservation and biological diversity.

* * * * * * *

(4) Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991

Partial text of Public Law 101–513 [H.R. 5114], 104 Stat. 1979, approved November 5, 1990; as amended by Public Law 102–27 [Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991; H.R. 1281], 105 Stat. 130, approved April 10, 1991

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes, namely:

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TITLE V—GENERAL PROVISIONS

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ENVIRONMENT AND GLOBAL WARMING

SEC. 533.[1] (a) It is the policy of the United States that sustainable economic growth must be predicated on the sustainable management of natural resources. The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank (MDB) to promote vigorously within each MDB the expansion of programs in areas which address the problems of global climate change through requirements to—

(1) expand programs in energy conservation, end use energy efficiency, and renewable energy and promotion by—

(A) continuing to augment and expand professional staffs with expertise in these areas;

(B) giving priority to these areas in the "least cost" energy sector investment plans;

(C) encouraging and promoting these areas in policy-based energy sector lending;

(D) developing loans for these purposes; and

(E) convening seminars for MDB staff and board members on these areas and alternative energy investment opportunities;

[1] Originally codified at 22 U.S.C. 262*l*. It was omitted from the U.S. Code when it was not repeated in subsequent appropriation acts. Similar language was first enacted as sec. 540 of the Foreign Assistance Appropriations Act, 1986.

(2) provide analysis for each proposed loan to support additional power generating capacity comparing demand reduction costs to proposal costs;

(3) continue to assure that environmental impact assessments (EIA) of proposed energy projects are conducted early in the project cycle, include consideration of alternatives to the proposed project, and encourage public participation in the EIA process;

(4) continue to include the environmental costs of proposed projects with significant environmental impacts in economic assessments; and

(5) continue to provide technical assistance as a component of energy sector lending.

(b) The Secretary of the Treasury shall, not later than March 1, 1991, submit an annual report to the Congress which shall include—

(1) a detailed description of how the natural resource management initiatives mandated by this section have been incorporated in the Administration's efforts to address Third World Debt (the Brady Plan);

(2) a detailed description of progress made by each of the MDBs in adopting and implementing programs meeting the standards set out in subsection (a) including, in particular, efforts by the Department of the Treasury to assure implementation of this section, progress made by each MDB in subsection (a)(1)(B), and the amounts and proportion of lending in the energy sector for projects or programs in subsection (a)(1);

(3) the progress the Inter-American Development Bank has made in implementing environmental reforms;

(4) an updated analysis of each MDB's forestry sector loans, and a current analysis of each MDB's energy sector loans, and their impact on emissions of CO_2 and the status of proposals for specific forestry and energy sector activities to reduce CO_2 emissions; and

(5) the progress the International Bank for Reconstruction and Development has made in implementing the recommendations set forth in the April 1, 1988, report on "Debt-for-Nature Swaps" by the World Bank.

(c)(1) The Administrator of the Agency for International Development shall update and issue guidance to all Agency missions and bureaus detailing the elements of the "Global Warming Initiative",[2] which will continue to emphasize the need to reduce emissions of greenhouse gases, especially CO_2 and CFCs, through strategies consistent with continued economic development. This initiative shall continue to emphasize the need to accelerate sustainable development strategies in areas such as reforestation, biodiversity, end-use energy efficiency, least-cost energy planning, and renewable energy, and shall encourage mission directors to incorporate the elements of this initiative in developing their country programs.

[2] The Global Warming Initiative was enacted as sec. 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990.

(2) The Administrator shall pursue this initiative by, among other things—

(A) increasing the number and expertise of personnel devoted to this initiative in all bureaus and missions;

(B) devoting increased resources to technical training of mission directors;

(C) accelerating the activities of the Multi-Agency Working Group on Power Sector Innovation;

(D) focusing tropical forestry assistance programs on the key middle- and low-income developing countries (hereinafter "key countries") which are projected to contribute large amounts of greenhouse gases to the global environment;

(E) assisting countries in developing a systematic analysis of the appropriate use of their total tropical forest resources, with the goal of developing a national program for sustainable forestry;

(F) focusing energy assistance activities on the key countries, where assistance would have the greatest impact on reducing emissions from greenhouse gases; and

(G) continuing to follow the directives with respect to key countries and countries that receive large Economic Support Fund assistance contained in section 534(b)(3) of Public Law 101–167.

(3) None of the funds appropriated in this Act shall be available for any program, project or activity which would—

(A) result in any significant loss of tropical forests; or

(B) involve commercial[3] timber extraction in primary tropical forest areas unless an environmental assessment:

(i) identifies potential impacts on biological diversity;

(ii) demonstrates that all timber extraction will be conducted according to an environmentally sound management system which maintains the ecological functions of the natural forest and minimizes impacts on biological diversity; and

(iii) demonstrates that the activity will contribute to reducing deforestation.

(4) Funds appropriated to carry out the provisions of sections 103 and 106 of the Foreign Assistance Act of 1961, as amended, may be used by the Agency for International Development, notwithstanding any other provision of law, for the purpose of supporting tropical forestry and energy programs aimed at reducing emissions of greenhouse gases with regard to the key countries in which deforestation and energy policy would make a significant contribution to global warming, except that such assistance shall be subject to sections 116, 502B, and 620A of the Foreign Assistance Act of 1961.

(5) Funds appropriated by this Act to carry out the provisions of sections 103 and 106 of the Foreign Assistance Act of 1961 may be used for expenses (including related support costs) relating to the environment and energy sectors, of employees or individuals detailed to or employed by the Agency for International Development,

[3] Sec. 308 of Public Law 102–27 (105 Stat. 152) struck out "industrial" and inserted in lieu thereof "commercial" and inserted text to end of subpara. (B) beginning with "unless an environmental assessment:".

particularly those involved with the "Global Warming Initiative" described in this subsection.

(d) Of the funds appropriated by this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961, not less than $80,000,000 shall be made available for environment and energy activities, including funds earmarked under section 534 of this Act, as follows—

(1) not less than $15,000,000 of the aggregate of the funds appropriated to carry out the provisions of sections 103 through 106 and chapter 10 of part I of the Foreign Assistance Act of 1961 shall be made available for biological diversity activities, of which: $3,000,000 shall be made available for the Parks in Peril project pursuant to the authority of section 119(b) of that Act, $500,000 shall be for neotropical migratory bird conservation in Latin America and the Caribbean, $100,000 shall be for the Charles Darwin Station, $750,000 shall be for Project Noah, and $1,500,000 shall be for the National Science Foundation's international biological diversity program;

(2) not less than $30,000,000 of the funds appropriated to carry out the provisions of sections 103 and 106 of the Foreign Assistance Act of 1961 shall be made available to support the "Global Warming Initiative" as described in this section;

(3) not less than $5,000,000 of the funds appropriated to carry out the provisions of sections 103, 106 and chapter 10 of part I of the Foreign Assistance Act of 1961 shall be made available for assistance in support of elephant conservation and preservation; and

(4) not less than $20,000,000 of the funds appropriated to carry out the provisions of sections 103 and 106 of the Foreign Assistance Act of 1961 shall be made available for the Office of Energy of the Agency for International Development.

(e) Of the funds appropriated by this Act to carry out the provisions of section 23 of the Arms Export Control Act, not less than $15,000,000 shall be made available to countries in Africa for programs which support conservation and biological diversity.

(f) * * *

(g) Notwithstanding any other provision of law, none of the funds appropriated by this Act for programs of the Agency for International Development may be made available for any project or activity except in accordance with the requirements of section 117(c) of the Foreign Assistance Act of 1961 and the regulations issued pursuant thereto (22 CFR 216).

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TITLE VI—INTERNATIONAL FORESTRY COOPERATION

SEC. 601. SHORT TITLE.

This title may be cited as the "International Forestry Cooperation Act of 1990".

SEC. 602. FORESTRY AND RELATED NATURAL RESOURCE ASSISTANCE.

(a) FOCUS OF ACTIVITIES.—To achieve the maximum impact from activities undertaken under the authority of this title, the Secretary shall focus such activities on the key countries which could have a substantial impact on emissions of greenhouse gases related to global warming.

(b) AUTHORITY FOR INTERNATIONAL FORESTRY ACTIVITIES.—In support of forestry and related natural resource activities outside of the United States and its territories and possessions, the Secretary of Agriculture (hereinafter referred to in this title as the Secretary) may—

(1) provide assistance that promotes sustainable development and global environmental stability, including assistance for—

(A) conservation and sustainable management of forest land;

(B) forest plantation technology and tree improvement;

(C) rehabilitation of cutover lands, eroded watersheds, and areas damaged by wildfires or other natural disasters;

(D) prevention and control of insects, diseases, and other damaging agents;

(E) preparedness planning, training, and operational assistance to combat natural disasters;

(F) more complete utilization of forest products leading to resource conservation;

(G) range protection and enhancement; and

(H) wildlife and fisheries habitat protection and improvement;

(2) share technical, managerial, extension, and administrative skills related to public and private natural resource administration;

(3) provide education and training opportunities to promote the transfer and utilization of scientific information and technologies;

(4) engage in scientific exchange and cooperative research with foreign governmental, educational, technical and research institutions; and

(5) cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife and fisheries, and related natural resource activities.

(c) ELIGIBLE COUNTRIES.—The Secretary shall undertake the activities described in subsection (b), in countries that receive assistance from the Agency for International Development only at the request, or with the concurrence, of the Administrator of the Agency for International Development.

SEC. 603. TROPICAL DEFORESTATION ASSESSMENT AND ASSISTANCE.

In support of the Tropical Forestry Action Plan and to specifically address tropical deforestation and degradation, the Secretary may—

(1) support and actively participate in global and regional meetings that seek to reform such Plan;

(2) together with the United States Agency for International Development, and other Federal agencies, provide technical assistance to tropical countries for the formulation of national forestry sector development strategies; and

(3) cooperate with tropical countries on research, training, and technical programs aimed at implementing national forestry sector development strategies.

SEC. 604. INSTITUTE OF TROPICAL FORESTRY.

(a) EXPANSION.—The Secretary shall expand the capabilities of and construct additional facilities at the Caribbean National Forest and Institute of Tropical Forestry in Puerto Rico, as the Secretary determines necessary to support the purpose of this title, and as funds are appropriated for such expansion and construction.

(b) TROPICAL FORESTRY PLANS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall prepare and submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Committee on Agriculture of the House of Representatives, and to the Committees on Appropriations of the Senate and House of Representatives, a tropical forestry plan for the expansion and construction of additional facilities under subsection (a). Such plan shall include provisions for—

(1) the construction or acquisition of a major center for education, interpretation, and appreciation of the benefits and methods of the intelligent management of tropical forests;

(2) the acquisition or construction of facilities for housing and classroom instruction near the Caribbean National Forest/Luguillo Experimental Forest; and

(3) the acquisition or construction of facilities for the study and recovery of endangered tropical wildlife, fish and plant species.

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SEC. 609.[4, 5] ADMINISTRATIVE PROVISIONS.

(a) COORDINATION OF ACTIVITIES.—The Secretary shall coordinate all activities outside of the United States under this title with other Federal officials, departments, agencies, and international organizations, as the President may require.

(b) ASSISTANCE.—The Secretary may provide assistance, as determined appropriate by the Secretary to carry out this title, including technical and financial assistance, equipment, and facilities without reimbursement.

SEC. 610.[5, 6] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 611.[5, 7] CONFORMING AMENDMENTS. * * *

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[4] 16 U.S.C. 4504.

[5] Sec. 2(a)(1) of the Hawaii Tropical Forest Recovery Act (Public Law 102–574; 106 Stat. 4593) redesignated secs. 605 through 607 as secs. 609 through 611, and added new secs. 605 through 607, relating to the Institute of Pacific Islands Forestry. See 16 U.S.C. 4503a *et seq.*

[6] 16 U.S.C. 4505.

[7] Sec. 607 amended the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1641 *et seq.*), and the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. *et seq.*).

(5) Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990

Partial text of Public Law 101–167 [H.R. 3743], 103 Stat. 1195, approved November 21, 1989

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1990, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1990, and for other purposes, namely:

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TITLE V—GENERAL PROVISIONS

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GLOBAL WARMING INITIATIVE

SEC. 534. (a) TROPICAL FORESTRY ASSISTANCE.—(1) In order to achieve the maximum impact from activities relating to tropical forestry, the Agency for International Development shall focus tropical forestry assistance programs on the key middle- and low-income developing countries (hereinafter "key countries") which are projected to contribute large amounts of greenhouse gases related to global warming as a result of industrialization and the burning of fossil fuels, and destruction of tropical forests.

(2) Funds appropriated to carry out the provisions of sections 103 and 106 of the Foreign Assistance Act of 1961, as amended, may be used by the Agency for International Development, notwithstanding any other provision of law, for the purpose of supporting tropical forestry programs aimed at reducing emissions of greenhouse gases with regard to the key countries in which deforestation makes a significant contribution to global warming, except that such assistance shall be subject to sections 116, 502B, and 620A of the Foreign Assistance Act of 1961.

(3) In providing assistance relating to tropical forests, the Administrator of that Agency shall, to the extent feasible and appropriate, assist countries in developing a systematic analysis of the appropriate use of their total tropical forest resources, with the goal of developing a national program for sustainable forestry.

(b) ENERGY ASSISTANCE.—(1) In order to achieve the maximum impact from activities relating to energy, the Agency for International Development shall focus energy assistance activities on the key countries, where assistance would have the greatest impact on reducing emissions from greenhouse gases. Such assistance

shall be focused on improved energy efficiency, increased use of renewable energy resources and national energy plans (such as least-cost energy plans) which include investment in end-use efficiency and renewable energy resources.

(2) Funds appropriated to carry out the provisions of sections 103 and 106 of the Foreign Assistance Act of 1961, as amended, may be used by the Agency for International Development, notwithstanding any other provision of law, for the purpose of supporting energy programs aimed at reducing emissions of greenhouse gases related to global warming with regard to the key countries, except that such assistance shall be subject to sections 116, 502B, and 620A of the Foreign Assistance Act of 1961.

(3) It is the sense of the Congress that the Agency for International Development should increase its efforts in the fields of energy efficiency, renewable energy, and energy planning. Such increase should take place with respect to key countries and countries with large Economic Support Fund project assistance. Such efforts should include—

(A) an increase in the number of Agency for International Development staff with energy expertise, including staff with expertise in renewable energy technologies and end-use efficiency;

(B) assistance to develop analyses of energy-sector actions that could minimize emissions of greenhouse gases at least cost, while at the same time meeting basic economic and social development needs. Such assistance should include country-specific analyses which compare the economic and environmental costs of actions to promote energy efficiency and nonconventional renewable energy with the economic and environmental costs of investments to provide additional conventional energy supplies;

(C) assistance to develop energy-sector plans that employ end-use analysis and other techniques to identify the most cost-effective actions to minimize increased reliance on fossil fuels, ensuring to the maximum extent feasible that nongovernmental organizations and academic institutions are involved in this planning;

(D) insuring that AID energy assistance—including support for private-sector initiatives—is consistent with the analyses and plans described in subparagraphs (B) and (C) above, and that environmental impacts (including that on global warming) and alternatives have been fully analyzed;

(E) assistance to improve efficiency in the production, transmission, distribution, and use of energy. Such assistance should focus on the development of institutions to (i) promote energy efficiency in all sectors of energy production and use, (ii) provide training and technical assistance to help energy producers and users identify cost-effective actions to improve energy efficiency, (iii) finance specific investments in energy efficiency in all sectors of energy production and use, and (iv) improve local capabilities in the research, development, and sale of energy efficient technologies;

(F) assistance in exploiting nonconventional renewable energy resources, including wind, solar, small-hydro, geothermal,

and advanced biomass systems. This assistance should also promote efficient use of traditional biomass fuels through improved fuelwood management and improved methods of charcoal production;

(G) expanding efforts to meet the energy needs of the rural poor through the methods described in subparagraphs (E) and (F). Specifically these efforts should promote improved efficiency in the use of biomass fuels for household energy, improved systems of fuelwood management, and the development of the nonconventional renewable energy systems described in subparagraph (F);

(H) encouraging host countries to sponsor meetings with officials from the United States utility sector who are leaders in energy efficiency and other United States experts to discuss the application of least-cost planning techniques;

(I) developing a cadre of United States experts from industry, academia, nonprofit organizations, and government agencies capable of providing technical assistance to developing countries concerning energy policy and planning, energy efficiency and renewable energy resources;

(J) in cooperation with the Department of Energy, the Environmental Protection Agency, the World Bank,[1] and the Development Assistance Committee of the OECD, supporting research concerning the ways developing nations can meet their energy needs while minimizing global warming and how to meet those needs; and

(K) strengthening the Agency for International Development's partnership with the Department of Energy in order to ensure that the Agency's energy efforts take full advantage of United States expertise and technology.

(c) REPORTS AND AUTHORITIES.—(1) The Agency for International Development, in consultation with the Environmental Protection Agency (EPA), the Department of State, and other appropriate agencies, shall submit to Congress no later than April 15, 1990, a report which (1) examines the potential contributions of developing countries to future global emissions of greenhouse gases under different economic growth scenarios, (2) estimates the relative contributions of those countries to global greenhouse gas emissions, and (3) identifies specific key countries which stand to contribute significantly to global greenhouse gas emissions, and in which actions to promote energy efficiency, reliance on renewable energy resources, and conservation of forest resources could significantly reduce emissions of greenhouse gases. This report should utilize existing data, including the models and methodologies already developed by the EPA for their report to Congress on policy options for stabilizing global climate.

(2) Of the funds appropriated to carry out the provisions of sections 103 and 106 of the Foreign Assistance Act of 1961, as amended, the Agency for International Development may use such amounts as may be necessary to reimburse United States Government agencies, agencies of State governments, and institutions of higher learning for the full costs of employees detailed or assigned

[1] See other legislation on "Environmental Policy and International Financial Institutions".

to the Agency for International Development for the purpose of carrying out activities relating to forestry and energy programs aimed at reducing emissions of greenhouse gases related to global warming. Personnel who are detailed or assigned for the purposes of this section shall not be included within any personnel ceiling applicable to any United States Government agency during the period of detail or assignment.

(d)[1,2] EXPORT-IMPORT BANK.—(1) Of the financing provided by the Export-Import Bank that is utilized for the support of exports for the energy sector, the Bank shall seek to provide not less than 5 per centum of such financing for renewable energy projects.

(2) The Export-Import Bank shall take all appropriate steps to finance information exchanges and training whose purpose it is to help link United States producers in the renewable energy sector with assistance programs and potential foreign customers.

(3) Beginning on April 15, 1990, the Chairman of the Export-Import Bank shall submit an annual report to the Committees on Appropriations on the Bank's implementation of this subsection.

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[2] 12 U.S.C. 635g note.

(6) Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 [1]

FREEDOM Support Act

Partial text of Public Law 102–511 [S. 2532], 106 Stat. 3320, approved October 24, 1992; as amended by Public Law 104–66 [Federal Reports Elimination and Sunset Act of 1995; S. 790], 109 Stat. 707, approved December 21, 1995

AN ACT To support freedom and open markets in the independent states of the former Soviet Union, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[2] SHORT TITLES.

This Act may be cited as the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992" or the "FREEDOM Support Act".

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SEC. 3.[3] DEFINITION OF INDEPENDENT STATES.

For purposes of this Act, the terms "independent states of the former Soviet Union" and "independent states" mean the following: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

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TITLE III—BUSINESS AND COMMERCIAL DEVELOPMENT

SEC. 301.[4] AMERICAN BUSINESS CENTERS.

(a) ESTABLISHMENT.—The President is authorized and encouraged to establish American Business Centers in the independent states of the former Soviet Union receiving assistance under chapter 11 of part I of the Foreign Assistance Act of 1961 where the President determines that such centers can be cost-effective in promoting the objectives described in section 498 of that Act and United States economic interests and in establishing commercial partnerships between the people of the United States and the peoples of the independent states.

(b) ENVIRONMENTAL BUSINESS CENTERS AND AGRIBUSINESS CENTERS.—For purposes of this section, the term "American Business Centers" includes the following:

(1) Environmental business centers in those independent states that offer promising market possibilities for the export

[1] For full text, see *Legislation on Foreign Relations Through 2005*, vol. I–B.
[2] 22 U.S.C. 5801 note.
[3] 22 U.S.C. 5801.
[4] 22 U.S.C. 5821.

of United States environmental goods and services. To the maximum extent practicable, these environmental business centers should be established as a component of other centers.

(2) Agribusiness centers that include the participation of private United States agribusinesses or agricultural cooperatives, private nonprofit organizations, State universities and land grant colleges, and financial institutions, that make appropriate contributions of equipment, materials, and personnel for the operation of such centers. The purposes of these agribusiness centers shall be—

(A) to enhance the ability of farmers and other agribusiness practitioners in the independent states to better meet the needs of the people of the independent states;

(B) to assist the transition from a command and control system in agriculture to a free market system; and

(C) to facilitate the demonstration and use of United States agricultural equipment and technology.

(c) ADDITIONAL POLICY GUIDANCE.—To the maximum extent possible, and consistent with the particular purposes of the specific types of centers, the President should direct that—

(1) the American Business Centers established pursuant to this section place special emphasis on assistance to United States small- and medium-sized businesses to facilitate their entry into the commercial markets of the independent states;

(2) such centers offer office space, business facilities, and market analysis services to United States firms, trade associations, and State economic development offices on a user-fee basis that minimizes the cost of operating such centers;

(3) such centers serve as a repository for commercial, legal, and technical information, including environmental and export control information;

(4) such centers identify existing or potential counterpart businesses or organizations that may require specific technical coordination or assistance;

(5) such centers be established in several sites in the independent states; and

(6) host countries be asked to make appropriate contributions of real estate and personnel for the establishment and operation of such centers.

(d) FUNDING.—

(1) REIMBURSEMENT AGREEMENT.—Not later than 90 days after the date of enactment of this Act, the Administrator of the Agency for International Development shall conclude a reimbursement agreement with the Secretary of Commerce for the Department of Commerce's services in establishing and operating American Business Centers pursuant to this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—Of the amount authorized to be appropriated to carry out chapter 11 of part I of the Foreign Assistance Act of 1961, up to $12,000,000 for fiscal year 1993 are authorized to be appropriated to carry out this section, in addition to amounts otherwise available for such purpose.

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SEC. 303.[5] FUNDING FOR EXPORT PROMOTION ACTIVITIES AND CAPITAL PROJECTS.

(a) ALLOCATION OF A.I.D. FUNDS.—The President is encouraged to use a portion of the funds made available for the independent states of the former Soviet Union under chapter 11 of part I of the Foreign Assistance Act of 1961—

(1) to fund the export promotion, finance, and related activities carried out pursuant to subsection (b)(1), including activities relating to the export of intermediary goods; and

(2) to fund capital projects, including projects for telecommunications, environmental cleanup, power production, and energy related projects.

(b) EXPORT PROMOTION, FINANCE, AND RELATED ACTIVITIES.—The Secretary of Commerce, as Chair of the Trade Promotion Coordination Committee, should, in conjunction with other members of that committee, design and implement programs to provide adequate commercial and technical assistance to United States businesses seeking markets in the independent states of the former Soviet Union, including the following:

(1) Increasing the United States and Foreign Commercial Service presence in the independent states, in particular in the Russian Far Eastern cities of Vladivostok and Khabarovsk.

(2) Preparing profiles of export opportunities for United States businesses in the independent states and providing other technical assistance.

(3) Utilizing the Market Development Cooperator Program under section 2303 of the Export Enhancement Act of 1988 (15 U.S.C. 4723).

(4) Developing programs specifically for the purpose of assisting small- and medium-sized businesses in entering commercial markets of the independent states. In carrying out this paragraph, the Secretary of Commerce, to the extent possible, should work directly with private sector organizations with proven experience in trade and economic relations with the independent states.

(5) Supporting projects undertaken by the United States business community on the basis of partnership, joint venture, contractual, or other cooperative agreements with appropriate entities in the independent states.

(6) Supporting export finance programs, feasibility studies, political risk insurance, and other related programs through increased funding and flexibility in the implementation of such programs.

(7) Supporting the Business Information Service (BISNIS) and its related programs.

[5] 22 U.S.C. 5823.

SEC. 304.[6] **INTERAGENCY WORKING GROUP ON ENERGY OF THE TRADE PROMOTION COORDINATING COMMITTEE.**

The Trade Promotion Coordinating Committee should utilize its interagency working group on energy to assist United States energy sector companies to develop a long-term strategy for penetrating the energy market in the independent states of the former Soviet Union. The working group should—

(1) work with officials from the independent states in creating an environment conducive to United States energy investment;

(2) help to coordinate assistance to United States companies involved with projects to clean up former Soviet nuclear weapons sites and commercial nuclear waste; and

(3) work with representatives from United States business and industry involved with the energy sector to help facilitate the identification of business opportunities, including the promotion of oil, gas, and clean coal technology and products, energy efficiency, and the formation of joint ventures between United States companies and companies of the independent nations.

SEC. 305.[7] * * * [Repealed—1995]

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[6] 22 U.S.C. 5824.

[7] Formerly at 22 U.S.C. 5825; repealed by sec. 102(1) of Public Law 104–66 (109 Stat. 713). Sec. 305 had required the Secretary of Commerce to report annually to Congress on the implementation of this Act, on the programs of other industrialized nations establishing business in the former Soviet Union, and on related trade and pricing practices of other OECD nations.

(7) Support for East European Democracy (SEED) Act of 1989 [1]

Partial text of Public Law 101–179 [H.R. 3402], 103 Stat. 1298, approved November 28, 1989

AN ACT To promote political democracy and economic pluralism in Poland and Hungary by assisting those nations during a critical period of transition and abetting the development in those nations of private business sectors, labor market reforms, and democratic institutions; to establish, through these steps, the framework for a composite program of support for East European Democracy (SEED).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[2] SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Support for East European Democracy (SEED) Act of 1989".

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TITLE V—OTHER ASSISTANCE PROGRAMS

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SEC. 502.[3] ENVIRONMENTAL INITIATIVES FOR POLAND AND HUNGARY.

(a) PRIORITY FOR THE CONTROL OF POLLUTION.—The Congress recognizes the severe pollution problems affecting Poland and Hungary and the serious health problems which ensue from such pollution. The Congress therefore directs that a high priority be given in the implementation of assistance to Poland and Hungary to the control of pollution and the restoration of the natural resource base on which a sustainable, healthy economy depends.

(b) EPA ACTIVITIES GENERALLY.—In addition to specific authorities contained in any of the environmental statutes administered by the Environmental Protection Agency, the Administrator of that Agency (hereinafter in this section referred to as the "Administrator") is authorized to undertake such educational, policy training, research, and technical and financial assistance, monitoring, coordinating, and other activities as the Administrator may deem appropriate, either alone or in cooperation with other United States or foreign agencies, governments, or public or private institutions, in protecting the environment in Poland and Hungary.

(c) EPA ACTIVITIES IN POLAND.—The Administrator shall cooperate with Polish officials and experts to—

(1) establish an air quality monitoring network in the Krakow metropolitan area as a part of Poland's national air monitoring network; and

[1] For complete text, see *Legislation on Foreign Relations Through 2005*, vol. I–B.
[2] 22 U.S.C. 5401 note.
[3] 22 U.S.C. 5452.

(2) improve both water quality and the availability of drinking water in the Krakow metropolitan area.

(d) EPA ACTIVITIES IN HUNGARY.—The Administrator shall work with other United States and Hungarian officials and private parties to establish and support a regional center in Budapest for facilitating cooperative environmental activities between governmental experts and public and private organizations from the United States and Eastern and Western Europe.

(e) FUNDING OF EPA ACTIVITIES.—To enable the Environmental Protection Agency to carry out subsections (b), (c), and (d), there are authorized to be appropriated $10,000,000 for the 3-year period beginning October 1, 1989, to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 and following; relating to development assistance) or chapter 4 of Part II of that Act (22 U.S.C. 2346 and following; relating to the economic support fund). These funds may be used to carry out those subsections notwithstanding any provision of law relating to the use of foreign assistance funds.

(f) DEPARTMENT OF ENERGY ACTIVITIES RELATING TO FOSSIL FUELS.—

(1) CLEAN COAL.—The Secretary of Energy shall cooperate with Polish officials and experts to retrofit a coal-fired commercial powerplant in the Krakow, Poland, region with advanced clean coal technology that has been successfully demonstrated at a comparably scaled powerplant in the United States. Such retrofit shall be carried out by one or more United States companies using United States technology and equipment manufactured in the United States. The Secretary may vest title in any property acquired under this paragraph in an entity other than the United States.

(2) EQUIPMENT ASSESSMENT.—The Secretary of Energy shall cooperate with Polish officials and experts and companies within the United States to assess and develop the capability within Poland to manufacture or modify boilers, furnaces, smelters, or other equipment that will enable industrial facilities within Poland to use fossil fuels cleanly. The Secretary may vest title in any property acquired under this paragraph in an entity other than the United States.

(3) AUTHORIZATION OF APPROPRIATIONS.—To carry out paragraphs (1) and (2) of this subsection, there are authorized to be appropriated $30,000,000 for the 3-year period beginning October 1, 1989. Not more than $10,000,000 of the funds appropriated under this paragraph may be used to carry out the requirements of paragraph (1).

(g) PRIORITY FOR EFFICIENT ENERGY USE.—In view of the high energy usage per unit of output in Hungary and Poland, the Secretary of Energy shall give high priority to assisting officials of Poland and Hungary in improving the efficiency of their energy use, through emphasis on such measures as efficient motors, lights, gears, and appliances and improvements in building insulation and design.

(h) ALTERNATIVE INVESTMENTS IN ENERGY IN HUNGARY.—It is the sense of the Congress that the Executive branch should work with the Government of Hungary to achieve environmentally safe

alternative investments in energy efficiency, particularly with regard to projects along the Danube River.

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TITLE VII—REPORTS TO CONGRESS

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SEC. 703.[4] REPORT ON ENVIRONMENTAL PROBLEMS IN POLAND AND HUNGARY.

The first report submitted pursuant to section 704 shall include the following:

(1) ASSESSMENT OF PROBLEMS.—An overall assessment of the environmental problems facing Poland and Hungary, including—

(A) a relative ranking of the severity of the problems and their effects on both human health and the general environment;

(B) a listing of the geographical areas of each country that have suffered the heaviest environmental damage, and a description of the source and scope of the damage; and

(C) an assessment of the environmental performance of leading industrial polluters in those countries and the expected effect on pollution levels of industrial modernization.

(2) PRIORITIES AND COSTS FOR ACTION.—An analysis of the priorities that Poland and Hungary should each assign in addressing its environmental problems, and an estimate of the capital and human resources required to undertake a comprehensive program of environmental protection in that country.

(3) ROLE OF UNITED STATES AND MULTILATERAL ASSISTANCE.—A statement of strategy for United States assistance for the next 5 years to address environmental problems in Poland and Hungary, including—

(A) recommendations for appropriate levels and forms of bilateral financial and technical assistance;

(B) recommendations concerning United States participation in cooperative multilateral undertakings;

(C) an assessment of the feasibility of debt-for-nature swaps as a technique of environmental protection in each country; and

(D) recommendations for minimizing further environmental damage to Krakow, and for the protection and restoration of historic sites in that city.

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[4] 22 U.S.C. 5473.

(8) Enterprise for the Americas Initiative Act of 1992

Partial text of Public Law 102–532 [H.R. 4059], 106 Stat. 3509, approved October 27, 1992

AN ACT To amend the Agricultural Trade Development and Assistance Act of 1954 to authorize additional functions within the Enterprise for the Americas Initiative, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Enterprise for the Americas Initiative Act of 1992".

SEC. 2.[2] GOOD NEIGHBOR ENVIRONMENTAL ACT OF 1992. * * *

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SEC. 6.[3] THE GOOD NEIGHBOR ENVIRONMENTAL BOARD.

(a) ESTABLISHMENT.—The President shall establish an advisory board to be known as the Good Neighbor Environmental Board (hereinafter in this section referred to as the "Board").

(b) PURPOSE.—The purpose of the Board shall be to advise the President and the Congress on the need for implementation of environmental and infrastructure projects (including projects that affect agriculture, rural development, and human nutrition) within the States of the United States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border.

(c) MEMBERSHIP.—The Board shall be composed of—

(1) representatives from the United States Government, including a representative from the Department of Agriculture and representatives from other appropriate agencies;

(2) representatives from the governments of the States of Arizona, California, New Mexico, and Texas; and

(3) representatives from private organizations, including community development, academic, health, environmental, and other nongovernmental entities with experience and expertise on environmental and infrastructure problems along the southwest border.

(d) ANNUAL REPORTS TO THE PRESIDENT AND CONGRESS.—

(1) IN GENERAL.—The Board shall submit to the President and the Congress of the United States an annual report on—

(A) the environmental and infrastructure projects referred to in subsection (a) that have been implemented, and

[1] 7 U.S.C. 1691 note.

[2] Sec. 2 added new secs. 616 through 619 to title VI of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1738).

[3] 7 U.S.C. 5404.

(B) the need for the implementation of additional environmental and infrastructure projects.

(2) TRANSMISSION OF COPIES TO BOARD MEMBERS.—The Board shall—

(A) transmit to each member of the Board a copy of any report to be submitted pursuant to paragraph (1) at least 14 days before its submission, and

(B) allow each member of the Board to have 14 days within which to prepare and submit supplemental views with respect to the recommendations of the Board for inclusion in such report.

(9) Enterprise for the Americas Environmental Fund

Partial text of Public Law 83–480[1] [Agricultural Trade Development and Assistance Act of 1954; S. 2475], 68 Stat. 454, 7 U.S.C. 1691–1736d, approved July 10, 1954; as amended

AN ACT To increase the consumption of United States agricultural commodities in foreign countries, to improve the foreign relations of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Agricultural Trade Development and Assistance Act of 1954".

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TITLE VI—ENTERPRISE FOR THE AMERICAS INITIATIVE

SEC. 601.[2] ESTABLISHMENT OF THE FACILITY.

There is established in the Department of the Treasury an entity to be known as the "Enterprise for the Americas Facility" (hereafter referred to in this title as the "Facility").

SEC. 602.[3] PURPOSE.

The purpose of this title is to encourage and support improvement in the lives of the people of Latin America and the Caribbean through market-oriented reforms and economic growth with interrelated actions to promote debt reduction, investment reforms, and community-based conservation and sustainable use of the environment. The Facility will support such objectives through the administration of debt reduction operations relating to those countries that meet investment reform and other policy conditions provided for in this title.

SEC. 603.[4] ELIGIBILITY FOR BENEFITS UNDER THE FACILITY.

(a) REQUIREMENTS.—To be eligible for benefits from the Facility under this title, a country shall—

(1) be a Latin American or Caribbean country;

(2) have in effect or have received approval for, or, as appropriate in exceptional circumstances, be making significant progress towards the establishment of—

(A) an International Monetary Fund (hereafter referred to in this title as the "IMF") standby arrangement, extended IMF arrangement, or an arrangement under the

[1] For full text, see *Legislation on Foreign Relations Through 2005*, vol. I–B. Sec. 1512 of subtitle A of title XV of Public Law 101–624 (104 Stat. 3658) added title VI.

[2] 7 U.S.C. 1738.

[3] 7 U.S.C. 1738a.

[4] 7 U.S.C. 1738b.

structural adjustment facility or enhanced structural adjustment facility, or in exceptional circumstances, an IMF-monitored program or its equivalent; and

(B) as appropriate, structural or sectoral adjustment loans from the International Bank for Reconstruction and Development (hereafter referred to in this title as the "World Bank") or the International Development Association (hereafter referred to in this title as the "IDA");

(3) have placed into effect major investment reforms in conjunction with an Inter-American[5] Development Bank (hereafter referred to as the "IDB") loan or otherwise be implementing, or making significant progress towards an open investment regime; and

(4) if appropriate, have agreed with its commercial bank lenders on a satisfactory financing program, including, as appropriate, debt or debt service reduction.

(b) ELIGIBILITY DETERMINATION.—The President shall determine whether a country is an eligible country for purposes of subsection (a).

SEC. 604.[6] REDUCTION OF CERTAIN DEBT.

(a) AUTHORITY TO REDUCE DEBT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President may reduce the amount owed to the United States or any agency of the United States, and outstanding as of January 1, 1990, as a result of any credits extended under title I to a country eligible for benefits from the Facility.

(2) AVAILABILITY[7] OF APPROPRIATIONS.—The authorities under this section may be exercised only to the extent provided for in advance in appropriation Acts.

(b) LIMITATION.—A debt reduction authorized under subsection (a) shall be accomplished, at the direction of the Facility, through the exchange of a new obligation under this title for obligations of the type referred to in subsection (a) outstanding as of January 1, 1990.

(c) EXCHANGE OF OBLIGATIONS.—The Facility shall notify the Commodity Credit Corporation of an agreement entered into under subsection (b) with an eligible country to exchange a new obligation for outstanding obligations. At the direction of the Facility, the old obligations that are the subject of the agreement may be canceled and a new debt obligation may be established for the country relating to the agreement. The Commodity Credit Corporation shall make an adjustment in its accounts to reflect a debt reduction under this section.

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[5] Sec. 302 of Public Law 102–237 (105 Stat. 1855) added the hyphen to "Inter-American".

[6] 7 U.S.C. 1738c. Title II, chapter VIII of Public Law 102–27 (105 Stat. 147, 7 U.S.C. 1736e note) provided the following:

"Title I of Public Law 480 program allowed for the repayment of loans for the sale of agricultural commodities in foreign or local currencies until December 31, 1971. Since that time, until the law was changed in the 1985 farm bill, all sales have been on dollar credit terms. In view of the present financial situation, it is impossible for many countries to repay their loans in dollars. Therefore, the President may use the authority in section 411 and section 604 of the Agricultural Trade Development and Assistance Act of 1954 to renegotiate the payment on Public Law 480 debt in eligible countries in Latin America, the Caribbean and sub-Saharan Africa.".

[7] Sec. 303 of Public Law 102–237 (105 Stat. 1855) corrected the spelling of "AVAILABILITY".

SEC. 605.[8] REPAYMENT OF PRINCIPAL.

(a) CURRENCY OF PAYMENT.—The principal amount owed under each new obligation issued under section 604 shall be repaid in United States dollars.

(b) DEPOSIT OF PAYMENTS.—Principal repayments on new obligations issued under section 604 shall be deposited in Commodity Credit Corporation accounts.

SEC. 606.[9] INTEREST OF NEW OBLIGATIONS.

(a) RATE OF INTEREST.—New obligations issued to an eligible country under section 604 shall bear interest at a concessional rate.

(b) CURRENCY OF PAYMENT, DEPOSITS.—

(1) UNITED STATES DOLLARS.—An eligible country to which a new obligation has been issued under section 604 that has not entered into an agreement under section 607, shall be required to pay interest on such obligation in United States dollars which shall be deposited in Commodity Credit Corporation accounts.

(2) LOCAL CURRENCY.—If an eligible country to which a new obligation has been issued under section 604 has entered into an agreement under section 607, interest under such obligation may be paid in the local currency of the eligible country and deposited into an Environmental Fund as provided for in section 608. Such interest shall be the property of the eligible country until such time as it is disbursed under section 608. Such local currencies shall be used for the purposes specified in the agreement entered into under section 607.

(c) INTEREST PREVIOUSLY PAID.—If an eligible country to which a new obligation has been issued under section 604 enters into an agreement under section 607 subsequent to the date on which interest first becomes due on such new obligation, any interest paid on such new obligation prior to such agreement being entered into shall not be redeposited into the Fund established for the eligible country under section 608(a) but shall be deposited into Commodity Credit Corporation accounts.[10]

SEC. 607.[11] ENVIRONMENTAL FRAMEWORK AGREEMENTS.

(a) AUTHORITY.—The President is authorized to enter into an environmental framework agreement with each country eligible for benefits from the Facility concerning the operation and use of an Enterprise for the Americas Environmental Fund (hereafter referred to in this title as the "Environmental Fund")[12] established under section 608 for that country. The President shall consult with the Board established under section 610 when entering into such agreements.

(b) REQUIREMENTS.—An environmental framework agreement entered into under this section shall—

(1) require the eligible country to establish an Environmental Fund;

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[8] 7 U.S.C. 1738d.
[9] 7 U.S.C. 1738e.
[10] Sec. 304 of Public Law 102–237 (105 Stat. 1855) inserted "accounts".
[11] 7 U.S.C. 1738f.
[12] In a technical correction, sec. 305 of Public Law 102–237 (105 Stat. 1855) moved the close quotation mark.

(2) require the eligible country to make interest payments under section 608(a) into the Environmental Fund;

(3) require the eligible country to make prompt disbursements from the Environmental Fund to the body described in subsection (c);

(4) where appropriate, seek to maintain the value of the local currency resources deposited into the appropriate Environmental Fund in terms of United States dollars;

(5) specify, in accordance with section 612, the purposes for which the Environmental Fund may be used; and

(6) contain reasonable provisions for the enforcement of the terms of the agreement.

(c) ADMINISTERING BODY.—Funds disbursed from the Environmental Fund in an eligible country shall be administered by a body constituted under the laws of the country. Such body shall—

(1) be composed of—

(A) one or more representatives appointed by the President;

(B) one or more representatives appointed by the eligible country; and

(C) representatives from a broad range of environmental and local community development nongovernmental organizations of the host country;

the majority of which shall be local representatives from nongovernmental organizations, and scientific or academic bodies;

(2) receive proposals for grant assistance from local organizations, and make grants to such organizations in accordance with the priorities agreed upon in the framework agreement and consistent with the overall purposes of section 612;

(3) be responsible for the management of the program and oversight of grant activities funded from resources of the Environmental Fund;

(4) be subject to fiscal audits by an independent auditor on an annual basis;

(5) present an annual program for review by the Board established under section 610 each year;

(6) present an annual report on the activities undertaken during the previous year to the Chairman of the Board established under section 610, and the government of the eligible country each year; and

(7) have any grant over $100,000 be subject to veto by the United States and the government of the eligible country.

SEC. 608.[13] ENTERPRISE FOR THE AMERICAS ENVIRONMENTAL FUNDS.

(a) ESTABLISHMENT.—An eligible country shall, under the terms of an environmental framework agreement entered into under section 607, establish an Environmental Fund to receive payments in local currency pursuant to section 607(b)(1).

(b) INVESTMENT.—Amounts deposited into an Environmental Fund shall be invested until disbursed. Notwithstanding any other provision of law, any return on such investment may be retained

[13] 7 U.S.C. 1738g.

by the Environmental Fund and need not be deposited to the account of the Commodity Credit Corporation and may be retained without further appropriation by Congress.

SEC. 609.[14] DISBURSEMENT OF ENVIRONMENTAL FUNDS.

Funds in an Environmental Fund shall be disbursed only pursuant to a framework agreement entered into pursuant to section 607.

SEC. 610.[15] ENTERPRISE [16] FOR THE AMERICAS BOARD.

(a) ESTABLISHMENT.—There is established a board to be known as the "Enterprise [16] for the Americas Board" (hereafter referred to in this title as the "Board").

(b) MEMBERSHIP AND CHAIRPERSON.—

(1) MEMBERSHIP.—The Board shall be composed of—

(A) six [17] representatives from the United States Government, at least one of whom shall be a representative of the Department of Agriculture; [17] and

(B) five [18] representatives from private nongovernmental environmental, child survival and child development,[19] community development, scientific, and academic organizations with experience and expertise in Latin America and the Caribbean, at least one of whom shall be a representative from a child survival and child development organization; [20]

to be appointed by the President.

(2) CHAIRPERSON.—The Board shall be headed by a chairperson who shall be appointed by the President from among the representatives appointed under paragraph (1)(A).

(c) RESPONSIBILITIES.—The Board shall—

(1) advise the President on the negotiations for the environmental framework agreements described in subsections (a) and (b) of section 607;

(2) ensure, in consultation with the government of the appropriate eligible country, with nongovernmental organizations of such eligible country, and if appropriate, of the region, and with environmental, scientific, and academic leaders of such eligible country and, as appropriate, of the region, that a suitable body referred to in section 607(c) is identified; and

(3) review the programs, operations, and fiscal audits of the bodies referred to in section 607(c).

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[14] 7 U.S.C. 1738h.

[15] 7 U.S.C. 1738i.

[16] Sec. 603 of the Jobs Through Exports Act of 1992 (Public Law 102–549; 106 Stat. 3669) struck out "**ENVIRONMENT**" and inserted in lieu thereof "**ENTERPRISE**" in the catchline; and struck out "Environment" and inserted in lieu thereof "Enterprise" in the text.

[17] Sec. 339(1) of Public Law 102–237 (105 Stat. 1861) struck out "five" and inserted in lieu thereof "six", and inserted ", at least one of whom shall be a representative of the Department of Agriculture".

[18] Sec. 339(2) of Public Law 102–237 (105 Stat. 1861) struck out "four" and inserted in lieu thereof "five".

[19] Sec. 603(3)(A) of the Jobs Through Exports Act of 1992 (Public Law 102–549; 106 Stat. 3669) inserted "child survival and child development,".

[20] Sec. 603(3)(B) of the Jobs Through Exports Act of 1992 (Public Law 102–549; 106 Stat. 3669) inserted ", at least one of whom shall be a representative from a child survival and child development organization".

SEC. 611.[21] OVERSIGHT.

The President may designate appropriate United States agencies to review the implementation of programs under this title and the fiscal audits relating to such programs. Such oversight shall not constitute active management of an Environmental Fund.

SEC. 612.[22] ELIGIBLE ACTIVITIES AND GRANTEES.

(a) ELIGIBLE ENTITIES.—Activities eligible to receive assistance through the framework agreements entered into under section 607, shall include—

(1) activities of the type described in the Global Environmental Protection Assistance Act of 1989 (22 U.S.C. 2281 et seq.);[23]

(2) agriculture-related activities, including those that provide for the biological prevention and control of animal and plant pests and diseases, to benefit the environment; and

(3) local community initiatives that promote conservation and sustainable use of the environment.

(b) REGULATION.—All activities of the type referred to in subsection (a) shall, where appropriate, include initiatives that link conservation of natural resources with local community development.

(c) SETTING OF PRIORITIES.—Appropriate activities and priorities relating to the use of an Environmental Fund shall be set by local nongovernmental organizations within the appropriate eligible country.

(d) GRANTS.—Grants may be made by the body referred to in section 607(c) from the Environmental Fund for environmental purposes to—

(1) host country nongovernmental environmental, conservation, development, educational, and indigenous peoples organizations;

(2) other appropriate local or regional entities; or

(3) in exceptional circumstances, the government of the eligible country.

(e) PRIORITY.—In providing assistance from an Environmental Fund, the body established under section 607(c) within the eligible country shall give priority to projects that are run by nongovernmental organizations and other private entities, and that involve local communities in their planning and execution.

SEC. 613.[24] ENCOURAGING MULTILATERAL DEBT DONATIONS.

(a) ENCOURAGING DONATIONS FROM OFFICIAL CREDITORS.—The President should actively encourage other official creditors of an eligible country to provide debt reduction to such eligible country.

(b) ENCOURAGING DONATIONS FROM OTHER SOURCES.—The President shall make every effort to insure that programs established through Environmental Funds are able to receive donations from private and public entities, and private creditors of the eligible country.

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[21] 7 U.S.C. 1738j.

[22] 7 U.S.C. 1738k.

[23] Sec. 306 of Public Law 102–237 (105 Stat. 1856) corrected a typographical error here by striking "462), and—", and inserting in lieu thereof "2281 et seq.);".

[24] 7 U.S.C. 1738*l*.

SEC. 614.[25] ANNUAL REPORT TO CONGRESS.

(a) IN GENERAL.—Not later[26] than December 31 of each fiscal year, the President shall prepare and submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate an annual report concerning the operation of the Facility for the prior fiscal year. This report shall include—[27]

(1) a description of the activities undertaken by the Facility during the previous fiscal year;

(2) a description of any Enviromental[28] Framework Agreement entered into under this title;

(3) a report on what Environmental Funds have been established under this title and on the operations of such Funds; and

(4) a description of any grants that have been extended by administering bodies pursuant to an Enviromental[28] Framework Agreement under this title.

(b)[26] SUPPLEMENTAL VIEWS IN ANNUAL REPORT.—No later than December 15 of each fiscal year, each member of the Board shall be entitled to receive a copy of the report required under subsection (a). Each member of the Board may prepare and submit supplemental views to the President on the implementation of this title by December 31 for inclusion in the annual report when it is transmitted to Congress pursuant to this section.

SEC. 615.[29] CONSULTATIONS WITH CONGRESS.

The President shall consult with the appropriate congressional committees on a periodic basis to review the operation of the Facility under this title and the eligibility of countries for benefits from the Facility under this title.

SEC. 616.[30] SALE OF QUALIFIED DEBT TO ELIGIBLE COUNTRIES.

(a) IN GENERAL.—

(1) AUTHORIZATION.—The President may sell to an eligible country up to 40 percent of such country's qualified debt, only if an amount of the local currency of such country (other than the price paid for the debt) equal to—

(A) not less than 40 percent of the price paid for such debt by such eligible country, or

(B) the difference between the price paid for such debt and the face value of such debt;

whichever is less, is used by such country through an Environmental Fund for eligible activities described in section 612.

(2) ENVIRONMENTAL FUNDS.—For purposes of this section, the term "Environmental Fund" means an Environmental Fund established under section 608. In the case of Mexico, such fund may be designated as the Good Neighbor Environmental Fund for the Border.

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[25] 7 U.S.C. 1738m.

[26] Sec. 330 of Public Law 102–237 (105 Stat. 1858) struck out "Not later" and inserted in lieu thereof "(a) IN GENERAL.—Not later", and added subsec. (b).

[27] Sec. 3 of the Enterprise for the Americas Initiative Act of 1992 (Public Law 102–532; 106 Stat. 3512) added from "This report shall include—" through para. (4) of subsec. (a).

[28] As enrolled. Should read "Environmental".

[29] 7 U.S.C. 1738n. Sec. 331 of Public Law 102–237 (105 Stat. 1858) added sec. 615.

[30] 7 U.S.C. 1738o. Sec. 2 of the Enterprise for the Americas Initiative Act of 1992 (Public Law 102–532; 106 Stat. 3509) added sec. 616.

(3) ESTABLISHMENT AND OPERATION OF ENVIRONMENTAL FUNDS.—The President should advise eligible countries on the procedures required to establish and operate the Environmental Funds required to be established under paragraph (1).

(b) TERMS AND CONDITIONS.—The President shall establish the terms and conditions, including the amount to be paid by the eligible country, under which such country's qualified debt may be sold under this section.

(c) APPROPRIATIONS REQUIREMENT.—The authorities provided by this section may be exercised only in such amounts and to such extent as is provided in advance in appropriations Acts.

(d) CERTAIN PROHIBITIONS INAPPLICABLE.—A sale of debt under this section shall not be considered assistance for purposes of any provision of law limiting assistance to a country.

(e) IMPLEMENTATION BY THE FACILITY.—A sale of debt authorized under this section shall be accomplished at the direction of the Facility. The Facility shall direct the Commodity Credit Corporation to carry out such sale. The Commodity Credit Corporation shall make an adjustment in its accounts to reflect the sale.

(f) DEPOSIT OF PROCEEDS.—The proceeds from a sale of qualified debt under this section shall be deposited in the account or accounts established by the Commodity Credit Corporation for the repayment of such debt by the eligible country.

(g) DEBTOR CONSULTATION.—Before any sale of qualified debt may occur under this section, the President should consult with the eligible country's government concerning such sale. The topics addressed in the consultation shall include the amount of qualified debt involved in the transaction and the uses to which funds made available as a result of the sale shall be applied.

SEC. 617.[31] SALE, REDUCTION, OR CANCELLATION OF QUALIFIED DEBT TO FACILITATE CERTAIN DEBT SWAPS.

(a) AUTHORITY TO SELL, REDUCE, OR CANCEL QUALIFIED DEBT.—For the purpose of facilitating eligible debt swaps, the President, in accordance with this section—

(1) may sell to an eligible purchaser (as determined pursuant to subsection (c)(1)) any qualified debt of an eligible country; or

(2) may reduce or cancel eligible debt of an eligible country upon receipt of payment from an eligible payor (as determined under subsection (c)(2)).

(b) TERMS AND CONDITIONS.—The President shall establish the terms and conditions under which qualified debt may be sold, reduced, or canceled pursuant to this section.

(c) ELIGIBLE PURCHASERS AND ELIGIBLE PAYORS.—

(1) SALES OF DEBT.—Qualified debt may be sold pursuant to subsection (a)(1) only to a purchaser who presents plans satisfactory to the President for using the debt for the purpose of engaging in eligible debt swaps.

(2) REDUCTION OR CANCELLATION OF DEBT.—Qualified debt may be reduced or cancelled pursuant to subsection (a)(2) only if the payor presents plans satisfactory to the President for

[31] 7 U.S.C. 1738p. Sec. 2 of the Enterprise for the Americas Initiative Act of 1992 (Public Law 102–532; 106 Stat. 3509) added sec. 617.

using such reduction or cancellation for the purpose of facilitating eligible debt swaps.

(d) DEBTOR CONSULTATION AND RIGHT OF FIRST REFUSAL.—

(1) CONSULTATION.—Before selling, reducing, or canceling any qualified debt of an eligible country pursuant to this section, the President should consult with that country concerning, among other things, the amount of debt to be sold, reduced, or canceled and the uses of such debt for eligible debt swaps.

(2) RIGHT OF FIRST REFUSAL.—The qualified debt of an eligible country may be sold, reduced, or cancelled pursuant to this section only if that country has been offered the opportunity to purchase that debt pursuant to section 616 and has not accepted that offer.

(e) LIMITATION.—In the aggregate, not more than 40 percent of the qualified debt of an eligible country may be sold, reduced, or cancelled under this section or sold under section 616.

(f) ADMINISTRATION.—The Facility shall notify the Commodity Credit Corporation of purchasers and payors the President has determined to be eligible under subsection (c), and shall direct the corporation to carry out the sale, reduction, or cancellation of a qualified debt pursuant to this section. The Commodity Credit Corporation shall make an adjustment in its accounts to reflect such sale, reduction, or cancellation.

(g) APPROPRIATIONS REQUIREMENT.—The authorities provided by this section may be exercised only in such amounts and to such extent as is provided in advance in appropriations Acts.

(h) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of qualified debt pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such debt.

(i) ELIGIBLE DEBT SWAPS.—As used in this section, the term "eligible debt swap" means a debt-for-development swap or debt-for-nature swap.

SEC. 618.[32] NOTIFICATION TO CONGRESSIONAL COMMITTEES.

(a) NOTICE OF NEGOTIATIONS.—The Secretary of State and the Secretary of the Treasury shall, in every feasible instance, notify the designated congressional committees not less than 15 days prior to any formal negotiation for debt relief under this title.

(b) TRANSMITTAL OF TEXT OF AGREEMENTS.—The Secretary of State shall transmit to the designated congressional committees a copy of the text of any agreement with any foreign government which would result in any debt relief under this title no less than 30 days prior to its entry into force, together with a detailed justification of the interest of the United States in the proposed debt relief.

(c) ANNUAL REPORT.—The Secretary of State or the Secretary of the Treasury, as appropriate, shall submit to the designated congressional committees not later than February 1 of each year a consolidated statement of the budgetary implications of all debt relief

[32] 7 U.S.C. 1738q. Sec. 2 of the Enterprise for the Americas Initiative Act of 1992 (Public Law 102–532; 106 Stat. 3509) added sec. 618.

agreements entered into force under this title during the preceding fiscal year.

(d) DESIGNATED CONGRESSIONAL COMMITTEES.—As used in this section, the term "designated congressional committees" means the Committee on Agriculture and the Committee on Foreign Affairs[33] of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 619.[34] DEFINITION OF QUALIFIED DEBT.

As used in sections 616, 617, and 618, the term "qualified debt" means any obligation, or portion of such obligation, of an eligible country to pay for purchases of United States agricultural commodities guaranteed by the Commodity Credit Corporation under export credit guarantee programs authorized pursuant to section 5(f) of the Commodity Credit Corporation Charter Act or section 4(b) of the Food for Peace Act of 1966—

(1) in which the Commodity Credit Corporation obtained a legal right or interest, as a result of assignment or subrogation, not later than September 1, 1992; and

(2) the payment of which obligation has been, not later than September 1, 1992, rescheduled in accordance with principles set forth in an Agreed Minute of the Paris Club.

Such term includes the obligation to pay any interest which was due or accrued not later than September 1, 1992, and unpaid as of the date of a debt sale pursuant to section 616 or a debt sale, reduction, or cancellation pursuant to section 617 (as the case may be).

[33] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[34] 7 U.S.C. 1738r. Sec. 2 of the Enterprise for the Americas Initiative Act of 1992 (Public Law 102–532; 106 Stat. 3509) added sec. 619.

(10) Assigning Foreign Affairs Functions and Implementing the Enterprise for the Americas Initiative and the Tropical Forest Conservation Act

Executive Order 13345, July 8, 2004, 69 F.R. 41901, 7 U.S.C. 1738 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Agricultural Trade Development and Assistance Act of 1954 (ATDA Act), as amended [7 U.S.C. 1691 et seq.], the Foreign Assistance Act of 1961 (Foreign Assistance Act), as amended [22 U.S.C. 2151 et seq.], and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Functions to be Performed by the Secretary of the Treasury.* (a) The Secretary of the Treasury is hereby designated to perform the functions of the President under the following provisions of law:

(1) sections 603(b), 604(a), and 611 of the ATDA Act (7 U.S.C. 1738b(b), 1738c(a), and 1738j); and

(2) sections 703, 704(a), 805(b), 806(a), 807(a), 808(a), and 812 of the Foreign Assistance Act (22 U.S.C. 2430b, 2430c(a), 2431c(b), 2431d(a), 2431e(a), 2431f(a), and 2431j).

(b) The Secretary of the Treasury shall:

(1)(A) make determinations under the provisions of sections 703(b) and 805(b) of the Foreign Assistance Act in accordance with any recommendations received from the Secretary of State with respect to subsections 703(a)(1)-703(a)(4) and the corresponding recommendations under section 805(a)(1) of that Act; and

(B) make determinations under the provisions of section 805(b) of the Foreign Assistance Act in accordance with any recommendations from the Administrator of the United States Agency for International Development (USAID) with respect to section 803(5)(B) of that Act [22 U.S.C. 2431a(5)(B)];

(2) exercise the functions under the provisions listed in section 1(a)(1) of this order in consultation with the Secretary of State and with the National Advisory Council on International Monetary and Financial Policies (Council) established by Executive Order 11269 of February 14, 1966 [22 U.S.C. 286b note];

(3) consult, as appropriate, with the Secretary of State, the Administrator of USAID, the Council, the Secretary of Agriculture, the Director of the Office of Management and Budget, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, the Director of the Office of National Drug Control Policy, and the Chairman of the Council of Economic Advisers in the performance of all other functions under the provisions listed in section 1(a) of this order.

Sec. 2. *Functions to be Performed by the Secretary of State.* (a) The Secretary of State is hereby designated to perform the functions of the President under sections 607 and 614 of the ATDA Act (7 U.S.C. 1738f and 1738m) and section 813(a) of the Foreign Assistance Act (22 U.S.C. 2431k).

(b) The Secretary of State shall consult, as appropriate, with the Secretary of the Treasury and the Administrator of USAID, in the performance of functions under the provisions listed in subsection 2(a) of this order.

(c) The Secretary of State shall consult, as appropriate, in the performance of functions under section 607 of the ATDA Act, with the Secretary of Agriculture, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, and the heads of such other executive departments and agencies as the Secretary of State determines appropriate.

(d) The Secretary of State is hereby designated to receive advice or supplemental views on the President's behalf consistent with the following provisions of law:

(1) section 610(c)(1) of the ATDA Act (7 U.S.C. 1738i(c)(1)); and

(2) section 813(b) of the Foreign Assistance Act (22 U.S.C. 2431k).

Sec. 3. *Recommendation by USAID.* The Administrator of USAID shall make recommendations with respect to 803(5)(B) of the Foreign Assistance Act (22 U.S.C. 2431a(5)(B)[)], in cooperation with the Secretary of Agriculture and the Secretary of State.

Sec. 4. *Government Appointees to the Enterprise for the Americas Board.* (a) Pursuant to section 610(b)(1)(A) of the ATDA Act (7 U.S.C. 1738i(b)(1)(A)[)] and section 811(b)(1)(A) and (b)(2) of the Foreign Assistance Act (22 U.S.C. 2431i(b)(1)(A) and (b)(2)), the following officers or employees of the United States are hereby designated to serve as representatives on the Enterprise for the Americas Board:

(i) the designee of the Secretary of State, who shall be the chairperson of the Board;

(ii) the designee of the Secretary of the Treasury;

(iii) two designees of the Secretary of Agriculture, one of whom shall be an officer or employee of the United States Forest Service International Programs Office with experience in international forestry matters, and the other shall be an officer or employee of the Foreign Agricultural Service;

(iv) the designee of the Secretary of the Interior;

(v) the designee of the Administrator of the Environmental Protection Agency;

(vi) the designee of the Administrator of USAID, who shall be the vice chairperson of the Board; and

(vii) the designee of the Chairman of the Council on Environmental Quality.

(b) The Board shall permit the following officers or employees of the United States to attend and observe a Board meeting:

(i) a designee of the Secretary of Commerce; and

(ii) a designee of the head of any executive department or agency, if the meeting will relate to matters relevant to the activities of such executive department or agency.

(c) An officer of the United States listed in subsections 4(a) and 4(b) shall make a designation for purposes of those subsections in writing submitted to the Secretary of State and shall change any such designation in the same manner. The authority to make such a designation may not be delegated.

(d) The Secretary of State may, after consultation with the officers of the United States listed in subsection 4(b) and the Attorney General, as appropriate, establish such procedures as may be necessary to provide for the governance and administration of the Board.

Sec. 5. *Guidance for the Performance of Functions.* In performing functions under this order, officers of the United States:

(a) shall ensure that all actions taken by them are consistent with the President's constitutional authority to (i) conduct the foreign affairs of the United States, including the commencement, conduct, and termination of negotiations with foreign countries and international organizations, (ii) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties, (iii) recommend for congressional consideration such measures as the President may judge necessary or expedient, and (iv) supervise the unitary executive branch;

(b) may further assign functions assigned by this order to officers of any department or agency within the executive branch to the extent permitted by law except as provided in subsection 4(c) of this order and such further assignment shall be published in the Federal Register; and

(c) shall consult the Attorney General as appropriate in implementing this section.

Sec. 6. *Revocation of Executive Orders.* The following Executive Orders are hereby revoked:

(a) Executive Order 12757 of March 19, 1991;

(b) Executive Order 12823 of December 3, 1992;

(c) Executive Order 13028 of December 3, 1996; and

(d) Executive Order 13131 of July 22, 1999.

Sec. 7. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

b. Department of State—Delegation of Authority; Establishment of Bureau

(1) Science, Technology, and American Diplomacy [1]

Title V of Public Law 95–426 [Foreign Relations Authorization Act, Fiscal Year 1979; H.R. 12598], 92 Stat. 963 at 982, approved October 7, 1978, as amended

AN ACT To authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Year 1979".

* * * * * * *

TITLE V—SCIENCE, TECHNOLOGY, AND AMERICAN DIPLOMACY

FINDINGS

SEC. 501.[2] The Congress finds that—

(1) the consequences of modern scientific and technological advances are of such major significance in United States foreign policy that understanding and appropriate knowledge of modern science and technology by officers and employees of the United States Government are essential in the conduct of modern diplomacy;

(2) many problems and opportunities for development in modern diplomacy lie in scientific and technological fields;

(3) in the formulation, implementation, and evaluation of the technological aspects of United States foreign policy, the United States Government should seek out and consult with both public and private industrial, academic, and research institutions concerned with modern technology; and

(4) the effective use of science and technology in international relations for the mutual benefit of all countries requires the development and use of the skills and methods of long-range planning.

[1] Portions of this Act may also be found in *Legislation on Foreign Relations Through 2005*, vol. II–A.

[2] 22 U.S.C. 2656a.

DECLARATION OF POLICY

SEC. 502.[3] In order to maximize the benefits and to minimize the adverse consequences of science and technology in the conduct of foreign policy, the Congress declares the following to be the policy of the United States:

(1) Technological opportunities, impacts, changes, and threats should be anticipated and assessed, and appropriate measures should be implemented to influence such technological developments in ways beneficial to the United States and other countries.

(2) The mutually beneficial applications of technology in bilateral and multilateral agreements and activities involving the United States and foreign countries or international organizations should be recognized and supported as an important element of United States foreign policy.

(3) The United States Government should implement appropriate measures to insure that individuals are trained in the use of science and technology as an instrument in international relations and that officers and employees of the United States Government engaged in formal and informal exchanges of scientific and technical information, personnel, and hardware are knowledgeable in international affairs.

(4) In recognition of the environmental and technological factors that change relations among countries and in recognition of the growing interdependence between the domestic and foreign policies and programs of the United States, United States foreign policy should be continually reviewed by the executive and legislative branches of the Government to insure appropriate and timely application of science and technology to the conduct of United States foreign policy.

(5)[4] Federally supported international science and technology agreements should be negotiated to ensure that—

(A) intellectual property rights are properly protected; and

(B) access to research and development opportunities and facilities and the flow of scientific and technological information, are, to the maximum extent practicable, equitable and reciprocal.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 503.[5] (a) The President, in consultation with the Director of the Office of Science and Technology Policy and other officials whom the President considers appropriate, shall—

(1) notwithstanding any other provision of law, insure that the Secretary of State is informed and consulted before any agency of the United States Government takes any major action, primarily involving science or technology, with respect to any foreign government or international organization;

[3] 22 U.S.C. 2656b.
[4] Sec. 5171(a) of Public Law 100–418 (102 Stat. 1452) added para. (5).
[5] 22 U.S.C. 2656c.

(2) identify and evaluate elements of major domestic science and technology programs and activities of the United States Government with significant international implications;

(3) identify and evaluate international scientific or technological developments with significant implications for domestic programs and activities of the United States Government; and

(4) assess and initiate appropriate international scientific and technological activities which are based upon domestic scientific and technological activities of the United States Government and which are beneficial to the United States and foreign countries.

(b)[6] * * * [Repealed—1995]

(c) Except as otherwise provided by law, nothing in this section shall be construed as requiring the public disclosure of sensitive information relating to intelligence sources or methods or to persons engaged in monitoring scientific or technological developments for intelligence purposes.

(d)[7] (1) The information and recommendations developed under subsection (b)(3) shall be made available to the United States Trade Representative for use in his consultations with Federal agencies pursuant to Executive orders pertaining to the transfer of science and technology.

(2) In providing such information and recommendations, the President shall utilize information developed by any Federal departments, agencies, or interagency committees, as he may consider necessary.

RESPONSIBILITY OF THE SECRETARY OF STATE

SEC. 504.[8] (a)(1)[9] In order to implement the policies[9] set forth in section 502 of this title, the Secretary of State (hereafter in this section referred to as the "Secretary") shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States and foreign countries, international organizations, or commissions of which the United States and one or more foreign countries are members.

(2)[9] In coordinating and overseeing such agreements and activities, the Secretary shall consider (A) scientific merit; (B) equity of access as described in section 503(b); (C) possible commercial or trade linkages with the United States which may flow from the agreement or activity; (D) national security concerns; and (E) any other factors deemed appropriate.

(3)[9] Prior to entering into negotiations on such an agreement or activity, the Secretary shall provide Federal agencies which have primary responsibility for, or substantial interest in, the subject matter of the agreement or activity, including those agencies responsible for—

[6] Sec. 1111(b) of Public Law 104–66 (109 Stat. 723) repealed subsec. (b), which had required the President to report annually on personnel requirements, standards, and training for service of U.S. Government officers and employees with respect to assignments in any Federal agency that involve foreign relations and science or technology and related matters.

[7] Sec. 5171(c) of Public Law 100–418 (102 Stat. 1453) added subsec. (d).

[8] 22 U.S.C. 2656d.

[9] Sec. 5171(d) of Public Law 100–418 (102 Stat. 1453) redesignated subsec. (a) as (a)(1); struck out "policy" and inserted in lieu thereof "policies"; and added paras. (2) and (3).

(A) Federal technology management policies set forth by Public Law 96–517 and the Stevenson-Wydler Technology Innovation Act of 1980;

(B) national security policies;

(C) United States trade policies; and

(D) relevant Executive orders,

with an opportunity to review the proposed agreement or activity to ensure its consistency with such policies and Executive orders, and to ensure effective interagency coordination.

(b) The Secretary shall, to such extent or in such amounts as are provided in appropriation Acts, enter into long-term contracts, including contracts for the services of consultants, and shall make grants and take other appropriate measures in order to obtain studies, analyses, and recommendations from knowledgeable persons and organizations with respect to the application of science or technology to problems of foreign policy.

(c) The Secretary shall, to such extent or in such amounts as are provided in appropriation Acts, enter into short-term and long-term contracts, including contracts for the services of consultants, and shall make grants and take other appropriate measures in order to obtain assistance from knowledgeable persons and organizations in training officers and employees of the United States Government, at all levels of the Foreign Service and Civil Service—

(1) in the application of science and technology to problems of United States foreign policy and international relations generally; and

(2) in the skills of long-range planning and analysis with respect to the scientific and technological aspects of United States foreign policy.

(d) In obtaining assistance pursuant to subsection (c) in training personnel who are officers or employees of the Department of State, the Secretary may provide for detached service for graduate study at accredited colleges and universities.

(e)[10] * * * [Repealed—1982]

* * * * * * *

[10] Sec. 505(a)(2) of Public Law 97–241 (96 Stat. 299) repealed subsec. (e), which had required a report from the Secretary of State concerning the coordination and oversight of all major science or science and technology agreements and activities between the United States and foreign countries, international organizations, or commissions. The Secretary submitted this report on January 19, 1979, and filed a supplemental report on October 26, 1979.

(2) Establishment of Bureau of Oceans and International Environmental and Scientific Affairs [1]

Partial text of Public Law 93–126 [Department of State Appropriations Authorization Act of 1973; H.R. 7645], 87 Stat. 451, approved October 18, 1973; as amended

AN ACT To authorize appropriations for the Department of State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of State Appropriations Authorization Act of 1973".

* * * * * * *

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

SEC. 9.[2] (a)[3] There is established within the Department of State a Bureau of Oceans and International Environmental and Scientific Affairs. There[4] shall be an Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, appointed by the President, by and with the advice and consent of the Senate, who shall be the head of the Bureau and who shall have responsibility for matters relating to oceans, environmental, scientific, fisheries, wildlife, and conservation affairs and for such other related duties as the Secretary may from time to time designate.[5]

* * * * * * *

[1] This Public Law also may be found in *Legislation on Foreign Relations Through 2005*, vol. II–A.

[2] 22 U.S.C. 2655a.

[3] Sec. 162(q)(2) of the Foreign Relations Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 410), struck out subsec. (b), which had amended 5 U.S.C. 5315 to add reference to this Assistant Secretary of State.

[4] Sec. 162(q)(1)(A) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 410), struck out "In addition to the positions provided under the first section of the Act of May 26, 1949, as amended (22 U.S.C. 2652), there" and inserted in lieu thereof "There".

[5] Sec. 162(q)(1)(B) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 410), inserted "and for such other related duties as the Secretary may from time to time designate".

(3) Delegating to the Secretary of State Certain Functions With Respect to the Negotiation of International Agreements Relating to the Enhancement of the Environment

Executive Order 11742, October 23, 1973, 38 F.R. 29457, 33 U.S.C. 1251 note

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

c. International Cooperation or Participation in International Organizations [1]

(1) REDI Center Authorization

Partial text of Public Law 109–140 [H.R. 4436], 119 Stat. 2650, approved December 22, 2005

AN ACT To provide certain authorities for the Department of State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDI CENTER.

(a) AUTHORIZATION.—The Secretary of State is authorized to provide for the participation by the United States in the Regional Emerging Diseases Intervention Center (in this section referred to as "REDI Center") in Singapore, as established by the Agreement described in subsection (c).

(b) CONSULTATION AND REPORT.—

(1) CONSULTATION.—Prior to the review required under Article 6.3 of the Agreement described in subsection (c), the Secretary shall consult with the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(2) REPORT.—In connection with the submission of the annual congressional budget justification, the Secretary shall report on efforts undertaken at the REDI Center with regard to bioterrorism concerns.

(c) AGREEMENT DESCRIBED.—The Agreement referred to in this section is the Agreement between the Governments of the United States of America and the Republic of Singapore Establishing the Regional Emerging Diseases Intervention Center, done at Singapore, November 22, 2005.

* * * * * * *

[1] See also legislation under Law of the Sea, beginning at page 5.

(2) Congo Basin Forest Partnership Act of 2004

Public Law 108–200 [H.R. 2264], 118 Stat. 458, approved February 13, 2004

AN ACT To authorize appropriations for fiscal year 2004 to carry out the Congo Basin Forest Partnership program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congo Basin Forest Partnership Act of 2004".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The tropical forests of the Congo Basin, located in the Central African countries of Cameroon, the Central African Republic, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, the Republic of Congo, Rwanda, Burundi, and Gao Tome/Principe, are second in size only to the tropical forests of the Amazon Basin.

(2) These forests are a crucial economic resource for the people of the Central African region.

(3) Congo Basin forests play a critical role in sustaining the environment—absorbing carbon dioxide, cleansing water, and retaining soil.

(4) Congo Basin forests contain the most diverse grouping of plants and animals in Africa, including rare and endangered species, such as the lowland gorilla, mountain gorilla, chimpanzee, and okapi. These plants and animals are invaluable for many reasons, including their genetic and biochemical information, which could spark advances in medical, agricultural, and industrial technology.

(5) Logging operations, driven by a growing global demand for tropical hardwoods, are shrinking these forests. One estimate has logging taking out Congo Basin forest area at a rate of twice the size of the State of Rhode Island every year.

(6) The construction of logging roads and other developments are putting intense hunting pressure on wildlife. At current hunting levels, most species of apes and other primates, large antelope, and elephants will disappear from the Congo Basin, with some becoming extinct.

(7) If current deforestation and wildlife depletion rates are not reversed, the six countries of the Congo Basin most immediately, but also the world, will pay an immense economic, environmental, and cultural price.

(8) The United States has an interest in seeing political stability and economic development advance in the Congo Basin

countries. This interest will be adversely impacted if current deforestation and wildlife depletion rates are not reversed.

(9) Poorly managed and nonmanaged logging and hunting threatens to do to the Congo Basin what it did to West Africa, which lost much of its forest and wildlife through over-exploitation.

(10) Purged of wildlife, some Congo Basin forests already are "empty forests".

(11) In an attempt to conserve the forests of the Congo Basin, the region's governments convened the Yaounde (Cameroon) Forest Summit in March 1999.

(12) In September 2002, Secretary of State Colin Powell launched the Congo Basin Forest Partnership (CBFP) in Johannesburg, South Africa. The CBFP promotes the conservation and sustainable use of the region's forests, for example, by working to combat poaching, illegal logging, and other unsustainable practices, and giving local populations an economic stake in the preservation of the forests, including through the development of ecotourism.

(13)(A) The United States contribution to the CBFP will focus on conserving 11 key landscapes in 6 countries—Cameroon, the Central African Republic, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, and the Republic of Congo—identified at the Yaounde Forest Summit as being of the greatest biological importance to the region.

(B) The United States will fund field-based activities within these 25,000,000 acres that aim to support a network of 27 national parks and protected areas and well-managed forestry concessions.

(C) In this way, the work will build on existing United States efforts, including those of the Central African Regional Program for the Environment (CARPE) of the United States Agency for International Development, which will implement the CBFP.

(14) The CBFP has broad international financial support, including from non-African governments, the European Commission, the International Bank for Reconstruction and Development, and numerous nongovernment organizations.

(15) A dramatic step toward conserving Congo Basin forests has recently been taken by Gabon. In September 2002, President Omar Bongo announced the creation of 13 national parks, representing over 10 percent of Gabon's surface area. Previously, Gabon had no national park system.

(16) With the CBFP and other initiatives, there exists unprecedented momentum for the conservation of Congo Basin forests.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the President to carry out the Congo Basin Forest Partnership (CBFP) program $18,600,000 for fiscal year 2004.

(b) CARPE.—Of the amounts appropriated pursuant to the authorization of appropriations in subsection (a), $16,000,000 is authorized to be made available to the Central Africa Regional Program for the Environment (CARPE) of the United States Agency for International Development.

(c) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

(3) Great Ape Conservation Act of 2000

Public Law 106–411 [H.R. 4320], 114 Stat. 1789, approved November 1, 2000

AN ACT To assist in the conservation of great apes by supporting and providing financial resources for the conservation programs of countries within the range of great apes and projects of persons with demonstrated expertise in the conservation of great apes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Great Ape Conservation Act of 2000".

SEC. 2.[2] FINDINGS AND PURPOSES.

(a) FINDINGS—Congress finds that—

(1) great ape populations have declined to the point that the long-term survival of the species in the wild is in serious jeopardy;

(2) the chimpanzee, gorilla, bonobo, orangutan, and gibbon are listed as endangered species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(3) because the challenges facing the conservation of great apes are so immense, the resources available to date have not been sufficient to cope with the continued loss of habitat due to human encroachment and logging and the consequent diminution of great ape populations;

(4) because great apes are flagship species for the conservation of the tropical forest habitats in which they are found, conservation of great apes provides benefits to numerous other species of wildlife, including many other endangered species;

(5) among the threats to great apes, in addition to habitat loss, are population fragmentation, hunting for the bushmeat trade, live capture, and exposure to emerging or introduced diseases;

(6) great apes are important components of the ecosystems they inhabit, and studies of their wild populations have provided important biological insights;

(7) although subsistence hunting of tropical forest animals has occurred for hundreds of years at a sustainable level, the tremendous increase in the commercial trade of tropical forest species is detrimental to the future of these species; and

(8) the reduction, removal, or other effective addressing of the threats to the long-term viability of populations of great

[1] 16 U.S.C. 6301 note.
[2] 16 U.S.C. 6301.

apes in the wild will require the joint commitment and effort of countries that have within their boundaries any part of the range of great apes, the United States and other countries, and the private sector.

(b) PURPOSES—The purposes of this Act are—

(1) to sustain viable populations of great apes in the wild; and

(2) to assist in the conservation and protection of great apes by supporting conservation programs of countries in which populations of great apes are located and by supporting the CITES Secretariat.

SEC. 3.[3] DEFINITIONS.

In this Act:

(1) CITES.—The term "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington March 3, 1973 (27 UST 1087; TIAS 8249), including its appendices.

(2) CONSERVATION.—The term "conservation"—

(A) means the use of methods and procedures necessary to prevent the diminution of, and to sustain viable populations of, a species; and

(B) includes all activities associated with wildlife management, such as—

(i) conservation, protection, restoration, acquisition, and management of habitat;

(ii) in-situ research and monitoring of populations and habitats;

(iii) assistance in the development, implementation, and improvement of management plans for managed habitat ranges;

(iv) enforcement and implementation of CITES;

(v) enforcement and implementation of domestic laws relating to resource management;

(vi) development and operation of sanctuaries for members of a species rescued from the illegal trade in live animals;

(vii) training of local law enforcement officials in the interdiction and prevention of the illegal killing of great apes;

(viii) programs for the rehabilitation of members of a species in the wild and release of the members into the wild in ways which do not threaten existing wildlife populations by causing displacement or the introduction of disease;

(ix) conflict resolution initiatives;

(x) community outreach and education; and

(xi) strengthening the capacity of local communities to implement conservation programs.

(3) FUND.—The term "Fund" means the Great Ape Conservation Fund established by section 5.

(4) GREAT APE.—The term "great ape" means a chimpanzee, gorilla, bonobo, orangutan, or gibbon.

[3] 16 U.S.C. 6302

(5) MULTINATIONAL SPECIES CONSERVATION FUND.—The term "Multinational Species Conservation Fund" means such fund as established in title I of the Department of the Interior and Related Agencies Appropriations Act, 1999, under the heading "MULTINATIONAL SPECIES CONSERVATION FUND".

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4.[4] GREAT APE CONSERVATION ASSISTANCE.

(a) IN GENERAL.—Subject to the availability of funds and in consultation with other appropriate Federal officials, the Secretary shall use amounts in the Fund to provide financial assistance for projects for the conservation of great apes for which project proposals are approved by the Secretary in accordance with this section.

(b) PROJECT PROPOSALS.—

(1) ELIGIBLE APPLICATIONS.—A proposal for a project for the conservation of great apes may be submitted to the Secretary by—

(A) any wildlife management authority of a country that has within its boundaries any part of the range of a great ape if the activities of the authority directly or indirectly affect a great ape population;

(B) the CITES Secretariat; or

(C) any person or group with the demonstrated expertise required for the conservation of great apes.

(2) REQUIRED ELEMENTS.—A project proposal shall include—

(A) a concise statement of the purposes of the project;

(B) the name of the individual responsible for conducting the project;

(C) a description of the qualifications of the individuals who will conduct the project;

(D) a concise description of—

(i) methods for project implementation and outcome assessment;

(ii) staff and community management for the project; and

(iii) the logistics of the project;

(E) an estimate of the funds and time required to complete the project;

(F) evidence of support for the project by appropriate governmental entities of the countries in which the project will be conducted, if the Secretary determines that such support is required for the success of the project;

(G) information regarding the source and amount of matching funding available for the project; and

(H) any other information that the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(c) PROJECT REVIEW AND APPROVAL.—

(1) IN GENERAL.—The Secretary shall—

[4] 16 U.S.C. 6303.

(A) not later than 30 days after receiving a project proposal, provide a copy of the proposal to other appropriate Federal officials; and

(B) review each project proposal in a timely manner to determine if the proposal meets the criteria specified in subsection (d).

(2) CONSULTATION; APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a project proposal, and subject to the availability of funds, the Secretary, after consulting with other appropriate Federal officials, shall—

(A) consult on the proposal with the government of each country in which the project is to be conducted;

(B) after taking into consideration any comments resulting from the consultation, approve or disapprove the proposal; and

(C) provide written notification of the approval or disapproval to the person who submitted the proposal, other appropriate Federal officials, and each country described in subparagraph (A).

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a project proposal under this section if the project will enhance programs for conservation of great apes by assisting efforts to—

(1) implement conservation programs;

(2) address the conflicts between humans and great apes that arise from competition for the same habitat;

(3) enhance compliance with CITES and other applicable laws that prohibit or regulate the taking or trade of great apes or regulate the use and management of great ape habitat;

(4) develop sound scientific information on, or methods for monitoring—

(A) the condition and health of great ape habitat;

(B) great ape population numbers and trends; or

(C) the current and projected threats to the habitat, current and projected numbers, or current and projected trends; or

(5) promote cooperative projects on the issues described in paragraph (4) among government entities, affected local communities, nongovernmental organizations, or other persons in the private sector.

(e) PROJECT SUSTAINABILITY.—To the maximum extent practicable, in determining whether to approve project proposals under this section, the Secretary shall give preference to conservation projects that are designed to ensure effective, long-term conservation of great apes and their habitats.

(f) MATCHING FUNDS.—In determining whether to approve project proposals under this section, the Secretary shall give preference to projects for which matching funds are available.

(g) PROJECT REPORTING.—

(1) IN GENERAL.—Each person that receives assistance under this section for a project shall submit to the Secretary periodic reports (at such intervals as the Secretary considers necessary) that include all information that the Secretary, after consultation with other appropriate government officials, determines is necessary to evaluate the progress and success of the project

for the purposes of ensuring positive results, assessing problems, and fostering improvements.

(2) AVAILABILITY TO THE PUBLIC.—Reports under paragraph (1), and any other documents relating to projects for which financial assistance is provided under this Act, shall be made available to the public.

(h) LIMITATIONS ON USE FOR CAPTIVE BREEDING.—Amounts provided as a grant under this Act—

(1) may not be used for captive breeding of great apes other than for captive breeding for release into the wild; and

(2) may be used for captive breeding of a species for release into the wild only if no other conservation method for the species is biologically feasible.

(i) PANEL.—Every 2 years, the Secretary shall convene a panel of experts to identify the greatest needs for the conservation of great apes.

SEC. 5.[5] GREAT APE CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the Multinational Species Conservation Fund a separate account to be known as the "Great Ape Conservation Fund", consisting of—

(1) amounts transferred to the Secretary of the Treasury for deposit into the Fund under subsection (e);

(2) amounts appropriated to the Fund under section 6; and

(3) any interest earned on investment of amounts in the Fund under subsection (c).

(b) EXPENDITURES FROM FUND.—

(1) IN GENERAL.—Subject to paragraph (2), upon request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary, without further appropriation, such amounts as the Secretary determines are necessary to provide assistance under section 4.

(2) ADMINISTRATIVE EXPENSES.—Of the amounts in the account available for each fiscal year, the Secretary may expand[6] not more than 3 percent, or up to $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this Act.

(c) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

[5] 16 U.S.C. 6304.
[6] So in original. Should probably be "expend".

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(d) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(e) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations to provide assistance under section 4. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit into the Fund.

SEC. 6.[7] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Fund $5,000,000 for each of fiscal years 2001 through 2005.

[7] 16 U.S.C. 6305. The Department of Interior and Related Agencies Appropriations, 2006 (Public Law 109–54; 119 Stat. 499), provided the following:

"For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201–4203, 4211–4213, 221–4225, 4241–4245, and 1538), the Asian Elephant Conservation Act of 1997 (Public Law 105–96; 16 U.S.C. 4261–4266), the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301–5306), the Great Ape Conservation Act of 2000 (16 U.S.C. 6301), and the Marine Turtle Conservation Act of 2004 (Public Law 108–266; 16 U.S.C. 6601), $6,500,000, to remain available until expended.".

(4) Neotropical Migratory Bird Conservation Act

Public Law 106–247 [S. 148], 114 Stat. 593, approved July 20, 2000

AN ACT To require the Secretary of the Interior to establish a program to provide assistance in the conservation of neotropical migratory birds.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Neotropical Migratory Bird Conservation Act".

SEC. 2.[2] FINDINGS.

Congress finds that—

(1) of the nearly 800 bird species known to occur in the United States, approximately 500 migrate among countries, and the large majority of those species, the neotropical migrants, winter in Latin America and the Caribbean;

(2) neotropical migratory bird species provide invaluable environmental, economic, recreational, and aesthetic benefits to the United States, as well as to the Western Hemisphere;

(3)(A) many neotropical migratory bird populations, once considered common, are in decline, and some have declined to the point that their long-term survival in the wild is in jeopardy; and

(B) the primary reason for the decline in the populations of those species is habitat loss and degradation (including pollution and contamination) across the species' range; and

(4)(A) because neotropical migratory birds range across numerous international borders each year, their conservation requires the commitment and effort of all countries along their migration routes; and

(B) although numerous initiatives exist to conserve migratory birds and their habitat, those initiatives can be significantly strengthened and enhanced by increased coordination.

SEC. 3.[3] PURPOSES.

The purposes of this Act are—

(1) to perpetuate healthy populations of neotropical migratory birds;

(2) to assist in the conservation of neotropical migratory birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and

(3) to provide financial resources and to foster international cooperation for those initiatives.

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[1] 16 U.S.C. 6101 note.
[2] 16 U.S.C. 6101.
[3] 16 U.S.C. 6102.

SEC. 4.[4] DEFINITIONS.

In this Act:

(1) ACCOUNT.—The term "Account" means the Neotropical Migratory Bird Conservation Account established by section 9(a).

(2) CONSERVATION.—The term "conservation" means the use of methods and procedures necessary to bring a species of neotropical migratory bird to the point at which there are sufficient populations in the wild to ensure the long-term viability of the species, including—

(A) protection and management of neotropical migratory bird populations;

(B) maintenance, management, protection, and restoration of neotropical migratory bird habitat;

(C) research and monitoring;

(D) law enforcement; and

(E) community outreach and education.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 5.[5] FINANCIAL ASSISTANCE.

(a) IN GENERAL.—The Secretary shall establish a program to provide financial assistance for projects to promote the conservation of neotropical migratory birds.

(b) PROJECT APPLICANTS.—A project proposal may be submitted by—

(1) an individual, corporation, partnership, trust, association, or other private entity;

(2) an officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government;

(3) a State, municipality, or political subdivision of a State;

(4) any other entity subject to the jurisdiction of the United States or of any foreign country; and

(5) an international organization (as defined in section 1 of the International Organizations Immunities Act (22 U.S.C. 288)).

(c) PROJECT PROPOSALS.—To be considered for financial assistance for a project under this Act, an applicant shall submit a project proposal that—

(1) includes—

(A) the name of the individual responsible for the project;

(B) a succinct statement of the purposes of the project;

(C) a description of the qualifications of individuals conducting the project; and

(D) an estimate of the funds and time necessary to complete the project, including sources and amounts of matching funds;

[4] 16 U.S.C. 6103.
[5] 16 U.S.C. 6104

(2) demonstrates that the project will enhance the conservation of neotropical migratory bird species in the United States, Latin America, or the Caribbean;

(3) includes mechanisms to ensure adequate local public participation in project development and implementation;

(4) contains assurances that the project will be implemented in consultation with relevant wildlife management authorities and other appropriate government officials with jurisdiction over the resources addressed by the project;

(5) demonstrates sensitivity to local historic and cultural resources and complies with applicable laws;

(6) describes how the project will promote sustainable, effective, long-term programs to conserve neotropical migratory birds; and

(7) provides any other information that the Secretary considers to be necessary for evaluating the proposal.

(d) PROJECT REPORTING.—Each recipient of assistance for a project under this Act shall submit to the Secretary such periodic reports as the Secretary considers to be necessary. Each report shall include all information required by the Secretary for evaluating the progress and outcome of the project.

(e) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of each project shall be not greater than 25 percent.

(2) NON-FEDERAL SHARE.—

(A) SOURCE.—The non-Federal share required to be paid for a project shall not be derived from any Federal grant program.

(B) FORM OF PAYMENT.—

(i) PROJECTS IN THE UNITED STATES.—The non-Federal share required to be paid for a project carried out in the United States shall be paid in cash.

(ii) PROJECTS IN FOREIGN COUNTRIES.—The non-Federal share required to be paid for a project carried out in a foreign country may be paid in cash or in kind.

SEC. 6.[6] DUTIES OF THE SECRETARY.

In carrying out this Act, the Secretary shall—

(1) develop guidelines for the solicitation of proposals for projects eligible for financial assistance under section 5;

(2) encourage submission of proposals for projects eligible for financial assistance under section 5, particularly proposals from relevant wildlife management authorities;

(3) select proposals for financial assistance that satisfy the requirements of section 5, giving preference to proposals that address conservation needs not adequately addressed by existing efforts and that are supported by relevant wildlife management authorities; and

(4) generally implement this Act in accordance with its purposes.

[6] 16 U.S.C. 6105.

SEC. 7.[7] COOPERATION.

(a) IN GENERAL.—In carrying out this Act, the Secretary shall—

(1) support and coordinate existing efforts to conserve neotropical migratory bird species, through—

(A) facilitating meetings among persons involved in such efforts;

(B) promoting the exchange of information among such persons;

(C) developing and entering into agreements with other Federal agencies, foreign, State, and local governmental agencies, and nongovernmental organizations; and

(D) conducting such other activities as the Secretary considers to be appropriate; and

(2) coordinate activities and projects under this Act with existing efforts in order to enhance conservation of neotropical migratory bird species.

(b) ADVISORY GROUP.—

(1) IN GENERAL.—To assist in carrying out this Act, the Secretary may convene an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of neotropical migratory birds.

(2) PUBLIC PARTICIPATION.—

(A) MEETINGS.—The advisory group shall—

(i) ensure that each meeting of the advisory group is open to the public; and

(ii) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(B) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(C) MINUTES.—Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public.

(3) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory group.

SEC. 8.[8] REPORT TO CONGRESS.

Not later than October 1, 2002, the Secretary shall submit to Congress a report on the results and effectiveness of the program carried out under this Act, including recommendations concerning how the Act might be improved and whether the program should be continued.

SEC. 9.[9] NEOTROPICAL MIGRATORY BIRD CONSERVATION ACCOUNT.

(a) ESTABLISHMENT.—There is established in the Multinational Species Conservation Fund of the Treasury a separate account to be known as the "Neotropical Migratory Bird Conservation Account", which shall consist of amounts deposited into the Account by the Secretary of the Treasury under subsection (b).

(b) DEPOSITS INTO THE ACCOUNT.—The Secretary of the Treasury shall deposit into the Account—

[7] 16 U.S.C. 6106.
[8] 16 U.S.C. 6107.
[9] 16 U.S.C. 6108.

(1) all amounts received by the Secretary in the form of donations under subsection (d); and

(2) other amounts appropriated to the Account.

(c) USE.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may use amounts in the Account, without further Act of appropriation, to carry out this Act.

(2) ADMINISTRATIVE EXPENSES.—Of amounts in the Account available for each fiscal year, the Secretary may expend not more than 3 percent or up to $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this Act.

(d) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations to carry out this Act. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit into the Account.

SEC. 10.[10] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Account to carry out this Act $5,000,000 for each of fiscal years 2001 through 2005, to remain available until expended, of which not less than 75 percent of the amounts made available for each fiscal year shall be expended for projects carried out outside the United States.

[10] 16 U.S.C. 6109. The Department of Interior and Related Agencies Appropriations, 2006 (Public Law 109–54; 119 Stat. 499), provided the following:

"For financial assistance for projects to promote the conservation of neotropical migratory birds in accordance with the Neotropical Migratory Bird Conservation Act, Public Law 106–247 (16 U.S.C. 6101–6109), $4,000,000, to remain available until expended.".

(5) Responsibilities of Federal Agencies To Protect Migratory Birds

Executive Order 13186, January 10, 2001, 66 F.R. 3853, 16 U.S.C. 701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the migratory bird conventions, the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Bald and Golden Eagle Protection Acts (16 U.S.C. 668-668d), the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and other pertinent statutes, it is hereby ordered as follows:

Section 1. *Policy.* Migratory birds are of great ecological and economic value to this country and to other countries. They contribute to biological diversity and bring tremendous enjoyment to millions of Americans who study, watch, feed, or hunt these birds throughout the United States and other countries. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals-Mexico 1936, the Convention for the Protection of Birds and Their Environment- Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment-Union of Soviet Socialist Republics 1978.

These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act (Act), the United States has implemented these migratory bird conventions with respect to the United States. This Executive Order directs executive departments and agencies to take certain actions to further implement the Act.

Sec. 2. *Definitions.* For purposes of this order:

(a) "Take" means take as defined in 50 C.F.R. 10.12, and includes both "intentional" and "unintentional" take.

(b) "Intentional take" means take that is the purpose of the activity in question.

(c) "Unintentional take" means take that results from, but is not the purpose of, the activity in question.

(d) "Migratory bird" means any bird listed in 50 C.F.R. 10.13.

(e) "Migratory bird resources" means migratory birds and the habitats upon which they depend.

(f) "Migratory bird convention" means, collectively, the bilateral conventions (with Great Britain/Canada, Mexico, Japan, and Russia) for the conservation of migratory bird resources.

(g) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(h) "Action" means a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a Federal agency. Each Federal agency will further define what the term "action" means with respect to its own authorities and what programs should be included in the agency-specific Memoranda of Understanding required by this order. Actions delegated to or assumed by nonfederal entities, or carried out by nonfederal entities with Federal assistance, are not subject to this order. Such actions, however, continue to be subject to the Migratory Bird Treaty Act.

(i) "Species of concern" refers to those species listed in the periodic report "Migratory Nongame Birds of Management Concern in the United States," priority migratory bird species as documented by established plans (such as Bird Conservation Regions in the North American Bird Conservation Initiative or Partners in Flight physiographic areas), and those species listed in 50 C.F.R. 17.11.

Sec. 3. *Federal Agency Responsibilities.* (a) Each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations.

(b) In coordination with affected Federal agencies, the Service shall develop a schedule for completion of the MOUs within 180 days of the date of this order. The schedule shall give priority to completing the MOUs with agencies having the most substantive impacts on migratory birds.

(c) Each MOU shall establish protocols for implementation of the MOU and for reporting accomplishments. These protocols may be incorporated into existing actions; however, the MOU shall recognize that the agency may not be able to implement some elements of the MOU until such time as the agency has successfully included them in each agency's formal planning processes (such as revision of agency land management plans, land use compatibility guidelines, integrated resource management plans, and fishery management plans), including public participation and NEPA analysis, as appropriate. This order and the MOUs to be developed by the agencies are intended to be implemented when new actions or renewal of contracts, permits, delegations, or other third party agreements are initiated as well as during the initiation of new, or revisions to, land management plans.

(d) Each MOU shall include an elevation process to resolve any dispute between the signatory agencies regarding a particular practice or activity.

(e) Pursuant to its MOU, each agency shall, to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions:

(1) support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures,

and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;

(2) restore and enhance the habitat of migratory birds, as practicable;

(3) prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;

(4) design migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes (natural resource, land management, and environmental quality planning, including, but not limited to, forest and rangeland planning, coastal management planning, watershed planning, etc.) as practicable, and coordinate with other agencies and nonfederal partners in planning efforts;

(5) within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts such as Partners-in-Flight, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and other planning efforts, as well as guidance from other sources, including the Food and Agricultural Organization's International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries;

(6) ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern;

(7) provide notice to the Service in advance of conducting an action that is intended to take migratory birds, or annually report to the Service on the number of individuals of each species of migratory birds intentionally taken during the conduct of any agency action, including but not limited to banding or marking, scientific collecting, taxidermy, and depredation control;

(8) minimize the intentional take of species of concern by: (i) delineating standards and procedures for such take; and (ii) developing procedures for the review and evaluation of take actions. With respect to intentional take, the MOU shall be consistent with the appropriate sections of 50 C.F.R. parts 10, 21, and 22;

(9) identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the

detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts;

(10) within the scope of its statutorily-designated authorities, control the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources;

(11) promote research and information exchange related to the conservation of migratory bird resources, including coordinated inventorying and monitoring and the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation. Where such information is collected in the course of agency actions or supported through Federal financial assistance, reasonable efforts shall be made to share such information with the Service, the Biological Resources Division of the U.S. Geological Survey, and other appropriate repositories of such data (e.g, the Cornell Laboratory of Ornithology);

(12) provide training and information to appropriate employees on methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat;

(13) promote migratory bird conservation in international activities and with other countries and international partners, in consultation with the Department of State, as appropriate or relevant to the agency's authorities;

(14) recognize and promote economic and recreational values of birds, as appropriate; and

(15) develop partnerships with non-Federal entities to further bird conservation.

(f) Notwithstanding the requirement to finalize an MOU within 2 years, each agency is encouraged to immediately begin implementing the conservation measures set forth above in subparagraphs (1) through (15) of this section, as appropriate and practicable.

(g) Each agency shall advise the public of the availability of its MOU through a notice published in the **Federal Register**.

Sec. 4. *Council for the Conservation of Migratory Birds.* (a) The Secretary of Interior shall establish an interagency Council for the Conservation of Migratory Birds (Council) to oversee the implementation of this order. The Council's duties shall include the following: (1) sharing the latest resource information to assist in the conservation and management of migratory birds; (2) developing an annual report of accomplishments and recommendations related to this order; (3) fostering partnerships to further the goals of this order; and (4) selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

(b) The Council shall include representation, at the bureau director/administrator level, from the Departments of the Interior, State, Commerce, Agriculture, Transportation, Energy, Defense,

and the Environmental Protection Agency and from such other agencies as appropriate.

Sec. 5. *Application and Judicial Review.* (a) This order and the MOU to be developed by the agencies do not require changes to current contracts, permits, or other third party agreements.

(b) This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(6) Asian Elephant Conservation Act of 1997

Public Law 105–96 [H.R. 1787], 111 Stat. 2150, approved November 19, 1997; as amended by Public Law 107–141 [Asian Elephant Conservation Reauthorization Act of 2002; H.R. 700], 116 Stat. 13, approved February 12, 2002

AN ACT To assist in the conservation of Asian elephants by supporting and providing financial resources for the conservation programs of nations within the range of Asian elephants and projects of persons with demonstrated expertise in the conservation of Asian elephants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Asian Elephant Conservation Act of 1997".

SEC. 2.[2] FINDINGS.

The Congress finds the following:

(1) Asian elephant populations in nations within the range of Asian elephants have continued to decline to the point that the long-term survival of the species in the wild is in serious jeopardy.

(2) The Asian elephant is listed as an endangered species under section 4 of the Endangered Species Act of 1973 and under appendix I of the Convention on International Trade of Endangered Species of Wild Fauna and Flora.

(3) Because the challenges facing the conservation of Asian elephants are so great, resources to date have not been sufficient to cope with the continued loss of habitat and the consequent diminution of Asian elephant populations.

(4) The Asian elephant is a flagship species for the conservation of tropical forest habitats in which it is found and provides the consequent benefit from such conservation to numerous other species of wildlife including many other endangered species.

(5) Among the threats to the Asian elephant in addition to habitat loss are population fragmentation, human-elephant conflict, poaching for ivory, meat, hide, bones and teeth, and capture for domestication.

(6) To reduce, remove, or otherwise effectively address these threats to the long-term viability of populations of Asian elephants in the wild will require the joint commitment and effort of nations within the range of Asian elephants, the United States and other countries, and the private sector.

[1] 16 U.S.C. 4261 note.
[2] 16 U.S.C. 4261.

SEC. 3.[3] PURPOSES.

The purposes of this Act are the following:

(1) To perpetuate healthy populations of Asian elephants.

(2) To assist in the conservation and protection of Asian elephants by supporting the conservation programs of Asian elephant range states and the CITES Secretariat.

(3) To provide financial resources for those programs.

SEC. 4.[4] DEFINITIONS.

In this Act:

(1) The term "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and its appendices.

(2) The term "conservation" means the use of methods and procedures necessary to bring Asian elephants to the point at which there are sufficient populations in the wild to ensure that the species does not become extinct, including all activities associated with scientific resource management, such as conservation, protection, restoration, acquisition, and management of habitat; research and monitoring of known populations; assistance in the development of management plans for managed elephant ranges; CITES enforcement; law enforcement through community participation; translocation of elephants; conflict resolution initiatives; and community outreach and education.

(3) The term "Fund" means the account established by division A, section 101(e), title I of Public Law 105–277 under the heading "multinational species conservation fund".[5]

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "Administrator" means the Administrator of the Agency for International Development.

SEC. 5.[6] ASIAN ELEPHANT CONSERVATION ASSISTANCE.

(a) IN GENERAL.—The Secretary, subject to the availability of funds and in consultation with the Administrator, shall use amounts in the Fund to provide financial assistance for projects for the conservation of Asian elephants for which final project proposals are approved by the Secretary in accordance with this section.

(b) PROJECT PROPOSAL.—Any relevant wildlife management authority of a nation within the range of Asian elephants whose activities directly or indirectly affect Asian elephant populations, the CITES Secretariat, or any person with demonstrated expertise in the conservation of Asian elephants, may submit to the Secretary a project proposal under this section. Each proposal shall include the following:

(1) The name of the individual responsible for conducting the project.

(2) A succinct statement of the purposes of the project.

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[3] 16 U.S.C. 4262.

[4] 16 U.S.C. 4263.

[5] Sec. 5(a)(1) of the Asian Elephant Conservation Reauthorization Act of 2002 (Public Law 107–141; 116 Stat. 14) struck out "the Asian Elephant Conservation Fund established under section 6(a)" and inserted in lieu thereof "the account established by division A, section 101(e), title I of Public Law 105–277 under the heading 'multinational species conservation fund' ".

[6] 16 U.S.C. 4264.

(3) A description of the qualifications of the individuals who will conduct the project.

(4) An estimate of the funds and time required to complete the project.

(5) Evidence of support of the project by appropriate governmental entities of countries in which the project will be conducted, if the Secretary determines that the support is required for the success of the project.

(6) Information regarding the source and amount of matching funding available to the applicant.

(7) Any other information the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(c) PROJECT REVIEW AND APPROVAL.—

(1) IN GENERAL.—Within 30 days after receiving a final project proposal, the Secretary shall provide a copy of the proposal to the Administrator. The Secretary shall review each final project proposal to determine if it meets the criteria set forth in subsection (d).

(2) CONSULTATION; APPROVAL OR DISAPPROVAL.—Not later than 6 months after receiving a final project proposal, and subject to the availability of funds, the Secretary, after consulting with the Administrator, shall—

(A) request written comments on the proposal from each country within which the project is to be conducted;

(B) after requesting those comments, approve or disapprove the proposal; and

(C) provide written notification of that approval or disapproval to the person who submitted the proposal, the Administrator, and each of those countries.

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a final project proposal under this section if the project will enhance programs for conservation of Asian elephants by assisting efforts to—

(1) implement conservation programs;

(2) address the conflicts between humans and elephants that arise from competition for the same habitat;

(3) enhance compliance with provisions of CITES and laws of the United States or a foreign country that prohibit or regulate the taking or trade of Asian elephants or regulate the use and management of Asian elephant habitat;

(4) develop sound scientific information on the condition of Asian elephant habitat, Asian elephant population numbers and trends, or the threats to such habitat, numbers, or trends; or

(5) promote cooperative projects on those topics with other foreign governments, affected local communities, nongovernmental organizations, or others in the private sector.

(e) PROJECT SUSTAINABILITY.—To the maximum extent practical, in determining whether to approve project proposals under this section, the Secretary shall give consideration to projects which will enhance sustainable integrated conservation development programs to ensure effective, long-term conservation of Asian elephants.

(f) PROJECT REPORTING.—Each person who receives assistance under this section for a project shall provide periodic reports, as

the Secretary considers necessary, to the Secretary and the Administrator. Each report shall include all information required by the Secretary, after consulting with the Administrator, for evaluating the progress and success of the project.

(g) MATCHING FUNDS.—In determining whether to approve project proposals under this section, the Secretary shall give priority to those projects for which there exists some measure of matching funds.

(h) LIMITATION ON USE FOR CAPTIVE BREEDING.—Amounts provided as a grant under this Act may not be used for captive breeding of Asian elephants other than for release in the wild.

SEC. 6.[7, 8] ACCEPTANCE AND USE OF DONATIONS.

The Secretary may accept and use donations to provide assistance under section 5. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit into the Fund.

SEC. 7.[9] ADVISORY GROUP.

(a) IN GENERAL.—To assist in carrying out this Act, the Secretary may convene an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of Asian elephants.

(b) PUBLIC PARTICIPATION.—

(1) MEETINGS.—The Advisory Group shall—

(A) ensure that each meeting of the advisory group is open to the public; and

(B) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(3) MINUTES.—Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public.

(c) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory group.

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[7] 16 U.S.C. 4265.

[8] Sec. 5(a)(2) of the Asian Elephant Conservation Reauthorization Act of 2002 (Public Law 107–141; 116 Stat. 14) struck out the sec. heading of sec. 6 and all that followed through the heading for subsec. (d) and inserted in lieu thereof a new sec. heading. It previously read as follows:

"SEC. 6. ASIAN ELEPHANT CONSERVATION FUND.

"(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the 'Asian Elephant Conservation Fund', which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).

"(b) DEPOSITS INTO THE FUND.—The Secretary of the Treasury shall deposit into the Fund—

"(1) all amounts received by the Secretary in the form of donations under subsection (d); and

"(2) other amounts appropriated to the Fund.

"(c) USE.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary may use amounts in the Fund without further appropriation to provide assistance under section 5.

"(2) ADMINISTRATION.—Of amounts in the Fund available for each fiscal year, the Secretary may use not more than 3 percent to administer the Fund.

"(d) ACCEPTANCE AND USE OF DONATIONS.—".

[9] 16 U.S.C. 4265a. Sec. 4 of the Asian Elephant Conservation Reauthorization Act of 2002 (Public Law 107–141; 116 Stat. 13) redesignated sec. 7 as sec. 8 and added a new sec. 7.

SEC. 8.[9, 10] **AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There is authorized [11] to be appropriated to the Fund $5,000,000 for each of fiscal years 2001, 2002, 2003, 2004, 2005, 2006, and 2007 [12] to carry out this Act, which may remain available until expended.

(b) [11] ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this Act, the Secretary may expend not more than 3 percent or $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this Act.

[10] 16 U.S.C. 4266. The Department of Interior and Related Agencies Appropriations, 2006 (Public Law 109–54; 119 Stat. 499) provided the following:

"For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201–4203, 4211–4213, 221–4225, 4241–4245, and 1538), the Asian Elephant Conservation Act of 1997 (Public Law 105–96; 16 U.S.C. 4261–4266), the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301–5306), the Great Ape Conservation Act of 2000 (16 U.S.C. 6301), and the Marine Turtle Conservation Act of 2004 (Public Law 108–266; 16 U.S.C. 6601), $6,500,000, to remain available until expended.".

[11] Sec. 3 of the Asian Elephant Conservation Reauthorization Act of 2002 (Public Law 107–141; 116 Stat. 13) struck out "There are authorized" and inserted in lieu thereof "(a) IN GENERAL.—There is authorized", and added a new subsec. (b).

[12] Sec. 2 of the Asian Elephant Conservation Reauthorization Act of 2002 (Public Law 107–141; 116 Stat. 13) struck out "1998, 1999, 2000, 2001, and 2002" and inserted in lieu thereof "2001, 2002, 2003, 2004, 2005, 2006, and 2007".

(7) Rhinoceros and Tiger Conservation Act of 1998

Partial text of Public Law 105–312 [H.R. 2807], 112 Stat. 2956, approved October 30, 1998

AN ACT To clarify restrictions under the Migratory Bird Treaty Act on baiting and to facilitate acquisition of migratory bird habitat, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE IV—RHINOCEROS AND TIGER CONSERVATION [1]

SEC. 401.[2] SHORT TITLE.

This title may be cited as the "Rhinoceros and Tiger Conservation Act of 1998".

SEC. 402.[2] FINDINGS.

Congress finds that—

(1) the populations of all but 1 species of rhinoceros, and the tiger, have significantly declined in recent years and continue to decline;

(2) these species of rhinoceros and tiger are listed as endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973 (27 UST 1087; TIAS 8249) (referred to in this title as "CITES");

(3) the Parties to CITES have adopted several resolutions—

(A) relating to the conservation of tigers (Conf. 9.13 (Rev.)) and rhinoceroses (Conf. 9.14), urging Parties to CITES to implement legislation to reduce illegal trade in parts and products of the species; and

(B) relating to trade in readily recognizable parts and products of the species (Conf. 9.6), and trade in traditional medicines (Conf. 10.19), recommending that Parties ensure that their legislation controls trade in those parts and derivatives, and in medicines purporting to contain them;

(4) a primary cause of the decline in the populations of tiger and most rhinoceros species is the poaching of the species for use of their parts and products in traditional medicines;

(5) there are insufficient legal mechanisms enabling the United States Fish and Wildlife Service to interdict products that are labeled or advertised as containing substances derived from rhinoceros or tiger species and prosecute the merchandisers for sale or display of those products; and

[1] Except for sec. 401 and sec. 402 set out below, title IV amends the Rhinoceros and Tiger Conservation Act of 1994 (Public Law 103–391).

[2] 16 U.S.C. 5301 note.

(6) legislation is required to ensure that—

(A) products containing, or labeled or advertised as containing, rhinoceros parts or tiger parts are prohibited from importation into, or exportation from, the United States; and

(B) efforts are made to educate persons regarding alternatives for traditional medicine products, the illegality of products containing, or labeled or advertised as containing, rhinoceros parts and tiger parts, and the need to conserve rhinoceros and tiger species generally.

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(8) Rhinoceros and Tiger Conservation Act of 1994

Public Law 103–391 [H.R. 4924], 108 Stat. 4094, approved October 22, 1994; as amended by Public Law 105–312 [Rhinoceros and Tiger Conservation Act of 1998; H.R. 2807], 112 Stat. 2956, approved October 30, 1998; and Public Law 107–112 [Rhinoceros and Tiger Conservation Reauthorization Act of 2001; H.R. 645], 115 Stat. 2097, approved January 8, 2002

AN ACT To assist in the conservation of rhinoceros and tigers by supporting and providing financial resources for the conservation programs of nations whose activities directly or indirectly affect rhinoceros and tiger populations, and of the CITES Secretariat.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Rhinoceros and Tiger Conservation Act of 1994".

SEC. 2.[2] FINDINGS.

The Congress finds the following:

(1) The world's rhinoceros population is declining at an alarming rate, a 90 percent decline since 1970.

(2) All 5 subspecies of tiger are currently threatened with extinction in the wild, with approximately 5,000 to 6,000 tigers remaining worldwide.

(3) All rhinoceros species have been listed on Appendix I of CITES since 1977.

(4) All tiger subspecies have been listed on Appendix I of CITES since 1987.

(5) The tiger and all rhinoceros species, except the southern subspecies of white rhinoceros, are listed as endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(6) In 1987, the parties to CITES adopted a resolution that urged all parties to establish a moratorium on the sale and trade in rhinoceros products (other than legally taken trophies), to destroy government stockpiles of rhinoceros horn, and to exert pressure on countries continuing to allow trade in rhinoceros products.

(7) On September 7, 1993, under section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978) the Secretary certified that the People's Republic of China and Taiwan were engaged in trade of rhinoceros parts and tiger parts that diminished the effectiveness of an international conservation program for that endangered species.

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[1] 16 U.S.C. 5301 note.
[2] 16 U.S.C. 5301.

(8) On September 9, 1993, the Standing Committee of CITES, in debating the continuing problem of trade in rhinoceros horn and tiger parts, adopted a resolution urging parties to CITES to implement stricter domestic measures, up to and including an immediate prohibition in trade in wildlife species.

(9) On November 8, 1993, under section 8 of the Fisherman's Protection Act of 1967 (22 U.S.C. 1978), the President announced that the United States would impose trade sanctions against China and Taiwan unless substantial progress was made by March 1994 towards ending trade in rhinoceros and tiger products.

(10) On April 11, 1994, under section 8 of the Fisherman's Protective Act of 1967 (22 U.S.C. 1978), the President—

(A) directed that imports of wildlife specimens and products from Taiwan be prohibited, in response to Taiwan's failure to undertake sufficient actions to stop illegal rhinoceros and tiger trade; and

(B) indicated that the certification of China would remain in effect and directed that additional monitoring of China's progress be undertaken.

SEC. 3.[3] PURPOSES.

The purposes of this Act are the following:

(1) To assist in the conservation of rhinoceros and tigers by supporting the conservation programs of nations whose activities directly or indirectly affect rhinoceros and tiger populations, and the CITES Secretariat.

(2) To provide financial resources for those programs.

(3)[4] To prohibit the sale, importation, and exportation of products intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

SEC. 4.[5] DEFINITIONS.

In this Act—

(1) "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and its appendices;

(2) "conservation" means the use of all methods and procedures necessary to bring rhinoceros and tigers to the point at which there are sufficient populations to ensure that those species do not become extinct, including all activities associated with scientific resource management, such as research, census, law enforcement, habitat protection, acquisition, and management, propagation, live trapping, and transportation;

(3) "Fund" means the the[6] account established by division A, section 101(e), title I of Public Law 105–277 under the heading "multinational species conservation fund";[7]

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[3] 16 U.S.C. 5302.

[4] Sec. 403 of the Rhinoceros and Tiger Conservation Act of 1998 (Public Law 105–312; 112 Stat. 2959) added para. (3).

[5] 16 U.S.C. 5303.

[6] As enrolled; should probably read "the".

[7] Sec. 6(a)(1) of the Rhinoceros and Tiger Conservation Reauthorization Act of 2001 (Public Law 107–112; 115 Stat. 2098) struck out "Rhinoceros and Tiger Conservation Fund established

Continued

(4) "Secretary" means the Secretary of the Interior;[8]

(5) "Administrator" means the Administrator of the Agency for International Development; and[8]

(6)[8] "person" means—

(A) an individual, corporation, partnership, trust, association, or other private entity;

(B) an officer, employee, agent, department, or instrumentality of—

(i) the Federal Government;

(ii) any State, municipality, or political subdivision of a State; or

(iii) any foreign government;

(C) a State, municipality, or political subdivision of a State; or

(D) any other entity subject to the jurisdiction of the United States.

SEC. 5.[9] RHINOCEROS AND TIGER CONSERVATION ASSISTANCE.

(a) IN GENERAL.—The Secretary, subject to the availability of appropriations and in consultation with the Administrator, shall use amounts in the Fund to provide financial assistance for projects for the conservation of rhinoceros and tigers.

(b) PROJECT PROPOSAL.—A country whose activities directly or indirectly affect rhinoceros or tiger populations, the CITES Secretariat, or any other person may submit to the Secretary a project proposal under this section. Each proposal shall—

(1) name the individual responsible for conducting the project;

(2) state the purposes of the project succinctly;

(3) describe the qualifications of the individuals who will conduct the project;

(4) estimate the funds and time required to complete the project;

(5) provide evidence of support of the project by appropriate governmental entities of countries in which the project will be conducted, if the Secretary determines that the support is required for the success of the project; and

(6) provide any other information the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(c) PROJECT REVIEW AND APPROVAL.—Within 30 days of receiving a final project proposal, the Secretary shall provide a copy of the proposal to the Administrator. The Secretary shall review each final project proposal to determine if it meets the criteria set forth in subsection (d). Not later than 6 months after receiving a final project proposal, and subject to the availability of funds, the Secretary, after consulting with the Administrator, shall approve or

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under section 6(a)" and inserted in lieu thereof "the account established by division A, section 101(e), title I of Public Law 105–277 under the heading 'multinational species conservation fund'".

[8] Sec. 404 of the Rhinoceros and Tiger Conservation Act of 1998 (Public Law 105–312; 112 Stat. 2961) struck out "and" at the end of para. (4), struck out a period at the end of para. (5) and inserted in lieu thereof "; and", and added a new para. (6).

[9] 16 U.S.C. 5304.

disapprove the proposal and provide written notification to the person who submitted the proposal, to the Administrator, and to each country within which the project is to be conducted.

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a project under this section if the project will enhance programs for conservation of rhinoceros or tigers by assisting efforts to—

(1) implement conservation programs;

(2) enhance compliance with provisions of CITES and laws of the United States or a foreign country that prohibit or regulate the taking or trade of rhinoceros or tigers or the use of rhinoceros or tiger habitat; or

(3) develop sound scientific information on that species' habitat condition and carrying capacity, total numbers and population trends, or annual reproduction and mortality.

(e)[10] PROJECT SUSTAINABILITY.—To the maximum extent practical, in determining whether to approve project proposals under this section, the Secretary shall give consideration to projects which will enhance sustainable conservation programs to ensure effective long-term conservation of rhinoceros and tigers.

(f) PROJECT REPORTING.—Each person that receives assistance under this section for a project shall provide periodic reports, as the Secretary considers necessary, to the Secretary and the Administrator. Each report shall include all information requested by the Secretary, after consulting with the Administrator, for evaluating the progress and success of the project.

SEC. 6.[11] ACCEPTANCE AND USE OF DONATIONS.

The Secretary may accept and use donations to provide assistance under section 5. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit into the Fund.

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[10] Sec. 5 of the Rhinoceros and Tiger Conservation Reauthorization Act of 2001 (Public Law 107–112, 115 Stat. 2098) amended and restated subsec. (e). It previously read as follows:

"(e) PROJECT SUSTAINABILITY.—To the maximum extent practical, the Secretary should give consideration to projects which will enhance sustainable development programs to ensure effective, long-term conservation of rhinoceros and tigers.".

[11] 16 U.S.C. 5305. Sec. 6(a)(2) of the Rhinoceros and Tiger Conservation Reauthorization Act of 2001 (Public Law 107–112, 115 Stat. 2098) struck out the section catchline in sec. 6 and all that followed through the subsec. heading in subsec. (d) and inserted in lieu thereof a new section heading. The section previously read as follows:

"SEC. 6. RHINOCEROS AND TIGER CONSERVATION FUND.

"(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the 'Rhinoceros and Tiger Conservation Fund', which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).

"(b) DEPOSITS INTO THE FUND.—The Secretary of the Treasury shall deposit into the Fund—

"(1) all amounts received by the Secretary in the form of donations under subsection (d); and

"(2) other amounts appropriated to the Fund.

"(c) USE.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary may use amounts in the Fund without further appropriation to provide assistance under section 5.

"(2) ADMINISTRATION.—Of amounts in the Fund available for each fiscal year, the Secretary may use not more than 3 percent to administer the Fund.

"(d) ACCEPTANCE AND USE OF DONATIONS.—".

SEC. 7.[12] PROHIBITION ON SALE, IMPORTATION, OR EXPORTATION OF PRODUCTS LABELED OR ADVERTISED AS RHINOCEROS OR TIGER PRODUCTS.

(a) PROHIBITION.—A person shall not sell, import, or export, or attempt to sell, import, or export, any product, item, or substance intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

(b) PENALTIES.—

(1) CRIMINAL PENALTY.—A person engaged in business as an importer, exporter, or distributor that knowingly violates subsection (a) shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—A person that knowingly violates subsection (a), and a person engaged in business as an importer, exporter, or distributor that violates subsection (a), may be assessed a civil penalty by the Secretary of not more than $12,000 for each violation.

(B) MANNER OF ASSESSMENT AND COLLECTION.—A civil penalty under this paragraph shall be assessed, and may be collected, in the manner in which a civil penalty under the Endangered Species Act of 1973 may be assessed and collected under section 11(a) of that Act (16 U.S.C. 1540(a)).

(c) PRODUCTS, ITEMS, AND SUBSTANCES.—Any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section or any regulation issued under this section shall be subject to seizure and forfeiture to the United States.

(d) REGULATIONS.—After consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative, the Secretary shall issue such regulations as are appropriate to carry out this section.

(e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this section in the manner in which the Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)).

(f) USE OF PENALTY AMOUNTS.—Amounts received as penalties, fines, or forfeiture of property under this section shall be used in accordance with section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)).

SEC. 8.[13] EDUCATIONAL OUTREACH PROGRAM.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species.

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[12] 16 U.S.C. 5305a. Sec. 405 of the Rhinoceros and Tiger Conservation Act of 1998 (Public Law 105–312; 112 Stat. 2961) redesignated sec. 7 as sec. 9 and added a new sec. 7. Sec. 4 of the Rhinoceros and Tiger Conservation Reauthorization Act of 2001 (Public Law 107–112, 115 Stat. 2097) further redesignated sec. 9, as redesignated, as sec. 10.

[13] 16 U.S.C. 5305b. Sec. 406 of the Rhinoceros and Tiger Conservation Act of 1998 (Public Law 105–312; 112 Stat. 2961) added sec. 8.

(b) GUIDELINES.—The Secretary shall publish in the Federal Register guidelines for the program.

(c) CONTENTS.—Under the program, the Secretary shall publish and disseminate information regarding—

(1) laws protecting rhinoceros and tiger species, in particular laws prohibiting trade in products containing, or labeled or advertised as containing, their parts;

(2) use of traditional medicines that contain parts or products of rhinoceros and tiger species, health risks associated with their use, and available alternatives to the medicines; and

(3) the status of rhinoceros and tiger species and the reasons for protecting the species.

SEC. 9.[14] ADVISORY GROUP.

(a) IN GENERAL.—To assist in carrying out this Act, the Secretary may convene an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of rhinoceros and tiger species.

(b) PUBLIC PARTICIPATION.—

(1) MEETINGS.—The Advisory Group shall—

(A) ensure that each meeting of the advisory group is open to the public; and

(B) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(3) MINUTES.—Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public.

(c) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory group.

SEC. 10.[12, 15] AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized [16] to be appropriated to the Fund $10,000,000 for each of fiscal years 2001, 2002, 2003, 2004, 2005, 2006, and 2007 [17] to carry out this Act, to remain available until expended.

(b) [16] ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this Act, the Secretary may expend not more

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[14] 16 U.S.C. 5305c. Sec. 4 of the Rhinoceros and Tiger Conservation Reauthorization Act of 2001 (Public Law 107–112, 115 Stat. 2097) added sec. 9.

[15] 16 U.S.C. 5306. The Department of Interior and Related Agencies Appropriations, 2006 (Public Law 109–54; 119 Stat. 499), provided the following:

"For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201–4203, 4211–4213, 221–4225, 4241–4245, and 1538), the Asian Elephant Conservation Act of 1997 (Public Law 105–96; 16 U.S.C. 4261–4266), the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301–5306), the Great Ape Conservation Act of 2000 (16 U.S.C. 6301), and the Marine Turtle Conservation Act of 2004 (Public Law 108–266; 16 U.S.C. 6601), $6,500,000, to remain available until expended.".

[16] Sec. 3 of the Rhinoceros and Tiger Conservation Reauthorization Act of 2001 (Public Law 107–112; 115 Stat. 2097) struck out "There are authorized" and inserted in lieu thereof "(a) IN GENERAL.—There is authorized" and added a new subsec. (b).

[17] Sec. 2 of the Rhinoceros and Tiger Conservation Reauthorization Act of 2001 (Public Law 107–112; 115 Stat. 2097) struck out "1996 through 2002" and inserted in lieu thereof "2001, 2002, 2003, 2004, 2005, 2006, and 2007". Previously, sec. 407 of the Rhinoceros and Tiger Conservation Act of 1998 (Public Law 105–312; 112 Stat. 2961) struck out "1996, 1997, 1998, 1999, and 2000" and inserted in lieu thereof "1996 through 2002".

than 3 percent or $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this Act.

(9) Wild Exotic Bird Conservation Act of 1992

Partial text of Public Law 102–440 [Wild Exotic Bird Conservation, Great Lakes Fish and Wildlife Tissue Bank, Fish and Wildlife Conservation, and African Elephant Conservation Act; H.R. 5013], 106 Stat. 2224, approved October 23, 1992

AN ACT To promote the conservation of wild exotic birds, to provide for the Great Lakes Fish and Wildlife Tissue Bank, to reauthorize the Fish and Wildlife Conservation Act of 1980, to reauthorize the African Elephant Conservation Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—WILD EXOTIC BIRD CONSERVATION

SEC. 101.[1] SHORT TITLE.

This title may be cited as the "Wild Bird Conservation Act of 1992".

SEC. 102.[2] FINDINGS.

The Congress finds the following:

(1) In addition to habitat loss and local use, the international pet trade in wild-caught exotic birds is contributing to the decline of species in the wild, and the mortality associated with the trade remains unacceptably high.

(2) The United States, as the world's largest importer of exotic birds and as a Party to the Convention, should play a substantial role in finding effective solutions to these problems, including assisting countries of origin in implementing programs of wild bird conservation, and ensuring that the market in the United States for exotic birds does not operate to the detriment of the survival of species in the wild.

(3) Sustainable utilization of exotic birds has the potential to create economic value in them and their habitats, which will contribute to their conservation and promote the maintenance of biological diversity generally.

(4) Utilization of exotic birds that is not sustainable should not be allowed.

(5) Broad international attention has focused on the serious conservation and welfare problems which currently exist in the trade in wild-caught animals, including exotic birds.

(6) Many countries have chosen not to export their wild birds for the pet trade. Their decisions should be respected and their efforts should be supported.

(7) Several countries that allow for the export of their wild birds often lack the means to develop or effectively implement scientifically based management plans, and these countries

[1] 16 U.S.C. 4901 note.
[2] 16 U.S.C. 4901.

should be assisted in developing and implementing management plans to enable them to ensure that their wild bird trade is conducted humanely and at sustainable levels.

(8) The major exotic bird exporting countries are Parties to the Convention.

(9) The Convention recognizes that trade in species that are threatened with extinction, or that may become so, should be subject to strict regulation.

(10) The necessary population assessments, monitoring programs, and appropriate remedial measures for species listed in Appendix II of the Convention are not always being undertaken in order to maintain species at levels above which they might become eligible for inclusion in Appendix I of the Convention.

(11) Resolutions adopted pursuant to the Convention recommend that the Parties to the Convention take appropriate measures regarding trade in species of exotic birds that have significantly high mortality rates in transport, including suspension of trade for commercial purposes between Parties when appropriate.

(12) Article XIV provides that the Convention in no way affects the right of any Party to the Convention to adopt stricter domestic measures for the regulation of trade in all species, whether or not listed in an Appendix to the Convention.

(13) The United States prohibits the export of all birds native to the United States that are caught in the wild.

(14) This title provides a series of nondiscriminatory measures that are necessary for the conservation of exotic birds, and furthers the obligations of the United States under the Convention.

SEC. 103.[3] STATEMENT OF PURPOSE.

The purpose of this title is to promote the conservation of exotic birds by—

(1) assisting wild bird conservation and management programs in the countries of origin of wild birds;

(2) ensuring that all trade in species of exotic birds involving the United States is biologically sustainable and is not detrimental to the species;

(3) limiting or prohibiting imports of exotic birds when necessary to ensure that—

(A) wild exotic bird populations are not harmed by removal of exotic birds from the wild for the trade; or

(B) exotic birds in trade are not subject to inhumane treatment; and

(4) encouraging and supporting effective implementation of the Convention.

SEC. 104.[4] DEFINITIONS.

In this title—

(1) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and

[3] 16 U.S.C. 4902.
[4] 16 U.S.C. 4903.

Flora, as amended, signed in Washington on March 3, 1973, and the Appendices thereto.

(2) The term "exotic bird"—

(A) means any live or dead member of the class Aves that is not indigenous to the 50 States or the District of Columbia, including any egg or offspring thereof; and

(B) does not include—

(i) domestic poultry, dead sport-hunted birds, dead museum specimens, dead scientific specimens, or products manufactured from such birds; or

(ii) birds in the following families: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae.

(3) Each of the terms "import" and "importation" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States.

(4) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(5) The term "qualifying facility" means an exotic bird breeding facility that is included in a list published by the Secretary under section 107.

(6) The term "Secretary" means the Secretary of the Interior or a designee of the Secretary of the Interior.

(7) The term "species"—

(A) means any species, any subspecies, or any distinct population segment of a species or subspecies; and

(B) includes hybrids of any species or subspecies.

(8) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

SEC. 105.[5] MORATORIA ON IMPORTS OF EXOTIC BIRDS COVERED BY CONVENTION.

(a) IMMEDIATE MORATORIUM.—

(1) ESTABLISHMENT OF MORATORIUM.—The importation of any exotic bird of a species identified as a category B species in the report entitled "Report of the Animals Committee", adopted by the 8th meeting of the Conference of the Parties to the Convention, is prohibited.

(2) TERMINATION OF MORATORIUM.—A species of exotic birds shall be subject to the prohibition on importation established by paragraph (1) until the Secretary, after notice and an opportunity for public comment—

[5] 16 U.S.C. 4904.

(A) determines that appropriate remedial measures have been taken in the countries of origin for that species, so as to eliminate the threat of trade to the conservation of the species; and

(B) makes the findings described in section 106(c) for the species and includes the species in the list published under section 106(a).

(b) EMERGENCY AUTHORITY TO SUSPEND IMPORTS OF LISTED SPECIES.—

(1) AUTHORITY TO SUSPEND IMPORTS.—The Secretary is authorized to suspend the importation of exotic birds of any species that is listed in any Appendix to the Convention, and if applicable remove the species from the list under section 106(a), if the Secretary determines that—

(A)(i) trade in that species is detrimental to the species,

(ii) there is not sufficient information available on which to base a judgment that the species is not detrimentally affected by trade in that species, or

(iii) remedial measures have been recommended by the Standing Committee of the Convention that have not been implemented; and

(B) the suspension might be necessary for the conservation of the species.

(2) TERMINATION OF SUSPENSION.—A species of exotic birds shall be subject to a suspension of importation under paragraph (1) until the Secretary, after notice and an opportunity for public comment, makes the findings described in section 106(c) and includes the species in the list published under section 106(a).

(c) MORATORIUM AFTER ONE YEAR FOR OTHER SPECIES LISTED IN APPENDICES.—Effective on the date that is one year after the date of the enactment of this Act, the importation of any exotic bird of a species that is listed in any Appendix to the Convention is prohibited unless the Secretary makes the findings described in section 106(c) and includes the species in the list published under section 106(a).

(d) LIMITATION ON NUMBER IMPORTED DURING FIRST YEAR.—Notwithstanding any other provision of this Act, the Secretary shall prohibit the importation, during the 1-year period beginning on the date of the enactment of this Act, of exotic birds of each species that is listed under any Appendix to the Convention in excess of the number of that species that were imported during the most recent year for which the Secretary has complete import data.

SEC. 106.[6] LIST OF APPROVED SPECIES.

(a) LISTING.—

(1) IN GENERAL.—One year after the date of enactment of this Act and periodically thereafter, the Secretary shall, after notice and an opportunity for public comment, publish in the Federal Register a list of species of exotic birds that are listed in an Appendix to the Convention and that are not subject to a prohibition or suspension of importation otherwise applicable under section 105 (a), (b), or (c).

[6] 16 U.S.C. 4905.

(2) MANNER OF LISTING.—The Secretary shall list a species under paragraph (1) with respect to—

(A) the countries of origin from which the species may be imported; and

(B) if appropriate, the qualifying facilities in those countries from which the species may be imported.

(3) BASES FOR DETERMINATIONS.—In making a determination required under this subsection, the Secretary shall—

(A) use the best scientific information available; and

(B) consider the adequacy of regulatory and enforcement mechanisms in all countries of origin for the species, including such mechanisms for control of illegal trade.

(b) CAPTIVE BRED SPECIES.—The Secretary shall include a species of exotic birds in the list under subsection (a) if the Secretary determines that—

(1) the species is regularly bred in captivity and no wild-caught birds of the species are in trade; or

(2) the species is bred in a qualifying facility.

(c) NON-CAPTIVE BRED SPECIES.—The Secretary shall include in the list under subsection (a) a species of exotic birds that is listed in an Appendix to the Convention if the Secretary finds the Convention is being effectively implemented with respect to that species because of each of the following:

(1) Each country of origin for which the species is listed is effectively implementing the Convention, particularly with respect to—

(A) the establishment of a scientific authority or other equivalent authority;

(B) the requirements of Article IV of the Convention with respect to that species; and

(C) remedial measures recommended by the Parties to the Convention with respect to that species.

(2) A scientifically-based management plan for the species has been developed which—

(A) provides for the conservation of the species and its habitat and includes incentives for conservation;

(B) ensures that the use of the species is biologically sustainable and maintained throughout the range of the species in the country to which the plan applies at a level that is consistent with the role of the species in the ecosystem and is well above the level at which the species might become threatened with extinction; and

(C) addresses factors relevant to the conservation of the species, including illegal trade, domestic trade, subsistence use, disease, and habitat loss.

(3) The management plan is implemented and enforced.

(4) The methods of capture, transport, and maintenance of the species minimizes the risk of injury or damage to health, including inhumane treatment.

SEC. 107.[7] QUALIFYING FACILITIES.

(a) DETERMINATION.—Upon submission of a petition under section 110 by any person, the Secretary shall determine whether an exotic bird breeding facility is a qualifying facility. Such determination shall be effective for a period specified by the Secretary, which may not exceed 3 years. The Secretary shall, from time to time, publish a list of qualifying facilities in the Federal Register.

(b) CRITERIA.—The Secretary shall determine under subsection (a) that a facility is a qualifying facility for a species of exotic birds if the Secretary finds each of the following:

(1) The facility has demonstrated the capability of producing captive bred birds of the species in the numbers to be imported into the United States from that facility.

(2) The facility is operated in a manner that is not detrimental to the survival of the species in the wild.

(3) The facility is operated in a humane manner.

(4) The appropriate governmental authority of the country in which the facility is located has certified in writing, and the Secretary is satisfied, that the facility has the capability of breeding the species in captivity.

(5) The country in which the facility is located is a Party to the Convention.

(6) All birds exported from the facility are bred at the facility.

SEC. 108.[8] MORATORIA FOR SPECIES NOT COVERED BY CONVENTION.

(a) IN GENERAL.—The Secretary shall—

(1) review periodically the trade in species of exotic birds that are not listed in any Appendix to the Convention; and

(2) after notice and an opportunity for public comment, establish a moratorium or quota on—

(A) importation of any species of exotic birds from one or more countries of origin for the species, if the Secretary determines that—

(i) the findings described in section 106(c) (2), (3), and (4) cannot be made with respect to the species; and

(ii) the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title; or

(B) the importation of all species of exotic birds from a particular country, if—

(i) the country has not developed and implemented a management program for exotic birds in trade generally, that ensures both the conservation and the humane treatment of exotic birds during capture, transport, and maintenance; and

(ii) the Secretary finds that the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title.

[7] 16 U.S.C. 4906.
[8] 16 U.S.C. 4907.

(b) TERMINATION OF QUOTA OR MORATORIUM.—The Secretary shall terminate a quota or moratorium established under subsection (a) if the Secretary finds that the reasons for establishing the quota or moratorium no longer exist.

SEC. 109.[9] CALL FOR INFORMATION.

Within one month after the date of the enactment of this Act, the Secretary shall issue a call for information on the wild bird conservation program of each country that exports exotic birds, by—

(1) publishing a notice in the Federal Register requesting submission of such information to the Secretary by all interested persons; and

(2) submitting a written request for such information through the Secretary of State to each country that exports exotic birds.

SEC. 110.[10] PETITIONS.

(a) IN GENERAL.—Any person may at any time submit to the Secretary a petition in writing requesting that the Secretary exercise authority of the Secretary under this title to—

(1) establish, modify, or terminate any prohibition, suspension, or quota under this title on importation of any species of exotic bird;

(2) add a species of exotic bird to, or remove such a species from, a list under section 106; or

(3) determine under section 107 whether an exotic bird breeding facility is a qualifying facility.

(b) CONSIDERATION AND RULING.—For each petition submitted to the Secretary in accordance with subsection (a), the Secretary shall—

(1) within 90 days after receiving the petition, issue and publish in the Federal Register a preliminary ruling regarding whether the petition presents sufficient information indicating that the action requested in the petition might be warranted; and

(2) for each petition determined to present such sufficient information—

(A) provide an opportunity for the submission of public comment on the petition; and

(B) issue and publish in the Federal Register a final ruling on the petition, by not later than 90 days after the end of the period for public comment.

SEC. 111.[11] PROHIBITED ACTS.

(a) PROHIBITIONS.—

(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to—

(A) import any exotic bird in violation of any prohibition, suspension, or quota on importation under section 105 or 108;

[9] 16 U.S.C. 4908.
[10] 16 U.S.C. 4909.
[11] 16 U.S.C. 4910.

(B) import an exotic bird of a species that pursuant to section 106(a)(2)(B) is included in a list under section 106, if the bird was not captive bred at a qualifying facility; or

(C) violate any regulation promulgated by the Secretary pursuant to authority provided by this title.

(2) LIMITATION.—Paragraph (1) (A) and (B) does not apply to importations made incident to the transit of exotic birds through the United States to foreign countries if the applicable requirements of the Convention have been satisfied with respect to the trade in those exotic birds.

(b) BURDEN OF PROOF FOR EXEMPTIONS.—Any person claiming the benefit of any exemption or permit under this title shall have the burden of proving that the exemption or permit is applicable or has been granted, and was valid and in force at the time of the alleged violation.

SEC. 112.[12] EXEMPTIONS.

Notwithstanding any prohibition, suspension, or quota under this title on the importation of a species of exotic bird, the Secretary may, through the issuance of import permits, authorize the importation of a bird of the species if the Secretary determines that such importation is not detrimental to the survival of the species and the bird is being imported exclusively for any of the following purposes:

(1) Scientific research.

(2) As a personally owned pet of an individual who is returning to the United States after being continuously out of the country for a minimum of one year, except that an individual may not import more than 2 exotic birds under this paragraph in any year.

(3) Zoological breeding or display programs.

(4) Cooperative breeding programs that are—

(A) designed to promote the conservation of the species and maintain the species in the wild by enhancing the propagation and survival of the species; and

(B) developed and administered by, or in conjunction with, an avicultural, conservation, or zoological organization that meets standards developed by the Secretary.

SEC. 113.[13] PENALTIES AND REGULATIONS.

(a) PENALTIES.—

(1) CIVIL PENALTIES.—

(A) Any person who knowingly violates, and any person engaged in business as an importer of exotic birds who violates, section 111(a) (1) or (2) or any permit issued under section 112 may be assessed a civil penalty by the Secretary of not more than $25,000 for each violation.

(B) Any person who knowingly violates, and any person engaged in business as an importer of exotic birds who violates, section 111(a)(3) may be assessed a civil penalty by the Secretary of not more than $12,000 for each such violation.

[12] 16 U.S.C. 4911.
[13] 16 U.S.C. 4912.

(C) Any person who otherwise violates section 111(a) or any permit issued under section 112 may be assessed a civil penalty by the Secretary of not more than $500 for each such violation.

(D) A civil penalty under this section shall be assessed, and may be collected, in the manner in which a civil penalty under the Act of December 28, 1973 (Public Law 93–205), may be assessed and collected under section 111(a)[14] of that Act.

(2) CRIMINAL PENALTIES.—

(A) Any person who knowingly violates, and any person engaged in business as an importer of exotic birds who violates, section 111(a) (1) or (2) or any permit issued under section 112 shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(B) Any person who knowingly violates section 111(a)(3) shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both.

(b) DISTRICT COURT JURISDICTION.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any action arising under this title. For the purposes of this title, American Samoa shall be included in the Judicial District of the District Court of the United States for the District of Hawaii, and the Trust Territory of Palau and the Northern Marianas shall be included in the Judicial District of the District Court of the United States for the District of Guam.

(c) OTHER ENFORCEMENT.—The importation of an exotic bird is deemed to be transportation of wildlife for purposes of section 3(a) of the Lacey Act Amendments of 1981 (16 U.S.C. 3372(a)).

(d) REGULATIONS.—The Secretary shall prescribe regulations that are necessary and appropriate to carry out the purposes of this title.

(e) SAVINGS PROVISIONS.—The authority of the Secretary under this title is in addition to and shall not affect the authority of the Secretary under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or diminish the authority of the Secretary under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.). Nothing in this title shall be construed as repealing, superseding, or modifying any provision of Federal law.

SEC. 114.[15] EXOTIC BIRD CONSERVATION ASSISTANCE.

(a) ASSISTANCE.—The Secretary, subject to the availability of appropriations, shall use amounts in the Exotic Bird Conservation Fund established by subsection (b) to provide financial and technical assistance for projects to conserve exotic birds in their native countries. In selecting projects for assistance, the Secretary shall give particular attention to species that are subject to an import moratorium or quota under this title, in order to assist those countries in the development and implementation of conservation management programs, or law enforcement, or both.

(b) FUND.—

[14] So in original. Probably should be "section 11(a)".
[15] 16 U.S.C. 4913.

(1) ESTABLISHMENT.—There is established in the Treasury a separate account, which shall be known as the "Exotic Bird Conservation Fund".

(2) CONTENTS.—The Fund shall consist of—

(A) all amounts received by the United States in the form of penalties, fines, or forfeiture of property collected under this title in excess of the cost of paying rewards under section 113(c);

(B) donations received by the Secretary for exotic bird conservation; and

(C) such amounts as are appropriated to the Secretary for conserving exotic birds.

(c) REVIEW AND REPORT ON OTHER CONSERVATION OPPORTUNITIES.—The Secretary, in consultation with appropriate representatives of industry, the conservation community, the Secretariat of the Convention, and other national and international bodies, shall—

(1) review opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations; and

(2) report to the Congress the results of this review within 2 years after the date of enactment of this Act.

SEC. 115.[16] MARKING AND RECORDKEEPING.

(a) IN GENERAL.—The Secretary is authorized to promulgate regulations to require marking or recordkeeping that the Secretary determines will contribute significantly to the ability of the Secretary to ensure compliance with the prohibitions of section 111, for—

(1) any exotic bird that is imported after the date of enactment of this Act; or

(2) any other exotic bird that is—

(A) hatched after the date of the enactment of this Act;

(B) offered for sale; and

(C) of a species—

(i) the export of which from any country of origin is prohibited; and

(ii) that is subject to a high level of illegal trade.

(b) AVOIDING DETERRENCE OF BREEDING.—The Secretary shall seek to ensure that regulations promulgated under this section will not have the effect of deterring captive breeding of exotic birds.

SEC. 116.[17] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary $5,000,000 for each of the fiscal years 1993, 1994, and 1995 to carry out this title, to remain available until expended.

SEC. 117.[18] RELATIONSHIP TO STATE LAW.

Nothing in this title may be construed as precluding the regulation under State law of the sale, transfer, or possession of exotic birds if such regulation—

[16] 16 U.S.C. 4914.
[17] 16 U.S.C. 4915.
[18] 16 U.S.C. 4916.

(1) does not authorize any sale, transfer, or possession of exotic birds that is prohibited under this title; and

(2) is consistent with the international obligations of the United States.

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TITLE III—MISCELLANEOUS

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SEC. 302.[19] REAUTHORIZATION OF AFRICAN ELEPHANT CONSERVATION ACT. * * *

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[19] Sec. 302 reauthorized the African Elephant Conservation Act (16 U.S.C. 4245) through fiscal year 1998.

(10) United States Support for the United Nations Conference on Environment and Development

Partial text of Public Law 102–138 [Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; H.R. 1415], 105 Stat. 647, approved October 28, 1991

AN ACT To authorize appropriations for fiscal years 1992 and 1993 for the Department of State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE III—MISCELLANEOUS FOREIGN POLICY PROVISIONS

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SEC. 364. UNITED STATES SUPPORT FOR UNCED.

(a) FINDINGS.—The Congress finds that—

(1) the United Nations Conference on Environment and Development (hereinafter in this section referred to as "UNCED") is scheduled to meet in June 1992 in Rio de Janiero, Brazil; and

(2) UNCED affords a major opportunity to shape international environmental policy as an underpinning of sustainable development for well into the next century.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the United States should seek to integrate environmental principles and considerations into all spheres of international economic activity;

(2) the President should accord the UNCED process high-level attention and priority within the executive branch;

(3) the United States should exercise a leadership role in preparations for the June 1992 meeting of the UNCED;

(4) the United States should carefully consider what it hopes to achieve through the UNCED and how United States national security interests may best be advanced in deliberations in that conference;

(5) the United States should seek ways to forge a global partnership and international cooperation among developing and industrialized nations on behalf of environmentally sound economic development;

(6) the United States should actively pursue creative approaches to the spectrum of UNCED issues which the conference will address, and in particular seek innovative solutions to the key cross-sectorial issues of technology transfer and financial resources;

(7) the United States should consider how best to strengthen international legal and institutional mechanisms to effectively

address the range of UNCED issues beyond the 1992 Conference and into the next century;

(8) the United States should promote broad international participation in the UNCED process at all levels, from grass roots to national;

(9) the Agency for International Development should assume an appropriate role in the preparations for the June 1992 meeting of the UNCED, in view of the mandate and expertise of that agency regarding the twin conference themes of international environment and development; and

(10) the executive branch should consider funding for appropriate activities related to the UNCED in amounts which are commensurate with United States responsibilities in the world, as such funds can engender good will and further our national interests and objectives in the UNCED process.

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(11) International Cooperation in Global Change Research Act of 1990

Title II of Public Law 101–606 [Global Change Research Act of 1990; S. 169], 104 Stat. 3096 at 3102, approved November 16, 1990

AN ACT To require the establishment of a United States Global Research Program aimed at understanding and responding to global change, including the cumulative effects of human activities and natural processes on the environment, to promote discussions toward international protocols in global change research, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE II—INTERNATIONAL COOPERATION IN GLOBAL CHANGE RESEARCH

SEC. 201.[1] SHORT TITLE.

This title may be cited as the "International Cooperation in Global Change Research Act of 1990.

SEC. 202.[2] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Pooling of international resources and scientific capabilities will be essential to a successful global change program.

(2) While international scientific planning is already underway, there is currently no comprehensive intergovernmental mechanism for planning, coordinating, or implementing research to understand global change and to mitigate possible adverse effects.

(3) An international global change research program will be important in building future consensus on methods for reducing global environmental degradation.

(4) The United States, as a world leader in environmental and Earth sciences, should help provide leadership in developing and implementing an international global change research program.

(b) PURPOSES.—The purposes of this title are to—

(1) promote international, intergovernmental cooperation on global change research;

(2) involve scientists and policymakers from developing nations in such cooperative global change research programs; and

(3) promote international efforts to provide technical and other assistance to developing nations which will facilitate improvements in their domestic standard of living while minimizing damage to the global or regional environment.

[1] 15 U.S.C. 2921 note.
[2] 15 U.S.C. 2951.

SEC. 203.[3] INTERNATIONAL DISCUSSIONS.

(a) GLOBAL CHANGE RESEARCH.—The President should direct the Secretary of State, in cooperation with the Committee,[4] to initiate discussions with other nations leading toward international protocols and other agreements to coordinate global change research activities. Such discussions should include the following issues:

(1) Allocation of costs in global change research programs, especially with respect to major capital projects.

(2) Coordination of global change research plans with those developed by international organizations such as the International Council on Scientific Unions, the World Meteorological Organization, and the United Nations Environment Program.

(3) Establishment of global change research centers and training programs for scientists, especially those from developing nations.

(4) Development of innovative methods for management of international global change research, including—

(A) use of new or existing intergovernmental organizations for the coordination or funding of global change research; and

(B) creation of a limited foundation for global change research.

(5) the prompt establishment of international projects to)

(A) create globally accessible formats for data collected by various international sources; and

(B) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to possible adverse effects of global change.

(6) Establishment of international offices to disseminate information useful in identifying, preventing, mitigating, or adapting to the possible effects of global change.

(b) ENERGY RESEARCH.—The President should direct the Secretary of State (in cooperation with the Secretary of Energy, the Secretary of Commerce, the United States Trade Representative, and other appropriate members of the Committee) to initiate discussions with other nations leading toward an international research protocol for cooperation on the development of energy technologies which have minimally adverse effects on the environment. Such discussions should include, but not be limited to, the following issues:

(1) Creation of an international cooperative program to fund research related to energy efficiency, solar and other renewable energy sources, and passively safe and diversion-resistant nuclear reactors.

(2) Creation of an international cooperative program to develop low cost energy technologies which are appropriate to the environmental, economic, and social needs of developing nations.

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[3] 15 U.S.C. 2952.

[4] The Committee on Earth and Environmental Sciences as established by sec. 102 of Public Law 101–606 (104 Stat. 3097).

(3) Exchange of information concerning environmentally safe energy technologies and practices, including those described in paragraphs (1) and (2).

SEC. 204.[5] GLOBAL CHANGE RESEARCH INFORMATION OFFICE.

Not more than 180 days after the date of enactment of this Act, the President shall, in consultation with the Committee and all relevant Federal agencies, establish an Office of Global Change Research Information. The purpose of the Office shall be to disseminate to foreign governments, businesses, and institutions, as well as the citizens of foreign counties, scientific research information available in the United States which would be useful in preventing, mitigating, or adapting to the effects of global change. Such information shall include, but not be limited to, results of scientific research and development on technologies useful for—

(1) reducing energy consumption through conservation and energy efficiency;

(2) promoting the use of solar and renewable energy sources which reduce the amount of greenhouse gases released into the atmosphere;

(3) developing replacements for chlorofluorocarbons, halons, and other ozone-depleting substances which exhibit a significantly reduced potential for depleting stratospheric ozone;

(4) promoting the conservation of forest resources which help reduce the amount of carbon dioxide in the atmosphere;

(5) assisting developing countries in ecological pest management practices and in the proper use of agricultural, and industrial chemicals; and

(6) promoting recycling and source reduction of pollutants in order to reduce the volume of waste which must be disposed of, thus decreasing energy use and greenhouse gas emissions.

[5] 15 U.S.C. 2953.

(12) Rio Grande American Canal Extension Act of 1990

Public Law 101–438 [H.R. 4758], 104 Stat. 1001, approved October 18, 1990

AN ACT To provide for the construction, operation, and maintenance of an extension of the American Canal at El Paso, Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rio Grande American Canal Extension Act of 1990".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Riverside Dam on the international reach of the Rio Grande River at El Paso, Texas, provides the water used to irrigate nearly 32,000 acres of farmland in the United States.

(2) In June 1987, the Riverside Dam failed, and the temporary replacement structure now in place cannot be relied upon to guarantee the continued provision of these waters to the United States.

(3) Building a permanent structure in an international reach of the Rio Grande would require the conditional approval of the Government of Mexico through an action of the International Boundary and Water Commission, United State and Mexico, and Mexico could use such structure to divert waters to its own land.

(4) The United States constructed the American Dam completely in United States territory to ensure that waters from the American Canal would be completely retained within the United States up to a point below Mexico's diversion at the International Dam.

(5) Potentially disruptive international issues might arise from the commingling of the waters of the United States and the waters of Mexico in this reach of the Rio Grande, while such issues would not arise if a canal extension were constructed as operated wholly on the American side of the river.

(6) The construction and operation of any extension of the American Canal which would lie wholly in the United States would provide for a more equitable distribution of waters between the United States and Mexico, reduce water losses, and eliminate many hazards to public safety.

SEC. 3. CONSTRUCTION OF CANAL EXTENSION, OPERATION, MAINTENANCE AND USE.

(a) CONSTRUCTION OF EXTENSION.—Subject to subsection (e), the Secretary shall construct an extension of the American Canal, together with pumping plants, wasteways, measuring devices, and

other facilities needed to connect such extension with existing irrigation systems. Such extension shall lie wholly in the United States and shall be approximately 13 miles in length, beginning at the downstream end of the current American Canal in El Paso, Texas, and extending to Riverside Heading.

(b) OPERATION OF CANAL.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall operate the extension of the American Canal provided for in subsection (a).

(2) DELIVERY OF WATERS.—The Secretary shall enter into an agreement with El Paso County Water Improvement District Number 1 pursuant to which the Water Improvement District would be responsible for the operation of the American Canal with respect to the delivery of all waters, with the exception of those waters belonging to Mexico which, consistent with paragraph (3), the Secretary shall be responsible for delivering.

(3) UNITED STATES OBLIGATIONS UNDER 1906 AND 1933 CONVENTIONS.—In authorizing the agreement described in paragraph (2), this Act—

(A) does not in any way affect the jurisdiction, powers, or prerogatives of the International Boundary and Water Commission, United States and Mexico, and

(B) does not in any way impede the ability of the United States Government to fulfill its obligations under the 1906 and 1933 Conventions.

(c) USE OF CANAL AS CONVEYANCE CHANNEL.—

(1) USE BY MEXICO.—The Secretary may enter into an agreement with Mexico which permits Mexico to use the American Canal as a conveyance channel. Any such agreement shall require Mexico to make payments to the United States for Mexico's use of the American Canal.

(2) USE BY NON-FEDERAL ENTITIES.—Upon obtaining the express approval of the Secretary, El Paso County Water Improvement District Number 1 may enter into agreements with other non-Federal entities pursuant to which such entities may use the American Canal as a conveyance channel.

(d) MAINTENANCE OF EXTENSION.—The Secretary shall maintain the extension of the American Canal provided for in subsection (a).

(e) LOCAL CONTRIBUTION TO COSTS.—The extension of the American Canal provided for in subsection (a) may not be constructed unless the Secretary and El Paso County Water Improvement District Number 1 have entered into the following agreements:

(1) CONSTRUCTION COSTS.—An agreement pursuant to which El Paso County Water Improvement District Number 1 will pay $5,000,000 as its share of the construction costs for the construction of the extension of the American Canal provided for in subsection (a).

(2) MAINTENANCE COSTS.—An agreement pursuant to which El Paso County Water Improvement District Number 1 will contribute a cumulative amount of $50,000 each year to the United States Commissioner as its share of the costs for maintenance of the extension of the American Canal provided for in subsection (a). After the 7-year anniversary of the completion of the construction of that extension (and after the end of each

7-year interval since the last such renegotiation), the Secretary and the El Paso County Water Improvement District Number 1 may renegotiate the amount of the contribution of El Paso County Water Improvement District Number 1 pursuant to the agreement required by this paragraph in order to reflect any increase in Bureau of Labor Statistics Consumer Price Index-Urban Wage Earners and Clerical Workers (CPI-W)–1982–84–100 Index. In the event the funds contributed by the El Paso County Water Improvement District Number 1 pursuant to this paragraph are not utilized during any given year, the funds shall be carried over to the succeeding years in a contingency fund for necessary preventatives and routine maintenance work to be performed by the United States Section, International Boundary and Water Commission.

(f) REPEAL OF PREVIOUS CONSTRUCTION AUTHORIZATION.—Title IV of the Act entitled "an Act to authorize various Federal reclamation projects and programs, and for other purposes", approved September 28, 1976 (Public Law 94–423; 90 Stat. 1327), is repealed.

SEC. 4. STUDY OF SUBSIDENCE DAMAGE.

The Secretary—

(1) shall conduct a study to determine the likelihood and extent of any damage to property adjacent to the American Canal which would be caused by subsidence related to the Canal extension provided for in section 3(a), and

(2) shall submit a report to the Congress detailing his findings not later than 1 year after the date of the enactment of this Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) $42,000,000 to construct the extension of the American Canal provided for in section 3(a); and

(2) such sums as may be necessary to operate and maintain that extension and to conduct the study required by section 4.

SEC. 6. DEFINITIONS.

As used in this Act—

(1) the term "American Canal" means the Rio Grande American Canal constructed pursuant to the Act of August 29, 1935 (49 Stat. 961);

(2) the term "United States Commissioner" means the United States Commissioner, International boundary and Water Commission, United States and Mexico; and

(3) the term "Secretary" means the Secretary of State, acting through the United States Commissioner.

(13) International Cooperation to Protect Biological Diversity [1]

Public Law 100–530 [H.J. Res. 648], 102 Stat. 2651, approved October 25, 1988

JOINT RESOLUTION To encourage increased international cooperation to protect biological diversity.

Whereas habitat destruction is a main cause of the accelerating extinction of animal and plant species;

Whereas increased international cooperation is essential to protect species threatened with extinction and to halt the loss of unique and irreplaceable ecosystems; and

Whereas the United States has strongly supported efforts to convene an international convention for preservation of the Earth's biological diversity: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[2] STATEMENT OF POLICIES.

The Congress—

(1) supports the United States efforts, consistent with section 119(g) of the Foreign Assistance Act of 1961, to initiate discussions to develop an international agreement to preserve biological diversity; and

(2) calls upon the President to continue exerting United States leadership in order to achieve the earliest possible negotiation of an international convention to conserve the Earth's biological diversity, including the protection of a representative system of ecosystems adequate to conserve biological diversity.

SEC. 2.[2] REPORT.

Not later than one year after the date of the enactment of this joint resolution, the President shall submit a report to the Congress on progress toward the goal of negotiating the international convention described in paragraph (2) of section 1.

[1] This Act also appears in the Development Assistance section of *Legislation on Foreign Relations Through 2005*, vol. I–B.

[2] 22 U.S.C. 2151q note.

(14) African Elephant Conservation Act

Partial text of Public Law 100–478 [Endangered Species Act Amendments of 1988; H.R. 1467], 102 Stat. 2306 at 2315, approved October 7, 1988; as amended by Public Law 102–440 [H.R. 5013], 106 Stat. 2224, approved October 23, 1992; Public Law 105–217 [African Elephant Reauthorization Act of 1998; H.R. 39], 112 Stat. 911, approved August 5, 1998; Public Law 107–111 [African Elephant Reauthorization Act of 2001; H.R. 643], 115 Stat. 2095, approved January 8, 2002; and by Public Law 107–141 [Asian Elephant Conservation Reauthorization Act of 2002; H.R. 700], 116 Stat. 13, approved February 12, 2002

AN ACT To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE II—AFRICAN ELEPHANT CONSERVATION

SEC. 2001.[1] SHORT TITLE.

This title may be cited as the "African Elephant Conservation Act."

SEC. 2002.[2] STATEMENT OF PURPOSE.

The purpose of this title is to perpetuate healthy populations of African elephants.

SEC. 2003.[3] FINDINGS.

The Congress finds the following:

(1) Elephant populations in Africa have declined at an alarming rate since the mid-1970's.

(2) The large illegal trade in African elephant ivory is the major cause of this decline, and threatens the continued existence of the African elephant.

(3) The African elephant is listed as threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and its continued existence will be further jeopardized if this decline is not reversed.

(4) Because African elephant ivory is indistinguishable from Asian elephant ivory, there is a need to ensure that the trade in African elephant ivory does not further endanger the Asian elephant, which is listed as endangered under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and under Appendix I of CITES.

(5) In response to the significant illegal trade in African elephant ivory, the parties to CITES established the CITES Ivory

[1] 16 U.S.C. 4201 note.
[2] 16 U.S.C. 4201 note.
[3] 16 U.S.C. 4202.

Control System to curtail the illegal trade and to encourage African countries to manage, conserve, and protect their African elephant populations.

(6) The CITES Ivory Control System entered into force recently and should be allowed to continue in force for a reasonable period of time to assess its effectiveness in curtailing the illegal trade in African elephant ivory.

(7) Although some African countries have effective African elephant conservation programs, many do not have sufficient resources to properly manage, conserve, and protect their elephant populations.

(8) The United States, as a party to CITES and a large market for worked ivory, shares responsibility for supporting and implementing measures to stop the illegal trade in African elephant.

(9) There is no evidence that sport hunting is part of the poaching that contributes to the illegal trade in African elephant ivory, and there is evidence that the proper utilization of well-managed elephant populations provides an important source of funding for African elephant conservation programs.

SEC. 2004.[4] STATEMENT OF POLICY.

It is the policy of the United States—

(1) to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the CITES Secretariat; and

(2) to provide financial resources for those programs.

PART I—AFRICAN ELEPHANT CONSERVATION ASSISTANCE

SEC. 2101.[5] PROVISION OF ASSISTANCE.

(a) IN GENERAL.—The Secretary may provide financial assistance under this part from the[6] Fund for approved projects for research, conservation, management, or protection of African elephants.

(b) PROJECT PROPOSAL.—Any African government agency responsible for African elephant conservation and protection, the CITES Secretariat, and any organization or individual with experience in African elephant conservation may submit to the Secretary a project proposal under this section. Each such proposal shall contain—

(1) the name of the person responsible for conducting the project;

(2) a succinct statement of the need for and purposes of the project;

(3) a description of the qualifications of the individuals who will be conducting the project;

(4) an estimate of the funds and time required to complete the project;

(5) evidence of support of the project by government entities of countries within which the project will be conducted, if such support may be important for the success of the project; and

[4] 16 U.S.C. 4203.

[5] 16 U.S.C. 4211.

[6] Sec. 6(a)(1) of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2096) struck out "African Elephant Conservation".

(6) any other information the Secretary considers to be necessary or appropriate for evaluating the eligibility of the project for funding under this title.

(c) PROJECT REVIEW AND APPROVAL.—The Secretary shall review each project proposal to determine if it meets the criteria set forth in subsection (d) and otherwise merits assistance under this title. Not later than six months after receiving a project proposal, and subject to the availability of funds, the Secretary shall approve or disapprove the proposal and provide written notification to the person who submitted the proposal and to each country within which the project is proposed to be conducted.

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a project under this section if the project will enhance programs for African elephant research, conservation, management, or protection by—

(1) developing in a usable form sound scientific information on African elephant habitat condition and carrying capacity, total elephant numbers and population trends, or annual reproduction and mortality; or

(2) assisting efforts—

(A) to ensure that any taking of African elephants in the country is effectively controlled and monitored;

(B) to implement conservation programs to provide for healthy, sustainable African populations; or

(C) to enhance compliance with the CITES Ivory Control System.

(e)[7] PROJECT SUSTAINABILITY.—To the maximum extent practical, in determining whether to approve project proposals under this section, the Secretary shall give consideration to projects that will enhance sustainable conservation programs to ensure effective long-term conservation of African elephants.

(f)[7] PROJECT REPORTING.—Each entity that receives assistance under this section shall provide such periodic reports to the Director of the United States Fish and Wildlife Service as the Director considers relevant and appropriate. Each report shall include all information requested by the Director for evaluating the progress and success of the project.

SEC. 2102.[8] ACCEPTANCE AND USE OF DONATIONS

The Secretary may accept and use donations of funds to provide assistance under this part. Amounts received by the Secretary in

[7] Sec. 5 of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2096) redesignated subsec. (e) as subsec. (f) and added a new subsec. (e).

[8] 16 U.S.C. 4212. Sec. 6(a)(2) of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2096) struck out the catchline sec. 2102 and all that followed through the subsec. heading in subsec. (d) and inserted in lieu thereof a new catchline. The section previously read as follows:

"SEC. 2102. AFRICAN ELEPHANT CONSERVATION FUND.

"(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the 'African Elephant Conservation Fund', which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).

"(b) DEPOSITS INTO THE FUND.—The Secretary of the Treasury shall deposit into the Fund—

"(1) subject to appropriations, all amounts received by the Secretary in the form of donations under subsection (d); and

"(2) other amounts appropriated to the Fund to carry out this part.

"(c) USE.—

Continued

the form of such donations shall be transferred by the Secretary to the Secretary of the Treasury for deposit into the Fund.

SEC. 2103. ANNUAL REPORTS.

The Secretary shall submit an annual report to the Congress not later than January 31 of each year regarding the Fund and the status of the African elephant. Each such report shall include with respect to the year for which the report is submitted a description of—

(1) the total amounts deposited into and expended from the Fund;

(2) the costs associated with the administration of the Fund;

(3) a summary of the projects for which the Secretary has provided assistance under this part and an evaluation of those projects; and

(4) an evaluation of African elephant populations and whether the CITES Ivory Control System is functioning effectively to control the illegal trade in African elephant ivory.

SEC. 2104.[9] ADVISORY GROUP.

(a) IN GENERAL.—To assist in carrying out this title,[10] the Secretary may convene an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of African elephants.

(b) PUBLIC PARTICIPATION.—

(1) MEETINGS.—The Advisory Group shall—

(A) ensure that each meeting of the advisory group is open to the public; and

(B) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(3) MINUTES.—Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public.

(c) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory group.

PART II—MORATORIA AND PROHIBITED ACTS

SEC. 2201.[11] REVIEW OF AFRICAN ELEPHANT CONSERVATION PROGRAMS.

(a) IN GENERAL.—Within one month after the date of the enactment of this title, the Secretary shall issue a call for information

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"(1) IN GENERAL.—Subject to paragraph (2), amounts in the Fund may be used by the Secretary, without further appropriation, to provide assistance under this part.

"(2) ADMINISTRATION.—Not more than three percent of amounts appropriated to the Fund for a fiscal year may be used by the Secretary to administer the fund for that fiscal year.

"(d) ACCEPTANCE AND USE OF DONATIONS.—".

[9] 16 U.S.C. 4214. Sec. 4 of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2096) added sec. 2104.

[10] Sec. 5(b)(2)(A) of the Asian Elephant Conservation Reauthorization Act of 2002 (Public Law 107–141; 116 Stat. 14) struck out "this Act" and inserted in lieu thereof "this title".

[11] 16 U.S.C. 4221.

on the African elephant conservation program of each ivory producing country by—

(1) publishing a notice in the Federal Register requesting submission of such information to the Secretary by all interested parties; and

(2) submitting a written request for such information through the Secretary of State to each ivory producing country.

(b) REVIEW AND DETERMINATION.—

(1) IN GENERAL.—The Secretary shall review the African elephant conservation program of each ivory producing country and, not later than one year after the date of the enactment of this title, shall issue and publish in the Federal Register a determination of whether or not the country meets the following criteria:

(A) The country is a party to CITES and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

(2) DELAY IN ISSUING DETERMINATION.—If the Secretary finds within one year after the date of the enactment of this title that there is insufficient information upon which to make the determination under paragraph (1), the Secretary may delay issuing the determination until no later than December 31, 1989. The Secretary shall issue and publish in the Federal Register at the time of the finding a statement explaining the reasons for any such delay.

SEC. 2202.[12] MORATORIA.

(a) IVORY PRODUCING COUNTRIES.—

(1) IN GENERAL.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an ivory producing country immediately upon making a determination that the country does not meet all the criteria set forth in section 2201(b)(1).

(2) LATER ESTABLISHMENT.—With regard to any ivory producing country for which the Secretary has insufficient information to make a determination pursuant to section 2201(b), the Secretary shall establish a moratorium on the importation

[12] 16 U.S.C. 4222.

of raw and worked ivory from such country not later than January 1, 1990, unless, based on new information, the Secretary concludes before that date that the country meets all of the criteria set forth in section 22019(b)(1).

(b) INTERMEDIARY COUNTRIES.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an intermediary country immediately upon making a determination that the country—

(1) is not a party to CITES;

(2) does not adhere to the CITES Ivory Control System;

(3) imports raw ivory from a country that is not an ivory producing country;

(4) imports raw or worked ivory from a country that is not a party to CITES;

(5) imports raw or worked ivory that originates in an ivory producing country in violation of the laws of that ivory producing country;

(6) substantially increases its imports of raw or worked ivory from a country that is subject to a moratorium under this title during the first three months of that moratorium; or

(7) imports raw or worked ivory from a country that is subject to a moratorium under this title after the first three months of that moratorium, unless the ivory is imported by vessel during the first six months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of the moratorium.

(c) SUSPENSION OF MORATORIUM.—The Secretary shall suspend a moratorium established under this section if, after notice and public comment, the Secretary determines that the reasons for establishing the moratorium no longer exist.

(d) PETITION.—

(1) IN GENERAL.—Any person may at any time submit a petition in writing requesting that the Secretary establish or suspend a moratorium under this section. Such a petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition.

(2) CONSIDERATION AND RULING.—The Secretary shall publish a notice of receipt of a petition under this subsection in the Federal Register and shall provide an opportunity for the public to comment on the petition. The Secretary shall rule on such petition not later than 90 days after the close of the public comment period.

(e) SPORT-HUNTED TROPHIES.—Individuals may import sport-hunted elephant trophies that they have legally taken in an ivory producing country that has submitted an ivory quota. The Secretary shall not establish any moratorium under this section, pursuant to a petition or otherwise, which prohibits the importation into the United States of sport-hunted trophies from elephants that are legally taken by the importer or the importer's principal in an ivory producing country that has submitted an ivory quota.

(f) CONFISCATED IVORY.—Trade in raw or worked ivory that is confiscated by an ivory producing country or an intermediary country and is disposed of pursuant to the CITES Ivory Control System shall not be the sole cause for the establishment of a moratorium

under this part if all proceeds from the disposal of the confiscated ivory are used solely to enhance wildlife conservation programs or conservation purposes of CITES. With respect to any country that was not a party to CITES at the time of such confiscation, this subsection shall not apply until such country develops appropriate measures to assure that persons with a history of illegal dealings in ivory shall not benefit from the disposal of confiscated ivory.

SEC. 2203.[13] PROHIBITED ACTS.

Except as provided in section 2202(e), it is unlawful for any person—

(1) to import raw ivory from any country than an ivory producing country;

(2) to export raw ivory from the United States;

(3) to import raw or worked ivory that was exported from an ivory producing country in violation of that country's laws or of the CITES Ivory Control System;

(4) to import worked ivory, other than personal effects, from any country unless that country has certified that such ivory was derived from legal sources; or

(5) to import raw or worked ivory from a country for which a moratorium is in effect under section 2202.

SEC. 2204.[14] PENALTIES AND ENFORCEMENT.

(a) CRIMINAL VIOLATIONS.—Whoever knowingly violates section 2203 shall, upon conviction, be fined under title 18, United States Code, or imprisoned for not more than one year, or both.

(b) CIVIL VIOLATIONS.—Whoever violates section 2203 may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation.

(c) PROCEDURES FOR ASSESSMENT OF CIVIL PENALTY.—Proceedings for the assessment of a civil penalty under this section shall be conducted in accordance with the procedures provided for in section 11(a) of the Endangered Species Act of 1973 (16 U.S.C. 1540(a)).

(d) USE OF PENALTIES.—Subject to appropriations, penalties collected under this section may be used by the Secretary of the Treasury to pay rewards under section 2205 and, to the extent not used to pay such rewards, shall be deposited by the Secretary of the Treasury into the Fund.

(e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this part in the same manner such Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)). Section 11(c) of the Endangered Species Act of 1973 (16 U.S.C. 1540(c)) shall apply to actions arising under this part.

[13] 16 U.S.C. 4223.
[14] 16 U.S.C. 4224.

SEC. 2205.[15] **REWARDS.**

(a) IN GENERAL.—Upon the recommendation of the Secretary, the Secretary of the Treasury may pay a reward to any person who furnishes information which leads to a civil penalty or a criminal conviction under this title.

(b) AMOUNT.—The amount of a reward under this section shall be equal to not more than one-half of any criminal or civil penalty or fine with respect to which the reward is paid, or $25,000, whichever is less.

(c) LIMITATION ON ELIGIBILITY.—An officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his or her official duties shall not be eligible for a reward under this section.

PART III—MISCELLANEOUS

SEC. 2301.[16] **PERMISSION TO IMPORT OR EXPORT AFRICAN ELEPHANT IVORY.**

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SEC. 2302.[17] **RELATIONSHIP TO ENDANGERED SPECIES ACT OF 1973.**

The authority of the Secretary under this title is in addition to and shall not affect the authority of the Secretary under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or diminish the Secretary's authority under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

SEC. 2303. CERTIFICATION UNDER PELLY AMENDMENT.

If the Secretary finds in administering this title that a country does not adhere to the CITES Ivory Control System, that country is deemed, for purposes of section 8(a)(2) of the Act of August 27, 1954 (22 U.S.C. 1978), to be diminishing the effectiveness of an international program for endangered or threatened species.

SEC. 2304. EFFECTIVENESS OF CITES. [Repealed—2001][18]

SEC. 2305.[19] **DEFINITIONS.**

In this title—

(1) the term "African elephant" means any animal of the species loxodonta africana;

(2) the term "CITES" means the Convention on the International Trade in Endangered Species of Wild Fauna and Flora;

(3) the term "CITES Ivory Control System" means the ivory quota and marking system established by CITES to curtail illegal trade in African elephant ivory;

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[15] 16 U.S.C. 4225.

[16] Sec. 2301 amended sec. 9(d) of the Endangered Species Act of 1973 (16 U.S.C. 1538(d)).

[17] 16 U.S.C. 4241.

[18] Sec. 6(a)(3) of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2096) repealed sec. 2304. It previously read as follows:

"Within 3 months after the completion of the 8th Conference of the Parties to CITES, the Secretary shall determine whether this title, together with the CITES Ivory Control System, has substantially stopped the importation of illegally harvested ivory into the United States. If the Secretary determines that the importation of illegally harvested ivory has not been substantially stopped, the Secretary shall recommend to the Congress amendments to this title or other actions that may be necessary to achieve the purposes of this title, including the establishment of a complete moratorium on the importation of elephant ivory into the United States.".

[19] 16 U.S.C. 4244.

(4) the term "Fund" means the account established by division A, section 101(e), title I of Public Law 105–277 under the heading "multinational species conservation fund";[20]

(5) the terms "import" and "importation" have the meanings such terms have in the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(6) the term "intermediary country" means a country that exports raw or worked ivory that does not originate in that country;

(7) the term "ivory producing country" means any African country within which is located any part of the range of a population of African elephants;

(8) the term "ivory quota" means a quota submitted by an ivory producing country to the CITES Secretariat in accordance with the CITES Ivory Control System;

(9) the term "personal effects" means articles which are not intended for sale and are part of a shipment of the household effects of a person who is moving his or her residence to or from the United States, or are included in personal accompanying baggage;

(10) the term "raw ivory" means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved;

(11) the term "Secretary" means the Secretary of the Interior;

(12) the term "United States" means the fifty States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(13) the term "worked ivory" means any African elephant tusk, and any piece thereof, which is not raw ivory.

SEC. 2306.[21] AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized[22] to be appropriated to the Fund and to the Secretary a total of not to exceed $5,000,000 for each of fiscal years 2001, 2002, 2003, 2004, 2005, 2006, and 2007[23] to carry out this title, to remain available until expended.

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[20] Sec. 6(a)(4) of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2096) struck out "the African Elephant Conservation Fund established by section 2102" and inserted in lieu thereof "the account established by division A, section 101(e), title I of Public Law 105–277 under the heading 'multinational species conservation fund' ".

[21] 16 U.S.C. 4245. The Department of Interior and Related Agencies Appropriations, 2006 (Public Law 109–54; 119 Stat. 499), provided the following:

"For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201–4203, 4211–4213, 221–4225, 4241–4245, and 1538), the Asian Elephant Conservation Act of 1997 (Public Law 105–96; 16 U.S.C. 4261–4266), the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301–5306), the Great Ape Conservation Act of 2000 (16 U.S.C. 6301), and the Marine Turtle Conservation Act of 2004 (Public Law 108–266; 16 U.S.C. 6601), $6,500,000, to remain available until expended.".

[22] Sec. 3 of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2095) struck out "There are authorized" and inserted in lieu thereof "(a) IN GENERAL.—There is authorized"; and added subsec. (b).

[23] Sec. 2 of the African Elephant Reauthorization Act of 2001 (Public Law 107–111; 115 Stat. 2095) struck out "1997, 1998, 1999, 2000, 2001, and 2002" and inserted in lieu thereof "2001, 2002, 2003, 2004, 2005, 2006, and 2007". Previously, sec. 2 of Public Law 105–217 (112 Stat. 911) struck out "fiscal years 1992, 1993, 1994, 1995, 1996, 1997, and 1998" and inserted in lieu thereof "fiscal years 1997, 1998, 1999, 2000, 2001, and 2002". Prior to that, sec. 302 of Public Law 102–440 (106 Stat. 2234) struck out "fiscal years 1989, 1990, 1991, 1992, and 1993" and inserted in lieu thereof "fiscal years 1992, 1993, 1994, 1995, 1996, 1997, and 1998".

(b)[22] ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this Act, the Secretary may expend not more than 3 percent or $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this Act.

(15) Rio Grande Pollution Correction Act of 1987

Public Law 100–465 [H.R. 2046], 102 Stat. 2272, approved October 3, 1988

AN ACT To authorize the Secretary of State to conclude agreements with the appropriate representative of the Government of Mexico to correct pollution of the Rio Grande.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rio Grande Pollution Correction Act of 1987".

SEC. 2.[1] AGREEMENTS TO CORRECT POLLUTION OF RIO GRANDE.

(a) IN GENERAL.—The Secretary of State, acting through the United State Commissioner, International Boundary and Water Commission, United States and Mexico (hereafter in this Act referred to as the "Commissioner"), is authorized to conclude agreements with the appropriate representative of the Ministry of Foreign Relations of Mexico for the purpose of correcting the international problem of pollution of the Rio Grande caused by discharge of raw and inadequately treated sewage and other wastes into such river from the border cities including but not limited to Ciudad Acuna, Nuevo Laredo, and Reynosa, Mexico, and Del Rio, Laredo, and Hidalgo, Texas.

(b) CONTENT OF AGREEMENTS.—Agreements concluded under subsection (a) should consist of recommendations to the Governments of the United States and Mexico of measures to protect the health and welfare of persons along the Rio Grande from the effects of pollution, including—

(1) facilities that should be constructed, operated, and maintained in each country;

(2) estimates of the cost of plans, construction, operation, and maintenance of the facilities referred to in paragraph (1);

(3) formulas for the initial division between the United States and Mexico of the cost of plans, constructions, operation, and maintenance of the facilities referred to in paragraph (1);

(4) a method for review and adjustment of the formulas referred to in paragraph (3) at intervals of five years which recognizes that such initial formulas should not be used as a precedent in their subsequent review and adjustment; and

(5) dates for the beginning and completion of construction of the facilities referred to in paragraph (1).

[1] 22 U.S.C. 277g.

SEC. 3.[2] AUTHORITY OF SECRETARY OF STATE TO PLAN, CONSTRUCT, OPERATE, AND MAINTAIN FACILITIES.

The Secretary of State, acting through the Commissioner, is authorized to act jointly with the appropriate representative of the Government of Mexico and to—

(1) supervise the planning of, and

(2) supervise construction, operation, and maintenance of,

the facilities recommended in agreements concluded pursuant to section 2 and approved by the Governments of the United States and Mexico.

SEC. 4.[3] CONSULTATION WITH THE ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY AND OTHER AUTHORITIES

The Secretary of State shall consult with the Administrator of the Environmental Protection Agency and other concerned Federal, State, and local government officials in implementing this Act.

SEC. 5.[4] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary for the United States to fund its share of the cost of the plans, construction, operation, and maintenance of the facilities recommended in agreements concluded pursuant to section 2 and approved by the Governments of the United States and Mexico.

[2] 22 U.S.C. 277g–1.
[3] 22 U.S.C. 277g–2.
[4] 22 U.S.C. 277g–3.

(16) Temporary Emergency Wildfire Suppression Act

Public Law 100–428 [S. 2641], 102 Stat. 1615, approved September 9, 1988; as amended by Public Law 101–11 [Wildfire Suppression Assistance Act; H.R. 829], 103 Stat. 15, approved April 7, 1989

AN ACT To authorize the Secretary of Agriculture and other agency heads to enter into agreements with foreign fire organizations for assistance in wildfire protection.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Temporary Emergency Wildfire Suppression Act".

SEC. 2.[1] DEFINITIONS.

As used in this Act—

(1) the term "fire organization" means any governmental, public, or private entity having wildfire protection resources;

(2) the term "wildfire protection resources" means personnel, supplies, equipment, and other resources required for wildfire presuppression and suppression activities; and

(3) the term "wildfire" means any forest or range fire.

SEC. 3.[2] IMPLEMENTATION.

(a)(1) The Secretary of Agriculture or the Secretary of the Interior, in consultation with the Secretary of State, may enter into a reciprocal agreement with any foreign fire organization for mutual aid in furnishing wildfire protection resources for lands and other properties for which such Secretary or organization normally provides wildfire protection.

(2) Any agreement entered into under this subsection—

(A) shall include a waiver by each party to the agreement of all claims against every other party to the agreement for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement;

(B) shall include a provision to allow the termination of such agreement by any party thereto after reasonable notice; and

(C) may provide for the reimbursement of any party thereto for all or any part of the costs incurred by such party in furnishing wildfire protection resources for, or on behalf of, any other party thereto.

(b) In the absence of any agreement authorized under subsection (a), the Secretary of Agriculture or the Secretary of the Interior may—

(1) furnish emergency wildfire protection resources to any foreign nation when the furnishing of such resources is determined by such Secretary to be in the best interest of the United States, and

[1] 42 U.S.C. 1856m.
[2] 42 U.S.C. 1856n.

(2) accept emergency wildfire protection resources from any foreign fire organization when the acceptance of such resources is determined by such Secretary to be in the best interest of the United States.

(c) Notwithstanding the preceding provisions of this section, reimbursement may be provided for the costs incurred by the Government of Canada or a Canadian organization in furnishing wildfire protection resources to the government of the United States under—

(1) the memorandum entitled "Memorandum of Understanding Between the United States Department of Agriculture and Environment Canada on Cooperation in the Field of Forestry Related Programs" dated June 25, 1982; and

(2) the arrangement entitled "Arrangement in the Form of an Exchange of Notes Between the Government of Canada and the Government of the United States of America" dated May 4, 1982.

(d) Any service performed by any employee of the United States under an agreement or otherwise under this Act shall constitute service rendered in the line of duty in such employment. The performance of such service by any other individual shall not make such individual an employee of the United States.

SEC. 4.[3] **FUNDS.**

Funds available to the Secretary of Agriculture or the Secretary of the Interior for wildfire protection resources in connection with activities under the jurisdiction of such Secretary may be used to carry out activities authorized under agreements or otherwise under this Act, or for reimbursements authorized under section 3(c): *Provided,* That no such funds may be expended for wildfire protection resources or personnel provided by a foreign fire organization unless the Secretary determines that no wildfire protection resources or personnel within the United States are reasonably available to provide wildfire protection.

SEC. 5.[4] * * * [Repealed—1989]

[3] 42 U.S.C. 1856o.

[4] Sec. 2 of Public Law 101–11 (103 Stat. 15) repealed sec. 5, which formerly read as follows:

"**SEC. 5. TERMINATION DATE.**

"The authority to enter into agreements under section 3(a), to furnish or accept emergency wildfire protection resources under section 3(b), or to incur obligations for reimbursement under section 3(c), shall terminate on December 31, 1988.".

(17) Nuclear Waste Policy Act of 1982

Partial text of Public Law 97–425 [H.R. 3809], 96 Stat. 2201, approved January 7, 1983

AN ACT To provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TECHNICAL ASSISTANCE TO NON-NUCLEAR WEAPON STATES IN THE FIELD OF SPENT FUEL STORAGE AND DISPOSAL

SEC. 223.[1] (a) It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b)(1) Within 90 days of enactment of this Act, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these

[1] 42 U.S.C. 10203.

fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state power reactor operators.

(e) For the purposes of this subsection,[2] the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C. 438).[3]

(f) Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.

[2] So in original. Should probably read "section".
[3] So in original. Should probably read "21 UST 438".

(18) United Nations Environment Program Participation Act of 1973 [1]

Public Law 93–188 [H.R. 6788], 87 Stat. 713, approved December 15, 1973

AN ACT To provide for participation by the United States in the United Nations environment program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United Nations Environment Program Participation Act of 1973".

SEC. 2. It is the policy of the United States to participate in coordinated international efforts to solve environmental problems of global and international concern, and in order to assist the implementation of this policy, to contribute funds to the United Nations Environmental Fund for the support of international measures to protect and improve the environment.

SEC. 3. There is authorized to be appropriated $40,000,000 for contributions to the United Nations Environment Fund, which amount is authorized to remain available until expended, and which may be used upon such terms and conditions as the President may specify: *Provided,* That not more than $10,000,000 may be appropriated for use in fiscal year 1974.

[1] This Act may also be found in *Legislation on Foreign Relations Through 2005*, vol. II–B.

d. Strategic Environmental Research and Development Program

Chapter 172, Title 10, United States Code, as added by title XVIII of Public Law 101–510[1] [National Defense Authorization Act for Fiscal Year 1991; H.R. 4739], 104 Stat. 1485 at 1750, approved November 5, 1990; as amended by Public Law 102–25 [Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991; S. 725], 105 Stat. 75, approved April 6, 1991; Public Law 102–190 [National Defense Authorization Act for Fiscal Years 1992 and 1993; H.R. 2100], 105 Stat. 1290, approved December 5, 1991; Public Law 102–484 [National Defense Authorization Act for Fiscal Year 1993; H.R. 5006], 106 Stat. 2315, approved October 23, 1992; Public Law 103–160 [National Defense Authorization Act for Fiscal Year 1994; H.R. 2401], 107 Stat. 1547, approved November 30, 1993; Public Law 104–106 [National Defense Authorization Act for Fiscal Year 1996; S. 1124], 110 Stat. 186, approved February 10, 1996; Public Law 105–85 [National Defense Authorization Act for Fiscal Year 1998; H.R. 1119], 111 Stat. 1629, approved November 18, 1997; Public Law 105–245 [Energy and Water Appropriations Act, 1999; H.R. 4060], 112 Stat. 1838, approved October 7, 1998; Public Law 106–65 [National Defense Authorization Act for Fiscal Year 200; S. 1059], 113 Stat. 512, approved October 5, 1999; Public Law 106–398 [Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001; H.R. 4205], 114 Stat. 1654, approved October 30, 2000; and Public Law 108–136 [National Defense Authorization Act for Fiscal Year 2004; H.R. 1588], 117 Stat. 1392, approved November 24, 2003

CHAPTER 172—STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

Sec.
2901. Strategic Environmental Research and Development Program.
2902. Strategic Environmental Research and Development Program Council.
2903. Executive Director.
2904. Strategic Environmental Research and Development Program Scientific Advisory Board.

§ 2901. Strategic Environmental Research and Development Program

(a) The Secretary of Defense shall establish a program to be known as the "Strategic Environmental Research and Development Program".

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[1] Secs. 1801 and 1802 of Public Law 101–510 (104 Stat. 1757; 10 U.S.C. 2904 note) further provided, relating to this chapter:

"(b) INITIAL APPOINTMENTS OF ADVISORY BOARD MEMBERS.—(1) The Secretary of Defense and the Secretary of Energy shall make the appointments required by section 2904(a) of title 10, United States Code (as added by subsection (a)(1)), not later than 60 days after the date of the enactment of this Act.

"(2) Up to one-half of the members originally appointed to the Strategic Environmental Research and Development Program Scientific Advisory Board established under section 2904 of title 10, United States Code, as added by subsection (a)(1), may be appointed for terms of not more than six and not less than two years in order to provide for staggered expiration of the terms of members. The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall designate the members appointed for terms authorized under this paragraph and shall specify the terms for which such members are appointed.

"(c) FIRST ANNUAL REPORT OF THE STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM COUNCIL.—(1) The first annual report required by section 2902(h) of title 10, United

(b) The purposes of the program are as follows:

(1) To address environmental matters of concern to the Department of Defense and the Department of Energy through support for basic and applied research and development of technologies that can enhance the capabilities of the departments to meet their environmental obligations.

(2) To identify research, technologies, and other information developed by the Department of Defense and the Department of Energy for national defense purposes that would be useful to governmental and private organizations involved in the development of energy technologies and of technologies to address environmental restoration, waste minimization, hazardous waste substitution, and other environmental concerns, and to share such research, technologies, and other information with such governmental and private organizations.

(3) To furnish other governmental organizations and private organizations with data, enhanced data collection capabilities, and enhanced analytical capabilities for use by such organizations in the conduct of environmental research, including research concerning global environmental change.

(4) To identify technologies developed by the private sector that are useful for Department of Defense and Department of Energy defense activities concerning environmental restoration, hazardous and solid waste minimization and prevention, hazardous material substitution, and provide for the use of such technologies in the conduct of such activities.

§ 2902. Strategic Environmental Research and Development Program Council

(a) There is a Strategic Environmental Research and Development Program Council (hereinafter in this chapter referred to as the "Council").

States Code, as added by subsection (a)(1), shall be submitted to the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency not later than February 1, 1992.

"(2) The Strategic Environmental Research and Development Program Council shall conduct and include as part of the first annual report required pursuant to section 2902(h) of title 10, United States Code, as added by subsection (a)(1), an assessment of the advisability of, and various alternatives to, charging fees for information released, as required pursuant to sections 2901(b)(3), 2902(e)(1) and (2), and 2902(g)(2)(I) of such title (as so added), to private sector entities operating for a profit.

"(3) The Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency shall submit to the Congress, with the annual report referred to in paragraph (1), any recommendations for changes in the structure or personnel of the Council that the Secretaries and the Administrator consider necessary to carry out the environmental activities of the strategic environmental research and development program.

"(d) FIRST ANNUAL REPORT OF THE STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM SCIENTIFIC ADVISORY BOARD.—The first annual report of the Strategic Environmental Research and Development Program Scientific Advisory Board required by section 2904(h) of title 10, United States Code, as added by subsection (a)(1), shall be submitted not later than March 15, 1992.

"SEC. 1802. AVAILABILITY OF FUNDS

"Of the amounts authorized to be appropriated pursuant to section 201, $200,000,000 shall be available for the Strategic Environmental Research and Development Program established under chapter 172 of title 10, United States Code, as added by section 1001. To the extent provided in appropriation Acts, the amount made available by this section shall remain available until expended.".

(b)[2, 5, 7] The Council is composed of 12[3] members as follows:

(1) The Deputy Under Secretary of Defense for Science and Technology.[4]

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3)[5] The Deputy Under Secretary of Defense responsible for environmental security.

(4) The Assistant Secretary of Energy for Defense programs.

(5) The Assistant Secretary of Energy responsible for environmental restoration and waste management.

(6) The Director of the Department of Energy Office of Science.[6]

(7) The Administrator of the Environmental Protection Agency.

(8)[7] One representative from each of the Army, Navy, Air Force, and Coast Guard.[8]

(9) The Executive Director of the Council (appointed pursuant to section 2903 of this title), who shall be a nonvoting member.

(c) The Secretary of Defense shall designate a member of the Council as chairman for each odd numbered fiscal year. The Secretary of Energy shall designate a member of the Council as chairman for each even-numbered fiscal year.

(d) The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the Strategic Environmental Research and Development Program.

(2) To enter into contracts, grants, and other financial arrangements, in accordance with other applicable law, to carry out the purposes of the Strategic Environmental Research and Development Program.

(3)[9] To prepare an annual report that contains the following:

(A) A description of activities of the strategic environmental research and development program carried out during the fiscal year before the fiscal year in which the report is prepared.

(B) A general outline of the activities planned for the program during the fiscal year in which the report is prepared.

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[2] Sec. 265(a) of Public Law 103–160 (107 Stat. 1611) struck out para. (1), which had assigned to the Council the "Assistant Secretary of Defense responsible for matters relating to production and logistics"; redesignated paras. (2) through (4) as paras. (1) through (3), respectively; inserted a new para. (4); struck out para. (6), which had assigned to the Council the "Director of the Department of Energy Office of Environmental Restoration and Waste Management"; and inserted a new para. (6).

[3] Sec. 257(a)(1) of Public Law 102–190 (105 Stat. 1331) increased membership from nine to thirteen. Sec. 203(a)(1) of Public Law 104–106 (110 Stat. 217) struck out "thirteen" and inserted in lieu thereof "12".

[4] Sec. 324 of the National Defense Authorization Act for Fiscal Year 200 (Public Law 106–65; 113 Stat. 778) struck out "Director of Defense Research and Engineering" and inserted in lieu thereof "Deputy Under Secretary of Defense for Science and Technology".

[5] Sec. 203(a)(2) and (3) of Public Law 104–106 (110 Stat. 217) struck out para. (3), which named the Assistant Secretary of the Air Force responsible for matters relating to space, and renumbered the subsequent paras.

[6] Sec. 309(b)(2)(B) of the Energy and Water Appropriations Act, 1999 (Public Law 105–243; 112 Stat. 1853) struck out "Energy Research" and inserted in lieu thereof "Science".

[7] Sec. 257(a)(2) and (3) of Public Law 102–190 (105 Stat. 1331) redesignated subsequent paras. and inserted a new para. (9), since redesignated as "(8)".

[8] Sec. 203(a)(4) of Public Law 104–106 (110 Stat. 217) struck out ", who shall be nonvoting members". Previously, sec. 1052(38) of Public Law 102–484 (106 Stat. 2501) made a technical correction to para. (8).

[9] Sec. 203(b)(1)(A) of Public Law 104–106 (110 Stat. 217) amended and restated para. (3).

(C) A summary of projects continued from the fiscal year before the fiscal year in which the report is prepared and projects expected to be started during the fiscal year in which the report is prepared and during the following fiscal year.

(D)[10] A summary of the actions of the Strategic Environmental Research and Development Program Scientific Advisory Board during the year preceding the year in which the report is submitted and any recommendations, including recommendations on program direction and legislation, that the Advisory Board considers appropriate regarding the program.

(4) To promote the maximum exchange of information, and to minimize duplication, regarding environmentally related research, development, and demonstration activities through close coordination with the military departments and Defense Agencies, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, other departments and agencies of the Federal Government or any State and local governments, including the National Science and Technology Council,[11] and other organizations engaged in such activities.

(5) To ensure that research and development activities under the Strategic Environmental Research and Development Program do not duplicate other ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, or any other department or agency of the Federal Government.

(6) To ensure that the research and development programs identified for support pursuant to policies and procedures prescribed by the council utilize, to the maximum extent possible, the talents, skills, and abilities residing at the Federal laboratories, including the Department of Energy multiprogram and defense laboratories, the Department of Defense laboratories, and Federal contract research centers. To utilize the research capabilities of institutions of higher education and private industry to the extent practicable.

(e) In carrying out subsection (d)(1), the Council shall prescribe policies and procedures that—

(1) provide for appropriate access by Federal Government personnel, State and local government personnel, college and university personnel, industry personnel, and the general public to data under the control of, or otherwise available to, the Department of Defense that is relevant to environmental matters by—

(A) identifying the sources of such data;

[10] Sec. 313(b) of H.R. 5408, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as enacted by Public Law 106–398 (114 Stat. 1654A–55), added subpara. (D).

[11] Sec. 203(b)(1)(B) of Public Law 104–106 (110 Stat. 217) struck out "Federal Coordinating Council on Science, Engineering, and Technology" and inserted in lieu thereof "National Science and Technology Council".

(B) publicizing the availability and sources of such data by appropriately-targeted dissemination of information to such personnel and the general public, and by other means; and

(C) providing for review of classified data relevant to environmental matters with a view to declassifying or preparing unclassified summaries of such data;

(2) provide governmental and nongovernmental entities with analytic assistance, consistent with national defense missions, including access to military platforms for sensor deployment and access to computer capabilities, in order to facilitate environmental research;

(3) provide for the identification of energy technologies developed for national defense purposes (including electricity generation systems, energy storage systems, alternative fuels, biomass energy technology, and applied materials technology) that might have environmentally sound, energy efficient applications for other programs of the Department of Defense and the Department of Energy national security programs;[12]

(4) provide for the identification and support of programs of basic and applied research, development, and demonstration in technologies useful—

(A) to facilitate environmental compliance, remediation, and restoration activities of the Department of Defense and at Department of Energy defense facilities;

(B) to minimize waste generation, including reduction at the source, by such departments; or

(C) to substitute use of nonhazardous, nontoxic, nonpolluting, and other environmentally sound materials and substances for use of hazardous, toxic, and polluting materials and substances by such departments;

(5) provide for the identification and support of research, development, and application of other technologies developed for national defense purposes which not only are directly useful for programs, projects, and activities of such departments, but also have useful applications for solutions to such national and international environmental problems as climate change and ozone depletion;

(6) provide for the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, in cooperation with other Federal and State agencies, as appropriate, to conduct joint research, development, and demonstration projects relating to innovative technologies, management practices, and other approaches for purposes of—

(A) preventing pollution from all sources;

(B) minimizing hazardous and solid waste, including recycling; and

(C) treating hazardous and solid waste, including the use of thermal, chemical, and biological treatment technologies;

[12] Sec. 203(c) of Public Law 104–106 (110 Stat. 218) struck out "programs, particularly technologies that have the potential for industrial, commercial, and other governmental applications, and to support programs of research in and development of such applications;" and inserted in lieu thereof "programs;".

(7) encourage transfer of technologies referred to in clauses (2) through (6) to the private sector under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) and other applicable laws;

(8) provide for the identification of, and planning for the demonstration and use of, existing environmentally sound, energy-efficient technologies developed by the private sector that could be used directly by the Department of Defense;

(9) provide for the identification of military specifications that prevent or limit the use of environmentally beneficial technologies, materials, and substances in the performance of Department of Defense contracts and recommend changes to such specifications; and

(10) to ensure that the research and development programs identified for support pursuant to the policies and procedures prescribed by the Council are closely coordinated with, and do not duplicate, ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, or other Federal agencies.

(f)[13] The Council shall be subject to the authority, direction, and control of the Secretary of Defense in prescribing policies and procedures under subsection (d)(1).

(g)[14] Not later than February 1 of each year, the Council shall submit to the Secretary of Defense the annual report prepared pursuant to subsection (d)(3).

§ 2903. Executive Director

(a) There shall be an Executive Director of the Council appointed by the Secretary of Defense after consultation with the Secretary of Energy.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Executive Director is responsible for the management of the Strategic Environmental Research and Development Program in accordance with the policies established by the Council.

(c) The Executive Director may enter into contracts using competitive procedures. The Executive Director may enter into[15] other agreements in accordance with applicable law. In either case,[16] the Executive Director shall first obtain the approval of the Council for any contract or agreement in an amount equal to or in excess of $500,000 or such lesser amount as the Council may prescribe.

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[13] Sec. 203(b)(2) of Public Law 104–106 (110 Stat. 217) struck out subsecs. (f) and (h), and redesignated subsec. (g) as subsec. (f).

[14] Sec. 203(b)(2)(C) of Public Law 104–106 (110 Stat. 217) added a new subsec. (g).

Subsequently, sec. 1031(a)(52) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1603) struck out the paragraph designation "(1)", and struck out para. (2), which had read as follows:

"(2) Not later than March 15 of each year, the Secretary of Defense shall submit such annual report to Congress, along with such comments as the Secretary considers appropriate.".

[15] Sec. 203(d)(1) of Public Law 104–106 (110 Stat. 218) struck out "or" after "contracts" and inserted in lieu thereof "using competitive procedures. The Executive Director may enter into".

[16] Sec. 203(d)(2) of Public Law 104–106 (110 Stat. 218) struck out "law, except that" and inserted in lieu thereof "law. In either case,".

(d)(1) The Executive Director, with the concurrence of the Council, may appoint such professional and clerical staff as may be necessary to carry out the responsibilities and policies of the Council.

(2) The Executive Director, with the concurrence of the Council and without regard to the provisions of chapter 51 of title 5 and subchapter III of chapter 53 of such title, may establish the rates of basic pay for professional, scientific, and technical employees appointed pursuant to paragraph (1).[17]

§ 2904. Strategic Environmental Research and Development Program Scientific Advisory Board

(a) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall jointly appoint a Strategic Environmental Research and Development Program Scientific Advisory Board (hereafter in this section referred to as the "Advisory Board") consisting of not less than six and not more than 14[18] members.

(b)(1)[19] The following persons shall be permanent members of the Advisory Board:

(A) the Science Advisor to the President, or his designee.

(B) The Administrator of the National Oceanic and Atmospheric Administration, or his designee.

(2) Other members of the Advisory Board shall be appointed from among persons eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health physics, health sciences, or social sciences, with due regard given to the equitable representation of scientists and engineers who are women or who represent minority groups. At least one member of the Advisory Board shall be a representative of environmental public interest groups and one member shall be a representative of the interests of State governments.

(3) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall request—

(A) that the head of the National Academy of Sciences, in consultation with the head of the National Academy of Engineering and the head of the Institutes of Medicine of the National Academy of Sciences, nominate persons for appointment to the Advisory Board;

(B) that the Council on Environmental Quality nominate for appointment to the Advisory Board at least one person who is a representative of environmental public interest groups; and

(C) that the National Association of Governors nominate for appointment to the Advisory Board at least one person who is representative of the interests of State governments.

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[17] Sec. 701(h)(2) of Public Law 102–25 (105 Stat. 115) struck out "two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1991", and inserted in lieu thereof "on November 5, 1992". Sec. 265(b) of Public Law 103–160 (107 Stat. 1611) subsequently struck out "November 5, 1992" and inserted in lieu thereof "September 30, 1995". Sec. 203(e)(1) of Public Law 104–106 (110 Stat. 218) struck out "The authority provided in the preceding sentence shall expire on September 30, 1995." effective September 29, 1995, pursuant to sec. 203(e)(2) of that Act.

[18] Sec. 257(b)(1) of Public Law 102–190 (105 Stat. 1331) increased membership from 13.

[19] Sec. 257(b)(2) of Public Law 102–190 (105 Stat. 1331) amended and restated para. (1).

(4) Members of the Advisory Board shall be appointed for terms of not less than two years and not more than four years.[20]

(c) A member of the Advisory Board who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee, except for the purposes of chapter 81 of title 5 (relating to compensation for work-related injuries) and chapter 171 of title 28 (relating to tort claims).

(d) The Advisory Board shall prescribe procedures for carrying out its responsibilities. Such procedures shall define a quorum as a majority of the members, provide for annual election of the Chairman by the members of the Advisory Board, and require at least four meetings of the Advisory Board each year.

(e) The Council shall refer to the Advisory Board, and the Advisory Board shall review, each proposed research project including its estimated cost, for research in and development of technologies related to environmental activities in excess of $1,000,000. The Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding such project or proposal.

(f) The Advisory Board may make recommendations to the Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program.

(g) The Advisory Board shall assist and advise the Council in identifying the environmental data and analytical assistance activities that should be covered by the policies and procedures prescribed pursuant to section 2902(d)(1) of this title.

(h) Not later than March 15 of each year, the Advisory Board shall submit to the Congress an annual report setting forth its actions during the year preceding the year in which the report is submitted and any recommendations, including recommendations on projects, programs, and information exchange and recommendations for legislation, that the Advisory Board considers appropriate regarding the Strategic Environmental Research and Development Program.

(i) Each member of the Advisory Board shall be required to file a financial disclosure report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.).

[20] Sec. 341 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1686) struck out "three" and inserted in lieu thereof "not less than two years and not more than four".

e. Environmental Policy and International Financial Institutions [1]

(1) Bretton Woods Agreements Act, as amended [2]

Partial text of Public Law 79–171 [H.R. 3314], 59 Stat. 512, approved July 31, 1945, as amended

AN ACT To provide for the participation of the United States in the International Monetary Fund and the International Bank for Reconstruction and Development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Bretton Woods Agreements Act."

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SEC. 55.[3] DISCUSSIONS TO ENHANCE THE CAPACITY OF THE FUND TO ALLEVIATE THE POTENTIALLY ADVERSE IMPACTS OF FUND PROGRAMS ON THE POOR AND THE ENVIRONMENT.

The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to seek policy changes by the Fund, through formal initiatives and through bilateral discussions, which will result in—

(1) the initiation of a systematic review of policy prescriptions implemented by the Fund, for the purpose of determining whether the Fund's objectives were met and the social and environmental impacts of such policy prescriptions; and

(2) the establishment of procedures which ensure the inclusion, in future economic reform programs approved by the Fund, of policy options which eliminate or reduce the potential adverse impact on the well-being of the poor or the environment resulting from such programs.

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SEC. 59.[4] FUND POLICY CHANGES.

(a) POLICY CHANGES WITHIN THE IMF.—The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to promote regularly and vigorously in program discussions and quota increase negotiations the following proposals:

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[1] See also various Foreign Operations, Export Financing, and Related Programs Appropriations Acts, beginning at page xxx.

[2] For full text of this Act, see *Legislation on Foreign Relations Through 2005*, vol. III.

[3] 22 U.S.C. 286kk. Sec. 302 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2500) added sec. 55.

[4] 22 U.S.C. 286*ll*. Sec. 1002 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3357) added sec. 59.

(1) POVERTY ALLEVIATION, REDUCTION OF BARRIERS TO ECONOMIC AND SOCIAL PROGRESS, AND PROGRESS TOWARD ENVIRONMENTALLY SOUND POLICIES AND PROGRAMS.—(A)(i) Considerations of poverty alleviation and the reduction of barriers to economic and social progress should be incorporated into all Fund programs and all consultations under article IV of the Articles of Agreement of the Fund.

(ii) Preparation of Policy Framework Papers should be extended to all nations which have Fund programs and active Bank or International Development Association lending programs, and existence of a Policy Framework Paper should be a precondition for new lending to such nations by the Fund.

(iii) All Policy Framework Papers should articulate the principal poverty, economic, and social measures that the borrowing nation needs to address, and this portion of the Policy Framework Paper (or a summary thereof that includes specific measures and timing) should be made available when the Policy Framework Paper is submitted to the Executive Directors of the Bank and of the Fund for consideration.

(iv) In considering whether to allocate resources of the Fund to a borrower, the Fund should take into consideration the nature of the program and commitment of the borrower to address the issues referred to in clause (iii).

(v) The Fund should establish procedures to enable the Fund to cooperate with the Bank in evaluating the effectiveness of the measures referred to in clause (iii), at the levels of policy, project design, monitoring, and reporting, in the international financial institutions and in the borrowing nations.

(B)(i) The Fund should be encouraged to make further progress toward environmentally sound policies and programs.

(ii) The Fund should incorporate environmental considerations into all Fund programs, including consultations under article IV of the Articles of Agreement of the Fund.

(iii) The Fund should be encouraged to support the efforts of nations to implement systems of natural resource accounting in their national income accounts.

(iv) The Fund should be encouraged to assist and cooperate fully with the statistical research being undertaken by the Organization for Economic Cooperation and Development and by the United Nations in order to facilitate development and adoption of a generally applicable system for taking account of the depletion or degradation of natural resources in national income accounts.

(v) The Fund should be encouraged to consider and implement, as appropriate, revisions in its national income reporting systems consistent with such new systems as are of general applicability.

(2) POLICY AUDITS.—(A) The Fund should conduct periodic audits to review systematically the policy prescriptions recommended and required by the Fund in the areas of poverty and the environment.

(B) The purposes of such audits would be—

(i) to determine whether the Fund's objectives were met; and

(ii) to evaluate the social and environmental impacts of the implementation of the policy prescriptions.

(C) Such audits would have access to all ongoing programs and activities of the Fund and the ability to review the effects of Fund-supported programs, on a country-by-country basis, with respect to poverty, economic development, and environment.

(D) Such audits should be made public as appropriate with due respect to confidentiality.

(3) ENSURING POLICY OPTIONS THAT INCREASE THE PRODUCTIVE PARTICIPATION OF THE POOR.—The Fund should establish procedures that ensure the focus of future economic reform programs approved by the Fund on policy options that increase the productive participation of the poor in the economy.

(4) PUBLIC ACCESS TO INFORMATION.—(A) The Fund should establish procedures for public access to information.

(B) Such procedures shall seek to ensure access of the public to information while paying due regard to appropriate confidentiality.

(C) Policy Framework Papers and the supporting documents prepared by the Fund's mission to a country are examples of documents that should be made public at an appropriate time and in appropriate ways.

(b) PROGRESS REPORT.—Each annual report of the National Advisory Council on International Monetary and Financial Policies shall describe the following:

(1) The actions that the United States Executive Director and other officials have taken to convince the Fund to adopt the proposals set forth in subsection (a) through formal initiatives before the Board and management of the Fund, through bilateral discussions with other member nations, and through any further quota increase negotiations.

(2) The status of the progress being made by the Fund in implementing the proposals set forth in subsection (a).

(c) STUDY.—The Secretary of the Treasury shall instruct the United States Executive Director to the Fund to urge the Fund—

(1) to explore ways to increase the involvement and participation of important ministries, national development experts, environmental experts, free-market experts, and other legitimate experts and representatives from the loan-recipient country in the development of Fund programs; and

(2) to report on the status of Fund efforts in this regard.

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(2) International Financial Institutions Act [1]

Partial text of Public Law 95–118 [H.R. 5262], 91 Stat. 1067, approved October 3, 1977, as amended

AN ACT To provide for increased participation by the United States in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Asian Development Bank and the Asian Development Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1.[2] This Act may be cited as the International Financial Institutions Act.

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TITLE XIII—THE ENVIRONMENT [3]

SEC. 1301.[4] The Congress finds that—

(1) United States assistance to the multilateral development banks should promote sustainable use of natural resources and the protection of the environment, public health, and the status of indigenous peoples in developing countries;

(2) multilateral development bank projects, policies, and loans have failed in some cases to provide adequate safeguards for the environment, public health, natural resources, and indigenous peoples;

(3) many development efforts of the multilateral development banks are more enduring and less costly if based on consultations with directly affected population groups and communities;

(4) developing country governments sometimes do not ensure that appropriate policies and procedures are in place to use natural resources sustainably or consult with affected population groups and communities, where costs could be reduced or benefits made more enduring; and

(5) in general, the multilateral development banks do not yet provide systematic and adequate assistance to their borrowers to encourage sustainable resource use and consultation with affected communities, where costs could be reduced or benefits made more enduring.

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[1] This Act also may be found in *Legislation on Foreign Relations Through 2005*, vol. III.

[2] Sec. 1361(a) of Public Law 97–35 (95 Stat. 745) added sec. 1.

[3] Sec. 701 of H.R. 3750, as introduced by the House Committee on Banking, Finance and Urban Affairs, on December 11, 1987, and enacted into law by title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations Act, 1988; Public Law 100–202; 101 Stat. 1329 at 1329–134), added titles XIII through XVI.

[4] 22 U.S.C. 262m.

SEC. 1302.[5] The Secretary of the Treasury and the Secretary of State, in cooperation with the Administrator of the Agency for International Development, shall vigorously promote mechanisms to strengthen the environmental performance of these banks. These mechanisms shall include strengthening organizational, administrative, and procedural arrangements within the banks which will substantially improve management of assistance programs necessary to ensure the sustainable use of natural resources and the protection of indigenous peoples.

SEC. 1303.[6] (a)(1) In the course of reviewing assistance proposals of the multilateral development banks, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that other agencies and appropriate United States embassies and overseas missions of the Agency for International Development are instructed to analyze, where feasible, the environmental impacts of multilateral development loans well in advance of such loans' approval by the relevant institutions to determine whether the proposals will contribute to the sustainable development of the borrowing country.

(2) To the extent possible, such reviews shall address the economic viability of the project, adverse impacts on the environment, natural resources, public health, and indigenous peoples, and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts.

(3) If there is reason to believe that any such loan is particularly likely to have substantial adverse impacts, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that an affirmative investigation of such impacts is undertaken in consultation with relevant Federal agencies. If not classified under the national security system of classification, the information collected pursuant to this paragraph shall be made available to the public.

(b)(1)[7] The Secretary of the Treasury shall instruct the Executive Directors representing the United States at the multilateral development banks as defined in section 1307(g)[7] to urge the management and other directors of each such bank, to provide sufficient time between the circulation of assistance proposals and bank action on those proposals, in order to permit their evaluation by major shareholder governments.

(2)[7] The Secretary of the Treasury shall instruct such Executive Directors to work with other countries' Executive Directors and multilateral development bank management to—

(A) improve the procedures of each multilateral development bank for providing its board of directors with a complete and accurate record regarding public consultation before they vote

[5] 22 U.S.C. 262m–1.

[6] 22 U.S.C. 262m–2.

[7] Sec. 593(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (division D of the Consolidated Appropriations Act, 2005; Public Law 108–447; 118 Stat. 3037), inserted paragraph designation "(1)", struck out "International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank", and inserted in lieu thereof "multilateral development banks as defined in section 1307(g)", and added paras. (2) and (3).

on proposed projects with significant environmental implications; and

(B) revise bank procedures to consistently require public consultation on operational policy proposals or revisions that have significant environmental or social implications.

(3)[7] Progress under this subsection shall be incorporated into Treasury's required annual report to Congress on the environmental performance of the multilateral development banks.

(c) Based on the information obtained during the evaluation referred to in subsection (a) and other available information, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall identify those assistance proposals likely to have adverse impacts on the environment, natural resources, public health, or indigenous peoples. The proposals so identified shall be transmitted to the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs[8] of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate, not later than June 30 and December 31 of each year following the date of enactment of this title.

(d) The Secretary of the Treasury shall forward reports concerning information received under subsection (a) to the Executive Director representing the United States in the appropriate bank with instructions to seek to eliminate or mitigate adverse impacts which may result from the proposal.

SEC. 1304.[9] The Secretary of the Treasury, in consultation with the Secretary of State and the Administrator of the Agency for International Development, shall create a system for cooperative exchange of information with other interested member countries on assistance proposals of the multilateral development banks.

SEC. 1305.[10] The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to support the strengthening of educational programs within each multilateral development bank to improve the capacity of mid-level managers to initiate and manage environmental aspects of development activities, and to train officials of borrowing countries in the conduct of environmental analyses.

SEC. 1306.[11] (a) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vigorously and continuously urge that each bank identify and develop methods and procedures to insure that in addition to economic and technical considerations, unquantified environmental values be given appropriate consideration in decisionmaking, and include in the documents circulated to the Board of Executive Directors concerning each assistance proposal a detailed statement, to

[8] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives. Subsequently, H. Res. 5, 107th Congress, passed on January 3, 2001, abolished the House Committee on Banking, Finance, and Urban Affairs, and replaced it with the House Committee on Financial Services.

[9] 22 U.S.C. 262m–3.

[10] 22 U.S.C. 262m–4.

[11] 22 U.S.C. 262m–5.

include assessment of the benefits and costs of environmental impacts and possible mitigating measures, on the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided if the proposal is implemented, and alternatives to the proposed action.

(b) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vigorously and continuously promote—

(1) increases in the proportion of loans supporting environmentally beneficial policies, projects, and project components;

(2) the establishment of environmental programs in appropriate policy-based loans for the purpose of improving natural resource management, environmental quality, and protection of biological diversity;

(3) increases in the proportion of staff with professional training and experience in ecology and related areas and in the areas of anthropological and sociological impact analysis to ensure systematic appraisal and monitoring of environmental and sociocultural impacts of projects and policies;

(4) active and systematic encouragement of participation by borrowing countries nongovernmental environmental, community and indigenous peoples' organizations at all stages of preparations for country lending strategies, policy based loans, and loans that may have adverse environmental or sociocultural impacts; and

(5) full availability to concerned or affected non-governmental and community organization, early in the preparation phase and at all subsequent stages of planning of full documentary information concerning details of design and potential environmental and sociocultural impacts of proposed loans.

SEC. 1307.[12] ASSESSMENT OF ENVIRONMENTAL IMPACT OF PROPOSED MULTILATERAL DEVELOPMENT BANK ACTIONS.

(a)[13] ASSESSMENT REQUIRED BEFORE FAVORABLE VOTE ON PROPOSAL.—The Secretary of the Treasury shall instruct the United

[12] 22 U.S.C. 262m–7. Added by sec. 521 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2511), as sec. 1308. The same Act repealed the standing sec. 1307 and redesignated this sec. as sec. 1307. The repealed sec. 1307 had required an annual report be submitted by Secretary of the Treasury, with consultation from others in the Administration, to several committees on progress being made to implement the objectives of title XIII.

[13] Sec. 593(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (division D of the Consolidated Appropriations Act, 2005; Public Law 108–447; 118 Stat. 3037), amended and restated subsec. (a), which previously read as follows:

"(a) ASSESSMENT REQUIRED BEFORE FAVORABLE VOTE ON ACTION.—

"(1) IN GENERAL.—Beginning 2 years after the date of the enactment of this section, the Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank not to vote in favor of any action proposed to be taken by the respective bank which would have a significant effect on the human environment, unless for at least 120 days before the date of the vote—

"(A) an assessment analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has been completed by the borrowing country or the institution, and been made available to the board of directors of the institution; and

"(B) except as provided in paragraph (2), such assessment or a comprehensive summary of such assessment has been made available to the multilateral development bank, affected groups, and local nongovernmental organizations.

"(2) EXCEPTIONS AND REPORTS.—

"(A) EXCEPTIONS.—The requirement of paragraph (1)(B) shall not apply where the Secretary finds compelling reasons to believe that disclosure in any case described in paragraph (1) would jeopardize the confidential relationship between the borrower country and the respective bank.

States Executive Director of each multilateral development bank not to vote in favor of any proposal (including but not limited to any loan, credit, grant, guarantee) which would result or be likely to result in significant impact on the environment, unless the Secretary, after consultation with the Secretary of State and the Administrators of the United States Agency for International Development and the Environmental Protection Agency, determines that for at least 120 days before the date of the vote—

(1) an assessment analyzing the environmental impacts of the proposed action, including associated and cumulative impacts, and of alternatives to the proposed action, has been completed by the borrower or the bank and has been made available to the board of directors of the bank; and

(2) such assessment or a comprehensive summary of the assessment (with proprietary information redacted) has been made available to affected groups, and local nongovernmental organizations and notice of its availability in the country and at the bank has been posted on the bank's website.

(b) ACCESS TO ASSESSMENTS IN ALL MEMBER COUNTRIES.—The Secretary of the Treasury shall seek the adoption of policies and procedures, through discussions and negotiations with the other member countries of the multilateral development banks and with the management of such banks, which result in access by governmental agencies and interested members of the public of such member countries, to environmental assessments or documentary information containing comprehensive summaries of such assessments which discuss the environmental impact of prospective projects and programs being considered by such banks. Such assessments or summaries should be made available to such governmental agencies and interested members of the public at least 120 days before scheduled board action, and public participation in review of the relevant environmental information should be encouraged.

(c) CONSIDERATION OF ASSESSMENT.—The Secretary of the Treasury shall—

(1) ensure that an environmental impact assessment or comprehensive summary of such assessment described in subsection (a) accompanies loan proposals through the agency review process; and

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"(B) REPORTS BY SECRETARY.—The Secretary shall submit a quarterly report in writing to the Committees specified in subsection (f)(1) of the findings described in subparagraph (A).".

Previously, sec. 560(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2426), amended and restated subsec. (a).

Sec. 560(c) of Public Law 105–118 further provided that:

"(c) The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development and the International Development Association to use the voice and vote of the United States to strongly encourage their respective institutions to—

"(1) provide timely public information on procurement opportunities available to United States suppliers, with a special emphasis on small business; and

"(2) systematically consult with local communities on the potential impact of loans as part of the normal lending process, and expand the participation of affected peoples and nongovernmental organizations in decisions on the selection, design and implementation of policies and projects.".

(2) take into consideration recommendations from all other interested Federal agencies and interested members of the public.

(d) DEVELOPMENT OF PROCEDURES FOR SYSTEMATIC ENVIRONMENTAL ASSESSMENT.—The Secretary of the Treasury, in consultation with other Federal agencies, including the Environmental Protection Agency, the Department of State, and the Council on Environmental Quality, shall—

(1) instruct the United States Executive Director of each multilateral development bank to initiate discussions with the other executive directors of the respective bank and to propose that the respective bank develop and make available to member governments of, and borrowers from, the respective bank, within 18 months after the date of the enactment of this section, a procedure for the systematic environmental assessment of development projects for which the respective bank provides financial assistance, taking into consideration the Guidelines and Principles for Environmental Impact Assessment promulgated by the United Nations Environmental Programme and other bilateral or multilateral assessment procedures; and

(2) in determining the position of the United States on any action proposed to be taken by a multilateral development bank, develop and prescribe procedures for the consideration of, among other things—

(A) the environmental impact assessment of the action described in subsection (a);

(B) interagency and public review of such assessment; and

(C) other environmental review and consultation of such action that is required by other law.

(e) USE OF UNITED STATES PERSONNEL.—The Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, the Administrator of the Agency for International Development, and the Administrator of the National Oceanic and Atmospheric Administration, shall—

(1) make available to the multilateral development banks, without charge, appropriate United States Government personnel to assist in—

(A) training bank staff in environmental impact assessment procedures;

(B) providing advice on environmental issues;

(C) preparing environmental studies for projects with potentially significant environmental impacts; and

(D) preparing documents for public release, and developing procedures to provide for the inclusion of interested nongovernmental organizations in the environmental review process; and

(2) encourage other member countries of such banks to provide similar assistance.

(f) REPORTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall submit to the Committees on Foreign Relations and Environment and

Public Works of the Senate and the Committee on Banking, Finance and Urban Affairs[8] of the House of Representatives—

(A) not later than the end of the 1-year period beginning on the date of the enactment of this section, a progress report on the efficacy of efforts by the United States to encourage consistent and timely environmental impact assessment of actions proposed to be taken by the multilateral development banks and on the progress made by the multilateral development banks in developing and instituting environmental assessment policies and procedures; and

(B) not later than January 1, 1993, a detailed report on the matters described in subparagraph (A).

(2) AVAILABILITY OF REPORTS.—The reports required by paragraph (1) shall be made available to the member governments of, and the borrowers from, the multilateral development banks, and to the public.".

(g)[14] MULTILATERAL DEVELOPMENT BANK DEFINED.—In this title, the term "multilateral development bank" means the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the African Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank, the Inter-American Investment Corporation, any other institution (other than the International Monetary Fund) specified in section 1701(c)(2), and any subsidiary of any such institution.

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TITLE XV—OTHER POLICIES[3]

SEC. 1501. (a) In any negotiations concerning replenishment or an increase in capital for any multilateral development bank, the Secretary of the Treasury shall propose, as a principal point for negotiations, the following institutional reforms:

(1) The establishment of a unified program within each multilateral development bank to assess the extent to which bank lending benefits the least advantaged members of society, particularly women and the poor, and to increase the extent to which such members benefit from future bank lending.

(2) The establishment of an office or other administrative procedures within each multilateral development bank to—

(A) provide in-country liaison services for nongovernmental organizations operating at the community level;

(B) monitor the impact of project and nonproject lending on local populations; and

(C) ensure compliance with loan conditionalities, especially loan conditionalities relating to the protection of the

[14] Sec. 593(a)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (division D of the Consolidated Appropriations Act, 2005; Public Law 108–447; 118 Stat. 3037), amended and restated subsec. (g). Sec. 560(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2426), added the original subsec. (g).

quality of life of the poor and the rights of aboriginal minorities.

(3) A major increase in the number of members of the professional staff of each regional multilateral development bank with training in environmental or social impact analysis or natural science, including—

(A) recruitment of additional permanent professional staff; and

(B) training programs for existing staff members in these subject areas.

(4) With respect to the International Bank for Reconstruction and Development, the establishment of a program for policy-based lending to promote the sustainable use of renewable resources and the protection of the environment in borrowing countries.

(5) An increase in the length of any review period established by any multilateral development bank for board review of staff recommendations by such time as would be sufficient to allow the governments of member countries to review and comment on the staff recommendations before any action is taken by the board of directors of such bank on the recommendations.

(b) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to request the management of such bank to prepare an annual report which identifies and describes the most exemplary lending practices or loan components implemented during the preceding year with respect to each of the following lending policy goals for each major borrowing country or country group:

(1) Benefit to the poor.

(2) Involvement of nongovernmental organizations and local and indigenous populations in loan design, implementation, planning, and monitoring.

(3) Integration of, consideration of, and concern for environmental quality and the sustainable use of natural resources into loan design, implementation, planning, and monitoring.

(4) Recognition of and support for the economic and social development of women.

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TITLE XVI—HUMAN WELFARE [3]

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SEC. 1608.[15] INITIATION OF DISCUSSIONS TO FACILITATE DEBT-FOR-DEVELOPMENT SWAPS FOR HUMAN WELFARE AND ENVIRONMENTAL CONSERVATION.

(a) FINDINGS.—The Congress finds that—

(1) voluntary debt-for-development swaps in heavily indebted developing nations can simultaneously facilitate reduction of the burden of external indebtedness and increase the resources available within the country for charitable, educational, and

[15] 22 U.S.C. 262p–4c. Sec. 8 of H.R. 4645 as enacted into law by sec. 555 of Public Law 100–461 (102 Stat. 2268) added sec. 1608.

scientific purposes, including environmental conservation, educational, and scientific purposes, including environmental conservation, education, human welfare, health, agricultural research and development, microenterprise credit, and development of indigenous nonprofit organizations; and

(2) heavily indebted developing countries may desire to facilitate such swaps to the maximum extent consistent with sound domestic economic management and minimization of inflationary impact.

(b) INITIATION OF DISCUSSIONS TO FACILITATE DEBT-FOR-DEVELOPMENT SWAPS FOR HUMAN WELFARE AND ENVIRONMENTAL CONSERVATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with the directors of such bank, the International Development Association, and the International Finance Corporation and propose that such institutions provide advice and assistance, as appropriate, to borrowing country governments desiring to facilitate debt-for-development swaps, on mechanisms (including trust funds) to accomplish this purpose, particularly in the context of debt rescheduling, which mechanisms result in sound management of the macroeconomic impact of such swaps on such countries, and preserve the value of the capital obtained through such swaps.

(2) DEFINITIONS.—As used in this section:

(A) DEBT-FOR-DEVELOPMENT SWAP.—The term "debt-for-development swap" means the purchase of qualified debt by, or the donation of such debt to, an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, and the subsequent transfer of such debt to an organization located in such foreign country in exchange for an undertaking by such tax-exempt organization, such foreign government, or such foreign organization to engage in a charitable, educational, or scientific activity.

(B) QUALIFIED DEBT.—The term "qualified debt" means—

(i) sovereign debt issued by a foreign government;

(ii) debt owed by private institutions in the country governed by such foreign government; and

(iii) debt owed by institutions in the country governed by such foreign government, which are owned, in part, by private persons and, in part, by public institutions.

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SEC. 1614.[16] MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES.

(a) DIRECTIONS TO THE UNITED STATES EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall direct the United States Executive Directors of the multilateral development banks to—

(1) negotiate for the creation in each respective multilateral development bank, except where the Secretary of the Treasury determines that the provisions of this subsection have previously been met, of a department that will—

(A) be responsible for environmental protection and resource conservation, including support for restoration, protection, and sustainable use policies;

(B) develop and monitor strict environmental guidelines and policies to govern lending activities; and

(C) actively promote, coordinate and facilitate debt-for-nature exchanges and the restoration, protection, and sustainable use of tropical forests, renewable natural resources, endangered ecosystems and species in debtor countries;

(2) support and encourage the approval of multilateral development bank loans which include provisions that foster and facilitate the implementation of a sound and effective environmental policy in the borrowing country;

(3) encourage the banks to assist such countries in reducing and restructuring private debt through the use of a portion of a project or policy based environmental loan in ways which will enable such countries to buy back private debt at a rate of discount available for such debt, at auction in the secondary market or through negotiations with creditors holding such debt;

(4) seek to ensure that staff of each bank facilitate debtor countries' collaboration with local and international non-governmental or private organizations in implementing debt-for-nature exchanges; and

(5) seek to ensure that each bank adopts policy guidelines which to the maximum extent possible provide for—

(A) the inclusion of sustainable use policies in loan agreements negotiated with borrower members;

(B) the adoption of economic programs to foster sound environmental policies; and

(C) the provision of debtor countries' policy changes or significant increases in financial resources for use in at least 1 of the following—

(i) restoration, protection, or sustainable use of the world's oceans and atmosphere;

(ii) restoration, protection, or sustainable use of diverse animal and plant species;

(iii) establishment, restoration, protection, and maintenance of parks and reserves;

(iv) development and implementation of sound systems of natural resource management;

(v) development and support of local conservation programs;

[16] 22 U.S.C. 262p–4i. Sec. 512 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2508) added new secs. 1614 through 1616.

(vi) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

(vii) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

(viii) design and implementation of sound programs of land and ecosystem management; and

(ix) promotion of regenerative approaches in farming, forestry, and watershed management.

(b) NEGOTIATION OF GUIDELINES FOR RESTORATION, PROTECTION, OR SUSTAINABLE USE POLICIES.—The United States Executive Directors of the multilateral development banks shall seek to negotiate with the other executive directors to provide guidelines for restoration, protection, or sustainable use policies. Pending the outcome of such negotiations, the United States Executive Directors shall consider restoration, protection, or sustainable use policies to be those which—

(1) support development that maintains and restores the renewable natural resource base so that present and future needs of debtor countries' populations can be met, while not impairing critical ecosystems and not exacerbating global environmental problems;

(2) are environmentally sustainable in that resources are conserved and managed in an effort to remove pressure on the natural resource base and to make judicious use of the land so as to sustain growth and the availability of all natural resources;

(3) support development that does not exceed the limits imposed by local hydrological cycles, soil, climate, vegetation, and human cultural practices;

(4) promote the maintenance and restoration of soils, vegetation, hydrological cycles, wildlife, critical ecosystems (tropical forests, wetlands, and coastal marine resources), biological diversity and other natural resources essential to economic growth and human well-being and shall, when using natural resources, be implemented to minimize the depletion of such natural resources; and

(5) take steps, wherever feasible, to prevent pollution that threatens human health and important biotic systems and to achieve patterns of energy consumption that meet human needs and relies on renewable resources.

(c) INCLUSION OF CERTAIN ITEMS IN GUIDELINES.—The United States Executive Directors shall endeavor to include the provisions of paragraphs (1) through (5) of subsection (b) in the guidelines developed through the negotiations specified in this section.

SEC. 1615.[17] PROMOTION OF LENDING FOR THE ENVIRONMENT.

The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction

[17] 22 U.S.C. 262p–4j. Sec. 512 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2508) added sec. 1615.

and Development to initiate discussions with the other executive directors of such bank and the management of such bank and propose that, in order to reduce the future need for bank lending for reforestation and restoration of environmentally degraded areas, the bank establish a project and policy based environmental lending program (including a loan a portion of which could be used to reduce and restructure private debt), to be made available to interested countries with a demonstrated commitment to natural resource conservation, which would be based on—

(1) the estimated long-term economic return which could be expected from the sustainable use and protection of tropical forests, including the value of tropical forests for indigenous people and for science;

(2) the value derived from such services as—

(A) watershed management;

(B) soil erosion control;

(C) the maintenance and improvement of—

(i) fisheries;

(ii) water supply regulation for industrial development;

(iii) food;

(iv) fuel;

(v) fodder; and

(vi) building materials for local communities;

(D) the extraction of naturally occurring products from locally controlled protected areas; and

(E) indigenous knowledge of the management and use of natural resources; and

(3) the long-term benefits expected to be derived from maintaining biological diversity and climate stabilization.

SEC. 1616.[18] PROMOTION OF INSTITUTION-BUILDING FOR NONGOVERNMENTAL ORGANIZATIONS CONCERNED WITH THE ENVIRONMENT.

The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to vigorously promote the adoption of policies and procedures which seek to—

(1) increase collaboration with, and, where necessary, strengthen, nongovernmental organizations in such countries which are concerned with environmental protection by providing appropriate assistance and support for programs and activities on environmental protection; and

(2) encourage international collaboration for information exchange and project enhancement with nongovernmental organizations in developing countries which are concerned with environmental protection and government agencies and private voluntary organizations in developed countries which are concerned with environmental protection.

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[18] 22 U.S.C. 262p–4k. Sec. 512 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2510) added sec. 1616.

TITLE XVII—CONSOLIDATED REPORTING REQUIREMENTS [19]

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SEC. 1703.[20] COMBINED REPORT ON EFFECT OF PENDING MULTILATERAL DEVELOPMENT BANK LOANS ON ENVIRONMENT, NATURAL RESOURCES, PUBLIC HEALTH, AND INDIGENOUS PEOPLES.

Not later than April 1 and October 1 of each year, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall submit to the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs [8] of the House of Representatives, and the Committee on Appropriations and the Committee on Foreign Relations of the Senate, as a combined report, the reports required by section 1303(c) of this Act and by section 537(h)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 1(e) of Public Law 100–202).[21]

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[19] Sec. 541(a) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2514 *et seq.*) added title XVII.

[20] 22 U.S.C. 262r–2.

[21] Sec. 537(h) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Public Law 100–202; 101 Stat. 1329–161), provided the following:

"(h) The Administrator of the Agency for International Development, in consultation with the Secretaries of Treasury and State, shall continue, and work to enhance, the operation of the 'early warning system', by—

"(1) instructing overseas missions of the Agency for International Development and embassies of the United States to analyze the impacts of Multilateral Development Bank loans well in advance of a loan's approval. Such reviews shall address the economic viability of the project; adverse impacts on the environment, natural resources, public health, and indigenous peoples; and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts. If not classified under the national security system of classification, such information shall be made available to the public;

"(2) compiling a list of proposed Multilateral Development Bank loans likely to have adverse impacts on the environment, natural resources, public health, or indigenous peoples. The list shall contain the information identified in paragraph (1), shall be updated in consultation with interested members of the public, and shall be made available to the Committees on Appropriations by April 1, 1988 and semiannually thereafter; and

"(3) creating a cooperative mechanism for sharing information collected through the 'early warning system' with interested donor and borrowing nations and encouraging the Multilateral Development Banks to institute a similar system.".

(3) International Development and Finance Act of 1989 [1]

Partial text of Public Law 101–240 [H.R. 2494], 103 Stat. 2492, approved December 19, 1989, as amended

AN ACT To reauthorize the Export-Import Bank tied aid credit fund and pilot interest subsidy program, to provide for the participation of the United States in a replenishment of the Inter-American Development Bank and in the Enhanced Structural Adjustment Facility of the International Monetary Fund, to improve the safety and soundness of the United States banking system and encourage the reduction of the debt burdens of the highly indebted countries, to encourage the multilateral development banks to engage in environmentally sustainable lending practices and give greater priority to poverty alleviation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[2] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "International Development and Finance Act of 1989".

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TITLE V—ALLEVIATION OF POVERTY; ENVIRONMENTAL PROVISIONS; DEBT-FOR-DEVELOPMENT SWAPS; CONSOLIDATION OF REPORTING REQUIREMENTS

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SUBTITLE B—INTERNATIONAL DEBT EXCHANGES AND THE ENVIRONMENT

SEC. 511. SENSE OF THE CONGRESS RESOLUTION REGARDING ENVIRONMENTAL POLICY AND INTERNATIONAL DEBT EXCHANGES.

It is the sense of the Congress that—

(1) the Secretary of the Treasury should include support for sustainable development and conservation projects when providing a framework for negotiating or facilitating exchanges or reductions of commercial debt of foreign countries; and

(2) that in assisting or facilitating the reduction of debt of heavily indebted foreign countries, through multilateral institutions such as the International Monetary Fund or the International Bank for Reconstruction and Development, the Secretary of State and the Secretary of the Treasury should—

(A) support efforts to provide adequate resources for sustainable development and conservation projects as a component of the restructured commercial bank debt of that country; and

(B) in providing such support, seek to assure that—

[1] This Act may also be found in *Legislation on Foreign Relations Through 2005*, vol. III.
[2] 22 U.S.C. 2151 note.

(i) the host government, or a local nongovernmental organization acting with the support of the host government, has identified conservation or sustainable development projects it will target for assistance;

(ii) there will be in place an organization, either governmental or nongovernmental, that will have the commitment to assure the long-term viability of the project; and

(iii) the allocation of the resources provided for conservation and sustainable development projects through the debt restructuring agreement is done in a manner that will not overwhelm or distort economic conditions in the host country.

SEC. 512.[3] MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES. * * *

SUBTITLE C—ENVIRONMENTAL IMPACT ASSESSMENTS

SEC. 521.[4] ASSESSMENT OF ENVIRONMENTAL IMPACT OF PROPOSED MULTILATERAL DEVELOPMENT BANK ACTIONS. * * *

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TITLE VII—MISCELLANEOUS

SEC. 701.[5] SHORT TITLE.

This title may be cited as the "Global Environmental Protection Assistance Act of 1989".

PART A—COMMERCIAL DEBT-FOR-NATURE EXCHANGES

SEC. 711.[6] AMENDMENT TO THE FOREIGN ASSISTANCE ACT. * * *

PART B—MULTILATERAL FOREIGN ASSISTANCE COORDINATION

SEC. 721. GENERAL POLICY.

It is the sense of the Congress that the Secretary of State should seek to develop an increased consideration of global warming, tropical deforestation, sustainable development, and biological diversity among the highest goals of bilateral foreign assistance programs of all countries.

SEC. 722. POLICY ON NEGOTIATIONS.

(a) IN GENERAL.—The Secretary of State, acting through the United States representative to the Development Assistance Committee of the Organization for Economic Coordination and Development (OECD), should initiate, at the earliest practicable date, negotiations among member countries on a coordinated approach to global warming, tropical deforestation, sustainable development,

[3] Sec. 512 redesignated sec. 1614 of the International Financial Institutions Act (as earlier redesignated by sec. 501 of this Act), as sec. 1617, and inserted new secs. 1614 through 1616.

[4] Sec. 521 amended title XIII of the International Financial Institutions Act by adding a new sec. 1308 (22 U.S.C. 262m–7), redesignated as sec. 1307.

[5] 22 U.S.C. 2151 note.

[6] Sec. 711 added a new chapter 7 to part I of the Foreign Assistance Act of 1961, titled "Debt-for-Nature Exchanges".

and biological diversity through bilateral assistance programs that would include—

(1) increased consideration of the impact of developmental projects on global warming, tropical deforestation, and biological diversity;

(2) reduction or elimination of funding for those projects that exacerbate those problems;

(3) coordinated research and development of projects that emphasize sustainable use or protection of tropical forests and support for local conservation efforts;

(4) expanded use of forgiveness of foreign assistance debt in exchange for policy changes or programs that address problems associated with global warming, tropical deforestation, sustainable development, and biological diversity;

(5) increased use of foreign assistance funds and technical assistance in support of local conservation, restoration, or sustainable development efforts and debt-for-nature exchanges;

(6) improved exchange of information on energy efficiency and solar and renewable energy sources, and a greater emphasis on the use of those sources of energy in developmental projects; and

(7) increased use of environmental experts in the field to assess development projects for their impact on global warming, tropical deforestation, and biological diversity.

(b) IMPLEMENTATION OF AGREEMENT.—Negotiations described in subsection (a) shall seek to ensure that the recommended changes are implemented as quickly as possible by member countries of the Development Assistance Committee.

PART C—TECHNOLOGY DEPLOYMENT IN DEVELOPING COUNTRIES [7]

SEC. 731.[8] DEFINITIONS.

In this part:

(1) CARBON SEQUESTRATION.—The term "carbon sequestration" means the capture of carbon dioxide through terrestrial, geological, biological, or other means, which prevents the release of carbon dioxide into the atmosphere.

(2) GREENHOUSE GAS.—The term "greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(3) GREENHOUSE GAS INTENSITY.—The term "greenhouse gas intensity' means the ratio of greenhouse gas emissions to economic output.

SEC. 732.[9] REDUCTION OF GREENHOUSE GAS INTENSITY.

(a) LEAD AGENCY.—

(1) IN GENERAL.—The Department of State shall act as the lead agency for integrating into United States foreign policy

[7] Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added part C.

[8] 22 U.S.C. 7901. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 731.

[9] 22 U.S.C. 7902. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 732.

the goal of reducing greenhouse gas intensity in developing countries.

(2) REPORTS.—

(A) INITIAL REPORT.—Not later than 180 days after the date of enactment of this part, the Secretary of State shall submit to the appropriate authorizing and appropriating committees of Congress an initial report, based on the most recent information available to the Secretary from reliable public sources, that identifies the 25 developing countries that are the largest greenhouse gas emitters, including for each country—

(i) an estimate of the quantity and types of energy used;

(ii) an estimate of the greenhouse gas intensity of the energy, manufacturing, agricultural, and transportation sectors;

(iii) a description the progress of any significant projects undertaken to reduce greenhouse gas intensity;

(iv) a description of the potential for undertaking projects to reduce greenhouse gas intensity;

(v) a description of any obstacles to the reduction of greenhouse gas intensity; and

(vi) a description of the best practices learned by the Agency for International Development from conducting previous pilot and demonstration projects to reduce greenhouse gas intensity.

(B) UPDATE.—Not later than 18 months after the date on which the initial report is submitted under subparagraph (A), the Secretary shall submit to the appropriate authorizing and appropriating committees of Congress, based on the best information available to the Secretary, an update of the information provided in the initial report.

(C) USE.—

(i) INITIAL REPORT.—The Secretary of State shall use the initial report submitted under subparagraph (A) to establish baselines for the developing countries identified in the report with respect to the information provided under clauses (i) and (ii) of that subparagraph.

(ii) ANNUAL REPORTS.—The Secretary of State shall use the annual reports prepared under subparagraph (B) and any other information available to the Secretary to track the progress of the developing countries with respect to reducing greenhouse gas intensity.

(b) PROJECTS.—The Secretary of State, in coordination with Administrator of the United States Agency for International Development, shall (directly or through agreements with the World Bank, the International Monetary Fund, the Overseas Private Investment Corporation, and other development institutions) provide assistance to developing countries specifically for projects to reduce greenhouse gas intensity, including projects to—

(1) leverage, through bilateral agreements, funds for reduction of greenhouse gas intensity;

(2) increase private investment in projects and activities to reduce greenhouse gas intensity; and

(3) expedite the deployment of technology to reduce greenhouse gas intensity.

(c) FOCUS.—In providing assistance under subsection (b), the Secretary of State shall focus on—

(1) promoting the rule of law, property rights, contract protection, and economic freedom; and

(2) increasing capacity, infrastructure, and training.

(d) PRIORITY.—In providing assistance under subsection (b), the Secretary of State shall give priority to projects in the 25 developing countries identified in the report submitted under subsection (a)(2)(A).

SEC. 733.[10] TECHNOLOGY INVENTORY FOR DEVELOPING COUNTRIES.

(a) IN GENERAL.—The Secretary of Energy, in coordination with the Secretary of State and the Secretary of Commerce, shall conduct an inventory of greenhouse gas intensity reducing technologies that are developed, or under development in the United States, to identify technologies that are suitable for transfer to, deployment in, and commercialization in the developing countries identified in the report submitted under section 732(a)(2)(A).

(b) REPORT.—Not later than 180 days after the completion of the inventory under subsection (a), the Secretary of State and the Secretary of Energy shall jointly submit to Congress a report that—

(1) includes the results of the completed inventory;

(2) identifies obstacles to the transfer, deployment, and commercialization of the inventoried technologies;

(3) includes results from previous Federal reports related to the inventoried technologies; and

(4) includes an analysis of market forces related to the inventoried technologies.

SEC. 734.[11] TRADE-RELATED BARRIERS TO EXPORT OF GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGIES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this part, the United States Trade Representative shall (as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements)—

(1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and

(2) negotiate with foreign countries for the removal of those barriers.

(b) ANNUAL REPORT.—Not later than 1 year after the date on which a report is submitted under subsection (a)(1) and annually thereafter, the United States Trade Representative shall submit to Congress a report that describes any progress made with respect

[10] 22 U.S.C. 7903. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 733.

[11] 22 U.S.C. 7904. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 734.

to removing the barriers identified by the United States Trade Representative under subsection (a)(1).

SEC. 735.[12] GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGY EXPORT INITIATIVE.

(a) IN GENERAL.—There is established an interagency working group to carry out a Greenhouse Gas Intensity Reducing Technology Export Initiative to—

(1) promote the export of greenhouse gas intensity reducing technologies and practices from the United States;

(2) identify developing countries that should be designated as priority countries for the purpose of exporting greenhouse gas intensity reducing technologies and practices, based on the report submitted under section 732(a)(2)(A);

(3) identify potential barriers to adoption of exported greenhouse gas intensity reducing technologies and practices based on the reports submitted under section 734; and

(4) identify previous efforts to export energy technologies to learn best practices.

(b) COMPOSITION.—The working group shall be composed of—

(1) the Secretary of State, who shall act as the head of the working group;

(2) the Administrator of the United States Agency for International Development;

(3) the United States Trade Representative;

(4) a designee of the Secretary of Energy;

(5) a designee of the Secretary of Commerce; and

(6) a designee of the Administrator of the Environmental Protection Agency.

(c) PERFORMANCE REVIEWS AND REPORTS.—Not later than 180 days after the date of enactment of this part and each year thereafter, the interagency working group shall—

(1) conduct a performance review of actions taken and results achieved by the Federal Government (including each of the agencies represented on the interagency working group) to promote the export of greenhouse gas intensity reducing technologies and practices from the United States; and

(2) submit to the appropriate authorizing and appropriating committees of Congress a report that describes the results of the performance reviews and evaluates progress in promoting the export of greenhouse gas intensity reducing technologies and practices from the United States, including any recommendations for increasing the export of the technologies and practices.

SEC. 736.[13] TECHNOLOGY DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary of State, in coordination with the Secretary of Energy and the Administrator of the United States Agency for International Development, shall promote the adoption of technologies and practices that reduce greenhouse gas intensity in developing countries in accordance with this section.

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[12] 22 U.S.C. 7905. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 735.

[13] 22 U.S.C. 7906. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 736.

(b) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretaries and the Administrator shall plan, coordinate, and carry out, or provide assistance for the planning, coordination, or carrying out of, demonstration projects under this section in at least 10 eligible countries, as determined by the Secretaries and the Administrator.

(2) ELIGIBILITY.—A country shall be eligible for assistance under this subsection if the Secretaries and the Administrator determine that the country has demonstrated a commitment to—

(A) just governance, including—

(i) promoting the rule of law;

(ii) respecting human and civil rights;

(iii) protecting private property rights; and

(iv) combating corruption; and

(B) economic freedom, including economic policies that—

(i) encourage citizens and firms to participate in global trade and international capital markets;

(ii) promote private sector growth and the sustainable management of natural resources; and

(iii) strengthen market forces in the economy.

(3) SELECTION.—In determining which eligible countries to provide assistance to under paragraph (1), the Secretaries and the Administrator shall consider—

(A) the opportunity to reduce greenhouse gas intensity in the eligible country; and

(B) the opportunity to generate economic growth in the eligible country.

(4) TYPES OF PROJECTS.—Demonstration projects under this section may include—

(A) coal gasification, coal liquefaction, and clean coal projects;

(B) carbon sequestration projects;

(C) cogeneration technology initiatives;

(D) renewable projects; and

(E) lower emission transportation.

SEC. 737.[14] FELLOWSHIP AND EXCHANGE PROGRAMS.

The Secretary of State, in coordination with the Secretary of Energy, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall carry out fellowship and exchange programs under which officials from developing countries visit the United States to acquire expertise and knowledge of best practices to reduce greenhouse gas intensity in their countries.

SEC. 738.[15] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this part.

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[14] 22 U.S.C. 7907. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 737.

[15] 22 U.S.C. 7908. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 738.

Sec. 739.[16] **EFFECTIVE DATE.**

Except as otherwise provided in this part, this part takes effect on October 1, 2005.

TITLE VIII—EFFECTIVE DATE

SEC. 801.[17] **EFFECTIVE DATE.**

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

[16] 22 U.S.C. 7909. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 739.

[17] 22 U.S.C. 262d note.

f. Antarctica

(1) Antarctic Conservation Act of 1978

Public Law 95–541 [H.R. 7749], 92 Stat. 2048, approved October 28, 1978; as amended by Public Law 104–227 [Antarctic Science, Tourism, and Conservation Act of 1996; H.R. 3060], 110 Stat. 3034, approved October 2, 1996

AN ACT To implement the Agreed Measures for the Conservation of Antarctic Fauna and Flora, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antarctic Conservation Act of 1978".[1]

SEC. 2.[2] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1)[3] for well over a quarter of a century, scientific investigation has been the principal activity of the Federal Government and United States nationals in Antarctica;

(2)[3] more recently, interest of American tourists in Antarctica has increased;

(3)[3] as the lead civilian agency in Antarctica, the National Science Foundation has long had responsibility for ensuring that United States scientific activities and tourism, and their supporting logistics operations, are conducted with an eye to preserving the unique values of the Antarctic region;

(4)[3] the Antarctic Treaty and the Protocol establish a firm foundation for the conservation of Antarctic resources,[4] for the continuation of international cooperation and the freedom of scientific investigation in Antarctica; and

(5)[5] the Antarctic Treaty and the Protocol establish international mechanisms and create legal obligations necessary for the maintenance of Antarctica as a natural reserve devoted to peace and science.

(b) PURPOSE.—The purpose of this chapter is to provide for the conservation and protection of the fauna and flora of Antarctica,

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[1] 16 U.S.C. 2401 note.

[2] 16 U.S.C. 2401.

[3] Sec. 101(a)(1) of Public Law 104–227 (110 Stat. 3034) redesignated paras. (1) and (2) as paras. (4) and (5), and added new paras. (1), (2), and (3).

[4] Sec. 101(a)(2) of Public Law 104–227 (110 Stat. 3034) struck out "the Agreed Measures for the Conservation of Antarctic Fauna and Flora, adopted at the Third Antarctic Treaty Consultative Meeting, have established a firm foundation" and inserted in lieu thereof "the Protocol establish a firm foundation for the conservation of Antarctic resources,".

[5] Sec. 101(a)(3) of Public Law 104–227 (110 Stat. 3034) amended and restated para. (5), redesignated from para. (2) by the same Act. Para. (5) formerly read as follows:

"(5) the study of Antarctic fauna and flora, their adaptation to their rigorous environment, and their interrelationships with that environment has special scientific importance for all mankind.".

and of the ecosystem upon which such fauna and flora depend, consistent with the Antarctic Treaty and the Protocol.[6]

SEC. 3.[7] DEFINITIONS.

For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "Antarctica" means the area south of 60 degrees south latitude;

(3) the term "Antarctic Specially Protected Area" means an area identified as such pursuant to Annex V to the Protocol;

(4) the term "Director" means the Director of the National Science Foundation;

(5) the term "harmful interference" means—

(A) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of birds or seals;

(B) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of birds or seals;

(C) using explosives or firearms in a manner that disturbs concentrations of birds or seals;

(D) willfully disturbing breeding or molting birds or concentrations of birds or seals by persons on foot;

(E) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and

(F) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, native bird, native plant, or native invertebrate;

(6) the term "historic site or monument" means any site or monument listed as an historic site or monument pursuant to Annex V to the Protocol;

(7) the term "impact" means impact on the Antarctic environment and dependent and associated ecosystems;

(8) the term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into or introduce into, any place subject to the jurisdiction of the United States, including the 12-mile territorial sea of the United States, whether or not such act constitutes an importation within the meaning of the customs laws of the United States;

(9) the term "native bird" means any member, at any stage of its life cycle (including eggs), of any species of the class Aves which is indigenous to Antarctica or occurs there seasonally through natural migrations, and includes any part of such member;

(10) the term "native invertebrate" means any terrestrial or freshwater invertebrate, at any stage of its life cycle, which is indigenous to Antarctica, and includes any part of such invertebrate;

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[6] Sec. 101(b) of Public Law 104–227 (110 Stat. 3034) struck out "Treaty, the Agreed Measures for the Conservation of Antarctic Fauna and Flora, and Recommendation VII–3 of the Eighth Antarctic Treaty Consultative Meeting" and inserted in lieu thereof "Treaty and the Protocol".

[7] 16 U.S.C. 2402. Sec. 102 of Public Law 104–227 (110 Stat. 3035) amended and restated sec. 3.

(11) the term "native mammal" means any member, at any stage of its life cycle, of any species of the class Mammalia, which is indigenous to Antarctica or occurs there seasonally through natural migrations, and includes any part of such member;

(12) the term "native plant" means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi, and algae, at any stage of its life cycle (including seeds and other propagules), which is indigenous to Antarctica, and includes any part of such vegetation;

(13) the term "non-native species" means any species of animal or plant which is not indigenous to Antarctica and does not occur there seasonally through natural migrations;

(14) the term "person" has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States and any department, agency, or other instrumentality of the Federal Government or of any State or local government;

(15) the term "prohibited product" means any substance banned from introduction onto land or ice shelves or into water in Antarctica pursuant to Annex III to the Protocol;

(16) the term "prohibited waste" means any substance which must be removed from Antarctica pursuant to Annex III to the Protocol, but does not include materials used for balloon envelopes required for scientific research and weather forecasting;

(17) the term "Protocol" means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, including any future amendments thereto to which the United States is a party;

(18) the term "Secretary" means the Secretary of Commerce;

(19) the term "Specially Protected Species" means any native species designated as a Specially Protected Species pursuant to Annex II to the Protocol;

(20) the term "take" means to kill, injure, capture, handle, or molest a native mammal or bird, or to remove or damage such quantities of native plants that their local distribution or abundance would be significantly affected;

(21) the term "Treaty" means the Antarctic Treaty signed in Washington, DC, on December 1, 1959;

(22) the term "United States" means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; and

(23) the term "vessel subject to the jurisdiction of the United States" includes any "vessel of the United States" and any "vessel subject to the jurisdiction of the United States" as those terms are defined in section 303 of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2432).

SEC. 4.[8] **PROHIBITED ACTS.**

(a) IN GENERAL.—It is unlawful for any person—

(1) to introduce any prohibited product onto land or ice shelves or into water in Antarctica;

(2) to dispose of any waste onto ice-free land areas or into fresh water systems in Antarctica;

(3) to dispose of any prohibited waste in Antarctica;

(4) to engage in open burning of waste;

(5) to transport passengers to, from, or within Antarctica by any seagoing vessel not required to comply with the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), unless the person has an agreement with the vessel owner or operator under which the owner or operator is required to comply with Annex IV to the Protocol;

(6) who organizes, sponsors, operates, or promotes a nongovernmental expedition to Antarctica, and who does business in the United States, to fail to notify all members of the expedition of the environmental protection obligations of this Act, and of actions which members must take, or not take, in order to comply with those obligations;

(7) to damage, remove, or destroy a historic site or monument;

(8) to refuse permission to any authorized officer or employee of the United States to board a vessel, vehicle, or aircraft of the United States, or subject to the jurisdiction of the United States, for the purpose of conducting any search or inspection in connection with the enforcement of this Act or any regulation promulgated or permit issued under this Act;

(9) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in the conduct of any search or inspection described in paragraph (8);

(10) to resist a lawful arrest or detention for any act prohibited by this section;

(11) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section;

(12) to violate any regulation issued under this Act, or any term or condition of any permit issued to that person under this Act; or

(13) to attempt to commit or cause to be committed any act prohibited by this section.

(b) ACTS PROHIBITED UNLESS AUTHORIZED BY PERMIT.—It is unlawful for any person, unless authorized by a permit issued under this Act—

(1) to dispose of any waste in Antarctica (except as otherwise authorized by the Act to Prevent Pollution from Ships) including—

(A) disposing of any waste from land into the sea in Antarctica; and

[8] 16 U.S.C. 2403. Sec. 103 of Public Law 104–227 (110 Stat. 3036) amended and restated sec. 4.

(B) incinerating any waste on land or ice shelves in Antarctica, or on board vessels at points of embarcation or debarcation, other than through the use at remote field sites of incinerator toilets for human waste;

(2) to introduce into Antarctica any member of a nonnative species;

(3) to enter or engage in activities within any Antarctic Specially Protected Area;

(4) to engage in any taking or harmful interference in Antarctica; or

(5) to receive, acquire, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any native bird, native mammal, or native plant which the person knows, or in the exercise of due care should have known, was taken in violation of this Act.

(c) EXCEPTION FOR EMERGENCIES.—No act described in subsection (a)(1), (2), (3), (4), (5), (7), (12), or (13) or in subsection (b) shall be unlawful if the person committing the act reasonably believed that the act was committed under emergency circumstances involving the safety of human life or of ships, aircraft, or equipment or facilities of high value, or the protection of the environment.

SEC. 4A.[9] ENVIRONMENTAL IMPACT ASSESSMENT.

(a) FEDERAL ACTIVITIES.—(1)(A) The obligations of the United States under Article 8 of and Annex I to the Protocol shall be implemented by applying the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to proposals for Federal agency activities in Antarctica, as specified in this section.

(B) The obligations contained in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall apply to all proposals for Federal agency activities occurring in Antarctica and affecting the quality of the human environment in Antarctica or dependent or associated ecosystems, only as specified in this section. For purposes of the application of such section 102(2)(C) under this subsection, the term "significantly affecting the quality of the human environment" shall have the same meaning as the term "more than a minor or transitory impact".

(2)(A) Unless an agency which proposes to conduct a Federal activity in Antarctica determines that the activity will have less than a minor or transitory impact, or unless a comprehensive environmental evaluation is being prepared in accordance with subparagraph (C), the agency shall prepare an initial environmental evaluation in accordance with Article 2 of Annex I to the Protocol.

(B) If the agency determines, through the preparation of the initial environmental evaluation, that the proposed Federal activity is likely to have no more than a minor or transitory impact, the activity may proceed if appropriate procedures are put in place to assess and verify the impact of the activity.

(C) If the agency determines, through the preparation of the initial environmental evaluation or otherwise, that a proposed Federal activity is likely to have more than a minor or transitory impact,

[9] 16 U.S.C. 2403a. Sec. 104 of Public Law 104–227 (110 Stat. 3038) added sec. 4A.

the agency shall prepare and circulate a comprehensive environmental evaluation in accordance with Article 3 of Annex I to the Protocol, and shall make such comprehensive environmental evaluation publicly available for comment.

(3) Any agency decision under this section on whether a proposed Federal activity, to which paragraph (2)(C) applies, should proceed, and, if so, whether in its original or in a modified form, shall be based on the comprehensive environmental evaluation as well as other considerations which the agency, in the exercise of its discretion, considers relevant.

(4) For the purposes of this section, the term "Federal activity" includes all activities conducted under a Federal agency research program in Antarctica, whether or not conducted by a Federal agency.

(b) FEDERAL ACTIVITIES CARRIED OUT JOINTLY WITH FOREIGN GOVERNMENTS.—(1) For the purposes of this subsection, the term "Antarctic joint activity" means any Federal activity in Antarctica which is proposed to be conducted, or which is conducted, jointly or in cooperation with one or more foreign governments. Such term shall be defined in regulations promulgated by such agencies as the President may designate.

(2) Where the Secretary of State, in cooperation with the lead United States agency planning an Antarctic joint activity, determines that—

(A) the major part of the joint activity is being contributed by a government or governments other than the United States;

(B) one such government is coordinating the implementation of environmental impact assessment procedures for that activity; and

(C) such government has signed, ratified, or acceded to the Protocol,

the requirements of subsection (a) of this section shall not apply with respect to that activity.

(3) In all cases of Antarctic joint activity other than those described in paragraph (2), the requirements of subsection (a) of this section shall apply with respect to that activity, except as provided in paragraph (4).

(4) Determinations described in paragraph (2), and agency actions and decisions in connection with assessments of impacts of Antarctic joint activities, shall not be subject to judicial review.

(c) NONGOVERNMENTAL ACTIVITIES.—(1) The Administrator shall, within 2 years after the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996, promulgate regulations to provide for—

(A) the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty; and

(B) coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol.

(2) Such regulations shall be consistent with Annex I to the Protocol.

(d) DECISION TO PROCEED.—(1) No decision shall be taken to proceed with an activity for which a comprehensive environmental evaluation is prepared under this section unless there has been an opportunity for consideration of the draft comprehensive environmental evaluation at an Antarctic Treaty Consultative Meeting, except that no decision to proceed with a proposed activity shall be delayed through the operation of this paragraph for more than 15 months from the date of circulation of the draft comprehensive environmental evaluation pursuant to Article 3(3) of Annex I to the Protocol.

(2) The Secretary of State shall circulate the final comprehensive environmental evaluation, in accordance with Article 3(6) of Annex I to the Protocol, at least 60 days before the commencement of the activity in Antarctica.

(e) CASES OF EMERGENCY.—The requirements of this section, and of regulations promulgated under this section, shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without fulfilling those requirements.

(f) EXCLUSIVE MECHANISM.—Notwithstanding any other provision of law, the requirements of this section shall constitute the sole and exclusive statutory obligations of the Federal agencies with regard to assessing the environmental impacts of proposed Federal activities occurring in Antarctica.

(g) DECISIONS ON PERMIT APPLICATIONS.—The provisions of this section requiring environmental impact assessments (including initial environmental evaluations and comprehensive environmental evaluations) shall not apply to Federal actions with respect to issuing permits under section 5.

(h) PUBLICATION OF NOTICES.—Whenever the Secretary of State makes a determination under paragraph (2) of subsection (b) of this section, or receives a draft comprehensive environmental evaluation in accordance with Annex I, Article 3(3) to the Protocol, the Secretary of State shall cause timely notice thereof to be published in the Federal Register.

SEC. 5.[10] PERMITS.

(a) IN GENERAL.—The Director may issue permits which authorize acts otherwise prohibited by section 4(b).[11]

(b) APPLICATIONS FOR PERMITS.—(1) Applications for permits under this section shall be made in such manner and form, and shall contain such information, as the Director shall by regulation prescribe.

(2) The Director shall publish notice in the Federal Register of each application which is made for a permit under this section. The notice shall invite the submission by interested parties, within 30 days after the date of publication of the notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

[10] 16 U.S.C. 2404.

[11] Sec. 105(1) of Public Law 104–227 (110 Stat. 3040) struck out "section 4(a)" and inserted in lieu thereof "section 4(b)".

(c) ACTION BY APPROPRIATE SECRETARIES ON CERTAIN PERMIT APPLICATIONS.—(1) If the Director receives an application for a permit under this section requesting authority to undertake any action with respect to—

(A) any native mammal which is a marine mammal within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5));

(B) any native mammal, native bird, or native plant which is an endangered species or threatened species under the Endangered Species [12] Act of 1973 (16 U.S.C. 1531 et seq.); or

(C) any native bird which is protected under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.);

the Director shall submit a copy of the application to the Secretary of Commerce or to the Secretary of the Interior, as appropriate (hereinafter in this subsection referred to respectively as the "appropriate Secretary").

(2) After receiving a copy of any application from the Director under paragraph (1) the appropriate Secretary shall promptly determine, and notify the Director, whether or not any action proposed in the application also requires a permit or other authorization under any law administered by the appropriate Secretary.

(3) If the appropriate Secretary notifies the Director that any action proposed in the application requires a permit or other authorization under any law administered by the appropriate Secretary, the Director may not issue a permit under this section with respect to such action unless such other required permit or authorization is issued by the appropriate Secretary and a copy thereof is submitted to the Director. The issuance of any permit or other authorization by the appropriate Secretary for the carrying out of any action with respect to any native mammal, native bird, or native plant shall not be deemed to entitle the applicant concerned to the issuance by the Director of a permit under this section.

(d) ISSUANCE OF PERMITS.—As soon as practicable after receiving any application for a permit under this section, or, in the case of any application to which subsection (c) applies, as soon as practicable after the applicable requirements of such subsection are complied with, the Director shall issue, or deny the issuance of, the permit. Within 10 days after the date of the issuance or denial of a permit under this subsection, the Director shall publish notice of the issuance or denial in the Federal Register.

(e) [13] TERMS AND CONDITIONS OF PERMITS.—(1) Each permit issued under this section shall—

(A) if applicable, specify—

(i) the number and species of native mammals, native birds, native plants, or native invertebrates to which the permit applies, and [14]

[12] Sec. 105(2) of Public Law 104–227 (110 Stat. 3040) struck out "Special" and inserted in lieu thereof "Species".

[13] So in original. Two subsecs. (e) have been enacted.

[14] Sec. 105(3)(A) of Public Law 104–227 (110 Stat. 3040) struck out "or native plants to which the permit applies,", and inserted in lieu thereof "native plants, or native invertebrates to which the permit applies, and".

(ii)[15] the manner in which the taking or harmful interference shall be conducted (which manner shall be determined by the Director to be humane) and the area in which it will be conducted;

(B) the period during which the permit is valid; and

(C) such other terms and conditions as the Director deems necessary and appropriate to ensure that any act authorized under the permit is carried out in a manner consistent with the purpose of this chapter, the criteria set forth in paragraph (2), if applicable, and the regulations prescribed under this Act.

(2) The terms and conditions imposed by the Director in any permit issued under this section that authorizes any of the following acts shall be consistent with the following criteria:

(A) Permits authorizing the taking or harmful interference within Antarctica[16] of any native mammal or native bird (other than a Specially Protected Species[17] of any such mammal or bird)—

(i) may be issued only for the purpose of providing—

(I) specimens for scientific study or scientific information, or

(II) specimens for museums, zoological gardens, or other educational or cultural institutions or uses; or[18]

(III)[19] for unavoidable consequences of scientific activities or the construction and operation of scientific support facilities; and

(ii) shall ensure, as far as possible, that—

(I) no more native mammals and native birds are taken in any year than can normally be replaced by net natural reproduction in the following breeding season, and

(II) the variety of species and the balance of the natural ecological systems within Antarctica are[20] maintained.

(B) Permits authorizing the taking of Specially Protected Species[17] may be issued only if—

(i) there is a compelling scientific purpose for such taking; and

(ii) the actions allowed under any such permit will not jeopardize any existing natural ecological system, or the survival, of such species.

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[15] Sec. 105(3)(B) of Public Law 104–227 (110 Stat. 3040) struck out clauses (ii) and (iii) and inserted a new clause (ii). Former clauses (ii) and (iii) read as follows:

"(ii) if any such mammal or bird is authorized to be taken, transported, carried, or shipped, the manner (which manner must be determined by the Director to be humane) in which such action must be accomplished and the area in which such taking must occur, and

"(iii) if any such plant is authorized to be collected, the location and manner in which it must be collected;".

[16] Sec. 105(3)(C) of Public Law 104–227 (110 Stat. 3040) struck out "within Antarctica (other than within any specially protected area)" and inserted in lieu thereof "or harmful interference within Antarctica".

[17] Sec. 105(3)(D) of Public Law 104–227 (110 Stat. 3040) struck out "specially protected species" and inserted in lieu thereof "Specially Protected Species".

[18] Sec. 105(3)(E) of Public Law 104–227 (110 Stat. 3040) struck out "; and" and inserted in lieu thereof "; or".

[19] Sec. 105(3)(F) of Public Law 104–227 (110 Stat. 3040) added subclause (III).

[20] Sec. 105(3)(G) of Public Law 104–227 (110 Stat. 3041) struck out "with Antarctica and", and inserted in lieu thereof "within Antarctica are".

(C)[21] A permit authorizing the entry into an Antarctic Specially Protected Area shall be issued only—

(i) if the entry is consistent with an approved management plan, or

(ii) if a management plan relating to the area has not been approved but—

(I) there is a compelling purpose for such entry which cannot be served elsewhere, and

(II) the actions allowed under the permit will not jeopardize the natural ecological system existing in such area.

(e)[13] JUDICIAL REVIEW.—Any applicant for a permit may obtain judicial review of the terms and conditions of any permit issued by the Director under this section or of the refusal of the Director to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within 60 days after the date on which such permit is issued or denied.

(f)(1)[22] MODIFICATION, SUSPENSION, AND REVOCATION.—The Director may modify, suspend, or revoke, in whole or part, any permit issued under this section—

(A) in order to make the permit consistent with any change made after the date of issuance of the permit, to any regulation prescribed under section 6;

(B) if there is any change in conditions which makes the permit inconsistent with the purpose of this Act; or

(C) in any case in which there has been any violation of any term or condition of the permit, any regulation prescribed under this Act, or any provision of this Act.

(2) Whenever the Director proposes any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation. Any action taken by the Director after such a hearing is subject to judicial review on the same basis as is provided for with respect to permit applications under subsection (e) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Director shall be published in the Federal Register within 10 days from the date of the Director's decision.

(g) PERMIT FEES.—The Director may establish and charge fees for processing applications for permits under this section. The amount of such fees shall be commensurate with the administrative costs incurred by the Director in undertaking such processing.

[21] Sec. 105(3)(H) of Public Law 104–227 (110 Stat. 3041) amended and restated subpara. (C) and struck out subpara. (D).

[22] As enrolled. Para. designation "(1)" should probably follow "REVOCATION.—".

SEC. 6.[23] REGULATIONS.

(a) REGULATIONS TO BE ISSUED BY THE DIRECTOR.—(1) The Director shall issue such regulations as are necessary and appropriate to implement Annex II and Annex V to the Protocol and the provisions of this Act which implement those annexes, including section 4(b)(2), (3), (4), and (5) of this Act. The Director shall designate as native species—

(A) each species of the class Aves;

(B) each species of the class Mammalia; and

(C) each species of plant,

which is indigenous to Antarctica or which occurs there seasonally through natural migrations.

(2) The Director, with the concurrence of the Administrator, shall issue such regulations as are necessary and appropriate to implement Annex III to the Protocol and the provisions of this Act which implement that Annex, including section 4(a)(1), (2), (3), and (4), and section 4(b)(1) of this Act.

(3) The Director shall issue such regulations as are necessary and appropriate to implement Article 15 of the Protocol with respect to land areas and ice shelves in Antarctica.

(4) The Director shall issue such additional regulations as are necessary and appropriate to implement the Protocol and this Act, except as provided in subsection (b).

(b) REGULATIONS TO BE ISSUED BY THE SECRETARY OF THE DEPARTMENT IN WHICH THE COAST GUARD IS OPERATING.—The Secretary of the Department in which the Coast Guard is operating shall issue such regulations as are necessary and appropriate, in addition to regulations issued under the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), to implement Annex IV to the Protocol and the provisions of this Act which implement that Annex, and, with the concurrence of the Director, such regulations as are necessary and appropriate to implement Article 15 of the Protocol with respect to vessels.

(c) TIME PERIOD FOR REGULATIONS.—The regulations to be issued under subsection (a)(1) and (2) of this section shall be issued within 2 years after the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996. The regulations to be issued under subsection (a)(3) of this section shall be issued within 3 years after the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996.

SEC. 7.[24] NOTIFICATION OF TRAVEL TO ANTARCTICA.

The Secretary of State shall prescribe such regulations as may be necessary and appropriate to implement, with respect to United States citizens, paragraph 5 of Article VII of the Treaty pertaining to the filing of advance notifications of expeditions to, and within, Antarctica. For purposes of this section, the term "United States citizen" shall include any foreign person who organizes within the United States any expedition which will proceed to Antarctica from the United States.

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[23] 16 U.S.C. 2405. Sec. 106 of Public Law 104–227 (110 Stat. 3041) amended and restated sec. 6.

[24] 16 U.S.C. 2406.

SEC. 8.[25] CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTIES.—Any person who is found by the Director, after notice and opportunity for a hearing in accordance with subsection (b) of this section, to have committed any act prohibited by section 4(a) or to have violated any regulation prescribed under section 7 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $5,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed $10,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of any civil penalty shall be assessed by the Director by written notice. Any civil penalty assessed under this subsection may be remitted or mitigated by the Director.

(b) HEARINGS.—Hearings for the assessment of civil penalties under subsection (a) shall be conducted in accordance with section 554 of title 5, United States Code. For the purposes of conducting any such hearing, the Director may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Director or to appear and produce documents before the Director, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) REVIEW.—Upon the failure of any person against whom a civil penalty is assessed under subsection (a) to pay such penalty, the Director may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Director and shall sustain the decision of the Director if it is supported by substantial evidence on the record considered as a whole.

(d) PENALTIES UNDER OTHER LAWS.—The assessment of a civil penalty under subsection (a) for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law, including, but not limited to, the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Migratory Bird Treaty Act.

SEC. 9.[26] CRIMINAL OFFENSES.

(a) OFFENSES.—A person is guilty of an offense if he willfully commits any act prohibited by section 4(a).

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[25] 16 U.S.C. 2407.
[26] 16 U.S.C. 2408.

(b) PUNISHMENT.—Any offense described in subsection (a) is punishable by a fine of $10,000, or imprisonment for not more than one year, or both.

(c) OFFENSES UNDER OTHER LAWS.—A conviction under subsection (a) for any act shall not be deemed to preclude a conviction for such act under any other law, including, but not limited to, the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Migratory Bird Treaty Act.

SEC. 10.[27] ENFORCEMENT.

(a) RESPONSIBILITY.—The provisions of this Act and of any regulation prescribed, or permit issued, under this Act shall be enforced by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of[28] Interior, and the Secretary of the department in which the Coast Guard is operating. The Director and such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other Federal agency or any State agency in the performance of such duties.

(b) POWERS OF AUTHORIZED OFFICERS.—Any officer who is authorized (by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with the Director or any such Secretary under subsection (a)) to enforce the provisions of this Act and of any regulation or permit issued under this Act may—

(1) secure, execute, and serve any order, warrant, subpena, or other process, which is issued under the authority of the United States;

(2) search without warrant any person, place, or conveyance where there is reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 4(a);

(3) seize without warrant any evidentiary item where there is reasonable grounds to believe that a person has committed or is attempting to commit any such act;

(4) offer and pay rewards for services or information which may lead to the apprehension of violators of such provisions;

(5) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;

(6) detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States; and

(7) make an arrest with or without a warrant with respect to any act prohibited by section 4(a) if such officer has reasonable grounds to believe that the person to be arrested is committing such act in his presence or view, or has committed such act.

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[27] 16 U.S.C. 2409.

[28] So in original. Probably should read "of the".

(c) SEIZURE.—Any property or item seized pursuant to subsection (b) shall be held by any person authorized by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, or the Secretary of the department in which the Coast Guard is operating pending the disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such property or item; except that such authorized person may, in lieu of holding such property or item, permit the owner or consignee thereof to post a bond or other satisfactory surety.

(d) FORFEITURE.—(1) Any animal or plant with respect to which an act prohibited by section 4(a) is committed shall be subject to forfeiture to the United States.

(2) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used in the commission of any act prohibited by section 4(a) shall be subject to forfeiture to the United States.

(3) Upon the forfeiture to the United States of any property or item described in paragraph (1) or (2), or upon the abandonment or waiver of any claim to any such property or item, it shall be disposed of by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, or the Secretary of the department in which the Coast Guard is operating, as the case may be, in such a manner, consistent with the purposes of the Act, as may be prescribed by regulation; except that no native mammal, native bird, or native plant may be disposed of by sale to the public.

(e) APPLICATION OF CUSTOMS LAWS.—All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provision of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Customs Service may, for the purposes of this Act, also be exercised or performed by the Director, the Secretary of Commerce, the Secretary of the Interior, or the Secretary of the department in which the Coast Guard is operating, or by such persons as each may designate.

(f) REGULATIONS.—The Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, and the Secretary of the department in which the Coast Guard is operating may prescribe such regulations as may be appropriate to enforce the provisions of this Act and of any regulation prescribed or permit issued under this Act, and charge reasonable fees for the expenses of the United States incurred in carrying out inspections and in transferring, boarding, handling, or storing native mammals, native birds, native plants, animals and plants not indigenous to Antarctica, and other evidentiary items seized or forfeited under this Act.

SEC. 11.[29] JURISDICTION OF COURTS.

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act or of any regulation prescribed, or permit issued, under this Act.

SEC. 12.[30] FEDERAL AGENCY COOPERATION.

Each Federal department or agency whose activities affect Antarctica shall utilize, to the maximum extent practicable, its authorities in furtherance of the purposes of this Act, and shall cooperate with the Director in carrying out the purposes of this Act.

SEC. 13.[31] RELATIONSHIP TO EXISTING TREATIES.

Nothing in this Act shall be construed as contravening or superseding the provisions of any international treaty, convention, or agreement, if such treaty, convention, or agreement is in force with respect to the United States on the date of the enactment of this Act, or of any statute which implements any such treaty, convention, or agreement.

SEC. 14.[32] SAVING PROVISIONS.

(a) REGULATIONS.—All regulations promulgated under this Act prior to the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996 shall remain in effect until superseding regulations are promulgated under section 6.

(b) PERMITS.—All permits issued under this Act shall remain in effect until they expire in accordance with the terms of those permits.

[29] 16 U.S.C. 2410.
[30] 16 U.S.C. 2411.
[31] 16 U.S.C. 2412.
[32] 16 U.S.C. 2413. The original sec. 14 amended the Fishermen's Protective Act of 1967 (22 U.S.C. 1971). Sec. 107 of Public Law 104–227 (110 Stat. 3042) added this sec. 14.

(2) Antarctic Science, Tourism, and Conservation Act of 1996

Partial text of Public Law 104–227 [H.R. 3060], 110 Stat. 3034, approved October 2, 1996

AN ACT To implement the Protocol on Environmental Protection to the Antarctic Treaty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Antarctic Science, Tourism, and Conservation Act of 1996".

TITLE I—AMENDMENTS TO THE ANTARCTIC CONSERVATION ACT OF 1978

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TITLE II—CONFORMING AMENDMENTS TO OTHER LAWS

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TITLE III—POLAR RESEARCH AND POLICY STUDY

SEC. 301. POLAR RESEARCH AND POLICY STUDY.

Not later than March 1, 1997, the National Science Foundation shall provide a detailed report to the Congress on—

(1) the status of the implementation of the Arctic Environmental Protection Strategy and Federal funds being used for that purpose;

(2) all of the Federal programs relating to Arctic and Antarctic research and the total amount of funds expended annually for each such program, including—

(A) a comparison of the funding for logistical support in the Arctic and Antarctic;

(B) a comparison of the funding for research in the Arctic and Antarctic;

(C) a comparison of any other amounts being spent on Arctic and Antarctic programs; and

(D) an assessment of the actions taken to implement the recommendations of the Arctic Research Commission with respect to the use of such funds for research and logistical support in the Arctic.

[1] 16 U.S.C. 2401 note.

(3) Protection of Antarctica as a Global Ecological Commons

Public Law 101–620 [S.J. Res. 206], 104 Stat. 3340, approved November 16, 1990

JOINT RESOLUTION Calling for the United States to encourage immediate negotiations toward a new agreement among Antarctic Treaty Consultative Parties, for the full protection of Antarctica as a global ecological commons.

Whereas Antarctica, like the great oceans and the atmosphere, is a part of the global commons;

Whereas the Antarctic region, including the continent and the Southern Ocean, is a fragile ecosystem that support an amazing abundance of life, and is, in turn, crucial to other life on Earth;

Whereas Antarctica is a critical areas in the study and documentation of global change;

Whereas negotiations of the Antarctic Treaty Consultative Parties have resulted in the Convention on the Regulation of Antarctic Mineral Resource Activities;

Whereas the Convention on the Regulation of Antarctic Mineral Resource Activities, while requiring consideration of environmental impacts prior to allowing minerals development in Antarctica, does not guarantee preservation of the Antarctic environment; and

Whereas the challenge to humankind is to ensure that Antarctica is stewarded in a manner that conserves its unique environment and preserves its value for scientific research: Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) Antarctica is a global ecological commons, and should, therefore, be subject to a new agreement or protocol which supplement[1] the Antarctic Treaty of 1959, providing for comprehensive environmental protection of Antarctica, and which should for an indefinite period establish Antarctica as a region closed to commercial minerals development and related activities;

(2) under such new agreements, information about mineral or other resources in Antarctica should be obtained under strictly controlled arrangements and should be openly shared in the international scientific community;

(3) the Convention on the Regulation of Antarctic Mineral Resource Activities, through a considerable step forward, does not guarantee protection of the fragile environment of Antarctica and could actually stimulate movement toward commercial exploitation;

[1] As enrolled. Should probably read "supplements".

(4) pending the negotiation and entry into force of the new agreements referred to in paragraph (1) the Convention on the Regulation of Antarctic Mineral Resource Activities should not be presented to the Senate for advice and consent to ratification;

(5) until such new agreements enter into force, the United States should support the interim restraint measures currently in effect among the Consultative Parties to the Antarctic Treaty; and

(6) the negotiation of a new agreements[2] referred to in paragraph (1) should be fully supported by the United States at the November 1990 meeting of the Antarctic Treaty Consultative Parties in Santiago, Chile.

[2] As enrolled. Should probably read "agreement" or "of new agreements".

(4) Antarctic Protection Act of 1990

Public Law 101–594 [H.R. 3977], 104 Stat. 2975, approved November 16, 1990; as amended by Public Law 104–227 [Antarctic Science, Tourism, and Conservation Act of 1996; H.R. 3060], 110 Stat. 3034, approved October 2, 1996

AN ACT To protect and conserve the continent of Antarctica, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Antarctic Protection Act of 1990".

SEC. 2.[2] FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Antarctic continent with its associated and dependent ecosystems is a distinctive environment providing a habitat for many unique species and offering a natural laboratory from which to monitor critical aspects of stratospheric ozone depletion and global climate change;

(2) Antarctica is protected by a series of international agreements, including the Antarctic Treaty and associated recommendations, the Convention on the Conservation of Antarctic Seals, and the Convention on the Conservation of Antarctic Marine Living Resources, which are intended to conserve the renewable natural resources of Antarctica and to recognize the importance of Antarctica for the conduct of scientific research;

(3) recurring and recent developments in Antarctica, including increased siting of scientific stations, poor waste disposal practices, oil spills, increased tourism, and the over-exploitation of marine living resources, have raised serious questions about the adequacy and implementation of existing agreements and domestic law to protect the Antarctic environment and its living marine resources;

(4) the parties to the Antarctic Treaty have negotiated a Convention on the Regulation of Antarctic Mineral Resources Activities which the United States has signed but not yet ratified;

(5) the Convention on the Regulation of Antarctic Mineral Resources Activities does not guarantee the preservation of the fragile environment of Antarctica and could actually stimulate movement toward Antarctic mineral resource activity;

(6) the exploitation of mineral resources in Antarctica could lead to additional degradation of the Antarctic environment, including increased risk of oil spills;

[1] 16 U.S.C. 2461 note.
[2] 16 U.S.C. 2461.

(7) the Antarctic Treaty Consultative Parties have agreed to a voluntary ban on Antarctic mineral resource activities which needs to be made legally binding;

(8) the level of scientific study, including necessary support facilities, has increased to the point that some scientific programs may be degrading the Antarctic environment; and

(9) the planned special consultative meeting of parties to the Antarctic Treaty and the imminence of the thirtieth anniversary of the Antarctic Treaty provide opportunities for the United States to exercise leadership toward protection and sound management of Antarctica.

(b) PURPOSE.—The purpose of this Act is to—

(1) strengthen substantially overall environmental protection of Antarctica;

(2) prohibit prospecting, exploration, and development of Antarctic mineral resources by United States citizens and other persons subject to the jurisdiction of the United States;

(3) urge other nations to join the United States in immediately negotiating one or more new agreements to provide an indefinite ban on all Antarctic mineral resource activities and comprehensive protection for Antarctica and its associated and dependent ecosystems; and

(4) urge all nations to consider a permanent ban on Antarctic mineral resource activities.

SEC. 3.[3] DEFINITIONS.

For the purposes of this Act:

(1) The term "Antarctica" means the area south of the Antarctic Convergence as defined in section 303(1) of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2432).

(2) The term "Antarctic mineral resource activity" means prospecting, exploration, or development in Antarctica of mineral resources, but does not include scientific research within the meaning of article III of the Antarctic Treaty, done at Washington on December 1, 1959.

(3) The term "development" means any activity, including logistic support, which takes place following exploration, the purpose of which is the exploitation of specific mineral resource deposits, including processing, storage, and transport activities.

(4) The term "exploration" means any activity, including logistic support, the purpose of which is the identification or evaluation of specific mineral resource deposits. The term includes exploratory drilling, dredging, and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development.

(5) The term "mineral resources" means all nonliving natural nonrenewable resources, including fossil fuels, minerals, whether metallic or nonmetallic, but does not include ice, water, or snow.

(6) The term "person" means any individual, corporation, partnership, trust, association, or any other entity existing or

[3] 16 U.S.C. 2462.

organized under the laws of the United States, or any officer, employee, agent, department, or other instrumentality of the Federal Government or of any State or political subdivision thereof.

(7) The term "prospecting" means any activity, including logistic support, the purpose of which is the identification of mineral resource potential for possible exploration and development.

(8) The term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere.

SEC. 4.[4] PROHIBITION OF ANTARCTIC MINERAL RESOURCE ACTIVITIES.

It[4] is unlawful for any person to engage in, finance, or otherwise knowingly provide assistance to any Antarctic mineral resource activity.

SEC. 5.[5] ENFORCEMENT.

(a) IN GENERAL.—A violation of this Act or any regulation promulgated under this Act is deemed to be a violation of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431–2444) and shall be enforced under that Act by the Under Secretary or another Federal official to whom the Under Secretary has delegated this responsibility.

(b) PENALTY.—If the Under Secretary determines that a person has violated section 4—

(1) that person shall be ineligible to locate a mining claim under the mining laws of the United States; and

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[4] 16 U.S.C. 2463. Sec. 202(a) of Public Law 104–227 (110 Stat. 3044) struck out "Pending a new agreement among the Antarctic Treaty Consultative Parties in force for the United States, to which the Senate has given advice and consent or which is authorized by further legislation by the Congress, which provides an indefinite ban on Antarctic mineral resource activities, it" and inserted in lieu thereof "It".

[5] 16 U.S.C. 2465. Sec. 202 of Public Law 104–227 (110 Stat. 3044) struck out secs. 5 and 7 (formerly at 16 U.S.C. 2464 and 2466, respectively) and redesignated sec. 6 as sec. 5. Secs. 5 and 7 had provided as follows:

"SEC. 5. INTERNATIONAL AGREEMENT.

"(a) It is the sense of Congress that the Secretary of State should enter into negotiations with the Antarctic Treaty Consultative Parties to conclude one or more new international agreements to—

"(1) conserve and protect permanently the natural environment of Antarctica and its associated and dependent ecosystems;

"(2) prohibit or ban indefinitely Antarctic mineral resource activities by all parties to the Antarctic Treaty;

"(3) grant Antarctica special protective status as a land of science dedicated to wilderness protection, international cooperation, and scientific research;

"(4) ensure that the results of all scientific investigations relating to geological processes and structures be made openly available to the international scientific community, as required by the Antarctic Treaty; and

"(5) include other comprehensive measures for the protection of the Antarctic environment.

"(b) It is the sense of Congress that any treaty or other international agreement submitted by the President to the Senate for its advice and consent to ratification relating to mineral resources or activities in Antarctica should be consistent with the purpose and provisions of this Act.

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"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated—

"(1) to the Under Secretary not more than $1,000,000 for each of fiscal years 1991 and 1992 to carry out the purposes of this Act; and

"(2) to the Secretary of State not more than $500,000 for each of fiscal years 1991 and 1992 to carry out section 5 of this Act.".

(2) the Secretary of the Interior shall refuse to issue a patent under the mining laws of the United States, or a lease under the laws of the United States related to mineral or geothermal leasing, to any such person who attempts to perfect such patent or lease application after the Under Secretary has made such determination.

g. Global Climate Change Prevention Act of 1990

Title XXIV of Public Law 101–624 [Food, Agriculture, Conservation, and Trade Act of 1990; S. 2830], 104 Stat. 3359 at 4058, approved November 28, 1990; as amended by Public Law 104–127 [Federal Agriculture Improvement and Reform Act of 1996; H.R. 2854], 110 Stat. 888, approved April 4, 1996; and Public Law 107–171 [Farm Security and Rural Investment Act of 2002; H.R. 2646], 116 Stat. 134, approved May 13, 2002

AN ACT To extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural research and related programs, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE XXIV—GLOBAL CLIMATE CHANGE

SEC. 2401.[1] SHORT TITLE.

This title may be cited as the "Global Climate Change Prevention Act of 1990".

SEC. 2402.[2] GLOBAL CLIMATE CHANGE PROGRAM.

(a) ESTABLISHMENT.—For the purpose of having within the Department of Agriculture a focal point for coordinating all issues of climate change, the Secretary of Agriculture (hereafter in this title referred to as the "Secretary") shall establish a Global Climate Change Program (hereafter in this section referred to as the "Program"). The Secretary shall designate a director of the Program who shall be responsible for carrying out the duties specified in subsections (b) and (c).

(b) GENERAL DUTIES.—The Director shall—

(1) coordinate policy analysis, long range planning, research, and response strategies relating to climate change issues;

(2) provide liaison with other Federal agencies, through the Office of Science and Technology Policy, regarding issues of climate change;

(3) inform the Department of scientific developments and policy issues relating to the effects of climate change on agriculture and forestry, including broader issues that affect the impact of climate change on the farms and forests of the United States;

(4) recommend to the Secretary alternative courses of action with which to respond to such scientific developments and policy issues; and

[1] 7 U.S.C. 6701 note.
[2] 7 U.S.C. 6701.

(5) ensure that recognition of the potential for climate change is fully integrated into the research, planning, and decisionmaking processes of the Department.

(c) SPECIFIC RESPONSIBILITIES.—The Director shall—

(1) coordinate the global climate change studies required by section 2403;

(2) provide, through such other agencies as the Secretary determines appropriate, competitive grants for research in climatology relating to the potential impact of climate change on agriculture;

(3) coordinate the participation of the Department in interagency climate-related activities;

(4) consult with the National Academy of Sciences and private, academic, State, and local groups with respect to climate research and related activities;

(5) represent the Department to the Office of Science and Technology Policy and coordinate the activities of the Department in response to requirements of this title;

(6) represent the Department on the Intergovernmental Panel on Climate Change;

(7) review all Department budget items relating to climate change issues, including specifically the research budget to be submitted by the Secretary to the Office of Science and Technology Policy and the Office of Management and Budget.

SEC. 2403.[3] STUDY OF GLOBAL CLIMATE CHANGE, AGRICULTURE, AND FORESTRY.

(a) CROPS.—

(1) IN GENERAL.—The Secretary shall study the effects of global climate change on agriculture and forestry. The study shall, at a minimum address—

(A) the effects of simultaneous increases in temperature and carbon dioxide on crops of economic significance;

(B) the effects of more frequent or more severe weather events on such crops;

(C) the effects of potential changes in hydrologic regimes on current crops yields;

(D) the economic effects of widespread and increased drought frequency in the south, midwest, and plains States; and

(E) changes in pest problems due to higher temperatures.

(2) FURTHER STUDIES.—If the results of the study conducted under paragraph (1) warrant, the Secretary shall conduct further studies that address the means of mitigating the effects of global climate change on crops of economic significance that shall, at a minimum—

(A) identify whether climate change tolerance can be bred into these crops, the amount of time necessary for any such breeding, and the effects on the income of farmers;

[3] 7 U.S.C. 6702.

(B) evaluate existing genetic resource and breeding programs for crops for their ability to develop new varieties that can tolerate potential climate changes; and

(C) assess the potential for the development of crop varieties that are tolerant to climate changes and other environmental stresses, such as drought, pests, and salinity.

(b) FORESTS.—The Secretary shall conduct a study on the emissions of methane, nitrous oxide, and hydrocarbons from tropical and temperate forests, the manner in which such emissions may affect global climate change; the manner in which global climate change may affect such emissions; and the manner in which such emissions may be reduced through management practices. The study shall, at a minimum—

(1) obtain measurements of nitrous oxide, methane, and nonmethane hydrocarbons from tropical and temperate forests;

(2) determine the manner in which the nitrous oxide, methane, and nonmethane hydrocarbon emissions from temperate and tropical forest systems will respond due to climate change; and

(3) identify and address alternative management strategies for temperate and tropical forests that may mitigate any negative effects of global climate change.

(c) REPORTS.—The Secretary shall submit reports of the studies conducted under subsections (a) and (b) within 3 and 6 years, respectively, after the date of enactment of this Act to the Committee on Agriculture and the Committee on Science, Space, and Technology[4] of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate. In addition, interim reports regarding such studies shall be provided by the Secretary to such Committees annually, with recommendations for actions which may be taken to mitigate the negative effects of global climate change and to adapt to global climate changes and related phenomenon.

SEC. 2404.[5] * * * [Repealed—1996]

SEC. 2405.[6] **OFFICE OF INTERNATIONAL FORESTRY.**

(a) ESTABLISHMENT.—The Secretary, acting through the Chief of the Forest Service, shall establish an Office of International Forestry within the Forest Service within six months after the date of enactment of this Act.

(b) DEPUTY CHIEF DESIGNATION.—The Chief shall appoint a Deputy Chief for International forestry.

(c) DUTIES.—The Deputy Chief shall—

(1) be responsible for the international forestry activities of the Forest Service;

(2) coordinate the activities of the Forest Service in implementing the provisions of this title; and

[4] Sec. 1(a)(10) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Science, Space, and Technology of the House of Representatives shall be treated as referring to the Committee on Science of the House of Representatives.

[5] Formerly at 7 U.S.C. 6703. Sec. 868 of Public Law 104–127 (110 Stat. 1175) repealed sec. 2404, which had established a technical advisory committee to provide advice to the Secretary of Agriculture concerning the major study areas required under title XXIV of this Act.

[6] 7 U.S.C. 6704.

(3) serve as Forest Service liaison to the director for the program established pursuant to section 2402.

(d)[7] AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriate for each of fiscal years 1996 through 2007[8] such sums as are necessary to carry out this section.

SEC. 2406.[9] LINE ITEM.

The President's proposed budget to Congress for the first fiscal year beginning after the date of enactment of this Act and for each subsequent fiscal year shall specifically identify funds to be spent on Forest Service international cooperation and assistance.

SEC. 2407.[10] INSTITUTES OF TROPICAL FORESTRY.

The Secretary is authorized and directed to establish an Institute of Tropical Forestry in Puerto Rico and the Institute of Pacific Islands Forestry (hereafter in this section referred to as the "Institutes"). The Institutes shall conduct research on forest management and natural resources that shall include—

(1) management and development of tropical forests;

(2) the relationship between climate change and tropical forests;

(3) threatened and endangered species;

(4) recreation and tourism;

(5) development of tropical forest resources on a sustained yield basis;

(6) techniques to monitor the health and productivity of tropical forests;

(7) tropical forest regeneration and restoration; and

(8) the effects of tropical deforestation on biodiversity, global climate, wildlife, soils, and water.

SEC. 2408.[11] THE FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING ACT OF 1974. * * *

SEC. 2409.[12] URBAN FORESTRY DEMONSTRATION PROJECTS.

The Secretary is authorized to undertake, through the Forest Service's Northeastern Area State and Private Forestry program, a study and pilot implementation project to demonstrate the benefits of retaining and integrating forests in urban development. The focus of such a study and implementation project should be to protect the environment and associated natural resource values, for current and future generations.

SEC. 2410.[13] BIOMASS ENERGY DEMONSTRATION PROJECTS.

The Secretary, in consultation with the Secretary of Energy, may carry out projects that demonstrate the potential of short-rotation silvicultural methods to produce wood for electricity production and

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[7] Sec. 371 of Public Law 104–127 (110 Stat. 1015) added subsec. (d).

[8] Sec. 8103 of Public Law 107–171 (116 Stat. 475) struck out "2002" and inserted in lieu thereof "2007".

[9] 7 U.S.C. 6705.

[10] 7 U.S.C. 6706.

[11] Sec. 2408 amended the Forest and Rangeland Renewable Resources Planning Act of 1974 at 16 U.S.C. 1601(a) and 1602.

[12] 7 U.S.C. 6707.

[13] 7 U.S.C. 6708.

industrial energy needs, In carrying out such projects, the Secretary shall cooperate with private industries, Federal and State agencies, and other organizations.

SEC. 2411.[14] INTERAGENCY COOPERATION TO MAXIMIZE BIOMASS GROWTH.

The Secretary may enter into an agreement with the Secretary of Defense to—

(1) conduct a study of reforestation and improved management of Department of Defense military installations and lands; and

(2) develop a program to manage such forest and lands so as to maximize their potential for biomass growth and sequestering carbon dioxide.

SEC. 2412.[15] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1997,[16] to carry out this title.

[14] 7 U.S.C. 6709.
[15] 7 U.S.C. 6710.
[16] Sec. 843 of Public Law 104–127 (110 Stat. 1170) struck out "1996" and inserted in lieu thereof "1997".

h. Global Change Research Act of 1990

Partial text of Public Law 101–606 [Global Change Research Act of 1990; S. 169], 104 Stat. 3096, approved November 16, 1990

AN ACT To require the establishment of a United States Global Research Program aimed at understanding and responding to global change, including the cumulative effects of human activities and natural processes on the environment, to promote discussions toward international protocols in global change research, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Global Change Research Act of 1990".

SEC. 2.[2] DEFINITIONS.

As used in this Act, the term—

(1) "Committee" means the Committee on Earth and Environmental Sciences established under section 102;

(2) "Council" means the Federal Coordinating Council on Science, Engineering, and Technology;

(3) "global change" means changes in the global environment (including alterations in climate, land productivity, oceans or Other water resources, atmospheric chemistry, and ecological systems) that may alter the capacity of the Earth to sustain life;

(4) "global change research" means study, monitoring, assessment, prediction, and information management activities to describe and understand—

(A) the interactive physical, chemical, and biological processes that regulate the total Earth system;

(B) the unique environment that the Earth provides for life;

(C) changes that are occurring in the Earth system; and

(D) the manner in which such system, environment, and changes are influenced by human actions;

(5) "Plan" means the National Global Change Research Plan developed under section 104, or any revision thereof; and

(6) "Program" means the United States Global Change Research Program established under section 103.

[1] 15 U.S.C. 2921 note.
[2] 15 U.S.C. 2921.

TITLE I—UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM

SEC. 101.[3] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress makes the following findings:

(1) Industrial, agricultural, and other human activities, coupled with an expanding world population, are contributing to processes of global change that may significantly alter the Earth habitat within a few human generations.

(2) Such human-induced changes, in conjunction with natural fluctuations, may lead to significant global warming and thus alter world climate patterns and increase global sea levels. Over the next century, these consequences could adversely affect world agricultural and marine production, coastal habitability, biological diversity, human health, and global economic and social well-being.

(3) The release of chlorofluorocarbons and other stratospheric ozone-depleting substances is rapidly reducing the ability of the atmosphere to screen out harmful ultraviolet radiation, which could adversely affect human health and ecological systems.

(4) Development of effective policies to abate, mitigate, and cope with global change will rely on greatly improved scientific understanding of global environmental processes and on our ability to distinguish human-induced from natural global change.

(5) New developments in interdisciplinary Earth sciences, global observing systems, and computing technology make possible significant advances in the scientific understanding and prediction of these global changes and their effects.

(6) Although significant Federal global change research efforts are underway, an effective Federal research program will require efficient interagency coordination, and coordination with the research activities of State, private, and international entities.

(b) PURPOSE.—The purpose of this title is to provide for development and coordination of a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.

SEC. 102.[4] COMMITTEE ON EARTH AND ENVIRONMENTAL SCIENCES.

(a) ESTABLISHMENT.—The President, through the Council, shall establish a Committee on Earth and Environmental Sciences. The Committee shall carry out Council functions under section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) relating to global change research, for the purpose of increasing the overall effectiveness and productivity of Federal global change research efforts.

(b) MEMBERSHIP.—The Committee shall consist of at least one representative from—

(1) the National Science Foundation;

[3] 15 U.S.C. 2931.
[4] 15 U.S.C. 2932.

(2) the National Aeronautics and Space Administration;

(3) the National Oceanic and Atmospheric Administration of the Department of Commerce;

(4) the Environmental Protection Agency;

(5) the Department of Energy;

(6) the Department of State;

(7) the Department of Defense;

(8) the Department of the Interior;

(9) the Department of Agriculture;

(10) the Department of Transportation;

(11) the Office of Management and Budget;

(12) the Office of Science and Technology Policy;

(13) the Council on Environmental Quality;

(14) the National Institute of Environmental Health Sciences of the National Institutes of Health; and

(15) such other agencies and departments of the United States as the President or the Chairman of the Council considers appropriate.

Such representatives shall be high ranking officials of their agency or department, wherever possible the head of the portion of that agency or department that is most relevant to the purpose of the title described in section 101(b).

(c) CHAIRPERSON.—The Chairman of the Council, in consultation with the Committee, biennially shall select one of the Committee members to serve as Chairperson. The Chairperson shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.

(d) SUPPORT PERSONNEL.—An Executive Secretary shall be appointed by the Chairperson of the Committee, with the approval of the Committee. The Executive Secretary shall be a permanent employee of one of the agencies or departments represented on the Committee, and shall remain in the employ of such agency or department. The Chairman of the Council shall have the authority to make personnel decisions regarding any employees detailed to the Council for purposes of working on business of the Committee pursuant to section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651).

(e) FUNCTIONS RELATIVE TO GLOBAL CHANGE.—The Council, through the Committee, shall be responsible for planning and coordinating the Program. In carrying out this responsibility, the Committee shall—

(1) serve as the forum for developing the Plan and for overseeing its implementation;

(2) improve cooperation among Federal agencies and departments with respect to global change research activities;

(3) provide budgetary advice as specified in section 105;

(4) work with academic, State, industry, and other groups conducting global change research, to provide for periodic public and peer review of the Program;

(5) cooperate with the Secretary of State in—

(A) providing representation at international meetings and conferences on global change research in which the United States participates; and

(B) coordinating the Federal activities of the United States with programs of other nations and with international global change research activities such as the International Geosphere-Biosphere Program;

(6) consult with actual and potential users of the results of the Program to ensure that such results are useful in developing national and international policy responses to global change; and

(7) report at least annually to the President and the Congress, through the Chairman of the Council, on Federal global change research priorities, policies, and programs.

SEC. 103.[5] UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM.

The President shall establish an interagency United States Global Change Research Program to improve understanding of global change. The Program shall be implemented by the Plan developed under section 104.

SEC. 104.[6] NATIONAL GLOBAL CHANGE RESEARCH PLAN.

(a) IN GENERAL.—The Chairman of the Council, through the Committee, shall develop a National Global Change Research Plan for implementation of the Program. The Plan shall contain recommendations for national global change research. The Chairman of the Council shall submit the Plan to the Congress within one year after the date of enactment of this title, and a revised Plan shall be submitted at least once every three years thereafter.

(b) CONTENTS OF THE PLAN.—The Plan shall—

(1) establish, for the 10-year period beginning in the year the Plan is submitted, the goals and priorities for Federal global change research which most effectively advance scientific understanding of global change and provide usable information on which to base policy decisions relating to global change;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, and information management, required to achieve such goals and priorities;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments represented on the Committee that contribute to the Program;

(4) set forth the role of each Federal agency and department in implementing the Plan;

(5) consider and utilize, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, or other entities;

(6) make recommendations for the coordination of the global change research activities of the United States with such activities of other nations and international organizations, including—

[5] 15 U.S.C. 2933.
[6] 15 U.S.C. 2934.

(A) a description of the extent and nature of necessary international cooperation;

(B) the development by the Committee, in consultation when appropriate with the National Space Council, of proposals for cooperation on major capital projects;

(C) bilateral and multilateral proposals for improving worldwide access to scientific data and information; and

(D) methods for improving participation in international global change research by developing nations; and

(7) estimate, to the extent practicable, Federal funding for global change research activities to be conducted under the Plan.

(c) RESEARCH ELEMENTS.—The Plan shall provide for, but not be limited to, the following research elements:

(1) Global measurements, establishing worldwide observations necessary to understand the physical, chemical, and biological processes responsible for changes in the Earth system on all relevant spatial and time scales.

(2) Documentation of global change, including the development of mechanisms for recording changes that will actually occur in the Earth system over the coming decades.

(3) Studies of earlier changes in the Earth system, using evidence from the geological and fossil record.

(4) Predictions, using quantitative models of the Earth system to identify and simulate global environmental processes and trends, and the regional implications of such processes and trends.

(5) Focused research initiatives to understand the nature of and interaction among physical, chemical, biological, and social processes related to global change.

(d) INFORMATION MANAGEMENT.—The Plan shall provide recommendations for collaboration within the Federal Government and among nations to—

(1) establish, develop, and maintain information bases, including necessary management systems which will promote consistent, efficient, and compatible transfer and use of data;

(2) create globally accessible formats for data collected by various international sources; and

(3) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to the effects of global change.

(e) NATIONAL RESEARCH COUNCIL EVALUATION.—The Chairman of the Council shall enter into an agreement with the National Research Council under which the National Research Council shall—

(1) evaluate the scientific content of the Plan; and

(2) provide information and advice obtained from United States and international sources, and recommended priorities for future global change research.

(f) PUBLIC PARTICIPATION.—In developing the Plan, the Committee shall consult with academic, State, industry, and environmental groups and representatives. Not later than 90 days before the Chairman of the Council submits the Plan, or any revision thereof, to the Congress, a summary of the proposed Plan shall be

published in the Federal Register for a public comment period of not less than 60 days.

SEC. 105.[7] BUDGET COORDINATION.

(a) COMMITTEE GUIDANCE.—The Committee shall each year provide general guidance to each Federal agency or department participating in the Program with respect to the preparation of requests for appropriations for activities related to the Program.

(b) SUBMISSION OF REPORTS WITH AGENCY APPROPRIATIONS REQUESTS.—(1) Working in conjunction with the Committee, each Federal agency or department involved in global change research shall include with its annual request for appropriations submitted to the President under section 1108 of title 31, United States Code, a report which—

(A) identifies each element of the proposed global change research activities of the agency or department;

(B) specifies whether each element (i) contributes directly to the Program or (ii) contributes indirectly but in important ways to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(2) Each agency or department that submits a report under paragraph (1) shall submit such report simultaneously to the Committee.

(c) CONSIDERATION IN PRESIDENT'S BUDGET.—(1) The President shall, in a timely fashion, provide the Committee with an opportunity to review and comment on the budget estimate of each agency and department involved in global change research in the context of the Plan.

(2) The President shall identify in each annual budget submitted to the Congress under section 1105 of title 31, United States Code, those items in each agency's or department's annual budget which are elements of the Program.

SEC. 106.[8] SCIENTIFIC ASSESSMENT.

On a periodic basis (not less frequently than every 4 years), the Council, through the Committee, shall prepare and submit to the President and the Congress an assessment which—

(1) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings;

(2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and

(3) analyzes current trends in global change, both human-inducted[9] and natural, and projects major trends for the subsequent 25 to 100 years.

[7] 15 U.S.C. 2935.
[8] 15 U.S.C. 2936.
[9] So in original. Probably should read "human-induced".

SEC. 107.[10] ANNUAL REPORT.

(a) GENERAL.—Each year at the time of submission to the Congress of the President's budget, the Chairman of the Council shall submit to the Congress a report on the activities conducted by the Committee pursuant to this title, including—

(1) a summary of the achievements of the Program during the period covered by the report and of priorities for future global change research;

(2) an analysis of the progress made toward achieving the goals of the Plan;

(3) expenditures required by each agency or department for carrying out its portion of the Program, including—

(A) the amounts spent during the fiscal year most recently ended;

(B) the amounts expected to be spent during the current fiscal year; and

(C) the amounts requested for the fiscal year for which the budget is being submitted.

(b) RECOMMENDATIONS.—The report required by subsection (b) shall include recommendations by the President concerning—

(1) changes in agency or department roles needed to improve implementation of the Plan; and

(2) additional legislation which may be required to achieve the purposes of this title.

SEC. 108.[11] RELATION TO OTHER AUTHORITIES.

(a) NATIONAL CLIMATE PROGRAM RESEARCH ACTIVITIES.—The President, the Chairman of the Council, and the Secretary of Commerce shall ensure that relevant research activities of the National Climate Program, established by the National Climate Program Act (15 U.S.C. 2901 et seq.), are considered in developing national global change research efforts.

(b) AVAILABILITY OF RESEARCH FINDINGS.—The President, the Chairman of the Council, and the heads of the agencies and departments represented on the Committee, shall ensure that the research findings of the Committee, and of Federal agencies and departments, are available to—

(1) the Environmental Protection Agency for use in the formulation of a coordinated national policy on global climate change pursuant to section 1103 of the Global Climate Protection Act of 1987 (15 U.S.C. 2901 note); and

(2) all Federal agencies and departments for use in the formulation of coordinated national policies for responding to human-induced and natural processes of global change pursuant to other statutory responsibilities and obligations.

(c) EFFECT ON FEDERAL RESPONSE ACTIONS.—Nothing in this title shall be construed, interpreted, or applied to preclude or delay the planning or implementation of any Federal action designed, in whole or in part, to address the threats of stratospheric ozone depletion or global climate change.

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[10] 15 U.S.C. 2937. This reporting requirement terminated as of May 15, 2000, pursuant to sec. 3003 of Public Law 104–66 (109 Stat. 734).

[11] 15 U.S.C. 2938.

TITLE II—INTERNATIONAL COOPERATION IN GLOBAL CHANGE RESEARCH [12]

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TITLE III—GROWTH DECISION AID [13]

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[12] For title II, the International Cooperation in Global Change Research Act of 1990, see page 572.

[13] Title III commissioned a U.S. study on the "implications and potential consequences of growth and development on urban, suburban, and rural communities", to be conducted by the Secretary of Commerce. For text, see 15 U.S.C. 2961 (104 Stat. 3104).

i. Clean Air Act Amendments—International Provisions

Partial text of Public Law 101–549 [Clean Air Act Amendments of 1990; S. 1630], 104 Stat. 2399, approved November 15, 1990

AN ACT To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

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TITLE IV—ACID DEPOSITION CONTROL

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SEC. 408.[1] MONITOR ACID RAIN PROGRAM IN CANADA.

(a) REPORTS TO CONGRESS.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of State, the Secretary of Energy, and other persons the Administrator deems appropriate, shall prepare and submit a report to Congress on January 1, 1994, January 1, 1999, and January 1, 2005.

(b) CONTENTS.—The report to Congress shall analyze the current emission levels of sulfur dioxide and nitrogen oxides in each of the provinces participating in Canada's acid rain control program the amount of emission reductions of sulfur dioxide and oxides of nitrogen achieved by each province, the methods utilized by each province in making those reductions, the costs to each province and the employment impacts in each province of making and maintaining those reductions.

(c) COMPLIANCE.—Beginning on January 1, 1999, the reports shall also assess the degree to which each province is complying with its stated emissions cap.

SEC. 409. REPORT ON CLEAN COAL TECHNOLOGIES.

The Secretary of Energy in consultation with the Secretary of Commerce shall provide a report to the Congress within one year of enactment of this legislation which will identify, inventory and analyze clean coal technologies export programs within United States Government agencies including the Departments of Commerce and Energy and at the Export-Import Bank and the Overseas Private Investment Corporation. The study shall address the effectiveness of interagency coordination of export promotion and determine the feasibility of establishing an interagency commission for the purpose of promoting the export and use of clean coal technologies.

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[1] 42 U.S.C. 7651 note.

TITLE VI—STRATOSPHERIC OZONE PROTECTION

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SEC. 602. STRATOSPHERIC OZONE PROTECTION.

(a) NEW TITLE VI.—The Clean Air Act is amended by adding the following new title after title V:

"TITLE VI—STRATOSPHERIC OZONE PROTECTION

* * * * * * *

"SEC. 617.[2] INTERNATIONAL COOPERATION.

"(a) IN GENERAL.—The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this title, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

"(b) ASSISTANCE TO DEVELOPING COUNTRIES.—The Administrator in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are Parties to the Montreal Protocol and operating under article 5 of the Protocol. There are authorized to be appropriated not more than $30,000,000 to carry out this section in fiscal years 1991, 1992 and 1993 and such sums as may be necessary in fiscal years 1994 and 1995. If China and India become Parties to the Montreal Protocol, there are authorized to be appropriated not more than an additional $30,000,000 to carry out this section in fiscal years 1991, 1992, and 1993.".

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TITLE VIII—MISCELLANEOUS PROVISIONS

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SEC. 811.[3] EQUIVALENT AIR QUALITY CONTROLS AMONG TRADING NATIONS.

(a) FINDINGS.—The Congress finds that—

(1) all nations have the responsibility to adopt and enforce effective air quality standards and requirements and the United Stats, in enacting this Act, is carrying out is responsibility in this regard;

(2) as a result of complying with this Act, businesses in the United States will make significant capital investments and incur incremental costs in implementing control technology standards;

[2] 42 U.S.C. 7671p.
[3] 42 U.S.C. 7612 note.

(3) such compliance may impair the competitiveness of certain United States jobs, production, processes, and products if foreign goods are produced under less costly environmental standards and requirements than are United States goods; and

(4) mechanisms should be sought through which the United States and its trading partners can agree to eliminate or reduce competitive disadvantages.

(b) ACTION BY THE PRESIDENT.—

(1) IN GENERAL.—Within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990, the President shall submit to the Congress a report—

(A) identifying and evaluating the economic effects of—

(i) the significant air quality standards and controls required under this Act, and

(ii) the differences between the significant standards and controls required under this Act and similar standards and controls adopted and enforced by the major trading partners of the United States,

on the international competitiveness of United Stats manufacturers; and

(B) containing a strategy for addressing such economic effects through trade consultations and negotiations.

(2) ADDITIONAL REPORTING REQUIREMENTS.—(A) The evaluation required under paragraph (1)(A) shall examine the extent to which the significant air quality standards and controls required under this Act are comparable to existing internationally-agreed norms.

(B) The strategy required to be developed under paragraph (1)(B) shall include recommended options (such as the harmonization of standards and trade adjustment measures) for reducing or eliminating competitive disadvantages caused by differences in standards and controls between the United States and each of its major trading partners.

(3) PUBLIC COMMENT.—Interested parties shall be given an opportunity to submit comments regarding the evaluations and strategy required in the report under paragraph (1). The President shall take any such comment unto account in preparing the report.

(4) INTERIM REPORT.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990, the President shall submit to the Congress an interim report on the progress being made in complying with paragraph (1).

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SEC. 815.[4] ESTABLISHMENT OF PROGRAM TO MONITOR AND IMPROVE AIR QUALITY IN REGIONS ALONG THE BORDER BETWEEN THE UNITED STATES AND MEXICO.

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") is authorized, in cooperation with the Department of State and the affected States, to negotiate with representatives of Mexico to authorize a program to monitor and improve air quality in regions along

[4] 42 U.S.C. 7509a note.

the border between the United States and Mexico. The program established under this section shall not extend beyond July 1, 1995.

(b) MONITORING AND REMEDIATION.—

(1) MONITORING.—The monitoring component of the program conducted under this section shall identify and determine sources of pollutants for which national ambient air quality standards (hereinafter referred to as "NAAQS") and other air quality goals have been established in regions along the border between the United States and Mexico. any such monitoring component of the program shall include, but not be limited to, the collection of meteorological data, the measurement of air quality, the compilation of an emissions inventory, and shall be sufficient to the extent necessary to successfully support the use of a state-of-the-art mathematical air modeling analysis. Any such monitoring component of the program shall collect and produce data projecting the level of emission reductions necessary in both Mexico and the United States to bring about attainment of both primary and secondary NAAQS, and other air quality goals in regions along the border in the United States. any such monitoring component of the program shall include to the extent possible, data from monitoring programs undertaken by other parties.

(2) REMEDIATION.—The Administrator is authorized to negotiate with appropriate representatives of Mexico to develop joint remediation measures to reduce the level of airborne pollutants to achieve and maintain primary and secondary NAAQS, and other air quality goals, in regions along the border between the United States and Mexico. Such joint remediation measures may include, but not be limited to measures included in the Environmental Protection Agency's Control Techniques and Control Technology documents. Any such remediation program shall also identify those control measures implementation of which in Mexico would be expedited by the use of material and financial assistance of the United States.

(c) ANNUAL REPORTS.—The Administrator shall, each year the program authorized in this section is in operation, report to Congress on the progress of the program in bringing nonattainment areas along the border of the United States into attainment with primary and secondary NAAQS. The report issued by the Administrator under this paragraph shall include recommendations on funding mechanisms to assist in implementation of monitoring and remediation efforts.

(d) FUNDING AND PERSONNEL.—The Administrator may, where appropriate, make available, subject to the appropriations, such funds, personnel, and equipment as may be necessary to implement the provisions of this section. In those cases where direct financial assistance of the United States is provided to implement monitoring and remediation programs in Mexico, the Administrator shall develop grant agreements with appropriate representatives of Mexico to assure the accuracy and completeness of monitoring data and the performance of remediation measures which are financed by the United States. With respect to any control measures within Mexico funded by the United States, the Administrator shall, to the maximum extent practicable, utilize resources of Mexico where

such utilization would reduce costs to the United States. Such funding agreements shall include authorization for the Administrator to—

(1) review and agree to plans for monitoring and remediation;

(2) inspect premises, equipment and records to insure compliance with the agreements established under and the purposes set forth in this section; and

(3) where necessary, develop grant agreements with affected States to carry out the provisions of this section.

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j. Forest Resources Conservation and Shortage Relief Act of 1990

Partial text of title IV of Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629 at 714, approved August 20, 1990; as amended by Public Law 103–45 [Forest Resources Conservation and Shortage Relief Amendments Act of 1993; H.R. 2343], 107 Stat. 223, approved July 1, 1993; and Public Law 106–36 [Miscellaneous Trade and Technical Corrections Act of 1999; H.R. 435], 113 Stat. 127, approved June 25, 1999

AN ACT To make miscellaneous and technical changes to various trade laws.

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TITLE IV—EXPORTS OF UNPROCESSED TIMBER

SEC. 487.[1] SHORT TITLE.

This title may be cited as the "Forest Resources Conservation and Shortage Relief Act of 1990".

SEC. 488.[2] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Timber is essential to the United States.

(2) Forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation efforts.

(3) In the interest of conserving those resources, the United States has set aside millions of acres of otherwise harvestable timberlands in the western United States, representing well over 100,000,000,000 board feet of otherwise harvestable timber.

(4) In recent years, administrative, statutory, or judicial action had been taken to set aside an increased amount of otherwise harvestable timberlands for conservation purposes.

(5) In the next few months and years, additional amounts of otherwise harvestable timberlands may be set aside for conservation purposes, pursuant to the Endangered Species Act of 1973, the National Forest Management Act of 1976, or other expected statutory, administrative, and judicial actions.

(6) There is evidence there is a shortfall in the supply of unprocessed timber in the western United States.

(7) There is reason to believe that any shortfall which may already exist may worsen unless action is taken,

(8) In conjunction with the broad conservation actions expected in the next few months and years, conservation action is necessary with respect to exports of unprocessed timber.

(b) PURPOSES.—The purposes of this title are—

[1] 16 U.S.C. 620 note.
[2] 16 U.S.C. 620.

(1) to promote the conservation of forest resources in conjunction with State and Federal resources management plans, and other actions or decisions, affecting the use of forest resources.

(2) to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States;

(3) to take action necessary, to meet the goals of Article XI 2.(a) of the GATT 1994 (as defined in section 3501(1)(B) of title 19),[3] to ensure sufficient supplies of certain forest resources or products which are essential to the United States;

(4) to continue and refine the existing Federal policy of restricting the export of unprocessed timber harvested from Federal lands in the western United States; and

(5) to effect measures aimed at meeting these objectives in conformity with the obligations of the United States under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of title 19).[4]

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SEC. 491.[5] RESTRICTION ON EXPORTS OF UNPROCESSED TIMBER FROM STATE AND OTHER PUBLIC LANDS.

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(f)[6] WESTERN RED CEDAR.—Nothing in this section shall be construed to supersede section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).

(g)[5] PRESIDENTIAL AUTHORITY.—The President is authorized, after suitable notice and a public comment period of not less than 120 days, to suspend the provisions of this section if a panel of experts has reported to the Dispute Settlement Body of the World Trade Organization (as the term "World Trade Organization" is defined in section 2(8) of the Uruguay Round Agreements Act),[7] or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that the provisions of this section are in violation of, or inconsistent with, United States obligations under that trade agreement.

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[3] Sec. 1002(a)(1)(A) of the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106–36; 113 Stat. 133) struck out "General Agreement on Tariffs and Trade" and inserted in lieu thereof "GATT 1994 (as defined in section 3501(1)(B) of title 19)".

[4] Sec. 1002(a)(1)(B) of the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106–36; 113 Stat. 133) struck out "General Agreement on Tariffs and Trade" and inserted in lieu thereof "WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of title 19)".

[5] 16 U.S.C. 620c. Sec. 2(3) of Public Law 103–45 (107 Stat. 224) redesignated subsecs. (e) through (j) of this section as subsecs. (g) through (l), respectively.

[6] Sec. 2(4) of Public Law 103–45 (107 Stat. 224) added subsec. (f).

[7] Sec. 1002(a)(2) of the Miscellaneous Trade and Technical Correction Acts of 1999 (Public Law 106–36; 113 Stat. 133) struck out "Contracting Parties to the General Agreement on Tariffs and Trade" and inserted in lieu thereof "Dispute Settlement Body of the World Trade Organization (as the term 'World Trade Organization' is defined in section 2(8) of the Uruguay Round Agreements Act)".

(h)[5] REMOVAL OR MODIFICATIONS OF STATE RESTRICTIONS.—Based upon a determination that it is in the national economic interest, the President may remove or modify any prohibition on exports from public lands in a State if that State petitions the President to remove or modify such prohibition.

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(k)[5] SUSPENSION OF PROHIBITIONS.—Notwithstanding any other provision of this section, beginning on January 1, 1998, and annually thereafter, if the President finds, upon review of the purposes and implementation of this title, that the prohibitions on exports required by subsection (a) no longer promote the purposes of this title, then the President may suspend such prohibitions, except that such suspension shall not take effect until 90 days after the President notifies the Congress of such finding.

(l)[5] EXISTING AUTHORITY NOT AFFECTED.—Nothing in this title shall be construed to limit the authority of the President or the United States Trade Representative to take action authorized by law to respond appropriately to any measures taken by a foreign government in connection with this title.

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SEC. 498.[8] EASTERN HARDWOODS STUDY.

(a) STUDY.—The Secretary of Commerce, in conjunction with the Secretary of Agriculture and the Secretary of the Interior, shall conduct a study of the export from the United States, during the 2-year period beginning on January 1, 1991, of unprocessed hardwood timber harvested from Federal lands or public lands east of the 100th meridian. In order to carry out the provisions of this section—

(1) the Secretary of Commerce shall require each person exporting such timber from the United States to declare, in addition to the information normally required in the Shipper's Export Declarations, the State in which the timber was grown and harvested; and

(2) the Secretary of Agriculture and the Secretary of the Interior shall ensure that all hardwood saw timber harvested from Federal lands east of the 100th meridian is marked in such a manner as to make it readily identifiable at all times before its manufacture, and shall take such steps as each Secretary considers appropriate to ensure that such markings are not altered or destroyed before manufacturing.

(b) REPORT TO CONGRESS.—Not later than April 1, 1993, the Secretary of Commerce shall submit to the Committees on Agriculture, Interior and Insular Affairs, and Foreign Affairs[9] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the volume and value of unprocessed timber grown and harvested from Federal lands or public lands east of the 100th meridian that is exported

[8] 16 U.S.C. 620i.

[9] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

from the United States during the 2-year period beginning on January 1, 1991, the country to which such timber is exported, and the State in which such timber was grown and harvested.

SEC. 499.[10] AUTHORITY OF EXPORT ADMINISTRATION ACT OF 1979.

Nothing in this title shall be construed to—

(1) prejudice the outcome of pending or prospective petitions filed under, or

(2) warrant the exercise of the authority contained in, section 7 of the Export Administration Act of 1979 with respect to the export of unprocessed timber.

[10] 16 U.S.C. 620j.

k. Pesticide Monitoring Improvements Act of 1988 [1]

Partial text of Title IV of Public Law 100–418 [H.R. 4848], 102 Stat. 1107 at 1411, approved August 23, 1988

AN ACT To enhance the competitiveness of American industry, and for other purposes.

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SUBTITLE G—PESTICIDE MONITORING IMPROVEMENTS

SEC. 4701.[2] SHORT TITLE.

This subtitle may be cited as the "Pesticide Monitoring Improvements Act of 1988".

SEC. 4702. * * *

SEC. 4703.[3] FOREIGN PESTICIDE INFORMATION.

(a) COOPERATIVE AGREEMENTS.—The Secretary of Health and Human Services shall enter into cooperative agreements with the governments of the countries which are the major sources of food imports into the United States subject to pesticide residue monitoring by the Food and Drug Administration for the purpose of improving the ability of the Food and Drug Administration to assure compliance with the pesticide tolerance requirements of the Federal Food, Drug, and Cosmetic Act with regard to imported food.

(b) INFORMATION ACTIVITIES.—

(1) The cooperative agreements entered into under subsection (a) with governments of foreign countries shall specify the action to be taken by the parties to the agreements to accomplish the purpose described in subsection (a), including the means by which the governments of the foreign countries will provide to the Secretary of Health and Human Services current information identifying each of the pesticides used in the production, transportation, and storage of food products imported from production regions of such countries into the United States.

(2) In the case of a foreign country with which the Secretary is unable to enter into an agreement under subsection (a) or for which the information provided under paragraph (1) is insufficient to assure an effective pesticide monitoring program, the Secretary shall, to the extent practicable, obtain the information described in paragraph (1) with respect to such country from other Federal or international agencies or private sources.

(3) The Secretary of Health and Human Services shall assure that appropriate offices of the Food and Drug Administration which are engaged in the monitoring of imported food for

[1] This Act may also be found in *Legislation on Foreign Relations Through 2005*, vol. I–B.
[2] 21 U.S.C. 1401 note.
[3] 21 U.S.C. 1402.

pesticide residues receive the information obtained under paragraph (1) or (2).

(4) The Secretary of Health and Human Services shall make available any information obtained under paragraph (1) or (2) to State agencies engaged in the monitoring of imported food for pesticide residues other than information obtained from private sources the disclosure of which to such agencies is restricted.

(c) COORDINATION WITH OTHER AGENCIES.—The Secretary of Health and Human Services shall—

(1) notify in writing the Department of Agriculture, the Environmental Protection Agency, and the Department of State at the initiation of negotiations with a foreign country to develop a cooperative agreement under subsection (a); and

(2) coordinate the activities of the Department of Health and Human Services with the activities of those departments and agencies, as appropriate, during the course of such negotiations.

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services shall report to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Labor and Human Resources of the Senate and the House of Representatives on the activities undertaken by the Secretary to implement this section. The report shall be made available to appropriate Federal and State agencies and to interested persons.

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l. Global Climate Protection Act of 1987

Partial text of Public Law 100–204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989; H.R. 1777], 101 Stat. 1331 at 1407, approved December 22, 1987; as amended by Public Law 103–199 [FRIENDSHIP Act; H.R. 3000], 107 Stat. 2317, approved December 17, 1993

AN ACT To authorize appropriations for fiscal years 1988 and 1989 for the Department of State, the U.S. Information Agency, the Voice of America, the Board for International Broadcasting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE XI—GLOBAL CLIMATE PROTECTION [1]

SEC. 1101. SHORT TITLE.

This title may be cited as the "Global Climate Protection Act of 1987".

SEC. 1102. FINDINGS.

The Congress finds as follows:

(1) There exists evidence that manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long-term and substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect.

(2) By early in the next century, an increase in Earth temperature could—

(A) so alter global weather patterns as to have an effect on existing agricultural production and on the habitability of large portions of the Earth; and

(B) cause thermal expansion of the oceans and partial melting of the polar ice caps and glaciers, resulting in rising sea levels.

(3) Important research into the problem of climate change is now being conducted by various United States Government and international agencies, and the continuation and intensification of those efforts will be crucial to the development of an effective United States response.

(4) While the consequences of the greenhouse effect may not be fully manifest until the next century, ongoing pollution and deforestation may be contributing now to an irreversible process. Necessary actions must be identified and implemented in time to protect the climate.

(5) The global nature of this problem will require vigorous efforts to achieve international cooperation aimed at minimizing

[1] 15 U.S.C. 2901 note.

and responding to adverse climate change; such international cooperation will be greatly enhanced by United States leadership. A key step in international cooperation will be the meeting of the Governing Council of the United Nations Environment Program, scheduled for June 1989, which will seek to determine a direction for worldwide efforts to control global climate change.

(6) Effective United States leadership in the international arena will depend upon a coordinated national policy.

SEC. 1103. MANDATE FOR ACTION ON THE GLOBAL CLIMATE.

(a) GOALS OF UNITED STATES POLICY.—United States policy should seek to—

(1) increase worldwide understanding of the greenhouse effect and its environmental and health consequences;

(2) foster cooperation among nations to develop more extensive and coordinated scientific research efforts with respect to the greenhouse effect;

(3) identify technologies and activities to limit mankind's adverse effect on the global climate by—

(A) slowing the rate of increase of concentrations of greenhouse gases in the atmosphere in the near term; and

(B) stabilizing or reducing atmospheric concentrations of greenhouse gases over the long term; and

(4) work toward multilateral agreements.

(b) FORMULATION OF UNITED STATES POLICY.—The President, through the Environmental Protection Agency, shall be responsible for developing and proposing to Congress a coordinated national policy on global climate change. Such policy formulation shall consider research findings of the Committee on Earth Sciences of the Federal Coordinating Council on Science and Engineering Technology, the National Academy of Sciences, the National Oceanic and Atmospheric Administration, the National Science Foundation, the National Aeronautic and Space Administration, the Department of Energy, the Environmental Protection Agency, and other organizations engaged in the conduct of scientific research.

(c) COORDINATION OF UNITED STATES POLICY IN THE INTERNATIONAL ARENA.—The Secretary of State shall be responsible to coordinate those aspects of United States policy requiring action through the channels of multilateral diplomacy, including the United Nations Environment Program and other international organizations. In the formulation of these elements of United States policy, the Secretary of State shall, under the direction of the President, work jointly with the Administrator of the Environmental Protection Agency and other United States agencies concerned with environmental protection, consistent with applicable Federal law.

SEC. 1104. REPORT TO CONGRESS.

Not later than 24 months after the date of enactment of this Act, the Secretary of State and the Administrator of the Environmental Protection Agency shall jointly submit to all committees of jurisdiction in the Congress a report which shall include—

(1) a summary analysis of current international scientific understanding of the greenhouse effect, including its environmental and health consequences;

(2) an assessment of United States efforts to gain international cooperation in limiting global climate change; and

(3) a description of the strategy by which the United States intends to seek further international cooperation to limit global climate change.

SEC. 1105. INTERNATIONAL YEAR OF GLOBAL CLIMATE PROTECTION.

In order to focus international attention and concern on the problem of global warming, and to foster further work on multilateral treaties aimed at protecting the global climate, the Secretary of State shall undertake all necessary steps to promote, within the United Nations system, the early designation of an International Year of Global Climate Protection.

SEC. 1106. CLIMATE PROTECTION AND UNITED STATES RELATIONS WITH THE INDEPENDENT STATES OF THE FORMER SOVIET UNION.[2]

In recognition of the respective leadership roles of the United States and the independent states of the former Soviet Union[3] in the international arena, and of the extent to which they are[4] producers of atmospheric pollutants, the Congress urges that the President accord the problem of climate protection a high priority on the agenda of United States relations with the independent states.[5]

* * * * * * *

[2] Sec. 603(1)(A) of the FRIENDSHIP Act (Public Law 103–45; 107 Stat. 2327) struck out "**UNITED STATES-SOVIET RELATIONS**" in the section heading, and inserted in lieu thereof "**UNITED STATES RELATIONS WITH THE INDEPENDENT STATES OF THE FORMER SOVIET UNION**".

[3] Sec. 603(1)(B) of the FRIENDSHIP Act (Public Law 103–45; 107 Stat. 2327) struck out "Soviet Union" and inserted in lieu thereof "independent states of the former Soviet Union".

[4] Sec. 603(1)(C) of the FRIENDSHIP Act (Public Law 103–45; 107 Stat. 2327) struck out "their joint role as the world's two major" and inserted in lieu thereof "the extent to which they are".

[5] Sec. 603(1)(D) of the FRIENDSHIP Act (Public Law 103–45; 107 Stat. 2327) struck out "United States-Soviet relations" and inserted in lieu thereof "United States relations with the independent states".

m. International Environmental Protection Act of 1983

Partial text of Public Law 98–164 [H.R. 2915], 97 Stat. 1017 at 1045, approved November 22, 1983

AN ACT To authorize appropriations for fiscal years 1984 and 1985 for the Department of State, the United States Information Agency, the Board for International Broadcasting, the Inter-American Foundation, and the Asia Foundation, to establish the National Endowment for Democracy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE VII—INTERNATIONAL ENVIRONMENTAL PROTECTION

SHORT TITLE

SEC. 701.[1] This title may be cited as the "International Environmental Protection Act of 1983".

ENDANGERED SPECIES

SEC. 702.[2] * * *

ENVIRONMENTAL EXCHANGES

SEC. 703. (a)[3] * * *

(b) Of the amount by which expenditures for the Fulbright Academic Exchange Programs, for the Humphrey Fellowship Program, and for the International Visitor Program for each of the fiscal years 1984 and 1985 exceeds the expenditures for these programs in fiscal year 1982, 5 percent shall be used to finance programs authorized by the amendment made by subsection (a) of this section.

INTERNATIONAL WILDLIFE RESOURCES CONSERVATION

SEC. 704. (a) The Secretary of State and the Secretary of the Interior, in consultation with the heads of other concerned Federal agencies, shall undertake a review of the effectiveness of existing United States international activities relating to the conservation of international wildlife resources and shall develop recommendations to substantially improve existing capabilities. On the basis of this review, the Secretary of State and the Secretary of the Interior shall, within six months after the date of enactment of this Act, transmit to the chairman of the Committee on Foreign Relations of

[1] 22 U.S.C. 2151 note.

[2] Sec. 702 amended the Foreign Assistance Act of 1961 by adding a new sec. 119 concerning endangered species.

[3] Subsec. (a) amended sec. 102(b) of the Mutual Educational and Cultural Exchange Act of 1961, authorizing the President to foster exchanges between the United States and other countries of experts in the fields of environmental science and environmental management.

the Senate and to the chairman of the Committee on Foreign Affairs[4] of the House of Representatives a report—

(1) describing the programs of all Federal agencies concerned with international wildlife resources conservation programs;

(2) recommending an integrated United States plan of action to assist foreign governments and international organizations in conserving wildlife, taking into account the projections in the Global 2000 study;

(3) analyzing the extent to which the Department of State and other relevant Federal agencies are currently involved in—

(A) the establishment of effective liaison with international, national, and local governmental and nongovernmental agencies, organizations, and persons involved in or knowledgeable of wildlife resources conservation abroad;

(B) the provisions of expert international wildlife resources conservation staff assistance and advice to United States Embassies, Agency for International Development missions, United States overseas military installations, and other United States governmental or private interests;

(C) facilitating the provision of advice or assistance to governments, agencies, or organizations which wish to enhance their wildlife resources conservation capabilities abroad;

(D) the acquisition and dissemination of reliable data or information concerning—

(i) the conservation status of species of wild fauna and flora;

(ii) the conservation status of lands and waters upon which wild fauna and flora depend;

(iii) existing or proposed laws proclamations, statutes, orders, regulations, or policies which pertain to the taking, collecting, import, or export of wildlife resources, or to other aspects of international wildlife resources conservation;

(iv) the potential impact upon wildlife resources abroad of actions authorized, funded or carried out by the United States Government; and

(v) opportunities to initiate or enhance the efficiency of international wildlife resources conservation by the transfer of United States expertise through technical assistance, training, exchange of publications, or other means;

(E) maintaining liaison, for the purposes of providing information needed to make sound conservation decisions, with persons responsible for implementing actions abroad which are authorized, funded, or carried out by Federal agencies or other persons under the jurisdiction of the United States; and

(F) the performance of any other activities which may be relevant to the United States obligations, authorities, or

[4] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

interests in the field of international wildlife resources conservation;

(4) recommending steps which could be taken to increase the capabilities of the Department of State and other relevant Federal agencies in carrying out the functions described in paragraph (3), including estimates of the costs of taking those steps and estimates of the personnel required to increase those capabilities; and

(5) analyzing the desirability of delineating geographic regions abroad (which would be known as "International Wildlife Resources Conservation Regions") and assigning qualified members of the Foreign Service to be responsible for wildlife resource conservation issues in those regions.

n. Environmental Effects Abroad of Major Federal Actions

Executive Order 12114, January 4, 1979, 44 F.R. 1957, 42 U.S.C. 4321 note

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

SECTION 1

1–1. *Purpose and Scope*. The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and the Marine Protection Research and Sanctuaries Act (16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.) and the Deepwater Port Act (33 U.S.C. 1501 et seq.) consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

SECTION 2

2–1. *Agency Procedures*. Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2–2. *Information Exchange*. To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2–3. *Actions Included*. Agencies in their procedures under Section 2–1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2–4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2–4. *Applicable Procedures*. (a) There are the following types of documents to be used in connection with actions described in Section 2–3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one (or more) more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2–4(a), with respect to actions described in Section 2–3, as follows:

(i) for effects described in Section 2–3(a), an environmental impact statement described in Section 2–4(a)(i);

(ii) for effects described in Section 2–3(b), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2–3(c), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2–3(d), a document described in Section 2–4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2–4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act (43 U.S.C. 4321 et seq.) and other environmental laws, including the Marine Protection Research and Sanctuaries Act (16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.), and the Deepwater Port Act (33 U.S.C. 1501 et seq.), consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2–5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2–1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3–2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2–5. *Exemptions and Considerations*. (a) Notwithstanding Section 2–3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2–1 implementing Section 2–4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2–1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2–5 do not apply to actions described in Section 2–3(a) unless permitted by law.

SECTION 3

3–1. *Rights of Action*. This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3–2. *Foreign Relations*. The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3–3. *Multi-Agency Actions*. Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3–4. *Certain Terms*. For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2–5(a)(v) does not mean or include direct loans to finance exports.

3–5. *Multiple Impacts*. If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

M. AVIATION, SPACE, AND INTERNATIONAL SCIENTIFIC COOPERATION

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1. Aviation Security

a. 49 United States Code

NOTE.—Public Law 103–272 (108 Stat. 745) repealed several Public Laws relating to transportation, aviation and airport security, and consolidated their substance into 49 U.S.C.

SUBTITLE VII—AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

SUBPART I—GENERAL

CHAPTER 401—GENERAL PROVISIONS

* * * * * * *

§ 40105. International negotiations, agreements, and obligations

(a) ADVICE AND CONSULTATION.—The Secretary of State shall advise the Administrator of the Federal Aviation Administration and the Secretaries of Transportation and Commerce, and consult with them as appropriate, about negotiations for an agreement with a government of a foreign country to establish or develop air navigation, including air routes and services. The Secretary of Transportation shall consult with the Secretary of State in carrying out this part to the extent this part is related to foreign air transportation.

(b) ACTIONS OF SECRETARY AND ADMINISTRATOR.—(1) In carrying out this part, the Secretary of Transportation and the Administrator—

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation

disapproves the agreement because it is not in the public interest. Section 40106(b)(2) of this title applies to this subsection.

(c) CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.—In carrying out section 40101(e) of this title, the Secretaries of State and Transportation, to the maximum extent practicable, shall consult on broad policy goals and individual negotiations with—

(1) the Secretaries of Commerce and Defense;

(2) airport operators;

(3) scheduled air carriers;

(4) charter air carriers;

(5) airline labor;

(6) consumer interest groups;

(7) travel agents and tour organizers; and

(8) other groups, institutions, and governmental authorities affected by international aviation policy.

(d) CONGRESSIONAL OBSERVERS AT INTERNATIONAL AVIATION NEGOTIATIONS.—The President shall grant to at least one representative of each House of Congress the privilege of attending international aviation negotiations as an observer if the privilege is requested in advance in writing.

§ 40106. Emergency powers

(a) DEVIATIONS FROM REGULATIONS.—Appropriate military authority may authorize aircraft of the armed forces of the United States to deviate from air traffic regulations prescribed under section 40103(b)(1) and (2) of this title when the authority decides the deviation is essential to the national defense because of a military emergency or urgent military necessity. The authority shall—

(1) give the Administrator of the Federal Aviation Administration prior notice of the deviation at the earliest practicable time; and

(2) to the extent time and circumstances allow, make every reasonable effort to consult with the Administrator and arrange for the deviation in advance on a mutually agreeable basis.

(b) SUSPENSION OF AUTHORITY.—(1) When the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of—

(A) an air carrier or foreign air carrier to provide foreign air transportation to an from that foreign country;

(B) a person to operate aircraft in foreign air commerce to and from that foreign country;

(C) a foreign air carrier to provide foreign air transportation between the United states and another country that maintains air service with the foreign country; and

(D) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

(2) The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. Notwithstanding section 40105(b) of this title, the authority of the President to suspend rights under this subsection is a condition to a certificate of public convenience and necessity, air carrier operating certificate, foreign air carrier or foreign aircraft permit, or foreign air carrier operating specification issued by the Secretary of Transportation under this part.

(3) An air carrier or foreign air carrier may not provide foreign air transportation, and a person may not operate aircraft in foreign air commerce, in violation of a suspension of authority under this subsection.

§ 40107. Presidential transfers

(a) GENERAL AUTHORITY.—The President may transfer to the Administrator of the Federal Aviation Administration a duty, power, activity, or facility of a department, agency, or instrumentality of the executive branch of the United States Government, or an officer or unit of a department, agency, or instrumentality of the executive branch, related primarily to selecting, developing, testing, evaluating, establishing, operating, or maintaining a system, procedure, facility, or device for safe and efficient air navigation and air traffic control. In making a transfer, the President may transfer records and property and make officers and employees from the department, agency, instrumentality, or unit available to the Administrator.

(b) DURING WAR.—If war occurs, the President by executive order may transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.

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SUBPART III—SAFETY

* * * * * * *

CHAPTER 449—SECURITY

SUBCHAPTER I—REQUIREMENTS

§ 44901. Screening passengers and property

(a)[1] IN GENERAL.—The Under Secretary of Transportation for Security shall provide for the screening of all passengers and prop-

[1] Sec. 110(b) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 614) struck out subsecs. (a) and (b), redesignated subsec. (c) as subsec. (h), and added new subsecs. (a) through (g).

Previously, subsecs. (a) and (b) read as follows:

"(a) GENERAL REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be car-

Continued

erty, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. In the case of flights and flight segments originating in the United States, the screening shall take place before boarding and shall be carried out by a Federal Government employee (as defined in section 2105 of title 5, United States Code), except as otherwise provided in section 44919 or 44920 and except for identifying passengers and baggage for screening under the CAPPS and known shipper programs and conducting positive bag-match programs.

(b)[1] SUPERVISION OF SCREENING.—All screening of passengers and property at airports in the United States where screening is required under this section shall be supervised by uniformed Federal personnel of the Transportation Security Administration who shall have the power to order the dismissal of any individual performing such screening.

(c)[1] CHECKED BAGGAGE.—A system must be in operation to screen all checked baggage at all airports in the United States as soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act.

(d)[1] EXPLOSIVE DETECTION SYSTEMS.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall take all necessary action to ensure that—

(A) explosive detection systems are deployed as soon as possible to ensure that all United States airports described in section 44903(c) have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002, and that as soon as such systems are in place at an airport, all checked baggage at the airport is screened by those systems; and

(B) all systems deployed under subparagraph (A) are fully utilized; and

(C) if explosive detection equipment at an airport is unavailable, all checked baggage is screened by an alternative means.

(2)[2] DEADLINE.—

(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

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ried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier.

"(b) AMENDING REGULATIONS.—Notwithstanding subsection (a) of this section, the Administrator may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation.".

[2] Sec. 425 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2186) added para. (2).

(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

(ii) the need to ensure that such installations and modifications are effective; and

(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.

(e)[1] MANDATORY SCREENING WHERE EDS NOT YET AVAILABLE.—As soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act and until the requirements of subsection (b)(1)(A) are met, the Under Secretary shall require alternative means for screening any

piece of checked baggage that is not screened by an explosive detection system. Such alternative means may include 1 or more of the following:

(1) A bag-match program that ensures that no checked baggage is placed aboard an aircraft unless the passenger who checked the baggage is aboard the aircraft.

(2) Manual search.

(3) Search by canine explosive detection units in combination with other means.

(4) Other means or technology approved by the Under Secretary.

(f)[1] CARGO DEADLINE.—A system must be in operation to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft in air transportation and intrastate air transportation as soon as practicable after the date of enactment of the Aviation and Transportation Security Act.

(g)[1] DEPLOYMENT OF ARMED PERSONNEL.—

(1) IN GENERAL.—The Under Secretary shall order the deployment of law enforcement personnel authorized to carry firearms at each airport security screening location to ensure passenger safety and national security.

(2) MINIMUM REQUIREMENTS.—Except at airports required to enter into agreements under subsection (c), the Under Secretary shall order the deployment of at least 1 law enforcement officer at each airport security screening location. At the 100 largest airports in the United States, in terms of annual passenger enplanements for the most recent calendar year for which data are available, the Under Secretary shall order the deployment of additional law enforcement personnel at airport security screening locations if the Under Secretary determines that the additional deployment is necessary to ensure passenger safety and national security.

(h)[1] EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Under Secretary—[3]

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Under Secretary[3] decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

§ 44902. Refusal to transport passengers and property

(a) MANDATORY REFUSAL.—The Under Secretary[3] of Transportation for Security[4] shall prescribe regulations requiring an air

[3] Sec. 101(f)(7) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) struck out "Administrator" and inserted in lieu thereof "Under Secretary".

[4] Sec. 101(f)(9) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) struck out "of the Federal Aviation Administration" and inserted in lieu thereof "of Transportation for Security".

carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

(b) PERMISSIVE REFUSAL.—Subject to regulations of the Under Secretary,[3] an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.

(c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry passengers or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier is deemed to include an agreement that the passenger or property will not be carried if consent to search the passenger or property for a purpose referred to in this section is not given.

§ 44903. Air transportation security

(a) DEFINITION.—In this section, "law enforcement personnel" means individuals—

(1) authorized to carry and use firearms;

(2) vested with the degree of the police power of arrest the Under Secretary[3] of Transportation for Security[4] considers necessary to carry out this section; and

(3) identifiable by appropriate indicia of authority.

(b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Under Secretary[3] shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy. When prescribing a regulation under this subsection, the Under Secretary[3] shall—

(1) consult with the Secretary of Transportation, the Attorney General, the heads of other departments, agencies, and instrumentalities of the United States Government, and State and local authorities;

(2) consider whether a proposed regulation is consistent with—

(A) protecting passengers; and

(B) the public interest in promoting air transportation and intrastate air transportation;

(3) to the maximum extent practicable, require a uniform procedure for searching and detaining passengers and property to ensure—

(A) their safety; and

(B) courteous and efficient treatment by an air carrier, an agent or employee of an air carrier, and Government, State, and local law enforcement personnel carrying out this section; and

(4) consider the extent to which a proposed regulation will carry out this section.

(c) SECURITY PROGRAMS.—(1) The Under Secretary[3] shall prescribe regulations under subsection (b) of this section that require each operator of an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers. The regulations shall authorize the operator to use the services of qualified State, local, and private law enforcement personnel. When the Under Secretary[3] decides, after being notified by an operator in the form the Under Secretary[3] prescribes, that not enough qualified State, local, and private law enforcement personnel are available to carry out subsection (b), the Under Secretary[3] may authorize the operator to use, on a reimbursable basis, personnel employed by the Under Secretary,[3] or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel. When deciding whether additional personnel are needed, the Under Secretary[3] shall consider the number of passengers boarded at the airport, the extent of anticipated risk of criminal violence or aircraft piracy at the airport or to the air carrier aircraft operations at the airport, and the availability of qualified State or local law enforcement personnel at the airport.

(2)(A) The Under Secretary[3] may approve a security program of an airport operator, or an amendment in an existing program, that incorporates a security program of an airport tenant (except an air carrier separately complying with part 108 or 129 of title 14, Code of Federal Regulations) having access to a secured area of the airport, if the program or amendment incorporates—

(i) the measures the tenant will use, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, to carry out the security requirements imposed by the Under Secretary[3] on the airport operator under the access control system requirements of section 107.14 of title 14, Code of Federal Regulations, or under other requirements of part 107 of title 14; and

(ii) the methods the airport operator will use to monitor and audit the tenant's compliance with the security requirements and provides that the tenant will be required to pay monetary penalties to the airport operator if the tenant fails to carry out a security requirement under a contractual provision or requirement imposed by the airport operator.

(B) If the Under Secretary[3] approves a program or amendment described in subparagraph (A) of this paragraph, the airport operator may not be found to be in violation of a requirement of this subsection or subsection (b) of this section when the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for the violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(C)[5] MAXIMUM USE OF CHEMICAL AND BIOLOGICAL WEAPON DETECTION EQUIPMENT.—The Secretary of Transportation may require airports to maximize the use of technology and equipment that is designed to detect or neutralize potential chemical or biological weapons.

(3)[6] PILOT PROGRAMS.—The Administrator shall establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control and other security protections for closed or secure areas of the airports. Such technology may include biometric or other technology that ensures only authorized access to secure areas.

(d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE ARRESTS.—With the approval of the Attorney General and the Secretary of State, the Secretary of Transportation may authorize an individual who carries out air transportation security duties—

(1) to carry firearms; and

(2) to make arrests without warrant for an offense against the United States committed in the presence of the individual or for a felony under the laws of the United States, if the individual reasonably believes the individual to be arrested has committed or is committing a felony.

(e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Under Secretary[3] has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under section 46502 of this title from the moment all external doors of the aircraft are closed following boarding until those doors are opened to allow passengers to leave the aircraft. When requested by the Under Secretary,[3] other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection.

(f)[7] GOVERNMENT AND INDUSTRY CONSORTIA.—The Under Secretary[3] may establish at airports such consortia of government and aviation industry representatives as the Under Secretary[3] may designate to provide advice on matters related to aviation security and safety. Such consortia shall not be considered Federal advisory committees for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

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[5] Sec. 120 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 629) amended and restated subpara. (C). As added by sec. 6 of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2520), subpara. (C) previously read as follows:

"(C) MANUAL PROCESS.—

"(i) IN GENERAL.—The Administrator shall issue an amendment to air carrier security programs to require a manual process, at explosive detection system screen locations in airports where explosive detection equipment is underutilized, which will augment the Computer Assisted Passenger Prescreening System by randomly selecting additional checked bags for screening so that a minimum number of bags, as prescribed by the Administrator are examined."

"(ii) LIMITATION ON STATUTORY CONSTRUCTION.—Clause (i) shall not be construed to limit the ability of the Under Secretary[3] to impose additional security measures on an air carrier or a foreign air carrier when a specific threat warrants such additional measures.

"(iii) MAXIMUM USE OF EXPLOSIVE DETECTION EQUIPMENT.—In prescribing the minimum number of bags to be examined under clause (i), the Administrator shall seek to maximize the use of the explosive detection equipment.".

[6] Sec. 106(d) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 610) added para. (3).

[7] Sec. 717 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106–181; 114 Stat. 163) added subsec. (f).

(g)[8] IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.—

(1) ENFORCEMENT.—

(A) UNDER SECRETARY[3] TO PUBLISH SANCTIONS.—The Under Secretary[3] shall publish in the Federal Register a list of sanctions for use as guidelines in the discipline of employees for infractions of airport access control requirements. The guidelines shall incorporate a progressive disciplinary approach that relates proposed sanctions to the severity or recurring nature of the infraction and shall include measures such as remedial training, suspension from security-related duties, suspension from all duties without pay, and termination of employment.

(B) USE OF SANCTIONS.—Each airport operator, air carrier, and security screening company shall include the list of sanctions published by the Under Secretary[3] in its security program. The security program shall include a process for taking prompt disciplinary action against an employee who commits an infraction of airport access control requirements.

(2) IMPROVEMENTS.—The Under Secretary[3] shall—

(A) work with airport operators and air carriers to implement and strengthen existing controls to eliminate airport access control weaknesses;[9]

(B) require airport operators and air carriers to develop and implement comprehensive and recurring training programs that teach employees their roles in airport security, the importance of their participation, how their performance will be evaluated, and what action will be taken if they fail to perform;

(C) require airport operators and air carriers to develop and implement programs that foster and reward compliance with airport access control requirements and discourage and penalize noncompliance in accordance with guidelines issued by the Under Secretary[3] to measure employee compliance;

(D)[10] on an ongoing basis, assess and test for compliance with access control requirements, report annually findings of the assessments, and assess the effectiveness of penalties in ensuring compliance with security procedures and take any other appropriate enforcement actions when noncompliance is found;

(E) improve and better administer the Under Secretary's[11] security database to ensure its efficiency, reliability, and usefulness for identification of systemic problems and allocation of resources;

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[8] Sec. 4 of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2520) added subsec. (g).

[9] Sec. 106(c)(1) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 609) struck out "weaknesses by January 31, 2001" and inserted in lieu thereof "weaknesses".

[10] Sec. 106(c)(2) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 609) amended and restated subpara. (D), which previously read as follows:

"(D) assess and test for compliance with access control requirements, report findings, and assess penalties or take other appropriate enforcement actions when noncompliance is found;".

[11] Sec. 101(f)(8) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) struck out "Administrator's" and inserted in lieu thereof "Under Secretary's".

(F) improve the execution of the Under Secretary's[11] quality control program;[12] and

(G)[13] work with airport operators to strengthen access control points in secured areas (including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas) to ensure the security of passengers and aircraft and consider the deployment of biometric or similar technologies that identify individuals based on unique personal characteristics.

(h)[14] IMPROVED AIRPORT PERIMETER ACCESS SECURITY.—

(1) IN GENERAL.—The Under Secretary, in consultation with the airport operator and law enforcement authorities, may order the deployment of such personnel at any secure area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier aircraft operations at the airport, or to meet national security concerns.

(2) SECURITY OF AIRCRAFT AND GROUND ACCESS TO SECURE AREAS.—In determining where to deploy such personnel, the Under Secretary shall consider the physical security needs of air traffic control facilities, parked aircraft, aircraft servicing equipment, aircraft supplies (including fuel), automobile parking facilities within airport perimeters or adjacent to secured facilities, and access and transition areas at airports served by other means of ground or water transportation.

(3) DEPLOYMENT OF FEDERAL LAW ENFORCEMENT PERSONNEL.—The Secretary may enter into a memorandum of understanding or other agreement with the Attorney General or the head of any other appropriate Federal law enforcement agency to deploy Federal law enforcement personnel at an airport in order to meet aviation safety and security concerns.

(4) AIRPORT PERIMETER SCREENING.—The Under Secretary—

(A) shall require, as soon as practicable after the date of enactment of this subsection, screening or inspection of all individuals, goods, property, vehicles, and other equipment before entry into a secured area of an airport in the United States described in section 44903(c);

(B) shall prescribe specific requirements for such screening and inspection that will assure at least the same level of protection as will result from screening of passengers and their baggage;

(C) shall establish procedures to ensure the safety and integrity of—

(i) all persons providing services with respect to aircraft providing passenger air transportation or intra-

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[12] Sec. 106(c)(3) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 610) struck out "program by January 31, 2001;" and inserted in lieu thereof "program;".

[13] Sec. 106(c)(4) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 610) struck out subpara. (G) and inserted in lieu thereof a new subpara. (G). Previously, subpara. (G) read as follows:

"(G) require airport operators and air carriers to strengthen access control points in secured areas (including air traffic control operations areas) to ensure the security of passengers and aircraft by January 31, 2001.".

[14] Sec. 106(d) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 608) added subsec. (h).

state air transportation and facilities of such persons at an airport in the United States described in section 44903(c);

(ii) all supplies, including catering and passenger amenities, placed aboard such aircraft, including the sealing of supplies to ensure easy visual detection of tampering; and

(iii) all persons providing such supplies and facilities of such persons;

(D) shall require vendors having direct access to the airfield and aircraft to develop security programs; and

(E) may provide for the use of biometric or other technology that positively verifies the identity of each employee and law enforcement officer who enters a secure area of an airport.

(i)[15] AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.—

(1) IN GENERAL.—If the Under Secretary,[16] after receiving the recommendations of the National Institute of Justice, determines, with the approval of the Attorney General and the Secretary of State, that it is appropriate and necessary and would effectively serve the public interest in avoiding air piracy, the Under Secretary[3] may authorize members of the flight deck crew on any aircraft providing air transportation or intrastate air transportation to carry a less-than-lethal weapon while the aircraft is engaged in providing such transportation.

(2) USAGE.—If the Under Secretary[16] grants authority under paragraph (1) for flight deck crew members to carry a less-than-lethal weapon while engaged in providing air transportation or intrastate air transportation, the Under Secretary[16] shall—

(A) prescribe rules requiring that any such crew member be trained in the proper use of the weapon; and

(B) prescribe guidelines setting forth the circumstances under which such weapons may be used.

(3)[17] REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.

(j)[18] SHORT-TERM ASSESSMENT AND DEPLOYMENT OF EMERGING SECURITY TECHNOLOGIES AND PROCEDURES.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall recommend to airport operators, within 6

[15] Sec. 126(b) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 632) added subsec. (i), originally as a second subsec. (h). Subsequently, sec. 1406(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2307) redesignated the second subsec. (h) as subsec. (i).

[16] Sec. 1405(b) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2307) struck out "Secretary" and inserted in lieu thereof "Under Secretary".

[17] Sec. 1405(a) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2307) added para. (3).

[18] Sec. 136 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 636) added subsec. (j), originally as subsec. (i). Subsequently, sec. 1406(1) of the Homeland Security Act of 2002 (Public Law 107–296; 115 Stat. 2307) redesignated subsec. (i) as subsec. (j).

months after the date of enactment of the Aviation and Transportation Security Act, commercially available measures or procedures to prevent access to secure airport areas by unauthorized persons. As part of the 6-month assessment, the Under Secretary for Transportation Security shall—

(A) review the effectiveness of biometrics systems currently in use at several United States airports, including San Francisco International;

(B) review the effectiveness of increased surveillance at access points;

(C) review the effectiveness of card- or keypad-based access systems;

(D) review the effectiveness of airport emergency exit systems and determine whether those that lead to secure areas of the airport should be monitored or how breaches can be swiftly responded to; and

(E) specifically target the elimination of the "piggy-backing" phenomenon, where another person follows an authorized person through the access point. The 6-month assessment shall include a 12-month deployment strategy for currently available technology at all category X airports, as defined in the Federal Aviation Administration approved air carrier security programs required under part 108 of title 14, Code of Federal Regulations. Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall conduct a review of reductions in unauthorized access at these airports.

(2) COMPUTER-ASSISTED PASSENGER PRESCREENING SYSTEM.—

(A) IN GENERAL.—The Secretary of Transportation shall ensure that the Computer-Assisted Passenger Prescreening System, or any successor system—

(i) is used to evaluate all passengers before they board an aircraft; and

(ii) includes procedures to ensure that individuals selected by the system and their carry-on and checked baggage are adequately screened.

(B) MODIFICATIONS.—The Secretary of Transportation may modify any requirement under the Computer-Assisted Passenger Prescreening System for flights that originate and terminate within the same State, if the Secretary determines that—

(i) the State has extraordinary air transportation needs or concerns due to its isolation and dependence on air transportation; and

(ii) the routine characteristics of passengers, given the nature of the market, regularly triggers primary selectee status.

(k)[19] LIMITATION ON LIABILITY FOR ACTS TO THWART CRIMINAL VIOLENCE OR AIRCRAFT PIRACY.—An individual shall not be liable

[19] Sec. 144 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 644) added subsec. (k), originally as a third subsec. (h). Subsequently, sec. 1406(3) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2307) redesignated the third subsec. (h) as subsec. (k).

for damages in any action brought in a Federal or State court arising out of the acts of the individual in attempting to thwart an act of criminal violence or piracy on an aircraft if that individual reasonably believed that such an act of criminal violence or piracy was occurring or was about to occur.

(l)[20] AIR CHARTER PROGRAM.—

(1) IN GENERAL.—The Under Secretary for Border and Transportation Security of the Department of Homeland Security shall implement an aviation security program for charter air carriers (as defined in section 40102(a)) with a maximum certificated takeoff weight of more than 12,500 pounds.

(2) EXEMPTION FOR ARMED FORCES CHARTERS.—

(A) IN GENERAL.—Paragraph (1) and the other requirements of this chapter do not apply to passengers and property carried by aircraft when employed to provide charter transportation to members of the armed forces.

(B) SECURITY PROCEDURES.—The Secretary of Defense, in consultation with the Secretary of Homeland Security and the Secretary of Transportation, shall establish security procedures relating to the operation of aircraft when employed to provide charter transportation to members of the armed forces to or from an airport described in section 44903(c).

(C) ARMED FORCES DEFINED.—In this paragraph, the term "armed forces" has the meaning given that term by section 101(a)(4) of title 10.

§ 44904. Domestic air transportation system security

(a) ASSESSING THREATS.—The Under Secretary[3] of Transportation for Security[4] and the Director of the Federal Bureau of Investigation jointly shall assess current and potential threats to the domestic air transportation system. The assessment shall include consideration of the extent to which there are individuals with the capability and intent to carry out terrorist or related unlawful acts against that system and the ways in which those individuals might carry out those acts. The Under Secretary[3] and the Director jointly shall decide on and carry out the most effective method for continuous analysis and monitoring of security threats to that system.

(b) ASSESSING SECURITY.—In coordination with the Director, the Under Secretary[3] shall carry out periodic threat and vulnerability assessments on security at each airport that is part of the domestic air transportation system. Each assessment shall include consideration of—

(1) the adequacy of security procedures related to the handling and transportation of checked baggage and cargo;

(2) space requirements for security personnel and equipment;

(3) separation of screened and unscreened passengers, baggage, and cargo;

(4) separation of the controlled and uncontrolled areas of airport facilities; and

[20] Sec. 606(a) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2568) added subsec. (l).

(5) coordination of the activities of security personnel of the Transportation Security Administration,[21] the United States Customs Service, the Immigration and Naturalization Service, and air carriers, and of other law enforcement personnel.

(c) IMPROVING SECURITY.—The Under Secretary[3] shall take necessary actions to improve domestic air transportation security by correcting any deficiencies in that security discovered in the assessments, analyses, and monitoring carried out under this section.

§ 44905. Information about threats to civil aviation

(a) PROVIDING INFORMATION.—Under guidelines the Secretary of Transportation prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the Secretary.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew of a particular flight or series of flights, the Under Secretary[3] of Transportation for Security[4] shall cancel the flight or series of flights.

(c) GUIDELINES ON PUBLIC NOTICE.—(1) The President shall develop guidelines for ensuring that public notice is provided in appropriate cases about threats to civil aviation. The guidelines shall identify officials responsible for—

(A) deciding, on a case-by-case basis, if public notice of a threat is in the best interest of the United States and the traveling public;

(B) ensuring that public notice is provided in a timely and effective way, including the use of a toll-free telephone number; and

(C) canceling the departure of a flight or series of flights under subsection (b) of this section.

(2) The guidelines shall provide for consideration of—

(A) the specificity of the threat;

(B) the credibility of intelligence information related to the threat;

(C) the ability to counter the threat effectively;

(D) the protection of intelligence information sources and methods;

(E) cancellation, by an air carrier or the Under Secretary,[3] of a flight or series of flights instead of public notice;

(F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and

(G) other factors the Under Secretary[3] considers appropriate.

(d) GUIDELINES ON NOTICE TO CREWS.—The Under Secretary[3] shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

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[21] Sec. 101(f)(1) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 644) struck out "the Administration" and inserted in lieu thereof "the Transportation Security Administration".

(e) LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a threat to civil aviation may be provided to selective potential travelers only if the threat applies only to those travelers.

(f) RESTRICTING ACCESS TO INFORMATION.—In cooperation with the departments, agencies, and instrumentalities of the Government that collect, receive, and analyze intelligence information related to aviation security, the Under Secretary[3] shall develop procedures to minimize the number of individuals who have access to information about threats. However, a restriction on access to that information may be imposed only if the restriction does not diminish the ability of the Government to carry out its duties and powers related to aviation security effectively, including providing notice to the public and flight and cabin crews under this section.

(g) DISTRIBUTION OF GUIDELINES.—The guidelines developed under this section shall be distributed for use by appropriate officials of the Department of Transportation, the Department of State, the Department of Justice, and air carriers.

§ 44906.[22] Foreign air carrier security programs

The Under Secretary[3] of Transportation for Security[4] shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Under Secretary.[3] The Under Secretary[3] shall not approve a security program of a foreign air carrier under section 129.25, or any successor regulation, unless the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Under Secretary[3] requires air carriers serving the same airports to adhere to. The foregoing requirement shall not be interpreted to limit the ability of the Under Secretary[3] to impose additional security measures on a foreign air carrier or an air carrier when the Under Secretary[3] determines that a specific threat warrants such additional measures. The Under Secretary[3] shall prescribe regulations to carry out this section.

§ Sec. 44907. Security standards at foreign airports

(a) ASSESSMENT.—(1) At intervals the Secretary of Transportation considers necessary, the Secretary shall assess the effectiveness of the security measures maintained at—

(A) a foreign airport—

(i) served by an air carrier;

(ii) from which a foreign air carrier serves the United States; or

(iii) that poses a high risk of introducing danger to international air travel; and

(B) other foreign airports the Secretary considers appropriate.

(2) The Secretary of Transportation shall conduct an assessment under paragraph (1) of this subsection—

(A) in consultation with appropriate aeronautic authorities of the government of a foreign country concerned and each air

[22] Sec. 322 of Public Law 104–132 (110 Stat. 1254) amended and restated sec. 44906.

carrier serving the foreign airport for which the Secretary is conducting the assessment;

(B) to establish the extent to which a foreign airport effectively maintains and carries out security measures; and

(C) by using a standard that will result in an analysis of the security measures at the airport based at least on the standards and appropriate recommended practices contained in Annex 17 to the Convention on International Civil Aviation in effect on the date of the assessment.

(3) Each report to Congress required under section 44938(b) of this title shall contain a summary of the assessments conducted under this subsection.

(b) CONSULTATION.—In carrying out subsection (a) of this section, the Secretary of Transportation shall consult with the Secretary of State—

(1) on the terrorist threat that exists in each country; and

(2) to establish which foreign airports are not under the de facto control of the government of the foreign country in which they are located and pose a high risk of introducing danger to international air travel.

(c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary of Transportation, after conducting an assessment under subsection (a) of this section, decides that an airport does not maintain and carry out effective security measures, the Secretary of Transportation, after advising the Secretary of State, shall notify the appropriate authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures in use at the airport up to the standard used by the Secretary of Transportation in making the assessment.

(d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT EFFECTIVE SECURITY MEASURES.—(1) When the Secretary of Transportation decides under this section that an airport does not maintain and carry out effective security measures—

(A) the Secretary of Transportation shall—

(i) publish the identity of the airport in the Federal Register;

(ii) have the identity of the airport posted and displayed prominently at all United States airports at which scheduled air carrier operations are provided regularly; and

(iii) notify the news media of the identity of the airport;

(B) each air carrier and foreign air carrier providing transportation between the United States and the airport shall provide written notice of the decision, on or with the ticket, to each passenger buying a ticket for transportation between the United States and the airport;

(C) notwithstanding section 40105(b) of this title, the Secretary of Transportation, after consulting with the appropriate aeronautic authorities of the foreign country concerned and each air carrier serving the airport and with the approval of the Secretary of State, may withhold, revoke, or prescribe conditions on the operating authority of an air carrier or foreign air carrier that uses that airport to provide foreign air transportation; and

(D) the President may prohibit an air carrier or foreign air carrier from providing transportation between the United States and any other foreign airport that is served by aircraft flying to or from the airport with respect to which a decision is made under this section.

(2)(A) Paragraph (1) of this subsection becomes effective—

(i) 90 days after the government of a foreign country is notified under subsection (c) of this section if the Secretary of Transportation finds that the government has not brought the security measures at the airport up to the standard the Secretary used in making an assessment under subsection (a) of this section; or

(ii) immediately on the decision of the Secretary of Transportation under subsection (c) of this section if the Secretary of Transportation decides, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from the airport.

(B) The Secretary of Transportation immediately shall notify the Secretary of State of a decision under subparagraph (A)(ii) of this paragraph so that the Secretary of State may issue a travel advisory required under section 44908(a) of this title.

(3) The Secretary of Transportation promptly shall submit to Congress a report (and classified annex if necessary) on action taken under paragraph (1) or (2) of this subsection, including information on attempts made to obtain the cooperation of the government of a foreign country in meeting the standard the Secretary used in assessing the airport under subsection (a) of this section.

(4) An action required under paragraph (1)(A) and (B) of this subsection is no longer required only if the Secretary of Transportation, in consultation with the Secretary of State, decides that effective security measures are maintained and carried out at the airport. The Secretary of Transportation shall notify Congress when the action is no longer required to be taken.

(e) SUSPENSIONS.—Notwithstanding sections 40105(b) and 40106(b) of this title, the Secretary of Transportation, with the approval of the Secretary of State and without notice or a hearing, shall suspend the right of an air carrier or foreign air carrier to provide foreign air transportation, and the right of a person to operate aircraft in foreign air commerce, to or from a foreign airport when the Secretary of Transportation decides that—

(1) a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from that airport; and

(2) the public interest requires an immediate suspension of transportation between the United States and that airport.

(f) CONDITION OF CARRIER AUTHORITY.—This section is a condition to authority the Secretary of Transportation grants under this part to an air carrier or foreign air carrier.

§ 44908. Travel advisory and suspension of foreign assistance

(a) TRAVEL ADVISORIES.—On being notified by the Secretary of Transportation that the Secretary of Transportation has decided

under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from a foreign airport that the Secretary of Transportation has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

(1) immediately shall issue a travel advisory for that airport; and[23]

(2)[23] shall publicize the advisory widely.

(b) SUSPENDED ASSISTANCE.—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) ACTIONS NO LONGER REQUIRED.—An action required under this section is no longer required only if the Secretary of Transportation has made a decision as provided under section 44907(d)(4) of this title. The Secretary shall notify Congress when the action is no longer required to be taken.

§ 44909. Passenger manifests

(a) AIR CARRIER REQUIREMENTS.—(1) Not later than March 16, 1991, the Secretary of Transportation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest should[24] include the following information:

(A) the full name of each passenger.

(B) the passport number of each passenger, if required for travel.

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

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[23] Sec. 2224(a) of title XXII of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277; 112 Stat. 2681–819), inserted "and" at the end of para. (1), struck out para. (2), and redesignated para. (3) as para. (2). Para. (2) had previously read as follows:

"(2) shall publish the advisory in the Federal Register; and".

[24] Sec. 718 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106–181; 114 Stat. 163) struck out "shall" and inserted in lieu thereof "should".

(b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a)(1) and (2) of this section.

(c)[25] FLIGHTS IN FOREIGN AIR TRANSPORTATION TO THE UNITED STATES.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of the Aviation and Transportation Security Act, each air carrier and foreign air carrier operating a passenger flight in foreign air transportation to the United States shall provide to the Commissioner of Customs by electronic transmission a passenger and crew manifest containing the information specified in paragraph (2). Carriers may use the advanced passenger information system established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) to provide the information required by the preceding sentence.

(2) INFORMATION.—A passenger and crew manifest for a flight required under paragraph (1) shall contain the following information:

(A) The full name of each passenger and crew member.

(B) The date of birth and citizenship of each passenger and crew member.

(C) The sex of each passenger and crew member.

(D) The passport number and country of issuance of each passenger and crew member if required for travel.

(E) The United States visa number or resident alien card number of each passenger and crew member, as applicable.

(F) Such other information as the Under Secretary, in consultation with the Commissioner of Customs, determines is reasonably necessary to ensure aviation safety.

(3) PASSENGER NAME RECORDS.—The carriers shall make passenger name record information available to the Customs Service upon request.

(4) TRANSMISSION OF MANIFEST.—Subject to paragraph (5), a passenger and crew manifest required for a flight under paragraph (1) shall be transmitted to the Customs Service in advance of the aircraft landing in the United States in such manner, time, and form as the Customs Service prescribes.

(5) TRANSMISSION OF MANIFESTS TO OTHER FEDERAL AGENCIES.—Upon request, information provided to the Under Secretary or the Customs Service under this subsection may be shared with other Federal agencies for the purpose of protecting national security.

§ 44910. Agreements on aircraft sabotage, aircraft hijacking, and airport security

The Secretary of State shall seek multilateral and bilateral agreement on strengthening enforcement measures and standards for compliance related to aircraft sabotage, aircraft hijacking, and airport security.

[25] Sec. 115 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 623) added subsec. (c).

§ 44911. Intelligence

(a) DEFINITION.—In this section, "intelligence community" means the intelligence and intelligence-related activities of the following units of the United States Government:

(1) the Department of State.
(2) the Department of Defense.
(3) the Department of the Treasury.
(4) the Department of Energy.
(5) the Departments of the Army, Navy, and Air Force.
(6) the Central Intelligence Agency.
(7) the National Security Agency.
(8) the Defense Intelligence Agency.
(9) the Federal Bureau of Investigation.
(10) the Drug Enforcement Administration.

(b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about[26] terrorism are made available, as appropriate, to the heads of other units in the intelligence community, the Secretary of Transportation, and the Under Secretary[3] of Transportation for Security.[4]

(c) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the units in the intelligence community shall place[27] greater emphasis on strategic intelligence efforts by establishing a unit for strategic planning on terrorism.

(d) DESIGNATION OF INTELLIGENCE OFFICER.—At the request of the Secretary, the Director of Central Intelligence shall designate at least one intelligence officer of the Central Intelligence Agency to serve in a senior position in the Office of the Secretary.

(e) WRITTEN WORKING AGREEMENTS.—The heads of units in the intelligence community, the Secretary, and the Under Secretary[3] shall review and, as appropriate, revise written working agreements between the intelligence community and the Under Secretary.[3]

§ 44912. Research and development

(a) PROGRAM REQUIREMENT.—(1) The Under Secretary[3] of Transportation for Security[4] shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. The program shall provide for developing and having in place, not later than November 16, 1993, new equipment and procedures necessary to meet the technological challenges presented by terrorism. The program shall include research on, and development of, technological improvements and ways to enhance human performance.

(2) In designing and carrying out the program established under this subsection, the Under Secretary[3] shall—

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[26] Sec. 102(b) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 605) struck out "international" which previously appeared at this point.

[27] Sec. 102(c) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 605) struck out "consider placing" and inserted in lieu thereof "place".

(A) consult and coordinate activities with other departments, agencies, and instrumentalities of the United States Government doing similar research;

(B) identify departments, agencies, and instrumentalities that would benefit from that research; and

(C) seek cost-sharing agreements with those departments, agencies, and instrumentalities.

(3) In carrying out the program established under this subsection, the Under Secretary[3] shall review and consider the annual reports the Secretary of Transportation submits to Congress on transportation security and intelligence.

(4)[28] (A) In carrying out the program established under this subsection, the Administrator shall designate an individual to be responsible for engineering, research, and development with respect to security technology under the program.

(B) The individual designated under subparagraph (A) shall use appropriate systems engineering and risk management models in making decisions regarding the allocation of funds for engineering, research, and development with respect to security technology under the program.

(C) The individual designated under subparagraph (A) shall, on an annual basis, submit to the Research, Engineering and Development Advisory Committee a report on activities under this paragraph during the preceding year. Each report shall include, for the year covered by such report, information on—

(i) progress made in engineering, research, and development with respect to security technology;

(ii) the allocation of funds for engineering, research, and development with respect to security technology; and

(iii) engineering, research, and development with respect to any technologies drawn from other agencies, including the rationale for engineering, research, and development with respect to such technologies.

(5)[28] The Under Secretary[3] may—

(A) make grants to institutions of higher learning and other appropriate research facilities with demonstrated ability to carry out research described in paragraph (1) of this subsection, and fix the amounts and terms of the grants; and

(B) make cooperative agreements with governmental authorities the Under Secretary[3] decides are appropriate.

(b) REVIEW OF THREATS.—(1) The Under Secretary[3] shall periodically review[29] threats to civil aviation, with particular focus on—

(A)[30] a comprehensive systems analysis (employing vulnerability analysis, threat attribute definition, and technology roadmaps) of the civil aviation system, including—

(i) the destruction, commandeering, or diversion of civil aircraft or the use of civil aircraft as a weapon; and

[28] Sec. 112(b)(1) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620) redesignated para. (4) as para. (5) and added a new para. (4).

[29] Sec. 112(a)(1) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620) struck out "complete an intensive review of" and inserted in lieu thereof "periodically review".

[30] Sec. 112(b)(2) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 621) redesignated subparas. (A) through (G) as subparas. (B) through (H) and added a new subpara. (A).

(ii) the disruption of civil aviation service, including by cyber attack;

(B)[30] explosive material that presents the most significant threat to civil aircraft;

(C)[30] the minimum amounts, configurations, and types of explosive material that can cause, or would reasonably be expected to cause, catastrophic damage to aircraft in air transportation;[31]

(D)[30] the amounts, configurations, and types of explosive material that can be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(E)[32] the potential release of chemical, biological, or similar weapons or devices either within an aircraft or within an airport;

(F)[32] the feasibility of using various ways to minimize damage caused by explosive material that cannot be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(G)[32] the ability to screen passengers, carry-on baggage, checked baggage, and cargo; and

(H)[32] the technologies that might be used in the future to attempt to destroy or otherwise threaten commercial aircraft and the way in which those technologies can be countered effectively.

(2) The Under Secretary[3] shall use the results of the review under this subsection to develop the focus and priorities of the program established under subsection (a) of this section.

(c)[33] SCIENTIFIC ADVISORY PANEL.—(1) The Administrator shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering, and Development Advisory Committee, to review, comment on, advise the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft, commercial aviation facilities, commercial aviation personnel and pas-

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[31] Sec. 112(a)(2) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620) struck out "commercial aircraft in service and expected to be in service in the 10–year period beginning on November 16, 1990;" and inserted in lieu thereof "aircraft in air transportation;".

[32] Sec. 112(a)(3) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620) added subpara. (E), originally as subpara. (D), and redesignated the following subparas. accordingly. Subsequently, sec. 112(b)(2) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 621) redesignated subparas. (A) through (G) as subparas. (B) through (H).

[33] Sec. 112(b)(3) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620) amended and restated subsec. (c), which previously read as follows:

"(c) SCIENTIFIC ADVISORY PANEL.—The Administrator shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering and Development Advisory Committee, to review, comment on, advise on the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft by the next generation of terrorist weapons. The panel shall consist of individuals with scientific and technical expertise in—

"(1) the development and testing of effective explosive detection systems;

"(2) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective technology must be capable of detecting;

"(3) technologies involved in minimizing airframe damage to aircraft from explosives; and

"(4) other scientific and technical areas the Administrator considers appropriate.".

sengers, and other components of the commercial aviation system by the next generation of terrorist weapons.

(2)(A) The advisory panel shall consist of individuals who have scientific and technical expertise in—

(i) the development and testing of effective explosive detection systems;

(ii) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective explosive detection technology must be capable of detecting;

(iii) technologies involved in minimizing airframe damage to aircraft from explosives; and

(iv) other scientific and technical areas the Administrator considers appropriate.

(B) In appointing individuals to the advisory panel, the Administrator should consider individuals from academia and the national laboratories, as appropriate.

(3) The Administrator shall organize the advisory panel into teams capable of undertaking the review of policies and technologies upon request.

(4) Not later than 90 days after the date of the enactment of the Aviation and Transportation Security Act, and every two years thereafter, the Administrator shall review the composition of the advisory panel in order to ensure that the expertise of the individuals on the panel is suited to the current and anticipated duties of the panel.

§ 44913. Explosive detection

(a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—(1) A deployment or purchase of explosive detection equipment under section 108.7(b)(8) or 108.20 of title 14, Code of Federal Regulations, or similar regulation is required only if the Under Secretary[3] of Transportation for Security[4] certifies that the equipment alone, or as part of an integrated system, can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Under Secretary[3] shall base the certification on the results of tests conducted under protocols developed in consultation with expert scientists outside of the Transportation Security Administration.[34] Those tests shall be completed not later than April 16, 1992.

(2) Before completion of the tests described in paragraph (1) of this subsection, but not later than April 16, 1992, the Under Secretary[3] may require deployment of explosive detection equipment described in paragraph (1) if the Under Secretary[3] decides that deployment will enhance aviation security significantly. In making that decision, the Under Secretary[3] shall consider factors such as the ability of the equipment alone, or as part of an integrated system, to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Under Secretary[3] shall notify the Committee on Com-

[34] Sec. 101(f)(2) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) struck out "of the Administration" and inserted in lieu thereof "of the Transportation Security Administration".

merce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure[35] of the House of Representatives of a deployment decision made under this paragraph.

(3)[36] Until such time as the Under Secretary[3] determines that equipment certified under paragraph (1) is commercially available and has successfully completed operational testing as provided in paragraph (1), the Under Secretary[3] shall facilitate the deployment of such approved commercially available explosive detection devices as the Under Secretary[3] determines will enhance aviation security significantly. The Under Secretary[3] shall require that equipment deployed under this paragraph be replaced by equipment certified under paragraph (1) when equipment certified under paragraph (1) becomes commercially available. The Under Secretary[3] is authorized , based on operational considerations at individual airports, to waive the required installation of commercially available equipment under paragraph (1) in the interests of aviation security. The Under Secretary[3] may permit the requirements of this paragraph to be met at airports by the deployment of dogs or other appropriate animals to supplement equipment for screening passengers, baggage, mail, or cargo for explosives or weapons.

(4)[36] This subsection does not prohibit the Under Secretary[3] from purchasing or deploying explosive detection equipment described in paragraph (1) of this subsection.

(b) GRANTS.—The Secretary of Transportation may provide grants to continue the Explosive Detection K–9 Team Training Program to detect explosives at airports and on aircraft.

§ 44914. Airport construction guidelines

In consultation with air carriers, airport authorities, and others the Under Secretary[3] of Transportation for Security[4] considers appropriate, the Under Secretary[3] shall develop guidelines for airport design and construction to allow for maximum security enhancement. In developing the guidelines, the Under Secretary[3] shall consider the results of the assessment carried out under section 44904(a) of this title.

§ 44915. Exemptions

The Under Secretary[3] of Transportation for Security[4] may exempt from sections 44901, 44903(a)–(c) and (e), 44906, 44935, and 44936 of this title airports in Alaska served only by air carriers that—

(1) hold certificates issued under section 41102 of this title;

(2) operate aircraft with certificates for a maximum gross takeoff weight of less than 12,500 pounds; and

(3) board passengers, or load property intended to be carried in an aircraft cabin, that will be screened under section 44901 of this title at another airport in Alaska before the passengers board, or the property is loaded on, an aircraft for a place outside Alaska.

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[35] Sec. 5(9) of Public Law 104–287 (110 Stat. 3389) struck out "Public Works and Transportation" and inserted in lieu thereof "Transportation and Infrastructure".

[36] Sec. 305(a) of Public Law 104–264 (110 Stat. 3252) redesignated para. (3) as para. (4), and added a new para. (3).

§ 44916.[37] Assessments and evaluations

(a) PERIODIC ASSESSMENTS.—The Under Secretary of Transportation Security[38] shall require each air carrier and airport (including the airport owner or operator in cooperation with the air carriers and vendors serving each airport) that provides for intrastate, interstate, or foreign air transportation to conduct periodic vulnerability assessments of the security systems of that air carrier or airport, respectively. The Transportation Security Administration[39] shall perform periodic audits of such assessments.

(b) INVESTIGATIONS.—The Under Secretary[3] shall conduct periodic and unannounced inspections of security systems of airports and air carriers to determine the effectiveness and vulnerabilities of such systems. To the extent allowable by law, the Under Secretary[3] may provide for anonymous tests of those security systems.

§ 44917.[40] Deployment of Federal air marshals

(a) IN GENERAL.—The Under Secretary of Transportation for Security under the authority provided by section 44903(d)

(1) may provide for deployment of Federal air marshals on every passenger flight of air carriers in air transportation or intrastate air transportation;

(2) shall provide for deployment of Federal air marshals on every such flight determined by the Secretary to present high security risks;

(3) shall provide for appropriate training, supervision, and equipment of Federal air marshals;

(4) shall require air carriers providing flights described in paragraph (1) to provide seating for a Federal air marshal on any such flight without regard to the availability of seats on the flight and at no cost to the United States Government or the marshal;

(5) may require air carriers to provide, on a space-available basis, to an off-duty Federal air marshal a seat on a flight to the airport nearest the marshal's home at no cost to the marshal or the United States Government if the marshal is traveling to that airport after completing his or her security duties;

(6) may enter into agreements with Federal, State, and local agencies under which appropriately-trained law enforcement personnel from such agencies, when traveling on a flight of an air carrier, will carry a firearm and be prepared to assist Federal air marshals;

(7) shall establish procedures to ensure that Federal air marshals are made aware of any armed or unarmed law enforcement personnel on board an aircraft; and

(8) may appoint—

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[37] Sec. 312(a) of Public Law 104–264 (110 Stat. 3254) added sec. 44916.

[38] Sec. 101(f)(A) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) struck out "Administrator" and inserted in lieu thereof "Under Secretary of Transportation Security".

[39] Sec. 101(f)(B) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) struck out "Administration" and inserted in lieu thereof "Transportation Security Administration".

[40] Sec. 105 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 606) added sec. 44917.

(A) an individual who is a retired law enforcement officer;

(B) an individual who is a retired member of the Armed Forces; and

(C) an individual who has been furloughed from an air carrier crew position in the 1-year period beginning on September 11, 2001, as a Federal air marshal, regardless of age, if the individual otherwise meets the background and fitness qualifications required for Federal air marshals.

(b) LONG DISTANCE FLIGHTS.—In making the determination under subsection (a)(2), nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority.

(c) INTERIM MEASURES.—Until the Under Secretary completes implementation of subsection (a), the Under Secretary may use, after consultation with and concurrence of the heads of other Federal agencies and departments, personnel from those agencies and departments, on a nonreimbursable basis, to provide air marshal service.

§ 44918.[41] Crew training

(a) BASIC SECURITY TRAINING.—

(1) IN GENERAL.—Each air carrier providing scheduled passenger air transportation shall carry out a training program for flight and cabin crew members to prepare the crew members for potential threat conditions.

(2) PROGRAM ELEMENTS.—An air carrier training program under this subsection shall include, at a minimum, elements that address each of the following:

(A) Recognizing suspicious activities and determining the seriousness of any occurrence.

(B) Crew communication and coordination.

(C) The proper commands to give passengers and attackers.

(D) Appropriate responses to defend oneself.

(E) Use of protective devices assigned to crew members (to the extent such devices are required by the Administrator of the Federal Aviation Administration or the Under Secretary for Border and Transportation Security of the Department of Homeland Security).

(F) Psychology of terrorists to cope with hijacker behavior and passenger responses.

(G) Situational training exercises regarding various threat conditions.

(H) Flight deck procedures or aircraft maneuvers to defend the aircraft and cabin crew responses to such procedures and maneuvers.

(I) The proper conduct of a cabin search, including explosive device recognition.

[41] Sec. 603 of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2563) amended and restated sec. 44918, which had originally been added by sec. 107 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 610), and further amended by sec. 1403(a) of the Homeland Security Act of 2002 (Public law 107–296; 116 Stat. 2305).

(J) Any other subject matter considered appropriate by the Under Secretary.

(3) APPROVAL.—An air carrier training program under this subsection shall be subject to approval by the Under Secretary.

(4) MINIMUM STANDARDS.—Not later than one year after the date of enactment of the Vision 100—Century of Aviation Reauthorization Act, the Under Secretary may establish minimum standards for the training provided under this subsection and for recurrent training.

(5) EXISTING PROGRAMS.—Notwithstanding paragraphs (3) and (4), any training program of an air carrier to prepare flight and cabin crew members for potential threat conditions that was approved by the Administrator or the Under Secretary before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act may continue in effect until disapproved or ordered modified by the Under Secretary.

(6) MONITORING.—The Under Secretary, in consultation with the Administrator, shall monitor air carrier training programs under this subsection and periodically shall review an air carrier's training program to ensure that the program is adequately preparing crew members for potential threat conditions. In determining when an air carrier's training program should be reviewed under this paragraph, the Under Secretary shall consider complaints from crew members. The Under Secretary shall ensure that employees responsible for monitoring the training programs have the necessary resources and knowledge.

(7) UPDATES.—The Under Secretary, in consultation with the Administrator, shall order air carriers to modify training programs under this subsection to reflect new or different security threats.

(b) ADVANCED SELF-DEFENSE TRAINING.—

(1) IN GENERAL.—Not later than one year after the date of enactment of the Vision 100—Century of Aviation Reauthorization Act, the Under Secretary shall develop and provide a voluntary training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

(2) PROGRAM ELEMENTS.—The training program under this subsection shall include both classroom and effective hands-on training in the following elements of self-defense:

(A) Deterring a passenger who might present a threat.

(B) Advanced control, striking, and restraint techniques.

(C) Training to defend oneself against edged or contact weapons.

(D) Methods to subdue and restrain an attacker.

(E) Use of available items aboard the aircraft for self-defense.

(F) Appropriate and effective responses to defend oneself, including the use of force against an attacker.

(G) Any other element of training that the Under Secretary considers appropriate.

(3) PARTICIPATION NOT REQUIRED.—A crew member shall not be required to participate in the training program under this subsection.

(4) COMPENSATION.—Neither the Federal Government nor an air carrier shall be required to compensate a crew member for participating in the training program under this subsection.

(5) FEES.—A crew member shall not be required to pay a fee for the training program under this subsection.

(6) CONSULTATION.—In developing the training program under this subsection, the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, representatives of air carriers, the director of self-defense training in the Federal Air Marshals Service, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

(7) DESIGNATION OF TSA OFFICIAL.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for implementing the training program under this subsection. The official shall consult with air carriers and labor organizations representing crew members before implementing the program to ensure that it is appropriate for situations that may arise on board an aircraft during a flight.

(c) LIMITATION.—Actions by crew members under this section shall be subject to the provisions of section 44903(k).

§ 44919.[42] Security screening pilot program

(a) ESTABLISHMENT OF PROGRAM.—The Under Secretary shall establish a pilot program under which, upon approval of an application submitted by an operator of an airport, the screening of passengers and property at the airport under section 44901 will be carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary.

(b) PERIOD OF PILOT PROGRAM.—The pilot program under this section shall begin on the last day of the 1-year period beginning on the date of enactment of this section and end on the last day of the 3-year period beginning on such date of enactment.

(c) APPLICATIONS.—An operator of an airport may submit to the Under Secretary an application to participate in the pilot program under this section.

(d) SELECTION OF AIRPORTS.—From among applications submitted under subsection (c), the Under Secretary may select for participation in the pilot program not more than 1 airport from each of the 5 airport security risk categories, as defined by the Under Secretary.

(e) SUPERVISION OF SCREENED PERSONNEL.—The Under Secretary shall provide Federal Government supervisors to oversee all screening at each airport participating in the pilot program under this section and provide Federal Government law enforcement officers at the airport pursuant to this chapter.

(f) QUALIFIED PRIVATE SCREENING COMPANY.—A private screening company is qualified to provide screening services at an airport

[42] Sec. 108(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 611) added secs. 44919 and 44920.

participating in the pilot program under this section if the company will only employ individuals to provide such services who meet all the requirements of this chapter applicable to Federal Government personnel who perform screening services at airports under this chapter and will provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel in accordance with this chapter.

(g) STANDARDS FOR PRIVATE SCREENING COMPANIES.—The Under Secretary may enter into a contract with a private screening company to provide screening at an airport participating in the pilot program under this section only if the Under Secretary determines and certifies to Congress that the private screening company is owned and controlled by a citizen of the United States, to the extent that the Under Secretary determines that there are private screening companies owned and controlled by such citizens.

(h) TERMINATION OF CONTRACTS.—The Under Secretary may terminate any contract entered into with a private screening company to provide screening services at an airport under the pilot program if the Under Secretary finds that the company has failed repeatedly to comply with any standard, regulation, directive, order, law, or contract applicable to the hiring or training of personnel to provide such services or to the provision of screening at the airport.

(i) ELECTION.—If a contract is in effect with respect to screening at an airport under the pilot program on the last day of the 3-year period beginning on the date of enactment of this section, the operator of the airport may elect to continue to have such screening carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary under section 44920 or by Federal Government personnel in accordance with this chapter.

§ 44920.[42] Security screening opt-out program

(a) IN GENERAL.—On or after the last day of the 2-year period beginning on the date on which the Under Secretary transmits to Congress the certification required by section 110(c) of the Aviation and Transportation Security Act, an operator of an airport may submit to the Under Secretary an application to have the screening of passengers and property at the airport under section 44901 to be carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary.

(b) APPROVAL OF APPLICATIONS.—The Under Secretary may approve any application submitted under subsection (a).

(c) QUALIFIED PRIVATE SCREENING COMPANY.—A private screening company is qualified to provide screening services at an airport under this section if the company will only employ individuals to provide such services who meet all the requirements of this chapter applicable to Federal Government personnel who perform screening services at airports under this chapter and will provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel in accordance with this chapter.

(d) STANDARDS FOR PRIVATE SCREENING COMPANIES.—The Under Secretary may enter into a contract with a private screening company to provide screening at an airport under this section only if the Under Secretary determines and certifies to Congress that—

(1) the level of screening services and protection provided at the airport under the contract will be equal to or greater than the level that would be provided at the airport by Federal Government personnel under this chapter; and

(2) the private screening company is owned and controlled by a citizen of the United States, to the extent that the Under Secretary determines that there are private screening companies owned and controlled by such citizens.

(e) SUPERVISION OF SCREENED PERSONNEL.—The Under Secretary shall provide Federal Government supervisors to oversee all screening at each airport at which screening services are provided under this section and provide Federal Government law enforcement officers at the airport pursuant to this chapter.

(f) TERMINATION OF CONTRACTS.—The Under Secretary may terminate any contract entered into with a private screening company to provide screening services at an airport under this section if the Under Secretary finds that the company has failed repeatedly to comply with any standard, regulation, directive, order, law, or contract applicable to the hiring or training of personnel to provide such services or to the provision of screening at the airport.

(g)[43] OPERATOR OF AIRPORT.—Notwithstanding any other provision of law, an operator of an airport shall not be liable for any claims for damages filed in State or Federal court (including a claim for compensatory, punitive, contributory, or indemnity damages) relating to—

(1) such airport operator's decision to submit an application to the Secretary of Homeland Security under subsection (a) or section 44919 or such airport operator's decision not to submit an application; and

(2) any act of negligence, gross negligence, or intentional wrongdoing by—

(A) a qualified private screening company or any of its employees in any case in which the qualified private screening company is acting under a contract entered into with the Secretary of Homeland Security or the Secretary's designee; or

(B) employees of the Federal Government providing passenger and property security screening services at the airport.

(3) Nothing in this section shall relieve any airport operator from liability for its own acts or omissions related to its security responsibilities, nor except as may be provided by the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 shall it relieve any qualified private screening company or its employees from any liability related to its own acts of negligence, gross negligence, or intentional wrongdoing.

[43] Sec. 547 of the Department of Homeland Security Appropriations Act, 2006 (Public Law 109–90; 119 Stat. 2089), added subsec. (g).

§ 44921.[44] Federal flight deck officer program

(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing[45] air transportation or intrastate[45] air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as "Federal flight deck officers".

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

(A) The type of firearm to be used by a Federal flight deck officer.

(B) The type of ammunition to be used by a Federal flight deck officer.

(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check

[44] Sec. 1402(a) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2300) added sec. 44921.

[45] Sec. 609(b) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2570) struck out "passenger" that previously appeared at this point.

should be required beyond that required by section 44936(a)(1).

(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

(K) Methods for ensuring that security personnel ill be able to identify whether a pilot is authorized to carry a firearm under the program.

(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

(M) Any other issues that the Under Secretary considers necessary.

(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

(1) IN GENERAL.—The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

(2) TRAINING.—

(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

(C) TRAINING IN USE OF FIREARMS.—

(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

(d) DEPUTIZATION.—

(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

(A) the pilot is employed by an air carrier;

(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

(4) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pi-

lot's training or qualification and requalification to carry firearms under the program.

(f) AUTHORITY TO CARRY FIREARMS.—

(1) IN GENERAL.—The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

(h) LIMITATION ON LIABILITY.—

(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier; or

(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

(k) APPLICABILITY.—

(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

(2) PILOT DEFINED.—The term "pilot" means an individual who has final authority and responsibility for the operation and safety of the flight or any other flight deck crew member;[46]

(3)[47] ALL-CARGO AIR TRANSPORTATION.—In this section, the term "air transportation" includes all-cargo air transportation.

§ 44922.[48] Deputation of State and local law enforcement officers

(a) DEPUTATION AUTHORITY.—The Under Secretary of Transportation for Security may deputize a State or local law enforcement officer to carry out Federal airport security duties under this chapter.

(b) FULFILLMENT OF REQUIREMENTS.—A State or local law enforcement officer who is deputized under this section shall be treated as a Federal law enforcement officer for purposes of meeting the requirements of this chapter and other provisions of law to provide Federal law enforcement officers to carry out Federal airport security duties.

(c) AGREEMENTS.—To deputize a State or local law enforcement officer under this section, the Under Secretary shall enter into a voluntary agreement with the appropriate State or local law enforcement agency that employs the State or local law enforcement officer.

(d) REIMBURSEMENT.—

(1) IN GENERAL.—The Under Secretary shall reimburse a State or local law enforcement agency for all reasonable, allowable, and allocable costs incurred by the State or local law enforcement agency with respect to a law enforcement officer deputized under this section.

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[46] Sec. 609(b)(2) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2570) struck out "or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command", and inserted in lieu thereof "or any other flight deck crew member".

[47] Sec. 609(b)(3) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2570) added para. (3).

[48] Sec. 351 of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 419), added sec. 44922.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(e) FEDERAL TORT CLAIMS ACT.—A State or local law enforcement officer who is deputized under this section shall be treated as an "employee of the Government" for purposes of sections 1346(b), 2401(b), and chapter 171 of title 28, United States Code, while carrying out Federal airport security duties within the course and scope of the officer's employment, subject to Federal supervision and control, and in accordance with the terms of such deputation.

(f) STATIONING OF OFFICERS.—The Under Secretary may allow law enforcement personnel to be stationed other than at the airport security screening location if that would be preferable for law enforcement purposes and if such personnel would still be able to provide prompt responsiveness to problems occurring at the screening location.

§ 44923.[49] Airport security improvement projects

(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Under Secretary for Border and Transportation Security of the Department of Homeland Security may make grants to airport sponsors—

(1) for projects to replace baggage conveyer systems related to aviation security;

(2) for projects to reconfigure terminal baggage areas as needed to install explosive detection systems;

(3) for projects to enable the Under Secretary to deploy explosive detection systems behind the ticket counter, in the baggage sorting area, or in line with the baggage handling system; and

(4) for other airport security capital improvement projects.

(b) APPLICATIONS.—A sponsor seeking a grant under this section shall submit to the Under Secretary an application in such form and containing such information as the Under Secretary prescribes.

(c) APPROVAL.—The Under Secretary, after consultation with the Secretary of Transportation, may approve an application of a sponsor for a grant under this section only if the Under Secretary determines that the project will improve security at an airport or improve the efficiency of the airport without lessening security.

(d) LETTERS OF INTENT.—

(1) ISSUANCE.—The Under Secretary may issue a letter of intent to a sponsor committing to obligate from future budget authority an amount, not more than the Federal Government's share of the project's cost, for an airport security improvement project (including interest costs and costs of formulating the project).

(2) SCHEDULE.—A letter of intent under this subsection shall establish a schedule under which the Under Secretary will reimburse the sponsor for the Government's share of the project's costs, as amounts become available, if the sponsor, after the

[49] Sec. 605(a) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2566) added sec. 44923.

Under Secretary issues the letter, carries out the project without receiving amounts under this section.

(3) NOTICE TO UNDER SECRETARY.—A sponsor that has been issued a letter of intent under this subsection shall notify the Under Secretary of the sponsor's intent to carry out a project before the project begins.

(4) NOTICE TO CONGRESS.—The Under Secretary shall transmit to the Committees on Appropriations and Transportation and Infrastructure of the House of Representatives and the Committees on Appropriations and Commerce, Science and Transportation of the Senate a written notification at least 3 days before the issuance of a letter of intent under this section.

(5) LIMITATIONS.—A letter of intent issued under this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

(6) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued.

(e) FEDERAL SHARE.—

(1) IN GENERAL.—The Government's share of the cost of a project under this section shall be 90 percent for a project at a medium or large hub airport and 95 percent for a project at any other airport.

(2) EXISTING LETTERS OF INTENT.—The Under Secretary shall revise letters of intent issued before the date of enactment of this section to reflect the cost share established in this subsection with respect to grants made after September 30, 2003.

(f) SPONSOR DEFINED.—In this section, the term "sponsor" has the meaning given that term in section 47102.

(g) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements that apply to grants and letters of intent issued under chapter 471 (other than section 47102(3)) shall apply to grants and letters of intent issued under this section.

(h) AVIATION SECURITY CAPITAL FUND.—

(1) IN GENERAL.—There is established within the Department of Homeland Security a fund to be known as the Aviation Security Capital Fund. The first 250,000,000 derived from fees received under section 44940(a)(1) in each of fiscal years 2004 through 2007 shall be available to be deposited in the Fund. The Under Secretary shall impose the fee authorized by section 44940(a)(1) so as to collect at least 250,000,000 in each of such fiscal years for deposit into the Fund. Amounts in the Fund shall be available to the Under Secretary to make grants under this section.

(2) ALLOCATIONS.—Of the amount made available under paragraph (1) for a fiscal year, 125,000,000 shall be allocated in such a manner that—

(A) 40 percent shall be made available for large hub airports;

(B) 20 percent shall be made available for medium hub airports;

(C) 15 percent shall be made available for small hub airports and nonhub airports; and

(D) 25 percent shall be distributed by the Secretary to any airport on the basis of aviation security risks.

(3) DISCRETIONARY GRANTS.—Of the amount made available under paragraph (1) for a fiscal year, $125,000,000 shall be used to make discretionary grants, with priority given to fulfilling intentions to obligate under letters of intent issued under subsection (d).

(i) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to amounts made available under subsection (h), there is authorized to be appropriated to carry out this section $250,000,000 for each of fiscal years 2004 through 2007. Such sums shall remain available until expended.

(2) ALLOCATIONS.—50 percent of amounts appropriated pursuant to this subsection for a fiscal year shall be used for making allocations under subsection (h)(2) and 50 percent of such amounts shall be used for making discretionary grants under subsection (h)(3).

§ 44924.[50] Repair station security

(a) SECURITY REVIEW AND AUDIT.—To ensure the security of maintenance and repair work conducted on air carrier aircraft and components at foreign repair stations, the Under Secretary for Border and Transportation Security of the Department of Homeland Security, in consultation with the Administrator of the Federal Aviation Administration, shall complete a security review and audit of foreign repair stations that are certified by the Administrator under part 145 of title 14, Code of Federal Regulations, and that work on air carrier aircraft and components. The review shall be completed not later than 18 months after the date on which the Under Secretary issues regulations under subsection (f).

(b) ADDRESSING SECURITY CONCERNS.—The Under Secretary shall require a foreign repair station to address the security issues and vulnerabilities identified in a security audit conducted under subsection (a) within 90 days of providing notice to the repair station of the security issues and vulnerabilities so identified and shall notify the Administrator that a deficiency was identified in the security audit.

(c) SUSPENSIONS AND REVOCATIONS OF CERTIFICATES.—

(1) FAILURE TO CARRY OUT EFFECTIVE SECURITY MEASURES.—If, after the 90th day on which a notice is provided to a foreign repair station under subsection (b), the Under Secretary determines that the foreign repair station does not maintain and carry out effective security measures, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall suspend the certification of the repair station until such time as the Under

[50] Sec. 611(b)(1) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2571) added sec. 44924.

Secretary determines that the repair station maintains and carries out effective security measures and transmits the determination to the Administrator.

(2) IMMEDIATE SECURITY RISK.—If the Under Secretary determines that a foreign repair station poses an immediate security risk, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall revoke the certification of the repair station.

(3) PROCEDURES FOR APPEALS.—The Under Secretary, in consultation with the Administrator, shall establish procedures for appealing a revocation of a certificate under this subsection.

(d) FAILURE TO MEET AUDIT DEADLINE.—If the security audits required by subsection (a) are not completed on or before the date that is 18 months after the date on which the Under Secretary issues regulations under subsection (f), the Administrator shall be barred from certifying any foreign repair station until such audits are completed for existing stations.

(e) PRIORITY FOR AUDITS.—In conducting the audits described in subsection (a), the Under Secretary and the Administrator shall give priority to foreign repair stations located in countries identified by the Government as posing the most significant security risks.

(f) REGULATIONS.—Not later than 240 days after the date of enactment of this section, the Under Secretary, in consultation with the Administrator, shall issue final regulations to ensure the security of foreign and domestic aircraft repair stations.

(g) REPORT TO CONGRESS.—If the Under Secretary does not issue final regulations before the deadline specified in subsection (f), the Under Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an explanation as to why the deadline was not met and a schedule for issuing the final regulations.

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

§ 44931.[51] **Director of Intelligence and Security** * * * [Repealed—2001]

§ 44932.[51] **Assistant Administrator for Civil Aviation Security** * * * [Repealed—2001]

§ 44933.[52] **Federal Security Managers**

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Under Secretary of Transportation for Security shall establish the position of Federal Security Manager at each airport in the United States described in section 44903(c). The Under Secretary shall designate individuals as Managers for, and station those Managers at, those airports.

[51] Sec. 101(f)(6) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) repealed secs. 44931 and 44932.

[52] Sec. 103 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 605) amended and restated sec. 44933.

(b) DUTIES AND POWERS.—The Manager at each airport shall—

(1) oversee the screening of passengers and property at the airport; and

(2) carry out other duties prescribed by the Under Secretary.

§ 44934. Foreign Security Liaison Officers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Under Secretary[3] of Transportation for Security[4] shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Under Secretary[3] decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the Under Secretary[3] shall designate an Officer for each of those airports. In coordination with the Secretary, the Under Secretary[3] shall designate an Officer for each of those airports where extraordinary security measures are in place. The Secretary shall give high priority to stationing those Officers.

(b) DUTIES AND POWERS.—An Officer reports directly to the Under Secretary.[53] The Officer at each airport shall—

(1) serve as the liaison of the Assistant Administrator to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and

(2) to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.

(c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of the Secretary and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

§ 44935. Employment standards and training

(a) EMPLOYMENT STANDARDS.—The Under Secretary[3] of Transportation for Security[4] shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and

(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the Under Secretary[3] shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the Under Secretary[3] shall recommend

[53] Sec. 101(f)(4) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 603) struck out "Assistant Administrator for Civil Aviation Security" and inserted in lieu thereof "Under Secretary".

guidelines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—(1) The Under Secretary—[3]

(A) may train individuals employed to carry out a security program under section 44903(c) of this title; and

(B) shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.

(2) The Under Secretary[3] may authorize reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs. To the extent practicable, air travel reimbursed under this paragraph shall be on air carriers.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) The Under Secretary[3] shall prescribe standards for educating and training—

(A) ground security coordinators;

(B) security supervisory personnel; and

(C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

(e)[54] SECURITY SCREENERS.—

(1) TRAINING PROGRAM.—The Under Secretary of Transportation for Security shall establish a program for the hiring and training of security screening personnel.

(2) HIRING.—

(A) QUALIFICATIONS.—Within 30 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall establish qualification standards for individuals to be hired by the United States as security screening personnel. Notwithstanding any provision of law, those standards shall require, at a minimum, an individual—

(i) to have a satisfactory or better score on a Federal security screening personnel selection examination;

(ii) to be a citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));[55]

(iii) to meet, at a minimum, the requirements set forth in subsection (f);

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[54] Sec. 111(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 616) struck out subsec. (e), redesignated subsec. (f) as subsec. (i), and added new subsecs. (e) through (j). Subsec. (f), as redesignated as subsec. (i), became a second subsec. (i), and probably should have been redesignated as subsec. (k).

[55] Sec. 1603 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2313) struck out "citizen of the United States" and inserted in lieu thereof "citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))".

(iv) to meet such other qualifications as the Under Secretary may establish; and

(v) to have the ability to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(B) BACKGROUND CHECKS.—The Under Secretary shall require that an individual to be hired as a security screener undergo an employment investigation (including a criminal history record check) under section 44936(a)(1).

(C) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Under Secretary, in consultation with the heads of other appropriate Federal agencies, shall establish procedures, in addition to any background check conducted under section 44936, to ensure that no individual who presents a threat to national security is employed as a security screener.

(3) EXAMINATION; REVIEW OF EXISTING RULES.—The Under Secretary shall develop a security screening personnel examination for use in determining the qualification of individuals seeking employment as security screening personnel. The Under Secretary shall also review, and revise as necessary, any standard, rule, or regulation governing the employment of individuals as security screening personnel.

(f)[54] EMPLOYMENT STANDARDS FOR SCREENING PERSONNEL.—

(1) SCREENER REQUIREMENTS.—Notwithstanding any provision of law, an individual may not be deployed as a security screener unless that individual meets the following requirements:

(A) The individual shall possess a high school diploma, a general equivalency diploma, or experience that the Under Secretary has determined to be sufficient for the individual to perform the duties of the position.

(B) The individual shall possess basic aptitudes and physical abilities, including color perception, visual and aural acuity, physical coordination, and motor skills, to the following standards:

(i) Screeners operating screening equipment shall be able to distinguish on the screening equipment monitor the appropriate imaging standard specified by the Under Secretary.

(ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment.

(iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing.

(v) Screeners who perform pat-downs or hand-held metal detector searches of individuals shall have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(C) The individual shall be able to read, speak, and write English well enough to—

(i) carry out written and oral instructions regarding the proper performance of screening duties;

(ii) read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(iv) write incident reports and statements and log entries into security records in the English language.

(D) The individual shall have satisfactorily completed all initial, recurrent, and appropriate specialized training required by the security program, except as provided in paragraph (3).

(2) VETERANS PREFERENCE.—The Under Secretary shall provide a preference for the hiring of an individual as a security screener if the individual is a member or former member of the armed forces and if the individual is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member of the armed forces.

(3) EXCEPTIONS.—An individual who has not completed the training required by this section may be deployed during the on-the-job portion of training to perform functions if that individual—

(A) is closely supervised; and

(B) does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(4) REMEDIAL TRAINING.—No individual employed as a security screener may perform a screening function after that individual has failed an operational test related to that function until that individual has successfully completed the remedial training specified in the security program.

(5) ANNUAL PROFICIENCY REVIEW.—The Under Secretary shall provide that an annual evaluation of each individual assigned screening duties is conducted and documented. An individual employed as a security screener may not continue to be employed in that capacity unless the evaluation demonstrates that the individual—

(A) continues to meet all qualifications and standards required to perform a screening function;

(B) has a satisfactory record of performance and attention to duty based on the standards and requirements in the security program; and

(C) demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(6) OPERATIONAL TESTING.—In addition to the annual proficiency review conducted under paragraph (5), the Under Secretary shall provide for the operational testing of such personnel.

(g)[54] TRAINING.—

(1) USE OF OTHER AGENCIES.—The Under Secretary may enter into a memorandum of understanding or other arrangement with any other Federal agency or department with appropriate law enforcement responsibilities, to provide personnel, resources, or other forms of assistance in the training of security screening personnel.

(2) TRAINING PLAN.—Within 60 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall develop a plan for the training of security screening personnel. The plan shall require, at a minimum, that a security screener—

(A) has completed 40 hours of classroom instruction or successfully completed a program that the Under Secretary determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction;

(B) has completed 60 hours of on-the-job instructions; and

(C) has successfully completed an on-the-job training examination prescribed by the Under Secretary.

(3) EQUIPMENT-SPECIFIC TRAINING.—An individual employed as a security screener may not use any security screening device or equipment in the scope of that individual's employment unless the individual has been trained on that device or equipment and has successfully completed a test on the use of the device or equipment.

(h)[54] TECHNOLOGICAL TRAINING.—

(1) IN GENERAL.—The Under Secretary shall require training to ensure that screeners are proficient in using the most up-to-date new technology and to ensure their proficiency in recognizing new threats and weapons.

(2) PERIODIC ASSESSMENTS.—The Under Secretary shall make periodic assessments to determine if there are dual use items and inform security screening personnel of the existence of such items.

(3) CURRENT LISTS OF DUAL USE ITEMS.—Current lists of dual use items shall be part of the ongoing training for screeners.

(4) DUAL USE DEFINED.—For purposes of this subsection, the term "dual use" item means an item that may seem harmless but that may be used as a weapon.

(i)[54] LIMITATION ON RIGHT TO STRIKE.—An individual that screens passengers or property, or both, at an airport under this section may not participate in a strike, or assert the right to strike, against the person (including a governmental entity) employing such individual to perform such screening.

(j)[54] UNIFORMS.—The Under Secretary shall require any individual who screens passengers and property pursuant to section 44901 to be attired while on duty in a uniform approved by the Under Secretary.

(i)[54] ACCESSIBILITY OF COMPUTER-BASED TRAINING FACILITIES.—The Administrator shall work with air carriers and airports to ensure that computer-based training facilities intended for use by security screeners at an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation are conveniently located for that airport and easily accessible.

§ 44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1)(A)[56] The Under Secretary[3] of Transportation for Security[4] shall require by regulation that an employment investigation, including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security,,[57] shall be conducted,[58] of each individual employed in, or applying for, a position as a security screener under section 44935(e) or a position[59] in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

(i)[56] aircraft of an air carrier or foreign air carrier; or

(ii)[56] a secured area of an airport in the United States the Under Secretary[3] designates that serves an air carrier or foreign air carrier.

(B)[56] The Under Secretary[3] shall require by regulation that an employment investigation (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security)[60] be conducted for—

(i) individuals who are[61] responsible for screening passengers or property under section 44901 of this title;

(ii) supervisors of the individuals described in clause (i);[62]

(iii)[62] individuals who regularly have escorted access to aircraft of an air carrier or foreign air carrier or a secured area

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[56] Sec. 304(a) of Public Law 104–264 (110 Stat. 3251) redesignated subparas. (A) and (B) as clauses (i) and (ii), added new subpara. designation (A) in para. (1), and added new subparas. (B), (C), and (D).

Subsequently, sec. 2(c)(3) of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2518) added subpara. (E).

Subsequently, sec. 138(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 639) struck out subparas. (C), (D), and (E) and added a new subpara. (C).

[57] Sec. 138(a)(1) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 639) inserted "and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security,", resulting in the double comma.

[58] Sec. 2(c)(1) of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2517) struck out "as the Administrator decides is necessary to ensure air transportation security,".

[59] Sec. 111(b)(1) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620) inserted "as a security screener under section 44935(e) or a position".

[60] Sec. 138(a)(2) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 639) stuck out "in any case described in subparagraph (C)" and inserted in lieu thereof "and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security".

[61] Sec. 138(a)(3) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 639) struck out "will be" and inserted in lieu thereof "are".

[62] Sec. 138(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 639) struck out "and" at the end of clause (ii), redesignated clause (iii) as clause (iv), and inserted a new clause (iii).

of an airport in the United States the Administrator designates that serves an air carrier or foreign air carrier; and

(iv)[62] such other individuals who exercise security functions associated with baggage or cargo, as the Under Secretary[3] determines is necessary to ensure air transportation security.

(C)[56] BACKGROUND CHECKS OF CURRENT EMPLOYEES.—

(i) A new background check (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security shall be required for any individual who is employed in a position described in subparagraphs (A) and (B) on the date of enactment of the Aviation and Transportation Security Act.

(ii) The Under Secretary may provide by order (without regard to the provisions of chapter 5 of title 5, United States Code) for a phased-in implementation of the requirements of this subparagraph.

(D)[63] EXEMPTION.—An employment investigation, including a criminal history record check, shall not be required under this subsection for an individual who is exempted under section 107.31(m)(1) or (2)[64] of title 14, Code of Federal Regulations, as in effect on November 22, 2000. The Under Secretary shall work with the International Civil Aviation Organization and with appropriate authorities of foreign countries to ensure that individuals exempted under this subparagraph do not pose a threat to aviation or national security.[65]

(2) An air carrier, foreign air carrier, airport operator, or government[66] that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the Under Secretary[3] requires is conducted.

(3)[67] The Under Secretary[3] shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection.

(b) PROHIBITED EMPLOYMENT.—(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, airport operator, or government[68] may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

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[63] Sec. 2(c)(3) of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2518) added subpara. (D), originally as subpara. (F). Subsequently, sec. 138(a)(7) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 639) struck out subparas. (C) through (E), added a new subpara. (C), and redesignated subpara. (F) as subpara. (D).

[64] Sec. 138(a)(9) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 640) struck out "107.31(m)" and inserted in lieu thereof "107.31(m)(1) or (2)".

[65] Sec. 138(a)(10) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 640) struck out "the date of enactment of this subparagraph." and inserted in lieu thereof "November 22, 2000. The Under Secretary shall work with the International Civil Aviation Organization and with appropriate authorities of foreign countries to ensure that individuals exempted under this subparagraph do not pose a threat to aviation or national security.".

[66] Sec. 138(a)(11) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 640) struck out "carrier, or airport operator" and inserted in lieu thereof "carrier, foreign air carrier, airport operator, or government".

[67] Sec. 306 of Public Law 104–264 (110 Stat. 3252) added para. (3).

[68] Sec. 138(a)(12) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 640) struck out "carrier, or airport operator" and inserted in lieu thereof "carrier, airport operator, or government".

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted (or found not guilty by reason of insanity)[69] of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed or felony unarmed[70] robbery;

(xii) distribution of, or intent to distribute, a controlled substance;[71]

(xiii)[71] a felony involving a threat;

(xiv)[71] a felony involving—

(I) willful destruction of property;

(II) importation or manufacture of a controlled substance;

(III) burglary;

(IV) theft;

(V) dishonesty, fraud, or misrepresentation;

(VI) possession or distribution of stolen property;

(VII) aggravated assault;

(VIII) bribery; and

(IX) illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year, or any other crime classified as a felony that the Under Secretary[3] determines indicates a propensity for placing contraband aboard an aircraft in return for money; or

(xv)[71] conspiracy to commit any of the acts referred to in clauses (i) through (xiv).[72]

(2) The Under Secretary[3] may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

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[69] Sec. 2(d)(1) of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2518) inserted "(or found not guilty by reason of insanity)".

[70] Sec. 2(d)(2) of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2518) inserted "or felony unarmed".

[71] Sec. 2(d) of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2518) struck out "or" at the end of clause (xii), redesignated clause (xiii) as clause (xv), and added new clauses (xiii) and (xiv).

[72] Sec. 2(d)(5) of the Airport Security Improvement Act of 2000 (Public Law 106–528; 114 Stat. 2518) struck out "clauses (i)–(xii) of this paragraph" and inserted in lieu thereof "clauses (i) through (xiv)".

(3) An air carrier, foreign air carrier, airport operator, or government[73] may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the Under Secretary[3] approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—(1) If the Under Secretary[3] requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Under Secretary[3] shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the Under Secretary[3] designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the Under Secretary[3] shall consult with the Attorney General. All Federal agencies shall cooperate with the Under Secretary and the Under Secretary's designee in the process of collecting and submitting fingerprints.[74]

(2) The Under Secretary[3] shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

(d) FEES AND CHARGES.—The Under Secretary[3] and the Attorney General shall establish reasonable fees and charges to pay expenses incurred in carrying out this section. The employer of the individual being investigated shall pay the costs of a record check of the individual. Money collected under this section shall be credited to the account in the Treasury from which the expenses were incurred and are available to the Under Secretary[3] and the Attorney General for those expenses.

(e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.[75]

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[73] Sec. 138(a)(13) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 640) struck out "carrier, or airport operator" and inserted in lieu thereof "carrier, airport operator, or government".

[74] Sec. 138(a)(14) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 640) added this sentence.

[75] Sec. 138(b) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 640) redesignated subsecs. (f) through (h) as subsecs. (h) through (j) and moved them to 49 U.S.C. 44703. Subsec. (h), as redesignated, relates to records of employment of pilot applicants,

Continued

§ 44937. Prohibition on transferring duties and powers

Except as specifically provided by law, the Under Secretary[3] of Transportation for Security[4] may not transfer a duty or power under section 44903(a), (b), (c), or (e), 44906,[76] 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.

§ 44938. Reports

(a) TRANSPORTATION SECURITY.—Not later than March 31[77] of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the biennial[78] report the Under Secretary[3] of Transportation for Security[4] submits under subsection (b) of this section in each year the Under Secretary[3] submits the biennial report,[78] but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

(1) an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;

(2) an evaluation of deployment of explosive detection devices;

(3) recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(c) of this title;

(4) identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;

(5) an evaluation of cooperation with foreign transportation and security authorities;

(6) the status of the extent to which the recommendations of the President's Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;

(7) a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of the report;

(8) financial and staffing requirements of the Director;

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the Under Secretary[3] related to security; and

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subsec. (i) relates to limitation on liability and the preemption of state law, and subsec. (j) relates to limitation on statutory construction.

[76] Sec. 6(57) of Public Law 103–429 (108 Stat. 4385) struck out "44906(a) or (b)" and inserted in lieu thereof "44906".

[77] Sec. 502 of Public Law 103–305 (108 Stat. 1595) struck out "December 31" and inserted in lieu thereof "March 31".

[78] Sec. 1502(b)(1) of the Federal Reports Elimination Act of 1998 (Public Law 105–362; 110 Stat. 3295) struck out "annual", inserted in lieu thereof "biennial", and inserted "in each year the Administrator submits the biennial report". Sec. 101(f)(7) of Public Law 107–71 (115 Stat. 603) subsequently struck out "Administrator" and inserted in lieu thereof "Under Secretary".

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The Under Secretary[3] shall submit biennially[79] to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and

(3) that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the Under Secretary[3] decides that Foreign Security Liaison Officers are necessary for air transportation security; and

(B) for which extraordinary security measures are in place.[80]

§ 44939.[81] Training to operate certain aircraft

(a) WAITING PERIOD.—A person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part may provide training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds to an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Secretary of Homeland Security only if—

(1) that person has first notified the Secretary that the alien or individual has requested such training and submitted to the Secretary, in such form as the Secretary may prescribe, the following information about the alien or individual:

(A) full name, including any aliases used by the applicant or variations in spelling of the applicant's name;

(B) passport and visa information;

(C) country of citizenship;

(D) date of birth;

(E) dates of training; and

(F) fingerprints collected by, or under the supervision of, a Federal, State, or local law enforcement agency or by another entity approved by the Federal Bureau of Investigation or the Secretary of Homeland Security, including fin-

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[79] Sec. 1502(b)(2) of the Federal Reports Elimination Act of 1998 (Public Law 105–362; 110 Stat. 3295) struck out "annually" and inserted in lieu thereof "biennially".

[80] Sec. 1502(b)(3) of the Federal Reports Elimination Act of 1998 (Public Law 105–362; 110 Stat. 3295) struck out subsec. (c), which previously read as follows:

"(c) DOMESTIC AIR TRANSPORTATION SYSTEM SECURITY.—The Administrator shall submit to Congress an annual report for each of the calendar years 1991 and 1992 on the progress being made, and the problems occurring, in carrying out section 44904 of this title. The report shall include recommendations for improving domestic air transportation security.".

[81] Sec. 612(a) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2572) amended and restated sec. 44939. Sec. 113(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 622) originally added sec. 44939.

Sec. 113(c) of Public Law 107–71 further stated:

"(c) INTERNATIONAL COOPERATION.—The Secretary of Transportation, in consultation with the Secretary of State, shall work with the International Civil Aviation Organization and the civil aviation authorities of other countries to improve international aviation security through screening programs for flight instruction candidates.".

gerprints taken by United States Government personnel at a United States embassy or consulate; and

(2) the Secretary has not directed, within 30 days after being notified under paragraph (1), that person not to provide the requested training because the Secretary has determined that the individual presents a risk to aviation or national security.

(b) INTERRUPTION OF TRAINING.—If the Secretary of Homeland Security, more than 30 days after receiving notification under subsection (a) from a person providing training described in subsection (a), determines that the individual presents a risk to aviation or national security, the Secretary shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

(c) NOTIFICATION.—A person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part may provide training in the operation of any aircraft having a maximum certificated takeoff weight of 12,500 pounds or less to an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Secretary of Homeland Security only if that person has notified the Secretary that the individual has requested such training and furnished the Secretary with that individual's identification in such form as the Secretary may require.

(d) EXPEDITED PROCESSING.—Not later than 60 days after the date of enactment of this section, the Secretary shall establish a process to ensure that the waiting period under subsection (a) shall not exceed 5 days for an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) who—

(1) holds an airman's certification of a foreign country that is recognized by an agency of the United States, including a military agency, that permits an individual to operate a multiengine aircraft that has a certificated takeoff weight of more than 12,500 pounds;

(2) is employed by a foreign air carrier that is certified under part 129 of title 14, Code of Federal Regulations, and that has a security program approved under section 1546 of title 49, Code of Federal Regulations;

(3) is an individual that has unescorted access to a secured area of an airport designated under section 4936(a)(1)(A)(ii); or

(4) is an individual that is part of a class of individuals that the Secretary has determined that providing aviation training to presents minimal risk to aviation or national security because of the aviation training already possessed by such class of individuals.

(e) TRAINING.—In subsection (a), the term "training" means training received from an instructor in an aircraft or aircraft simulator and does not include recurrent training, ground training, or demonstration flights for marketing purposes.

(f) NONAPPLICABILITY TO CERTAIN FOREIGN MILITARY PILOTS.—The procedures and processes required by subsections (a) through (d) shall not apply to a foreign military pilot endorsed by the Department of Defense for flight training in the United States and seeking training described in subsection (e) in the United States.

(g) FEE.—

(1) IN GENERAL.—The Secretary of Homeland Security may assess a fee for an investigation under this section, which may not exceed 100 per individual (exclusive of the cost of transmitting fingerprints collected at overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Secretary may adjust the maximum amount of the fee to reflect the costs of such an investigation.

(2) OFFSET.—Notwithstanding section 3302 of title 31, any fee collected under this section—

(A) shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Secretary for those expenses; and

(B) shall remain available until expended.

(h) INTERAGENCY COOPERATION.—The Attorney General, the Director of Central Intelligence, and the Administrator of the Federal Aviation Administration shall cooperate with the Secretary in implementing this section.

(i) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The Secretary shall require flight schools to conduct a security awareness program for flight school employees to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.

§ 44940.[82] Security service fee

(a) GENERAL AUTHORITY.—

(1) PASSENGER FEES.—The Under Secretary of Transportation for Security shall impose a uniform fee, on passengers of air carriers and foreign air carriers in air transportation and intrastate air transportation originating at airports in the United States, to pay for the following costs of providing civil aviation security services:

(A) Salary, benefits, overtime, retirement and other costs of screening personnel, their supervisors and managers, and Federal law enforcement personnel deployed at airport security screening locations under section 44901.

(B) The costs of training personnel described in subparagraph (A), and the acquisition, operation, and maintenance of equipment used by such personnel.

(C) The costs of performing background investigations of personnel described in subparagraphs (A), (D), (F), and (G).

(D) The costs of the Federal air marshals program.

(E) The costs of performing civil aviation security research and development under this title.

(F) The costs of Federal Security Managers under section 44903.

(G) The costs of deploying Federal law enforcement personnel pursuant to section 44903(h). The amount of such costs shall be determined by the Under Secretary and shall not be subject to judicial review.

[82] Sec. 118(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 625) added sec. 44940.

(H)[83] The costs of security-related capital improvements at airports.

(I)[83] The costs of training pilots and flight attendants under sections 44918 and 44921.

The amount of such costs shall be determined by the Under Secretary and shall not be subject to judicial review. For purposes of subparagraph (A), the term "Federal law enforcement personnel" includes State and local law enforcement officers who are deputized under section 44922.[84]

(2) AIR CARRIER FEES.—

(A) AUTHORITY.—In addition to the fee imposed pursuant to paragraph (1), and only to the extent that the Under Secretary estimates that such fee will be insufficient to pay for the costs of providing civil aviation security services described in paragraph (1), the Under Secretary may impose a fee on air carriers and foreign air carriers engaged in air transportation and intrastate air transportation to pay for the difference between any such costs and the amount collected from such fee, as estimated by the Under Secretary at the beginning of each fiscal year. The estimates of the Under Secretary under this subparagraph are not subject to judicial review.

(B) LIMITATIONS.—

(i) OVERALL LIMIT.—The amounts of fees collected under this paragraph for each fiscal year may not exceed, in the aggregate, the amounts paid in calendar year 2000 by carriers described in subparagraph (A) for screening passengers and property, as determined by the Under Secretary.

(ii) PER-CARRIER LIMIT.—The amount of fees collected under this paragraph from an air carrier described in subparagraph (A) for each of fiscal years 2002, 2003, and 2004 may not exceed the amount paid in calendar year 2000 by that carrier for screening passengers and property, as determined by the Under Secretary.

(iii) ADJUSTMENT OF PER-CARRIER LIMIT.—For fiscal year 2005 and subsequent fiscal years, the per-carrier limitation under clause (ii) may be determined by the Under Secretary on the basis of market share or any other appropriate measure in lieu of actual screening costs in calendar year 2000.

(iv) FINALITY OF DETERMINATIONS.—Determinations of the Under Secretary under this subparagraph are not subject to judicial review.

(C) SPECIAL RULE FOR FISCAL YEAR 2002.—The amount of fees collected under this paragraph from any carrier for fiscal year 2002 may not exceed the amounts paid by that carrier for screening passengers and property for a period of time in calendar year 2000 proportionate to the period

[83] Sec. 605(b)(1) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2568) added subparas. (H) and (I).

[84] Sec. 351(b) of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 420), added this sentence.

of time in fiscal year 2002 during which fees are collected under this paragraph.

(b) SCHEDULE OF FEES.—In imposing fees under subsection (a), the Under Secretary shall ensure that the fees are reasonably related to the Transportation Security Administration's costs of providing services rendered.

(c) LIMITATION ON FEE.—Fees imposed under subsection (a)(1) may not exceed $2.50 per enplanement in air transportation or intrastate air transportation that originates at an airport in the United States, except that the total amount of such fees may not exceed $5.00 per one-way trip.

(d) IMPOSITION OF FEE.—

(1) IN GENERAL.—Notwithstanding section 9701 of title 31 and the procedural requirements of section 553 of title 5, the Under Secretary shall impose the fee under subsection (a)(1), and may impose a fee under subsection (a)(2), through the publication of notice of such fee in the Federal Register and begin collection of the fee within 60 days of the date of enactment of this Act, or as soon as possible thereafter.

(2) SPECIAL RULES PASSENGER FEES.—A fee imposed under subsection (a)(1) through the procedures under subsection (d) shall apply only to tickets sold after the date on which such fee is imposed. If a fee imposed under subsection (a)(1) through the procedures under subsection (d) on transportation of a passenger of a carrier described in subsection (a)(1) is not collected from the passenger, the amount of the fee shall be paid by the carrier.

(3) SUBSEQUENT MODIFICATION OF FEE.—After imposing a fee in accordance with paragraph (1), the Under Secretary may modify, from time to time through publication of notice in the Federal Register, the imposition or collection of such fee, or both.

(4) LIMITATION ON COLLECTION.—No fee may be collected under this section except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act or in section 44923.[85]

(e) ADMINISTRATION OF FEES.—

(1) FEES PAYABLE TO UNDER SECRETARY.—All fees imposed and amounts collected under this section are payable to the Under Secretary.

(2) FEES COLLECTED BY AIR CARRIER.—A fee imposed under subsection (a)(1) shall be collected by the air carrier or foreign air carrier that sells a ticket for transportation described in subsection (a)(1).

(3) DUE DATE FOR REMITTANCE.—A fee collected under this section shall be remitted on the last day of each calendar month by the carrier collecting the fee. The amount to be remitted shall be for the calendar month preceding the calendar month in which the remittance is made.

[85] Sec. 605(b)(2) of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176; 117 Stat. 2568) struck out "Act." and inserted in lieu thereof "Act or in section 44923.".

(4) INFORMATION.—The Under Secretary may require the provision of such information as the Under Secretary decides is necessary to verify that fees have been collected and remitted at the proper times and in the proper amounts.

(5) FEE NOT SUBJECT TO TAX.—For purposes of section 4261 of the Internal Revenue Code of 1986 (26 U.S.C. 4261), a fee imposed under this section shall not be considered to be part of the amount paid for taxable transportation.

(6) COST OF COLLECTING FEE.—No portion of the fee collected under this section may be retained by the air carrier or foreign air carrier for the costs of collecting, handling, or remitting the fee except for interest accruing to the carrier after collection and before remittance.

(f) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(3) shall remain available until expended.

(g) REFUNDS.—The Under Secretary may refund any fee paid by mistake or any amount paid in excess of that required.

(h) EXEMPTIONS.—The Under Secretary may exempt from the passenger fee imposed under subsection (a)(1) any passenger enplaning at an airport in the United States that does not receive screening services under section 44901 for that segment of the trip for which the passenger does not receive screening.

§ 44941.[86] Immunity for reporting suspicious activities

(a) IN GENERAL.—Any air carrier or foreign air carrier or any employee of an air carrier or foreign air carrier who makes a voluntary disclosure of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism, as defined by section 3077 of title 18, United States Code, to any employee or agent of the Department of Transportation, the Department of Justice, any Federal, State, or local law enforcement officer, or any airport or airline security officer shall not be civilly liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, for such disclosure.

(b) APPLICATION.—Subsection (a) shall not apply to—

(1) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or

(2) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.

§ 44942.[87] Performance goals and objectives

(a) SHORT TERM TRANSITION.—

[86] Sec. 125(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 631) added sec. 44941.

(1) IN GENERAL.—Within 180 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary for Transportation Security may, in consultation with Congress—

(A) establish acceptable levels of performance for aviation security, including screening operations and access control, and

(B) provide Congress with an action plan, containing measurable goals and milestones, that outlines how those levels of performance will be achieved.

(2) BASICS OF ACTION PLAN.—The action plan shall clarify the responsibilities of the Transportation Security Administration, the Federal Aviation Administration and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.

(b) LONG-TERM RESULTS-BASED MANAGEMENT.—

(1)[88] PERFORMANCE PLAN AND REPORT.—

(A) PERFORMANCE PLAN.—

(i) Each year, consistent with the requirements of the Government Performance and Results Act of 1993 (GPRA), the Secretary and the Under Secretary for Transportation Security shall agree on a performance plan for the succeeding 5 years that establishes measurable goals and objectives for aviation security. The plan shall identify action steps necessary to achieve such goals.

(ii) In addition to meeting the requirements of GPRA, the performance plan should clarify the responsibilities of the Secretary, the Under Secretary for Transportation Security and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.

(B) PERFORMANCE REPORT.—Each year, consistent with the requirements of GPRA, the Under Secretary for Transportation Security shall prepare and submit to Congress an annual report including an evaluation of the extent goals and objectives were met. The report shall include the results achieved during the year relative to The goals established in the performance plan.

§ 44943.[87] Performance management system

(a) ESTABLISHING A FAIR AND EQUITABLE SYSTEM FOR MEASURING STAFF PERFORMANCE.—The Under Secretary for Transportation Security shall establish a performance management system which strengthens the organization's effectiveness by providing for the establishment of goals and objectives for managers, employees, and organizational performance consistent with the performance plan.

(b) ESTABLISHING MANAGEMENT ACCOUNTABILITY FOR MEETING PERFORMANCE GOALS.—

[87] Sec. 130 of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 633) added secs. 44942 and 44943.

[88] So in original. No para. (2) is enacted.

(1) IN GENERAL.—Each year, the Secretary and Under Secretary of Transportation for Security shall enter into an annual performance agreement that shall set forth organizational and individual performance goals for the Under Secretary.

(2) GOALS.—Each year, the Under Secretary and each senior manager who reports to the Under Secretary shall enter into an annual performance agreement that sets forth organization and individual goals for those managers. All other employees hired under the authority of the Under Secretary shall enter into an annual performance agreement that sets forth organization and individual goals for those employees.

(c) PERFORMANCE-BASED SERVICE CONTRACTING.—To the extent contracts, if any, are used to implement the Aviation Security Act, the Under Secretary for Transportation Security shall, to the extent practical, maximize the use of performance-based service contracts. These contracts should be consistent with guidelines published by the Office of Federal Procurement Policy.

§ 44944.[89] Voluntary provision of emergency services

(a) PROGRAM FOR PROVISION OF VOLUNTARY SERVICES.—

(1) PROGRAM.—The Under Secretary of Transportation for Transportation Security shall carry out a program to permit qualified law enforcement officers, firefighters, and emergency medical technicians to provide emergency services on commercial air flights during emergencies.

(2) REQUIREMENTS.—The Under Secretary shall establish such requirements for qualifications of providers of voluntary services under the program under paragraph (1), including training requirements, as the Under Secretary considers appropriate.

(3) CONFIDENTIALITY OF REGISTRY.—If as part of the program under paragraph (1) the Under Secretary requires or permits registration of law enforcement officers, firefighters, or emergency medical technicians who are willing to provide emergency services on commercial flights during emergencies, the Under Secretary shall take appropriate actions to ensure that the registry is available only to appropriate airline personnel and otherwise remains confidential.

(4) CONSULTATION.—The Under Secretary shall consult with appropriate representatives of the commercial airline industry, and organizations representing community-based law enforcement, firefighters, and emergency medical technicians, in carrying out the program under paragraph (1), including the actions taken under paragraph (3).

(b) EXEMPTION FROM LIABILITY.—An individual shall not be liable for damages in any action brought in a Federal or State court that arises from an act or omission of the individual in providing or attempting to provide assistance in the case of an in-flight emergency in an aircraft of an air carrier if the individual meets such qualifications as the Under Secretary shall prescribe for purposes of this section.

[89] Sec. 131(a) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 635) added sec. 44944.

(c) EXCEPTION.—The exemption under subsection (b) shall not apply in any case in which an individual provides, or attempts to provide, assistance described in that paragraph in a manner that constitutes gross negligence or willful misconduct.

b. Cape Town Treaty Implementation Act of 2004

Public Law 108–297 [H.R. 4226], 108 Stat. 1095, approved August 9, 2004

AN ACT To amend title 49, United States Code, to make certain conforming changes to provisions governing the registration of aircraft and the recordation of instruments in order to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, known as the "Cape Town Treaty".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as "Cape Town Treaty Implementation Act of 2004".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The Cape Town Treaty (as defined in section 44113 of title 49, United States Code) extends modern commercial laws for the sale, finance, and lease of aircraft and aircraft engines to the international arena in a manner consistent with United States law and practice.

(2) The Cape Town Treaty provides for internationally established and recognized financing and leasing rights that will provide greater security and commercial predictability in connection with the financing and leasing of highly mobile assets, such as aircraft and aircraft engines.

(3) The legal and financing framework of the Cape Town Treaty will provide substantial economic benefits to the aviation and aerospace sectors, including the promotion of exports, and will facilitate the acquisition of newer, safer aircraft around the world.

(4) Only technical changes to United States law and regulations are required since the asset-based financing and leasing concepts embodied in the Cape Town Treaty are already reflected in the United States in the Uniform Commercial Code.

(5) The new electronic registry system established under the Cape Town Treaty will work in tandem with current aircraft document recordation systems of the Federal Aviation Administration, which have served United States industry well.

(6) The United States Government was a leader in the development of the Cape Town Treaty.

(b) PURPOSE.—Accordingly, the purpose of this Act is to provide for the implementation of the Cape Town Treaty in the United States by making certain technical amendments to the provisions of chapter 441 of title 49, United States Code, directing the Federal

[1] 49 U.S.C. 40101 note.

Aviation Administration to complete the necessary rulemaking processes as expeditiously as possible, and clarifying the applicability of the Treaty during the rulemaking process.

SEC. 3.[2] RECORDATION OF SECURITY INSTRUMENTS.

SEC. 4.[1] REGULATIONS.

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration shall issue regulations necessary to carry out this Act, including any amendments made by this Act.

(b) CONTENTS OF REGULATIONS.—Regulations to be issued under this Act shall specify, at a minimum, the requirements for—

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[2] Sec. 3 consists of amendments to 49 U.S.C. 44107, which reads as follows (as amended):

"§ **44107. Recordation of conveyances, leases, and security instruments**

"(a) ESTABLISHMENT OF SYSTEM.—The Administrator of the Federal Aviation Administration shall establish a system for recording—

"(1) conveyances that affect an interest in civil aircraft of the United States;

"(2) leases and instruments executed for security purposes, including conditional sales contracts, assignments, and amendments, that affect an interest in—

"(A) a specifically identified aircraft engine having at least 550 rated takeoff horsepower or its equivalent;

"(B) a specifically identified aircraft propeller capable of absorbing at least 750 rated takeoff shaft horsepower;

"(C) an aircraft engine, propeller, or appliance maintained for installation or use in an aircraft, aircraft engine, or propeller, by or for an air carrier holding a certificate issued under section 44705 of this title; and

"(D) spare parts maintained by or for an air carrier holding a certificate issued under section 44705 of this title; and

"(3) releases, cancellations, discharges, and satisfactions related to a conveyance, lease, or instrument recorded under paragraph (1) or (2).

"(b) GENERAL DESCRIPTION REQUIRED.—A lease or instrument recorded under subsection (a)(2)(C) or (D) of this section only has to describe generally the engine, propeller, appliance, or spare part by type and designate its location.

"(c) ACKNOWLEDGMENT.—Except as the Administrator otherwise may provide, a conveyance, lease, or instrument may be recorded under subsection (a) of this section only after it has been acknowledged before—

"(1) a notary public; or

"(2) another officer authorized under the laws of the United States, a State, the District of Columbia, or a territory or possession of the United States to acknowledge deeds.

"(d) RECORDS AND INDEXES.—The Administrator shall—

"(1) keep a record of the time and date that each conveyance, lease, and instrument is filed and recorded with the Administrator; and

"(2) record each conveyance, lease, and instrument filed with the Administrator, in the order of their receipt, and index them by—

"(A) the identifying description of the aircraft, aircraft engine, or propeller, or location specified in a lease or instrument recorded under subsection (a)(2)(C) or (D) of this section; and

"(B) the names of the parties to each conveyance, lease, and instrument."

"(e) INTERNATIONAL REGISTRY.—

"(1) DESIGNATION OF UNITED STATES ENTRY POINT.—As permitted under the Cape Town Treaty, the Federal Aviation Administration Civil Aviation Registry is designated as the United States Entry Point to the International Registry relating to—

"(A) civil aircraft of the United States;

"(B) an aircraft for which a United States identification number has been assigned but only with regard to a notice filed under paragraph (2); and

"(C) aircraft engines.

"(2) SYSTEM FOR FILING NOTICE OF PROSPECTIVE INTERESTS.—

"(A) ESTABLISHMENT.—The Administrator shall establish a system for filing notices of prospective assignments and prospective international interests in, and prospective sales of, aircraft or aircraft engines described in paragraph (1) under the Cape Town Treaty.

"(B) MAINTENANCE OF VALIDITY.—A filing of a notice of prospective assignment, interest, or sale under this paragraph and the registration with the International Registry relating to such assignment, interest, or sale shall not be valid after the 60th day following the date of the filing unless documents eligible for recording under subsection (a) relating to such notice are filed for recordation on or before such 60th day.

"(3) AUTHORIZATION FOR REGISTRATION OF AIRCRAFT.—A registration with the International Registry relating to an aircraft described in paragraph (1) (other than subparagraph (C)) is valid only if (A) the person seeking the registration first files documents eligible for recording under subsection (a) and relating to the registration with the United States Entry Point, and (B) the United States Entry Point authorizes the registration.".

(1) the registration of aircraft previously registered in a country in which the Cape Town Treaty is in effect; and

(2) the cancellation of registration of a civil aircraft of the United States based on a request made in accordance with the Cape Town Treaty.

(c) EXPEDITED RULEMAKING PROCESS.—

(1) FINAL RULE.—The Administrator shall issue regulations under this section by publishing a final rule by December 31, 2004.

(2) EFFECTIVE DATE.—The final rule shall not be effective before the date the Cape Town Treaty enters into force with respect to the United States.

(3) ECONOMIC ANALYSIS.—The Administrator shall not be required to prepare an economic analysis of the cost and benefits of the final rule.

(d) APPLICABILITY OF TREATY.—Notwithstanding parts 47.37(a)(3)(ii) and 47.47(a)(2) of title 14, of the Code of Federal Regulations, Articles IX(5) and XIII of the Cape Town Treaty shall apply to the matters described in subsection (b) until the earlier of the effective date of the final rule under this section or December 31, 2004.

SEC. 5. LIMITATION ON VALIDITY OF CONVEYANCES, LEASES, AND SECURITY INSTRUMENTS.

Section 44108(c)(2) of title 49, United States Code, is amended by striking the period at the end and inserting "or the Cape Town Treaty, as applicable.".

SEC. 6. DEFINITIONS.

(a) IN GENERAL.—Chapter 441 of title 49, United States Code, is amended by adding at the end the following:

"§ 44113. Definitions

"In this chapter, the following definitions apply:

"(1) CAPE TOWN TREATY.—The term 'Cape Town Treaty' means the Convention on International Interests in Mobile Equipment, as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, signed at Rome on May 9, 2003.

"(2) UNITED STATES ENTRY POINT.—The term 'United States Entry Point' means the Federal Aviation Administration Civil Aviation Registry.

"(3) INTERNATIONAL REGISTRY.—The term 'International Registry' means the registry established under the Cape Town Treaty.".

(b) CONFORMING AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

"44113. Definitions.".

SEC. 7.[1] EFFECTIVE DATE AND PRESERVATION OF PRIOR RIGHTS.

This Act, including any amendments made by this Act, shall take effect on the date the Cape Town Treaty (as defined in section 44113 of title 49, United States Code) enters into force with respect to the United States and shall not apply to any registration or recordation that was made before such effective date under chapter

441 of such title or any legal rights relating to such registration or recordation.

c. Aviation Security Improvement Act of 1990

Partial text of Public Law 101–604 [H.R. 5732], 104 Stat. 3066, approved November 16, 1990; as amended by Public Law 103–272 [H.R. 1758], 108 Stat. 745, approved July 5, 1994

AN ACT To promote and strengthen aviation security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Aviation Security Improvement Act of 1990".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[2] FINDINGS.

Congress finds that—

(1) the safety and security of passengers of United States air carriers against terrorist threats should be given the highest priority by the United States Government;

(2) the report of the President's Commission on Aviation Security and Terrorism, dated May 15, 1990, found that current aviation security systems are inadequate to provide such protection;

(3) the United States Government should immediately take steps to ensure fuller compliance with existing laws and regulations relating to aviation security;

(4) the United States Government should work through the International Civil Aviation Organization and directly with foreign governments to enhance aviation security of foreign carriers and at foreign airports;

(5) the United States Government should ensure that enhanced security measures are fully implemented by both United States and foreign air carriers;

(6) all nations belonging to the Summit Seven should promptly amend the Bonn Declaration to extend sanctions for all terrorist acts, including attacks against airports and air carrier ticket offices;

(7) the United States Government, in bilateral negotiations with foreign governments, should emphasize upgrading international aviation security objectives;

(8) the United States Government should have in place a mechanism by which the Government notifies the public, on a case-by-case basis and through the application of a uniform national standard, of certain credible threats to civil aviation security;

[1] 49 U.S.C. app. 1301 note.
[2] 22 U.S.C. 5501 note.

(9) the United States Government has a special obligation to United States victims of acts of terrorism directed against this Nation and should provide prompt assistance to the families of such victims and assure that fair and prompt compensation is provided to such victims and their families;

(10) the United States should work with other nations to treat as outlaws state sponsors of terrorism, isolating such sponsors politically, economically, and militarily;

(11) the United States must develop a clear understanding that state-sponsored terrorism threatens United States values and interests, and that active measures are needed to counter more effectively the terrorist threat; and

(12) the United States must have the national will to take every feasible action to prevent, counter, and respond to terrorist activities.

TITLE I—AVIATION SECURITY [3]

TITLE II—UNITED STATES RESPONSE TO TERRORISM AFFECTING AMERICANS ABROAD

SEC. 201.[4] INTERNATIONAL NEGOTIATIONS CONCERNING AVIATION SECURITY.

(a) UNITED STATES POLICY.—It is the policy of the United States—

(1) to seek bilateral agreements to achieve United States aviation security objectives with foreign governments;

(2) to continue to press vigorously for security improvements through the Foreign Airport Security Act and the foreign airport assessment program; and

(3) to continue to work through the International Civil Aviation Organization to improve aviation security internationally.

(b) NEGOTIATIONS FOR AVIATION SECURITY.—(1) The Department of State, in consultation with the Department of Transportation, shall be responsible for negotiating requisite aviation security agreements with foreign governments concerning the implementation of United States rules and regulations which affect the foreign operations of United States air carriers, foreign air carriers, and foreign international airports. The Secretary of State is directed to enter, expeditiously, into negotiations for bilateral and multilateral agreements—

(A) for enhanced aviation security objectives;

(B) to implement the Foreign Airport Security Act and the foreign airport assessment program to the fullest extent practicable; and

(C) to achieve improved availability of passenger manifest information.

(2) A principal objective of bilateral and multilateral negotiations with foreign governments and the International Civil Aviation Organization shall be improved availability of passenger manifest information.

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[3] Sec. 7(b) of Public Law 103–272 (108 Stat. 1398) repealed sec. 101(a) and (b), secs. 102 through 111, and sec. 203(a) through (c). See 49 U.S.C. relating to aviation security.

[4] 22 U.S.C. 5501.

SEC. 202.[5] COORDINATOR FOR COUNTERTERRORISM.

The Coordinator for Counterterrorism shall be responsible for the coordination of international aviation security for the Department of State.

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SEC. 204.[6] DEPARTMENT OF STATE NOTIFICATION OF FAMILIES OF VICTIMS.

(a) DEPARTMENT OF STATE POLICY.—It is the policy of the Department of State pursuant to section 43 of the State Department Basic Authorities Act to directly and promptly notify the families of victims of aviation disasters abroad concerning citizens of the United States directly affected by such a disaster, including timely written notice. The Secretary of State shall ensure that such notification by the Department of State is carried out notwithstanding notification by any other person.

(b) DEPARTMENT OF STATE GUIDELINES.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such regulations, guidelines, and circulars as are necessary to ensure that the policy under subsection (a) is fully implemented.

SEC. 205.[7] DESIGNATION OF STATE DEPARTMENT-FAMILY LIAISON AND TOLL-FREE FAMILY COMMUNICATIONS SYSTEM.

(a) DESIGNATION OF STATE DEPARTMENT-FAMILY LIAISON.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and guidelines as are necessary to provide that in the event of an aviation disaster directly involving United States citizens abroad, if possible, the Department of State will assign a specific individual, and an alternate, as the Department of State liaison for the family of each such citizen.

(b) TOLL-FREE COMMUNICATIONS SYSTEM.—In the establishment of the Department of State toll-free communications system to facilitate inquiries concerning the affect of any disaster abroad on United States citizens residing or traveling abroad, the Secretary of State shall ensure that a toll-free telephone number is reserved for the exclusive use of the families of citizens who have been determined to be directly involved in any such disaster.

SEC. 206.[8] DISASTER TRAINING FOR STATE DEPARTMENT PERSONNEL.

(a) ADDITIONAL TRAINING.—The Secretary of State shall institute a supplemental program of training in disaster management for all consular officers.

(b) TRAINING IMPROVEMENTS.—

(1) In expanding the training program under subsection (a), the Secretary of State shall consult with death and bereavement counselors concerning the particular demands posed by aviation tragedies and terrorist activities.

(2) In providing such additional training under subsection (a) the Secretary of State shall consider supplementing the current training program through—

[5] 22 U.S.C. 5502.
[6] 22 U.S.C. 5503.
[7] 22 U.S.C. 5504.
[8] 22 U.S.C. 5505.

(A) providing specialized training to create a team of "disaster specialists" to deploy immediately in a crisis; or

(B) securing outside experts to be brought in during the initial phases to assist consular personnel.

SEC. 207.[9] DEPARTMENT OF STATE RESPONSIBILITIES AND PROCEDURES AT INTERNATIONAL DISASTER SITE.

(a) DISPATCH OF SENIOR STATE DEPARTMENT OFFICIAL TO SITE.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and guidelines as are necessary to provide that in the event of an international disaster, particularly an aviation tragedy, directly involving significant numbers of United States citizens abroad not less than one senior officer from the Bureau of Consular Affairs of the Department of State shall be dispatched to the site of such disaster.

(b) CRITERIA FOR DEPARTMENT OF STATE STAFFING AT DISASTER SITE.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall promulgate criteria for Department of State staffing of disaster sites abroad. Such criteria shall define responsibility for staffing decisions and shall consider the deployment of crisis teams under subsection (d). The Secretary of State shall promptly issue such rules and guidelines as are necessary to implement criteria developed pursuant to this subsection.

(c) STATE DEPARTMENT OMBUDSMAN.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and guidelines as are necessary to provide that in the event of an international aviation disaster involving significant numbers of United States citizens abroad not less than one officer or employee of the Department of State shall be dispatched to the disaster site to provide on-site assistance to families who may visit the site and to act as an ombudsman in matters involving the foreign local government authorities and social service agencies.

(d) CRISIS TEAMS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall promulgate procedures for the deployment of a "crisis team", which may include public affairs, forensic, and bereavement experts, to the site of any international disaster involving United States citizens abroad to augment in-country Embassy and consulate staff. The Secretary of State shall promptly issue such rules and guidelines as are necessary to implement procedures developed pursuant to this subsection.

SEC. 208.[10] RECOVERY AND DISPOSITION OF REMAINS AND PERSONAL EFFECTS.

It is the policy of the Department of State (pursuant to section 43 of the State Department Basic Authorities Act) to provide liaison with foreign governments and persons and with United States air carriers concerning arrangements for the preparation and transport to the United States of the remains of citizens who die abroad, as well as the disposition of personal effects. The Secretary

[9] 22 U.S.C. 5506.
[10] 22 U.S.C. 5507.

of State shall ensure that regulations and guidelines of the Department of State reflect such policy and that such assistance is rendered to the families of United States citizens who are killed in terrorist incidents and disasters abroad.

SEC. 209.[11] ASSESSMENT OF LOCKERBIE EXPERIENCE.

(a) ASSESSMENT.—The Secretary of State shall compile an assessment of the Department of State response to the Pan American Airways Flight 103 aviation disaster over Lockerbie, Scotland, on December 21, 1988.

(b) GUIDELINES.—The Secretary of State shall establish, based on the assessment compiled under subsection (a) and other relevant factors, guidelines for future Department of State responses to comparable disasters and shall distribute such guidelines to all United States diplomatic and consular posts abroad.

SEC. 210.[12] OFFICIAL DEPARTMENT OF STATE RECOGNITION.

Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall promulgate guidelines for appropriate ceremonies or other official expressions of respect and support for the families of United States citizens who are killed through acts of terrorism abroad.

SEC. 211.[13] UNITED STATES GOVERNMENT COMPENSATION FOR VICTIMS OF TERRORISM.

(a) COMPENSATION.—The President shall submit to the Congress, not later than one year after the date of the enactment of this Act, recommendations on whether or not legislation should be enacted to authorize the United States to provide monetary and tax relief as compensation to United States citizens who are victims of terrorism.

(b) BOARD.—The President may establish a board to develop criteria for compensation and to recommend changes to existing laws to establish a single comprehensive approach to victim compensation for terrorist acts.

(c) INCOME TAX BENEFIT FOR VICTIMS OF LOCKERBIE TERRORISM.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of any individual whose death was a direct result of the Pan American Airways Flight 103 terrorist disaster over Lockerbie, Scotland, on December 21, 1988, any tax imposed by subtitle A of the Internal Revenue Code of 1986 shall not apply—

(A) with respect to the taxable year which includes December 21, 1988, and

(B) with respect to the prior taxable year.

(2) LIMITATION.—In no case may the tax benefit pursuant to paragraph (1) for any taxable year, for any individual, exceed an amount equal to 28 percent of the annual rate of basic pay at Level V of the Executive Schedule of the United States as of December 21, 1988.

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[11] 22 U.S.C. 5508.
[12] 22 U.S.C. 5509.
[13] 22 U.S.C. 5510.

SEC. 212.[14] OVERSEAS SECURITY ELECTRONIC BULLETIN BOARD.

Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall issue such rules and regulations as may be necessary to establish, under the Bureau of Consular Affairs, an electronic bulletin board accessible to the general public. Such bulletin board shall contain all information, updated daily, which is available on the Overseas Security Electronic Bulletin Board of the Bureau of Diplomatic Security.

SEC. 213. ANTITERRORISM ASSISTANCE.

(a) AVIATION SECURITY.—In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated $7,000,000 for fiscal year 1991 for aviation security assistance under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.), relating to antiterrorism assistance.

(b)[15] TRAINING SERVICES.— * * *

SEC. 214.[16] ANTITERRORISM MEASURES.

(a) GUIDELINES FOR INTERNATIONAL AVIATION TRAVELERS.—For the purpose of notifying the public, the Secretary of State, in consultation with the Secretary of Transportation, shall develop and publish guidelines for thwarting efforts by international terrorists to enlist the unwitting assistance of international aviation travelers in terrorist activities. Notices concerning such guidelines shall be posted and prominently displayed domestically and abroad in international airports.

(b) DEVELOPMENT OF INTERNATIONAL STANDARDS.—The Secretary of State and the Secretary of Transportation in all appropriate fora, particularly talks and meetings related to international civil aviation, shall enter into negotiations with other nations for the establishment of international standards regarding guidelines for thwarting efforts by international terrorists to enlist the unwitting assistance of international aviation travelers in terrorist activities.

(c) PUBLICATION OF REWARDS FOR TERRORISM-RELATED INFORMATION.—For the purpose of notifying the public, the Secretary of State shall publish the availability of United States Government rewards for information on international terrorist-related activities, including rewards available under section 36(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708(a)) and chapter 204 of title 18, United States Code. To the extent appropriate and feasible, notices making such publication shall be posted and prominently displayed domestically and abroad in international airports.

(d) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Transportation should take appropriate measures to utilize and train properly the officers and employees of other United States Government agencies who have functions at international airports in the United States and abroad in the detection of explosives and firearms which could be a threat to international civil aviation.

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[14] 22 U.S.C. 5511.

[15] Sec. 213(b) amended sec. 573(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa2). For text, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

[16] 22 U.S.C. 5512.

SEC. 215.[17] PROPOSAL FOR CONSIDERATION BY THE INTERNATIONAL CIVIL AVIATION ORGANIZATION.

Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Transportation, shall propose to the International Civil Aviation Organization the establishment of a comprehensive aviation security program which shall include (1) training for airport security personnel, (2) grants for security equipment acquisition for certain nations, and (3) expansion of the appropriate utilization of canine teams in the detection of explosive devices in all airport areas, including use in passenger screening areas and nonpublic baggage assembly and processing areas.

[17] 22 U.S.C. 5513.

d. International Security and Development Cooperation Act of 1985—International Terrorism and Foreign Airport Security [1]

Partial text of Title V of Public Law 99–83 [S. 960], 99 Stat. 190, approved August 8, 1985; as amended by Public Law 103–272 [H.R. 1758], 108 Stat. 745, approved July 5, 1994

AN ACT To authorize international development and security assistance programs and Peace Corps programs for fiscal years 1986 and 1987, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "International Security and Development Cooperation Act of 1985".

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TITLE V—INTERNATIONAL TERRORISM AND FOREIGN AIRPORT SECURITY

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PART B—FOREIGN AIRPORT SECURITY

SEC. 551.[2] SECURITY STANDARDS FOR FOREIGN AIR TRANSPORTATION. * * *

(c) CLOSING OF BEIRUT INTERNATIONAL AIRPORT.—It is the sense of the Congress that the President is urged and encouraged to take all appropriate steps to carry forward his announced policy of seeking the effective closing of the international airport in Beirut, Lebanon, at least until such time as the Government of Lebanon has instituted measures and procedures designed to prevent the use of that airport by aircraft hijackers and other terrorists in attacking civilian airlines or their passengers, hijacking their aircraft, or taking or holding their passengers hostage.

SEC. 552.[3] TRAVEL ADVISORY AND SUSPENSION OF FOREIGN ASSISTANCE. * * * [Repealed—1994]

SEC. 553.[3] UNITED STATES AIRMARSHAL PROGRAM. * * * [Repealed—1994]

SEC. 554. ENFORCEMENT OF INTERNATIONAL CIVIL AVIATION ORGANIZATION STANDARDS.

The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to enforce that Organization's existing

[1] For complete text of this Act, see *Legislation on Foreign Relations Through 2005*, vol. I–A.
[2] Sec. 551(a) amended sec. 1115 of the Federal Aviation Act of 1958; subsec. (b) made conforming amendments.
[3] Sec. 7(b) of Public Law 103–272 (108 Stat. 1379) repealed secs. 552, 553, and 556. See 49 U.S.C. relating to aviation security.

standards and to support United States actions enforcing such standards.

SEC. 555. INTERNATIONAL CIVIL AVIATION BOYCOTT OF COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

It is the sense of the Congress that the President—

(1) should call for an international civil aviation boycott with respect to those countries which the President determines—

(A) grant sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or

(B) otherwise support international terrorism; and

(2) should take steps, both bilateral and multilateral, to achieve a total international civil aviation boycott with respect to those countries.

SEC. 556.[3] MULTILATERAL AND BILATERAL AGREEMENTS WITH RESPECT TO AIRCRAFT SABOTAGE, AIRCRAFT HIJACKING, AND AIRPORT SECURITY. * * * [Repealed—1994]

SEC. 557. RESEARCH ON AIRPORT SECURITY TECHNIQUES FOR DETECTING EXPLOSIVES.

In order to improve security at international airports, there are authorized to be appropriated to the Secretary of Transportation from the Airport and Airway Trust Fund (in addition to amounts otherwise available for such purpose) $5,000,000, without fiscal year limitation, to be used for research on and the development of airport security devices or techniques for detecting explosives.

SEC. 558. HIJACKING OF TWA FLIGHT 847 AND OTHER ACTS OF TERRORISM.

The Congress joins with all Americans in celebrating the release of the hostages taken from Trans World Airlines flight 847. It is the sense of the Congress that—

(1) purser Uli Derickson, pilot John Testrake, co-pilot Philip Maresca, flight engineer Benjamin Zimmermann, and the rest of the crew of Trans World Airlines flight 847 displayed extraordinary valor and heroism during the hostages' ordeal and therefore should be commended;

(2) the hijackers who murdered United States Navy Petty Officer Stethem should be immediately brought to justice;

(3) all diplomatic means should continue to be employed to obtain the release of the 7 United States citizens previously kidnapped and still held in Lebanon;

(4) acts of international terrorism should be universally condemned; and

(5) the Secretary of State should be supported in his efforts to gain international cooperation to prevent future acts of terrorism.

SEC. 559. EFFECTIVE DATE.

This part shall take effect on the date of enactment of this Act.

2. International Cooperation in Scientific Research

a. National Science Foundation Act of 1950, as amended

Partial text of Public Law 81–507 [S. 247], 64 Stat. 154, approved May 10, 1950; as amended by Public Law 86–232 [H.R. 8284], 73 Stat. 468, approved September 8, 1959; Public Law 90–407 [H.R. 5404], 82 Stat. 365, approved July 18, 1968; and by Public Law 99–159 [National Science, Engineering, and Mathematics Authorization Act for Fiscal Year 1986; H.R. 1210], 99 Stat. 891, approved November 22, 1985

AN ACT To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Science Foundation Act of 1950".

* * * * * * *

INTERNATIONAL COOPERATION AND COORDINATION WITH FOREIGN POLICY

Sec. 13.[1] (a) The Foundation is authorized to cooperate in any international scientific or engineering[2] activities consistent with the purposes of this Act and to expend for such international scientific or engineering[2] activities such sums within the limit of appropriated funds as the Foundation may deem desirable. The Director[3] may defray the expenses of representatives of Government agencies and other organizations and of individual scientists or engineers[2] to accredited international scientific or engineering[2] congresses and meetings whenever he deems it necessary in the promotion of the objectives of this Act. In this connection, with the approval of the Secretary of State, the Foundation may undertake programs granting fellowships to, or making other similar arrangements with, foreign nationals for study and research in the sciences or in engineering in the United States without regard to section 10 of this Act or the affidavit of allegiance to the United States required by section 15(d)(2) of this Act[3]. In this connection, with the approval of the Secretary of State, the Foundation may undertake programs granting fellowships to, or making other similar arrangements with, foreign nationals for study and research in the sciences or in engineering[2] in the United States without regard to section

[1] 42 U.S.C. 1872.

[2] Sec. 110(a)(16) of Public Law 99–159 (99 Stat. 891) inserted "or engineering" after "scientific", inserted "or engineers" after "scientists", and struck out "scientific study or scientific work" and inserted in lieu thereof "study and research in the sciences or in engineering".

[3] Subsec. (a) of Public Law 90–407 (82 Stat. 365) struck out ", with the approval of the Board," following "The Director". Subsec. (a) further struck out "section 16(d)(2) of this Act" and inserted in lieu thereof "section 15(d)(2) of this Act.

10 of this Act or the affidavit of allegiance to the United States required by section 15(d)(2) of this Act[3].[4]

(b)(1) The authority to enter into contracts or other arrangements with organizations or individuals in foreign countries and with agencies of foreign countries, as provided in section 11(c), and the authority to cooperate in international scientific[5] or engineering[6] activities as provided in subsection (a) of this section, shall be exercised only with the approval of the Secretary of State, to the end that such authority shall be exercised in such manner as is consistent with the foreign policy objectives of the United States.

(2) If, in the exercise of the authority referred to in paragraph (1) of this subsection, negotiation with foreign countries or agencies thereof becomes necessary, such negotiation shall be carried on by the Secretary of State in consultation with the Director.

* * * * * * *

[4] Subsec. (a) of Public Law 86–232 (73 Stat. 468) added the final two sentences of subsec. (a).
[5] Subsec. (b)(1) of Public Law 86–232 (73 Stat. 468) struck out "research".
[6] Sec. 110(a)(17) of Public Law 99–159 (99 Stat. 891) inserted "or engineering".

b. National Aeronautics and Space Act of 1958

Partial text of Public Law 85–568 [H.R. 12575], 72 Stat. 426, approved July 29, 1958; as amended by Public Law 94–39 [National Aeronautics and Space Administration Authorization Act, 1976; H.R. 4700], 89 Stat. 218, approved June 19, 1975

AN ACT To provide for research into problems of flight within and outside the Earth's atmosphere, and for other purposes.

* * * * * * *

INTERNATIONAL COOPERATION

SEC. 205.[1] The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this Act, and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

* * * * * * *

TITLE IV—UPPER ATMOSPHERIC RESEARCH[2]

PURPOSE AND POLICY

SEC. 401.[3] (a) The purpose of this title is to authorize and direct the Administration to develop and carry out a comprehensive program of research, technology, and monitoring of the phenomena of the upper atmosphere so as to provide for an understanding of and to maintain the chemical and physical integrity of the Earth's upper atmosphere.

(b) The Congress declares that it is the policy of the United States to undertake an immediate and appropriate research, technology, and monitoring program that will provide for understanding the physics and chemistry of the Earth's upper atmosphere.

DEFINITIONS

SEC. 402.[4] For the purpose of this title the term "upper atmosphere" means that portion of the Earth's sensible atmosphere above the troposphere.

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[1] 42 U.S.C. 2475.

[2] Sec. 8 of the National Aeronautics and Space Administration Authorization Act, 1976 (Public Law 94–39; 89 Stat. 222) added title IV.

[3] 42 U.S.C. 2481.

[4] 42 U.S.C. 2482.

PROGRAM AUTHORIZED

SEC. 403.[5] (a) In order to carry out the purposes of this title the Administration in cooperation with other Federal agencies, shall initiate and carry out a program of research, technology, monitoring, and other appropriate activities directed to understand the physics and chemistry of the upper atmosphere.

(b) In carrying out the provisions of this title the Administration shall—

(1) arrange for participation by the scientific and engineering community, of both the Nation's industrial organizations and institutions of higher education, in planning and carrying out appropriate research, in developing necessary technology and in making necessary observations and measurements;

(2) provide, by way of grant, contract, scholarships or other arrangements, to the maximum extent practicable and consistent with other laws, for the widest practicable and appropriate participation of the scientific and engineering community in the program authorized by this title; and

(3) make all results of the program authorized by this title available to the appropriate regulatory agencies and provide for the widest practicable dissemination of such results.

INTERNATIONAL COOPERATION

SEC. 404.[6] In carrying out the provisions of this title, the Administration, subject to the direction of the President and after consultation with the Secretary of State, shall make every effort to enlist the support and cooperation of appropriate scientists and engineers of other countries and international organizations.

* * * * * * *

[5] 42 U.S.C. 2483.
[6] 42 U.S.C. 2484.

c. National Aeronautics and Space Administration Authorization Act of 2000

Partial text of Public Law 106–391 [H.R. 1654], 114 Stat. 1577, approved October 30, 2000

AN ACT To authorize appropriations for the National Aeronautics and Space Administration for fiscal years 2000, 2001, and 2002, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Aeronautics and Space Administration Authorization Act of 2000".

(b) TABLE OF CONTENTS.— * * *

* * * * * * *

TITLE II—INTERNATIONAL SPACE STATION

SEC. 201.[1] INTERNATIONAL SPACE STATION CONTINGENCY PLAN.

(a) BIMONTHLY REPORTING ON RUSSIAN STATUS.—Not later than the first day of the first month beginning more than 60 days after the date of the enactment of this Act, and not later than the first day of every second month thereafter until October 1, 2006, the Administrator shall report to Congress whether or not the Russians have performed work expected of them and necessary to complete the International Space Station. Each such report shall also include a statement of the Administrator's judgment concerning Russia's ability to perform work anticipated and required to complete the International Space Station before the next report under this subsection.

(b) DECISION ON RUSSIAN CRITICAL PATH ITEMS.—The President shall notify Congress within 90 days after the date of the enactment of this Act of the decision on whether or not to proceed with permanent replacement of any Russian elements in the critical path of the International Space Station or any Russian launch services. Such notification shall include the reasons and justifications for the decision and the costs associated with the decision. Such decision shall include a judgment of when all elements identified in Revision E assembly sequence as of June 1999 will be in orbit and operational. If the President decides to proceed with a permanent replacement for any Russian element in the critical path or any Russian launch services, the President shall notify Congress of the reasons and the justification for the decision to proceed with the permanent replacement and the costs associated with the decision.

[1] 42 U.S.C. 2451 note.

(c) ASSURANCES.—The United States shall seek assurances from the Russian Government that it places a higher priority on fulfilling its commitments to the International Space Station than it places on extending the life of the Mir Space Station, including assurances that Russia will not utilize assets allocated by Russia to the International Space Station for other purposes, including extending the life of Mir.

(d) EQUITABLE UTILIZATION.—In the event that any International Partner in the International Space Station Program willfully violates any of its commitments or agreements for the provision of agreed-upon Space Station-related hardware or related goods or services, the Administrator should, in a manner consistent with relevant international agreements, seek a commensurate reduction in the utilization rights of that Partner until such time as the violated commitments or agreements have been fulfilled.

(e) OPERATION COSTS.—The Administrator shall, in a manner consistent with relevant international agreements, seek to reduce the National Aeronautics and Space Administration's share of International Space Station common operating costs, based upon any additional capabilities provided to the International Space Station through the National Aeronautics and Space Administration's Russian Program Assurance activities.

SEC. 202.[1] COST LIMITATION FOR THE INTERNATIONAL SPACE STATION.

(a) LIMITATION OF COSTS.—

(1) IN GENERAL.—Except as provided in subsections (c) and (d), the total amount obligated by the National Aeronautics and Space Administration for—

(A) costs of the International Space Station may not exceed $25,000,000,000; and

(B) space shuttle launch costs in connection with the assembly of the International Space Station may not exceed $17,700,000,000.

(2) CALCULATION OF LAUNCH COSTS.—For purposes of paragraph (1)(B)—

(A) not more than $380,000,000 in costs for any single space shuttle launch shall be taken into account; and

(B) if the space shuttle launch costs taken into account for any single space shuttle launch are less than $380,000,000, then the Administrator shall arrange for a verification, by the General Accounting Office, of the accounting used to determine those costs and shall submit that verification to the Congress within 60 days after the date on which the next budget request is transmitted to the Congress.

(b) COSTS TO WHICH LIMITATION APPLIES.—

(1) DEVELOPMENT COSTS.—The limitation imposed by subsection (a)(1)(A) does not apply to funding for operations, research, or crew return activities subsequent to substantial completion of the International Space Station.

(2) LAUNCH COSTS.—The limitation imposed by subsection (a)(1)(B) does not apply—

(A) to space shuttle launch costs in connection with operations, research, or crew return activities subsequent to substantial completion of the International Space Station;

(B) to space shuttle launch costs in connection with a launch for a mission on which at least 75 percent of the shuttle payload by mass is devoted to research; nor

(C) to any additional costs incurred in ensuring or enhancing the safety and reliability of the space shuttle.

(3) SUBSTANTIAL COMPLETION.—For purposes of this subsection, the International Space Station is considered to be substantially completed when the development costs comprise 5 percent or less of the total International Space Station costs for the fiscal year.

(c) NOTICE OF CHANGES TO SPACE STATION COSTS.—The Administrator shall provide with each annual budget request a written notice and analysis of any changes under subsection (d) to the amounts set forth in subsection (a) to the Senate Committees on Appropriations and on Commerce, Science, and Transportation and to the House of Representatives Committees on Appropriations and on Science. In addition, such notice may be provided at other times, as deemed necessary by the Administrator. The written notice shall include—

(1) an explanation of the basis for the change, including the costs associated with the change and the expected benefit to the program to be derived from the change;

(2) an analysis of the impact on the assembly schedule and annual funding estimates of not receiving the requested increases; and

(3) an explanation of the reasons that such a change was not anticipated in previous program budgets.

(d) FUNDING FOR CONTINGENCIES.—

(1) NOTICE REQUIRED.—If funding in excess of the limitation provided for in subsection (a) is required to address the contingencies described in paragraph (2), then the Administrator shall provide the written notice required by subsection (c). In the case of funding described in paragraph (3)(A), such notice shall be required prior to obligating any of the funding. In the case of funding described in paragraph (3)(B), such notice shall be required within 15 days after making a decision to implement a change that increases the space shuttle launch costs in connection with the assembly of the International Space Station.

(2) CONTINGENCIES.—The contingencies referred to in paragraph (1) are the following:

(A) The lack of performance or the termination of participation of any of the International countries party to the Intergovernmental Agreement.

(B) The loss or failure of a United States-provided element during launch or on-orbit.

(C) On-orbit assembly problems.

(D) New technologies or training to improve safety on the International Space Station.

(E) The need to launch a space shuttle to ensure the safety of the crew or to maintain the integrity of the station.

(3) AMOUNTS.—The total amount obligated by the National Aeronautics and Space Administration to address the contingencies described in paragraph (2) is limited to—

(A) $5,000,000,000 for the International Space Station; and

(B) $3,540,000,000 for the space shuttle launch costs in connection with the assembly of the International Space Station.

(e) REPORTING AND REVIEW.—

(1) IDENTIFICATION OF COSTS.—

(A) SPACE SHUTTLE.—As part of the overall space shuttle program budget request for each fiscal year, the Administrator shall identify separately—

(i) the amounts of the requested funding that are to be used for completion of the assembly of the International Space Station; and

(ii) any shuttle research mission described in subsection (b)(2).

(B) INTERNATIONAL SPACE STATION.—As part of the overall International Space Station budget request for each fiscal year, the Administrator shall identify the amount to be used for development of the International Space Station.

(2) ACCOUNTING FOR COST LIMITATIONS.—As part of the annual budget request to the Congress, the Administrator shall account for the cost limitations imposed by subsection (a).

(3) VERIFICATION OF ACCOUNTING.—The Administrator shall arrange for a verification, by the General Accounting Office, of the accounting submitted to the Congress within 60 days after the date on which the budget request is transmitted to the Congress.

(4) INSPECTOR GENERAL.—Within 60 days after the Administrator provides a notice and analysis to the Congress under subsection (c), the Inspector General of the National Aeronautics and Space Administration shall review the notice and analysis and report the results of the review to the committees to which the notice and analysis were provided.

SEC. 203.[1] RESEARCH ON INTERNATIONAL SPACE STATION.

(a) STUDY.—The Administrator shall enter into a contract with the National Research Council and the National Academy of Public Administration to jointly conduct a study of the status of life and microgravity research as it relates to the International Space Station. The study shall include—

(1) an assessment of the United States scientific community's readiness to use the International Space Station for life and microgravity research;

(2) an assessment of the current and projected factors limiting the United States scientific community's ability to maximize the research potential of the International Space Station, including, but not limited to, the past and present availability of resources in the life and microgravity research accounts

within the Office of Human Spaceflight and the Office of Life and Microgravity Sciences and Applications and the past, present, and projected access to space of the scientific community; and

(3) recommendations for improving the United States scientific community's ability to maximize the research potential of the International Space Station, including an assessment of the relative costs and benefits of—

(A) dedicating an annual mission of the Space Shuttle to life and microgravity research during assembly of the International Space Station; and

(B) maintaining the schedule for assembly in place at the time of the enactment.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study conducted under this section.

SEC. 204. SPACE STATION COMMERCIAL DEVELOPMENT DEMONSTRATION PROGRAM. * * *

SEC. 205.[1] SPACE STATION RESEARCH UTILIZATION AND COMMERCIALIZATION MANAGEMENT.

(a) RESEARCH UTILIZATION AND COMMERCIALIZATION MANAGEMENT ACTIVITIES.—The Administrator of the National Aeronautics and Space Administration shall enter into an agreement with a non-government organization to conduct research utilization and commercialization management activities of the International Space Station subsequent to substantial completion as defined in section 202(b)(3). The agreement may not take effect less than 120 days after the implementation plan for the agreement is submitted to the Congress under subsection (b).

(b) IMPLEMENTATION PLAN.—Not later than September 30, 2001, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives an implementation plan to incorporate the use of a non-government organization for the International Space Station. The implementation plan shall include—

(1) a description of the respective roles and responsibilities of the Administration and the non-government organization;

(2) a proposed structure for the non-government organization;

(3) a statement of the resources required;

(4) a schedule for the transition of responsibilities; and

(5) a statement of the duration of the agreement.

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d. National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993

Partial text of Public Law 102–588 [H.R. 6135], 106 Stat. 5107, approved November 4, 1992; as amended by Public Law 105–362 [Federal Reports Elimination Act of 1998; S. 1364], 112 Stat. 3280, approved November 10, 1998

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993".

TITLE I—AUTHORIZATION OF APPROPRIATIONS

SEC. 101. FINDINGS.

Congress finds that—

(1) investments in research and development are directly linked to long-term productivity and economic growth;

(2) as a major driver of advanced technology, the space program can play a major role in the Nation's reinvestment in civilian research and development;

(3) in addition to carrying out the Nation's goals in science and exploration, the space program makes a significant and direct contribution to the national employment base and, through the development of advanced technologies, will contribute to sustaining a healthy employment base and economy in the future;

(4) the long-term health of the United States space program is critically dependent on maintaining a stable and continuously evolving core program of science, space transportation, space exploration, space technology, and space applications;

(5) such a core program must be based on a realistic projection of resources that will be available and, in the near term, should not exceed inflationary growth;

(6) in addition to carrying out a core space program, international leadership, technological advancement, and expanded scientific knowledge will be enhanced by an expanded space program based on special initiatives in science, exploration, space transportation, space technology, and space applications;

(7) the Nation's space program can provide a productive environment for utilizing the skills of scientists and engineers formerly involved in the Nation's defense sector;

(8) civil space activities of the United States, whether made possible by, or in response to, Cold War strategic competition with the Soviet Union, must, in an era of declining political conflict, mature as instruments of United States foreign policy, and grow to support the national interest during the post-Cold War era;

(9) the national interest is furthered by trade and cooperation among friendly nations, and to the extent the former Soviet republics have shown themselves willing and capable of fostering a friendship with the United States, the national interest is furthered through trade and cooperation of mutual advantage between the United States and the former Soviet republics in civil aerospace, space science, and space exploration;

(10) a vigorous and coordinated effort by the United States and other spacefaring nations is needed to minimize the growth of orbital debris, and space activities should be conducted in a manner that minimizes the likelihood of additional orbital debris creation;

(11) the aerospace industry, rooted in aeronautics, is a major positive contributor to United States international influence and competitiveness;

(12) aeronautical research and development sustains our leadership in air transport and military aviation worldwide; and

(13) the National Aero-Space Plane is a core technology for any national aerospace policy and will permit the United States to maintain a worldwide competitive posture into the future.

SEC. 102. FISCAL YEAR 1993 AUTHORIZATION OF APPROPRIATIONS.

(a) RESEARCH AND DEVELOPMENT.—There are authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1992, for "Research and Development" for the following programs:

(1) Space Station Freedom, $2,100,000,000.

(2) * * *

(3) * * *

(4) Life Sciences, $153,700,000, of which $2,000,000 is authorized for cooperative life science activities on the Space Station Mir. None of the funds appropriated pursuant to this Act shall be used for the Search for Extraterrestrial Intelligence (SETI).

(5)–(18) * * *

(g)[1] EARTH OBSERVING SYSTEM.—(1) The Administrator shall carry out an Earth Observing System program that addresses the highest priority international climate change research goals as defined by the Committee on Earth and Environmental Sciences and the Intergovernmental Panel on Climate Change.

(2)(A) Within 180 days after the date of enactment of this Act, the Administrator shall submit to Congress a plan which will ensure that the highest priority measurements are maintained on schedule to the greatest extent practicable while lower priority

[1] 42 U.S.C. 2451 note.

measurements are deferred, deleted, or obtained through other means.

(B) Within 90 days after the date of enactment of this Act, the Core System of the Earth Observing System Data and Information System, the Administrator shall submit to Congress a Development Plan which—

(i) identifies the highest risk elements of the development effort and the key advanced technologies required to significantly increase scientific productivity;

(ii) provides a plan for the development of one or more prototype systems for use in reducing the development risk of critical system elements and obtaining feedback for scientific users;

(iii) provides a plan for research into key advanced technologies;

(iv) identifies sufficient resources for carrying out the Development Plan; and

(v) identifies how the Earth Observing System Data Information System will connect to and utilize other federally-supported research networks, including the National Research and Education Network.

* * * * * * *

TITLE II—GENERAL PROVISIONS

* * * * * * *

SEC. 212.[2] NATIONAL SPACE COUNCIL AUTHORIZATION.

There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2471), $1,598,000 for fiscal year 1993, of which not more than $1,000 shall be available for official reception and representation expenses. The National Space Council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

* * * * * * *

SEC. 215. SPACE AGENCY FORUM ON INTERNATIONAL SPACE YEAR.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) it is in the national interest that the Space Agency Forum on International Space Year (in this section referred to as "SAFISY") maintain its facilitating role in the coordination of current and planned complementary Earth and space science research findings so as to maximize scientific return;

(2) the initiative for multilateral scientific cooperation among space agencies and international scientific organizations undertaken by SAFISY should continue beyond 1992, the International Space Year; and

(3) the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration should pursue implementation of proposals for long-term multilateral scientific cooperation developed during the International Space

[2] 42 U.S.C. 2471 note.

Year, notably those contained in the report of the second Pacific ISY Conference.

(b) REPORT TO CONGRESS.—At the earliest practicable date, but not later than September 1, 1993, the National Aeronautics and Space Administration shall submit to Congress its plan for continuing SAFISY activities, with particular reference to planned coordination of current and future complementary Earth and space science research findings, and other acts of multilateral scientific cooperation.

* * * * * * *

SEC. 218.[3] SPACE COOPERATION WITH THE FORMER SOVIET REPUBLICS.

(a) REPORT TO CONGRESS.—Within one year after the date of enactment of this Act, the President shall submit to Congress a report describing—

(1) the opportunities for increased space related trade with the independent states of the former Soviet Union;

(2) a technology procurement plan for identifying and evaluating all unique space hardware, space technology, and space services available to the United States from the independent states of the former Soviet Union, specifically including those technologies the National Aeronautics and Space Administration has identified as high priority in its Space Research and Technology Integrated Technology Plan.

(3) the trade missions carried out pursuant to subsection (c), including the private participation and the results of such missions;

(4) the offices and accounts of the National Aeronautics and Space Administration to which expenses for either cooperative activities or procurement actions, involving the independent states of the former Soviet Union, are charged;

(5) any barriers, regulatory or practical, that inhibit space-related trade between the United States and the independent states of the former Soviet Union, including such barriers in either the United States or the independent states; and

(6) any anticompetitive issues raised by a potential acquisition.

(b) NOTIFICATION TO CONGRESS.—If any United States Government agency denies a request for a license or other approval that may be necessary to conduct discussions on space-related matters with the independent states of the former Soviet Union, that agency shall immediately notify the Speaker of the House of Representatives and President of the Senate. Each such notification shall include a statement of the reasons for the denial.

(c) ROLE OF THE OFFICE OF SPACE COMMERCE.—The Office of Space Commerce of the Department of Commerce is authorized and encouraged to conduct trade missions to appropriate independent states of the former Soviet Union for the purpose of familiarizing United States aerospace industry representatives with space hardware, space technologies, and space services that may be available from the independent states, and with the business practices and

[3] 15 U.S.C. 5801 note.

overall business climate in the independent states. The Office of Space Commerce shall also advise the Administrator as to the impact on United States industry of each potential acquisition of space hardware, space technology, or space services from the independent states of the former Soviet Union, specifically including any anticompetitive issues the Office may observe.

* * * * * * *

TITLE VI—BIOMEDICAL RESEARCH IN SPACE

SEC. 601.[4] FINDINGS.

The Congress finds that—

(1) the space program can make significant contributions to selected areas of health-related research and should be an integral part of the Nation's health research and development program;

(2) the continuing development of trained scientists and engineers is essential to carrying out an effective and sustained program of biomedical research in space and on the ground;

(3) the establishment and maintenance of an electronically accessible archive of data on space-related biomedical research is essential to advancement of the field;

(4) cooperation with the republics of the former Soviet Union, including use of former Soviet orbital facilities, offers the potential for greatly enhanced biomedical research activities and progress; and

(5) the establishment and maintenance of an international telemedicine consultation satellite capability to support emergency medical service provision can provide an important aid to disaster relief efforts.

* * * * * * *

SEC. 605.[5] JOINT FORMER SOVIET UNION STUDIES IN BIOMEDICAL RESEARCH. * * * [Repealed—1998]

* * * * * * *

SEC. 607.[6] ESTABLISHMENT OF EMERGENCY MEDICAL SERVICE TELEMEDICINE CAPABILITY.

The Administrator shall with the Director of the Federal Emergency Management Agency, the Director of the Office of Foreign Disaster, and the Surgeon General of the United States jointly create and maintain an international telemedicine satellite consultation capability to support emergency medical services in disaster-stricken areas.

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[4] 42 U.S.C. 2487.

[5] Sec. 1101(g) of Public Law 105–362 (112 Stat. 3292) repealed sec. 605. It previously read as follows:

"The Administrator, in consultation with the Director of the National Institutes of Health, shall, as soon as practicable, establish and submit to Congress a plan for the conduct of joint biomedical research activities by the republics of the former Soviet Union and the United States, including the use of the United States Space Shuttle and former Soviet orbital facilities such as the Mir space station.".

[6] 42 U.S.C. 2487f.

SEC. 608.[7] AUTHORIZATION OF APPROPRIATIONS.

The Administrator should ensure that up to $3,750,000 from the appropriations authorized for "Research and Development" for fiscal year 1993 are also used to carry out this title.

[7] 42 U.S.C. 2487g.

e. National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992

Partial text of Public Law 102–195 [H.R. 1988], 105 Stat. 1605, approved December 9, 1991

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control, and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992".

SEC. 2.[1] FINDINGS.

Congress finds that—

(1) * * *

(2) * * *

(3) development of an adequate data base for life sciences in space will be greatly enhanced through closer scientific cooperation with the Soviet Union, including active use of manned Soviet space stations;

(4)–(10) * * *

SEC. 3.[1] POLICY.

It is the policy of the United States that—

(1)–(4) * * *

(5) the National Aeronautics and Space Administration should promote and support efforts to advance scientific understanding by conducting or otherwise providing for research on environmental problems, including global change, ozone depletion, acid precipitation, deforestation, and smog.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR NASA.

(a) RESEARCH AND DEVELOPMENT.—There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1991, for "Research and development", for the following programs:

(1) United States International Space Station Freedom, $2,028,900,000 for fiscal year 1992, of which $18,000,000 is authorized for the design and development of an Assured Crew Return Vehicle.

* * * * * * *

[1] 42 U.S.C. 2451 note.

SEC. 10. PEACEFUL USES OF SPACE STATION.

No civil space station authorized under section 4(a)(1) of this Act may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.

* * * * * * *

SEC. 14. NATIONAL SPACE COUNCIL AUTHORIZATION.

(a)[2] AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2471), $1,491,000 for fiscal year 1992, of which not more than $1,000 shall be available for official reception and representation expenses. The National Space council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

(b) LANDSAT DATA CONTINUITY.—It is the sense of Congress that the National Space Council, in coordination with the Committee on Earth and Environmental Sciences, should establish policy recommendations for carrying out the President's commitment to maintaining the continuity of Landsat data, including plans and programs for a successor to Landsat 6, organizational options and recommendations for acquiring Landsat data for global change research, national security, environmental management, and other governmental purposes, and options and recommendations for encouraging the use of Landsat data by commercial firms and development of the commercial market for such data. Such policy recommendations shall be transmitted in writing to Congress at the time of submission of the President's fiscal year 1993 budget.

* * * * * * *

[2] 42 U.S.C. 2471 note.

f. National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991

Partial text of Public Law 101–611 [S. 2287], 104 Stat. 3188, approved November 16, 1990

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991".

TITLE I—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATIONS

SEC. 101.[1] FINDINGS.

The Congress finds that—

(1) over the next decade, the United States aeronautics and space program will be directed toward major national priorities of understanding, preserving, and enhancing our global environment, hypersonic transportation, human exploration, and emerging technology commercialization;

(2) * * *

(3) * * *

(4) the United States space program is based on a solid record of achievement and continues to promote the objective of international cooperation in the exploration of the planets and the universe;

(5)–(14) * * *

SEC. 102.[1] POLICY.

It is declared to be national policy that the United States should—

(1) * * *

(2) * * *

(3) ensure that the long-range environmental impact of all activities carried out under this title are fully understood and considered;

(4) promote and support efforts to advance scientific understanding by conducting or otherwise providing for research on environmental problems, including global change, ozone depletion, acid precipitation, deforestation, and smog;

(5)–(11) * * *

[1] 42 U.S.C. 2451 note.

(12) continue to seek opportunities for international cooperation in space and fully support international cooperative agreements;

(13)–(16) * * *

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATIONS.—There are authorized to be appropriated to the National Aeronautics and Space Administration the following amounts:

(1) For "research and development", for the following programs:

(A) United States International Space Station Freedom:

(i) Notwithstanding section 201(a)(1)(A) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, not more than $2,451,000,000 shall be made available for fiscal year 1991.

(ii) Such sums as are necessary from funds authorized for the United States International Space Station Freedom shall be used to initiate a flight test of the solar dynamic power program. By May 1, 1991, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology[2] of the House of Representatives a report on the implementation plan for the conduct of a flight test of the solar dynamic power program.

* * * * * * *

SEC. 108.[1] NATIONAL SPACE COUNCIL AUTHORIZATION.

(a) There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2471), $1,363,000 for fiscal year 1991, of which not more than $1,000 shall be available for official reception and representation expenses. The National Space Council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

(b) It is the sense of Congress that the National Space Council should, by October 1, 1991, establish guidelines and policy recommendations, including the need for licensing, for the conduct of expendable launch vehicle operations in which a Federal agency assumes substantial responsibility for public safety, indemnification, and administrative oversight.

* * * * * * *

[2] Sec. 1(a)(10) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Science, Space, and Technology of the House of Representatives shall be treated as referring to the Committee on Science of the House of Representatives.

SEC. 112.[3] SPACE SHUTTLE USE POLICY.

(a)(1) It shall be the policy of the United States to use the Space Shuttle for purposes that (i) require the presence of man, (ii) require the unique capabilities of the Space Shuttle or (iii) when other compelling circumstances exist.

(2) The term "compelling circumstances" includes, but is not limited to, occasions when the Administrator determines, in consultation with the Secretary of Defense and the Secretary of State, that important national security or foreign policy interests would be served by a Shuttle launch.

(3) The policy stated in subsection (a)(1) shall not preclude the use of available cargo space, on a Space Shuttle mission otherwise consistent with the policy described under subsection (a)(1), for the purpose of carrying secondary payloads (as defined by the Administrator) that do not require the presence of man if such payloads are consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

(b) The Administrator shall, within six months after the date of enactment of this Act, submit a report to the Congress setting forth a plan for the implementation of the policy described in subsection (a)(1). Such plan shall include—

(1) details of the implementation plan;

(2) a list of purposes that meet such policy;

(3) a proposed schedule for the implementation of such policy;

(4) an estimate of the costs to the United States of implementing such policy; and

(5) a process for informing the Congress in a timely and regular manner of how the plan is being implemented.

(c) At least annually, the Administrator shall submit to the Congress a report certifying that the payloads scheduled to be launched on the space shuttle for the next four years are consistent with the policy set forth in subsection (a)(1). For each payload scheduled to be launched from the space shuttle, which do not require the presence of man, the Administrator shall, in the certified report to Congress, state the specific circumstances which justified the use of the space shuttle. If, during the period between scheduled reports to the Congress, any additions are made to the list of certified payloads intended to be launched from the Shuttle, the Administrator shall inform the Congress of the additions and the reasons therefor within 45 days of the change.

(d) The report described in subsection (c) shall also include those National Aeronautics and Space Administration payloads designed solely to fly on the space shuttle which have begun the phase C/D of its development cycle.

* * * * * * *

SEC. 114.[1] STUDY ON INTERNATIONAL COOPERATION IN PLANETARY EXPLORATION.

(a) FINDINGS.—The Congress finds that

[3] 42 U.S.C. 2465a.

(1) the President on July 20, 1989, established the long-range goal of establishing a lunar base, followed by manned exploration of Mars in the early twenty-first century;

(2) the United States and the Soviet Union, in cooperation with other countries, are currently planning further unmanned missions to the Moon and to Mars with the possible goal of landing a human on Mars;

(3) a series of international missions to expand human presence beyond Earth orbit would further a spirit of, and follow through on the commitment made in, the 1987 agreement between the Soviet Union and the United States for space cooperation, as well as the successful cooperative agreements the United States has pursued with over one hundred countries since its inception, including the agreement with Japan, Canada, and the European countries for Space Station Freedom;

(4) international manned missions beyond Earth orbit could further encourage a cooperative approach in world affairs unrelated to activities in space;

(5) international manned missions beyond Earth orbit could save the individual nations involved tens of billions of dollars over national missions; and

(6) a multilateral effort for manned missions to establish a lunar colony, a Mars mission, and any other missions that have the goal of establishing human presence beyond Earth's orbit and possibly landing a human on Mars would lead to greater understanding of our universe and greater sensitivity to our own planet.

(b) STUDY.—The National Space Council shall conduct a study on International Cooperation in Planetary Exploration (hereafter in this section referred to as the "study").

(c) PURPOSE OF STUDY.—The purpose of the study is—

(1) to develop an inventory of technologies and intentions of all national space agencies with regard to lunar and planetary exploration, both manned and unmanned;

(2) to seek ways, through direct communication with appropriate officials of other nations or otherwise, to enhance the planning and exchange of information and data among the United States, the Soviet Union, European countries, Canada, Japan, and other interested countries with respect to unmanned projects beyond Earth orbit, in anticipation of later international manned missions to the Moon and to other bodies, including the possible goal of an international manned mission to Mars;

(3) to prepare a detailed proposal that most efficiently uses the resources of the national space agencies in cooperative endeavors to establish human presence beyond Earth orbit;

(4) to develop priority goals that accomplish unmet needs that could not be achieved by any individual country;

(5) to explore the possibilities of international unmanned probes to the Moon and Mars, and the possibilities for international manned missions beyond Earth's orbit; and

(6) to devise strategies for such cooperation that would prevent the unwanted transfer of technology.

In developing the inventory under paragraph (1), and in preparing the detailed proposal under paragraph (3), consideration shall be given to the potential contributions of commercial providers of space goods and services.

(d) REPORT.—The National Space Council shall, within one year after the date of the enactment of this Act, prepare and submit to Congress a report—

(1) outlining a preliminary strategy for cooperation among the United States, the Soviet Union, European countries, Canada, Japan, and other interested countries, based on their respective national strengths, with respect to unmanned projects beyond Earth orbit, in anticipation of later international manned missions to the Moon and to other bodies, including the possible goal of an international manned mission to Mars;

(2) including a conceptual design of a possible international manned mission, in coordination with the preliminary strategy referred to in paragraph (1), with target dates and a breakdown of responsibilities by nation;

(3) containing an inventory of planned and anticipated missions, manned and unmanned, that are being considered by national space agencies and commercial providers of space goods and services; and

(4) containing an inventory of space exploration technologies that either—

(A) are not immediately available in the United States but are available from other nations; or

(B) are available in the United States but are available from other nations in equal or superior form.

* * * * * * *

SEC. 118. SPACE DEBRIS.

(a) FINDINGS.—The Congress finds that—

(1) if space users fail to act soon to reduce their contribution to debris in space, orbital debris could severely restrict the use of some orbits within a decade;

(2) the lack of adequate data on the orbital distribution and size of debris will continue to hamper efforts to reduce the threat that debris poses to spacecraft; and

(3) existing international treaties and agreements are inadequate for minimizing the generation of orbital debris or controlling its effects.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the goal of United States policy should be that—

(1) the space related activities of the United States should be conducted in a manner that does not increase the amount of orbital space debris; and

(2) the United States should engage other spacefaring Nations to develop an agreement on the conduct of space activities that ensures that the amount of orbital space debris is not increased.

* * * * * * *

SEC. 123. PEACEFUL USES OF SPACE STATION.

No civil space station authorized under section 103(a)(1) of this Act may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.

* * * * * * *

SEC. 126. NATIONAL CIVIL REMOTE-SENSING ADVISORY COMMITTEE.

Not later than 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall report to the Congress on the advisability of establishing a permanent National Civil Remote-Sensing Advisory Committee. The report should address concerns related to national security, conflict of interest, and duplication of existing authorities. In preparing the report, the Director shall assess the effectiveness of a National Civil Remote-Sensing Advisory Committee comprised of interested private-sector persons (including remote-sensing data users, data vendors, technology developers, system operators, information management and telecommunications specialists, and social scientists) which would—

(1) provide advice and policy recommendations to the President, the President's Science Advisor, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and relevant committees of the Congress on the development of a national civil remote-sensing policy that would be responsive to both user needs and global developments, in terms of—

(A) coordinating land, oceanic, and atmospheric remote-sensing systems, including ground stations;

(B) coordinating research and development, applications, and commercial remote-sensing activities;

(C) fostering effective integration of satellite, aerial, and in situ data; and

(D) assessing current institutional arrangements for the management, exploitation, and sharing of both real-time and archived data;

(2) provide recommendations on the conduct of cooperative test and applications demonstration projects designed to manage environmental pollution and the use of natural resources; and

(3) coordinate with the United States Global Change Research Program on issues of mutual concern.

SEC. 127.[4] DEFINITION.

For purposes of this title, the term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

* * * * * * *

[4] 42 U.S.C. 2465a note.

g. National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989

Partial text of Public Law 100–685 [S. 2209], 102 Stat. 4083, approved November 17, 1988

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989".

TITLE I—NATIONAL AERONAUTICS AND SPACE CAPITAL DEVELOPMENT PROGRAM

FINDINGS

SEC. 101.[1] Congress finds that—

(1) in accordance with section 106 of the National Aeronautics and Space Administration Authorization Act of 1988 (Public Law 100–147), a space station, hereafter referred to as the United States International Space Station, shall be constructed in order to establish a permanent presence for man in space for the following purposes—

(A) the conduct of scientific experiments, applications experiments, and engineering experiments; * * *

(2)–(9) * * *

(10) the United States faces an increasingly successful foreign challenge to its traditional preeminent position in aeronautics which is rapidly reducing its lead in both civil and military aircraft;

(11) * * *

(12) the establishment of a permanent presence in space leading ultimately to space settlements is fully consistent with the goals of the National Aeronautics and Space Act of 1958;

* * * * * * *

TITLE II—FISCAL YEAR 1989 NASA AND MULTIYEAR SPACE STATION AUTHORIZATION

AUTHORIZATION

SEC. 201. (a) There is hereby authorized to be appropriated to the National Aeronautics and Space Administration for fiscal year 1989, except as otherwise stated:

[1] 42 U.S.C. 2451 note.

(1) For "Research and development" for the following programs:

(A) United States International Space Station, $900,000,000 for fiscal year 1989, $2,130,200,000 for fiscal year 1990, and $2,912,500,000 for fiscal year 1991.

* * * * * * *

INTERNATIONAL SPACE DOCKING CAPABILITY

SEC. 210. (a) It is the sense of Congress that the Administrator should establish a multilateral working group of representatives from the space agencies of appropriate spacefaring nations, including the Union of Soviet Socialist Republics, and from appropriate international entities, to explore the technological and procedural principles that would be necessary to achieve an international space docking capability, communications, and life support systems, and also space rescue missions which could particularly benefit from the use of such a capability.

(b) Within 6 months after the date of the enactment of this Act, the Administrator shall advise the Congress on the status of establishing an International Space Docking Working Group as recommended in subsection (a).

* * * * * * *

SPACE SETTLEMENTS

SEC. 217. (a) * * *

(b) In pursuit of the establishment of an International Space Year in 1992 pursuant to Public Law 99–170, the United States shall exercise leadership and mobilize the international community in furtherance of increasing mankind's knowledge and exploration of the solar system.

(c) Once every 2 years after the date of the enactment of this Act, the National Aeronautics and Space Administration shall submit a report to the President and to the Congress which—

(1)–(6) * * *

(7) reviews mechanism and institutional options which could foster a broad-based plan for international cooperation in establishing space settlements;

(8) analyzes the economics of financing space settlements, especially with respect to private sector and international participation;

* * * * * * *

SEC. 410. The Secretary, in Consultation with the Secretary of State, the Administration of the National Aeronautics and Space Administration, and appropriate non-Federal organizations, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology[2] of the House of Representatives a plan to construct and operate a worldwide system of ground-based remote sensors to

[2] Sec. 1(a)(10) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Science, Space, and Technology of the House of Representatives shall be treated as referring to the Committee on Science of the House of Representatives.

monitor the stratospheric levels of chemicals which can affect the level of ozone in the stratosphere and to use these results to improve our understanding of the possible changes in stratospheric ozone that are the consequence of human activities. The plans shall include time lines for construction and operation of the system, a description of the roles of the National Oceanic and Atmospheric Administration and the National Aeronautics and Space Administration, non-Federal organizations, other nations, and international organizations in constructing and operating the system, and estimates of the costs to construct and operate the system. The plan shall be submitted not later than July 1, 1989.

SEC. 411. It is the sense of the Congress that the global change program represents a significant opportunity for international cooperation and that it is in the best interest of the United States to maintain a separate civilian polar meteorological satellite program to facilitate data sharing with foreign participants in the global change program.

* * * * * * *

TITLE V—NATIONAL SPACE COUNCIL

NATIONAL SPACE COUNCIL

SEC. 501.[3] (a) Effective February 1, 1989, there is established in the Executive Office of the President the National Space Council, which shall be chaired by the Vice President.

(b) By March 1, 1989, the President shall submit to the Congress a report that outlines the composition and functions of the National Space Council.

(c) The Council may employ a staff of not more than seven persons, which is to be headed by a civilian executive secretary, who shall be appointed by the President.

* * * * * * *

[3] 42 U.S.C. 2471. See also National Space Council Authorization Act of 1990, and National Space Council as established by Executive Order 12675.

h. National Aeronautics and Space Administration Authorization Act of 1988

Partial text of Public Law 100–147 [H.R. 2782], 101 Stat. 860, approved October 30, 1987

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development; space flight, control and data communications; construction of facilities; and research and program management; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act of 1988".

* * * * * * *

SEC. 106. (a)[1] * * *

(b) * * *

(c) * * *

(d) * * *

(e) The Administrator shall promote international cooperation in the space station program by undertaking the development, construction, and operation of the space station in conjunction with (but not limited to) the Governments of Europe, Japan, and Canada.

* * * * * * *

SEC. 112.[1] The Intergovernmental Agreement currently being negotiated between the United States Government and Canada, Japan, and member governments of the European Space Agency, and the Memorandum of Understanding currently being negotiated between the National Aeronautics and Space Administration and its counterpart agencies in Canada, Japan, and Europe concerning the detailed design, development, construction, operation, or utilization of the space station shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology[2] of the House of Representatives. No such agreement shall take effect until 30 days have passed after the receipt by such committees of the agreement.

[1] 42 U.S.C. 2451 note.

[2] Sec. 1(a)(10) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Science, Space, and Technology of the House of Representatives shall be treated as referring to the Committee on Science of the House of Representatives.

i. Commercial Space Act of 1998

Partial text of Public Law 105–303 [H.R. 1702], 112 Stat. 2843, approved October 28, 1998; as amended by Public Law 106–65 [National Defense Authorization Act for Fiscal Year 2000; S. 1059], 113 Stat. 512, approved October 5, 1999

AN ACT To encourage the development of a commercial space industry in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Commercial Space Act of 1998".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[2] DEFINITIONS.

For purposes of this Act—

(1) the term "Administrator" means the Administrator of the National Aeronautics and Space Administration;

(2) the term "commercial provider" means any person providing space transportation services or other space-related activities, primary control of which is held by persons other than Federal, State, local, and foreign governments;

(3) the term "payload" means anything that a person undertakes to transport to, from, or within outer space, or in suborbital trajectory, by means of a space transportation vehicle, but does not include the space transportation vehicle itself except for its components which are specifically designed or adapted for that payload;

(4) the term "space-related activities" includes research and development, manufacturing, processing, service, and other associated and support activities;

(5) the term "space transportation services" means the preparation of a space transportation vehicle and its payloads for transportation to, from, or within outer space, or in suborbital trajectory, and the conduct of transporting a payload to, from, or within outer space, or in suborbital trajectory;

(6) the term "space transportation vehicle" means any vehicle constructed for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle not specifically designed or adapted for a payload;

(7) the term "State" means each of the several States of the Union, the District of Columbia, the Commonwealth of Puerto

[1] 42 U.S.C. 14701 note.
[2] 42 U.S.C. 14701.

Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; and

(8) the term "United States commercial provider" means a commercial provider, organized under the laws of the United States or of a State, which is—

(A) more than 50 percent owned by United States nationals; or

(B) a subsidiary of a foreign company and the Secretary of Transportation finds that—

(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

(I) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

(II) significant contributions to employment in the United States; and

(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (A) comparable to that afforded to such foreign company's subsidiary in the United States, as evidenced by—

(I) providing comparable opportunities for companies described in subparagraph (A) to participate in Government sponsored research and development similar to that authorized under this Act;

(II) providing no barriers, to companies described in subparagraph (A) with respect to local investment opportunities, that are not provided to foreign companies in the United States; and

(III) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (A).

TITLE I—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

SEC. 101.[3] COMMERCIALIZATION OF SPACE STATION.

(a) POLICY.—The Congress declares that a priority goal of constructing the International Space Station is the economic development of Earth orbital space. The Congress further declares that free and competitive markets create the most efficient conditions for promoting economic development, and should therefore govern the economic development of Earth orbital space. The Congress further declares that the use of free market principles in operating, servicing, allocating the use of, and adding capabilities to the Space

[3] 42 U.S.C. 14711.

Station, and the resulting fullest possible engagement of commercial providers and participation of commercial users, will reduce Space Station operational costs for all partners and the Federal Government's share of the United States burden to fund operations.

(b) REPORTS.—(1) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 90 days after the date of the enactment of this Act, a study that identifies and examines—

(A) the opportunities for commercial providers to play a role in International Space Station activities, including operation, use, servicing, and augmentation;

(B) the potential cost savings to be derived from commercial providers playing a role in each of these activities;

(C) which of the opportunities described in subparagraph (A) the Administrator plans to make available to commercial providers in fiscal years 1999 and 2000;

(D) the specific policies and initiatives the Administrator is advancing to encourage and facilitate these commercial opportunities; and

(E) the revenues and cost reimbursements to the Federal Government from commercial users of the Space Station.

(2) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 180 days after the date of the enactment of this Act, an independently conducted market study that examines and evaluates potential industry interest in providing commercial goods and services for the operation, servicing, and augmentation of the International Space Station, and in the commercial use of the International Space Station. This study shall also include updates to the cost savings and revenue estimates made in the study described in paragraph (1) based on the external market assessment.

(3) The Administrator shall deliver to the Congress, no later than the submission of the President's annual budget request for fiscal year 2000, a report detailing how many proposals (whether solicited or not) the National Aeronautics and Space Administration received during calendar years 1997 and 1998 regarding commercial operation, servicing, utilization, or augmentation of the International Space Station, broken down by each of these four categories, and specifying how many agreements the National Aeronautics and Space Administration has entered into in response to these proposals, also broken down by these four categories.

(4) Each of the studies and reports required by paragraphs (1), (2), and (3) shall include consideration of the potential role of State governments as brokers in promoting commercial participation in the International Space Station program.

SEC. 102.[4] COMMERCIAL SPACE LAUNCH AMENDMENTS.

* * * * * * *

[4] Sec. 102 amends chapter 701 of 49 U.S.C.

SEC. 103.[5] LAUNCH VOUCHER DEMONSTRATION PROGRAM.

* * * * * * *

SEC. 104.[6] PROMOTION OF UNITED STATES GLOBAL POSITIONING SYSTEM STANDARDS.

(a) FINDING.—The Congress finds that the Global Positioning System, including satellites, signal equipment, ground stations, data links, and associated command and control facilities, has become an essential element in civil, scientific, and military space development because of the emergence of a United States commercial industry which provides Global Positioning System equipment and related services.

(b) INTERNATIONAL COOPERATION.—In order to support and sustain the Global Positioning System in a manner that will most effectively contribute to the national security, public safety, scientific, and economic interests of the United States, the Congress encourages the President to—

(1) ensure the operation of the Global Positioning System on a continuous worldwide basis free of direct user fees;

(2) enter into international agreements that promote cooperation with foreign governments and international organizations to—

(A) establish the Global Positioning System and its augmentations as an acceptable international standard; and

(B) eliminate any foreign barriers to applications of the Global Positioning System worldwide; and

(3) provide clear direction and adequate resources to the Assistant Secretary of Commerce for Communications and Information so that on an international basis the Assistant Secretary can—

(A) achieve and sustain efficient management of the electromagnetic spectrum used by the Global Positioning System; and

(B) protect that spectrum from disruption and interference.

SEC. 105.[7] ACQUISITION OF SPACE SCIENCE DATA.

(a) ACQUISITION FROM COMMERCIAL PROVIDERS.—The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost effective, space science data from a commercial provider.

(b) TREATMENT OF SPACE SCIENCE DATA AS COMMERCIAL ITEM UNDER ACQUISITION LAWS.—Acquisitions of space science data by the Administrator shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10, United States Code). For purposes of such law and regulations, space science data shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude

[5] Sec. 103 amends sec. 504 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Public Law 102–588; 106 Stat. 5107).
[6] 42 U.S.C. 14712.
[7] 42 U.S.C. 14713.

the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) DEFINITION.—For purposes of this section, the term "space science data" includes scientific data concerning—

(1) the elemental and mineralogical resources of the moon, asteroids, planets and their moons, and comets;

(2) microgravity acceleration; and

(3) solar storm monitoring.

(d) SAFETY STANDARDS.—Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) LIMITATION.—This section does not authorize the National Aeronautics and Space Administration to provide financial assistance for the development of commercial systems for the collection of space science data.

SEC. 106.[8] ADMINISTRATION OF COMMERCIAL SPACE CENTERS.

The Administrator shall administer the Commercial Space Center program in a coordinated manner from National Aeronautics and Space Administration headquarters in Washington, D.C.

SEC. 107.[9] SOURCES OF EARTH SCIENCE DATA.

(a) ACQUISITION.—The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost- effective, space-based and airborne Earth remote sensing data, services, distribution, and applications from a commercial provider.

(b) TREATMENT AS COMMERCIAL ITEM UNDER ACQUISITION LAWS.—Acquisitions by the Administrator of the data, services, distribution, and applications referred to in subsection (a) shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10, United States Code). For purposes of such law and regulations, such data, services, distribution, and applications shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) STUDY.—(1) The Administrator shall conduct a study to determine the extent to which the baseline scientific requirements of Earth Science can be met by commercial providers, and how the National Aeronautics and Space Administration will meet such requirements which cannot be met by commercial providers.

(2) The study conducted under this subsection shall—

(A) make recommendations to promote the availability of information from the National Aeronautics and Space Administration to commercial providers to enable commercial providers

[8] 42 U.S.C. 14714.
[9] 42 U.S.C. 14715.

to better meet the baseline scientific requirements of Earth Science;

(B) make recommendations to promote the dissemination to commercial providers of information on advanced technology research and development performed by or for the National Aeronautics and Space Administration; and

(C) identify policy, regulatory, and legislative barriers to the implementation of the recommendations made under this subsection.

(3) The results of the study conducted under this subsection shall be transmitted to the Congress within 6 months after the date of the enactment of this Act.

(d) SAFETY STANDARDS.—Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) ADMINISTRATION AND EXECUTION.—This section shall be carried out as part of the Commercial Remote Sensing Program at the Stennis Space Center.

(f)[10] REMOTE SENSING.—* * *

TITLE II—FEDERAL ACQUISITION OF SPACE TRANSPORTATION SERVICES

SEC. 201.[11] REQUIREMENT TO PROCURE COMMERCIAL SPACE TRANSPORTATION SERVICES.

(a) IN GENERAL.—Except as otherwise provided in this section, the Federal Government shall acquire space transportation services from United States commercial providers whenever such services are required in the course of its activities. To the maximum extent practicable, the Federal Government shall plan missions to accommodate the space transportation services capabilities of United States commercial providers.

(b) EXCEPTIONS.—The Federal Government shall not be required to acquire space transportation services under subsection (a) if, on a case-by-case basis, the Administrator or, in the case of a national security issue, the Secretary of the Air Force, determines that—

(1) a payload requires the unique capabilities of the Space Shuttle;

(2) cost effective space transportation services that meet specific mission requirements would not be reasonably available from United States commercial providers when required;

(3) the use of space transportation services from United States commercial providers poses an unacceptable risk of loss of a unique scientific opportunity;

(4) the use of space transportation services from United States commercial providers is inconsistent with national security objectives;

(5) the use of space transportation services from United States commercial providers is inconsistent with international agreements for international collaborative efforts relating to science and technology;

[10] Subsec. (f) amends the Land Remote Sensing Policy Act of 1992 (Public Law 102–555; 106 Stat. 4171).

[11] 42 U.S.C. 14731.

(6) it is more cost effective to transport a payload in conjunction with a test or demonstration of a space transportation vehicle owned by the Federal Government; or

(7) a payload can make use of the available cargo space on a Space Shuttle mission as a secondary payload, and such payload is consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

Nothing in this section shall prevent the Administrator from planning or negotiating agreements with foreign entities for the launch of Federal Government payloads for international collaborative efforts relating to science and technology.

(c) DELAYED EFFECT.—Subsection (a) shall not apply to space transportation services and space transportation vehicles acquired or owned by the Federal Government before the date of the enactment of this Act, or with respect to which a contract for such acquisition or ownership has been entered into before such date.

(d) HISTORICAL PURPOSES.—This section shall not be construed to prohibit the Federal Government from acquiring, owning, or maintaining space transportation vehicles solely for historical display purposes.

SEC. 202.[12] ACQUISITION OF COMMERCIAL SPACE TRANSPORTATION SERVICES.

(a) TREATMENT OF COMMERCIAL SPACE TRANSPORTATION SERVICES AS COMMERCIAL ITEM UNDER ACQUISITION LAWS.—Acquisitions of space transportation services by the Federal Government shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10, United States Code). For purposes of such law and regulations, space transportation services shall be considered to be a commercial item.

(b) SAFETY STANDARDS.—Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

SEC. 203.[13] LAUNCH SERVICES PURCHASE ACT OF 1990 AMENDMENTS.

* * *

SEC. 204.[14] SHUTTLE PRIVATIZATION.

(a) POLICY AND PREPARATION.—The Administrator shall prepare for an orderly transition from the Federal operation, or Federal management of contracted operation, of space transportation systems to the Federal purchase of commercial space transportation services for all nonemergency space transportation requirements for transportation to and from Earth orbit, including human, cargo, and mixed payloads. In those preparations, the Administrator shall take into account the need for short-term economies, as well as the goal of restoring the National Aeronautics and Space Administration's research focus and its mandate to promote the fullest possible commercial use of space. As part of those preparations, the Administrator shall plan for the potential privatization of the

[12] 42 U.S.C. 14732.

[13] Sec. 203 amends the Launch Services Purchase Act of 1990 (Public Law 101–611; 104 Stat. 3405).

[14] 42 U.S.C. 14733.

Space Shuttle program. Such plan shall keep safety and cost effectiveness as high priorities. Nothing in this section shall prohibit the National Aeronautics and Space Administration from studying, designing, developing, or funding upgrades or modifications essential to the safe and economical operation of the Space Shuttle fleet.

(b) FEASIBILITY STUDY.—The Administrator shall conduct a study of the feasibility of implementing the recommendation of the Independent Shuttle Management Review Team that the National Aeronautics and Space Administration transition toward the privatization of the Space Shuttle. The study shall identify, discuss, and, where possible, present options for resolving, the major policy and legal issues that must be addressed before the Space Shuttle is privatized, including—

(1) whether the Federal Government or the Space Shuttle contractor should own the Space Shuttle orbiters and ground facilities;

(2) whether the Federal Government should indemnify the contractor for any third party liability arising from Space Shuttle operations, and, if so, under what terms and conditions;

(3) whether payloads other than National Aeronautics and Space Administration payloads should be allowed to be launched on the Space Shuttle, how missions will be prioritized, and who will decide which mission flies and when;

(4) whether commercial payloads should be allowed to be launched on the Space Shuttle and whether any classes of payloads should be made ineligible for launch consideration;

(5) whether National Aeronautics and Space Administration and other Federal Government payloads should have priority over non-Federal payloads in the Space Shuttle launch assignments, and what policies should be developed to prioritize among payloads generally;

(6) whether the public interest requires that certain Space Shuttle functions continue to be performed by the Federal Government; and

(7) how much cost savings, if any, will be generated by privatization of the Space Shuttle.

(c) REPORT TO CONGRESS.—Within 60 days after the date of the enactment of this Act, the National Aeronautics and Space Administration shall complete the study required under subsection (b) and shall submit a report on the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

SEC. 205.[15] USE OF EXCESS INTERCONTINENTAL BALLISTIC MISSILES.

(a) IN GENERAL.—The Federal Government shall not—

(1) convert any missile described in subsection (c) to a space transportation vehicle configuration; or

(2) transfer ownership of any such missile to another person, except as provided in subsection (b).

(b) AUTHORIZED FEDERAL USES.—(1) A missile described in subsection (c) may be converted for use as a space transportation vehicle by the Federal Government if, except as provided in paragraph (2) and at least 30 days before such conversion, the agency seeking

[15] 42 U.S.C. 14734.

to use the missile as a space transportation vehicle transmits to the Committee on Armed Services[16] and the Committee on Science of the House of Representatives, and to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, a certification that the use of such missile—

(A) would result in cost savings to the Federal Government when compared to the cost of acquiring space transportation services from United States commercial providers;

(B) meets all mission requirements of the agency, including performance, schedule, and risk requirements;

(C) is consistent with international obligations of the United States; and

(D) is approved by the Secretary of Defense or his designee.

(2) The requirement under paragraph (1) that the certification described in that paragraph must be transmitted at least 30 days before conversion of the missile shall not apply if the Secretary of Defense determines that compliance with that requirement would be inconsistent with meeting immediate national security requirements.

(c) MISSILES REFERRED TO.—The missiles referred to in this section are missiles owned by the United States that—

(1) were formerly used by the Department of Defense for national defense purposes as intercontinental ballistic missiles; and

(2) have been declared excess to United States national defense needs and are in compliance with international obligations of the United States.

SEC. 206.[17] NATIONAL LAUNCH CAPABILITY STUDY.

(a) FINDINGS.—Congress finds that a robust satellite and launch industry in the United States serves the interest of the United States by—

(1) contributing to the economy of the United States;

(2) strengthening employment, technological, and scientific interests of the United States; and

(3) serving the foreign policy and national security interests of the United States.

(b) DEFINITIONS.—In this section:

(1) SECRETARY.—The term "Secretary" means the Secretary of Defense.

(2) TOTAL POTENTIAL NATIONAL MISSION MODEL.—The term "total potential national mission model" means a model that—

(A) is determined by the Secretary, in consultation with the Administrator, to assess the total potential space missions to be conducted in the United States during a specified period of time; and

(B) includes all launches in the United States (including launches conducted on or off a Federal range).

(c) REPORT.—

[16] Sec. 1067(21) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 775) struck out "transmits to the Committee on National Security" and inserted in lieu thereof "transmits to the Committee on Armed Services".

[17] 42 U.S.C. 14735.

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall, in consultation with the Administrator and appropriate representatives of the satellite and launch industry and the governments of States and political subdivisions thereof—

(A) prepare a report that meets the requirements of this subsection; and

(B) submit that report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(2) REQUIREMENTS FOR REPORT.—The report prepared under this subsection shall—

(A) identify the total potential national mission model for the period beginning on the date of the report and ending on December 31, 2007;

(B) identify the resources that are necessary or available to carry out the total potential national mission model described in subparagraph (A), including—

(i) launch property and services of the Department of Defense, the National Aeronautics and Space Administration, and non-Federal facilities; and

(ii) the ability to support commercial launch-on-demand on short notification, taking into account Federal requirements, at launch sites or test ranges in the United States;

(C) identify each deficiency in the resources referred to in subparagraph (B); and

(D) with respect to the deficiencies identified under subparagraph (C), include estimates of the level of funding necessary to address those deficiencies for the period described in subparagraph (A).

(d) RECOMMENDATIONS.—Based on the reports under subsection (c), the Secretary, after consultation with the Secretary of Transportation, the Secretary of Commerce, and representatives from interested private sector entities, States, and local governments, shall—

(1) identify opportunities for investment by non-Federal entities (including States and political subdivisions thereof and private sector entities) to assist the Federal Government in providing launch capabilities for the commercial space industry in the United States;

(2) identify one or more methods by which, if sufficient resources referred to in subsection (c)(2)(D) are not available to the Department of Defense and the National Aeronautics and Space Administration, the control of the launch property and launch services of the Department of Defense and the National Aeronautics and Space Administration may be transferred from the Department of Defense and the National Aeronautics and Space Administration to—

(A) one or more other Federal agencies;

(B) one or more States (or subdivisions thereof);

(C) one or more private sector entities; or

(D) any combination of the entities described in subparagraphs (A) through (C); and

(3) identify the technical, structural, and legal impediments associated with making launch sites or test ranges in the United States viable and competitive.

j. Cooperative East-West Ventures in Space

Public Law 98–562 [S.J. Res. 236], 98 Stat. 2914, approved October 30, 1984

JOINT RESOLUTION Relating to cooperative East-West ventures in space.

Whereas the United States and the Soviet Union could soon find themselves in an arms race in space, which is in the interest of no one;

Whereas the prospect of an arms race in space between the United States and the Soviet Union has aroused worldwide concern expressed publicly by the governments of many countries;

Whereas the 1972–1975 Apollo-Soyuz project involving the United States and the Soviet Union and culminating with a joint docking in space was successful, thus proving the practicability of a joint space effort;

Whereas shortly after the completion of the Apollo-Soyuz project, and intended as a followup to it, the United States and the Soviet Union signed an agreement to examine the feasibility of a Shuttle-Salyut program and an international space platform program, but that initiative was allowed to lapse;

Whereas the United States signed a five-year space cooperation agreement with the Soviet Union in 1972, renewed it in 1977, then chose not to renew it in 1982;

Whereas the United States recently proposed to the Soviet Union that the two Nations conduct a joint simulated space rescue mission;

Whereas the Soviet Union has not yet responded to the substance of this proposal; and

Whereas the opportunities offered by space for prodigious achievements in virtually every field of human endeavor, leading ultimately to the colonization of space in the cause of advancing human civilization, would probably be lost irretrievably were space to be made into yet another East-West battleground: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President should—

(1) endeavor, at the earliest practicable date, to renew the 1972–1977 agreement between the United States and the Soviet Union on space cooperation for peaceful purposes;

(2) continue energetically to gain Soviet agreement to the recent United States proposal for a joint simulated space rescue mission;

(3) seek to initiate talks with the Government of the Soviet Union, and with other governments interested for cooperative East-West ventures in space including cooperative ventures in such areas as space medicine and space biology, planetary science, manned and unmanned space exploration.

k. National Space Council Authorization Act of 1990

Partial text of Public Law 101–328 [S. 2124], 104 Stat. 308, approved July 8, 1990

AN ACT To authorize appropriations for the National Space Council, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the National Space Council Authorization Act of 1990.

AUTHORIZATION OF APPROPRIATION

SEC. 2.[1] There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2471), $1,200,000 for fiscal year 1990. The National Space Council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

* * * * * * *

REVIEW OF LAUNCH INDUSTRY

SEC. 5. (a) The National Space Council is requested to initiate a review of United States launch policy, including the Nation's expendable launch vehicle and satellite industries, their current and projected markets, the existing and projected level of foreign competition in these industries, the extent and level of support form foreign governments in these markets and industries, the consequences of the entry of nonmarket providers of launch services and satellites into the world market, restrictions on the use of foreign launch services and the export of United States satellites, and the importance of the United States launch vehicle and satellite industry to the national and economic security.

(b) The findings of this review and any policy recommendations are to be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology[2] of the House of Representatives by August 1, 1990.

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[1] 42 U.S.C. 2471 note.

[2] Sec. 1(a)(10) of Public Law 104–14 (109 Stat. 187) provided that references to the Committee on Science, Space, and Technology of the House of Representatives shall be treated as referring to the Committee on Science of the House of Representatives.

EFFECTIVE DATE

SEC. 6.[3] The provisions of this Act are effective as of October 1, 1989.

[3] 5 U.S.C. 5314 note.

l. FREEDOM Support Act—Space Trade and Cooperation

Partial text of Public Law 102–511 [S. 2532], 106 Stat. 3320, approved October 24, 1992

AN ACT To support freedom and open markets in the independent states of the former Soviet Union, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLES.

This Act may be cited as the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992" or the "FREEDOM Support Act".

* * * * * * *

TITLE VI—SPACE TRADE AND COOPERATION

SEC. 601.[2] FACILITATING DISCUSSIONS REGARDING THE ACQUISITION OF SPACE HARDWARE, TECHNOLOGY, AND SERVICES FROM THE FORMER SOVIET UNION.

(a) EXPEDITED REVIEW.—Any request for a license or other approval described in subsection (c) that is submitted to any United States Government agency by the National Aeronautics and Space Administration, any of its contractors, or any other person shall be considered on an expedited basis by that agency and any other agency involved in an applicable interagency review process.

(b) NOTICE TO CONGRESS IF LICENSE DENIED.—If any United States Government agency denies a request for a license or other approval described in subsection (c), that agency shall immediately notify the designated congressional committees. Each such notification shall include a statement of the reasons for the denial.

(c) DESCRIPTION OF DISCUSSIONS.—This section applies to a request for any license or other approval that may be necessary to conduct discussions with an independent state of the former Soviet Union with respect to the possible acquisition of any space hardware, space technology, or space service for integration into—

(1) United States space projects that have been approved by the Congress, or

(2) commercial space ventures,

including discussions relating to technical evaluation of such hardware, technology, or service.

SEC. 602.[3] OFFICE OF SPACE COMMERCE.

(a) TRADE MISSIONS.—The Office of Space Commerce of the Department of Commerce is authorized and encouraged to conduct

[1] 22 U.S.C. 5801 note. For full text of Public Law 102–511, see *Legislation on Foreign Relations Through 2005*, vol. I–B.
[2] 22 U.S.C. 5871.
[3] 22 U.S.C. 5872.

one or more trade missions to appropriate independent states of the former Soviet Union for the purpose of familiarizing United States aerospace industry representatives with space hardware, space technologies, and space services that may be available from the independent states, and with the business practices and overall business climate in the independent states.

(b) MONITORING NEGOTIATIONS.—The Office of Space Commerce—

(1) shall monitor the progress of any discussions described in section 601(c)(1) that are being conducted; and

(2) shall advise the Administrator of the National Aeronautics and Space Administration as to the impact on United States industry of each potential acquisition of space hardware, space technology, or space services from the independent states of the former Soviet Union, specifically including any anticompetitive issues the Office may observe.

SEC. 603.[4] REPORT TO CONGRESS.

Within one year after the date of enactment of this title, the President shall submit to the designated congressional committees a report describing—

(1) the opportunities for increased space-related trade with the independent states of the former Soviet Union;

(2) a technology procurement plan for identifying and evaluating all unique space hardware, space technology, and space services available to the United States from the independent states;

(3) specific space hardware, space technology, and space services that have been, or could be, the subject of discussions described in section 601(c);

(4) the trade missions carried out pursuant to section 602(a), including the private participation in and the results of such missions;

(5) any barriers, regulatory or practical, that inhibit space-related trade between the United States and independent states, including any such barriers in either the United States or the independent states; and

(6) any anticompetitive issues raised during the course of negotiations, as observed pursuant to section 602(b).

SEC. 604.[5] DEFINITIONS.

For purposes of this title—

(1) the term "contractor" means a National Aeronautics and Space Administration contractor to the extent that the acquisition of space hardware, space technology, or space services from the independent states of the former Soviet Union may be relevant to the contractor's responsibilities under the contract; and

(2) the term "designated congressional committees" means the Committee on Science, Space, and Technology and the

[4] 22 U.S.C. 5873.
[5] 22 U.S.C. 5874.

Committee on Foreign Affairs of the House of Representatives[6] and the Committee on Commerce, Science, and Transportation and the Committee on Foreign Relations of the Senate.

* * * * * * *

[6] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives. Sec. 1(a)(10) of that Act (109 Stat. 187) provided that references to the Committee on Science, Space, and Technology of the House of Representatives shall be treated as referring to the Committee on Science of the House of Representatives.

m. National Space Council

Executive Order 12675, April 20, 1989, 54 F.R. 17691, 42 U.S.C. 2451 note; as amended by Executive Order 12712, April 26, 1990, 55 F.R. 18095; and Executive Order 12869, September 30, 1993, 58 F.R. 51751

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to provide a coordinated process for developing a national space policy and strategy and for monitoring its implementation, it is hereby ordered as follows:

Section 1. *Establishment and Composition of the National Space Council.*

(a) There is established the National Space Council ("the Council").

(b) The Council shall be composed of the following members:

(1) The Vice President, who shall be Chairman of the Council;

(2) The Secretary of State;

(3) The Secretary of the Treasury;

(4) The Secretary of Defense;

(5) The Secretary of Commerce;

(6) The Secretary of Transportation;

(7)[1] The Secretary of Energy;

(8) The Director of the Office of Management and Budget;

(9) The Chief of Staff to the President;

(10) The Assistant to the President for National Security Affairs;

(11) The Assistant to the President for Science and Technology;

(12) The Director of Central Intelligence; and

(13) The Administrator of the National Aeronautics and Space Administration.

(c) The Chairman shall, from time to time, invite the following to participate in meetings of the Council:

(1) The Chairman of the Joint Chiefs of Staff; and

(2) The heads of other executive departments and agencies and other senior officials in the Executive Office of the President.

Sec. 2. *Functions of the Council.* (a) The Council shall advise and assist the President on national space policy and strategy, and perform such other duties as the President may from time to time prescribe.

(b) In addition, the Council is directed to:

(1) review United States Government space policy, including long-range goals, and develop a strategy for national space activities;

[1] Executive Order 12712 (April 26, 1990; 55 F.R. 18095) inserted the Secretary of Energy at (b)(7) and renumbered the remaining.

(2) develop recommendations for the President on space policy and space-related issues;

(3) monitor and coordinate implementation of the objectives of the President's national space policy by executive departments and agencies; and

(4) foster close coordination, cooperation, and technology and information exchange among the civil, national security, and commercial space sectors, and facilitate resolution of differences concerning major space and space-related policy issues.

(c) The creation and operation of the Council shall not interfere with existing lines of authority and responsibilities in the departments and agencies.

Sec. 3. *Responsibilities of the Chairman.* (a) The Chairman shall serve as the President's principal advisor on national space policy and strategy.

(b) The Chairman shall, in consultation with the members of the Council, establish procedures for the Council and establish the agenda for Council activities.

(c) The Chairman shall report to the President on the activities and recommendations of the Council. The Chairman shall advise the Council as appropriate regarding the President's directions with respect to the Council's activities and national space policy generally.

(d) The Chairman shall authorize the establishment of such committees of the Council, including an executive committee, and of such working groups, composed of senior designees of the Council members and of other officials invited to participate in Council meetings, as he deems necessary or appropriate for the efficient conduct of Council functions.

Sec. 4. *National Space Policy Planning Process.* (a) The Council will establish a process for developing and monitoring the implementation of national space policy and strategy.

(b) To implement this process, each agency represented on the Council shall provide such information regarding its current and planned space activities as the Chairman shall request.

(c) The head of each executive department and agency shall ensure that its space-related activities conform to national space policy and strategy.

Sec. 5.[2] *Establishment of Vice President's Space Policy Advisory Board.* * * * [Revoked—1993]

Sec. 6.[3] *Microgravity Research Board.* * * *

Sec. 7. *Administrative Provisions.* (a) The Office of Administration in the Executive Office of the President shall provide the Council with such administrative support on a reimbursable basis as may be necessary for the performance of the functions of the Council.

(b) The President shall appoint an Executive Secretary who shall appoint such staff as may be necessary to assist in the performance of the Council's functions.

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[2] Sec. 4(f) of Executive Order 12869 (58 F.R. 51752; September 30, 1993) revoked sec. 5.

[3] Sec. 6 amended Executive Order 12660.

(c) All Federal departments, agencies, and interagency councils and committees having an impact on space policy shall extend, as appropriate, such cooperation and assistance to the Council as is necessary to carry out its responsibilities under this order.

(d) The head of each agency serving on the Council or represented on any working groups or committee of the Council shall provide such administrative support as may be necessary, in accordance with law and subject to the availability of appropriations, to enable the agency head or its representative to carry out his responsibilities.

Sec. 8. *Report.* The Council shall submit an annual report setting forth its assessment of and recommendations for the space policy and strategy of the United States Government.

n. Establishment of the National Science and Technology Council

Executive Order 12881, November 23, 1993, 58 F.R. 62491, 42 U.S.C. 6601 note; as amended by Executive Order 13284, January 23, 2003 [1]

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the National Science and Technology Council ("the Council").

Sec. 2. *Membership.* The Council shall comprise the:

(a) President, who shall serve as Chairman of the Council;
(b) Vice President;
(c) Secretary of Commerce;
(d) Secretary of Defense;
(e) Secretary of Energy;
(f) Secretary of Health and Human Services;
(g) Secretary of State;
(h) Secretary of the Interior;
(i) [2] Secretary of Homeland Security;
(j) Administrator, National Aeronautics and Space Administration;
(k) Director, National Science Foundation;
(l) Director of the Office of Management and Budget;
(m) Administrator, Environmental Protection Agency;
(n) Assistant to the President for Science and Technology;
(o) National Security Adviser;
(p) Assistant to the President for Economic Policy;
(q) Assistant to the President for Domestic Policy; and
(r) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Sec. 3. *Meetings of the Council.* The President or, upon his direction, the Assistant to the President for Science and Technology ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

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[1] The President also established the President's Committee of Advisors on Science and Technology, to be composed of not more than 16 individuals from outside the U.S. Government, to advise the National Science and Technology Council (Executive Order 12882, November 23, 1993, 58 F.R. 62493; continued by Executive Order 12974, September 29, 1995, 60 F.R. 51875; further continued by Executive Order 13062, September 29, 1997, 62 F.R. 51755; and further continued by Executive Order 13138, September 30, 1999, 64 F.R. 53879). Subsequently, Executive Order 13226 (September 30, 2001; 66 F.R. 50521) revoked Executive Order 12882.

Executive Order 13226 further established the President's Council of Advisors on Science and Technology (continued by Executive Order 13305, May 28, 2003, 68 F.R. 32323; and further continued by Executive Order 13385, September 29, 2005, 70 F.R. 57987).

[2] Sec. 9 of Executive Order 13284 (January 23, 2003; 68 F.R. 4075) redesignated subsecs. (i) through (q) as subsecs. (j) through (r) and inserted a new subsec. (i).

Sec. 4. *Functions.* (a) The principal functions of the Council are, to the extent permitted by law: (1) to coordinate the science and technology policymaking process; (2) to ensure science and technology policy decisions and programs are consistent with the President's stated goals; (3) to help integrate the President's science and technology policy agenda across the Federal Government; (4) to ensure science and technology are considered in development and implementation of Federal policies and programs; and (5) to further international cooperation in science and technology. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate science and technology policy through the Council and shall share information on research and development budget requests within the Council.

(c) The Council shall develop for submission to the director of the Office of Management and Budget recommendations on research and development budgets that reflect national goals. In addition, the Council shall provide advice to the Director of the Office of Management and Budget concerning the agencies' research and development budget submissions.

(d) The Assistant will, when appropriate, work in conjunction with the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget, and the National Security Adviser.

Sec. 5. *Administration.* (a) The Council will oversee the duties of the Federal Coordinating Council for Science, Engineering, and Technology, the National Space Council, and the National Critical Materials Council.

(b) The Council may function through established or ad hoc committees, task forces, or interagency groups.

(c) To the extent practicable and permitted by law, executive departments and agencies shall make resources, including, but not limited to, personnel, office support, and printing, available to the Council as requested by the Assistant.

(d) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

3. Arctic Research

a. Arctic Tundra Habitat Emergency Conservation Act

Public Law 106–108 [H.R. 2454], 113 Stat. 1491, approved November 24, 1999

AN ACT To assure the long-term conservation of mid-continent light geese and the biological diversity of the ecosystem upon which many North American migratory birds depend, by directing the Secretary of the Interior to implement rules to reduce the overabundant population of mid-continent light geese.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Arctic Tundra Habitat Emergency Conservation Act".

SEC. 2.[1] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) The winter index population of mid-continent light geese was 800,000 birds in 1969, while the total population of such geese is more than 5,200,000 birds today.

(2) The population of mid-continent light geese is expanding by over 5 percent each year, and in the absence of new wildlife management actions it could grow to more than 6,800,000 breeding light geese in 3 years.

(3) The primary reasons for this unprecedented population growth are—

(A) the expansion of agricultural areas and the resulting abundance of cereal grain crops in the United States;

(B) the establishment of sanctuaries along the United States flyways of migrating light geese; and

(C) a decline in light geese harvest rates.

(4) As a direct result of this population explosion, the Hudson Bay Lowlands Salt-Marsh ecosystem in Canada is being systematically destroyed. This ecosystem contains approximately 135,000 acres of essential habitat for migrating light geese and many other avian species. Biologists have testified that one-third of this habitat has been destroyed, one-third is on the brink of devastation, and the remaining one-third is overgrazed.

(5) The destruction of the Arctic tundra is having a severe negative impact on many avian species that breed or migrate through this habitat, including the following:

(A) Canada Goose.

(B) American Wigeon.

(C) Dowitcher.

(D) Hudsonian Godwit.

[1] 16 U.S.C. 703 note.

(E) Stilt Sandpiper.
(F) Northern Shoveler.
(G) Red-Breasted Merganser.
(H) Oldsquaw.
(I) Parasitic Jaeger.
(J) Whimbrel.
(K) Yellow Rail.

(6) It is essential that the current population of mid-continent light geese be reduced by 50 percent by the year 2005 to ensure that the fragile Arctic tundra is not irreversibly damaged.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To reduce the population of mid-continent light geese.

(2) To assure the long-term conservation of mid-continent light geese and the biological diversity of the ecosystem upon which many North American migratory birds depend.

SEC. 3.[1] FORCE AND EFFECT OF RULES TO CONTROL OVERABUNDANT MID-CONTINENT LIGHT GEESE POPULATIONS.

(a) FORCE AND EFFECT.—

(1) IN GENERAL.—The rules published by the Service on February 16, 1999, relating to use of additional hunting methods to increase the harvest of mid-continent light geese (64 Fed. Reg. 7507–7517) and the establishment of a conservation order for the reduction of mid-continent light goose populations (64 Fed. Reg. 7517–7528), shall have the force and effect of law.

(2) PUBLIC NOTICE.—The Secretary, acting through the Director of the Service, shall take such action as is necessary to appropriately notify the public of the force and effect of the rules referred to in paragraph (1).

(b) APPLICATION.—Subsection (a) shall apply only during the period that—

(1) begins on the date of the enactment of this Act; and

(2) ends on the latest of—

(A) the effective date of rules issued by the Service after such date of the enactment to control overabundant mid-continent light geese populations;

(B) the date of the publication of a final environmental impact statement for such rules under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(C) May 15, 2001.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to limit the authority of the Secretary or the Service to issue rules, under another law, to regulate the taking of mid-continent light geese.

SEC. 4.[1] COMPREHENSIVE MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than the end of the period described in section 103(b), the Secretary shall prepare, and as appropriate implement, a comprehensive, long-term plan for the management of mid-continent light geese and the conservation of their habitat.

(b) REQUIRED ELEMENTS.—The plan shall apply principles of adaptive resource management and shall include—

(1) a description of methods for monitoring the levels of populations and the levels of harvest of mid-continent light geese, and recommendations concerning long-term harvest levels;

(2) recommendations concerning other means for the management of mid-continent light goose populations, taking into account the reasons for the population growth specified in section 102(a)(3);

(3) an assessment of, and recommendations relating to, conservation of the breeding habitat of mid-continent light geese;

(4) an assessment of, and recommendations relating to, conservation of native species of wildlife adversely affected by the overabundance of mid-continent light geese, including the species specified in section 102(a)(5); and

(5) an identification of methods for promoting collaboration with the Government of Canada, States, and other interested persons.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2000 through 2002.

SEC. 5.[1] DEFINITIONS.

In this Act:

(1) MID-CONTINENT LIGHT GEESE.—The term "mid-continent light geese" means Lesser snow geese (Anser caerulescens caerulescens) and Ross' geese (Anser rossii) that primarily migrate between Canada and the States of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) SERVICE.—The term "Service" means the United States Fish and Wildlife Service.

b. Arctic Research and Policy Act of 1984

Title I of Public Law 98–373 [S. 373], 98 Stat. 1242, approved July 31, 1984; as amended by Public Law 101–609 [S. 677], 104 Stat. 3125, approved November 16, 1990; and Public Law 103–199 [FRIENDSHIP Act; H.R. 3000], 107 Stat. 2317, approved December 17, 1993

AN ACT To provide for a comprehensive national policy dealing with national research needs and objectives in the Arctic, for a National Critical Materials Council, for development of a continuing and comprehensive national materials policy for programs necessary to carry out that policy, including Federal programs of advanced materials research and technology, and for innovation in basic materials industries, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

TITLE I—ARCTIC RESEARCH AND POLICY

SHORT TITLE

SEC. 101. This title may be cited as the "Arctic Research and Policy Act of 1984".

FINDINGS AND PURPOSES

SEC. 102.[1] (a) The Congress finds and declares that—

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce the Nation's dependence on foreign oil and improve the national balance of payments;

(2)[2] the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is a natural laboratory for research into human health and adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic make the Arctic a unique testing ground for research into high latitude communications, which is likely to be crucial for future defense needs;

[1] 15 U.S.C. 4101.

[2] Sec. 601(1) of the FRIENDSHIP Act (Public Law 103–199; 107 Stat. 2327) struck out "as the Nation's only common border with the Soviet Union," preceding "the Arctic is critical".

(8) Arctic marine technology is critical to cost-effective recovery and transportation of energy resources and to the national defense;

(9) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of the Arctic;

(10) most Arctic-rim countries[3] possess Arctic technologies far more advanced than those currently available in the United States;

(11) Federal Arctic research is fragmented and uncoordinated at the present time, leading to the neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) improved logistical coordination and support for Arctic research and better dissemination of research data and information is necessary to increase the efficiency and utility of national Arctic research efforts;

(13) a comprehensive national policy and program plan to organize and fund currently neglected scientific research with respect to the Arctic is necessary to fulfill national objectives in Arctic research;

(14) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological, materials, geophysical, social, and behavioral phenomena in the Arctic;

(15) research into the long-range health, environmental, and social effects of development in the Arctic is necessary to mitigate the adverse consequences of that development to the land and its residents;

(16) Arctic research expands knowledge of the Arctic, which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries, and facilitate the formulation of national policy for the Arctic; and

(17) the Alaskan Arctic provides an essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this title are—

(1) to establish national policy, priorities, and goals and to provide a Federal program to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences;

(2) to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy;

(3) to designate the National Science Foundation as the lead agency responsible for implementing Arctic research policy; and

[3] Sec. 601(2) of the FRIENDSHIP Act (Public Law 103–199; 108 Stat. 2327) struck out ", particularly the Soviet Union," after "countries".

(4) to establish an Interagency Arctic Research Policy Committee to develop a national Arctic research policy and a five-year plan to implement that policy.

ARCTIC RESEARCH COMMISSION

SEC. 103.[4] (a) The President shall establish an Arctic Research Commission (hereafter referred to as the "Commission").

(b)(1) The Commission shall be composed of seven[5] members appointed by the President, with the Director of the National Science Foundation serving as a nonvoting, ex officio member. The members appointed by the President shall include—

(A) four[6] members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(B) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resource development; and

(C) two members[7] appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(2) The President shall designate one of the appointed members of the Commission to be chairperson of the Commission.

(c)(1) Except as provided in paragraph (2) of this subsection, the term of office of each member of the Commission appointed under subsection (b)(1) shall be four years.

(2) Of the members of the Commission originally appointed under subsection (b)(1)—

(A) one shall be appointed for a term of two years;

(B) two shall be appointed for a term of three years; and

(C) two shall be appointed for a term of four years.

(3) Any vacancy occurring in the membership of the Commission shall be filled, after notice of the vacancy is published in the Federal Register, in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment.

(d)(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS–

[4] 15 U.S.C. 4102.

[5] Sec. 2(1) of Public Law 101–609 (104 Stat. 3125) struck out "five" and inserted in lieu thereof "seven".

[6] Sec. 2(2) of Public Law 101–609 (104 Stat. 3125) struck out "three" and inserted in lieu thereof "four".

[7] Sec. 2(3) of Public Law 101–609 (104 Stat. 3125) struck out "one member" and inserted in lieu thereof "two members".

18[8] of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose.

(2) The Commission shall meet at the call of its Chairman or a majority of its members.

(3) Each Federal agency referred to in section 107(b) may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities relating to Arctic research of their agencies.

(4) The Commission shall conduct at least one public meeting in the State of Alaska annually.

DUTIES OF COMMISSION

SEC. 104.[9] (a) The Commission shall—

(1) develop and recommend an integrated national Arctic research policy;

(2) in cooperation with the Interagency Arctic Research Policy Committee established under section 107, assist in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and recommend[10] improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate and in accordance with the findings and purposes of this title;

(6) recommend[10] methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Committee established under section 107 as it may find appropriate;[11]

(8) cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy;[11]

(9)[11] recommend to the Interagency Committee the means for developing international scientific cooperation in the Arctic; and

[8] Sec. 3 of Public Law 101–609 (104 Stat. 3125) struck out "GS–16" and inserted in lieu thereof "GS–18".

[9] 15 U.S.C. 4103.

[10] Sec. 4(a)(1) and (2) of Public Law 101–609 (104 Stat. 3125) struck out "suggest" and inserted in lieu thereof "recommend" in paras. (4) and (6), respectively.

[11] Sec. 4(a)(3) through (5) of Public Law 101–609 (104 Stat. 3125) struck out "and" at the end of para. (7); ended para. (8) with a semicolon; and added paras. (9) and (10).

(10)[11] not later than January 31, 1991, and every 2 years thereafter, publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 107 in the performance of its duties.

(b)[12] Not later than January 31 of each year, the Commission shall submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

COOPERATION WITH THE COMMISSION

SEC. 105.[13] (a)(1) The Commission may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research in the possession of the agency which the Commission considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 552 of title 5, United States Code.

(b) With the consent of the appropriate agency head, the Commission may utilize the facilities and services of any Federal agency to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy, upon reimbursement to be agreed upon by the Commission and the agency head and taking every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

ADMINISTRATION OF THE COMMISSION

SEC. 106.[14] The Commission may—

(1) in accordance with the civil service laws and subchapter III of chapter 53 of title 5, United States Code, appoint and fix the compensation of an Executive Director and necessary additional staff personnel, but not to exceed a total of seven compensated personnel;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5, United States Code;

(3) enter into contracts and procure supplies, services and personal property,[15]

(4) enter into agreements with the General Services Administration for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in amounts to be agreed upon by the Commission and the Administrator of the General Services Administration; and[15]

(5)[15] appoint, and accept without compensation the services of, scientists and engineering specialists to be advisors to the

[12] Sec. 4(b) of Public Law 101–609 (104 Stat. 3125) amended and restated subsec. (b).
[13] 15 U.S.C. 4104.
[14] 15 U.S.C. 4105.
[15] Sec. 5 of Public Law 101–609 (104 Stat. 3125) struck out "and" at the end of para. (3); ended para. (4) with "; and"; and added a new para. (5).

Commission. Each advisor may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims) of the United States Code, an advisor appointed under this paragraph shall not be considered an employee of the United States for any purpose.

LEAD AGENCY AND INTERAGENCY ARCTIC RESEARCH POLICY COMMITTEE

SEC. 107.[16] (a) The National Science Foundation is designated as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall insure that the requirements of section 108 are fulfilled.

(b)(1) The President shall establish an Interagency Arctic Research Policy Committee (hereinafter referred to as the "Interagency Committee").

(2) The Interagency Committee shall be composed of representatives of the following Federal agencies or offices:

(A) the National Science Foundation;
(B) the Department of Commerce;
(C) the Department of Defense;
(D) the Department of Energy;
(E) the Department of the Interior;
(F) the Department of State;
(G) the Department of Transportation;
(H) the Department of Health and Human Services;
(I) the National Aeronautics and Space Administration;
(J) the Environmental Protection Agency; and
(K) any other agency or office deemed appropriate.

(3) The representative of the National Science Foundation shall serve as the Chairperson of the Interagency Committee.

DUTIES OF THE INTERAGENCY COMMITTEE

SEC. 108.[17] (a) The Interagency Committee shall—

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on—

(A) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(B) Arctic research programs of Federal agencies;

[16] 15 U.S.C. 4106.
[17] 15 U.S.C. 4107.

(C) recommendations of the Commission on future Arctic research; and

(D) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided for in section 109;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research as provided for in section 110;

(6) facilitate cooperation between the Federal Government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research in accordance with the findings and purposes of this title;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under this title;

(9) promote Federal interagency coordination of all Arctic research activities, including—

(A) logistical planning and coordination; and

(B) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code; and

(10) provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President, a brief, concise report containing—

(1) a statement of the activities and accomplishments of the Interagency Committee since its last report; and

(2)[18] a statement detailing with particularity the recommendations of the Commission with respect to Federal interagency activities in Arctic research and the disposition and responses to those recommendations.

5-YEAR ARCTIC RESEARCH PLAN

SEC. 109.[19] (a) The Interagency Committee, in consultation with the Commission, the Governor of the State of Alaska, the residents of the Arctic, the private sector, and public interest groups, shall prepare a comprehensive 5-year program plan (hereinafter referred to as the "Plan") for the overall Federal effort in Arctic research. The Plan shall be prepared and submitted to the President for transmittal to the Congress within one year after the enactment of this Act and shall be revised biennially thereafter.

(b) The Plan shall contain but need not be limited to the following elements:

[18] Sec. 6 of Public Law 101–609 (104 Stat. 3126) amended and restated para. (2).
[19] 15 U.S.C. 4108.

(1) An assessment of national needs and problems regarding the Arctic and the research necessary to address those needs or problems;

(2) a statement of the goals and objectives of the Interagency Committee for national Arctic research;

(3) a detailed listing of all existing Federal programs relating to Arctic research, including the existing goals, funding levels for each of the 5 following fiscal years, and the funds currently being expended to conduct the programs;

(4) recommendations for necessary program changes and other proposals to meet the requirements of the policy and goals as set forth by the Commission and in the Plan as currently in effect; and

(5) a description of the actions taken by the Interagency Committee to coordinate the budget review process in order to ensure interagency coordination and cooperation in (A) carrying out Federal Arctic research programs, and (B) eliminating unnecessary duplication of effort among these programs.

COORDINATION AND REVIEW OF BUDGET REQUESTS

SEC. 110.[20] (a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 108(a)(5), in accordance with the national Arctic research policy and the 5-year program under section 108(a)(2) and section 109, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget requests for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

AUTHORIZATION OF APPROPRIATIONS; NEW SPENDING AUTHORITY

SEC. 111.[21] (a) There are authorized to be appropriated such sums as may be necessary for carrying out this title.

[20] 15 U.S.C. 4109.
[21] 15 U.S.C. 4110.

(b) Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this title shall be effective for any fiscal year only to such extent or in such amounts as may be provided in appropriation Acts.

DEFINITION

SEC. 112.[22] As used in this title, the term "Arctic" means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.

[22] 15 U.S.C. 4111.

c. Arctic Research Commission

Executive Order 12501, January 28, 1985, 50 F.R. 4191, 15 U.S.C. 4101 note; as amended by Executive Order 13286, February 28, 2003, 68 F.R. 10627

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Arctic Research and Policy Act of 1984 (Title I of Public Law 98–373) ("the Act"), it is hereby ordered as follows:

Section 1. *Establishment of Arctic Research Commission.* There is established the Arctic Research Commission.

Sec. 2. *Membership of the Commission.* (a) The Commission shall be composed of five members appointed by the President, as follows:

(1) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(2) one member appointed from among indigenous residents of the Arctic who are representatives of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resources development; and

(3) one member appointed from individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

The Director of the National Science Foundation shall serve as a nonvoting *ex officio* member of the Commission. The President shall designate a Chairperson from among the five voting members of the Commission.

(b) In making initial appointments to the Commission, the President shall designate one member to serve for a term of two years, two members to serve for terms of three years, and two members to serve for terms of four years as provided by Section 103(c) of the Act. Upon the expiration of these initial terms of office, the term of office of each member of the Commission shall be four years.

(c) Each of the Federal agencies represented on the Interagency Committee established by Section 7 of this Order may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities of their agencies relating to Arctic research.

Sec. 3. *Meetings of the Commission.* The Commission shall meet at the call of the Chairman or a majority of its members. The Commission annually shall conduct at least one public meeting in the State of Alaska.

Sec. 4. *Functions of the Commission.* (a) The Commission shall:

(1) develop and recommend an integrated national Arctic research policy;

(2) assist, in cooperation with the Interagency Arctic Research Policy Committee established by Section 7 of this Order,

in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Arctic Research Policy Committee as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska, and with agencies and organizations of that State which the Governor may designate, with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall:

(1) submit to the President and Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year; and

(2) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Arctic Research Policy Committee in the performance of its duties.

Sec. 5. *Responsibilities of Federal Agencies.* (a) The heads of Executive agencies shall, to the extent permitted by law, and in accordance with Section 105 of the Act, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) The heads of Executive agencies shall, upon reimbursement to be agreed upon by the Commission and the agency head, permit the Commission to utilize their facilities and services to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy. The Commission shall take every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

Sec. 6. *Administration of the Commission.* Members of the Commission who are otherwise employed for compensation shall serve without compensation for their work on the Commission, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service. Members of the Commission who are not otherwise employed for compensation shall be compensated for each day the member is engaged in actual performance of duties as a member, not to exceed 90 days of service each calendar year, at a rate equal to the daily equivalent of the rate for GS–16 of the General Schedule.

Sec. 7. *Establishment of Interagency Arctic Research Policy Committee.* There is established the Interagency Arctic Research Policy Committee (the "Interagency Committee"). The National Science

Foundation shall serve as lead agency on the Interagency Committee and shall be responsible for implementing Arctic research policy.

Sec. 8. *Membership of the Interagency Committee.* The Interagency Committee shall be composed of representatives of the following Federal agencies or their designees:

(a) National Science Foundation;
(b) Department of Commerce;
(c) Department of Defense;
(d) Department of Energy;
(e) Department of Interior;
(f) Department of State;
(g) Department of Transportation;
(h) Department of Health and Human Services;
(i)[1] Department of Homeland Security;
(j) National Aeronautics and Space Administration;
(k) Environmental Protection Agency;
(l) Office of Science and Technology Policy; and
(m) any other Executive agency that the Director of the National Science Foundation shall deem appropriate. The Director of the National Science Foundation or his designee shall serve as Chairperson of the Interagency Committee.

Sec. 9. *Functions of the Interagency Committee.* (a) The Interagency Committee shall:

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on:

(a) the development of the national Arctic research policy and the 5-year plan implementing the policy;
(b) Arctic research programs of Federal agencies;
(c) recommendations of the Commission on future Arctic research; and
(d) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided in section 109 of the Act;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research, as provided in section 110 of the Act;

(6) facilitate cooperation between the Federal government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research;

[1] Sec. 45 of Executive Order 13286 (February 28, 2003; 68 F.R. 10627) inserted subsec. (i) and redesignated existing subsecs. (i) through (l) as subsecs. (j) through (m),

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under the Act; and

(9) promote Federal interagency coordination of all Arctic research activities, including:

(a) logistical planning and coordination; and

(b) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President a report concerning:

(1) its activities and accomplishments since its last report; and

(2) the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

Sec. 10. *Public Participation.* The Interagency Committee will provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

Sec. 11. *Administration of Interagency Committee.* Each agency represented on the Committee shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, facilities, staff, and other support services as may be necessary for effective performances of its functions.

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1. Provisions of Law Relating to Travel Outside the United States [1]

a. Reporting Requirements for House Interparliamentary Groups

Partial text of Public Law 86–628 [Legislative Branch Appropriation Act of 1961; H.R. 12232], 74 Stat. 446, approved July 12, 1960; as amended by Public Law 90–137 [S. 1872], 81 Stat. 445 at 463, approved November 19, 1967; Public Law 94–59 [H.R. 6950], 89 Stat. 269, approved July 25, 1975; Public Law 103–437 [U.S.C. Technical Amendments; H.R. 4777], 108 Stat. 4581, approved November 2, 1994; Public Law 104–186 [House of Representatives Administrative Reform Technical Corrections Act; H.R. 2739], 110 Stat. 1718, approved August 20, 1996; and Public Law 106–113 [Consolidated Appropriations Act, 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999

AN ACT Making appropriations for the Legislative Branch for the fiscal year ending June 30, 1961, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending June 30, 1961, and for other purposes, namely:

* * * * * * *

Sec. 105.[2] * * *

(b) Each chairman or senior member of the House of Representatives and Senate group or delegation of the United States group or delegation to the Interparliamentary Union, the NATO Parliamentary Assembly,[3] the Canada-United States Interparliamentary Group, the Mexico-United States Interparliamentary Group, or any similar interparliamentary group of which the United States is a member or participates, by whom or on whose behalf local currencies owned by the United States are made available and expended and/or expenditures are made from funds appropriated for the expenses of such group or delegation, shall file with the chairman of the Committee on Foreign Relations of the Senate in the case of the group or delegation of the Senate, or with the chairman of the Committee on Foreign Affairs[4] of the House of Representatives in the case of the group or delegation of the House, an

[1] See also *Legislation on Foreign Relations Through 2005,* vol. II–A, regarding passport laws and regulations.

[2] 22 U.S.C. 276c–1. Sec. 1104 of Public Law 94–59 (89 Stat. 299) amended and restated sec. 105.

[3] Sec. 701(b)(2) of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1501A–459) struck out "North Atlantic Assembly" and inserted in lieu thereof "NATO Parliamentary Assembly".

[4] Sec. 9(a)(2) of Public Law 103–437 (108 Stat. 4588) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs". Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall

Continued

itemized report showing all such expenditures made by or on behalf of each Member or employee of the group or delegation together with the purposes of the expenditure, including per diem (lodging and meals), transportation, and for other purposes. Within sixty days after the beginning of each regular session of Congress, the chairman of the Committee on Foreign Relations and the chairman of the Committee on Foreign Affairs[4] shall prepare consolidated reports showing with respect to each such group or delegation the total amount expended, the purpose of the expenditures, the amount expended for each such purpose, the names of the Members or employees by or on behalf of whom the expenditures were made and the amount expended by or on behalf of each Member or employee for each such purpose. The consolidated reports prepared by the chairman of the Committee on Foreign Relations of the Senate shall be filed with the Secretary of the Senate, and the consolidated reports prepared by the chairman of the Committee on Foreign Affairs[4] of the House shall be filed with the Clerk[5] of the House and shall be open to public inspection.

* * * * * * *

be treated as referring to the Committee on International Relations of the House of Representatives.

[5] Sec. 218(1) of Public Law 104–186 (110 Stat. 1747) struck out "Committee on House Administration" and inserted in lieu thereof "Clerk".

b. Local Currency Availability

Partial text of Public Law 83–665 [Mutual Security Act of 1954; H.R. 9678], 68 Stat. 832, approved August 26, 1954; as amended by Public Law 83–778 [H.R. 10051], 68 Stat. 1223, approved September 3, 1954; Public Law 84–726 [H.R. 11356], 70 Stat. 560, approved July 18, 1956; Public Law 85–477 [H.R. 12181], 72 Stat. 268, approved June 30, 1958; Public Law 85–766 [H.R. 13450], 72 Stat. 880, approved August 27, 1958; Public Law 86–472 [H.R. 11510], 74 Stat. 138, approved May 14, 1960; Public Law 86–628 [H.R. 12232], 74 Stat. 460, approved July 12, 1960; Public Law 86–633 [H.R. 11380], 78 Stat. 1015, approved October 7, 1964; Public Law 93–126 [H.R. 7645], 87 Stat. 451, approved October 18, 1973; Public Law 93–371 [H.R. 14012], 88 Stat. 424, approved August 13, 1974; Public Law 94–59 [H.R. 6950], 89 Stat. 269, approved July 25, 1975; Public Law 94–157 [H.R. 10647], 89 Stat. 826, approved December 18, 1975; Public Law 94–350 [S. 3168], 90 Stat. 823, approved July 12, 1976; Public Law 94–440 [H.R. 14238], 90 Stat. 1439, approved October 1, 1976; Public Law 95–384 [S. 3750], 92 Stat. 730, approved September 26, 1978; and Public Law 104–186 [House of Representatives Administrative Reform Technical Corrections Act; H.R. 2739], 110 Stat. 1718, approved August 20, 1996

AN ACT To promote the security and foreign policy of the United States by furnishing assistance to friendly nations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mutual Security Act of 1954".

* * * * * * *

Sec. 502. * * *

(b)[1] (1)(A) Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, or any other provision of law—

(i) local currencies owned by the United States which are in excess of the amounts reserved under section 612(a) of the Foreign Assistance Act of 1961 and of the requirements of the United States Government in payment of its obligations outside of the United States, as such requirements may be determined from time to time by the President; and

(ii) any other local currencies owned by the United States in amounts not to exceed the equivalent of $75 per day per person or the maximum per diem allowance established under the authority of subchapter I of chapter 57 of title 5 of the United States Code for employees of the United States Government while traveling in a foreign country, whichever is greater, exclusive of the actual cost of transportation;

shall be made available to Members and employees of the Congress for their local currency expenses when authorized as provided in subparagraph (B).

(B) The authorization required for purposes of subparagraph (A) may be provided—

[1] 22 U.S.C. 1754(b). Sec. 22 of the International Security Assistance Act of 1978 (Public Law 95–384; 92 Stat. 742) amended and restated subsec. (b).

(i) by the Speaker of the House of Representatives in the case of a Member or employee of the House;

(ii) by the chairman of a standing or select committee of the House of Representatives in the case of a member or employee of that committee;

(iii) by the President of the Senate, the President pro tempore of the Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, in the case of a Member or employee of the Senate;

(iv) by the chairman of a standing, select, or special committee of the Senate in the case of a member or employee of that committee or of an employee of a member of that committee; and

(v) by the chairman of a joint committee of the Congress in the case of a member or employee of that committee.

(C) Whenever local currencies owned by the United States are not otherwise available for purposes of this subsection, the Secretary of the Treasury shall purchase such local currencies as may be necessary for such purposes, using any funds in the Treasury not otherwise appropriated.

(2) On a quarterly basis, the chairman of each committee of the House of Representatives or the Senate and of each joint committee of the Congress (A) shall prepare a consolidated report (i) which itemizes the amounts and dollar equivalent values of each foreign currency expended and the amounts of dollar expenditures from appropriated funds in connection with travel outside the United States, stating the purposes of the expenditures including per diem (lodging and meals), transportation, and other purposes, and (ii) which shows the total itemized expenditures, by such committee and by each member or employee of such committee (including in the case of a committee of the Senate, each employee of a member of the committee who received an authorization under paragraph (1) from the chairman of the committee); and (B) shall forward such consolidated report to the Clerk of the House of Representatives (if the committee is a committee of the House of Representatives or a joint committee whose funds are disbursed by the Chief Administrative Officer[2] of the House) or to the Secretary of the Senate (if the committee is a committee of the Senate or a joint committee whose funds are disbursed by the Secretary of the Senate). Each such consolidated report shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after the report is forwarded pursuant to this paragraph. In the case of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, such consolidated report may, in the discretion of the chairman of the committee, omit such information as would identify the foreign countries in which members and employees of that committee traveled.

(3)(A) Each Member or employee who receives an authorization under paragraph (1) from the Speaker of the House of Representatives, the President of the Senate, the President pro tempore of the

[2] Sec. 218(2) of Public Law 104–186 (110 Stat. 1747) struck out "Clerk" and inserted in lieu thereof "Chief Administrative Officer".

Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, shall within thirty days after the completion of the travel involved, submit a report setting forth the information specified in paragraph (2), to the extent applicable, to the Clerk of the House of Representatives (in the case of a Member of the House or an employee whose salary is disbursed by the Chief Administrative Officer[2] of the House) or the Secretary of the Senate (in the case of a Member of the Senate or an employee whose salary is disbursed by the Secretary of the Senate). In the case of an authorization for a group of Members or employees, such reports shall be submitted for all Members of the group by its chairman, or if there is no designated chairman, by the ranking Member or if the group does not include a Member, by the senior employee in the group. Each report submitted pursuant to this subparagraph shall be open to public inspection.

(B) On a quarterly basis, the Clerk of the House of Representatives and the Secretary of the Senate shall each prepare a consolidation of the reports received by them under this paragraph with respect to expenditures during the preceding quarter by each Member and employee or by each group in the case of expenditures made on behalf of a group which are not allocable to individual members of the group. Each such consolidation shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after its completion.

* * * * * * *

c. Availability of Funds for Field Examination of Estimates

Partial text of Public Law 83–207 [H.R. 6200], 67 Stat. 418 at 438, approved August 7, 1953

AN ACT Making supplemental appropriations for the fiscal year ending June 30, 1954, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Supplemental Appropriations Act, 1954") for the fiscal year ending June 30, 1954, and for other purposes, namely:

* * * * * * *

§ 1108. * * *

(g)[1] Amounts available under law are available for field examinations of appropriation estimates. The use of the amounts is subject only to regulations prescribed by the appropriate standing committees of Congress.

[1] As originally enacted in Public Law 83–207, this provision was codified at 31 U.S.C. 22a. Public Law 97–258 (96 Stat. 913) recodified title 31, changed this provision to 31 U.S.C. 1108(g), and amended the text.

2. Legislation Authorizing U.S. Participation in Parliamentary Conferences

a. Interparliamentary Union

(1) Participation Authorization

Public Law 74–170 [S. 2276], 49 Stat. 425, approved June 28, 1935; as amended by Public Law 80–409 [S. 1005], 62 Stat. 19, approved February 6, 1948; Public Law 85–477 [H.R. 12181], 72 Stat. 272, approved June 20, 1958; Public Law 87–195 [S. 1983], 75 Stat. 465, approved September 4, 1961; Public Law 87–56 [S. 2996], 76 Stat. 263, approved August 1, 1962; Public Law 88–633 [H.R. 11380], 87 Stat. 1014, approved October 7, 1964; Public Law 90–137 [S. 1872], 81 Stat. 463, approved November 14, 1967; Public Law 92–226 [S. 2819], 86 Stat. 34, approved February 7, 1972; Public Law 93–126 [H.R. 7645], 87 Stat. 452, approved October 18, 1973; Public Law 94–141 [S. 1517], 89 Stat. 756, approved November 29, 1975; Public Law 95–45 [H.R. 5040], 91 Stat. 221 as 223, approved June 15, 1977; Public Law 95–426 [H.R. 12598], 92 Stat. 963 at 994, approved October 7, 1978; Public Law 103–437 [U.S.C. Technical Amendments; H.R. 4777], 108 Stat. 4581, approved November 2, 1994; and Public Law 105–277 [Foreign Relations Authorization Act, Fiscal Years 1998 and 1999; H.R. 4328], 112 Stat. 2681 at 2681–801, approved October 21, 1998

AN ACT To authorize participation by the United States in the Interparliamentary Union.[1]

NOTE.—Sec. 2503 of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (Public Law 105–277; 112 Stat. 2681–836), provided the following:

"SEC. 2503. UNITED STATES MEMBERSHIP IN THE BUREAU OF THE INTERPARLIAMENTARY UNION.

"(a) INTERPARLIAMENTARY UNION LIMITATION.—Unless the Secretary of State certifies to Congress that the United States will be assessed not more than $500,000 for its annual contribution to the Bureau of Interparliamentary Union during fiscal year 1999, then effective October 1, 1999, the authority for further participation by the United States in the Bureau shall terminate in accordance with subsection (d).

"(b) * * *

"(c) * * *

[1] Formerly at 22 U.S.C. 276–276a–4.

"(d) CONDITIONAL TERMINATION OF AUTHORITY.—Unless Congress receives the certification described in subsection (a) before October 1, 1999, effective on that date the Act entitled 'An Act to authorize participation by the United States in the Interparliamentary Union', approved June 28, 1935 (22 U.S.C. 276–276a–4) is repealed.

"(e) TRANSFER OF FUNDS TO THE TREASURY.—Unobligated balances of appropriations made under section 303 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1988; Public Law 100–202) that are available as of the day before the date of enactment of this Act shall be transferred on such date to the general fund of the Treasury of the United States.".

The Secretary of State did not make the required certification and Public Law 74–170 was repealed.

(2) Designation of Senate Delegates to Conferences of the Interparliamentary Union [1]

Public Law 85–474 [Departments of State and Justice, the Judiciary, and Related Agencies Appropriations Act of 1959; H.R. 12428], 72 Stat. 244 at 246, approved June 30, 1958; as amended by Public Law 94–141 [S. 1517], 89 Stat. 756, approved November 29, 1975

* * * * * * *

DEPARTMENT OF STATE

* * * * * * *

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

* * * * * * *

MISSIONS TO INTERNATIONAL ORGANIZATIONS

* * * *Provided,* That, hereafter, Senate delegates to Conferences of the Interparliamentary Union shall be designated by the Presiding Officer of the Senate. Not less than two Senators so designated shall be members of the Committee on Foreign Relations.[2]

[1] 22 U.S.C. 276c.
[2] Sec. 204(c) of Public Law 94–141 (89 Stat. 762) added this sentence.

b. Requirements Relating to Funds for International Organizations and Conferences

Partial text of Public Law 99–415 [Anglo-Irish Agreement Support Act of 1986; H.R. 4329], 100 Stat. 947, approved September 19, 1986

AN ACT To authorize United States contributions to the International Fund established pursuant to the November 15, 1985, agreement between the United Kingdom and Ireland, as well as other assistance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 7. REQUIREMENTS RELATING TO FUNDS FOR "INTERNATIONAL ORGANIZATION AND CONFERENCES".

(a) DISBURSEMENTS, AUDITS, AND REPORTS.—The provisions relating to disbursements on vouchers, audits, and submission of reports with respect to expenditures pursuant to the Joint Resolution of July 11, 1956 (Public Law 689),[1] shall also apply with respect to expenditures pursuant to section 109(c)[2] of the Act of November 22, 1983 (Public Law 98–164).

* * * * * * *

[1] 22 U.S.C. 1928a–1928e.
[2] 97 Stat. 1019.

c. Interparliamentary Groups—Permanent Appropriations

Partial text of Public Law 100–202 [Department of State Appropriation Act, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; as amended by Public Law 100–459 [Department of State and Related Agencies Appropriations Act, 1989; H.R. 4782], 102 Stat. 2207, approved October 1, 1988; Public Law 101–515 [Department of State and Related Agencies Appropriations Act, 1991; H.R. 5021], 104 Stat. 2128, approved November 5, 1990; Public Law 105–277 [Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681, approved October 21, 1998; and Public Law 107–77 [Department of State and Related Agency Appropriations Act, 2002; H.R. 2500], 115 Stat. 790, approved November 28, 2001

* * * * * * *

SEC. 303.[1] There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a total of $350,000 for each fiscal year to carry out (in accordance with the respective authorization amounts)[2] section 2(2) of Public Law 84–689, section 2 of Public Law 86–42, section 2 of Public Law 86–420, and section 109 (b) and (c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985. These funds may be disbursed to each delegation, pursuant to vouchers in accordance with the applicable provisions of law, at any time requested by the Chairman of the delegation after that fiscal year begins.

[1] 22 U.S.C. 276e note. Sec. 408(a) of the Department of State and Related Agency Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 790), sought to strike out "$440,000" and insert in lieu thereof "$620,000". Sec. 2503(c)(1) of Public Law 105–277 (112 Stat. 2681–837), however, had previously struck out "$440,000" and inserted in lieu thereof "$350,000". The 2002 amendment is, thus, not executed.

Previously, sec. 303 of Public Law 100–459 (102 Stat. 2207), struck out "$290,000" and inserted in lieu thereof "$340,000", and added ", and section 109(c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985." after "Public Law 86–420." Further amended by Public Law 101–515 (104 Stat. 2128), which struck out "$340,000" and inserted in lieu thereof "$440,000", and further struck out "section 109(c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985" and inserted in lieu thereof "section 109 (b) and (c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985".

[2] Sec. 2503(c)(2) of Public Law 105–277 (112 Stat. 2681–837) struck out "paragraph (2) of the first section of Public Law 74–170," following "(in accordance with the respective authorization amounts)".

d. United States-Europe Interparliamentary Groups—Appropriations Authorization

Partial text of Public Law 98–164 [Department of State Authorization Act, Fiscal Years 1984 and 1985; H.R. 2915], 97 Stat. 1017, approved November 22, 1983; as amended by Public Law 99–93 [H.R. 2068], 99 Stat. 405, approved August 16, 1985; Public Law 99–415 [Anglo–Irish Agreement Support Act of 1986, H.R. 4329], 100 Stat. 949, approved September 19, 1986; Public Law 100–204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, H.R. 1777], 101 Stat. 1331, approved December 22, 1987; Public Law 100–459 [Department of State Appropriations Act, 1989; H.R. 4782], 102 Stat. 2186 at 2207, approved October 1, 1988; Public Law 101–515 [Department of State Appropriations Act, 1991; H.R. 5021], 104 Stat. 2101, approved November 5, 1990; and Public Law 107–77 [Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002; H.R. 2500], 115 Stat. 748, approved November 28, 2001

AN ACT To authorize appropriations for fiscal years 1984 and 1985 for the Department of State, the United States Information Agency, the Board for International Broadcasting, the Inter-American Foundation, and the Asia Foundation, to establish the National Endowment for Democracy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—DEPARTMENT OF STATE

* * * * * * *

INTERPARLIAMENTARY GROUPS

SEC. 109.[1] (a) * * *

(b) There are authorized to be appropriated each fiscal year $100,000, to be equally divided between delegations of the Senate

[1] 22 U.S.C. 276*l* note.

and the House of Representatives, to assist in[2] meeting the expenses of the United States Group[3] of the British-American Parliamentary Group which is to be held in the United States.

(c)[4] There are authorized to be appropriated for each fiscal year $50,000 for expenses of United States participation in the United States-European Community Interparliamentary Group.

* * * * * * *

[2] Sec. 304(b)(1) of Public Law 101–515 (104 Stat. 2128) struck out "Of the amount appropriated for the purposes authorized by the amendment made by subsection (a) of this section, up to $25,000 may be used to meet the expenses incurred in hosting the spring 1984", and inserted in lieu thereof "There are authorized to be appropriated each fiscal year $50,000, to be equally divided between delegations of the Senate and the House of Representatives, to assist in".

Sec. 408(b)(4) of the Department of State and Related Agency Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 791), struck out "$50,000" and inserted in lieu thereof "$100,000". Sec. 408(c) of that Act provided the following:

"(c) Notwithstanding any other provision of law, whenever either the House of Representatives or the Senate does not appoint its allotment of members as part of the American delegation or group to a conference or assembly of the British-American Interparliamentary Group, the Conference on Security and Cooperation in Europe (CSCE), the Mexico-United States Interparliamentary Group, the North Atlantic Assembly, or any similar interparliamentary group of which the United States is a member or participates and so notifies the other body of Congress, the other body may make appointments to complete the membership of the American delegation. Any appointment pursuant to this section shall be for the period of such conference or assembly and the body of Congress making such an appointment shall be responsible for the expenses of any member so appointed. Any such appointment shall be made in the same manner in which other appointments to the delegation by such body of Congress are made.".

[3] Sec. 304(b)(2) of Public Law 101–515 (104 Stat. 2128) inserted "the expenses of the United States Group" after "meeting".

[4] Sec. 303(b) of the Department of State Appropriations Act, 1989 (Public Law 100–459; 102 Stat. 2207), extensively amended subsec. (c), to take effect October 1, 1988. It formerly read as follows:

"Of the amounts authorized to be appropriated for each fiscal year for 'International Organizations and Conferences' $50,000 may be used for expenses of United States participation in the United States-European Community Interparliamentary Group.".

Subsec. (c) was amended previously by sec. 7(b) of Public Law 99–415 (100 Stat. 949).

e. British-American Interparliamentary Group; Participation in Conference on Security and Cooperation in Europe

Partial text of Public Law 102–138 [Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; H.R. 1415], 105 Stat. 647, approved October 28, 1991

AN ACT To authorize appropriations for fiscal years 1992 and 1993 for the Department of State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—DEPARTMENT OF STATE

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PART E—INTERNATIONAL ORGANIZATIONS

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SEC. 168.[1] BRITISH-AMERICAN INTERPARLIAMENTARY GROUP.

(a) ESTABLISHMENT AND MEETINGS.—Not to exceed 24 Members of Congress shall be appointed to meet annually and when the Congress is not in session (except that this restriction shall not apply to meetings held in the United States), with representatives of the House of Commons and the House of Lords of the Parliament of Great Britain for discussion of common problems in the interest of relations between the United States and Great Britain. The Members of Congress so appointed shall be referred to as the "United States group" of the United States Interparliamentary Group.

(b) APPOINTMENT OF MEMBERS.—Of the Members of Congress appointed for purposes of this section—

(1) half shall be appointed by the Speaker of the House of Representatives from among Members of the House (not less than 4 of whom shall be members of the Committee on Foreign Affairs),[2] and

(2) half shall be appointed by the President Pro Tempore of the Senate, upon recommendations of the majority and minority leaders of the Senate, from among Members of the Senate (not less than 4 of whom shall be members of the Committee on Foreign Relations) unless the majority and minority leaders of the Senate determine otherwise.

(c) CHAIR AND VICE CHAIR.—(1) The Chair or Vice Chair of the House delegation of the United States group shall be a member from the Committee on Foreign Affairs.[2]

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[1] 22 U.S.C. 276*l*.

[2] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(2) The President Pro Tempore of the Senate shall designate the Chair or Vice Chair of the Senate delegation.

(d) FUNDING.—There is authorized to be appropriated $50,000 for each fiscal year to assist in meeting the expenses of the United States group for each fiscal year for which an appropriation is made, half of which shall be for the House delegation and half of which shall be for the Senate delegation. The House and Senate portions of such appropriations shall be disbursed on vouchers to be approved by the Chair of the House delegation and the Chair of the Senate delegation, respectively.

(e) CERTIFICATION OF EXPENDITURES.—The certificate of the Chair of the House delegation or the Senate delegation of the United States group shall be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group.

(f) ANNUAL REPORT.—The United States group shall submit to the Congress a report for each fiscal year for which an appropriation is made for the United States group, which shall include its expenditures under such appropriation.

(g)[3] INTERPARLIAMENTARY CONFERENCE OF NORTH ATLANTIC ASSEMBLY. * * *

SEC. 169.[4] UNITED STATES DELEGATION TO THE PARLIAMENTARY ASSEMBLY OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE (CSCE).

(a) ESTABLISHMENT.—In accordance with the allocation of seats to the United States in the Parliamentary Assembly of the Conference on Security and Cooperation in Europe (hereinafter referred to as the "CSCE Assembly") not to exceed 17 Members of Congress shall be appointed to meet jointly and annually with representative parliamentary groups from other Conference on Security and Cooperation in Europe (CSCE) member-nations for the purposes of—

(1) assessing the implementation of the objectives of the CSCE;

(2) discussing subjects addressed during the meetings of the Council of Ministers for Foreign Affairs and the biennial Summit of Heads of State or Government;

(3) initiating and promoting such national and multilateral measures as may further cooperation and security in Europe.

(b) APPOINTMENT OF DELEGATION.—For each meeting of the CSCE Assembly, there shall be appointed a United States Delegation, as follows:

(1) In 1992 and every even-numbered year thereafter, 9 Members shall be appointed by the Speaker of the House from Members of the House (not less than 4 of whom, including the Chairman of the United States Delegation, shall be from the Committee on Foreign Affairs);[2] and 8 Members shall, upon recommendations of the Majority and Minority leaders of the

[3] Subsec. (g) amended sec. 5 of the "Joint resolution to authorize participation by the United States in parliamentary conferences of the North Atlantic Treaty Organization", approved July 11, 1956 (22 U.S.C. 1928e).

[4] 22 U.S.C. 276m. See also *Legislation on Foreign Relations Through 2005*, vol. II–B.

Senate, be appointed by the President Pro Tempore of the Senate from Members of the Senate (not less than 4 of whom, including the Vice Chairman of the United States Delegation, shall be from the Committee on Foreign Relations, unless the President Pro Tempore of the Senate, upon recommendations of the Majority and Minority leaders of the Senate, determines otherwise).

(2) In every odd-numbered year beginning in 1993, 9 Members shall, upon recommendation of the Majority and Minority Leaders of the Senate, be appointed by the President Pro Tempore of the Senate from Members of the Senate (not less than 4 of whom, including the Chairman of the United States Delegation, shall be from the Committee on Foreign Relations, unless the President Pro Tempore of the Senate, upon recommendations of the Majority and Minority leaders of the Senate, determines otherwise); and 8 Members shall be appointed by the Speaker of the House from Members of the House (not less than 4 of whom, including the Vice Chairman, shall be from the Committee on Foreign Affairs).[2]

(c) ADMINISTRATIVE SUPPORT.—For the purpose of providing general staff support and continuity between successive delegations, each United States Delegation shall have 2 secretaries (one of whom shall be appointed by the Chairman of the Committee on Foreign Affairs[2] of the House of Representatives and one of whom shall be appointed by the Chairman of the Delegation of the Senate).

(d) FUNDING.—

(1) UNITED STATES PARTICIPATION.—There is authorized to be appropriated for each fiscal year $80,000 to assist in meeting the expenses of the United States delegation. For each fiscal year for which an appropriation is made under this subsection, half of such appropriation may be disbursed on voucher to be approved by the Chairman and half of such appropriation may be disbursed on voucher to be approved by the Vice Chairman.

(2) AVAILABILITY OF APPROPRIATIONS.—Amounts appropriated pursuant to this subsection are authorized to be available until expended.

(e) ANNUAL REPORT.—The United States Delegation shall, for each fiscal year for which an appropriation is made, submit to the Congress a report including its expenditures under such appropriation. The certificate of the Chairman and Vice Chairman of the United States Delegation shall be final and conclusive upon the accounting officers in the auditing of the accounts of the United States Delegation.

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f. Mexico-United States Interparliamentary Group

Public Law 86–420 [H.J. Res. 283], 74 Stat. 40, approved April 9, 1960; as amended by Public Law 94–350 [S. 3168], 90 Stat. 823, approved July 12, 1976; Public Law 95–45 [H.R. 5040], 91 Stat. 222, approved June 15, 1977; Public Law 101–515 [Department of State Appropriations, 1991; H.R. 5021], 104 Stat. 2101, approved November 5, 1990; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–437 [U.S.C. Technical Amendments; H.R. 4777], 108 Stat. 4581, approved November 2, 1994; and Public Law 107–77 [Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002; H.R. 2500], 115 Stat. 748, approved November 28, 2001

JOINT RESOLUTION To authorize participation by the United States in parliamentary conferences with Mexico.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not[1] to exceed twenty-four Members of Congress shall be appointed to meet jointly and at least annually with representatives of the Chamber of Deputies and Chamber of Senators of the Mexican Congress for discussion of common problems in the interests of relations between the United States and Mexico. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the United States group) half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the Foreign Affairs[2] Committee), and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate[3] from Members of the Senate (not less than four of whom shall be from the Foreign Relations Committee). Such appointments shall be for the period of each meeting of the Mexico-United States Interparliamentary group except for the four members of the Foreign Affairs[2] Committee, and the four members of the Foreign Relations Committee, whose appointment shall be for the duration of each Congress. The Chairman or Vice Chairman of the House delegation shall be a Member from the Foreign Affairs Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[4]

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[1] 22 U.S.C. 276h.

[2] Sec. 9(a)(4) of Public Law 103–437 (108 Stat. 4588) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs". Previously, sec. 4(b) of Public Law 95–45 (91 Stat. 222) had struck out "Foreign Affairs" and inserted in lieu thereof "International Relations".

[3] Sec. 4(b)(1) of Public Law 95–45 (91 Stat. 222) inserted "upon recommendations of the majority and minority leaders of the Senate."

[4] Sec. 4(b)(3) of Public Law 94–45 (91 Stat. 222) added this sentence.

SEC. 2.[5] An appropriation of $120,000[6] annually is authorized, $60,000[6] of which shall be for the House delegation and $60,000[6] for the Senate delegation, or so much thereof as may be necessary to assist in meeting the expenses of the United States group of the Mexico-United States Interparliamentary group for each fiscal year for which an appropriation is made, the House and Senate portions of such appropriation to be disbursed on vouchers to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation, respectively.

SEC. 3.[7] The United States group of the Mexico-United States Interparliamentary group shall submit to the Congress a report for each fiscal year for which an appropriation is made including its expenditures under such appropriation.

SEC. 4.[8] The certificate of the Chairman of the House delegation or the Senate delegation of the Mexico-United States Interparliamentary group shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the Mexico-United States Interparliamentary group.

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[5] 22 U.S.C. 276i.

[6] Sec. 408(b)(2) of the Department of State and Related Agency Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 790), substituted "$120,000", "$60,000", and "$60,000", in lieu of "$80,000", "$40,000", and "$40,000", respectively. Previously, sec. 502(a)(1) of Public Law 103–236 (108 Stat. 461) substituted "$80,000", "$40,000", and "$40,000" in lieu of "$100,000", "$50,000", and "$50,000", respectively. Previously, sec. 304(c) of Public Law 101–515 (104 Stat. 2129) substituted "$100,000", "$50,000", and "$50,000" in lieu of "$50,000", "$25,000", and "$25,000" respectively; and sec. 118(b) of the Foreign Relations Authorization Act Fiscal Year 1977 (Public Law 94–350) substituted "$50,000", "$25,000", and "$25,000" in lieu of "$30,000", "$15,000", and "$15,000" respectively.

[7] 22 U.S.C. 276j.

[8] 22 U.S.C. 276k.

g. Canada-United States Interparliamentary Group

Public Law 86–42 [H.J. Res. 254], 73 Stat. 72, approved June 11, 1959; as amended by Public Law 94–350 [S. 3168], 90 Stat. 823, approved July 12, 1976; Public Law 95–45 [H.R. 5040], 91 Stat. 221 at 222, approved June 15, 1977; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–437 [U.S.C. Technical Amendments; H.R. 4777], 108 Stat. 4581, approved November 2, 1994; and Public Law 107–77 [Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002; H.R. 2500], 115 Stat. 748, approved November 28, 2001

JOINT RESOLUTION To authorize participation by the United States in parliamentary conference with Canada.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not[1] to exceed twenty-four Members of Congress shall be appointed to meet jointly and at least annually and when Congress is not in session (except that this restriction shall not apply during the first session of the Eighty-sixth Congress or to meetings held in the United States) with representatives of the House of Commons and Senate of the Canadian Parliament for discussion of common problems in the interests of relations between the United States and Canada. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the United States group) half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the Foreign Affairs[2] Committee), and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate[3] from Members of the Senate (not less than four of whom shall be from the Foreign Relations Committee).

Such appointments shall be for a period of each meeting of the Canada-United States Interparliamentary group except for the four members of the Foreign Affairs[2] Committee and the four members of the Foreign Relations Committee, whose appointments shall be for the duration of each Congress.

The Chairman or Vice Chairman of the House delegation shall be a Member from the International Relations Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice

[1] 22 U.S.C. 276d.

[2] Sec. 9(a)(3) of Public Law 103–437 (108 Stat. 4588) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs". Previously, sec. 4(a) of Public Law 95–45 (91 Stat. 222) had struck out "Foreign Affairs" and inserted in lieu thereof "International Relations".

[3] Sec. 4(a)(1) of Public Law 95–45 (91 Stat. 222) inserted "upon recommendations of the majority and minority leaders of the Senate.".

Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[4]

Sec. 2.[5] An appropriation of $150,000[6] annually is authorized, $75,000[6] of which shall be for the House delegation and $75,000[6] for the Senate delegation, or so much thereof as may be necessary, to assist in meeting the expenses of the United States group of the Canada-United States Interparliamentary group for each fiscal year for which an appropriation is made, the House and Senate portions of such appropriation to be disbursed on vouchers to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation, respectively.

Sec. 3.[7] The United States group of the Canada-United States Interparliamentary group shall submit to the Congress a report for each fiscal year for which an appropriation is made including its expenditures under such appropriation.

Sec. 4.[8] The certificate of the Chairman of the House delegation or the Senate delegation of the Canada-United States Interparliamentary group shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the Canada-United States Interparliamentary group.

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[4] Sec. 4(a)(3) of Public Law 95–45 (91 Stat. 222) added this paragraph.

[5] 22 U.S.C. 276e.

[6] Sec. 408(b)(3) of the Department of State and Related Agency Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 791) substituted "$150,000", "$75,000", and "$75,000" in lieu of "$70,000", "$35,000", and "$35,000", respectively. Previously, sec. 502(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 462) substituted "$70,000", "$35,000", and "$35,000" in lieu of "$50,000", "$25,000", and "$25,000", respectively. Previously, sec. 118(a) of the Foreign Relations Authorization Act, Fiscal Year 1977 (Public Law 94–350), substituted "$50,000", "$25,000", and "$25,000" in lieu of "$30,000", "$15,000", and "$15,000", respectively.

[7] 22 U.S.C. 276f.

[8] 22 U.S.C. 276g.

h. United States Group of the NATO Parliamentary Assembly

Public Law 84–689 [H.J. Res. 501], 70 Stat. 523, approved July 11, 1956; as amended by Public Law 85–477 [H.R. 12181], 72 Stat. 261, approved June 30, 1958; Public Law 88–205 [H.R. 7885], 77 Stat. 379, approved December 16, 1963; Public Law 90–137 [S. 1782], 81 Stat. 445, approved November 14, 1967; Public Law 94–350 [S. 3168], 90 Stat. 823, approved July 12, 1976; Public Law 95–45 [H.R. 5040], 91 Stat. 221 at 222, approved June 15, 1977; Public Law 98–164 [Department of State Authorization Act, Fiscal Years 1984 and 1985; H.R. 2915], 97 Stat. 1017 at 1019, approved November 22, 1983; Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329 at 1329–23, approved December 22, 1987; Public Law 100–204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989; H.R. 1777], 101 Stat. 1331 at 1396, approved December 22, 1987; Public Law 102–138 [Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; H.R. 1415], 105 Stat. 647 at 677, approved October 28, 1991; Public Law 103–437 [U.S.C. Technical Amendments; H.R. 4777], 108 Stat. 4581, approved November 2, 1994; Public Law 106–113 [Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; H.R. 3427], 113 Stat. 1536, approved November 23, 1999; and Public Law 107–77 [Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002; H.R. 2500], 115 Stat. 748, approved November 28, 2001

JOINT RESOLUTION To authorize participation by the United States in parliamentary conferences of the North Atlantic Treaty Organization.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not[1] to exceed twenty-four[2] Members of Congress shall be appointed to meet jointly and annually[3] with representative parliamentary groups from other NATO (North Atlantic Treaty Organization) members, for discussion of common problems in the interests of the maintenance of peace and security in the North Atlantic area. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the "United States Group"), half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the Committee on Foreign Affairs),[4, 5] and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate[6] from Members of the Senate. Not more than seven of the appointees from the Senate shall be of the

[1] 22 U.S.C. 1928a.

[2] Sec. 4(c)(1) of Public Law 95–45 (91 Stat. 222) struck out "eighteen" and inserted in lieu thereof "twenty-four".

[3] Public Law 88–205 (77 Stat. 379) struck out "and when Congress is not in session," which previously appeared at this point.

[4] Sec. 4(c)(2) of Public Law 95–45 (91 Stat. 222) added the parenthetical text.

[5] Sec. 9(a)(5) of Public Law 103–437 (108 Stat. 4588) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs". Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[6] Sec. 4(c)(2) of Public Law 95–45 (91 Stat. 222) inserted "upon recommendations of the majority and minority leaders of the Senate".

same political party.[7] The Chairman or Vice Chairman of the House delegation shall be a Member from the Foreign Affairs Committee,[5] and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[8] Each delegation shall have a secretary. The secretaries of the Senate and House delegations shall be appointed, respectively, by the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Foreign Affairs of the House of Representatives.[9]

Sec. 2.[10] There is authorized to be appropriated annually (1)[11] for the annual contribution of the United States toward the maintenance of the NATO Parliamentary Assembly,[12] such sum as may be agreed upon by the United States Group and approved by such Assembly,[12] but in no event to exceed for any year an amount equal to 25 per centum of the total annual contributions made for that year by all members of the North Atlantic Treaty Organization toward the maintenance of such Assembly,[12] and (2)[11] $200,000, $100,000 for the House delegation and $100,000 for the Senate delegation,[13] or so much thereof as may be necessary, to assist in meeting the expenses of the United States group of the NATO Parliamentary Assembly[12] for each fiscal year for which an appropriation is made, such appropriation to be dispersed on voucher to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation.

Sec. 3.[14] The United States group of the NATO Parliamentary Assembly[12] shall submit to the Congress a report for each fiscal year for which an appropriation is made, including its expenditures under such appropriation.

Sec. 4.[15] The certificate of the Chairman of the House delegation and the Senate delegation of the NATO Parliamentary Assembly[12] shall hereafter be final and conclusive upon the accounting officers

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[7] Sec. 4(c)(3) of Public Law 95–45 (91 Stat. 222) amended and restated this sentence, which previously read as follows:

"Not more than five of the appointees from the respective Houses shall be of the same political party".

[8] Sec. 4(c)(4) of Public Law 94–45 (91 Stat. 222) added this sentence.

[9] Sec. 744 of Public Law 100–204 (101 Stat. 1396) added the two preceding sentences.

[10] 22 U.S.C. 1928b.

[11] Sec. 303 of Title II of the Department of State Appropriation Act, 1988 (sec. 101(a) of the Continuing Appropriations, 1988, Public Law 100–202; 101 Stat. 1329–23), struck out "annually" and inserted in lieu thereof "annually (1)" and added "(2)" after "and".

[12] Public Law 90–137 (81 Stat. 463) struck out "The North Atlantic Treaty Organization Parliamentary Conference" and inserted in lieu thereof "North Atlantic Assembly". Public Law 90–137 further struck out "such Conference" and inserted in lieu thereof "such Assembly". Subsequently, sec. 701(b)(1) of Public Law 106–113 (113 Stat. 1537–451) struck out "North Atlantic Assembly and inserted in lieu thereof "NATO Parliamentary Assembly".

[13] Sec. 408(b)(1) of the Department of State and Related Agency Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 790), amended the amounts authorized to be appropriated, which formerly read "$100,000", "$50,000", and "$50,000" respectively. Previously, sec. 303 of Title III of Continuing Appropriations, Fiscal Year 1988 (Public Law 100–202; 101 Stat 1329–23), amended the amounts authorized to be appropriated which formerly read "$50,000, $25,000 for the House delegation and $25,000 for the Senate delegation" (as authorized by Public Law 92–226). Prior to that authorization, the amounts were "$30,000, $15,000 for the House delegation and $15,000 for the Senate delegation". The Foreign Relations Authorization Act (Public Law 100–204; 101 Stat. 1396) had directed that sec. 2 be amended by substituting "$75,000" in lieu of "$50,000", and "$50,000" in lieu of "$25,000" for the House delegation. This amendment could not be executed because of the prior amendment by Public Law 100–202. Previously, sec. 502(d) of Public Law 85–477 (72 Stat. 273) amended and restated this sentence.

[14] 22 U.S.C. 1928c.

[15] 22 U.S.C. 1928d.

in the auditing of the accounts of the United States group of the NATO Parliamentary Assembly.[12]

Sec. 5.[16] In addition to the amounts authorized by section 2, there is authorized to be appropriated $50,000 for fiscal year 1977 to meet the expenses incurred by the United States group in hosting the twenty-second annual meeting of the North Atlantic Assembly. In addition to amounts authorized by section 2, there is authorized to be appropriated $550,000 for fiscal year 1994 to meet the expenses incurred by the United States group in hosting the fortieth annual meeting of the North Atlantic Assembly.[17] In addition to the amounts authorized by section 2, there is authorized to be appropriated $450,000 for fiscal year 1984 to meet the expenses incurred by the United States group in hosting the thirty-first annual meeting of the North Atlantic Assembly.[18] Amounts appropriated under this section are authorized to remain available until expended.

[16] 22 U.S.C. 1928e. Sec. 107 of the Foreign Relations Authorization Act, Fiscal Year 1977 (Public Law 94–350) added sec. 5.

[17] Sec. 168(g) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 677), added this sentence.

[18] Sec. 109(a) of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (Public Law 98–164; 97 Stat. 1019) added this sentence. For complete text of sec. 109(b), see *Legislation on Foreign Relations Through 2005*, vol. II–B.

3. International Claims Settlement Acts

a. International Claims Settlement Act of 1949, as amended

Public Law 81–455 [H.R. 4406], 64 Stat. 12, approved March 10, 1950; as amended by Public Law 83–242 [H.R. 5742], 67 Stat. 506, approved August 8, 1953; Reorganization Plan No. 1, effective July 1, 1954, 19 F.R. 3985, 68 Stat. 1279; Public Law 84–285 [H.R. 6382], 69 Stat. 562, approved August 9, 1955; Public Law 85–604 [S. 3557], 72 Stat. 527, approved August 8, 1958; Public Law 85–791 [H.R. 6788], 72 Stat. 941 at 951, approved August 28, 1958; Public Law 88–666 [H.R. 12259], 78 Stat. 1110, approved October 16, 1964; Public Law 89–554 [H.R. 10104], 80 Stat. 378 at 656, approved September 6, 1966; Public Law 89–559 [H.R. 10104], 80 Stat. 378 at 656, approved November 6, 1966; Public Law 90–421 [H.R. 9063], 82 Stat. 420, approved July 4, 1968; Public Law 91–167 [H.R. 11711], 83 Stat. 435, approved December 24, 1969; Public Law 93–460 [H.R. 13261], 88 Stat. 1386, approved October 20, 1974; Public Law 94–542 [S. 3621], 90 Stat. 2509, approved October 18, 1976; Public Law 96–445 [H.R. 6440], 94 Stat. 1891, approved October 13, 1980; Public Law 96–606 [H.R. 5737], 94 Stat. 3534, approved December 28, 1980; Public Law 97–164 [H.R. 4482], 96 Stat. 25 at 49, approved April 2, 1982; Public Law 99–451 [H.R. 5506], 100 Stat. 1138, approved October 8, 1986; Public Law 100–204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989; H.R. 1777], 101 Stat. 1331 at 1350, approved December 22, 1987; Public Law 100–352 [Review of Cases by the Supreme Court; S. 952], 102 Stat. 662 at 664, approved June 27, 1988; Public Law 102–572 [Court of Federal Claims Technical and Procedural Improvements Act of 1992; S. 1569], 106 Stat. 4516, approved October 29, 1992; Public Law 104–114 [Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996; H.R. 927], 110 Stat. 785, approved March 12, 1996; Public Law 104–316 [General Accounting Office Act of 1996; H.R. 3864], 110 Stat. 3826, approved October 19, 1996; and Public Law 105–277 [Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681, approved October 21, 1998

AN ACT To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Claims Settlement Act of 1949".

TITLE I [1]

Sec. 2.[2] For the purposes of this Title—

(a) The term "person" shall include an individual, partnership, corporation, or the Government of the United States.

(b) The term "United States" when used in a geographical sense shall include the United States, its Territories and insular possessions, and the Canal Zone.

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though

[1] Designated "Title I" by Public Law 84–285 (69 Stat. 562).
[2] 22 U.S.C. 1621.

not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(d) The term "Yugoslav Claims Settlement of 1948" means the agreements between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia regarding pecuniary claims of the United States and its nationals, signed July 19, 1948.

Sec. 3.[3] (a)[4] * * * [Repealed—1966]

(b)[4] * * * [Repealed—1966]

(c) The Commission[5] may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may

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[3] 22 U.S.C. 1622.

[4] Sec. 8(a) of Public Law 89–554 (80 Stat. 656) repealed subsecs. (a) and (b).

[5] Reorganization Plan No. 1, 1954, effective July 1, 1954 (19 F.R. 3985; 68 Stat. 1279) abolished the International Claims Commission and transferred its functions to the Foreign Claims Settlement Commission of the United States. Sec. 1 of Reorganization Plan No. 1 read:

"FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

"SECTION 1. *Establishment of Commission.*—There is hereby established the Foreign Claims Settlement Commission of the United States, hereinafter referred to as the Commission. The Commission shall be composed of three members, who shall each be appointed by the President by and with the advice and consent of the Senate, hold office during the pleasure of the President, and receive compensation at the rate of $15,000 per annum. The President shall from time to time designate one of the members of the Commission as the Chairman of the Commission, hereinafter referred to as the Chairman. Two members of the Commission shall constitute a quorum for the transaction of the business of the Commission.".

The Foreign Claims Settlement Commission was transferred by Public Law 96–209 (94 Stat. 96) to the Department of Justice. Public Law 96–209 provides the following:

"SEC. 101. The Foreign Claims Settlement Commission of the United States, established under Reorganization Plan Numbered 1 of 1954, is hereby transferred to the Department of Justice as a separate agency within that Department.

"SEC. 102. All functions, powers, and duties of the Foreign Claims Settlement Commission established by Reorganization Plan Numbered 1 of 1954 are hereby transferred with the Commission, together with personnel, assets, liabilities, unexpended balances of appropriations, authorizations, allocations, and other funds held, used, available, or to be made available in connection with the statutory functions of the Commission. The Commission shall continue to perform its functions as provided by the War Claims Act of 1948, as amended, the International Claims Settlement Act of 1949, as amended, and Reorganization Plan Numbered 1 of 1954.

"SEC. 103.(a) The Commission shall be composed of a Chairman and two members. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, to serve on a full-time basis for a term of three years, and compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(b) The other members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate, and serve on a part-time basis, and be compensated on a per diem basis at a rate of compensation equivalent to the daily rate for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day that such member is employed in the actual performance of official business of the Commission as may be directed by the Chairman. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

"(c) The terms of Office of the Chairman and members of the Commission shall be for three years, except the Chairman and members first appointed after the enactment of this subsection shall be appointed to terms ending respectively September 30, 1982, September 30, 1981, and September 30, 1980. The incumbent of any such office may continue to serve until a successor takes office.

"(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, members of the Foreign Claims Settlement Commission who are serving on the effective date of this Act, shall continue to serve in their same capacities until the expiration of the terms to which they were appointed.

"SEC. 104. The Commission is authorized, in accordance with civil service laws and in accordance with title 5 of the United States Code, to appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. The Commission is authorized to employ experts and consultants in accordance with section 3109 of title 5 of the United States Code, without compensation or at rates of compensation not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of title 5 of the United States Code. Notwithstanding any other provision of law, the Commission is further authorized to employ nationals of other countries who may possess special knowledge, languages, or other expertise necessary to assist the Commission. The Commission is authorized to pay expenses of packing, shipping, and storing personal effects of personnel of the Commission assigned

Continued

delegate functions to any member, officer, or employee of the Commission. The President may fix a termination date for the authority of the Commission, and the terms of office of its members under this Title. Any member of the Commission may be removed by the Secretary of State,[6] upon notice and hearing, for neglect of duty, or malfeasance in office, but for no other cause. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report, through the Secretary of State,[6] to the Congress concerning its operations under this Title. The Commission shall, upon completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following: (1) A list of all claims disallowed; (2) a list of all claims allowed, in whole or in part, together and with the amount of each claim and the amount awarded thereon; and (3) a copy of the decision rendered in each case. No member of such Commission shall be appointed after the effective date of this Title until such Commission is reorganized by further Act of Congress but acting members may be designated by the President as provided by this section, who shall receive no compensation from the funds appropriated by H.R. 6200 for defraying the expenses of such Commission.[7]

Sec. 4.[8] (a)(1) The Commission shall have jurisdiction to receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States—

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abroad, and to pay allowances and benefits similar to those provided by title IX of the Foreign Service Act of 1946, as amended. The Commission is authorized, with the consent of the head of any other department or agency of the Federal Government, to utilize the facilities and services of such department or agency in carrying out the functions of the Commission. Officers and employees of any department and agency of the Federal Government may, with the consent of the head of such department or agency, be assigned to assist the Commission in carrying out its functions. The Commission shall reimburse such department and agency for the pay of such officers or employees.

"SEC. 105. All functions, powers, and duties not directly related to adjudicating claims are hereby vested in the Chairman, including the functions set forth in section 3 of Reorganization Plan Numbered 1 of 1954 and the authority to issue rules and regulations.

"SEC. 106. The Attorney General shall provide necessary administrative support and services to the Commission. The Chairman shall prepare the budget requests, authorization documents, and legislative proposals for the Commission within the procedures established by the Department of Justice, and the Attorney General shall submit these items to the Director of the Office of Management and Budget as proposed by the Chairman.

"SEC. 107. Nothing in this Act shall be construed to diminish the independence of the Commission in making its determinations on claims in programs that it is authorized to administer pursuant to the powers and responsibilities conferred upon the Commission by the War Claims Act of 1948, as amended, the International Claims Settlement Act of 1949, as amended, and Reorganization Plan Numbered 1 of 1954. The decisions of the Commission with respect to claims shall be final and conclusive on all questions of law and fact, and shall not be subject to review by the Attorney General or any other official of the United States or by any court by mandamus or otherwise.".

[6] The functions of the Secretary of State under these sentences were abolished and transferred to the Foreign Claims Settlement Commission by Reorganization Plan No. 1, 1954. Public Law 89–348 (79 Stat. 1310) modified this reporting requirement from semiannual to annual submission.

Subsequently, sec. 1 of Public Law 106–197 (114 Stat. 246) provided that:

"Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) does not apply to any report required to be submitted under any of the following provisions of law: * * *

"(8) Section 3 of the International Claims Settlement Act of 1949 (22 U.S.C. 1622).".

[7] H.R. 6200 is the Supplemental Appropriation Act, 1954, Act of August 7, 1953 (67 Stat. 418).

[8] 22 U.S.C. 1623. Sec. 2211 of Division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277; 112 Stat. 2681–812) struck out "(a) The" at the beginning of sec. 4 and inserted in lieu thereof para. (a)(1). Sec. 2211 further redesignated the second sentence of subsec. (a) as para. (2) and redesignated paras. (1) and (2) as subparas. (A) and (B).

(A) included within the terms of the Yugoslav Claims Agreement of 1948;

(B) included within the terms of any claims agreement concluded on or after March 10, 1954, between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof; or

(C) included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

(2)[8] In the decision of claims under this Title, the Commission shall apply the following in the following order:

(A)[8] The provisions of the applicable claims agreement as provided in this subsection.

(B)[8] the applicable principles of international law, justice, and equity. In determining the value of a claim under international law, the Commission shall award the fair market value of the property as of the time of the taking by the foreign government involved (without regard to any action or event that occurs after the taking), except that the value of the claim shall not reflect any diminution in value attributable to actions which are carried out, or threats of action which are made, by the foreign government with respect to the property before the taking. Fair market value shall be ascertained in accordance with the method most appropriate to the property taken and equitable to the claimant, including—

(i) market value of outstanding equity securities;

(ii) replacement value;

(iii) going-concern value (which includes consideration of an enterprise's profitability); and

(iv) book value.

In the case of any claim for losses in a service industry, the appropriate basis of valuation shall be presumed to be that referred to in clause (iii). For purposes of the preceding sentence, the term "service" means economic activity the output of which is other than tangible goods.[9]

(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission has jurisdiction under this Title. All decisions shall be upon such evidence and written legal contentions as may be presented within

[9] Sec. 1(a) of Public Law 99–451 (100 Stat. 1138) added the text to this point beginning with "In determining the value of a claim . . . ".

such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this Title shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fee and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U.S.C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other person commissioned by the Commission, or under letter rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this Title, shall forfeit all rights under this Title, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f)[10] No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title, on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(g) The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction under this title. Any and all payments required to be made by the Secretary of the Treasury under this title pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive of all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

(i) The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established

[10] Sec. 1 of Public Law 90–421 (82 Stat. 420) amended subsec. (f), which previously read as follows:

"(f) In connection with any claim decided by the Commission pursuant to this Title in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine and apportion the just and reasonable attorney's fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award. Written evidence that the claimant and any such attorney have agreed to the amount of the attorney's fees shall be conclusive upon the Commission: *Provided, however,* That the total amount of the fees so agreed upon does not exceed 10 per centum of the total amount paid pursuant to the award. Any fee so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury by deducting the amount thereof from the total amount paid pursuant to the award. Any agreement to the contrary shall be unlawful and void. The Commission is authorized and directed to mail to each claimant in proceedings before the Commission notice of the provisions of this subsection. Whoever, in the United States or elsewhere, pays or offers to pay, or promises to pay, or receives on account of services rendered or to be rendered in connection with any such claim, compensation which, when added to any amount previously paid on account of such services, will exceed the amount of fees so determined by the Commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both, and if any such payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same, and, in addition thereof, any such person shall forfeit all rights under this title.".

in an individual claim while deferring consideration and action on other items of the same claim.

(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this title.

(k)[11] In exercising authority granted after the date of the enactment of this subsection under this or any other Act, the Commission, in determining the value of claims of the Government of the United States or of nationals of the United States (as defined in this Act or such other Act) against any foreign government for losses arising from the nationalization or other taking of property, shall comply with the principles set forth in subsection (a)(2) of this section.

Sec. 5.[12] The Commission shall, as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury and to the Secretary of State copies of the awards made in favor of the Government of the United States or of nationals of the United States under this Title. The Commission shall certify to the Secretary of State, upon his request, copies of the formal submissions of claims filed pursuant to subsection (b) of section 4 of this Act for transmission to the foreign government concerned.

Sec. 6.[13] The Commission shall complete its affairs in connection with settlement of United States-Yugoslav claims arising under the Yugoslav Claims Agreement of 1948 not later than December 31, 1954;[14] *Provided,* That nothing in this provision shall be construed to limit the life of the Commission, or its authority to act on future agreements which may be affected under the provisions of this legislation.

Sec. 7.[15] (a) Subject to the limitations hereinafter provided, the Secretary of the Treasury is authorized and directed to pay, as prescribed by section 8 of this Title, an amount not exceeding the principal of each award, plus accrued interests on such awards as bear interest, certified pursuant to section 5 of this Title, in accordance with the award. Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b)[16] (1) There shall be deducted from the amount of each payment made pursuant to subsection (c) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 5[17] per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(2)[16] The Secretary of the Treasury shall deduct from any amounts covered, subsequent to the date of enactment of this paragraph, into any special fund, created pursuant to section 8, 5 per centum thereof as reimbursement to the Government of the United

[11] Public Law 99–451 (100 Stat. 1138) added subsec. (k).
[12] 22 U.S.C. 1624.
[13] 22 U.S.C. 1625.
[14] Public Law 83–242 (67 Stat. 506) struck out "not more than four years following enactment of this Act;" and inserted in lieu thereof "December 31, 1954;".
[15] 22 U.S.C. 1626.
[16] Sec. 2 of Public Law 90–421 (82 Stat. 420) inserted "(1)" after the subsection letter and added a new para. (2).
[17] Public Law 83–242 (67 Stat. 506) struck out "3" and inserted in lieu thereof "5".

States for expenses incurred by the Commission and by the Treasury Department in the administration of this Title. The amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(c) Payments made pursuant to this Title shall be made only to the person or persons on behalf of whom the award is made, except that—

(1)[18] if any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over $1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Secretary of the Treasury[19] to be entitled thereto, without the necessity of compliance with the requirement of law with respect to the administration of estates;

(2) in the case of a partnership or corporation, the existence of which has been terminated and on behalf of which an award is made, payment shall be made, except as provided in paragraphs (3) and (4), to the person or persons found by the Secretary of the Treasury[20] to be entitled thereto;

(3) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee in accordance with the order of the court;

(4) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award is made, or makes an assignment of such award, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

(5) in the case of any assignment of an award, or any part thereof, which is made in writing and duly acknowledged and filed, after such award is certified to the Secretary of the Treasury, payment may, in the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(d) Whenever the Secretary of the Treasury,[21] shall find that any person is entitled to any such payment, after such payment shall have been received by such person, it shall be an absolute bar to recovery by any other person against the United States, its officers, agents or employees with respect to such payment.

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[18] Sec. 3 of Public Law 90–421 (82 Stat. 420) amended para. (1), which previously read as follows:

"(1) if such person is deceased or is under a legal disability, payment shall be made to his legal representative: *Provided,* That if the total award is not over $500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General of the United States to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;".

[19] Sec. 202(h)(1)(A) of Public Law 104–316 (110 Stat. 3842) struck out "Comptroller General" and inserted in lieu thereof "Secretary of the Treasury".

[20] Sec. 202(h)(1)(B) of Public Law 104–316 (110 Stat. 3842) struck out "Comptroller General of the United States" and inserted in lieu thereof "Secretary of the Treasury".

[21] Sec. 202(h)(2) of Public Law 104–316 (110 Stat. 3842) struck out ", or the Comptroller General of the United States, as the case may be" after "Secretary of the Treasury".

(e) Any person who makes application for any such payment shall be held to have consented to all the provisions of this Title.

(f) Nothing in this Title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

Sec. 8.[22] (a) There are hereby created in the Treasury of the United States (1) a special fund to be known as the Yugoslav Claims Fund; and (2) such other special funds as may, in the discretion of the Secretary of the Treasury, be required, each to be a claims fund to be known by the name of the foreign government which has entered into a settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Title. There shall be covered into the Treasury to the credit of the proper special fund all funds hereinafter specified. All payments authorized under section 7 of this Title shall be disbursed from the proper fund, as the case may be, and all amounts covered into the Treasury to the credit of the aforesaid funds are hereby permanently appropriated for the making of the payments authorized by section 7 of this Title.

(b) The Secretary of the Treasury is authorized and directed to cover into—

(1) the Yugoslav Claims Fund the sum of $17,000,000 being the amount paid by the Government of the Federal People's Republic of Yugoslavia pursuant to the Yugoslav Claims Agreement of 1948;

(2) a special fund created for that purpose pursuant to subsection (a) of this section any amounts hereafter paid in United States dollars, by a foreign government which has entered into a claims settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Title.

(c)[23] The Secretary of the Treasury is authorized and directed out of the sums covered, prior to the date of enactment of subsection (e) of this section, into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7(b)(1) of this Title—

(1) to make payments in full of the principal of awards of $1,000 or less, certified pursuant to section 5 of this Title;

(2) to make payments of $1,000 on the principal of each award of more than $1,000 in principal amount, certified pursuant to section 5 of this Title;

(3) to make additional payment of not to exceed 25 per centum of the unpaid principal of awards in the principal amount of more than $1,000;

(4) after completing the payments prescribed by paragraphs (2) and (3) of this subsection, to make payments, from time to time in ratable proportions, on account of the unpaid principal

[22] 22 U.S.C. 1627.

[23] Sec. 4 of Public Law 90–421 (82 Stat. 420) amended subsec. (c), which previously read as follows:

"The Secretary of the Treasury is authorized and directed out of the sums covered into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7(b) of this Title—".

of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution at the time such payments are made; and

(5) after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest.

(d) The Secretary of the Treasury, upon the concurrence of the Secretary of State, is authorized and directed, out of the sum covered into the Yugoslav Claims Fund pursuant to subsection (b) of this section, after completing the payments of such funds pursuant to subsection (c) of this section, to make payment of the balance of any sum remaining in such fund of the Government of the Federal People's Republic of Yugoslavia to the extent required under article 1(c) of the Yugoslav Claims Agreement of 1948. The Secretary of State shall certify to the Secretary of the Treasury the total cost of adjudication, not borne by the claimants, attributable to the Yugoslav Claims Agreement of 1948. Such certification shall be final and conclusive and shall not be subject to review by any other official or department, agency, or establishment of the United States.

(e)[24] Except as provided in subsection (f),[25] the Secretary of the Treasury is authorized and directed out of sums covered, subsequent to the date of enactment of this subsection, into any special fund created pursuant to this section to make payment on account of awards certified by the Commission pursuant to this title with respect to claims included within the terms of a claims settlement agreement concluded between the Government of the United States and a foreign government as described in subsection (a) of section 4 of this title, as follows and in the following order of priority:

(1) Payment in the amount of $1,000 or the principal amount of the award, whichever is less;

(2) Thereafter, payments from time to time on account of the unpaid principal balance of each remaining award which shall bear to such unpaid principal balance the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid principal balance of all such awards; and

(3) Thereafter, payments from time to time on account of the unpaid balance of each award of interest which shall bear to such unpaid balance of interest, the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid balance of interest of all such awards.

(f)[26] (1) Out of sums covered after May 11, 1979, into the special fund created pursuant to this section to receive funds paid by the People's Republic of China, the Secretary of the Treasury is authorized and directed to make payments on account of awards certified

[24] Sec. 5 of Public Law 90–421 (82 Stat. 420) added subsec. (e).

[25] Sec. 1(1) of Public Law 96–445 (94 Stat. 1891) inserted "Except as provided in subsection (f),".

[26] Sec. 1(2) of Public Law 96–445 (94 Stat. 1891) added subsec. (f).

by the Commission pursuant to title V with respect to claims included within the terms of the Agreement Between the Government of the United States of America and the Government of the People's Republic of China Concerning the Settlement of Claims, signed on May 11, 1979, in the following order of priority:

(A) Payment in the amount of $1,000 or the principal amount of the award, whichever is less.

(B) Thereafter, except as provided in paragraph (2), to the extent there remain unpaid principal balances on awards, payments from time to time on account of the unpaid principal balance of each remaining award which bear to such unpaid principal balance the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid principal balance of all such awards.

(C) Thereafter, payments from time to time on account of the unpaid balance of each award of interest which bear to such unpaid balance of interest the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid balance of interest of all such awards.

(2)(A) For the purpose of computing the payments to be made under paragraph (1) to any claimant which was an incorporated business enterprise on the date of nationalization or other taking of property, the award certified by the Commission under title V shall be reduced by the amount of Federal tax benefits derived by such claimant on account of the losses upon which such claim was based, but in no case shall payments be reduced below the amount paid to such claimant on account of such claim before the date of the enactment of this subsection. For purposes of this subparagraph, such Federal tax benefits shall be the amount by which the claimant's taxes in any prior taxable year or years under chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code of 1939, or subtitle A of the Internal Revenue Code of 1954, were decreased with respect to the loss or losses upon which the claim was based. The sum of the amounts which would otherwise be payable but for this paragraph which are not paid to any such claimant shall be aggregated, and the Secretary of the Treasury is authorized and directed to make payments out of such aggregated sums in accordance with subparagraph (B).

(B) To the extent that there remain unpaid principal balances on awards to claimants which were, on the date of nationalization or other taking of property, nonprofit organizations operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes (after payments made to such nonprofit organizations pursuant to subparagraphs (A) and (B) of paragraph (1) are taken into account), the Secretary of the Treasury is authorized and directed to make payments from time to time on account of the unpaid principal balance of each remaining award to such nonprofit organizations which bear to such unpaid principal balance the same proportion as the total sums aggregated pursuant to subparagraph (A) at the times such payments are made bear to the aggregate unpaid principal balance of all such awards to nonprofit organizations.

(g)[27] The Secretary of the Treasury is authorized and directed to invest the amounts held respectively in the "special funds" established by this section in public debt securities with maturities suitable for the needs of the separate accounts and bearing interest at rates determined by the Secretary, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities. The interest earned on the amounts in each special fund shall be used to make payments, in accordance with subsection (c), on awards payable from that special fund.

Sec. 9.[28] There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Commission to carry out its functions under this Title.

TITLE II[29]

VESTING AND LIQUIDATION OF BULGARIAN, HUNGARIAN, AND RUMANIAN PROPERTY

Sec. 201.[30] As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "Property" means any property, right, or interest.

(3) "Treaty of peace," with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947, which came into force between that country and the United States on September 15, 1947.

Sec. 202.[31] (a) In accordance with article 25 of the treaty of peace with Bulgaria, article 29 of the treaty of peace with Hungary, and article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on the effective date of this title, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. Such property shall be sold or otherwise liquidated as expeditiously as possible after vesting under such rules and regulations as the President or his designee may prescribe. The net proceeds remaining upon completion of the administration and liquidation thereof, including the adjudication of any suits or claims with respect thereto under sections 207 and 208, shall be covered into the Treasury. Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release, when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one

[27] Sec. 142 of Public Law 100–204 (101 Stat. 1350) added subsec. (g).
[28] 22 U.S.C. 1621 note.
[29] Sec. 3 of Public Law 84–285 (69 Stat. 562) added Title II.
[30] 22 U.S.C. 1631. Sec. 3 of Public Law 84–285 (69 Stat. 562) added sec. 201.
[31] 22 U.S.C. 1631a. Sec. 3 of Public Law 84–285 (69 Stat. 562) added sec. 202.

year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended,[32] and which at the date of vesting was owned directly or indirectly by Bulgaria, Hungary, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property pursuant to such Act, including the adjudication of any suits or claims with respect thereto under such Act, be covered into the Treasury, except that the net proceeds of any such property which the President or his designee shall determine was directly owned by a natural person at the date of vesting shall be divested by the President or such officer or agency as he may designate and carried in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(c) The determination under this section that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court.

(d) The President or his designee may require any person to furnish, in the form of reports or otherwise, complete information, including information with regard to past transactions, relative to any property blocked under Executive Order 8389 of April 10, 1940, as amended,[33] or as may be otherwise necessary to enforce the provisions of this section; and the President or his designee may require of any person the production of any books of account, records, contracts, letters, memoranda, or other papers relative to such property or as may be otherwise necessary to enforce the provisions of this section.

Sec. 203.[34] Whenever shares of stock or other beneficial interest in any corporation, association, or company or trust are vested in any officer or agency designated by the President under this title, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel such shares of stock or other beneficial interest upon its, his, or their books and in lieu thereof to issue certificates or other

[32] 40 Stat. 411; 50 U.S.C. App. 1.
[33] 5 F.R. 1400; 3 CFR, Cum. Supp., page 645.
[34] 22 U.S.C. 1631b. Sec. 3 of Public Law 84–285 (69 Stat. 562) added sec. 203.

instruments for such shares or other beneficial interest to the designee of the President, or otherwise as such designee shall require.

Sec. 204.[35] 1Any vesting order, or other order or requirement issued pursuant to this title, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of such property as may be covered by such order or requirement; and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment so filed, registered, or recorded.

Sec. 205.[36] Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Sec. 206.[37] The district courts of the United States are given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this title, with a right of appeal from the final order of decree of such court as provided in chapter 83[38] of title 28, United States Code.

Sec. 207.[39] (a) Any person who has not filed a notice of claim under subsection (b) of this section may institute a suit in equity for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and held by such designee. Such suit, to which said designee shall be made a party defendant, shall be instituted in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which the claimant resides, or, if a corporation, where it has its principal place of business, by the filing of a complaint which alleges—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended;[40] and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

If the court finds in favor of the claimant, it shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of such property, or the net proceeds thereof, held by said designee or the portion thereof to which the court shall determine said

[35] 22 U.S.C. 1631c. Sec. 3 of Public Law 84–285 (69 Stat. 562) added sec. 204.
[36] 22 U.S.C. 1631d. Sec. 3 of Public Law 84–285 (69 Stat. 562) added sec. 205.
[37] 22 U.S.C. 1631e. Sec. 3 of Public Law 84–285 (69 Stat. 562) added sec. 206.
[38] Sec. 6(g) of Public Law 100–352 (102 Stat. 664) struck out "sections 1252, 1254, 1291, and 1292" and inserted in lieu thereof "chapter 83".
[39] 22 U.S.C. 1631f. Sec. 3 of Public Law 84–285 (69 Stat. 562) added sec. 207.
[40] 5 F.R. 1400; 3 CFR, Cum. Supp., page 645.

claimant is entitled. If suit shall be so instituted, then such property, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) Any person who has not instituted a suit under the provisions of subsection (a) of this section may file a notice of claim under oath for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and held by such designee. Such notice of claim shall be filed with said designee and in such form and containing such particulars as said designee shall require. Said designee may return any property so claimed, or the net proceeds thereof, whenever he shall determine—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

Any person whose claim is finally denied in whole or in part by said designee may obtain review of such denial by filing a petition therefor in the United States Court of Appeals for the District of Columbia Circuit. Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim as provided in section 2112 of title 28, United States Code.[41] The court may enter judgment affirming the order of the designee; or, upon finding that such order is not in accordance with law or that any material findings upon which such order is based are unsupported by substantial evidence, may enter judgment modifying or setting aside the order in whole or in part, and (1) directing a return of all or part of the property claimed, or (2) remanding the claim for further administrative proceedings thereon. If a notice of claim is filed under this subsection, the property which is the subject of such claim, or if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final order of said designee or any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until a final order of said designee or a final judgment or decree, shall be entered against the claimant, or the claim or suit otherwise terminated.

[41] Public Law 85–791 (72 Stat. 951) amended and restated the two previous sentences. They previously read as follows:

"Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy must be served on the said designee. Within forty-five days after service of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall certify and file with the court a transcript of the entire record of the proceedings with respect to such claim.".

(c) The sole relief and remedy of any person having any claim to any property vested pursuant to section 202(a), except a person claiming under section 216, shall be that provided by the terms of subsections (a) and (b) of this section, and in the event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President.[42] The claim of any person based on his ownership of shares of stock or other proprietary interest in a corporation which was the owner of property at the date of vesting thereof under sec. 202(a) shall be allowable under subsec. (a) or (b) of this section if 25 per centum or more of the outstanding capital stock or other proprietary interest in the corporation was owned at such date by nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan. But no such claim of a national of a foreign country shall be satisfied except after certification by the Department of State that the country of the national accords protection to nationals of the United States in similar types of cases.

(d) the designee of the President may retain or recover from any property, or the net proceeds thereof, returned pursuant to subsection (a) or (b) of this section an amount not exceeding that expended or incurred by him for the conservation, preservation, or maintenance of such property or proceeds.

Sec. 208.[43] (a) Any property vested in the designee of the President pursuant to section 202(a), or the net proceeds thereof, shall be equitably applied by such designee in accordance with this section to the payment of debts owed by the person who owned such property immediately prior to its vesting in such designee. No debt claim shall be allowed under this section—

(1) if it is asserted against Bulgaria, Hungary, or Rumania (including the government or any political subdivisions, agencies, or instrumentalities thereof); or

(2) if it is based upon an obligation expressed or payable in any currency other than the currency of the United States; or

(3) if it was not due and owing—

(A) on October 9, 1940, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Rumania;

(B) on March 4, 1941, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Bulgaria; or

(C) on March 13, 1941, in the event that the property in respect of which such debt claim is filed was owned immediately prior to vesting be a national of Hungary.

Any defense to the payment of such claim which would have been available to the debtor shall be available to the designee, except

[42] Sec. 6 of Public Law 90–421 (82 Stat. 421) amended and restated this sentence. It previously read as follows:

"The sole relief and remedy of any person having any claim to any property vested pursuant to sec. 202(a) shall be that provided by the terms of subsec. (a) or (b) of this section, and in any event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President.".

[43] 22 U.S.C. 1631g. Sec. 3 of Public Law 84–285 (69 Stat. 565) added sec. 208.

that the period from and after December 7, 1941, shall not be included for the purpose of determining the applicability of any statute of limitations. Debt claims allowable under this section shall include only those of natural persons who were citizens of the United States at the dates their debtors became obligated to them; those of other natural persons who are and have been continuously since December 7, 1941, residents of the United States; those of corporations organized under the laws of the United States of any State, Territory, or possession thereof, or the District of Columbia; and those acquired by the designee of the President under this title. Successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The designee of the President under this title shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of one year from the date of the last vesting in the designee of the President of any property of a debtor in respect to whose debts the date is fixed. No debt shall be paid prior to expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or proceeds in respect of which a suit or proceeding for return pursuant to this title is pending.

(c) The designee shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part. The determination of the designee that a claim is within either paragraph (1) or (2) of subsection (a) of this section shall be final and shall not be subject to judicial review, and such claim shall not be considered a debt claim for any purpose under this section.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property owned by the debtor immediately prior to its vesting in the designee of the President, as shall remain after deduction of (1) the amount of the expenses of the designee (including both expenses in connection with such property or proceeds thereof, and such portion as the designee shall fix of his other expenses), and of taxes, as defined in section 212, paid by the designee in respect to such property or proceeds; and (2) such amount, if any, as the designee may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the designee, ratable payments shall be made in accordance with subsection (g) of this section to the extent permitted by the money available and additional payments shall be made whenever the designee shall determine that substantial further money has become available,

through liquidation of any such property or otherwise. The designee shall not be required, through any judgment of any court, levy of execution, or otherwise, to sell or liquidate any property vested in him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the designee's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the designee as defendant. Such complaint shall be served on the designee. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, and the determination of the designee with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the designee's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the designee shall assign priorities in accordance with subsection (g) of this section. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the designee as defendant. A copy of such complaint shall be served upon the designee and on each claimant named in the schedule. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, any findings or other determinations made by the designee with respect thereto, and the schedule prepared by the designee. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has

filed a claim with the designee pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the designee and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) of this section, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 3466 and 3468 of the Revised Statutes (31 U.S.C., secs. 191 and 193), except as provided in subsection (h) of this section; (3) all other claims for services rendered; for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) of this section, payment may be made, permits payment in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the designee of the President under this title.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property vested in the designee under section 202(a), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section. No person asserting any interest, right, or title in any property or proceeds acquired by the designee shall be barred from proceeding pursuant to this title for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or proceeds be deemed to have been waived solely by reason of such proceeding. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property from the designee shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property prior to its vesting in the designee. Payment by the designee to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

Sec. 209.[44] The officer or agency designated by the President under this title to entertain claims under section 207(b) and section 208 shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by section 207(b) and section 208, may be exercised through subordinate officers designated by such officer or agency.

Sec. 210.[45] No suit may be instituted pursuant to section 207(a) after the expiration of one year from the date of vesting of the property in respect of which relief is sought. No return may be made pursuant to section 207(b) unless notice of claim has been filed within one year from the date of vesting of the property in respect of which the claim is filed.

Sec. 211.[46] No property or proceeds shall be returned under this title, nor shall any payment be made or judgment awarded in respect of any property vested in any officer or agency designated by the President under this title unless satisfactory evidence is furnished to said designee, or the court, as the case may be, that the aggregate of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services rendered in connection with such return or payment or judgment does not exceed 10 per centum of the value of such property or proceeds or of such payment. Any agent, attorney at law or in fact, or representative, believing that the aggregate of the fees should be in excess of such 10 per centum may, in the case of any return of, or the making of any payment in respect of, such property or proceeds by the President or such officer or agency as he may designate, petition the district court of the United States for the district in which he resides for an order authorizing fees in excess of 10 per centum and shall name such officer or agency as respondent. The court hearing such petition or a court awarding any judgment in respect of any such property or proceeds, as the case may be, shall approve an aggregate of fees in excess of 10 per centum of the value of such property or proceeds only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess. Any person accepting any fee in excess of an amount approved under this section, or retaining for more than thirty days any portion of a fee, accepted prior to such approval, in excess of the fee as approved, shall be guilty of a violation of this title.

Sec. 212.[47] (a) The vesting in any officer or agency designated by the President under this title of any property or the receipt by such designee of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period before or after such vesting.

(b) The officer or agency designated by the President under this title shall, notwithstanding the filing of any claim or the institution

[44] 22 U.S.C. 1631h. Sec. 3 of Public Law 84–285 (69 Stat. 568) added sec. 209.
[45] 22 U.S.C. 1631i. Sec. 3 of Public Law 84–285 (69 Stat. 568) added sec. 210.
[46] 22 U.S.C. 1631j. Sec. 3 of Public Law 84–285 (69 Stat. 568) added sec. 211.
[47] 22 U.S.C. 1631k. Sec. 3 of Public Law 84–285 (69 Stat. 569) added sec. 212.

of any suit under this title, pay any tax incident to any such property, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, earnings, increment, or proceeds are held by such designee, unless they are returned pursuant to this title without payment of such tax by the designee. Every such tax shall be paid by the designee to the same extent, as nearly as may be deemed practicable, as though the property had not been vested, and shall be paid only out of the property, or earnings, increment, or proceeds thereof, to which they are incident or out of other property acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or the earnings, increment, or proceeds thereof while held by the designee except with his consent. Where any property is transferred, otherwise than pursuant to section 207(a) or 207(b) hereof, the designee may transfer the property free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property in the hands of the designee.

(c) Subject to the provisions of subsection (b) of this section, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the designee with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessments, collection, refund, or credit of Federal taxes shall be suspended with respect to any vested property or the earnings, increment, or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate, and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the designee.

Sec. 213.[48] Prior to covering the net proceeds of liquidation of any property into the Treasury pursuant to section 202(a), the designee of the President under this title shall determine—

(1) the amount of his administrative expenses attributable to the performance of his functions under this title with respect to such property and the proceeds thereof. The amount so determined, together with an amount not exceeding that expended or incurred for the conservation, preservation, or maintenance of such property and the proceeds thereof, and for taxes in respect of same, shall be deducted and retained by the

[48] 22 U.S.C. 1631l. Sec. 3 of Public Law 84–285 (69 Stat. 570) added sec. 213.

designee from the proceeds otherwise covered into the Treasury; and

(2) that the time for the institution of a suit under section 207(a), for the filing of a notice of claim under section 207(b), and for the filing of debt claims under section 208 has elapsed.

The determinations of the designee under this section shall be final and conclusive.

Sec. 214.[49] No property conveyed, transferred, assigned, delivered, or paid to the designee of the President under this title, or the net proceeds thereof, shall be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court, except as provided in this title.

Sec. 215.[50] Whoever shall willfully violate any provision of this title or any rule or regulation issued hereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President or of a designee of the President under this title, issued in compliance with the provisions of this title shall be fined not more than $5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both.

Sec. 216.[51] (a) Notwithstanding any other provision of this Act or any provision of the Trading With the Enemy Act, as amended, any person (1) who was formerly a national of Bulgaria, Hungary, or Rumania, and (2) who, as a consequence of any law, decree, or regulation of the nation of which he was a national discriminating against political, racial or religious groups, at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated enjoyed full rights of citizenship under the law of such nation, shall be eligible hereunder to receive the return of his interest in property which was vested under section 202(a) hereof or under the Trading With the Enemy Act, as amended, as the property of a corporation organized under the laws of Bulgaria, Hungary, or Rumania if 25 per centum or more of the outstanding capital stock of such corporation was owned at the date of vesting by such persons and nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan, or if such corporation was subjected after December 7, 1941, under the laws of its country, to special wartime measures directed against it because of the enemy character of some or all of its stockholders; and no certificate by the Department of State as provided under section 207(c) hereof shall be required for such persons.

(b) An interest in property vested under the Trading With the Enemy Act, as amended, as the property of a corporation organized under the laws of Bulgaria, Hungary, or Rumania shall be subject to return under subsection (a) of this section only if a notice of claim for the return of any such interest has been timely filed under the provisions of section 33 of that Act, provided that application may be made therefore within six months after the date of enactment hereof. In the event such interest has been liquidated and the net proceeds thereof transferred to the Bulgarian Claims

[49] 22 U.S.C. 1631m. Sec. 3 of Public Law 84–285 (69 Stat. 570) added sec. 214.
[50] 22 U.S.C. 1631n. Sec. 3 of Public Law 84–285 (69 Stat. 570) added sec. 215.
[51] 22 U.S.C. 1631o. Sec. 1(7) of Public Law 90–421 (82 Stat. 421) added sec. 216.

Fund, Hungarian Claims Fund, or Rumanian Claims Fund, the net proceeds of any other interest representing vested property held in the United States Treasury may be used for the purpose of making the return hereunder.

(c) Determinations by the designee of the President or any other officer or agency with respect to claims under this section, including the allowance or disallowance thereof, shall be final and shall not be subject to review by any court.

TITLE III[52]

CLAIMS AGAINST BULGARIA, HUNGARY, RUMANIA, ITALY, AND THE SOVIET UNION

Sec. 301.[53] As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "National of the United States" means (A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

(3) "Treaty of peace", with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947,[54] which came into force between that country and the United States on September 15, 1947.

(4) "Memorandum of Understanding" means the Memorandum of Understanding between the United States and Italy regarding Italian assets in the United States and certain claims of nationals of the United States, signed at Washington, District of Columbia, August 14, 1947 (61 Stat. 3962).

(5) "Soviet Government" means the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933.

(6) "Litvinov Assignment" means (A) the communications dated November 16, 1933, from Maxim Litvinov to President Franklin D. Roosevelt, wherein the Soviet Government assigned to the Government of the United States amounts admitted or found to be due it as the successor of prior governments of Russia, or otherwise, preparatory to a final settlement of the claims outstanding between the two Governments and the claims of their nationals; (B) the communication dated November 16, 1933, from President Franklin D. Roosevelt to Maxim Litvinov, accepting such assignment; and (C) the assignments executed by Serge Ughet on August 25, 1933, and November

[52] Sec. 3 of Public Law 84–285 (69 Stat. 570) added title III.
[53] 22 U.S.C. 1641. Sec. 3 of Public Law 84–285 (69 Stat. 570) added sec. 301.
[54] 61 Stat., pt. 2.

15, 1933, assigning certain assets to the Government of the United States.

(7) "Russian national" includes any corporation or business association organized under the laws, decrees, ordinances or acts of the former Empire of Russia or of any government successor thereto, and subsequently nationalized or dissolved or whose assets were taken over by the Soviet Government or which was merged with any other corporation or organization by the Soviet Government.

(8) "Commission" means the Foreign Claims Settlement Commission of the United States, established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).[55]

(9) "Property" means any property, right, or interest.

Sec. 302.[56] (a) There are hereby created in the Treasury of the United States five funds to be known as the Bulgarian Claims Fund, the Hungarian Claims Fund, the Rumanian Claims Fund, the Italian Claims Funds, and the Soviet Claims Fund. The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act. The Secretary of the Treasury shall cover into the Italian Claims Fund the sum $5,000,000 paid to the United States by the Government of Italy pursuant to article II of the Memorandum of Understanding.[57] The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. The Secretary shall deduct from each claims fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title. Such deduction shall be made before any payment is made out of such fund under section 310. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(b)[58] The Secretary of the Treasury shall cover into each of the Bulgarian and Rumanian Claims Funds such sums as may be paid by the Government of the respective country pursuant to the terms of any claims settlement agreement between the Government of the United States and the Government of such country.

(c)[59] The Secretary of the Treasury shall cover into the Hungarian Claims Fund, such sums as may be paid to the United States by the Government of Hungary pursuant to the terms of the United States-Hungarian Claims Agreement of March 6, 1973.[60]

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[55] 22 U.S.C. 1622 note.
[56] 22 U.S.C. 1641a. Sec. 3 of Public Law 84–285 (69 Stat. 571) added sec. 302.
[57] 61 Stat. 3962.
[58] Sec. 8 of Public Law 90–421 (82 Stat. 422) added subsec. (b).
[59] Sec. 1(1) of Public Law 93–460 (88 Stat. 1386) added subsec. (c).
[60] TIAS 7569; 24 UST 522.

Sec. 303.[61] The Commission shall receive and determine in accordance with the applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania.[62] Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania;

(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1984, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947;

(4)[63] pays effective compensation for the nationalization, compulsory liquidation, or other taking of property of nationals of the United States in Bulgaria and Rumania, between August 9, 1955, and the effective date of the claims agreement between the respective country and the United States; and

(5)[64] pay effective compensation for the nationalization, compulsory liquidation, or other taking of property of nationals of the United States in Hungary, between August 9, 1955, and the date the United States-Hungarian Claims Agreement of March 6, 1973, enters into force.[65]

Sec. 304.[66] (a) The Commission shall receive and determine, in accordance with the Memorandum of Understanding[65] and applicable substantive law including international law, the validity and amount of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy. Upon payment of the principal amounts (without interest) of all awards from the Italian Claims Fund created pursuant to section 302 of this Act, the Commission shall determine the validity and amount of any claim under this section by any natural person who was a citizen of the United States on the date of enactment of this title and shall, in the event an award is issued pursuant to such

[61] 22 U.S.C. 1641b. Sec. 3 of Public Law 84–285 (69 Stat. 571) added sec. 303.
[62] 61 Stat. pt. 2.
[63] Sec. 10 of Public Law 90–421 (82 Stat. 422) added para. (4).
[64] Sec. 1(3) of Public Law 93–460 (88 Stat. 1386) added para. (5).
[65] 61 Stat. 3902.
[66] 22 U.S.C. 1641c. Sec. 3 of Public Law 84–285 (69 Stat. 572) added sec. 304.

claims, certify the same to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund in accordance with the provisions of section 310 of this Act, notwithstanding that the period of time prescribed in section 316 of this Act for the settlement of all claims under this section may have expired.[67]

(b)[68] The Commission shall receive and determine, or redetermine, as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were eligible to file claims under the first sentence of subsection (a) of this section on the date of enactment of this title, but failed to file such claims or, if they filed such claims, failed to file such claims within the limit of time required therefor: *Provided,* That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy, subsection (a) of this section, or section 202 of the War Claims Act of 1948, as amended.

(c)[68] The Commission shall receive and determine, or redetermine as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were nationals of the United States on September 3, 1943, and the date of enactment of this subsection, against the Government of Italy which arose out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, in territory ceded by Italy pursuant to the treaty of peace with Italy: *Provided,* That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy or subsection (a) of this section.

(d)[68] Within thirty days after enactment of this subsection, or within thirty days after the date of enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under subsections (b) and (c) of this section, whichever date is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed with the Commission, which limit shall not be more than six months after such publication.

(e)[68] The Commission shall certify awards on claims determined pursuant to subsection (b) and (c) of this section to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund in accordance with the provisions of section 310 of this title, after payment in full of all awards certified pursuant to subsection (a) of this section.

(f)[68] After payment in full of all awards certified to the Secretary of the Treasury pursuant to subsections (a) and (e) of this section, the Secretary of the Treasury is authorized and directed to transfer the unobligated balance in the Italian Claims Fund into the War Claims Fund created by section 13 of the War Claims Act of 1948, as amended.

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[67] Public Law 85–604 added this sentence.
[68] Sec. 11 of Public Law 90–421 (82 Stat. 422) added subsecs. (b) through (f).

Sec. 305.[69] (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and

(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

(c) The Commission shall give preference to the disposition of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

Sec. 306.[70] (a) Within sixty days after the date of enactment of this title, or within sixty days after the date of enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (1), (2), or (3) of section 303 of this title, whichever date is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed under this title, which limit shall not be more than one year after such publication, except that with respect to claims under section 305 this limit shall not exceed six months.

(b)[71] Within thirty days after enactment of this subsection or the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (4) of section 303 of this title, whichever is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed under paragraph (4) of section 303 of this title, which limit shall not be more than six months after such publication.

(c)[72] Within thirty days after enactment of this subsection, or thirty days after enactment of legislation making appropriations to

[69] 22 U.S.C. 1641d. Sec. 3 of Public Law 84–285 (69 Stat. 572) added sec. 305.
[70] 22 U.S.C. 1641e. Sec. 3 of Public Law 84–285 (69 Stat. 572) added sec. 306.
[71] Sec. 12 of Public Law 90–421 (82 Stat. 423) added subsec. (b).
[72] Sec. 1(4) of Public Law 93–460 (88 Stat. 1386) added subsecs. (c) and (d).

the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (5) of section 303, whichever date is later, the Commission shall publish in the Federal Register the time when, and the limit of time within which, claims may be filed with the Commission under paragraph (5) of section 303, which limit shall not be more than six months after such publication.

(d)[72] Notwithstanding any other provision of this section, any national of the United States who was mailed notice by any department or agency of the Government of the United States with respect to filing a claim against the government of Hungary arising out of any of the failures referred to in paragraph (1), (2), or (3) of section 303 of this title, and who did not receive the notice as the result of administrative error in placing a nonexistent address on the notice, may file with the Commission a claim under any such paragraph. The Commission shall publish in the Federal Register, within thirty days after enactment of this paragraph, when the limit of time within which any such claim may be filed with the Commission, which limit shall not be more than six months after such publication.

Sec. 307.[73] The amount of any award made pursuant to this title based on a claim of a national of the United States other than the national of the United States to whom the claim originally accrued shall not exceed the amount of the actual consideration last paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less.

Sec. 308.[74] The Commission shall as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 309.[75] All payments authorized under this title shall be disbursed exclusively from the claims funds attributable to the country with respect to which the claims are allowed pursuant to this title. All amounts covered into the Treasury to the credit of the claims funds created by section 302 are hereby permanently appropriated for the making of the payments authorized under this title.

Sec. 310.[76] (a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

(1) Payment in full of the principal amount of each award made pursuant to section 305(a)(1) and each award of $1,000 or less made pursuant to section 303 or 304;

(2) Payment in full of the principal amount of each award of $1,000 or less made pursuant to section 305(a)(2);

(3) Payment in the amount of $1,000 on account of the principal of each award or more than $1,000 in amount made pursuant to section 303, 304, or 305(a)(2);

(4) After completing the payments under the preceding paragraphs of this subsection from any one fund, payments from

[73] 22 U.S.C. 1641f. Sec. 3 of Public Law 84–285 (69 Stat. 573) added sec. 307.
[74] 22 U.S.C. 1641g. Sec. 3 of Public Law 84–285 (69 Stat. 573) added sec. 308.
[75] 22 U.S.C. 1641h. Sec. 3 of Public Law 84–285 (69 Stat. 573) added sec. 309.
[76] 22 U.S.C. 1641i. Sec. 3 of Public Law 84–285 (69 Stat. 573) added sec. 310.

time to time, in ratable proportions, on account of the then unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution on account of such awards at the time such payments are made;

(5) After payment has been made in full of the principal amounts of all awards from any one fund, pro rate payments from the remainder of such fund then available for distribution on account of accrued interest on such award as bear interest.

(6)[77] Whenever the Commission is authorized to settle claims by the enactment of paragraph (4) of section 303 of this title with respect to Rumania and Bulgaria, no further payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission pursuant to paragraph (1), (2), or (3) of section 303 of the Bulgarian or Rumanian Claims Funds, as the case may be, until payments on account of awards certified pursuant to paragraph (4) of section 303 with respect to such fund have been authorized in equal proportion to payments previously authorized on existing awards certified pursuant to paragraphs (1), (2), and (3) of section 303.

(7)[78] (A) Except as otherwise provided in subparagraph (D), whenever the Commission is authorized to settle claims by enactment of paragraph (5) of section 303 of this title with respect to Hungary, no further payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission under paragraphs (2) and (3) of section 303 out of the Hungarian Claims Fund until payments on account of awards certified under paragraph (5) of section 303 with respect to such fund have been authorized in equal proportions to payments previously authorized on existing awards certified under paragraphs (2) and (3) of section 303.

(B) Except as otherwise provided in subparagraph (D), with respect to awards previously certified under paragraph (1) of section 303, the Secretary of the Treasury shall not authorize any further payments until payments on account of awards certified under paragraphs (2), (3), and (5) of section 303 have been authorized in equal proportions to payments previously authorized on existing awards certified under paragraph (1) of section 303.

(C) Except as otherwise provided in subparagraph (D), the Secretary of the Treasury shall not authorize any further payments on account of awards certified under paragraph (3), of section 303 based on Kingdom of Hungary bonds expressed in United States dollars or upon awards to Standstill creditors of Hungary that were the subject matter of the agreement of December 6, 1969, between the Government of Hungary and the American Committee for Standstill creditors of Hungary.

(D) No payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission

[77] Sec. 13 of Public Law 90–421 (82 Stat. 423) added para. (6).
[78] Sec. 1(5) of Public Law 93–460 (88 Stat. 1386) added para. (7).

under paragraph (5) of section 303 of this title, and no further payments shall be so authorized under paragraph (1), (2), or (3) of section 303 (except payments certified as the result of claims filed under subsection (d) of section 306), until payments on accounts of awards certified under such paragraphs (1), (2), and (3) as the result of a claims filed under subsection (d) of section 306 have been authorized in equal proportions to payments previously authorized on existing awards certified under such paragraphs and arising out of claims filed other than under such subsection (d).

(E) The Secretary of the Treasury is authorized and directed to deduct the sum of $125,000 from the Hungarian Claims Fund and cover such amount into the Treasury to the credit of miscellaneous receipts in satisfaction of the claim of the United States referred to in article 2, paragraph 4 of the United States-Hungarian Claims Agreement of March 6, 1973. Such amount shall be deducted in annual installments over the period during which the Government of Hungary makes payments to the Government of the United States as provided in article 4 of the agreement.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purposes of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

(d) With respect to any claim which, at the time of the award, is vested in persons other than the person to whom the claim originally accrued, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein; and all such claimants shall participate, in proportion to their indicated interests, in the payments provided by this section in all respects as if the award had been in favor of a single person.

Sec. 311.[79] (a) If a corporation or other legal entity has a claim on which an award may be made under this title, no award may be made to any other person under this title with respect to such claim.

(b) A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capital stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States. This subsection shall not be construed so as to exclude from eligibility a claim based upon a direct ownership interest in a corporation, association, or other entity, or the property thereof, for loss by reason of the nationalization, compulsory liquidation, or other taking of such corporation, association, or other entity by the Governments of Bulgaria, Hungary, Italy, Rumania, or the Soviet

[79] 22 U.S.C. 1641j. Sec. 3 of Public Law 84–285 (69 Stat. 573) added sec. 311.

Government. Any such claim may be allowed without regard to the per centum of ownership vested in the claimant.[80]

Sec. 312.[81] No award shall be made under this title to or for the benefit of any person who voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any government hostile to the United States during World War II, or who has been convicted of a violation of any provision of chapter 115, of title 18, of the United States Code,[82] or of any other crime involving disloyalty to the United States.

Sec. 313.[83] Payment of any award made pursuant to section 303 or 305 shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against the appropriate foreign government or national for the unpaid balance of his claim or for restitution of his property. All awards or payments made pursuant to this title shall be without prejudice to the claims of the United States against any foreign government.

Sec. 314.[84] The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

Sec. 315.[85] There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

Sec. 316.[86] (a) The Commission shall complete its affairs in connection with the settlement of claims pursuant to section 305(a)(1) not later than two years, and all other claims pursuant to this title not later than four years, following the date of enactment of this title, or following the date of enactment of legislation making appropriations to the Commission for the payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

(b)[87] The Commission shall complete its affairs in connection with the settlement of claims pursuant to paragraph (4) of section 303 and subsections (b) and (c) of section 304 of this title not later than two years following the date of enactment of such paragraphs, or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred

[80] Public Law 85–604 (72 Stat. 531) added this sentence. Sec. 3(b) of Public Law 85–604 also provided that "Any claim heretofore denied under subsection (b) of section 311 of the International Claims Settlement Act of 1949, as amended, prior to the date of enactment of this section, shall be reconsidered by the Foreign Claims Settlement Commission solely to redetermine its validity and amount by reason of the amendments made by this section.".

[81] 22 U.S.C. 1641k. Sec. 3 of Public Law 84–285 (69 Stat. 574) added sec. 312.

[82] 62 Stat. 807.

[83] 22 U.S.C. 1641l. Sec. 3 of Public Law 84–285 (69 Stat. 574) added sec. 313.

[84] 22 U.S.C. 1641m. Sec. 3 of Public Law 84–285 (69 Stat. 574) added sec. 314.

[85] 22 U.S.C. 1641n. Sec. 3 of Public Law 84–285 (69 Stat. 574) added sec. 315.

[86] 22 U.S.C. 1641o. Sec. 3 of Public Law 84–285 (69 Stat. 574) added sec. 316.

[87] Sec. 14 of Public Law 90–421 (82 Stat. 423) added subsec. (b).

in carrying out its functions under paragraph (4) of section 303 and subsections (b) and (c) of section 304 of this title, whichever is later.

(c)[88] The Commission shall complete its affairs in connection with the settlement of claims pursuant to paragraph (5) of section 303 of this title not later than two years following the deadline established under subsection (c) of section 306 of this title.

Sec. 317.[89] (a) The total remuneration paid to all agents, attorneys at law or in fact, or representatives, for services rendered on behalf of any claimant in connection with any claim filed with the Commission shall not exceed 10 per centum of the total amount paid under this title on account of such claim, or such greater amount as may be determined pursuant to subsection (b) of this section. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration which, together with all remuneration paid to other persons on account of such services and of which he has notice, is in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(b) Not later than three months after the Commission has completed its affairs in connection with the settlement of all claims payable from the fund from which an award is payable, any agent, attorney at law or in fact, or representative who believes that the total remuneration for services rendered in connection with the claim upon which such award is made should exceed the maximum otherwise permitted by this section may, pursuant to such procedure as the Commission shall prescribe by regulation, petition the Commission for an order authorizing the payment of remuneration in excess of such maximum. The Commission shall issue such an order only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess; and such order shall state the amount of the excess which may so be paid. The determination of the Commission in ruling upon such petition shall be within the sole discretion of the Commission and shall not be subjected to review by any court.

Sec. 318.[90] The following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; and subsections (c), (d), (e), and (f) of section 7.

TITLE IV[91]

CLAIMS AGAINST CZECHOSLOVAKIA

Sec. 401.[92] As used in this title—

(1) "National of the United States," means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any

[88] Sec. 1(6) of Public Law 93–460 (88 Stat. 1386) added subsec. (c).
[89] 22 U.S.C. 1641p. Sec. 3 of Public Law 84–285 (69 Stat. 574) added sec. 317.
[90] 22 U.S.C. 1641q. Sec. 3 of Public Law 84–285 (69 Stat. 574) added sec. 318.
[91] Public Law 85–604 (72 Stat. 527) added title IV. See also Czechoslovakian Claims Settlement Act of 1981.
[92] 22 U.S.C. 1642. Sec. 1 of Public Law 85–604 (72 Stat. 527) added sec. 401.

State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly, or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

(2) "Commission" means the Foreign Claims Settlement Commission of the United States, established, pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).

(3) "Property" means any property, right, or interest.

Sec. 402.[93] (a) The Secretary of the Treasury is directed to hold, in an account in the Treasury of the United States, the net proceeds of the sale of certain Czechoslovakian steel mill equipment heretofore blocked and sold in the United States by order of the Secretary of the Treasury under authority of Executive Order Numbered 9193, dated July 6, 1942 (7 F.R. 5205, July 9, 1942).

(b)[94] There is hereby created in the Treasury of the United States a fund to be designated the Czechoslovakian Claims Fund, for the payment of unsatisfied claims of nationals of the United States against Czechoslovakia as authorized in this title.

(c) If, within one year following the date of enactment of this title, the Government of Czechoslovakia voluntarily settles with and pays to the Government of the United States a sum in payment of claims of United States nationals against Czechoslovakia, all moneys held pursuant to subsection (a) of this section will be disposed of in accordance with the terms of the settlement agreement with Czechoslovakia and applicable provisions of this title and the sum paid by Czechoslovakia shall be covered into the Czechoslovakian Claims Fund.

(d) Upon the expiration of one year after the date of enactment of this title if no settlement with Czechoslovakia of the type specified in subsection (c) of this section has occurred, all moneys held pursuant to subsection (a) of this section except amounts held in reserve pursuant to section 403 of this title, shall be covered into the Czechoslovakian Claims Fund.

(e) The Secretary of the Treasury shall deduct from the Czechoslovakian Claims Fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title.[95] The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(f) After the deduction for administrative expenses pursuant to subsection (e) of this section, and after payment of awards certified pursuant to section 410 of this title, the balance remaining in the Fund, if any, shall be paid to Czechoslovakia in accordance with instructions to be provided by the Secretary of State.

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[93] 22 U.S.C. 1642a. Sec. 1 of Public Law 85–604 (72 Stat. 527) added sec. 402.

[94] See also sec. 4 of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97–127) which establishes three accounts in the Fund which shall be available for payments of claims awarded under sec. 410 of this Act, under sec. 5 of Public Law 97–127, and under sec. 6 of Public Law 97–127.

[95] Sec. 4(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97–127) stipulates that $50,000 shall be deducted from the fund for the costs of administrating this title and Public Law 97–127, and that such deduction shall be made in lieu of the deduction described in this subsection.

Sec. 403.[96] No judicial relief or remedy shall be available to any person asserting a claim against the United States or any officer or agent thereof with respect to any action taken under this title, or any other claim for or on account of the property or proceeds described in section 402 of this title, or for any other action taken with respect thereto except to the extent that the action complained of constitutes a taking of private property without just compensation, and to such extent the sole judicial relief and remedy available shall be an action brought against the United States in the United States Court of Federal Claims[97] which action must be brought within one year of the date of enactment of this title or it shall be forever barred; and any action so brought shall receive a preference over all actions which themselves are not given preference by statute. No other court shall have original jurisdiction to consider any such claim by mandamus or otherwise. If any action is brought pursuant to this section the Secretary of the Treasury shall set aside an appropriate reserve in the account containing the moneys held pursuant to subsection (a) of section 402 of this title. Such reserve shall be retained pending a final determination of all issues raised in the action and recovery in any such action shall be limited to and paid out of the moneys so reserved. After a final determination of all issues raised in the action and payment of any judgment against the United States entered pursuant thereto, any balance no longer required to be held in reserve shall be disposed of in accordance with the provisions of subsection (d) of section 402 of this title. Nothing in this section shall be construed to create (1) any liability against the United States for any action taken pursuant to section 404 of this title, (2) any liability against the United States in favor of the Government of Czechoslovakia, any agency or instrumentality thereof or any person who is an assignee or successor in interest thereto, or (3) any other liability against the United States.

Sec. 404.[98] The Commission shall determine in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States, subject, however, to the terms and conditions of an applicable claims agreement, if any, concluded between the Governments of Czechoslovakia and the United States within one year following the date of enactment of this title. In making the determination with respect to the validity and amount of claims and value of properties, rights, or interest taken, the Commission is authorized to accept the fair or proved value of the said property, right, or interest as of a time when the property or business enterprise taken, was last operated, used, managed or

[96] 22 U.S.C. 1642b. Sec. 1 of Public Law 85–604 (72 Stat. 528) added sec. 403.

[97] Sec. 902(b)(1) of Public Law 102–572 (106 Stat. 4516) provided that any reference in any Federal law or any document to the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims". Previously, sec. 161(6) of the Federal Courts Improvement Act (Public Law 97–164; 96 Stat. 49) struck out "United States Court of Claims" and inserted in lieu thereof "United States Claims Court".

[98] 22 U.S.C. 1642c. Sec. 1 of Public Law 85–604 (72 Stat. 528) added sec. 404.

controlled by the national or nationals of the United States asserting the claim irrespective of whether such date is prior to the actual date of nationalization or taking by the Government of Czechoslovakia.

Sec. 405.[99] A claim under section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

Sec. 406.[100] (a) A claim under section 404 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall be denied.

(b) A claim under section 404 of this title, based upon a direct ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the nationalization or other taking was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim.

(c) A claim under section 404 of this title, based upon an indirect ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such nationalization or other taking was vested in nationals of the United States.

(d) Any award on a claim under subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant bears to the entire ownership interest thereof.

Sec. 407.[101] In determining the amount of any award by the Commission there shall be deducted all amounts the claimant has received from any source on account of the same loss or losses with respect to which such award is made.

Sec. 408.[102] With respect to any claim under section 404 of this title which, at the time of the award, is vested in persons other than the person by whom the loss was sustained, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in the payments authorized

[99] 22 U.S.C. 1642d. Sec. 1 of Public Law 85–604 (72 Stat. 528) added sec. 405. See also sec. 6(b) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97–127), which states, in part, that the provisions of this section "shall be deemed to be met if such property was owned on such a date by a person who became a national of the United States on or before February 26, 1948.".

[100] 22 U.S.C. 1642e. Sec. 1 of Public Law 85–604 (72 Stat. 529) added sec. 406.

[101] 22 U.S.C. 1642f. Sec. 1 of Public Law 85–604 (72 Stat. 529) added sec. 407.

[102] 22 U.S.C. 1642g. Sec. 1 of Public Law 85–604 (72 Stat. 529) added sec. 408.

by this title in all respects as if the award had been in favor of a single person.

Sec. 409.[103] No award shall be made on any claim under section 404 of this title to or for the benefit of (1) any person who has been convicted of a violation of any provision of chapter 115, title 18, of the United States Code, or of any other crime involving disloyalty to the United States, or (2) any claimant whose claim under this title is within the scope of title III of this Act.

Sec. 410.[104] The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 411.[105] Within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later, the Commission shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than twelve months after such publication.

Sec. 412.[106] The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 411 of this title or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

Sec. 413.[107] (a) The Secretary of the Treasury is authorized and directed, out of the sums covered into the Czechoslovakian Claims Fund, to make payments on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority.

(1) Payment in the amount of $1,000 or in the amount of the award, whichever is less.

(2) Thereafter, payments from time to time on account of the unpaid balance of each remaining award made pursuant to this title which shall bear to such unpaid balance the same proportion as the total amount in the fund available for distribution at the time such payments are made bears to the aggregate unpaid balance of all such awards.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purpose of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant.

(d) If any person to whom any payment is to be made pursuant to this title is decreased or is under a legal disability, payment

[103] 22 U.S.C. 1642h. Sec. 1 of Public Law 85–604 (72 Stat. 529) added sec. 409.
[104] 22 U.S.C. 1642i. Sec. 1 of Public Law 85–604 (72 Stat. 529) added sec. 410.
[105] 22 U.S.C. 1642j. Sec. 1 of Public Law 85–604 (72 Stat. 529) added sec. 411.
[106] 22 U.S.C. 1642k. Sec. 1 of Public Law 85–604 (72 Stat. 529) added sec. 412.
[107] 22 U.S.C. 1642l. Sec. 1 of Public Law 85–604 (72 Stat. 530) added sec. 413.

shall be made to his legal representative, except that if any payment to be made is not over $1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance and with the requirements of law with respect to the administration of estates.

(e) Subject to the provisions of any claims agreement hereafter concluded between the Governments of Czechoslovakia and the United States, payment of any award pursuant to this title shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim or be construed to have divested any claimant, or the United States on his behalf, of any rights against any foreign government for the unpaid balance of his claim.

Sec. 414.[108] No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

Sec. 415.[109] The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

Sec. 416.[110] To the extent they are not inconsistent with the provisions of this title, the following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsections (c), (d), (e), and (f) of section 7.

Sec. 417.[111] There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

[108] 22 U.S.C. 1642m. Sec. 1 of Public Law 85–604 (72 Stat. 530) added sec. 414.
[109] 22 U.S.C. 1642n. Sec. 1 of Public Law 85–604 (72 Stat. 530) added sec. 415.
[110] 22 U.S.C. 1642o. Sec. 1 of Public Law 85–604 (72 Stat. 530) added sec. 416.
[111] 22 U.S.C. 1642p. Sec. 1 of Public Law 85–604 (72 Stat. 530) added sec. 417.

TITLE V[112]

PURPOSE OF TITLE

Sec. 501.[113] It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba[114], or the Chinese Communist regime,[115] which have arisen since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[116] out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, and claims for disability or death of nationals of the United States arising out of violations of international law by the Government of Cuba, or the Chinese Communist regime,[115] in order to obtain information concerning the total amount of such claims against the Government of Cuba, or the Chinese Communist regime,[115] on behalf of nationals of the United States. This title shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims.

Sec. 502.[117] For the purposes of this title:

(1) The term "national of the United States," means (A) a natural person who is a citizen of the United States, or (B) a corporation or other legal entity which is organized under the laws of the United States, or of any States, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any leasehold interest, and debts owned by the Government of Cuba or the Chinese Communist regime[115] or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime[115] and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime.[115]

(4) The term "Government of Cuba" includes the government of any political subdivision, agency, or instrumentality thereof.

(5)[118] The term "Chinese Communist regime" means the so-called People's Republic of China, including any political subdivision, agency, or instrumentality thereof.

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[112] Public Law 88–666 (78 Stat. 1110) added title V.

[113] 22 U.S.C. 1643. Public Law 88–666 (78 Stat. 1110) added sec. 501.

[114] Public Law 89–262 (79 Stat. 988) struck out "which have arisen out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or" which previously followed "the Government of Cuba".

[115] Public Law 89–780 (80 Stat. 1365) inserted ", or the Chinese Communist regime,".

[116] Public Law 89–780 (80 Stat. 1365) inserted "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,".

[117] 22 U.S.C. 1643a. Public Law 88–666 (78 Stat. 1110) added sec. 502.

[118] Sec. 2 of Public Law 89–780 (80 Stat. 1365) added para. (5).

RECEIPT OF CLAIMS

Sec. 503.[119] (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba[120] or the Chinese Communist regime,[115] arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[116] for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States, if such claims are submitted to the Commission within such period specified by the Commission by notice published in the Federal Register (which period shall not be more than eighteen months after such publication) within sixty days after the enactment of this title or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime,[121] or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions with respect to each respective claims program authorized under this title, whichever date is later. In making the determination with respect to the validity and the amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) cost of replacement.

(b) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba, or the Chinese Communist regime,[115] arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[116] for disability or death resulting from actions taken by or under the authority of the Government of Cuba, or the Chinese Communist regime,[115] if such claims are submitted to the Commission within the period established by the Commission under subsection (a), or within six months after the date the claims first arose (as determined by the Commission), whichever date last occurs.

OWNERSHIP OF CLAIMS

Sec. 504.[122] (a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was

[119] 22 U.S.C. 1643b. Public Law 88–666 (78 Stat. 1110) added sec. 503.

[120] Sec. 2 of Public Law 89–262 (79 Stat. 988) struck out "arising out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or" which previously appeared at this point.

[121] Sec. 3 of Public Law 89–780 (80 Stat. 1365) inserted "or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime,".

[122] 22 U.S.C. 1643c. Public Law 88–666 (78 Stat. 1111) added sec. 504.

based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

(b) A claim for disability under section 503(b) may be considered if it is filed by the disabled person or by his successors in interest; and a claim for death under section 503(b) may be considered if filed by the personal representative of decedent's estate or by a person or persons for pecuniary losses and damage sustained on account of such death. A claim shall not be considered under this section unless the disabled or deceased person was a national of the United States at the time of injury or death and if considered, shall be considered only to the extent the claim has been held by a national or nationals of the United States continuously until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 505.[123] (a) A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba, or the Chinese Communist regime.[124]

(b) A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

[123] 22 U.S.C. 1643d. Public Law 88–666 (78 Stat. 1111) added sec. 505.

[124] Sec. 3 of Public Law 89–262 (79 Stat. 988) added this sentence. Subsequently, sec. 4 of Public Law 89–780 (80 Stat. 1365) inserted ", or the Chinese Communist regime".

OFFSETS

Sec. 506.[125] In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.[126]

ACTION OF COMMISSION WITH RESPECT TO CLAIMS

Sec. 507.[127] (a) The Commission shall certify to each individual who has filed a claim under this title the amount determined by the Commission to be the loss of damage suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in reaching its decision.

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

TRANSFER OF RECORDS

Sec. 508.[128] The Secretary of State shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

APPLICATION OF OTHER LAWS

Sec. 509.[129] To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsection (f) of section 7.

SETTLEMENT PERIOD

Sec. 510.[130] The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than July 6, 1972.

APPROPRIATIONS

Sec. 511.[131] There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission to pay its administration expenses incurred in carrying out its functions under this title.

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[125] 22 U.S.C. 1643e. Public Law 88–666 (78 Stat. 1112) added sec. 506.

[126] Sec. 4 of Public Law 89–262 (79 Stat. 988) struck out ": *Provided,* That the deduction of such amounts shall not be construed as divesting the United States of any rights against the Government of Cuba for the amounts so deducted".

[127] 22 U.S.C. 1643f. Public Law 88–666 (78 Stat. 1112) added sec. 507.

[128] 22 U.S.C. 1643g. Public Law 88–666 (78 Stat. 1112) added sec. 508.

[129] 22 U.S.C. 1643h. Public Law 88–666 (78 Stat. 1112) added sec. 509.

[130] 22 U.S.C. 1643i. Public Law 88–666 (78 Stat. 1112) added sec. 510. Public Law 91–157 (83 Stat. 435) set July 6, 1972 as the final date for the settlement of claims pursuant to this title.

[131] 22 U.S.C. 1643j. Public Law 88–666 (78 Stat. 1113) added sec. 511. Subsequently, sec. 5 of Public Law 89–262 (79 Stat. 988) amended and restated sec. 511.

FEES FOR SERVICES

Sec. 512.[132] No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of so much of the total amount of such claim, as determined under this title, as does not exceed $20,000, plus 5 per centum of so much of such amount, if any, as exceeds $20,000. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

SEPARABILITY

Sec. 513.[133] If any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the reminder of the Act, or the application of such provision to other persons or circumstances, shall not be affected.

DETERMINATION OF OWNERSHIP OF CLAIMS REFERRED BY DISTRICT COURTS OF THE UNITED STATES

Sec. 514.[134] Notwithstanding any other provision of this Act and only for purposes of section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, a United State district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996), resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba.

EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE

Sec. 515.[135] (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any person who was ineligible to file a claim under section 503, nor any

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[132] 22 U.S.C. 1643k. Public Law 88–666 (78 Stat. 1113) added sec. 512.

[133] Public Law 88–666 (78 Stat. 1113) added sec. 513.

[134] 22 U.S.C. 1643*l*. Sec. 303(b) of Public Law 104–114 (110 Stat. 820) added sec. 514. Sec. 303(c) of that Act provided:

"(c) RULE OF CONSTRUCTION.—Nothing in this Act or in section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed—

"(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

"(2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before the date of the enactment of this Act.".

[135] 22 U.S.C. 1643m. Sec. 304 of Public Law 104–114 (110 Stat. 821) added sec. 515.

national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any district court of the United States have jurisdiction to adjudicate any such claim.

(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of capital stock of nationals of the United States owning claims certified by the Commission under section 507.

TITLE VI [136]

PURPOSE OF TITLE

Sec. 600.[137] It is the purpose of this title to provide for the determination of the validity and amounts of outstanding claims against the German Democratic Republic which arose out of the nationalization, expropriation, or other taking of (or special measures directed against) property interests of nationals of the United States. This title shall not be construed as authorizing or as any intention to authorize an appropriation by the United States for the purpose of paying such claims.

DEFINITIONS

Sec. 601.[138] As used in this title—

(1) The term "national of the United States" means—

(a) a natural person who is a citizen of the United States;

(b) a corporation or other legal entity which is organized under the laws of the United States or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any lease-hold interest, and debts owed by enterprises which have been nationalized, expropriated, or taken by the German Democratic Republic for which no restoration or no adequate compensation has been made to the former owners of such property.

(4) The term "German Democratic Republic" includes the government of any political subdivision, agency, or instrumentality thereof or under its control.

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[136] Public Law 94–542 (90 Stat. 2509) added title VI.
[137] 22 U.S.C. 1644. Public Law 94–542 (90 Stat. 2509) added sec. 600.
[138] 22 U.S.C. 1644a. Public Law 94–542 (90 Stat. 2509) added sec. 601.

(5) The term "Claims Fund" is the special fund established in the Treasury of the United States composed of such sums as may be paid to the United States by the German Democratic Republic pursuant to the terms of any agreement settling such claims that may be entered into by the Governments of the United States and the German Democratic Republic.

RECEIPT AND DETERMINATION OF CLAIMS

Sec. 602.[139] The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. Such claims must be submitted to the Commission within the period specified by the Commission by notice published in the Federal Register (which period shall not be more than twelve months after such publication) within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

OWNERSHIP OF CLAIMS

Sec. 603.[140] A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 604.[141] (a) A claim under section 602 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States, shall not be considered. A claim under section 602 of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, or taken by the German Democratic Republic.

(b) A claim under section 602 of this title based upon a direct ownership interest in a corporation, association, or other entity for loss, shall be considered subject to the provisions of this title, if such corporation, association or other entity on the date of the loss

[139] 22 U.S.C. 1644b. Public Law 94–542 (90 Stat. 2510) added sec. 602.
[140] 22 U.S.C. 1644c. Public Law 94–542 (90 Stat. 2510) added sec. 603.
[141] 22 U.S.C. 1644d. Public Law 94–542 (90 Stat. 2510) added sec. 604.

was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 602 of this title for losses based upon an indirect ownership interest in a corporation, association, or other entity, shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States.

(d) The amount of any claim covered by subsections (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 605.[142] In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses, including any amount claimant received under section 202(a) of the War Claims Act of 1948, as amended, for losses which occurred as a direct consequence of special measures directed against such property in any area covered under this title.

CONSOLIDATED AWARDS

Sec. 606.[143] With respect to any claim under section 602 of this title which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award had been in favor of a single person.

CLAIMS FUND

Sec. 607.[144] (a) The Secretary of the Treasury is hereby authorized to establish in the Treasury of the United States a fund to be designated the Claims Fund as defined under section 601(5) for the payment of unsatisfied claims of nationals of the United States against the German Democratic Republic as authorized in this title.

(b) The Secretary of the Treasury shall deduct from any amounts covered into the Claims Fund, an amount equal to 5 per centum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department in the administration of this title. The amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

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[142] 22 U.S.C. 1644e. Public Law 94–542 (90 Stat. 2511) added sec. 605.
[143] 22 U.S.C. 1644f. Public Law 94–542 (90 Stat. 2511) added sec. 606.
[144] 22 U.S.C. 1644g. Public Law 94–542 (90 Stat. 2511) added sec. 607.

AWARD PAYMENT PROCEDURES

Sec. 608.[145] (a) The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to section 602 of this title.

(b) Upon certification of such award, the Secretary of the Treasury is authorized and directed, out of the sums covered into the Claims Fund, to make payments on account of such awards as follows, and in the following order of priority:

(1) payment in full of the principal amount of each award of $1,000 or less;

(2) payment in the amount of $1,000 on account of the principal amount of each award of more than $1,000 in principal amount;

(3) thereafter, payments from time to time, in ratable proportions, on account of the unpaid balance of the principal amounts of all awards according to the proportions which the unpaid balance of such awards bear to the total amount in the fund available for distribution at the time such payments are made;

(4) after payment has been made in full of the principal amounts of all awards, pro rata payments may be made on account of any interest that may be allowed on such awards;

(5) payments or applications for payments shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

SETTLEMENT PERIOD

Sec. 609.[146] The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 602 of this title.

TRANSFER OF RECORDS

Sec. 610.[147] The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

APPROPRIATIONS

Sec. 611.[148] There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their respective administrative expenses incurred in carrying out their functions under this title.

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[145] 22 U.S.C. 1644h. Public Law 94–542 (90 Stat. 2511) added sec. 608.
[146] 22 U.S.C. 1644i. Public Law 94–542 (90 Stat. 2512) added sec. 609.
[147] 22 U.S.C. 1644j. Public Law 94–542 (90 Stat. 2512) added sec. 610.
[148] 22 U.S.C. 1644k. Public Law 94–542 (90 Stat. 2512) added sec. 611.

FEES FOR SERVICES

Sec. 612.[149] No remuneration on account of services rendered on behalf of any claimant, in connection with any claim filed with the Commission under this title, shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claims. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

APPLICATION OF OTHER LAWS

Sec. 613.[150] To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of the Act shall be applicable to this title: subsections (b), (c), (d), (e), (h), and (j) of section 4; subsections (c), (d), (e), and (f) of section 7.

SEPARABILITY

Sec. 614.[151] If any provisions of this Act or the application thereof to any person or circumstances shall be held invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected.

PROTESTS

Sec. 615.[152] Notwithstanding the provision of sections 210 and 211 of the War Claims Act of 1948 (Act of July 3, 1948), as amended by Public Law 87–846, the Foreign Claims Settlement Commission established by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) is authorized and directed to receive and consider protests relating to awards made by the Commission during the ten calendar days immediately preceding the expiration of the Commission's mandate to make such awards on May 17, 1967. Any such protests must be filed within ninety days after notice of the enactment of this provision is filed with and published in the Federal Register, which shall take place within thirty days of enactment. Such protests may include the submission of new evidence not previously before the Commission, and shall be acted upon within thirty days after receipt by the Commission. The Commission may modify awards made during the subject period in accordance with the procedures established by the War Claims Act of 1948, and any increases in awards determined to be appropriated by the Commission shall be certified to and paid by the Secretary of the Treasury out of funds which are now or may hereafter become available in the War Claims Fund in accordance with section 213 of the Act.

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[149] 22 U.S.C. 1644*l*. Public Law 94–542 (90 Stat. 2512) added sec. 612.
[150] 22 U.S.C. 1644m. Public Law 94–542 (90 Stat. 2512) added sec. 613.
[151] 22 U.S.C. 1644 note. Public Law 94–542 (90 Stat. 2512) added sec. 614.
[152] 22 U.S.C. 1623 note. Public Law 94–542 (90 Stat. 2512) added sec. 615.

TITLE VII [153]

PURPOSE OF TITLE

Sec. 701.[154] It is the purpose of this title to provide for the determination of the validity and amounts of outstanding claims against Vietnam which arose out of the nationalization, expropriation, or other taking of (or special measures directed against) property of nationals of the United States. This title shall not be construed as authorizing or as any intention to authorize an appropriation by the United States for the purpose of paying such claims.

DEFINITIONS

Sec. 702.[155] As used in this title—

(1) the term "national of the United States" means—

(A) a natural person who is citizen of the United States; and

(B) a corporation or other legal entity which is organized under the laws of the United States or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly, or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity;

(2) the term "Commission" means the Foreign Claims Settlement Commission of the United States;

(3) the term "property" means—

(A) any property, right, or interest, including any leasehold interest,

(B) any debt owed by Vietnam or by any enterprise which has been nationalized, expropriated, or otherwise taken by Vietnam, and

(C) any debt which is a charge on property which has been nationalized, expropriated, or otherwise taken by Vietnam;

(4) the term "Vietnam" means—

(A) the Government of the Socialistic Republic of Vietnam,

(B) any predecessor governing authority operating in South Vietnam on or after April 29, 1975, including the Provisional Revolutionary Government of South Vietnam,

(C) the Government of the former Democratic Republic of Vietnam, and

(D) any political subdivision, agency, or instrumentality of any of the entities referred to in subparagraphs (A), (B), and (C); and

(5) the term "Claims Fund" means the special fund established in the Treasury of the United States composed of such

[153] Public Law 96–606 (94 Stat. 3534) added title VII.
[154] 22 U.S.C. 1645. Public Law 96–606 (94 Stat. 3534) added sec. 701.
[155] 22 U.S.C. 1645a. Public Law 96–606 (94 Stat. 3534) added sec. 702.

sums as may be paid to or realized by the United States pursuant to the terms of any agreement settling those claims described in section 703 that may be entered into between the Governments of the United States and Vietnam.

RECEIPT AND DETERMINATION OF CLAIMS

Sec. 703.[156] The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly, or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made. Such claims must be submitted to the Commission within the period specified by the Commission by notice published in the Federal Register (which period shall not be more than a period of two years beginning on the date of such publication) within sixty days after the date of the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

OWNERSHIP OF CLAIMS

Sec. 704.[157] A claim may be favorably considered under section 703 of this Act only if the property right on which it is based was owned, wholly or partially, directly, or indirectly, by a national of the United States on the date of loss and only to the extent that the claim has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 705.[158] (a) A claim under section 703 of this Act based upon an ownership interest in any corporation, association, or other entity which is a national of the United States may not be considered. A claim under section 703 based upon a debt of other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico may be considered only if such debt or other obligation is a charge on property which has been nationalized, expropriated, or otherwise taken by Vietnam.

(b) A claim under section 703 based upon a direct ownership interest in a corporation, association, or other entity may be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a

[156] 22 U.S.C. 1645b. Public Law 96–606 (94 Stat. 3535) added sec. 703.
[157] 22 U.S.C. 1645c. Public Law 96–606 (94 Stat. 3535) added sec. 704.
[158] 22 U.S.C. 1645d. Public Law 96–606 (94 Stat. 3535) added sec. 705.

national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 703 based upon an indirect ownership interest in a corporation, association, or other entity may be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States or if, at the time of the loss, nationals of the United States in fact controlled the corporation, association, or entity, as determined by the Commission.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by the corporation, association, or other entity, with respect to which the claim is made, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 706.[159] In determining the amount of any claim under this title, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses for which the claim is filed.

CERTIFICATION; ASSIGNED CLAIMS

Sec. 707.[160] (a) The Commission shall certify to each claimant who files a claim under this title the amount determined by the Commission to be the loss suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in making that determination.

(b) In any case in which a claim under this title is assigned by purchase before the Commission determines the amount due on that claim, the amount so determined shall not exceed the amount of actual consideration paid by the last such assignee.

CONSOLIDATED AWARDS

Sec. 708.[161] With respect to any claim under section 703 of this Act which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled to the award, which award shall indicate the respective interests of such claimants in the award, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award has been in favor of a single person.

[159] 22 U.S.C. 1645e. Public Law 96–606 (94 Stat. 3536) added sec. 706.
[160] 22 U.S.C. 1645f. Public Law 96–606 (94 Stat. 3536) added sec. 707.
[161] 22 U.S.C. 1645g. Public Law 96–606 (94 Stat. 3536) added sec. 708.

CLAIMS FUND

Sec. 709.[162] (a) The Secretary of the Treasury may establish in the Treasury of the United States the Claims Fund for the payment of unsatisfied claims of nationals of the United States against Vietnam, as authorized by this title.

(b) The Secretary of the Treasury shall deduct from any amounts covered into the Claims Fund an amount equal to 5 per centum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department in the administration of this title. The amounts so deducted shall be covered into the Treasury as miscellaneous receipts.

AWARD PAYMENT PROCEDURES

Sec. 710.[163] (a) The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to section 703 of this Act.

(b)(1) Upon certification of each award made pursuant to section 703, the Secretary of the Treasury shall, out of the sums covered into the Claims Fund, make payments on account of such awards as follows, and in the following order or priority:

(A) Payment in the amount of $2,500 or the principal amount of the award, whichever is less.

(B) Thereafter, payments from time to time, in ratable proportions, on account of the unpaid balance of the principal amounts of all awards according to the proportions which the unpaid balance of such awards bear to the total amount in the Claims Fund available for distribution at the time such payments are made.

(2) After payment has been made in full of the principal amounts of all awards pursuant to paragraph (1), pro rata payments may be made on account of any interest that may be allowed on such awards.

(c) Payments or applications for payments under subsection (b) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

SETTLEMENT PERIOD

Sec. 711.[164] The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years after the final date for the filing of claims as provided in section 703 of this Act.

TRANSFER OF RECORDS

Sec. 712.[165] The Secretary of State, the Secretary of the Treasury, and the Secretary of Defense shall transfer or otherwise make available to the Commission such records and documents relating

[162] 22 U.S.C. 1645h. Public Law 96–606 (94 Stat. 3536) added sec. 709.
[163] 22 U.S.C. 1645i. Public Law 96–606 (94 Stat. 3537) added sec. 710.
[164] 22 U.S.C. 1645j. Public Law 96–606 (94 Stat. 3537) added sec. 711.
[165] 22 U.S.C. 1645k. Public Law 96–606 (94 Stat. 3537) added sec. 712.

to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

AUTHORIZATION OF APPROPRIATIONS

Sec. 713.[166] There are authorized to be appropriated for any fiscal year beginning on or after October 1, 1980, such sums as may be necessary to enable the Commission and the Treasury Department to pay their respective administrative expenses incurred in carrying out their functions under this title. Amounts appropriated under this section may remain available until expended.

FEES FOR SERVICES

Sec. 714.[167] No remuneration on account of services rendered on behalf of any claimant, in connection with any claim filed with the Commission under this title, shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

APPLICATION OF OTHER PROVISIONS OF THE ACT

Sec. 715.[168] (a) To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: subsections (b), (c), (d), (e), and (h) of section 4 and subsections (c), (d), (e), and (f) of section 7. Any reference in such provisions to "this title" shall be deemed to be a reference to those provisions and to this title.

(b) Except as otherwise provided in this title and in those provisions of title I referred to in subsection (a), the Commission shall comply with the provisions of subchapter II of chapter 5, and the provisions of chapter 7, of title 5, United States Code.

SEPARABILITY

Sec. 716.[169] If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of this title or the application of such provision to other persons or circumstances shall not be affected.

[166] 22 U.S.C. 1645*l*. Public Law 96–606 (94 Stat. 3537) added sec. 713.
[167] 22 U.S.C. 1645m. Public Law 96–606 (94 Stat. 3537) added sec. 714.
[168] 22 U.S.C. 1645n. Public Law 96–606 (94 Stat. 3538) added sec. 715.
[169] 22 U.S.C. 1645o. Public Law 96–606 (94 Stat. 3538) added sec. 716.

b. Iran Claims Settlement

Partial text of Public Law 99–93 [H.R. 2068], 99 Stat. 437, approved August 16, 1985

AN ACT To authorize appropriations for fiscal years 1986 and 1987 for the Department of State, the United States Information Agency, the Board for International Broadcasting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Years 1986 and 1987".

(b) * * *

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TITLE V—IRAN CLAIMS SETTLEMENT

SEC. 501.[1] RECEIPT AND DETERMINATION OF CERTAIN CLAIMS.

(a) AUTHORITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION.—The Foreign Claims Settlement Commission of the United States is authorized to receive and determine the validity and amounts of claims by nationals of the United States against Iran which are settled en bloc by the United States. In deciding such claims, the Commission shall apply, in the following order—

(1) the terms of any settlement agreement;

(2) the relevant provisions of the Declarations of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981, giving consideration to interpretations thereof by the Iran-United States Claims Tribunal; and

(3) applicable principles of international law, justice, and equity.

Except as otherwise provided in this title, the provisions of title I of the International Claims Settlement Act of 1949 (22 U.S.C. 1621 et seq.) shall apply with respect to claims under this section. Any reference in such provisions to "this title" shall be deemed to refer to those provisions and to this section.

(b) CERTIFICATION AND PAYMENT.—The Commission shall certify to the Secretary of the Treasury any awards determined pursuant to subsection (a) in accordance with section 5 of title I of the International Claims Settlement Act of 1949 (22 U.S.C. 1624). Such awards shall be paid in accordance with sections 7 and 8 of such title (22 U.S.C. 1626 and 1627), except that—

(1) the Secretary of the Treasury is authorized to make payments pursuant to paragraphs (1) and (2) of section 8(c) of

[1] 50 U.S.C. 1701 note.

such title in the amount of $10,000 or the principal amount of the award, whichever is less; and

(2) the Secretary of the Treasury may deduct, pursuant to section 7(b) of such title, an amount calculated in accordance with section 502(a) of this Act, instead of 5 percent of payments made pursuant to section 8(c) of such title.

SEC. 502.[1] DEDUCTIONS FROM ARBITRAL AWARDS

(a) DEDUCTION FOR EXPENSES OF THE UNITED STATES.—Except as provided in section 503, the Federal Reserve Bank of New York shall deduct from the aggregate amount awarded under each enumerated claim before the Iran-United States Claims Tribunal in favor of a United States claimant, an amount equal to 1½ percent of the first $5,000,000 and 1 percent of any amount over $5,000,000, as reimbursement against Iran before the Tribunal and the maintenance of the Security Account established pursuant to the Declarations of the Democratic and Popular Republic of Algeria of January 19, 1981. The Federal Reserve Bank of New York shall made the deduction required by the preceding sentence whenever the Bank receives an amount from the Security Account in satisfaction of an award rendered by the Iran-United States Claim Tribunal on the enumerated claim involved.

(b) DEDUCTION TREATED AS MISCELLANEOUS RECEIPT.—Amounts deducted by the Federal Reserve Bank of New York pursuant to subsection (a) shall be deposited into the Treasury of the United States to the credit of miscellaneous receipts.

(c) PAYMENT TO UNITED STATES CLAIMANTS.—Nothing in this section shall be construed to effect the payment to United States claimants of amounts received by the Federal Reserve Bank of New York in respect of awards by the Iran-United States Claims Tribunal, after deduction of the amounts calculated in accordance with subsection (a).

(d) EFFECTIVE DATE.—This section shall be effective as of June 7, 1982.

SEC. 503.[1] BLOC SETTLEMENT.

The deduction by the Federal Reserve Bank of New York provided for in section 502(a) of this Act shall not apply in the case of a sum received by the Bank pursuant to an en bloc settlement of any category of claims of United States nationals against Iran when such sum is to be used for payments in satisfaction of awards certified by the Foreign Claims Settlement Commission pursuant to section 501(b) of this Act.

SEC. 504.[1] REIMBURSEMENT TO THE FEDERAL RESERVE BANK OF NEW YORK.

The Secretary of the Treasury may reimburse the Federal Reserve Bank of New York for expenses incurred by the Bank in the performance of fiscal agency agreements relating to the settlement or arbitration of claims pursuant to the Declarations of the Democratic and Popular Republic of Algeria of January 19, 1981.

SEC. 505.[1] CONFIDENTIALITY OF RECORDS.

Notwithstanding section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), records pertaining to the arbitration of claims before the Iran-United States

Claims Tribunal may not be disclosed to the general public, except that—

(1) rules, awards, and other decisions of the Tribunal and claims and responsive pleadings filed at the Tribunal by the United States on its own behalf shall be made available to the public, unless the Secretary of State determines that public disclosure would be prejudicial to the interests of the United States or United States claimants in proceedings before the Tribunal, or that public disclosure would be contrary to the rules of the Tribunal; and

(2) the Secretary of State may determine on case-by-case basis to make such information available when in the judgment of the Secretary the interests of justice so require.

* * * * * * *

c. Czechoslovakian Claims Settlement Act of 1981

Public Law 97–127 [S. 1946], 95 Stat. 1675, approved December 29, 1981

AN ACT To provide for the final settlement of certain claims against Czechoslovakia, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1.[1] This Act may be cited as the "Czechoslovakian Claims Settlement Act of 1981".

APPROVAL OF AGREEMENT

SEC. 2. (a) The Congress hereby approves the Agreement between the Government of the United States of America and the Government of the Czechoslovak Socialist Republic on the Settlement of Certain Outstanding Claims and Financial Issues, initiated at Prague, Czechoslovakia on November 6, 1981.

(b) The President may, without further approval by the Congress, execute such technical revisions of the Agreement approved by subsection (a) of this section as in his judgment may from time to time be required to facilitate the implementation of that Agreement. Nothing in this subsection shall be construed to authorize any revision of that Agreement to reduce any amount to be paid by the Government of the Czechoslovak Socialist Republic to the United States Government under the Agreement, or to defer the payment of any such amount.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) "Agreement" means the Agreement on the Settlement of Certain Outstanding Claims and Financial Issues approved by section 2(a) of this Act;

(2) "national of the United States" has the meaning given such term by section 401(1) of the International Claims Settlement Act of 1949;

(3) "Commission" means the Foreign Claims Settlement Commission of the United States;

(4) "Fund" means the Czechoslovakian Claims Fund established by section 402(b) of the International Claims Settlement Act of 1949;

(5) "Secretary" means the Secretary of the Treasury; and

(6) "property" means any property, right, or interest.

[1] 22 U.S.C. note prec. 1642. See also title IV of the International Claims Settlement Act of 1949 (Public Law 81–455; 22 U.S.C. 1642–1642q) for additional legislation on claims against Czechoslovakia.

THE FUND

SEC. 4. (a) The Secretary shall cover into the Fund the amount paid by the Government of the Czechoslovak Socialist Republic in settlement and discharge of claims of nationals of the United States pursuant to article 1(1) of the Agreement, and shall deduct from that amount $50,000 for reimbursement to the United States Government for expenses incurred by the Department of the Treasury and the Commission in the administration of this Act and title IV of the International Claims Settlement Act of 1949. The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts. The deduction required by this subsection shall be made in lieu of the deduction provided in section 402(e) of the International Claims Settlement Act of 1949; however, it is the sense of the Congress that the United States Government is entitled to a larger percentage of the total award (generally presumed to be 5 percent) and that the ex gratia payment hereinafter provide to certain claimants, who were otherwise excluded from sharing in this claims settlement under general-accepted principles of international law and United States practice, is justified only by the extraordinary circumstances of this case and does not establish any precedent for future claims negotiations or payments.

(b) The Secretary shall establish three accounts in the Fund into which the amount covered into the Fund pursuant to subsection (a) of this section, less the deduction required by that subsection, shall be covered as follows:

(1) An account into which $74,550,000 shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards certified pursuant to section 410 of the International Claims Settlement Act of 1949.

(2) An account into which $1,500,000 shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards determined pursuant to section 5 of this Act.

(3) An account into which the remainder of amounts in the Fund shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards determined pursuant to section 6 of this Act.

DETERMINATION OF CERTAIN CLAIMS

SEC. 5. (a) The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic of losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and the date of which the Agreement enters into force. In making the determination with respect to the validity and amount of any such claim and the value of the property taken, the Commission is authorized to accept the fair or proved value of such property as of the time when the property taken was last operated, used, managed, or controlled by the national or nationals of the United States asserting the claim, regardless of whether such time

is prior to the actual date of nationalization or other taking by the Government of the Czechoslovak Socialist Republic.

(b) The Commission shall certify to the Secretary the amount of any award determined pursuant to subsection (a).

DETERMINATION OF OTHER CLAIMS

SEC. 6. (a)(1) The Congress finds that—

(A) in the case of certain persons holding claims against the Czechoslovakian Government who became nationals of the United States by February 26, 1948, the date on which the current Communist Government of Czechoslovakia assumed power; and

(B) while the Commission had the authority to deny those claims described in subparagraph (A) on the basis that the properties involved had been taken by the Benes Government while the claimants were not yet nationals of the United States, the effect of that denial is to withhold compensation to persons who have been United States citizens for many years and whose expropriated property has benefited the Communist Government of Czechoslovakia no less than properties expropriated more directly and clearly by the Communist Government.

(2)(A) It is therefore the purpose of this section, in accordance with the intent of the Congress in enacting title IV of the International Claims Settlement Act of 1949 and in the interests of equity, to make ex gratia payments to the claimants described in paragraph (1) of this subsection.

(B) The Congress reaffirms the principle and practice of the United States to seek compensation from foreign governments on behalf only of persons who were nationals of the United States at the time they sustained losses by the nationalization or other taking of their property by those foreign governments. In making payments under this section, the Congress does not establish any precedent for future claims payments.

(b) The Commission shall reopen and redetermine the validity and amounts of any claim against the Government of Czechoslovakia which was filed with the Commission in accordance with the provisions of title IV of the International Claims Settlement Act of 1949, which was based on property found by the Commission to have been nationalized or taken by the Government of Czechoslovakia on or after January 1, 1945, and before February 26, 1948, and which was denied by the Commission because such property was not owned by a person who was a national of the United States on the date of such nationalization or taking. The provisions of section 405 of the International Claims Settlement Act of 1949 requiring that the property upon which a claim is based must have been owned by a national of the United States on the date of nationalization or other taking by the Government of Czechoslovakia shall be deemed to be met if such property was owned on such date by a person who became a national of the United States on or before February 26, 1948. The Commission shall certify to the Secretary the amount of any award determined pursuant to this subsection.

PROCEDURES

SEC. 7. (a) The provisions of sections 401, 403, 405, 406, 407, 408, 409, 414, 415, and 416 of the International Claims Settlement Act of 1949, to the extent that such provisions are not inconsistent with this Act, together with such regulations as the Commission may prescribe, shall apply with respect to any claim determined pursuant to section 5(a) of this Act or redetermined pursuant to section 6(b) of this Act.

(b) Not later than sixty days after the date of the enactment of this Act, the Commission shall establish and publish in the Federal Register a period of time within which claims described in section 5 of the Act must be filed with the Commission, and the date for the completion of the Commission's affairs in connection with the determination of those such claims and claims described in section 6 of this Act. Such filing period shall be not more than one year after the date of such publication in the Federal Register, and such completion date shall be not more than two years after the final date for the filing of claims under section 5. No person holding a claim to which section 6 of this Act applies shall be required to refile that claim before the Commission makes the redetermination required by that section.

PAYMENT OF AWARDS

SEC. 8. (a) As soon as practicable after the date of the enactment of this Act, the Secretary shall make payments from amounts in the account established pursuant to section 4(b)(1) of this Act on the unpaid balance of each award certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949.

(b) As soon as practicable after the Commission has completed the certification of awards pursuant to section 5(b) of this Act, the Secretary shall make payments on account of each such award from the amounts in the account established pursuant to section 4(b)(2) of this Act.

(c) As soon as practicable after the Commission has completed the certification of awards pursuant to section 6(b) of this Act, the Secretary shall make payments on account of each such award from the amounts in the account established pursuant to section 4(b)(3) of this Act.

(d) In the event that—

(1) the amounts in the account established pursuant to section 4(b)(2) of this Act exceed the aggregate total of all awards certified by the Commission pursuant to section 5(b) of this Act, or

(2) the amounts in the account established pursuant to section 4(b)(3) of this Act exceed the aggregate total of all awards certified by the Commission pursuant to section 6(b) of this Act,

the Secretary shall cover such excess amounts into the account established pursuant to section 4(b)(1) of this Act. The Secretary shall make payments pursuant to subsection (a) of this section,

from such excess amounts, on the unpaid balance of awards certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949.

(e) Payments under this section shall be made on the unpaid balance of each award which bear to such unpaid balance the same proportion as the total amount in the account in the Fund from which the payments are made bears to the aggregate unpaid balance of all awards payable from that account. Payments under this section, and applications for such payments, shall be made in accordance with such regulations as the Secretary may prescribe.

(f) In the event that—

(1) the Secretary is unable, within three years after the date of the establishment of the account prescribed by section 4(b)(1) of this Act, to locate any person entitled to receive payment under this section on account of an award certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949 or to locate any lawful heirs, successors, or legal representatives of that person, or if no valid application for payment is made by or on behalf of that person within six months after the Secretary has located that person or that person's heirs, successors, or legal representatives; or

(2) within six months after the Commission has completed the certification of awards pursuant to sections 5(b) and 6(b) of this Act, no valid application for payment is made by or on behalf of any person entitled to receive payment under this section on account of an award certified by the Commission pursuant to either such section,

the Secretary shall give notice by publication in the Federal Register and in such other publications as the Secretary may determine that, unless valid application for payment is made within sixty days after the date of such publication, that person's award under title IV of the International Claims Settlement Act of 1949 or this Act, as the case may be, and that person's right to receive payment on account of such award, shall lapse. Upon the expiration of such sixty-day period that person's award and right to receive payment shall lapse, and the amounts payable to that person shall be paid pro rata by the Secretary on account of all other awards under title IV of the International Claims Settlement Act of 1949 or this Act, as the case may be.

INVESTMENT OF FUNDS

SEC. 9. The Secretary shall invest and hold in separate accounts the amounts held respectively in the accounts established by section 4 of this Act. Such investment shall be in public debt securities with maturities suitable for the needs of the separate accounts and bearing interest at rates determined by the Secretary, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities. The interest earned on the amounts in each account established by section 4 of this Act shall be used to make payments, in accordance with section 8(e) of this Act, on awards payable from that account.

IMPLEMENTATION OF AGREEMENT

SEC. 10. (a) If, within sixty days after the date of the enactment of this Act—

(1) the Government of the Czechoslovak Socialist Republic does not make the payments to the United States Government described in article 6(2) of the Agreement, or

(2) the Czechoslovak Government does not receive the gold provided in article 6(1) of the Agreement,

the provisions to this Act shall cease to be effective, and the provisions of the Agreement may not be implemented unless the Congress approves the Agreement after the end of that sixty-day period.

(b) The sixty-day period for implementation of the Agreement required by subsection (a) shall be extended by an additional period of thirty calendar days if, before the expiration of that sixty-day period, the Secretary of State certifies in writing that such extension is consistent with the purposes of this Act, and reports that certification to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate, together with a detailed statement of the reasons for the extension. If at the end of that additional thirty-day period the events set forth in paragraphs (1) and (2) of subsection (a) have not occurred, the provisions of this Act shall cease to be effective and the provisions of the Agreement may not be implemented unless the Congress approves the Agreement after the end of that thirty-day period or unless, before the expiration of that thirty-day period, authorized by joint resolution a further extension of time for implementation of the Agreement. Such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976,[2] and in the House of Representatives a motion to proceed to the consideration of such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged.

SOCIAL SECURITY AGREEMENT

SEC. 11. The Secretary of State shall conduct a detail review of the exchange of letters between the United States and Czechoslovakia providing for reciprocal social security payments to residents of the two countries. Such review should include an examination of the extent to which Czechoslovakia is complying with the spirit and provisions of the letters, a comparison of the benefits being realized by residents of Czechoslovakia and of the United States under the letters, and an evaluation of the basis of differences in such benefits. The Secretary of State, in consultation with the Department of Health and Human Services, shall report to the Congress, not later than six months after the date of the enactment of this Act, the results of such review, together with any recommendations for legislation or changes in the agreement made

[2] For text, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

by the letters that may be necessary to achieve greater comparability and equity of benefits for the residents of the two countries. Such report should include specific assessments of the feasibility, likely effects, and advisability of terminating United States social security payments to residents of Czechoslovakia in response to inequities and incomparabilities of benefits payments under the exchange of letters.

d. Trust Territories of the Pacific

(1) Micronesian Claims Act of 1971, as amended

Public Law 92–39 [H.J. Res. 617], 85 Stat. 92, 50 App. U.S.C. 2018–2020b,[1] approved July 1, 1971; as amended by Public Law 93–131 [H.R. 6628], 87 Stat. 460, approved October 19, 1973

JOINT RESOLUTION To authorize an ex gratia contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages arising out of the hostilities of the Second World War, to provide for the payment of noncombat claims occurring prior to July 1, 1951, and to establish a Micronesian Claims Commission.

Whereas certain Micronesian inhabitants of the Trust Territory of the Pacific Islands, formerly under League of Nations mandate to Japan, suffered from the hostilities of the Second World War; and

Whereas the United States, while not liable for wartime damages suffered by the Micronesians, has responsibility for the welfare of the Micronesian people as the administering authority of the Trust Territory of the Pacific Islands; and

Whereas the Governments of Japan and the United States entered into an agreement on April 18, 1969, to contribute ex gratia the equivalent of $10,000,000 to the Micronesian inhabitants of the Trust Territory of the Pacific Islands in view of the suffering caused by the hostilities of the Second World War, each Government contributing the equivalent of $5,000,000, Japan's contribution to take the form of products and services; and

Whereas payments of these ex gratia contributions to certain Micronesian inhabitants of the Trust Territory of the Pacific Islands will meet a longstanding Micronesian grievance and will promote the welfare of the Micronesian people; and

Whereas certain Micronesian inhabitants of the Trust Territory of the Pacific Islands claim to have suffered damage to or loss or destruction of property, personal injury, or death caused by military and civilian employees of the United States Government and arising out of accidents or incidents between the dates of the securing of the various islands of Micronesia by the United States Armed Forces and July 1, 1951, and within an area under the control of the United States at the time of the accident or incident; and

Whereas the United States is desirous of making an equitable settlement of these claims by way of a monetary contribution: Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this resolution may be cited as the "Micronesian Claim Act of 1971".

[1] Secs. 2018 through 2020b terminated August 3, 1976, pursuant to sec. 103(e) of this Act.

TITLE I

Sec. 101. (a) It is the purpose of this title that, with respect to war claims, the United States should make the ex gratia contribution of $5,000,000 matching an equivalent contribution of the Government of Japan, to Micronesian inhabitants of the Trust Territory of the Pacific Islands who are determined by the Micronesian Claims Commission to be meritorious claimants, in particular amounts to be awarded by the Micronesian Claims Commission, and that the Secretary of the Interior, hereinafter referred to as the "Secretary", or his designee, shall pay to said Micronesian claimants as soon as possible following his receipt of the final report of the Micronesian Claims Commission on the claims allowed, such amounts as are finally certified pursuant to section 104 of this title.

(b)[2] A "Micronesian inhabitant of the Trust Territory of the Pacific Islands" is defined for the purposes of this Act as a person who—

(1) became a citizen of the Trust Territory of the Pacific Islands on July 18, 1947, and who remains a citizen of the Trust Territory of the Pacific Islands, or is a citizen of the United States, as of the date of filing a claim; or

(2) if then living, would have been eligible to become a citizen of the Trust Territory of the Pacific Islands on July 18, 1947; or

(3) is the successor, heir, or assignee of a person eligible under paragraph (1) or (2) and who is a citizen of the Trust Territory of the Pacific Islands, or of the United States, as of the date of filing a claim.

Sec. 102. (a) There is hereby authorized to be appropriated to the Trust Territory of the Pacific Islands $5,000,000, in addition to the normal budgetary expenditures for the Trust Territory of the Pacific Islands and in addition to the appropriations authorized by section 2 of the Act of June 30, 1954, as amended, to be paid into a "Micronesian Claims Fund". The Secretary is hereby authorized to create and manage said Micronesian Claims Fund.

(b) Funds approximating $5,000,000 appropriated to the Trust Territory of the Pacific Islands for supplies or capital improvements in accordance with the Act of June 30, 1954, as amended, shall be paid into a Micronesian Claims Fund as the products of Japan and the services of the Japanese people in the amount of one billion eight hundred million yen (currently computed at $5,000,000) are provided by Japan pursuant to article I of the "Agreement between the United States of America and Japan", signed April 18, 1969. These funds, together with the sum authorized to be appropriated by subsection (a) of this section, shall constitute the whole of the Micronesian Claims Fund.

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[2] Sec. 1 of Public Law 93–131 (87 Stat. 460) amended and restated subsec. (b), which previously read as follows:

"(b) A 'Micronesian inhabitant of the Trust Territory of the Pacific Islands' is defined for the purposes of this joint resolution as a person who:

"(1) became a citizen of the Trust Territory of the Pacific Islands on July 18, 1947, and who remains a citizen as of the date of filing a claim; or

"(2) if then living, would have been eligible for citizenship on July 18, 1947; or

"(3) is the successor, heir, or assignee of a person eligible under paragraph (1) or (2) and who is a citizen of the Trust Territory of the Pacific Islands as of the date of filing a claim.".

Sec. 103. (a) There is hereby established a Micronesian Claims Commission, hereinafter referred to as the "Commission", such Commission to be under the control and direction of the Chairman of the Foreign Claims Settlement Commission. The Commission shall be composed of five members, who shall be appointed, in consultation with the Secretary, by the Chairman of the Foreign Claims Settlement Commission, one of whom he shall designate as Chairman. Two members shall be selected from a list of Micronesian citizens nominated by the Congress of Micronesia. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of the original appointment. The members of the Commission shall serve at the pleasure of the Chairman of the Foreign Claims Settlement Commission. No Commissioner shall hold other public office or engage in any other employment during the period of his service on the Commission, except as an employee of the Foreign Claims Settlement Commission.

(b) The members of the Commission shall receive compensation and allowances as determined by the Chairman of the Foreign Claims Settlement Commission by application of the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands, but in no event shall traveling and other expenses incurred in connection with their duties as members, or a per diem allowance in lieu thereof, exceed that prescribed in accordance with the provisions of subchapter 1 of chapter 57 of title 5, United States Code. The term of office of the members of the Commission shall expire at the time fixed in subsection (e) of this section for winding up the affairs of the Commission.

(c) The Commission may, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, appoint and fix the compensation and allowances of such officers, attorneys, and employees of the Commission as may be reasonably necessary for its proper functioning, which employees shall be in addition to those who may be assigned by the Chairman of the Foreign Claims Settlement Commission to assist the Commission in carrying out its functions. The compensation and allowances of employees appointed pursuant to this section shall be within the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands, but in no event to exceed the amount of allowances prescribed in subchapter 1 of chapter 57 of title 5, United States Code. In addition, the Commission, with the approval of the Chairman of the Foreign Claims Settlement Commission, may make such expenditures as may be reasonably necessary to carry out its proper functioning. Officers and employees of any other department or agency of the Government of the United States or the government of the Trust Territory of the Pacific Islands may, with the consent of the head of such department or agency, with or without reimbursement, be assigned to assist the Commission in carrying out its functions. The Commission may, with the consent of the head of any other department or agency of the government of the United States or the government of the Trust Territory of the Pacific Islands, utilize, with or without reimbursement, the facilities and services of such department or agency in carrying out the functions of the Commission.

(d) The Commission shall, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, prescribe such rules and regulations as are necessary for carrying out its functions. As expeditiously as possible and, in any event, within three months of its appointment, the Commission shall give public notice in the Trust Territory of the Pacific Islands of the time when, and the limit of time within which, claims may be filed, which notice shall be given in such manner as the Commission shall prescribe: *Provided,* That the final date for the filing of claims shall not be more than one year after the appointment of the full membership of the Commission. The Commission shall give extensive publicity in the Trust Territory of the Pacific Islands to the provisions of this Act and shall make every effort to advise promptly all persons who may be entitled to file claims under the provisions of this Act administered by the Commission of their rights under such provisions, and to assist them in the preparation and filing of their claims. A majority of the membership of the Commission shall be necessary to transact business: *Provided, however,* That an affirmative vote of at least three members shall be required for the promulgation of rules and regulations, and for the final adjudication of any claim.

(e) The Commission shall wind up its affairs[3] as expeditiously as possible and in any event not later than three years after the expiration of the time for filing claims under this Act.

Sec. 104. (a) The Commission shall have authority to receive, examine, adjudicate, and render final decisions, in accordance with the laws of the Trust Territory of the Pacific Islands and international law, with respect to (1) claims of the Micronesian inhabitants of the Trust Territory of the Pacific Islands who suffered loss of life, physical injury, and property damage directly resulting from the hostilities between the Governments of Japan and the United States between December 7, 1941, and the dates of the securing of the various islands of Micronesia by United States Armed Forces, and (2) those claims arising as postwar claims between the dates of the securing of the various islands of Micronesia by United States Armed Forces and July 1, 1951. The Commission shall notify all claimants of the approval or denial of their claims, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission or its representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. As claims are adjudicated, the Commissioner shall certify them to the Secretary for payment in such manner as he may direct.[4] The claims covered by title I of this Act shall be paid from the Micronesian Claims Fund except that, as to claims based on death, up to $1,000 shall be paid immediately

[3] The Commission terminated on August 3, 1976.

[4] Sec. 2 of Public Law 93–131 amended and restated this sentence, which previously read as follows: "When all claims have been adjudicated, the Commission shall certify them to the Secretary for payment.".

upon adjudication, and the claims covered by title II of this Act shall be paid by the Secretary from the funds appropriated for such purpose.

(b) No later than six months after its organization, and annually thereafter, the Commission shall make a report, through the Chairman of the Foreign Claims Settlement Commission, to the Congress of the United States concerning its operations under this Act. The Commission shall, upon winding up its work, certify to the Chairman of the Foreign Claims Settlement Commission, the Secretary, and to the Congress of the United States the following:

(1) A list of all claims allowed, in whole or in part, together with the amount of each claim and, the amount awarded thereon.

(2) A list of all claims disallowed.

(3) A copy of the decision rendered in each case.

(c) In the event that funds remain in the Micronesian Claims Fund after all allowable and adjudicated claims are paid, such remaining funds shall be transferred from the Micronesian Claims Fund to the Treasury of the Trust Territory of the Pacific Islands for appropriation by the Congress of Micronesia for the welfare of the people of the Trust Territory of the Pacific Islands. In the event the allowable and adjudicated claims covered by title I of the act exceed a total of $10,000,000, the Secretary shall make pro rata payments.

(d) No payment shall be made on an award of the Commission unless the claimant shall first execute a full release to the United States and Japan in respect to any alleged liability of the United States or Japan, or both, arising before the date of the securing of the various islands of Micronesia by the United States Armed Forces.

Sec. 105. There is authorized to be appropriated such sums as may be necessary for the operation and administrative expenses of the Foreign Claims Settlement Commission, to the extent needed to cover activity connected with this Act, and of the Commission in order to carry out the purposes of this Act.

Sec. 106. The agreement for the payment of the Micronesian claims covered by title I of this Act having been reached by negotiators of the Governments of the United States and Japan, and since personnel to be appointed by the Secretary or the Commission will be available to assist the people of the Trust Territory of the Pacific Islands insofar as may be necessary in filing all claims covered by either title I or title II of this Act, no remuneration on account of services rendered on behalf of any claimant, or any association of claimants, in connection with any claim or claims covered by either title I or title II shall exceed, in total, 1 per centum of the amount paid on such claim or claims, pursuant to the provisions of this Act. Fees already paid for such services shall be deducted from the amount authorized by this Act. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more then twelve months, or both.

TITLE II

Sec. 201. For the purpose of promoting and maintaining friendly relations by the final settlement of meritorious postwar claims, the Micronesian Claims Commission is, pursuant to authority granted in section 104(a) title I, authorized to consider, ascertain, adjust, determine, and make payments, where accepted by the claimant in full satisfaction and in final settlement, of all claims by Micronesian inhabitants against the United States or the government of the Trust Territory of the Pacific Islands on account of personal injury or death or damage to or loss or destruction of private property, both real and personal, of Micronesian inhabitants of the former Japanese mandated islands, now the Trust Territory of the Pacific Islands administered by the United States under a trusteeship agreement with the United Nations, including claims for a taking or for use or retention of such property where no payments or inadequate payments have been made for such taking, use, or retention when such damage, loss, or destruction was caused by the United States Army, Navy, Marine Corps, or Coast Guard, or individual members thereof, including military personnel and United States Government civilian employees, and including employees of the Trust Territory government acting within the scope of their employment: *Provided,* That only those claims shall be considered by the Commission which are presented in writing as provided for in section 103(d) of title I of this Act and the accident or incident out of which the claim arose occurred prior to July 1, 1951, within the islands which now comprise the Trust Territory of the Pacific Islands and within an area under the control of the United States at the time of the accident or incident: *Provided further,* That any such settlements made by such Commission and any such payments made by the Secretary under the authority of title I or title II shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary and not subject to review.

Sec. 202. There is hereby authorized to be appropriated the amount of $20,000,000, in addition to the normal budgetary expenditures for the Trust Territory of the Pacific Islands and in addition to the appropriation authorized by section 2 of the Act of June 30, 1954, as amended, to be expended by the Secretary for the purposes of making payments to the extent authorized by this title of this Act.

Sec. 203. Any funds appropriated for the purposes of this title which remain after the settlement of claims under the provisions of this title shall be covered into the Treasury of the United States.

(2) Trust Territory Economic Development Loan Fund

Public Law 92–257 [S. 806], 86 Stat. 87, approved March 21, 1972; as amended by Public Law 97–357 [H.R. 5139], 96 Stat. 1705, approved October 19, 1982; and Public Law 105–362 [Federal Reports Elimination Act of 1998; S. 1364], 112 Stat. 3280, approved November 10, 1998

AN ACT Relating to the Trust Territory of the Pacific Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1.[1] For the purpose of promoting economic development in the Trust Territory of the Pacific Islands, there is authorized to be appropriated to the Secretary of the Interior, for payment to the government of the Trust Territory of the Pacific Islands as a grant in accordance with the provisions of this title, an amount which when added to the development fund established pursuant to section 3 of the Act of August 22, 1964 (78 Stat. 601), as augmented by subsequent Federal grants, will create a total fund of $5,000,000, which shall thereafter be known as the Trust Territory Economic Development Loan Fund.

Sec. 2.[2] The grant authorized by section 1 shall be made only after the government of the Trust Territory of the Pacific Islands has submitted to the Secretary of the Interior a plan for the use of the grant, and the plan has been approved by the Secretary. The plan shall provide among other things for a revolving fund to make loans or to guarantee loans to private enterprise. The term of any loan made pursuant to the plan shall not exceed twenty-five years.

Sec. 3.[3] No loan or loan guarantee shall be made under this title to any applicant who does not satisfy the territorial administering agency that financing is otherwise unavailable on reasonable terms and conditions. No loan or loan guarantee shall exceed (1) the amount which can reasonably be expected to be repaid, (2) the minimum amount necessary to accomplish the purposes of this title, or 25 per centum of the funds appropriated pursuant to section 1. No loan guarantee shall guarantee more than 90 per centum of the outstanding amount of any loan, and the reserves maintained to guarantee the loan shall not be less than the 25 per centum of the guarantee.

Sec. 4.[4] The plan provided for in section 2 shall set forth such fiscal control and accounting procedures as may be necessary to assure proper disbursement, repayment, and accounting for such funds.

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[1] 48 U.S.C. 1688.
[2] 48 U.S.C. 1689.
[3] 48 U.S.C. 1690.
[4] 48 U.S.C. 1691

Sec. 5.[5] The chief executives of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress.[6] The chief executives shall also make such other reports at such other times as may be required by the Congress or under applicable Federal laws.[6] This section is not subject to termination under section 502(a)(3) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 263, 268).

Sec. 6.[7] The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any relevant books, documents, papers, or records of the government of the Trust Territory of the Pacific Islands.

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[5] 48 U.S.C. 1692. Sec. 203(a) of Public Law 97–357 (96 Stat. 1707) amended and restated sec. 5. It previously read as follows:

"**Sec. 5.** The High Commissioner of the Trust Territory of the Pacific Islands shall make an annual report to the Secretary of the Interior on the administration of this title.".

[6] Sec. 901(p) of the Federal Reports Elimination Act of 1998 (Public Law 105–362; 112 Stat. 3291) struck out the third and fifth sentences of sec. 5, which previously read as follows:

"The chief executives shall transmit the comprehensive annual financial report to the Inspector General of the Department of the Interior who shall audit it and report his findings to the Congress."

"The chief executives shall submit to the Congress, the Secretary of the Interior, the High Commissioner of the Trust Territory of the Pacific Islands, and the cognizant Federal auditors a written statement of actions taken or contemplated on Federal audit recommendations within sixty days after the issuance date of the audit report.".

[7] 48 U.S.C. 1693.

(3) Civil Government for the Trust Territory of the Pacific Islands

Public Law 83–451 [S. 3318], 68 Stat. 330, approved June 30, 1954; as amended by Public Law 87–541 [S. 2775], 76 Stat. 171, approved July 19, 1962; Public Law 88–487 [H.R. 3198], 78 Stat. 601, approved August 22, 1964; Public Law 90–16 [S. 303], 81 Stat. 15, approved May 10, 1967; Public Law 90–617 [S. 3207], 82 Stat. 1213, approved October 21, 1968; Public Law 91–578 [3479], 84 Stat. 1559, approved December 24, 1970; Public Law 91–606 [S. 3619], 84 Stat. 1744, approved December 31, 1970; Public Law 93–111 [S. 1385], 87 Stat. 354, approved September 21, 1973; Public Law 93–288 [S. 3062], 88 Stat. 164, approved May 22, 1974; Public Law 94–27 [S. 326], 89 Stat. 95, approved May 28, 1975; Public Law 94–255 [H.R. 12122], 90 Stat. 299, approved April 1, 1976; Public Law 95–134 [H.R. 6550], 91 Stat. 1159, approved October 15, 1977; Public Law 96–205 [H.R. 3756], 94 Stat. 84, approved March 12, 1980; Public Law 96–597 [H.R. 8444], 94 Stat. 3478, approved December 24, 1980; and Public Law 97–357 [H.R. 5139], 96 Stat. 1705], approved October 19, 1982

AN ACT To provide for a continuance of civil government for the Trust Territory of the Pacific Islands.

Whereas, pursuant to the authority of Public Law 204, Eightieth Congress, approved July 18, 1947, the President approved a trusteeship agreement for the Trust Territory of the Pacific Islands between the United States Government and the Security Council of the United Nations; and

Whereas responsibility for civil administration of the Trust Territory was vested in the Secretary of the Navy by Executive Order Number 9875 of July 18, 1947; and

Whereas responsibility for such administration was transferred to the Secretary of the Interior, effective July 1, 1951, by Executive Order Numbered 10265 of June 29, 1951, as amended by Executive Order Numbered 10408 of November 10, 1952, and Executive Order Numbered 10470 of July 17, 1953: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (a)[1] That until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such a manner and through such agency or agencies as the President of the United States may direct or authorize.

(b)[2] The head of any department, corporation, or other agency of the executive branch of the Government may, upon the request of the Secretary of the Interior, extend to the Trust Territory of the Pacific Islands, with or without reimbursement, scientific, technical, and other assistance under any program administered by such agency, or extend to the Trust Territory any Federal program

[1] 48 U.S.C. 1681.
[2] Sec. 1 of Public Law 88–487 (78 Stat. 601) added subsec. (b).

administered by such agency if the assistance or program will promote the welfare of the Trust Territory, notwithstanding any provision of law under which the Trust Territory may otherwise be ineligible for the assistance of program: *Provided,* That the Secretary of the Interior shall not request assistance pursuant to this subsection that involves, in the aggregate, an estimated nonreimbursable cost in any one fiscal year in excess of $150,000: *Provided further,* That the cost of any program extended to the Trust Territory under this subsection shall be reimbursable out of appropriations authorized and made for the government of the Trust Territory pursuant to section 2 of this Act, as amended. The provisions of this subsection shall not apply to financial assistance under a grant-in-aid program.

Sec. 2.[3] There are authorized to be appropriated not to exceed $25,000,000 for fiscal year 1967, for fiscal year 1975, $75,000,000; for fiscal year 1976, $80,000,000; for the period beginning July 1, 1976, and ending September 30, 1976, $15,100,000; for fiscal year 1977, $80,000,000; and such amounts as were authorized but not appropriated for fiscal years 1975, 1976, and 1977; for fiscal year 1978, $90,000,000; for fiscal year 1979, $122,700,000; for fiscal year 1980, $112,000,000; for fiscal years after fiscal 1980, such sums as may be necessary, including, but not limited to, sums needed for completion of the capital improvement program; for a basic communications system; for a feasibility study and construction of hydroelectric project on Ponape; for expenditure by grant or contract for the installation, operation, and maintenance of communications systems which will provide internal and external communications;[4] and up to but not to exceed $8,000,000 for the construction of such buildings as are required for a four-year college to serve the Micronesian community (no appropriations for the construction of such buildings shall, however, be made (A) until, but not later than one year after the date of the enactment of this Act, the President causes a study to be made by an appropriate authority to determine the educational need and the most suitable educational concept for such a college and transmits such study, together with his recommendations, to the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States within said one year period and (B) until 90 calendar days after the receipt of such study and recommendations which shall be deemed approved unless specifically disapproved by resolution of either such committee), and $1,800,000 for a human development project in the Marshall Islands plus such sums as are necessary, for each fiscal years, or periods, to offset reductions in, or the termination of Federal grants-in-aid programs or other funds made available to the Trust Territory of the Pacific Islands by other Federal agencies, to remain available until expended, to carry out the provisions of this Act and to provide for a program of necessary

[3] 48 U.S.C. 1681 note. The language in sec. 2 concerning the authorization of funds after fiscal year 1980 was added by sec. 101 of Public Law 96–205 (94 Stat. 84). Sec. 2 had previously been amended by Public Law 90–16 (81 Stat. 15), Public Law 90–617 (82 Stat. 1213), Public Law 91–578 (84 Stat. 1559), Public Law 93–111 (87 Stat. 354), Public Law 94–27 (89 Stat. 95), Public Law 94–255 (90 Stat. 299), and Public Law 95–134 (91 Stat. 1159).

[4] Sec. 401 of Public Law 96–597 (94 Stat. 3478) inserted "for expenditure by grant or contract for the installation, operation, and maintenance of communications systems which will provide internal and external communications;".

capital improvements and public works related to health, education, utilities, highways, transportation facilities, communications, and public buildings: *Provided,* That except for funds appropriated for the activities of the Peace Corps no funds appropriated by any Act shall be used for administration of the Trust Territory of the Pacific Islands except as may be specifically authorized by law.

Sec. 3.[5] There are hereby authorized to be appropriated such sums as the Secretary of the Interior may find necessary, but not to exceed $10,000,000 for any one year, to alleviate suffering and damage resulting from major disasters that occur in the Trust Territory of the Pacific Islands. Such sums shall be in addition to those authorized in section 2 of this Act and shall not be subject to the limitations imposed by section 2 of this Act. The Secretary of the Interior shall determine whether or not a major disaster has occurred in accordance with the principles and policies of sections 102(2) and 301 of the Disaster Relief Act of 1974.[6]

Sec. 4.[7] (a) The following functions, powers, and duties heretofore vested in the government comptroller for Guam with respect to the government of the Trust Territory of the Pacific Islands and the government of the Northern Mariana Islands are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands:

(1) The authority to audit all accounts pertaining to the revenue and receipts of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands, and to funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the aforementioned governments including those pertaining to trust funds held by such governments.

(2) The authority to report to the Secretary of the Interior, the High Commissioner of the Trust Territory of the Pacific Islands, the chief executives of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands all failures to collect amounts due the governments, and expenditures of funds or uses of property which are irregular or not pursuant to law.

(b) The authority granted in paragraph (a) shall extend to all activities of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands,

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[5] 48 U.S.C. 1681 note. Sec. 2 of Public Law 90–617 (82 Stat. 1213) added sec. 3.

[6] Sec. 301(k) of Public Law 91–606 (84 Stat. 1759), struck out "section 2 of the Act of September 30, 1950 (64 Stat. 1109), as amended (42 U.S.C. 1855a)" and inserted in lieu thereof "section 102(1) of the Disaster Relief Act of 1970". Subsequently, sec. 602(k) of Public Law 93–288 (88 Stat. 164) struck out "section 102(1) of the Disaster Relief Act of 1970" and inserted in lieu thereof "sections 102(2) and 301 of the Disaster Relief Act of 1974".

[7] 48 U.S.C. 1681b. Sec. 203(b) of Public Law 97–357 (96 Stat. 1707) added sec. 4. Sec. 203(b) of Public Law 97–357 repealed a previous sec. 4, as added by sec. 2 of Public Law 93–111 (87 Stat. 354) and amended by sec. 203(b) of Public Law 95–134 (91 Stat. 1162) and sec. 201(b) of Public Law 96–205 (94 Stat. 85). The previous sec. 4 related to duties of the government comptroller for Guam in addition to those imposed by the Organic Act of Guam.

and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended. This section is not subject to termination under section 502(a)(3) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 263, 268).

(c) In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for Guam related to its audit function, with respect to the government of the Trust Territory of the Public Islands and the government of the Northern Mariana Islands are hereby transferred to the Office of Inspector General, Department of the Interior.

(4) Interior Appropriations for Trust Territory of the Pacific Islands

Partial text of Public Law 109–54 [Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006; H.R. 2361], 119 Stat. 499, approved August 2, 2005

AN ACT Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes, namely:

TITLE I—DEPARTMENT OF THE INTERIOR

* * * * * * *

DEPARTMENTAL OFFICES

INSULAR AFFAIRS

ASSISTANCE TO TERRITORIES

For expenses necessary for assistance to territories under the jurisdiction of the Department of the Interior, $76,883,000, of which: (1) $69,502,000 shall be available until expended for technical assistance, including maintenance assistance, disaster assistance, insular management controls, coral reef initiative activities, and brown tree snake control and research; grants to the judiciary in American Samoa for compensation and expenses, as authorized by law (48 U.S.C. 1661(c)); grants to the Government of American Samoa, in addition to current local revenues, for construction and support of governmental functions; grants to the Government of the Virgin Islands as authorized by law; grants to the Government of Guam, as authorized by law; and grants to the Government of the Northern Mariana Islands as authorized by law (Public Law 94-241; 90 Stat. 272); and (2) $7,381,000 shall be available for salaries and expenses of the Office of Insular Affairs: *Provided,* That all financial transactions of the territorial and local governments herein provided for, including such transactions of all agencies or instrumentalities established or used by such governments, may be audited by the Government Accountability Office, at its discretion, in accordance with chapter 35 of title 31, United States Code:[1] *Provided further,* That Northern Mariana Islands Covenant grant

[1] 48 U.S.C. 1469b.

funding shall be provided according to those terms of the Agreement of the Special Representatives on Future United States Financial Assistance for the Northern Mariana Islands approved by Public Law 104-134: *Provided further,* That of the amounts provided for technical assistance, sufficient funds shall be made available for a grant to the Pacific Basin Development Council: *Provided further,* That of the amounts provided for technical assistance, sufficient funding shall be made available for a grant to the Close Up Foundation: *Provided further,* That the funds for the program of operations and maintenance improvement are appropriated to institutionalize routine operations and maintenance improvement of capital infrastructure with territorial participation and cost sharing to be determined by the Secretary based on the grantee's commitment to timely maintenance of its capital assets: *Provided further,* That any appropriation for disaster assistance under this heading in this Act or previous appropriations Acts may be used as non-Federal matching funds for the purpose of hazard mitigation grants provided pursuant to section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c).

* * * * * * *

e. Ryukyu Claims Settlement Act

Public Law 89–296 [S.J. Res. 32], 79 Stat. 1071, approved October 27, 1965

JOINT RESOLUTION To authorize a contribution to certain inhabitants of the Ryukyu Islands for death and injury to persons and for use of and damage to private property, arising from acts and omissions of the United States Armed Forces, or members thereof, after August 15, 1945, and before April 28, 1952.

Whereas certain persons of the Ryukyu Islands suffered damages incident to the activities of the Armed Forces of the United States, or members thereof, after the surrender of Japanese forces in the Ryukyus on August 15, 1945, and before the effective date of the Treaty of Peace with Japan on April 28, 1952;

Whereas article 19 of the Treaty of Peace with Japan extinguished the legal liability of the United States for any claims of Japanese nationals, including Ryukyuans, with the result that the United States has made no compensation for the above-mentioned damages (except for use of and damage to land during the period from July 1, 1950 to April 28, 1952);

Whereas it is particularly consonant with the concern of the United States, as the sole administering authority in the Ryukyu Islands, for the welfare of the Ryukyuan people, that those Ryukyuans who suffered damages incident to the activities of the United States Armed Forces, or members thereof, should be compensated therefor;

Whereas payment of ex gratia compensation, by advancing the welfare of the Ryukyuan people, will promote the security interest, foreign policy, and foreign relations of the United States; and

Whereas the High Commissioner of the Ryukyu Islands has considered the evidence regarding these claims, and has determined, in an equitable manner, those claims which are meritorious, and the amounts thereof: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States should make an ex gratia contribution to the persons (excluding municipalities) determined by the High Commissioner of the Ryukyu Islands to be meritorious claimants, in the amounts determined by him, and that the Secretary of the Army or his designee should, under regulations prescribed by the Secretary of Defense, pay such amounts to the claimants or their legal heirs, as a civil function of the Department of the Army; and be it further

Resolved, That no funds appropriated under this joint resolution shall be disbursed to satisfy claims, or portions thereof, which have been satisfied by contributions made by the Government of Japan.

Sec. 2. There is authorized to be appropriated not to exceed $22,000,000[1] to carry out the provisions of this joint resolution, which funds are authorized to remain available for two years from the effective date of their appropriation. Any funds unobligated by the end of that period shall be covered into the Treasury of the United States.

Sec. 3. No remuneration on account of services rendered on behalf of any claimant in connection with any claim shall exceed 5 per centum of the total amount paid, pursuant to the provisions of this joint resolution, or such claim; except that no remuneration on account of such services rendered on behalf of any association of claimants by any agent or attorney (including organizations thereof) shall exceed 1 per centum of the aggregate amount so paid on the claims involved. Fees already paid for such services shall be deducted from the amounts authorized under this joint resolution. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

[1] Public Law 89–691 (80 Stat. 1018), approved October 15, 1966, appropriated the amount "$21,040,000."

4. Compacts of Free Association and Related Legislation

a. Compact of Free Association Amendments Act of 2003

Public Law 108–188 [H.J. Res. 63], 117 Stat. 2720, approved December 17, 2003

JOINT RESOLUTION To approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.

Whereas[1] the United States (in accordance with the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the United Nations Charter, and the objectives of the international trusteeship system of the United Nations) fulfilled its obligations to promote the development of the people of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned;

Whereas the United States, the Federated States of Micronesia, and the Republic of the Marshall Islands entered into the Compact of Free Association set forth in title II of Public Law 99-239, January 14, 1986, 99 Stat. 1770, to create and maintain a close and mutually beneficial relationship;

Whereas the United States, in accordance with section 231 of the Compact of Free Association entered into negotiations with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands to provide continued United States assistance and to reaffirm its commitment to this close and beneficial relationship; and

Whereas these negotiations, in accordance with section 431 of the Compact, resulted in the "Compact of Free Association, as amended between the Government of the United States of America and the Government of the Federated States of Micronesia", and the "Compact of Free Association, as amended between the Government of the United States of America and the Government of the Republic of the Marshall Islands", which, together with their related agreements, were signed by the Government of the United States and the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands on May 14, and April 30, 2003, respectively: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

[1] 48 U.S.C. 1921 note.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a)[2] SHORT TITLE.—This joint resolution, together with the table of contents in subsection (b) of this section, may be cited as the "Compact of Free Association Amendments Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this joint resolution is as follows:

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[2] 48 U.S.C. 1901 note.

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SEC. 101.[3] APPROVAL OF U.S.-FSM COMPACT OF FREE ASSOCIATION AND THE U.S.-RMI COMPACT OF FREE ASSOCIATION; REFERENCES TO SUBSIDIARY AGREEMENTS OR SEPARATE AGREEMENTS.

(a) FEDERATED STATES OF MICRONESIA.—The Compact of Free Association, as amended with respect to the Federated States of Micronesia and signed by the United States and the Government of the Federated States of Micronesia and set forth in Title II (section 201(a)) of this joint resolution, is hereby approved, and Congress hereby consents to the subsidiary agreements and amended subsidiary agreements listed in section 462 of the U.S.-FSM Compact. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the U.S.-

[3] 48 U.S.C. 1921.

FSM Compact, to an effective date for and thereafter to implement such U.S.-FSM Compact.

(b) REPUBLIC OF THE MARSHALL ISLANDS.—The Compact of Free Association, as amended with respect to the Republic of the Marshall Islands and signed by the United States and the Government of the Republic of the Marshall Islands and set forth in Title II (section 201(b)) of this joint resolution, is hereby approved, and Congress hereby consents to the subsidiary agreements and amended subsidiary agreements listed in section 462 of the U.S.-RMI Compact. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the U.S.-RMI Compact, to an effective date for and thereafter to implement such U.S.-RMI Compact.

(c) REFERENCES TO THE COMPACT, THE U.S.-FSM COMPACT, AND THE U.S.-RMI COMPACT; REFERENCES TO SUBSIDIARY AGREEMENTS OR SEPARATE AGREEMENTS.—

(1) Any reference in this joint resolution (except references in Title II) to "the Compact" shall be treated as a reference to the Compact of Free Association set forth in title II of Public Law 99–239, January 14, 1986, 99 Stat. 1770. Any reference in this joint resolution to the "U.S.-FSM Compact" shall be treated as a reference to the Compact of Free Association, as amended between the Government of the United States of America and the Government of the Federated States of Micronesia and set forth in Title II (section 201(a)) of this joint resolution. Any reference in this joint resolution to the "U.S.-RMI Compact" shall be treated as a reference to the Compact of Free Association, as amended between the Government of the United States of America and the Government of the Republic of the Marshall Islands and set forth in Title II (section 201(b)) of this joint resolution.

(2) Any reference to the term "subsidiary agreements" or "separate agreements" in this joint resolution shall be treated as a reference to agreements listed in section 462 of the U.S.-FSM Compact and the U.S.-RMI Compact, and any other agreements that the United States may from time to time enter into with either the Government of the Federated States of Micronesia or the Government of the Republic of the Marshall Islands, or with both such governments in accordance with the provisions of the U.S.-FSM Compact and the U.S.-RMI Compact.

(d) AMENDMENT, CHANGE, OR TERMINATION IN THE U.S.-FSM COMPACT AND U.S.-RMI COMPACT AND CERTAIN AGREEMENTS.—

(1) Any amendment, change, or termination by mutual agreement or by unilateral action of the Government of the United States of all or any part of the U.S.-FSM Compact or U.S.-RMI Compact shall not enter into force until after Congress has incorporated it in an Act of Congress.

(2) The provisions of paragraph (1) shall apply—

(A) to all actions of the Government of the United States under the U.S.-FSM Compact or U.S.-RMI Compact including, but not limited to, actions taken pursuant to sections 431, 441, or 442;

(B) to any amendment, change, or termination in the Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association referred to in section 462(a)(2) of the U.S.-FSM Compact and the Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association referred to in section 462(a)(5) of the U.S.-RMI Compact;

(C) to any amendment, change, or termination of the agreements concluded pursuant to Compact section 177, and section 215(a) of the U.S.-FSM Compact and section 216(a) of the U.S.-RMI Compact, the terms of which are incorporated by reference into the U.S.-FSM Compact and the U.S.-RMI Compact; and

(D) to the following subsidiary agreements, or portions thereof:

(i) Articles III, IV, and X of the agreement referred to in section 462(b)(6) of the U.S.-RMI Compact.

(ii) Article III and IV of the agreement referred to in section 462(b)(6) of the U.S.-FSM Compact.

(iii) Articles VI, XV, and XVII of the agreement referred to in section 462(b)(7) of the U.S.-FSM Compact and U.S.-RMI Compact.

(e) SUBSIDIARY AGREEMENTS DEEMED BILATERAL.—For purposes of implementation of the U.S.-FSM Compact and the U.S.-RMI Compact and this joint resolution, the Agreement Concluded Pursuant to Section 234 of the Compact of Free Association and referred to in section 462(a)(1) of the U.S.-FSM Compact and section 462(a)(4) of the U.S.-RMI Compact shall be deemed to be a bilateral agreement between the United States and each other party to such subsidiary agreement. The consent or concurrence of any other party shall not be required for the effectiveness of any actions taken by the United States in conjunction with either the Federated States of Micronesia or the Republic of the Marshall Islands which are intended to affect the implementation, modification, suspension, or termination of such subsidiary agreement (or any provision thereof) as regards the mutual responsibilities of the United States and the party in conjunction with whom the actions are taken.

(f) ENTRY INTO FORCE OF FUTURE AMENDMENTS TO SUBSIDIARY AGREEMENTS.—No agreement between the United States and the government of either the Federated States of Micronesia or the Republic of the Marshall Islands which would amend, change, or terminate any subsidiary agreement or portion thereof, other than those set forth in subsection (d) of this section shall enter into force until 90 days after the President has transmitted such agreement to the President of the Senate and the Speaker of the House of Representatives together with an explanation of the agreement and the reasons therefor. In the case of the agreement referred to in

section 462(b)(3) of the U.S.-FSM Compact and the U.S.-RMI Compact, such transmittal shall include a specific statement by the Secretary of Labor as to the necessity of such amendment, change, or termination, and the impact thereof.

SEC. 102.[4] AGREEMENTS WITH FEDERATED STATES OF MICRONESIA.

(a) LAW ENFORCEMENT ASSISTANCE.—Pursuant to sections 222 and 224 of the U.S.-FSM Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Federated States of Micronesia to develop and adequately enforce laws of the Federated States of Micronesia and to cooperate with the United States in the enforcement of criminal laws of the United States. Funds appropriated pursuant to section 105(j) of this title may be used to reimburse State or local agencies providing such assistance.

(b) AGREEMENT ON AUDITS.—The Comptroller General (and his duly authorized representatives) shall have the authorities necessary to carry out his responsibilities under section 232 of the U.S.-FSM Compact and the agreement referred to in section 462(b)(4) of the U.S.-FSM Compact, including the following authorities:

(1) GENERAL AUTHORITY OF THE COMPTROLLER GENERAL TO AUDIT.—

(A) The Comptroller General of the United States (and his duly authorized representatives) shall have the authority to audit—

(i) all grants, program assistance, and other assistance provided to the Government of the Federated States of Micronesia under Articles I and II of Title Two of the U.S.-FSM Compact; and

(ii) any other assistance provided by the Government of the United States to the Government of the Federated States of Micronesia. Such authority shall include authority for the Comptroller General to conduct or cause to be conducted any of the audits provided for in section 232 of the U.S.-FSM Compact. The authority provided in this paragraph shall continue for at least three years after the last such grant has been made or assistance has been provided.

(B) The Comptroller General (and his duly authorized representatives) shall also have authority to review any audit conducted by or on behalf of the Government of the United States. In this connection, the Comptroller General shall have access to such personnel and to such records, documents, working papers, automated data and files, and other information relevant to such review.

(2) COMPTROLLER GENERAL ACCESS TO RECORDS.—

(A) In carrying out paragraph (1), the Comptroller General (and his duly authorized representatives) shall have such access to the personnel and (without cost) to records, documents, working papers, automated data and files, and

[4] 48 U.S.C. 1921a.

other information relevant to such audits. The Comptroller General may duplicate any such records, documents, working papers, automated data and files, or other information relevant to such audits.

(B) Such records, documents, working papers, automated data and files, and other information regarding each such grant or other assistance shall be maintained for at least five years after the date such grant or assistance was provided and in a manner that permits such grants, assistance, and payments to be accounted for distinct from any other funds of the Government of the Federated States of Micronesia.

(3) STATUS OF COMPTROLLER GENERAL REPRESENTATIVES.—The Comptroller General and his duly authorized representatives shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be expressly waived by the Government of the United States. The Comptroller General and his duly authorized representatives shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents. Such persons shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations. The privileges, exemptions and immunities accorded under this paragraph are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government of the Federated States of Micronesia.

(4) AUDITS DEFINED.—As used in this subsection, the term "audits" includes financial, program, and management audits, including determining—

(A) whether the Government of the Federated States of Micronesia has met the requirements set forth in the U.S.-FSM Compact, or any related agreement entered into under the U.S.-FSM Compact, regarding the purposes for which such grants and other assistance are to be used; and

(B) the propriety of the financial transactions of the Government of the Federated States of Micronesia pursuant to such grants or assistance.

(5) COOPERATION BY FEDERATED STATES OF MICRONESIA.—The Government of the Federated States of Micronesia will cooperate fully with the Comptroller General of the United States in the conduct of such audits as the Comptroller General determines necessary to enable the Comptroller General to fully discharge his responsibilities under this joint resolution.

SEC. 103.[5] AGREEMENTS WITH AND OTHER PROVISIONS RELATED TO THE REPUBLIC OF THE MARSHALL ISLANDS.

(a) LAW ENFORCEMENT ASSISTANCE.—Pursuant to sections 222 and 224 of the U.S.-RMI Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Marshall Islands to develop and adequately enforce laws of the Marshall Islands and to cooperate with the United States in the enforcement of criminal laws of the United States. Funds appropriated pursuant to section 105(j) of this title may be used to reimburse State or local agencies providing such assistance.

(b) EJIT.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the President of the United States shall negotiate with the Government of the Marshall Islands an agreement whereby, without prejudice as to any claims which have been or may be asserted by any party as to rightful title and ownership of any lands on Ejit, the Government of the Marshall Islands shall assure that lands on Ejit used as of January 1, 1985, by the people of Bikini, will continue to be available without charge for their use, until such time as Bikini is restored and inhabitable and the continued use of Ejit is no longer necessary, unless a Marshall Islands court of competent jurisdiction finally determines that there are legal impediments to continued use of Ejit by the people of Bikini.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that if the impediments described in paragraph (1) do arise, the United States will cooperate with the Government of the Marshall Islands in assisting any person adversely affected by such judicial determination to remain on Ejit, or in locating suitable and acceptable alternative lands for such person's use.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that paragraph (1) shall not be applied in a manner which would prevent the Government of the Marshall Islands from acting in accordance with its constitutional processes to resolve title and ownership claims with respect to such lands or from taking substitute or additional measures to meet the needs of the people of Bikini with their democratically expressed consent and approval.

(c) SECTION 177 AGREEMENT.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in furtherance of the purposes of Article I of the Subsidiary Agreement for Implementation of Section 177 of the Compact, the payment of the amount specified therein shall be made by the United States under Article I of the Agreement between the Government of the United States and the Government of the Marshall Islands for the Implementation of section 177 of the Compact (hereafter in this subsection referred to as the "Section 177 Agreement") only

[5] 48 U.S.C. 1921b.

after the Government of the Marshall Islands has notified the President of the United States as to which investment management firm has been selected by such Government to act as Fund Manager under Article I of the Section 177 Agreement.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in the event that the President determines that an investment management firm selected by the Government of the Marshall Islands does not meet the requirements specified in Article I of the Section 177 Agreement, the United States shall invoke the conference and dispute resolution procedures of Article II of Title Four of the Compact. Pending the resolution of such a dispute and until a qualified Fund Manager has been designated, the Government of the Marshall Islands shall place the funds paid by the United States pursuant to Article I of the Section 177 Agreement into an interest-bearing escrow account. Upon designation of a qualified Fund Manager, all funds in the escrow account shall be transferred to the control of such Fund Manager for management pursuant to the Section 177 Agreement.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that if the Government of the Marshall Islands determines that some other investment firm should act as Fund Manager in place of the firm first (or subsequently) selected by such Government, the Government of the Marshall Islands shall so notify the President of the United States, identifying the firm selected by such Government to become Fund Manager, and the President shall proceed to evaluate the qualifications of such identified firm.

(4) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that at the end of 15 years after the effective date of the Compact, the firm then acting as Fund Manager shall transfer to the Government of the Marshall Islands, or to such account as such Government shall so notify the Fund Manager, all remaining funds and assets being managed by the Fund Manager under the Section 177 Agreement.

(d) NUCLEAR TEST EFFECTS.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in approving the Compact, the Congress understands and intends that the peoples of Bikini, Enewetak, Rongelap, and Utrik, who were affected by the United States nuclear weapons testing program in the Marshall Islands, will receive the amounts of $75,000,000 (Bikini); $48,750,000 (Enewetak); $37,500,000 (Rongelap); and $22,500,000 (Utrik), respectively, which amounts shall be paid out of proceeds from the fund established under Article I, section 1 of the subsidiary agreement for the implementation of section 177 of the Compact. The amounts specified in this subsection shall be in addition to any amounts which may be awarded to claimants pursuant to Article IV of the subsidiary agreement for the implementation of Section 177 of the Compact.

(e) ESPOUSAL PROVISIONS.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that it is the intention of the Congress of the United States that the provisions of section 177 of the Compact of Free Association and the Agreement between

the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact (hereafter in this subsection referred to as the "Section 177 Agreement") constitute a full and final settlement of all claims described in Articles X and XI of the Section 177 Agreement, and that any such claims be terminated and barred except insofar as provided for in the Section 177 Agreement.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in furtherance of the intention of Congress as stated in paragraph (1) of this subsection, the Section 177 Agreement is hereby ratified and approved. It is the explicit understanding and intent of Congress that the jurisdictional limitations set forth in Article XII of such Agreement are enacted solely and exclusively to accomplish the objective of Article X of such Agreement and only as a clarification of the effect of Article X, and are not to be construed or implemented separately from Article X.

(f) DOE RADIOLOGICAL HEALTH CARE PROGRAM; USDA AGRICULTURAL AND FOOD PROGRAMS.—

(1) MARSHALL ISLANDS PROGRAM.—Notwithstanding any other provision of law, upon the request of the Government of the Republic of the Marshall Islands, the President (either through an appropriate department or agency of the United States or by contract with a United States firm) shall continue to provide special medical care and logistical support thereto for the remaining members of the population of Rongelap and Utrik who were exposed to radiation resulting from the 1954 United States thermo-nuclear "Bravo" test, pursuant to Public Laws 95–134 and 96–205.

(2) AGRICULTURAL AND FOOD PROGRAMS.—

(A) IN GENERAL.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that notwithstanding any other provision of law, upon the request of the Government of the Marshall Islands, for the first fifteen years after the effective date of the Compact, the President (either through an appropriate department or agency of the United States or by contract with a United States firm or by a grant to the Government of the Republic of the Marshall Islands which may further contract only with a United States firm or a Republic of the Marshall Islands firm, the owners, officers and majority of the employees of which are citizens of the United States or the Republic of the Marshall Islands) shall provide technical and other assistance—

(i) without reimbursement, to continue the planting and agricultural maintenance program on Enewetak, as provided in subparagraph (C); and

(ii) without reimbursement, to continue the food programs of the Bikini and Enewetak people described in section 1(d) of Article II of the Subsidiary Agreement for the Implementation of Section 177 of the Compact

and for continued waterborne transportation of agricultural products to Enewetak including operations and maintenance of the vessel used for such purposes.

(B) POPULATION CHANGES.—The President shall ensure the assistance provided under these programs reflects the changes in the population since the inception of such programs.

(C) PLANTING AND AGRICULTURAL MAINTENANCE PROGRAM.—

(i) IN GENERAL.—The planting and agricultural maintenance program on Enewetak shall be funded at a level of not less than $1,300,000 per year, as adjusted for inflation under section 218 of the U.S.-RMI Compact.

(ii) AUTHORIZATION AND CONTINUING APPROPRIATION.—There is hereby authorized and appropriated to the Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for each fiscal year from 2004 through 2023, $1,300,000, as adjusted for inflation under section 218 of the U.S.-RMI Compact, for grants to carry out the planting and agricultural maintenance program.

(3) PAYMENTS.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that payments under this subsection shall be provided to such extent or in such amounts as are necessary for services and other assistance provided pursuant to this subsection. It is the sense of Congress that after the periods of time specified in paragraphs (1) and (2) of this subsection, consideration will be given to such additional funding for these programs as may be necessary.

(g) RONGELAP.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that because Rongelap was directly affected by fallout from a 1954 United States thermonuclear test and because the Rongelap people remain unconvinced that it is safe to continue to live on Rongelap Island, it is the intent of Congress to take such steps (if any) as may be necessary to overcome the effects of such fallout on the habitability of Rongelap Island, and to restore Rongelap Island, if necessary, so that it can be safely inhabited. Accordingly, it is the expectation of the Congress that the Government of the Marshall Islands shall use such portion of the funds specified in Article II, section 1(e) of the subsidiary agreement for the implementation of section 177 of the Compact as are necessary for the purpose of contracting with a qualified scientist or group of scientists to review the data collected by the Department of Energy relating to radiation levels and other conditions on Rongelap Island resulting from the thermonuclear test. It is the expectation of the Congress that the Government of the Marshall Islands, after consultation with the people of Rongelap, shall select the party to review such data, and shall contract for such review and for submission of a report to the

President of the United States and the Congress as to the results thereof.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the purpose of the review referred to in paragraph (1) of this subsection shall be to establish whether the data cited in support of the conclusions as to the habitability of Rongelap Island, as set forth in the Department of Energy report entitled: "The Meaning of Radiation for Those Atolls in the Northern Part of the Marshall Islands That Were Surveyed in 1978", dated November 1982, are adequate and whether such conclusions are fully supported by the data. If the party reviewing the data concludes that such conclusions as to habitability are fully supported by adequate data, the report to the President of the United States and the Congress shall so state. If the party reviewing the data concludes that the data are inadequate to support such conclusions as to habitability or that such conclusions as to habitability are not fully supported by the data, the Government of the Marshall Islands shall contract with an appropriate scientist or group of scientists to undertake a complete survey of radiation and other effects of the nuclear testing program relating to the habitability of Rongelap Island. Such sums as are necessary for such survey and report concerning the results thereof and as to steps needed to restore the habitability of Rongelap Island are authorized to be made available to the Government of the Marshall Islands.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that it is the intent of Congress that such steps (if any) as are necessary to restore the habitability of Rongelap Island and return the Rongelap people to their homeland will be taken by the United States in consultation with the Government of the Marshall Islands and, in accordance with its authority under the Constitution of the Marshall Islands, the Rongelap local government council.

(4) There are hereby authorized and appropriated to the Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for fiscal year 2005, $1,780,000; for fiscal year 2006, $1,760,000; and for fiscal year 2007, $1,760,000, as the final contributions of the United States to the Rongelap Resettlement Trust Fund as established pursuant to Public Law 102–154 (105 Stat. 1009), for the purposes of establishing a food importation program as a part of the overall resettlement program of Rongelap Island.

(h) FOUR ATOLL HEALTH CARE PROGRAM.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that services provided by the United States Public Health Service or any other United States agency pursuant to section 1(a) of Article II of the Agreement for the Implementation of Section 177 of the Compact (hereafter in this subsection referred to as the "Section 177 Agreement") shall be only for services to the people of the Atolls of Bikini, Enewetak, Rongelap, and Utrik who were affected by the consequences of the United States nuclear testing

program, pursuant to the program described in Public Law 95–134 (91 Stat. 1159) and Public Law 96–205 (94 Stat. 84) and their descendants (and any other persons identified as having been so affected if such identification occurs in the manner described in such public laws). Nothing in this subsection shall be construed as prejudicial to the views or policies of the Government of the Marshall Islands as to the persons affected by the consequences of the United States nuclear testing program.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that at the end of the first year after the effective date of the Compact and at the end of each year thereafter, the providing agency or agencies shall return to the Government of the Marshall Islands any unexpended funds to be returned to the Fund Manager (as described in Article I of the Section 177 Agreement) to be covered into the Fund to be available for future use.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the Fund Manager shall retain the funds returned by the Government of the Marshall Islands pursuant to paragraph (2) of this subsection, shall invest and manage such funds, and at the end of 15 years after the effective date of the Compact, shall make from the total amount so retained and the proceeds thereof annual disbursements sufficient to continue to make payments for the provision of health services as specified in paragraph (1) of this subsection to such extent as may be provided in contracts between the Government of the Marshall Islands and appropriate United States providers of such health services.

(i) ENJEBI COMMUNITY TRUST FUND.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that notwithstanding any other provision of law, the Secretary of the Treasury shall establish on the books of the Treasury of the United States a fund having the status specified in Article V of the subsidiary agreement for the implementation of Section 177 of the Compact, to be known as the "Enjebi Community Trust Fund" (hereafter in this subsection referred to as the "Fund"), and shall credit to the Fund the amount of $7,500,000. Such amount, which shall be ex gratia, shall be in addition to and not charged against any other funds provided for in the Compact and its subsidiary agreements, this joint resolution, or any other Act. Upon receipt by the President of the United States of the agreement described in this subsection, the Secretary of the Treasury, upon request of the Government of the Marshall Islands, shall transfer the Fund to the Government of the Marshall Islands, provided that the Government of the Marshall Islands agrees as follows:

(1) ENJEBI TRUST AGREEMENT.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the Government of the Marshall Islands and the Enewetak Local Government Council, in consultation with the people of Enjebi, shall provide for the creation of the Enjebi Community Trust Fund and the employment of the manager of the Enewetak Fund established pursuant to the Section 177 Agreement as trustee and manager of the Enjebi Community Trust

Fund, or, should the manager of the Enewetak Fund not be acceptable to the people of Enjebi, another United States investment manager with substantial experience in the administration of trusts and with funds under management in excess of $250,000,000.

(2) MONITOR CONDITIONS.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that upon the request of the Government of the Marshall Islands, the United States shall monitor the radiation and other conditions on Enjebi and within one year of receiving such a request shall report to the Government of the Marshall Islands when the people of Enjebi may resettle Enjebi under circumstances where the radioactive contamination at Enjebi, including contamination derived from consumption of locally grown food products, can be reduced or otherwise controlled to meet whole body Federal radiation protection standards for the general population, including mean annual dose and mean 30-year cumulative dose standards.

(3) RESETTLEMENT OF ENJEBI.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in the event that the United States determines that the people of Enjebi can within 25 years of January 14, 1986, resettle Enjebi under the conditions set forth in paragraph (2) of this subsection, then upon such determination there shall be available to the people of Enjebi from the Fund such amounts as are necessary for the people of Enjebi to do the following, in accordance with a plan developed by the Enewetak Local Government Council and the people of Enjebi, and concurred with by the Government of the Marshall Islands to assure consistency with the government's overall economic development plan:

(A) Establish a community on Enjebi Island for the use of the people of Enjebi.

(B) Replant Enjebi with appropriate food-bearing and other vegetation.

(4) RESETTLEMENT OF OTHER LOCATION.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in the event that the United States determines that within 25 years of January 14, 1986, the people of Enjebi cannot resettle Enjebi without exceeding the radiation standards set forth in paragraph (2) of this subsection, then the fund manager shall be directed by the trust instrument to distribute the Fund to the people of Enjebi for their resettlement at some other location in accordance with a plan, developed by the Enewetak Local Government Council and the people of Enjebi and concurred with by the Government of the Marshall Islands, to assure consistency with the government's overall economic development plan.

(5) INTEREST FROM FUND.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that prior to and during the distribution of the corpus of the Fund pursuant to paragraphs (3) and (4) of this subsection, the people of Enjebi may, if they so request, receive the interest earned by the Fund on no less frequent a basis than quarterly.

(6) DISCLAIMER OF LIABILITY.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that neither under the laws of the Marshall Islands nor under the laws of the United States, shall the Government of the United States be liable for any loss or damage to person or property in respect to the resettlement of Enjebi by the people of Enjebi, pursuant to the provision of this subsection or otherwise.

(j) BIKINI ATOLL CLEANUP.—

(1) DECLARATION OF POLICY.—In the joint resolution of January 14, 1986 (Public Law 99–239), the Congress determined and declared that it is the policy of the United States, to be supported by the full faith and credit of the United States, that because the United States, through its nuclear testing and other activities, rendered Bikini Atoll unsafe for habitation by the people of Bikini, the United States will fulfill its responsibility for restoring Bikini Atoll to habitability, as set forth in paragraph (2) and (3) of this subsection.

(2) CLEANUP FUNDS.—The joint resolution of January 14, 1986 (Public Law 99–239) authorized to be appropriated such sums as necessary to implement the settlement agreement of March 15, 1985, in The People of Bikini, et al. against United States of America, et al., Civ. No. 84–0425 (D. Ha.).

(3) CONDITIONS OF FUNDING.—In the joint resolution of January 14, 1986 (Public Law 99–239) the Congress provided that the funds referred to in paragraph (2) were to be made available pursuant to Article VI, Section 1 of the Compact Section 177 Agreement upon completion of the events set forth in the settlement agreement referred to in paragraph (2) of this subsection.

(k) AGREEMENT ON AUDITS.—The Comptroller General (and his duly authorized representatives) shall have the authorities necessary to carry out his responsibilities under section 232 of the U.S.-RMI Compact and the agreement referred to in section 462(b)(4) of the U.S.-RMI Compact, including the following authorities:

(1) GENERAL AUTHORITY OF THE COMPTROLLER GENERAL TO AUDIT.—

(A) The Comptroller General of the United States (and his duly authorized representatives) shall have the authority to audit—

(i) all grants, program assistance, and other assistance provided to the Government of the Republic of the Marshall Islands under Articles I and II of Title Two of the U.S.-RMI Compact; and

(ii) any other assistance provided by the Government of the United States to the Government of the Republic of the Marshall Islands. Such authority shall include authority for the Comptroller General to conduct or cause to be conducted any of the audits provided for in section 232 of the U.S.-RMI Compact. The authority provided in this paragraph shall continue for at least three years after the last such grant has been made or assistance has been provided.

(B) The Comptroller General (and his duly authorized representatives) shall also have authority to review any audit conducted by or on behalf of the Government of the United States. In this connection, the Comptroller General shall have access to such personnel and to such records, documents, working papers, automated data and files, and other information relevant to such review.

(2) COMPTROLLER GENERAL ACCESS TO RECORDS.—

(A) In carrying out paragraph (1), the Comptroller General (and his duly authorized representatives) shall have such access to the personnel and (without cost) to records, documents, working papers, automated data and files, and other information relevant to such audits. The Comptroller General may duplicate any such records, documents, working papers, automated data and files, or other information relevant to such audits.

(B) Such records, documents, working papers, automated data and files, and other information regarding each such grant or other assistance shall be maintained for at least five years after the date such grant or assistance was provided and in a manner that permits such grants, assistance and payments to be accounted for distinct from any other funds of the Government of the Republic of the Marshall Islands.

(3) STATUS OF COMPTROLLER GENERAL REPRESENTATIVES.—The Comptroller General and his duly authorized representatives shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be expressly waived by the Government of the United States. The Comptroller General and his duly authorized representatives shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents. Such persons shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations. The privileges, exemptions and immunities accorded under this paragraph are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government of the Republic of the Marshall Islands.

(4) AUDITS DEFINED.—As used in this subsection, the term "audits" includes financial, program, and management audits, including determining—

(A) whether the Government of the Republic of the Marshall Islands has met the requirements set forth in the U.S.-RMI Compact, or any related agreement entered into under the U.S.-RMI Compact, regarding the purposes for which such grants and other assistance are to be used; and

(B) the propriety of the financial transactions of the Government of the Republic of the Marshall Islands pursuant to such grants or assistance.

(5) COOPERATION BY THE REPUBLIC OF THE MARSHALL ISLANDS.—The Government of the Republic of the Marshall Islands will cooperate fully with the Comptroller General of the United States in the conduct of such audits as the Comptroller General determines necessary to enable the Comptroller General to fully discharge his responsibilities under this joint resolution.

(l) KWAJALEIN.—

(1) STATEMENT OF POLICY.—It is the policy of the United States that payment of funds by the Government of the Marshall Islands to the landowners of Kwajalein Atoll in accordance with the land use agreement dated October 19, 1982, or as amended or superseded, and any related allocation agreements, is required in order to ensure that the Government of the United States will be able to fulfill its obligation and responsibilities under Title Three of the U.S.-RMI Compact and the subsidiary agreements concluded pursuant to the U.S.-RMI Compact.

(2) FAILURE TO PAY.—

(A) IN GENERAL.—If the Government of the Marshall Islands fails to make payments in accordance with paragraph (1), the Government of the United States shall initiate procedures under section 313 of the U.S.-RMI Compact and consult with the Government of the Marshall Islands with respect to the basis for the nonpayment of funds.

(B) RESOLUTION.—The United States shall expeditiously resolve the matter of any nonpayment of funds required under paragraph (1) pursuant to section 313 of the U.S.-RMI Compact and the authority and responsibility of the Government of the United States for security and defense matters in or relating to the Marshall Islands. This paragraph shall be enforced, as may be necessary, in accordance with section 105(e).

(3) DISPOSITION OF INCREASED PAYMENTS PENDING NEW LAND USE AGREEMENT.—Until such time as the Government of the Marshall Islands and the landowners of Kwajalein Atoll have concluded an agreement amending or superseding the land use agreement reflecting the terms of and consistent with the Military Use Operating Rights Agreement dated October 19, 1982, any amounts paid by the United States to the Government of the Marshall Islands in excess of the amounts required to be paid pursuant to the land use agreement dated October 19, 1982, shall be paid into, and held in, an interest bearing escrow account in a United States financial institution by the Government of the Republic of the Marshall Islands. At such time, the funds and interest held in escrow shall be paid to the landowners of Kwajalein in accordance with the new land use agreement. If no such agreement is concluded by the date

which is five years after the date of enactment of this resolution, then such funds and interest shall, unless otherwise mutually agreed between the Government of the United States of America and the Government of the Republic of the Marshall Islands, be returned to the U.S. Treasury.

(4) NOTIFICATIONS AND REPORT.—

(A) The Government of the Republic of the Marshall Islands shall notify the Government of the United States of America when an agreement amending or superseding the land use agreement dated October 19, 1982, is concluded.

(B) If no agreement amending or superseding the land use agreement dated October 19, 1982 is concluded by the date five years after the date of enactment of this resolution, then the President shall report to Congress on the intentions of the United States with respect to the use of Kwajalein Atoll after 2016, on any plans to relocate activities carried out on Kwajalein Atoll, and on the disposition of the funds and interest held in escrow under paragraph (3).

(5) ASSISTANCE.—The President is authorized to make loans and grants to the Government of the Marshall Islands to address the special needs of the community at Ebeye, Kwajalein Atoll, and other Marshallese communities within the Kwajalein Atoll, pursuant to development plans adopted in accordance with applicable laws of the Marshall Islands. The loans and grants shall be subject to such other terms and conditions as the President, in the discretion of the President, may determine are appropriate.

SEC. 104.[6] INTERPRETATION OF AND UNITED STATES POLICY REGARDING U.S.-FSM COMPACT AND U.S.-RMI COMPACT.

(a) HUMAN RIGHTS.—In approving the U.S.-FSM Compact and the U.S.-RMI Compact, Congress notes the conclusion in the Statement of Intent of the Report of The Future Political Status Commission of the Congress of Micronesia in July, 1969, that "our recommendation of a free associated state is indissolubly linked to our desire for such a democratic, representative, constitutional government" and notes that such desire and intention are reaffirmed and embodied in the Constitutions of the Federated States of Micronesia and the Republic of the Marshall Islands. Congress also notes and specifically endorses the preamble to the U.S.-FSM Compact and the U.S.-RMI Compact, which affirms that the governments of the parties to the U.S.-FSM Compact and the U.S.-RMI Compact are founded upon respect for human rights and fundamental freedoms for all. The Secretary of State shall include in the annual reports on the status of internationally recognized human rights in foreign countries, which are submitted to Congress pursuant to sections 116 and 502B of the Foreign Assistance Act of 1961, "22 U.S.C. 2151n, 2304" a full and complete report regarding the status of internationally recognized human rights in the Federated States of Micronesia and the Republic of the Marshall Islands.

(b) IMMIGRATION AND PASSPORT SECURITY.—

[6] 48 U.S.C. 1921c.

(1) NATURALIZED CITIZENS.—The rights of a bona fide naturalized citizen of the Federated States of Micronesia or the Republic of the Marshall Islands to enter the United States, to lawfully engage therein in occupations, and to establish residence therein as a nonimmigrant, to the extent such rights are provided under section 141 of the U.S.-FSM Compact and U.S.-RMI Compact, shall not be deemed to extend to any such naturalized citizen with respect to whom circumstances associated with the acquisition of the status of a naturalized citizen are such as to allow a reasonable inference, on the part of appropriate officials of the United States and subject to United States procedural requirements, that such naturalized status was acquired primarily in order to obtain such rights.

(2) PASSPORTS.—It is the sense of Congress that up to $250,000 of the grant assistance provided to the Federated States of Micronesia pursuant to section 211(a)(4) of the U.S.-FSM Compact, and up to $250,000 of the grant assistance provided to the Republic of the Marshall Islands pursuant to section 211(a)(4) of the U.S.-RMI Compact (or a greater amount of the section 211(a)(4) grant, if mutually agreed between the Government of the United States and the government of the Federated States of Micronesia or the government of the Republic of the Marshall Islands), be used for the purpose of increasing the machine-readability and security of passports issued by such jurisdictions. It is further the sense of Congress that such funds be obligated by September 30, 2004 and in the amount and manner specified by the Secretary of State in consultation with the Secretary of Homeland Security and, respectively, with the government of the Federated States of Micronesia and the government of the Republic of the Marshall Islands. The United States Government is authorized to require that passports used for the purpose of seeking admission under section 141 of the U.S.-FSM Compact and the U.S.-RMI Compact contain the security enhancements funded by such assistance.

(3) INFORMATION-SHARING.—It is the sense of Congress that the governments of the Federated States of Micronesia and the Republic of the Marshall Islands develop, prior to October 1, 2004, the capability to provide reliable and timely information as may reasonably be required by the Government of the United States in enforcing criminal and security-related grounds of inadmissibility and deportability under the Immigration and Nationality Act, as amended, and shall provide such information to the Government of the United States.

(4) TRANSITION; CONSTRUCTION OF SECTIONS 141(A)(3) AND 141(A)(4) OF THE U.S.-FSM COMPACT AND U.S.-RMI COMPACT.—The words "the effective date of this Compact, as amended" in sections 141(a)(3) and 141(a)(4) of the U.S.-FSM Compact and the U.S.-RMI Compact shall be construed to read, "on the day prior to the enactment by the United States Congress of the Compact of Free Association Amendments Act of 2003.".

(c) NONALIENATION OF LANDS.—Congress endorses and encourages the maintenance of the policies of the Government of the Federated States of Micronesia and the Government of the Republic of

the Marshall Islands to regulate, in accordance with their Constitutions and laws, the alienation of permanent interests in real property so as to restrict the acquisition of such interests to persons of Federated States of Micronesia citizenship and the Republic of the Marshall Islands citizenship, respectively.

(d) NUCLEAR WASTE DISPOSAL.—In approving the U.S.-FSM Compact and the U.S.-RMI Compact, Congress understands that the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands will not permit any other government or any nongovernmental party to conduct, in the Republic of the Marshall Islands or in the Federated States of Micronesia, any of the activities specified in subsection (a) of section 314 of the U.S.-FSM Compact and the U.S.-RMI Compact.

(e) IMPACT OF THE U.S.-FSM COMPACT AND THE U.S.-RMI COMPACT ON THE STATE OF HAWAII, GUAM, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND AMERICAN SAMOA; RELATED AUTHORIZATION AND CONTINUING APPROPRIATION.—

(1) STATEMENT OF CONGRESSIONAL INTENT.—In reauthorizing the U.S.-FSM Compact and the U.S.-RMI Compact, it is not the intent of Congress to cause any adverse consequences for an affected jurisdiction.

(2) DEFINITIONS.—For the purposes of this title—

(A) the term "affected jurisdiction" means American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the State of Hawaii; and

(B) the term "qualified nonimmigrant" means a person, or their children under the age of 18, admitted or resident pursuant to section 141 of the U.S.-RMI or U.S.-FSM Compact, or section 141 of the Palau Compact who, as of a date referenced in the most recently published enumeration is a resident of an affected jurisdiction. As used in this subsection, the term "resident" shall be a person who has a "residence," as that term is defined in section 101(a)(33) of the Immigration and Nationality Act, as amended.

(3) AUTHORIZATION AND CONTINUING APPROPRIATION.—There is hereby authorized and appropriated tothe Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for each fiscal year from 2004 through 2023, $30,000,000 for grants to affected jurisdictions to aid in defraying costs incurred by affected jurisdictions as a result of increased demands placed on health, educational, social, or public safety services or infrastructure related to such services due to the residence in affected jurisdictions of qualified nonimmigrants from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau. The grants shall be—

(A) awarded and administered by the Department of the Interior, Office of Insular Affairs, or any successor thereto, in accordance with regulations, policies and procedures applicable to grants so awarded and administered; and

(B) used only for health, educational, social, or public safety services, or infrastructure related to such services, specifically affected by qualified nonimmigrants.

(4) ENUMERATION.—The Secretary of the Interior shall conduct periodic enumerations of qualified nonimmigrants in each affected jurisdiction. The enumerations—

(A) shall be conducted at such intervals as the Secretary of the Interior shall determine, but no less frequently than every five years, beginning in fiscal year 2003;

(B) shall be supervised by the United States Bureau of the Census or such other organization as the Secretary of the Interior may select; and

(C) after fiscal year 2003, shall be funded by the Secretary of the Interior by deducting such sums as are necessary, but not to exceed $300,000 as adjusted for inflation pursuant to section 217 of the U.S.-FSM Compact with fiscal year 2003 as the base year, per enumeration, from funds appropriated pursuant to the authorization contained in paragraph (3) of this subsection.

(5) ALLOCATION.—The Secretary of the Interior shall allocate to the government of each affected jurisdiction, on the basis of the results of the most recent enumeration, grants in an aggregate amount equal to the total amount of funds appropriated under paragraph (3) of this subsection, as reduced by any deductions authorized by subparagraph (C) of paragraph (4) of this subsection, multiplied by a ratio derived by dividing the number of qualified nonimmigrants in such affected jurisdiction by the total number of qualified nonimmigrants in all affected jurisdictions.

(6) AUTHORIZATION FOR HEALTH CARE REIMBURSEMENT.—There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to reimburse health care institutions in the affected jurisdictions for costs resulting from the migration of citizens of the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau to the affected jurisdictions as a result of the implementation of the Compact of Free Association, approved by Public Law 99–239, or the approval of the U.S.-FSM Compact and the U.S.-RMI Compact by this resolution.

(7) USE OF DOD MEDICAL FACILITIES AND NATIONAL HEALTH SERVICE CORPS.—

(A) DOD MEDICAL FACILITIES.—The Secretary of Defense shall make available, on a space available and reimbursable basis, the medical facilities of the Department of Defense for use by citizens of the Federated States of Micronesia and the Republic of the Marshall Islands who are properly referred to the facilities by government authorities responsible for provision of medical services in the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau and the affected jurisdictions.

(B) NATIONAL HEALTH SERVICE CORPS.—The Secretary of Health and Human Services shall continue to make the services of the National Health Service Corps availableto the residents of the Federated States of Micronesia and the Republic of the Marshall Islands to the same extent

and for so long as such services are authorized to be provided to persons residing in any other areas within or outside the United States.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph such sums as are necessary for each fiscal year.

(8) REPORTING REQUIREMENT.—Not later than one year after the date of enactment of this joint resolution, and at one year intervals thereafter, the Governors of Guam, the State of Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa may provide to the Secretary of the Interior by February 1 of each year their comments with respect to the impacts of the Compacts on their respective jurisdiction. The Secretary of the Interior, upon receipt of any such comments, shall report to the Congress not later than May 1 of each year to include the following:

(A) The Governor's comments on the impacts of the Compacts as well as the Administration's analysis of such impact.

(B) The Administration views on any recommendations for corrective action to eliminate those consequences as proposed by such Governors.

(C) With regard to immigration, statistics concerning the number of persons availing themselves of the rights described in section 141(a) of the Compact during the year covered by each report.

(D) With regard to trade, an analysis of the impact on the economy of American Samoa resulting from imports of canned tuna into the United States from the Federated States of Micronesia, and the Republic of the Marshall Islands.

(9) RECONCILIATION OF UNREIMBURSED IMPACT EXPENSES.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the President, to address previously accrued and unreimbursed impact expenses, may at the request of the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands, reduce, release, or waive all or part of any amounts owed by the Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands (or either government's autonomous agencies or instrumentalities), respectively, to any department, agency, independent agency, office, or instrumentality of the United States.

(B) TERMS AND CONDITIONS.—

(i) SUBSTANTIATION OF IMPACT COSTS.—Not later than 120 days after the date of the enactment of this resolution, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands shall each submit to the Secretary of the Interior a report, prepared in consultation with an independent accounting firm, substantiating unreimbursed impact expenses claimed for the period from January 14, 1986, through September 30, 2003. Upon request of the Secretary of the Interior, the Governor of Guam and the

Governor of the Commonwealth of the Northern Mariana Islands shall submit to the Secretary of the Interior copies of all documents upon which the report submitted by that Governor under this clause was based.

(ii) CONGRESSIONAL NOTIFICATION.—The President shall notify Congress of his intent to exercise the authority granted in subparagraph (A).

(iii) CONGRESSIONAL REVIEW AND COMMENT.—Any reduction, release, or waiver under this Act shall not take effect until 60 days after the President notifies Congress of his intent to approve a request of the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands. In exercising his authority under this section and in determining whether to give final approval to a request, the President shall take into consideration comments he may receive after Congressional review.

(iv) EXPIRATION.—The authority granted in subparagraph (A) shall expire on February 28, 2005.

(10) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—There are hereby authorized to the Secretary of the Interior for each of fiscal years 2004 through 2023 such sums as may be necessary for grants to the governments of Guam, the State of Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa, as a result of increased demands placed on educational, social, or public safety services or infrastructure related to service due to the presence in Guam, Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa of qualified nonimmigrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(f) FOREIGN LOANS.—Congress hereby reaffirms the United States position that the United States Government is not responsible for foreign loans or debt obtained by the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands.

(g) SENSE OF CONGRESS CONCERNING FUNDING OF PUBLIC INFRASTRUCTURE.—It is the sense of Congress that not less than 30 percent of the United States annual grant assistance provided under section 211 of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and not less than 30 percent of the total amount of section 211 funds allocated to each of the States of the Federated States of Micronesia, shall be invested in infrastructure improvements and maintenance in accordance with section 211(a)(6). It is further the sense of Congress that not less than 30 percent of the United States annual grant assistance provided under section 211 of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, shall be invested in infrastructure improvements and maintenance in accordance with section 211(d).

(h) REPORTS AND REVIEWS.—

(1) REPORT BY THE PRESIDENT.—Not later than the end of the first full calendar year following enactment of this resolution, and not later than December 31 of each year thereafter, the President shall report to Congress regarding the Federated States of Micronesia and the Republic of the Marshall Islands, including but not limited to—

(A) general social, political, and economic conditions, including estimates of economic growth, per capita income, and migration rates;

(B) the use and effectiveness of United States financial, program, and technical assistance;

(C) the status of economic policy reforms including but not limited to progress toward establishing self-sufficient tax rates;

(D) the status of the efforts to increase investment including: the rate of infrastructure investment of U.S. financial assistance under the U.S.-FSM Compact and the U.S.-RMI Compact; non-U.S. contributions to the trust funds, and the level of private investment; and

(E) recommendations on ways to increase the effectiveness of United States assistance and to meet overall economic performance objectives, including, if appropriate, recommendations to Congress to adjust the inflation rate or to adjust the contributions to the Trust Funds based on non-U.S. contributions.

(2) REVIEW.—During the year of the fifth, tenth, and fifteenth anniversaries of the date of enactment of this resolution, the Government of the United States shall review the terms of the respective Compacts and consider the overall nature and development of the U.S.-FSM and U.S.-RMI relationships including the topics set forth in subparagraphs (A) through (E) of paragraph (1). In conducting the reviews, the Government of the United States shall consider the operating requirements of the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands and their progress in meeting the development objectives set forth in their respective development plans. The President shall include in the annual reports to Congress for the years following the reviews the comments of the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands on the topics described in this paragraph, the President's response to the comments, the findings resulting from the reviews, and any recommendations for actions to respond to such findings.

(3) BY THE COMPTROLLER GENERAL.—Not later than the date that is three years after the date of enactment of this joint resolution, and every 5 years thereafter, the Comptroller General of the United States shall submit to Congress a report on the Federated States of Micronesia and the Republic of the Marshall Islands including the topics set forth in paragraphs (1)(A) through (E) above, and on the effectiveness of administrative oversight by the United States.

(i) CONSTRUCTION OF SECTION 141(f).—Section 141(f)(2) of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia and of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, shall be construed as though, after "may by regulations prescribe", there were included the following: ", except that any such regulations that would have a significant effect on the admission, stay and employment privileges provided under this section shall not become effective until 90 days after the date of transmission of the regulations to the Committee on Energy and Natural Resources and the Committee on the Judiciary of the Senate and the Committee on Resources, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives".

(j) INFLATION ADJUSTMENT.—As of Fiscal Year 2015, if the United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2009 through 2013 is greater than United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2004 through 2008 (as reported in the Survey of Current Business or subsequent publication and compiled by the Department of Interior), then section 217 of the U.S.-FSM Compact, paragraph 5 of Article II of the U.S.-FSM Fiscal Procedures Agreement, section 218 of the U.S.-RMI Compact, and paragraph 5 of Article II of the U.S.-RMI Fiscal Procedures Agreement shall be construed as if "the full" appeared in place of "two-thirds of the" each place those words appear. If an inflation adjustment is made under this subsection, the base year for calculating the inflation adjustment shall be fiscal year 2014.

(k) PARTICIPATION BY SECONDARY SCHOOLS IN THE ARMED SERVICES VOCATIONAL APTITUDE BATTERY (ASVAB) STUDENT TESTING PROGRAM.—In furtherance of the provisions of Title Three, Article IV, Section 341 of the U.S.-FSM and the U.S.-RMI Compacts, the purpose of which is to establish the privilege to volunteer for service in the U.S. Armed Forces, it is the sense of Congress that, to facilitate eligibility of FSM and RMI secondary school students to qualify for such service, the Department of Defense may extend the Armed Services Vocational Aptitude Battery (ASVAB) Student Testing Program (STP) and the ASVAB Career Exploration Program to selected secondary Schools in the FSM and the RMI to the extent such programs are available to Department of Defense Dependent Schools located in foreign jurisdictions.

SEC. 105.[7] SUPPLEMENTAL PROVISIONS.

(a) DOMESTIC PROGRAM REQUIREMENTS.—Except as may otherwise be provided in this joint resolution, all United States Federal programs and services extended to or operated in the Federated States of Micronesia or the Republic of the Marshall Islands are and shall remain subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and

[7] 48 U.S.C. 1921d.

regulations applicable to such programs when operating in the United States (including its territories and commonwealths).

(b) RELATIONS WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS.—

(1) Appropriations made pursuant to Article I of Title Two and subsection (a)(2) of section 221 of article II of Title Two of the U.S.-FSM Compact and the U.S.-RMI Compact shall be made to the Secretary of the Interior, who shall have the authority necessary to fulfill his responsibilities for monitoring and managing the funds so appropriated consistent with the U.S.-FSM Compact and the U.S.-RMI Compact, including the agreements referred to in section 462(b)(4) of the U.S.-FSM Compact and U.S.-RMI Compact (relating to Fiscal Procedures) and the agreements referred to in section 462(b)(5) of the U.S.-FSM Compact and the U.S.-RMI Compact (regarding the Trust Fund).

(2) Appropriations made pursuant to subsections (a)(1) and (a)(3) through (6) of section 221 of Article II of Title Two of the U.S.-FSM Compact and subsection (a)(1) and (a)(3) through (5) of the U.S.-RMI Compact shall be made directly to the agencies named in those subsections.

(3) Appropriations for services and programs referred to in subsection (b) of section 221 of Article II of Title Two of the U.S.-FSM Compact or U.S.-RMI Compact and appropriations for services and programs referred to in sections 105(f) and 108(a) of this joint resolution shall be made to the relevant agencies in accordance with the terms of the appropriations for such services and programs.

(4) Federal agencies providing programs and services to the Federated States of Micronesia and the Republic of the Marshall Islands shall coordinate with the Secretaries of the Interior and State regarding provision of such programs and services. The Secretaries of the Interior and State shall consult with appropriate officials of the Asian Development Bank and with the Secretary of the Treasury regarding overall economic conditions in the Federated States of Micronesia and the Republic of the Marshall Islands and regarding the activities of other donors of assistance to the Federated States of Micronesia and the Republic of the Marshall Islands.

(5) United States Government employees in either the Federated States of Micronesia or the Republic of the Marshall Islands are subject to the authority of the United States Chief of Mission, including as elaborated in section 207 of the Foreign Service Act and the President's Letter of Instruction to the United States Chief of Mission and any order or directive of the President in effect from time to time.

(6) INTERAGENCY GROUP ON FREELY ASSOCIATED STATES' AFFAIRS.—

(A) IN GENERAL.—The President is hereby authorized to appoint an Interagency Group on Freely Associated States' Affairs to provide policy guidance and recommendations on implementation of the U.S.-FSM Compact and the U.S.-RMI Compact to Federal departments and agencies.

(B) SECRETARIES.—It is the sense of Congress that the Secretary of State and the Secretary of the Interior shall be represented on the Interagency Group.

(7) UNITED STATES APPOINTEES TO JOINT COMMITTEES.—

(A) JOINT ECONOMIC MANAGEMENT COMMITTEE.—

(i) IN GENERAL.—The three United States appointees (United States chair plus two members) to the Joint Economic Management Committee provided for in section 213 of the U.S.-FSM Compact and Article III of the U.S.-FSM Fiscal Procedures Agreement referred to in section 462(b)(4) of the U.S.-FSM Compact shall be United States Government officers or employees.

(ii) DEPARTMENTS.—It is the sense of Congress that 2 of the 3 appointees should be designated from the Department of State and the Department of the Interior, and that U.S. officials of the Asian Development Bank shall be consulted in order to properly coordinate U.S. and Asian Development Bank financial, program, and technical assistance.

(iii) ADDITIONAL SCOPE.—Section 213 of the U.S.-FSM Compact shall be construed to read as though the phrase, "the implementation of economic policy reforms to encourage investment and to achieve self-sufficient tax rates," were inserted after "with particular focus on those parts of the plan dealing with the sectors identified in subsection (a) of section 211".

(B) JOINT ECONOMIC MANAGEMENT AND FINANCIAL ACCOUNTABILITY COMMITTEE.—

(i) IN GENERAL.—The three United States appointees (United States chair plus two members) to the Joint Economic Management and Financial Accountability Committee provided for in section 214 of the U.S.-RMI Compact and Article III of the U.S.-RMI Fiscal Procedures Agreement referred to in section 462(b)(4) of the U.S.-RMI Compact shall be United States Government officers or employees.

(ii) DEPARTMENTS.—It is the sense of Congress that 2 of the 3 appointees should be designated from the Department of State and the Department of the Interior, and that U.S. officials of the Asian Development Bank shall be consulted in order to properly coordinate U.S. and Asian Development Bank financial, program, and technical assistance.

(iii) ADDITIONAL SCOPE.—Section 214 of the U.S.-RMI Compact shall be construed to read as though the phrase, "the implementation of economic policy reforms to encourage investment and to achieve self-sufficient tax rates," were inserted after "with particular focus on those parts of the framework dealing with the sectors and areas identified in subsection (a) of section 211".

(8) OVERSIGHT AND COORDINATION.—It is the sense of Congress that the Secretary of State and the Secretary of the Interior shall ensure that there are personnel resources committed

in the appropriate numbers and locations to ensure effective oversight of United States assistance, and effective coordination of assistance among United States agencies and with other international donors such as the Asian Development Bank.

(9) The United States voting members (United States chair plus two or more members) of the Trust Fund Committee appointed by the Government of the United States pursuant to Article 7 of the Trust Fund Agreement implementing section 215 of the U.S.-FSM Compact and referred to in section 462(b)(5) of the U.S.-FSM Compact and any alternates designated by the Government of the United States shall be United States Government officers or employees. The United States voting members (United States chair plus two or more members) of the Trust Fund Committee appointed by the Government of the United States pursuant to Article 7 of the Trust Fund Agreement implementing section 216 of the U.S.-RMI Compact and referred to in section 462(b)(5) of the U.S.-RMI Compact and any alternates designated by the Government of the United States shall be United States Government officers or employees. It is the sense of Congress that the appointees should be designated from the Department of State, the Department of the Interior, and the Department of the Treasury.

(10) The Trust Fund Committee provided for in Article 7 of the U.S.-FSM Trust Fund Agreement implementing section 215 of the U.S.-FSM Compact shall be a nonprofit corporation incorporated under the laws of the District of Columbia. To the extent that any law, rule, regulation or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Trust Fund Committee is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the Trust Fund Committee pursuant to this joint resolution, such law, rule, regulation, or ordinance shall be deemed to be preempted by this joint resolution. The Trust Fund Committee provided for in Article 7 of the U.S.-RMI Trust Fund Agreement implementing section 216 of the U.S.-RMI Compact shall be a non-profit corporation incorporated under the laws of the District of Columbia. To the extent that any law, rule, regulation or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Trust Fund Committee is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the Trust Fund Committee pursuant to this joint resolution, such law, rule, regulation, or ordinance shall be deemed to be preempted by this joint resolution.

(c) CONTINUING TRUST TERRITORY AUTHORIZATION.—The authorization provided by the Act of June 30, 1954, as amended (68 Stat. 330) shall remain available after the effective date of the Compact with respect to the Federated States of Micronesia and the Republic of the Marshall Islands for the following purposes:

(1) Prior to October 1, 1986, for any purpose authorized by the Compact or the joint resolution of January 14, 1986 (Public Law 99–239).

(2) Transition purposes, including but not limited to, completion of projects and fulfillment of commitments or obligations;

termination of the Trust Territory Government and termination of the High Court; health and education as a result of exceptional circumstances; ex gratia contributions for the populations of Bikini, Enewetak, Rongelap, and Utrik; and technical assistance and training in financial management, program administration, and maintenance of infrastructure.

(d) SURVIVABILITY.—In furtherance of the provisions of Title Four, Article V, sections 452 and 453 of the U.S.-FSM Compact and the U.S.-RMI Compact, any provisions of the U.S.-FSM Compact or the U.S.-RMI Compact which remain effective after the termination of the U.S.-FSM Compact or U.S.-RMI Compact by the act of any party thereto and which are affected in any manner by provisions of this title shall remain subject to such provisions.

(e) NONCOMPLIANCE SANCTIONS; ACTIONS INCOMPATIBLE WITH UNITED STATES AUTHORITY.—Congress expresses its understanding that the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands will not act in a manner incompatible with the authority and responsibility of the United States for security and defense matters in or related to the Federated States of Micronesia or the Republic of the Marshall Islands pursuant to the U.S.-FSM Compact or the U.S.-RMI Compact, including the agreements referred to in sections 462(a)(2) of the U.S.-FSM Compact and 462(a)(5) of the U.S.-RMI Compact. Congress further expresses its intention that any such act on the part of either such Government will be viewed by the United States as a material breach of the U.S.-FSM Compact or U.S.-RMI Compact. The Government of the United States reserves the right in the event of such a material breach of the U.S.-FSM Compact by the Government of the Federated States of Micronesia or the U.S.-RMI Compact by the Government of the Republic of the Marshall Islands to take action, including (but not limited to) the suspension in whole or in part of the obligations of the Government of the United States to that Government.

(f) CONTINUING PROGRAMS AND LAWS.—

(1) FEDERATED STATES OF MICRONESIA AND REPUBLIC OF THE MARSHALL ISLANDS.—In addition to the programs and services set forth in section 221 of the Compact, and pursuant to section 222 of the Compact, the programs and services of the following agencies shall be made available to the Federated States of Micronesia and to the Republic of the Marshall Islands:

(A) CONTINUATION OF THE PROGRAMS AND SERVICES OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—Except as provided in clauses (ii) and (iii), the programs and services of the Department of Homeland Security, Federal Emergency Management Agency shall continue to be available to the Federated States of Micronesia and the Republic of the Marshall Islands to the same extent as such programs and services were available in fiscal year 2003.

(i) Paragraph (a)(6) of section 221 of the U.S.-FSM Compact and paragraph (a)(5) of the U.S.-RMI Compact shall each be construed as though the paragraph

reads as follows: "the Department of Homeland Security, United States Federal Emergency Management Agency.".

(ii) Subsection (d) of section 211 of the U.S.-FSM Compact and subsection (e) of section 211 of the U.S.-RMI Compact shall each be construed as though the subsection reads as follows: "Not more than $200,000 (as adjusted for inflation pursuant to section 217 of the U.S.-FSM Compact and section 218 of the U.S.-RMI Compact) shall be made available by the Secretary of the Interior to the Department of Homeland Security, Federal Emergency Management Agency to facilitate the activities of the Federal Emergency Management Agency in accordance with and to the extent provided in the Federal Programs and Services Agreement.".

(iii) The Secretary of State, in consultation with the Department of Homeland Security and the Federal Emergency Management Agency, shall immediately undertake negotiations with the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands regarding disaster assistance and shall report to the appropriate committees of Congress no later than June 30, 2004, on the outcome of such negotiations, including recommendations for changes to law regarding disaster assistance under the U.S.-FSM Compact and the U.S.-RMI Compact, and including subsidiary agreements as needed to implement such changes to law. If an agreement is not concluded, and legislation enacted which reflects such agreement, before the date which is five years after the date of enactment of this Joint Resolution, the following provisions shall apply:

"Paragraph (a)(6) of section 221 of the U.S.-FSM Compact and paragraph (a)(5) of section 221 of the U.S.-RMI Compact shall each be construed and applied as if each provision reads as follows:

"The U.S. Agency for International Development shall be responsible for the provision of emergency and disaster relief assistance in accordance with its statutory authorities, regulations and policies. The Republic of the Marshall Islands and the Federated States of Micronesia may additionally request that the President make an emergency or major disaster declaration. If the President declares an emergency or major disaster, the Department of Homeland Security (DHS), the Federal Emergency Management Agency (FEMA) and the U.S. Agency for International Development shall jointly (a) assess the damage caused by the emergency or disaster and (b) prepare a reconstruction plan including an estimate of the total amount of Federal resources that are needed for reconstruction. Pursuant to an interagency agreement, FEMA shall transfer funds from the Disaster Relief Fund in the amount

of the estimate, together with an amount to be determined for administrative expenses, to the U.S. Agency for International Development, which shall carry out reconstruction activities in the Republic of the Marshall Islands and the Federated States of Micronesia in accordance with the reconstruction plan. For purposes of Disaster Relief Fund appropriations, the funding of the activities to be carried out pursuant to this paragraph shall be deemed to be necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

"DHS may provide to the Republic of the Marshall Islands and the Federated States of Micronesia preparedness grants to the extent that such assistance is available to the States of the United States. Funding for this assistance may be made available from appropriations made to DHS for preparedness activities.".

(B) TREATMENT OF ADDITIONAL PROGRAMS.—

(i) CONSULTATION.—The United States appointees to the committees established pursuant to section 213 of the U.S.-FSM Compact and section 214 of the U.S.-RMI Compact shall consult with the Secretary of Education regarding the objectives, use, and monitoring of United States financial, program, and technical assistance made available for educational purposes.

(ii) CONTINUING PROGRAMS.—The Government of the United States—

(I) shall continue to make available to the Federated States of Micronesia and the Republic of the Marshall Islands for fiscal years 2004 through 2023, the services to individuals eligible for such services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) to the extent that such services continue to be available to individuals in the United States; and

(II) shall continue to make available to eligible institutions in the Federated States of Micronesia and the Republic of the Marshall Islands, and to students enrolled in such institutions, and in institutions in the United States and its territories, for fiscal years 2004 through 2023, grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.) to the extent that such grants continue to be available to institutions and students in the United States.

(iii) SUPPLEMENTAL EDUCATION GRANTS.—In lieu of eligibility for appropriations under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), other than subtitle C of that Act (29 U.S.C. 2881 et seq.) (Job Corps), title II of the Workforce Investment Act of 1998 (20 U.S.C. 9201 et seq.; commonly known as

the Adult Education and Family Literacy Act), title I of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2321 et seq.), the Head Start Act (42 U.S.C. 9831 et seq.), and subpart 3 of part A, and part C, of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070b et seq., 42 U.S.C. 2751 et seq.), there are authorized to be appropriated to the Secretary of Education to supplement the education grants under section 211(a)(1) of the U.S.-FSM Compact and section 211(a)(1) of the U.S.-RMI Compact, respectively, the following amounts:

(I) $12,230,000 for the Federated States of Micronesia for fiscal year 2005 and an equivalent amount, as adjusted for inflation under section 217 of the U.S.-FSM Compact, for each of fiscal years 2005 through 2023; and

(II) $6,100,000 for the Republic of the Marshall Islands for fiscal year 2005 and an equivalent amount, as adjusted for inflation under section 218 of the U.S.-RMI Compact, for each of fiscal years 2005 through 2023, except that citizens of the Federated States of Micronesia and the Republic of the Marshall Islands who attend an institution of higher education in the United States or its territories, the Federated States of Micronesia, or the Republic of the Marshall Islands on the date of enactment of this joint resolution may continue to receive assistance under such subpart 3 of part A or part C, for not more than 4 academic years after such date to enable such citizens to complete their program of study.

(iv) FISCAL PROCEDURES.—Appropriations made pursuant to clause (iii) shall be used and monitored in accordance with an agreement between the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Interior, and in accordance with the respective Fiscal Procedures Agreements referred to in section 462(b)(4) of the U.S.-FSM Compact and section 462(b)(4) of the U.S.-RMI Compact. The agreement between the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Interior shall provide for the transfer, not later than 60 days after the appropriations made pursuant to clause (iii) become available to the Secretary of Education, the Secretary of Labor, and the Secretary of Health and Human Services, from the Secretary of Education, the Secretary of Labor, and the Secretary of Health and Human Services, to the Secretary of the Interior for disbursement.

(v) FORMULA EDUCATION GRANTS.—For fiscal years 2005 through 2023, except as provided in clause (ii) and the exception provided under clause (iii), the Governments of the Federated States of Micronesia and

the Republic of the Marshall Islands shall not receive any grant under any formula-grant program administered by the Secretary of Education or the Secretary of Labor, nor any grant provided through the Head Start Act (42 U.S.C. 9831 et seq.) administered by the Secretary of Health and Human Services.

(vi) TRANSITION.—For fiscal year 2004, the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall continue to be eligible for appropriations and to receive grants under the provisions of law specified in clauses (ii) and (iii).

(vii) TECHNICAL ASSISTANCE.—The Federated States of Micronesia and the Republic of the Marshall Islands may request technical assistance from the Secretary of Education, the Secretary of Health and Human Services, or the Secretary of Labor the terms of which, including reimbursement, shall be negotiated with the participation of the appropriate cabinet officer for inclusion in the Federal Programs and Services Agreement.

(viii) CONTINUED ELIGIBILITY FOR COMPETITIVE GRANTS.—The Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall continue to be eligible for competitive grants administered by the Secretary of Education, the Secretary of Health and Human Services, and the Secretary of Labor to the extent that such grants continue to be available to State and local governments in the United States.

(ix) APPLICABILITY.—The Republic of Palau shall remain eligible for appropriations and to receive grants under the provisions of law specified in clauses (ii) and (iii) until the end of fiscal year 2007, to the extent the Republic of Palau was so eligible under such provisions in fiscal year 2003.

(C) The Legal Services Corporation.

(D) The Public Health Service.

(E) The Rural Housing Service (formerly, the Farmers Home Administration) in the Marshall Islands and each of the four States of the Federated States of Micronesia: Provided, That in lieu of continuation of the program in the Federated States of Micronesia, the President may agree to transfer to the Government of the Federated States of Micronesia without cost, the portfolio of the Rural Housing Service applicable to the Federated States of Micronesia and provide such technical assistance in management of the portfolio as may be requested by the Federated States of Micronesia.

(2) TORT CLAIMS.—The provisions of section 178 of the U.S.-FSM Compact and the U.S.-RMI Compact regarding settlement and payment of tort claims shall apply to employees of any Federal agency of the Government of the United States (and to any other person employed on behalf of any Federal agency of the Government of the United States on the basis of

a contractual, cooperative, or similar agreement) which provides any service or carries out any other function pursuant to or in furtherance of any provisions of the U.S.-FSM Compact or the U.S.-RMI Compact or this joint resolution, except for provisions of Title Three of the Compact and of the subsidiary agreements related to such Title, in such area to which such Agreement formerly applied.

(3) PCB CLEANUP.—The programs and services of the Environmental Protection Agency regarding PCBs shall, to the extent applicable, as appropriate, and in accordance with applicable law, be construed to be made available to such islands for the cleanup of PCBs imported prior to 1987. The Secretary of the Interior and the Secretary of Defense shall cooperate and assist in any such cleanup activities.

(g) COLLEGE OF MICRONESIA.—Until otherwise provided by Act of Congress, or until termination of the U.S.-FSM Compact and the U.S.-RMI Compact, the College of Micronesia shall retain its status as a land-grant institution and its eligibility for all benefits and programs available to such land-grant institutions.

(h) TRUST TERRITORY DEBTS TO U.S. FEDERAL AGENCIES.—Neither the Government of the Federated States of Micronesia nor the Government of the Marshall Islands shall be required to pay to any department, agency, independent agency, office, or instrumentality of the United States any amounts owed to such department, agency, independent agency, office, or instrumentality by the Government of the Trust Territory of the Pacific Islands as of the effective date of the Compact. There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

(i) JUDICIAL TRAINING.—

(1) IN GENERAL.—In addition to amounts provided under section 211(a)(4) of the U.S.-FSM Compact and the U.S.-RMI Compact, the Secretary of the Interior shall annually provide $300,000 for the training of judges and officials of the judiciary in the Federated States of Micronesia and the Republic of the Marshall Islands in cooperation with the Pacific Islands Committee of the Ninth Circuit Judicial Council and in accordance with and to the extent provided in the Federal Programs and Services Agreement and the Fiscal Procedure Agreement, as appropriate.

(2) AUTHORIZATION AND CONTINUING APPROPRIATION.—There is hereby authorized and appropriated to the Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for each fiscal year from 2004 through 2023, $300,000, as adjusted for inflation under section 218 of the U.S.-FSM Compact and the U.S.-RMI Compact, to carry out the purposes of this section.

(j) TECHNICAL ASSISTANCE.—Technical assistance may be provided pursuant to section 224 of the U.S.-FSM Compact or the U.S.-RMI Compact by Federal agencies and institutions of the Government of the United States to the extent such assistance may be provided to States, territories, or units of local government. Such assistance by the Forest Service, the Natural Resources Conservation Service, the Fish and Wildlife Service, the National Marine

Fisheries Service, the United States Coast Guard, and the Advisory Council on Historic Preservation, the Department of the Interior, and other agencies providing assistance under the National Historic Preservation Act (80 Stat. 915; 16 U.S.C. 470–470t), shall be on a nonreimbursable basis. During the period the U.S.-FSM Compact and the U.S.-RMI Compact are in effect, the grant programs under the National Historic Preservation Act shall continue to apply to the Federated States of Micronesia and the Republic of the Marshall Islands in the same manner and to the same extent as prior to the approval of the Compact. Any funds provided pursuant to sections 102(a), 103(a), 103(b), 103(f), 103(g), 103(h), 103(j), 105(c), 105(g), 105(h), 105(i), 105(j), 105(k), 105(l), and 105(m) of this joint resolution shall be in addition to and not charged against any amounts to be paid to either the Federated States of Micronesia or the Republic of the Marshall Islands pursuant to the U.S.-FSM Compact, the U.S.-RMI Compact, or their related subsidiary agreements.

(k) PRIOR SERVICE BENEFITS PROGRAM.—Notwithstanding any other provision of law, persons who on January 1, 1985, were eligible to receive payment under the Prior Service Benefits Program established within the Social Security System of the Trust Territory of the Pacific Islands because of their services performed for the United States Navy or the Government of the Trust Territory of the Pacific Islands prior to July 1, 1968, shall continue to receive such payments on and after the effective date of the Compact.

(l) INDEFINITE LAND USE PAYMENTS.—There are authorized to be appropriated such sums as may be necessary to complete repayment by the United States of any debts owed for the use of various lands in the Federated States of Micronesia and the Marshall Islands prior to January 1, 1985.

(m) COMMUNICABLE DISEASE CONTROL PROGRAM.—There are authorized to be appropriated for grants to the Government of the Federated States of Micronesia, the Government of the Republic of the Marshall Islands, and the governments of the affected jurisdictions, such sums as may be necessary for purposes of establishing or continuing programs for the control and prevention of communicable diseases, including (but not limited to) cholera, tuberculosis, and Hansen's Disease. The Secretary of the Interior shall assist the Government of the Federated States of Micronesia, the Government of the Republic of the Marshall Islands and the governments of the affected jurisdictions in designing and implementing such a program.

(n) USER FEES.—Any person in the Federated States of Micronesia or the Republic of the Marshall Islands shall be liable for user fees, if any, for services provided in the Federated States of Micronesia or the Republic of the Marshall Islands by the Government of the United States to the same extent as any person in the United States would be liable for fees, if any, for such services in the United States.

(o) TREATMENT OF JUDGMENTS OF COURTS OF THE FEDERATED STATES OF MICRONESIA, THE REPUBLIC OF THE MARSHALL ISLANDS, AND THE REPUBLIC OF PALAU.—No judgment, whenever issued, of a court of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, against the United

States, its departments and agencies, or officials of the United States or any other individuals acting on behalf of the United States within the scope of their official duty, shall be honored by the United States, or be subject to recognition or enforcement in a court in the United States, unless the judgment is consistent with the interpretation by the United States of international agreements relevant to the judgment. In determining the consistency of a judgment with an international agreement, due regard shall be given to assurances made by the Executive Branch to Congress of the United States regarding the proper interpretation of the international agreement.

(p) ESTABLISHMENT OF TRUST FUNDS; EXPEDITION OF PROCESS.—

(1) IN GENERAL.—The Trust Fund Agreement executed pursuant to the U.S.-FSM Compact and the Trust Fund Agreement executed pursuant to the U.S.-RMI Compact each provides for the establishment of a trust fund.

(2) METHOD OF ESTABLISHMENT.—The trust fund may be established by—

(A) creating a new legal entity to constitute the trust fund; or

(B) assuming control of an existing legal entity including, without limitation, a trust fund or other legal entity that was established by or at the direction of the Government of the United States, the Government of the Federated States of Micronesia, the Government of the Republic of the Marshall Islands, or otherwise for the purpose of facilitating or expediting the establishment of the trust fund pursuant to the applicable Trust Fund Agreement.

(3) OBLIGATIONS.—For the purpose of expediting the commencement of operations of a trust fund under either Trust Fund Agreement, the trust fund may, but shall not be obligated to, assume any obligations of an existing legal entity and take assignment of any contract or other agreement to which the existing legal entity is party.

(4) ASSISTANCE.—Without limiting the authority that the United States Government may otherwise have under applicable law, the United States Government may, but shall not be obligated to, provide financial, technical, or other assistance directly or indirectly to the Government of the Federated States of Micronesia or the Government of the Republic of the Marshall Islands for the purpose of establishing and operating a trust fund or other legal entity that will solicit bids from, and enter into contracts with, parties willing to serve in such capacities as trustee, depositary, money manager, or investment advisor, with the intention that the contracts will ultimately be assumed by and assigned to a trust fund established pursuant to a Trust Fund Agreement.

SEC. 106.[8] CONSTRUCTION CONTRACT ASSISTANCE.

(a) ASSISTANCE TO U.S. FIRMS.—In order to assist the Governments of the Federated States of Micronesia and of the Republic of the Marshall Islands through private sector firms which may be

[8] 48 U.S.C. 1921e.

awarded contracts for construction or major repair of capital infrastructure within the Federated States of Micronesia or the Republic of the Marshall Islands, the United States shall consult with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands with respect to any such contracts, and the United States shall enter into agreements with such firms whereby such firms will, consistent with applicable requirements of such Governments—

(1) to the maximum extent possible, employ citizens of the Federated States of Micronesia and the Republic of the Marshall Islands;

(2) to the extent that necessary skills are not possessed by citizens of the Federated States of Micronesia and the Republic of the Marshall Islands, provide on the job training, with particular emphasis on the development of skills relating to operation of machinery and routine and preventative maintenance of machinery and other facilities; and

(3) provide specific training or other assistance in order to enable the Government to engage in long-term maintenance of infrastructure.

Assistance by such firms pursuant to this section may not exceed 20 percent of the amount of the contract and shall be made available only to such firms which meet the definition of United States firm under the nationality rule for suppliers of services of the Agency for International Development (hereafter in this section referred to as "United States firms"). There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover any additional costs incurred by the Government of the Federated States of Micronesia or the Republic of the Marshall Islands if such Governments, pursuant to an agreement entered into with the United States, apply a preference on the award of contracts to United States firms, provided that the amount of such preference does not exceed 10 percent of the amount of the lowest qualified bid from a non-United States firm for such contract.

SEC. 107.[9] PROHIBITION.

All laws governing conflicts of interest and post-employment of Federal employees shall apply to the implementation of this Act.

SEC. 108.[10] COMPENSATORY ADJUSTMENTS.

(a) ADDITIONAL PROGRAMS AND SERVICES.—In addition to the programs and services set forth in section 221 of the U.S.-FSM Compact and the U.S.-RMI Compact, and pursuant to section 222 of the U.S.-FSM Compact and the U.S.-RMI Compact, the services and programs of the following United States agencies shall be made available to the Federated States of Micronesia and the Republic of the Marshall Islands: the Small Business Administration, Economic Development Administration, the Rural Utilities Services (formerly Rural Electrification Administration); the programs and

[9] 48 U.S.C. 1921f.
[10] 48 U.S.C. 1921g.

services of the Department of Labor under subtitle C of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2881 et seq.; relating to Job Corps); and the programs and services of the Department of Commerce relating to tourism and to marine resource development.

(b) FURTHER AMOUNTS.—

(1) The joint resolution of January 14, 1986 (Public Law 99–239) provided that the governments of the Federated States of Micronesia and the Marshall Islands may submit to Congress reports concerning the overall financial and economic impacts on such areas resulting from the effect of title IV of that joint resolution upon Title Two of the Compact. There were authorized to be appropriated for fiscal years beginning after September 30, 1990, such amounts as necessary, but not to exceed $40,000,000 for the Federated States of Micronesia and $20,000,000 for the Marshall Islands, as provided in appropriation acts, to further compensate the governments of such islands (in addition to the compensation provided in subsections (a) and (b) of section 111 of the joint resolution of January 14, 1986 (Public Law 99–239)) for adverse impacts, if any, on the finances and economies of such areas resulting from the effect of title IV of that joint resolution upon Title Two of the Compact. The joint resolution of January 14, 1986 (Public Law 99–239) further provided that at the end of the initial fifteen-year term of the Compact, should any portion of the total amount of funds authorized in section 111 of that resolution not have been appropriated, such amount not yet appropriated may be appropriated, without regard to divisions between amounts authorized in section 111 for the Federated States of Micronesia and for the Marshall Islands, based on either or both such government's showing of such adverse impact, if any, as provided in that subsection.

(2) The governments of the Federated States of Micronesia and the Republic of the Marshall Islands may each submit no more than one report or request for further compensation under section 111 of the joint resolution of January 14, 1986 (Public Law 99–239) and any such report or request must be submitted by September 30, 2009. Only adverse economic effects occurring during the initial 15-year term of the Compact may be considered for compensation under section 111 of the joint resolution of January 14, 1986 (Public Law 99–239).

SEC. 109.[11] AUTHORIZATION AND CONTINUING APPROPRIATION.

(a) There are authorized and appropriated to the Department of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, such sums as are necessary to carry out the purposes of sections 105(f)(1) and 105(i) of this Act, sections 211, 212(b), 215, and 217 of the U.S.-FSM Compact, and sections 211, 212, 213(b), 216, and 218 of the U.S.-RMI Compact, in this and subsequent years.

(b) There are authorized to be appropriated to the Departments, agencies, and instrumentalities named in paragraphs (1) and (3)

[11] 48 U.S.C. 1921h.

through (6) of section 221(a) of the U.S.-FSM Compact and paragraphs (1) and (3) through (5) of section 221(a) of the U.S.-RMI Compact, such sums as are necessary to carry out the purposes of sections 221(a) of the U.S.-FSM Compact and the U.S.-RMI Compact, to remain available until expended.

SEC. 110.[12] PAYMENT OF CITIZENS OF THE FEDERATED STATES OF MICRONESIA, THE REPUBLIC OF THE MARSHALL ISLANDS, AND THE REPUBLIC OF PALAU EMPLOYED BY THE GOVERNMENT OF THE UNITED STATES IN THE CONTINENTAL UNITED STATES.

Section 605 of Public Law 107–67 (the Treasury and General Government Appropriations Act, 2002) is amended by striking "or the Republic of the Philippines," in the last sentence and inserting the following: "the Republic of the Philippines, the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau,".

TITLE II—COMPACTS OF FREE ASSOCIATION WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS

SEC. 201.[13] COMPACTS OF FREE ASSOCIATION, AS AMENDED BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA AND BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS.

(a) COMPACT OF FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA.—The Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia is as follows:

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA

Affirming that their Governments and their relationship as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the people of the Federated States of Micronesia have the right to enjoy self-government; and

Affirming the common interests of the United States of America and the Federated States of Micronesia in creating and maintaining their close and mutually beneficial relationship through the free and voluntary association of their respective Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and budgetary self-reliance of the Federated States of Micronesia; and

Recognizing that their relationship until the entry into force on November 3, 1986 of the Compact was based upon the International Trusteeship System of the United Nations Charter, and in

[12] 5 U.S.C. 3101 note.
[13] 48 U.S.C. 1921 note.

particular Article 76 of the Charter; and that pursuant to Article 76 of the Charter, the people of the Federated States of Micronesia have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they, through their freely-expressed wishes, have adopted a Constitution appropriate to their particular circumstances; and

Recognizing that the Compact reflected their common desire to terminate the Trusteeship and establish a government-to-government relationship which was in accordance with the new political status based on the freely expressed wishes of the people of the Federated States of Micronesia and appropriate to their particular circumstances; and

Recognizing that the people of the Federated States of Micronesia have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of the Government of the Federated States of Micronesia into the Compact by the people of the Federated States of Micronesia constituted an exercise of their sovereign right to self-determination; and

Recognizing the common desire of the people of the United States and the people of the Federated States of Micronesia to maintain their close government-to-government relationship, the United States and the Federated States of Micronesia:

NOW, THEREFORE, MUTUALLY AGREE to continue and strengthen their relationship of free association by amending the Compact, which continues to provide a full measure of self-government for the people of the Federated States of Micronesia; and

FURTHER AGREE that the relationship of free association derives from and is as set forth in this Compact, as amended, by the Governments of the United States and the Federated States of Micronesia; and that, during such relationship of free association, the respective rights and responsibilities of the Government of the United States and the Government of the Federated States of Micronesia in regard to this relationship of free association derive from and are as set forth in this Compact, as amended.

TITLE ONE

GOVERNMENTAL RELATIONS

Article I

Self-Government

Section 111

The people of the Federated States of Micronesia, acting through the Government established under their Constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Government of the Federated States of Micronesia has the capacity to conduct foreign affairs and shall do so in its own name and right, except as otherwise provided in this Compact, as amended.

(b) The foreign affairs capacity of the Government of the Federated States of Micronesia includes:

(1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law;

(2) the conduct of its commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting its individual citizens.

(c) The Government of the United States recognizes that the Government of the Federated States of Micronesia has the capacity to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of its foreign affairs, the Government of the Federated States of Micronesia confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support applications by the Government of the Federated States of Micronesia for membership or other participation in regional or international organizations as may be mutually agreed.

Section 123

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of the Federated States of Micronesia shall consult, in the conduct of its foreign affairs, with the Government of the United States.

(b) In recognition of the foreign affairs capacity of the Government of the Federated States of Micronesia, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of the Federated States of Micronesia on matters that the Government of the United States regards as relating to or affecting the Government of the Federated States of Micronesia.

Section 124

The Government of the United States may assist or act on behalf of the Government of the Federated States of Micronesia in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not

be responsible to third parties for the actions of the Government of the Federated States of Micronesia undertaken with the assistance or through the agency of the Government of the United States pursuant to this section unless expressly agreed.

Section 125

The Government of the United States shall not be responsible for nor obligated by any actions taken by the Government of the Federated States of Micronesia in the area of foreign affairs, except as may from time to time be expressly agreed.

Section 126

At the request of the Government of the Federated States of Micronesia and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of the Federated States of Micronesia for travel outside the Federated States of Micronesia, the United States and its territories and possessions.

Section 127

Except as otherwise provided in this Compact, as amended, or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as Administering Authority which resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on November 2, 1986, are, as of that date, no longer assumed and enjoyed by the Government of the United States.

Article III

Communications

Section 131

(a) The Government of the Federated States of Micronesia has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communications assistance as mutually agreed.

(b) On May 24, 1993, the Government of the Federated States of Micronesia elected to undertake all functions previously performed by the Government of the United States with respect to domestic and foreign communications, except for those functions set forth in a separate agreement entered into pursuant to this section of the Compact, as amended.

Section 132

The Government of the Federated States of Micronesia shall permit the Government of the United States to operate telecommunications services in the Federated States of Micronesia to the extent necessary to fulfill the obligations of the Government of the United States under this Compact, as amended, in accordance with the terms of separate agreements entered into pursuant to this section of the Compact, as amended.

Article IV

Immigration

Section 141

(a) In furtherance of the special and unique relationship that exists between the United States and the Federated States of Micronesia, under the Compact, as amended, any person in the following categories may be admitted to, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions (the "United States") without regard to paragraph (5) or (7)(B)(i)(II) of section 212(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5) or (7)(B)(i)(II):

(1) a person who, on November 2, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the Federated States of Micronesia;

(2) a person who acquires the citizenship of the Federated States of Micronesia at birth, on or after the effective date of the Constitution of the Federated States of Micronesia;

(3) an immediate relative of a person referred to in paragraphs (1) or (2) of this section, provided that such immediate relative is a naturalized citizen of the Federated States of Micronesia who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence, and further provided, that, in the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) of this section for at least five years, and further provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended;

(4) a naturalized citizen of the Federated States of Micronesia who was an actual resident there for not less than five years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the Federated States of Micronesia to the Government of the United States no later than the effective date of the Compact, as amended, in form and content acceptable to the Government of the United States, provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended; or

(5) an immediate relative of a citizen of the Federated States of Micronesia, regardless of the immediate relative's country of citizenship or period of residence in the Federated States of Micronesia, if the citizen of the Federated States of Micronesia

is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

(b) Notwithstanding subsection (a) of this section, a person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact and the Compact, as amended. This subsection shall apply to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This subsection shall have no effect on the ability of the Government of the United States or any United States State or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

(c) Notwithstanding subsection (a) of this section, no person who has been or is granted citizenship in the Federated States of Micronesia, or has been or is issued a Federated States of Micronesia passport pursuant to any investment, passport sale, or similar program has been or shall be eligible for admission to the United States under the Compact or the Compact, as amended.

(d) A person admitted to the United States under the Compact, or the Compact, as amended, shall be considered to have the permission of the Government of the United States to accept employment in the United States. An unexpired Federated States of Micronesia passport with unexpired documentation issued by the Government of the United States evidencing admission under the Compact or the Compact, as amended, shall be considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1324a(b)(1)(B). The Government of the United States will take reasonable and appropriate steps to implement and publicize this provision, and the Government of the Federated States of Micronesia will also take reasonable and appropriate steps to publicize this provision.

(e) For purposes of the Compact and the Compact, as amended:

(1) the term "residence" with respect to a person means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(33), and variations of the term "residence," including "resident" and "reside," shall be similarly construed;

(2) the term "actual residence" means physical presence in the Federated States of Micronesia during eighty-five percent of the five-year period of residency required by section 141(a)(3) and (4);

(3) the term "certificate of actual residence" means a certificate issued to a naturalized citizen by the Government of the Federated States of Micronesia stating that the citizen has complied with the actual residence requirement of section 141(a)(3) or (4);

(4) the term "nonimmigrant" means an alien who is not an "immigrant" as defined in section 101(a)(15) of such Act, 8 U.S.C. 1101(a)(15); and

(5) the term "immediate relative" means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

(f) The Immigration and Nationality Act, as amended, shall apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where such Act does not apply) under the Compact or the Compact, as amended, and nothing in the Compact or the Compact, as amended, shall be construed to limit, preclude, or modify the applicability of, with respect to such person:

(1) any ground of inadmissibility or deportability under such Act (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of such Act, as provided in subsection (a) of this section), and any defense thereto, provided that, section 237(a)(5) of such Act shall be construed and applied as if it reads as follows: "any alien who has been admitted under the Compact, or the Compact, as amended, who cannot show that he or she has sufficient means of support in the United States, is deportable";

(2) the authority of the Government of the United States under section 214(a)(1) of such Act to provide that admission as a nonimmigrant shall be for such time and under such conditions as the Government of the United States may by regulations prescribe;

(3) except for the treatment of certain documentation for purposes of section 274A(b)(1)(B) of such Act as provided by subsection (d) of this section of the Compact, as amended, any requirement under section 274A, including but not limited to section 274A(b)(1)(E);

(4) section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, and actions taken pursuant to section 643; and

(5) the authority of the Government of the United States otherwise to administer and enforce the Immigration and Nationality Act, as amended, or other United States law.

(g) Any authority possessed by the Government of the United States under this section of the Compact or the Compact, as amended, may also be exercised by the Government of a territory or possession of the United States where the Immigration and Nationality Act, as amended, does not apply, to the extent such exercise of authority is lawful under a statute or regulation of such territory or possession that is authorized by the laws of the United States.

(h) Subsection (a) of this section does not confer on a citizen of the Federated States of Micronesia the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, as amended, or to petition for benefits for alien relatives under that Act. Subsection (a) of this section, however, shall not prevent a citizen of the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may be admitted, to lawfully engage in occupations, and reside in the Federated States of Micronesia, subject to the rights of the Government of the Federated States of Micronesia to deny entry to or deport any such citizen or national as an undesirable alien. Any determination of inadmissibility or deportability shall be based on reasonable statutory grounds and shall be subject to appropriate administrative and judicial review within the Federated States of Micronesia. If a citizen or national of the United States is a spouse of a citizen of the Federated States of Micronesia, the Government of the Federated States of Micronesia shall allow the United States citizen spouse to establish residence. Should the Federated States of Micronesia citizen spouse predecease the United States citizen spouse during the marriage, the Government of the Federated States of Micronesia shall allow the United States citizen spouse to continue to reside in the Federated States of Micronesia.

(b) In enacting any laws or imposing any requirements with respect to citizens and nationals of the United States entering the Federated States of Micronesia under subsection (a) of this section, including any grounds of inadmissibility or deportability, the Government of the Federated States of Micronesia shall accord to such citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries.

(c) Consistent with subsection (a) of this section, with respect to citizens and nationals of the United States seeking to engage in employment or invest in the Federated States of Micronesia, the Government of the Federated States of Micronesia shall adopt immigration-related procedures no less favorable than those adopted by the Government of the United States with respect to citizens of the Federated States of Micronesia seeking employment in the United States.

Section 143

Any person who relinquishes, or otherwise loses, his United States nationality or citizenship, or his Federated States of Micronesia citizenship, shall be ineligible to receive the privileges set forth in sections 141 and 142. Any such person may apply for admission to the United States or the Federated States of Micronesia, as the case may be, in accordance with any other applicable laws of the United States or the Federated States of Micronesia relating to immigration of aliens from other countries. The laws of the Federated States of Micronesia or the United States, as the case may be, shall dictate the terms and conditions of any such person's stay.

Article V

Representation

Section 151

Relations between the Government of the United States and the Government of the Federated States of Micronesia shall be conducted in accordance with the Vienna Convention on Diplomatic Relations. In addition to diplomatic missions and representation,

the Governments may establish and maintain other offices and designate other representatives on terms and in locations as may be mutually agreed.

Section 152

(a) Any citizen or national of the United States who, without authority of the United States, acts as the agent of the Government of the Federated States of Micronesia with regard to matters specified in the provisions of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), that apply with respect to an agent of a foreign principal shall be subject to the requirements of such Act. Failure to comply with such requirements shall subject such citizen or national to the same penalties and provisions of law as apply in the case of the failure of such an agent of a foreign principal to comply with such requirements. For purposes of the Foreign Agents Registration Act of 1938, the Federated States of Micronesia shall be considered to be a foreign country.

(b) Subsection (a) of this section shall not apply to a citizen or national of the United States employed by the Government of the Federated States of Micronesia with respect to whom the Government of the Federated States of Micronesia from time to time certifies to the Government of the United States that such citizen or national is an employee of the Federated States of Micronesia whose principal duties are other than those matters specified in the Foreign Agents Registration Act of 1938, as amended, that apply with respect to an agent of a foreign principal. The agency or officer of the United States receiving such certifications shall cause them to be filed with the Attorney General, who shall maintain a publicly available list of the persons so certified.

Article VI

Environmental Protection

Section 161

The Governments of the United States and the Federated States of Micronesia declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Federated States of Micronesia. In order to carry out this policy, the Government of the United States and the Government of the Federated States of Micronesia agree to the following mutual and reciprocal undertakings.

(a) The Government of the United States:

(1) shall continue to apply the environmental controls in effect on November 2, 1986 to those of its continuing activities subject to section 161(a)(2), unless and until those controls are modified under sections 161(a)(3) and 161(a)(4);

(2) shall apply the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq., to its activities under the Compact, as amended, and its related agreements as if the Federated States of Micronesia were the United States;

(3) shall comply also, in the conduct of any activity requiring the preparation of an Environmental Impact Statement under section 161(a)(2), with standards substantively similar to those required by the following laws of the United States, taking into

account the particular environment of the Federated States of Micronesia: the Endangered Species Act of 1973, as amended, 87 Stat. 884, 16 U.S.C. 1531 et seq.; the Clean Air Act, as amended, 77 Stat. 392, 42 U.S.C. Supp. 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), as amended, 86 Stat. 896, 33 U.S.C. 1251 et seq.; Title I of the Marine Protection, Research and Sanctuaries Act of 1972 (the Ocean Dumping Act), 33 U.S.C. 1411 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq.; the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.; and such other environmental protection laws of the United States and of the Federated States of Micronesia, as may be mutually agreed from time to time with the Government of the Federated States of Micronesia; and

(4) shall develop, prior to conducting any activity requiring the preparation of an Environmental Impact Statement under section 161(a)(2), written standards and procedures, as agreed with the Government of the Federated States of Micronesia, to implement the substantive provisions of the laws made applicable to U.S. Government activities in the Federated States of Micronesia, pursuant to section 161(a)(3).

(b) The Government of the Federated States of Micronesia shall continue to develop and implement standards and procedures to protect its environment. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Federated States of Micronesia, taking into account its particular environment, shall continue to develop and implement standards for environmental protection substantively similar to those required of the Government of the United States by section 161(a)(3) prior to its conducting activities in the Federated States of Micronesia, substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 161(a), including any standard or procedure applicable thereunder, and section 161(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of the Federated States of Micronesia.

(d) In the event that an Environmental Impact Statement is no longer required under the laws of the United States for major Federal actions significantly affecting the quality of the human environment, the regulatory regime established under sections 161(a)(3) and 161(a)(4) shall continue to apply to such activities of the Government of the United States until amended by mutual agreement.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact, as amended, and its related agreements from any environmental standard or procedure which may be applicable under sections 161(a)(3) and 161(a)(4) if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact, as amended, and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of the Federated States of Micronesia

shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of the Federated States of Micronesia.

(f) The laws of the United States referred to in section 161(a)(3) shall apply to the activities of the Government of the United States under this Compact, as amended, and its related agreements only to the extent provided for in this section.

Section 162

The Government of the Federated States of Micronesia may bring an action for judicial review of any administrative agency action or any activity of the Government of the United States pursuant to section 161(a) for enforcement of the obligations of the Government of the United States arising thereunder. The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction over such action or activity, and over actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees, governed by section 161, provided that:

(a) Such actions may only be civil actions for any appropriate civil relief other than punitive damages against the Government of the United States or, where required by law, its officers in their official capacity; no criminal actions may arise under this section.

(b) Actions brought pursuant to this section may be initiated only by the Government of the Federated States of Micronesia.

(c) Administrative agency actions arising under section 161 shall be reviewed pursuant to the standard of judicial review set forth in 5 U.S.C. 706.

(d) The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction to issue all necessary processes, and the Government of the United States agrees to submit itself to the jurisdiction of the court; decisions of the United States District Court shall be reviewable in the United States Court of Appeals for the Ninth Circuit or the United States Court of Appeals for the District of Columbia, respectively, or in the United States Supreme Court as provided by the laws of the United States.

(e) The judicial remedy provided for in this section shall be the exclusive remedy for the judicial review or enforcement of the obligations of the Government of the United States under this Article and actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees governed by section 161.

(f) In actions pursuant to this section, the Government of the Federated States of Micronesia shall be treated as if it were a United States citizen.

Section 163

(a) For the purpose of gathering data necessary to study the environmental effects of activities of the Government of the United States subject to the requirements of this Article, the Government

of the Federated States of Micronesia shall be granted access to facilities operated by the Government of the United States in the Federated States of Micronesia, to the extent necessary for this purpose, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the United States under Title Three.

(b) The Government of the United States, in turn, shall be granted access to the Federated States of Micronesia for the purpose of gathering data necessary to discharge its obligations under this Article, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the Federated States of Micronesia under Title One, and to the extent necessary for this purpose shall be granted access to documents and other information to the same extent similar access is provided the Government of the Federated States of Micronesia under the Freedom of Information Act, 5 U.S.C. 552.

(c) The Government of the Federated States of Micronesia shall not impede efforts by the Government of the United States to comply with applicable standards and procedures.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact, as amended, or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceased with respect to the Federated States of Micronesia on November 3, 1986, the date the Compact went into effect.

Section 172

(a) Every citizen of the Federated States of Micronesia who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any non-resident alien.

(b) The Government of the Federated States of Micronesia and every citizen of the Federated States of Micronesia shall be considered to be a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701–706, except that only the Government of the Federated States of Micronesia may seek judicial review under the Administrative Procedure Act or judicial enforcement under the Freedom of Information Act when such judicial review or enforcement relates to the activities of the Government of the United States governed by sections 161 and 162.

Section 173

The Governments of the United States and the Federated States of Micronesia agree to adopt and enforce such measures, consistent with this Compact, as amended, and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in the Federated States of Micronesia pursuant to this Compact, as amended, and its related agreements and by the Government of the Federated States

of Micronesia in the United States pursuant to this Compact, as amended, and its related agreements.

Section 174

Except as otherwise provided in this Compact, as amended, and its related agreements:

(a) The Government of the Federated States of Micronesia, and its agencies and officials, shall be immune from the jurisdiction of the court of the United States, and the Government of the United States, and its agencies and officials, shall be immune from the jurisdiction of the courts of the Federated States of Micronesia.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to November 3, 1986;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the November 3, 1986; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of the Compact shall be adjudicated in the same manner as a claim adjudicated according to section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor courts, which shall have jurisdiction therefore, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of the Federated States of Micronesia shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall

not be immune from the jurisdiction of the courts of the Federated States of Micronesia in any civil case in which an exception to foreign state immunity is set forth in the Foreign Sovereign Immunities Act (28 U.S.C. 1602 et seq.) or its successor statutes.

Section 175

(a) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern mutual assistance and cooperation in law enforcement matters, including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners, as well as other law enforcement matters. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188–95, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–15, shall be applicable to the transfer of prisoners under the separate agreement; and

(b) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern requirements relating to labor recruitment practices, including registration, reporting, suspension or revocation of authorization to recruit persons for employment in the United States, and enforcement for violations of such requirements.

Section 176

The Government of the Federated States of Micronesia confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases.

Section 177

Section 177 of the Compact entered into force with respect to the Federated States of Micronesia on November 3, 1986 as follows:

"(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Micronesia, or Palau for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

"(b) The Government of the United States and the Government of the Marshall Islands shall set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have arisen in regard to the Marshall Islands and its citizens and which have not as yet been compensated or which in the future may arise, for the continued administration by the Government of the United States of direct radiation related medical surveillance and treatment programs and radiological monitoring activities and for such additional programs and activities as may be mutually agreed, and for the assumption by the Government of the Marshall Islands

of responsibility for enforcement of limitations on the utilization of affected areas developed in cooperation with the Government of the United States and for the assistance by the Government of the United States in the exercise of such responsibility as may be mutually agreed. This separate agreement shall come into effect simultaneously with this Compact and shall remain in effect in accordance with its own terms.

"(c) The Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the amount of $150 million to be paid and distributed in accordance with the separate agreement referred to in this Section, and shall provide the services and programs set forth in this separate agreement, the language of which is incorporated into this Compact.".

The Compact, as amended, makes no changes to, and has no effect upon, Section 177 of the Compact, nor does the Compact, as amended, change or affect the separate agreement referred to in Section 177 of the Compact including Articles IX and X of that separate agreement, and measures taken by the parties thereunder.

Section 178

(a) The Federal agencies of the Government of the United States that provide the services and related programs in the Federated States of Micronesia pursuant to Title Two are authorized to settle and pay tort claims arising in the Federated States of Micronesia from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in section 178(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under section 178(a) that cannot be settled under section 178(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of the Federated States of Micronesia shall, in the separate agreement referred to in section 231, provide for:

(1) the administrative settlement of claims referred to in section 178(a), including designation of local agents in each State of the Federated States of Micronesia; such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such separate agreements; and

(2) arbitration, referred to in section 178(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to section 178(a).

(d) The provisions of section 174(d) shall not apply to claims covered by this section.

(e) Except as otherwise explicitly provided by law of the United States, neither the Government of the United States, its instrumentalities, nor any person acting on behalf of the Government of the United States, shall be named a party in any action based on, or arising out of, the activity or activities of a recipient of any grant or other assistance provided by the Government of the United States (or the activity or activities of the recipient's agency or any other person or entity acting on behalf of the recipient).

Section 179

(a) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over the Government of the United States, or its instrumentalities.

(b) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over any person if the Government of the United States provides notification to the Government of the Federated States of Micronesia that such person was acting on behalf of the Government of the United States, for actions taken in furtherance of section 221 or 224 of this amended Compact, or any other provision of law authorizing financial, program, or service assistance to the Federated States of Micronesia.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211 - Sector Grants

(a) In order to assist the Government of the Federated States of Micronesia in its efforts to promote the economic advancement, budgetary self-reliance, and economic self-sufficiency of its people, and in recognition of the special relationship that exists between the Federated States of Micronesia and the United States, the Government of the United States shall provide assistance on a sector grant basis for a period of twenty years in the amounts set forth in section 216, commencing on the effective date of this Compact, as amended. Such grants shall be used for assistance in the sectors of education, health care, private sector development, the environment, public sector capacity building, and public infrastructure, or for other sectors as mutually agreed, with priorities in the education and health care sectors. For each year such sector grant assistance is made available, the proposed division of this amount among these sectors shall be certified to the Government of the United States by the Government of the Federated States of Micronesia and shall be subject to the concurrence of the Government of the United States. In such case, the Government of the United States shall disburse the agreed upon amounts and monitor the use of such sector grants in accordance with the provisions of this Article and the Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, of Free Association Between the Government of the United States of America and the Government of the Federated States of Micronesia ("Fiscal Procedures Agreement") which shall come into effect simultaneously with this Compact, as amended. The provision of any United States assistance under the Compact, as amended, the Fiscal Procedures Agreement, the Trust Fund Agreement, or any other subsidiary agreement to the Compact, as amended, shall constitute "a particular distribution . . . required by the terms or special nature of the assistance" for purposes of Article XII, section 1(b) of the Constitution of the Federated States of Micronesia.

(1) EDUCATION.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support and improve the educational system of the Federated States of Micronesia and develop the human, financial, and material resources necessary for the Government of the Federated States of Micronesia to perform these services. Emphasis should be placed on advancing a quality basic education system.

(2) HEALTH.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support and improve the delivery of preventive, curative and environmental care and develop the human, financial, and material resources necessary for the Government of the Federated States of Micronesia to perform these services.

(3) PRIVATE SECTOR DEVELOPMENT.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support the efforts of the Government of the Federated States of Micronesia to attract foreign investment and increase indigenous business activity by vitalizing the commercial environment, ensuring fair and equitable application of the law, promoting adherence to core labor standards, and maintaining progress toward privatization of state-owned and partially state-owned enterprises, and engaging in other reforms.

(4) CAPACITY BUILDING IN THE PUBLIC SECTOR.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support the efforts of the Government of the Federated States of Micronesia to build effective, accountable and transparent national, state, and local government and other public sector institutions and systems.

(5) ENVIRONMENT.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to increase environmental protection; conserve and achieve sustainable use of natural resources; and engage in environmental infrastructure planning, design construction and operation.

(6) PUBLIC INFRASTRUCTURE.—

(i) U.S. annual grant assistance shall be made available in accordance with a list of specific projects included in the plan described in subsection (c) of this section to assist the Government of the Federated States of Micronesia in its efforts to provide adequate public infrastructure.

(ii) INFRASTRUCTURE AND MAINTENANCE FUND.—Five percent of the annual public infrastructure grant made available under paragraph (i) of this subsection shall be set aside, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to an Infrastructure Maintenance Fund (IMF). Administration of the Infrastructure Maintenance Fund shall be governed by the Fiscal Procedures Agreement.

(b) HUMANITARIAN ASSISTANCE.—Federated States of Micronesia Program. In recognition of the special development needs of the

Federated States of Micronesia, the Government of the United States shall make available to the Government of the Federated States of Micronesia, on its request and to be deducted from the grant amount made available under subsection (a) of this section, a Humanitarian Assistance - Federated States of Micronesia ("HAFSM") Program with emphasis on health, education, and infrastructure (including transportation), projects. The terms and conditions of the HAFSM shall be set forth in the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Government of the Federated States of Micronesia Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended which shall come into effect simultaneously with the amendments to this Compact.

(c) DEVELOPMENT PLAN.—The Government of the Federated States of Micronesia shall prepare and maintain an official overall development plan. The plan shall be strategic in nature, shall be continuously reviewed and updated through the annual budget process, and shall make projections on a multi-year rolling basis. Each of the sectors named in subsection (a) of this section, or other sectors as mutually agreed, shall be accorded specific treatment in the plan. Insofar as grants funds are involved, the plan shall be subject to the concurrence of the Government of the United States.

(d) DISASTER ASSISTANCE EMERGENCY FUND.—An amount of two hundred thousand dollars ($200,000) shall be provided annually, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to a "Disaster Assistance Emergency Fund (DAEF)." Any funds from the DAEF may be used only for assistance and rehabilitation resulting from disasters and emergencies. The funds will be accessed upon declaration by the Government of the Federated States of Micronesia, with the concurrence of the United States Chief of Mission to the Federated States of Micronesia. The Administration of the DAEF shall be governed by the Fiscal Procedures Agreement.

Section 212 - Accountability

(a) Regulations and policies normally applicable to United States financial assistance to its state and local governments, as reflected in the Fiscal Procedures Agreement, shall apply to each sector grant described in section 211, and to grants administered under section 221 below, except as modified in the separate agreements referred to in section 231 of this Compact, as amended, or by United States law. The Government of the United States, after annual consultations with the Federated States of Micronesia, may attach reasonable terms and conditions, including annual performance indicators that are necessary to ensure effective use of United States assistance and reasonable progress toward achieving program objectives. The Government of the United States may seek appropriate remedies for noncompliance with the terms and conditions attached to the assistance, or for failure to comply with section 234, including withholding assistance.

(b) The Government of the United States shall, for each fiscal year of the twenty years during which assistance is to be provided on a sector grant basis under section 211, grant the Government

of the Federated States of Micronesia an amount equal to the lesser of (i) one half of the reasonable, properly documented cost incurred during each fiscal year to conduct the annual audit required under Article VIII (2) of the Fiscal Procedures Agreement or (ii) $500,000. Such amount will not be adjusted for inflation under section 217 or otherwise.

Section 213 - Joint Economic Management Committee

The Governments of the United States and the Federated States of Micronesia shall establish a Joint Economic Management Committee, composed of a U.S. chair, two other members from the Government of the United States and two members from the Government of the Federated States of Micronesia. The Joint Economic Management Committee shall meet at least once each year to review the audits and reports required under this Title, evaluate the progress made by the Federated States of Micronesia in meeting the objectives identified in its plan described in subsection (c) of section 211, with particular focus on those parts of the plan dealing with the sectors identified in subsection (a) of section 211, identify problems encountered, and recommend ways to increase the effectiveness of U.S. assistance made available under this Title. The establishment and operations of the Joint Economic Management Committee shall be governed by the Fiscal Procedures Agreement.

Section 214 - Annual Report

The Government of the Federated States of Micronesia shall report annually to the President of the United States on the use of United States sector grant assistance and other assistance and progress in meeting mutually agreed program and economic goals. The Joint Economic Management Committee shall review and comment on the report and make appropriate recommendations based thereon.

Section 215 - Trust Fund

(a) The United States shall contribute annually for twenty years from the effective date of this Compact, as amended, in the amounts set forth in section 216 into a Trust Fund established in accordance with the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund ("Trust Fund Agreement"). Upon termination of the annual financial assistance under section 211, the proceeds of the fund shall thereafter be used for the purposes described in section 211 or as otherwise mutually agreed.

(b) The United States contribution into the Trust Fund described in subsection (a) of this section is conditioned on the Government of the Federated States of Micronesia contributing to the Trust Fund at least $30 million, prior to September 30, 2004. Any funds received by the Federated States of Micronesia under section 111 (d) of Public Law 99–239 (January 14, 1986), or successor provisions, would be contributed to the Trust Fund as a Federated States of Micronesia contribution.

(c) The terms regarding the investment and management of funds and use of the income of the Trust Fund shall be set forth in the separate Trust Fund Agreement described in subsection (a) of this section. Funds derived from United States investment shall

not be subject to Federal or state taxes in the United States or the Federated States of Micronesia. The Trust Fund Agreement shall also provide for annual reports to the Government of the United States and to the Government of the Federated States of Micronesia. The Trust Fund Agreement shall provide for appropriate distributions of trust fund proceeds to the Federated States of Micronesia and for appropriate remedies for the failure of the Federated States of Micronesia to use income of the Trust Fund for the annual grant purposes set forth in section 211. These remedies may include the return to the United States of the present market value of its contributions to the Trust Fund and the present market value of any undistributed income on the contributions of the United States. If this Compact, as amended, is terminated, the provisions of sections 451 through 453 of this Compact, as amended, shall govern treatment of any U.S. contributions to the Trust Fund or accrued interest thereon.

Section 216 - Sector Grant Funding and Trust Fund Contributions

The funds described in sections 211, 212(b) and 215 shall be made available as follows:

[In millions of dollars]

Fiscal year	Annual Grants Section 211	Audit Grant Section 212(b) (amount up to)	Trust Fund Section 215	Total
2004	76.2	.5	16	92.7
2005	76.2	.5	16	92.7
2006	76.2	.5	16	92.7
2007	75.4	.5	16.8	92.7
2008	74.6	.5	17.6	92.7
2009	73.8	.5	18.4	92.7
2010	73	.5	19.2	92.7
2011	72.2	.5	20	92.7
2012	71.4	.5	20.8	92.7
2013	70.6	.5	21.6	92.7
2014	69.8	.5	22.4	92.7
2015	69	.5	23.2	92.7
2016	68.2	.5	24	92.7
2017	67.4	.5	24.8	92.7
2018	66.6	.5	25.6	92.7
2019	65.8	.5	26.4	92.7
2020	65	.5	27.2	92.7
2021	64.2	.5	28	92.7
2022	63.4	.5	28.8	92.7
2023	62.6	.5	29.6	92.7

Section 217 - Inflation Adjustment

Except for the amounts provided for audits under section 212(b), the amounts stated in this Title shall be adjusted for each United States Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or 5 percent, whichever is less in any one year, using the beginning of Fiscal Year 2004 as a base.

Section 218 - Carry-Over of Unused Funds

If in any year the funds made available by the Government of the United States for that year pursuant to this Article are not

completely obligated by the Government of the Federated States of Micronesia, the unobligated balances shall remain available in addition to the funds to be provided in subsequent years.

Article II

Services and Program Assistance

Section 221

(a) SERVICES.—The Government of the United States shall make available to the Federated States of Micronesia, in accordance with and to the extent provided in the Federal Programs and Services Agreement referred to in section 231, the services and related programs of:

(1) the United States Weather Service;

(2) the United States Postal Service;

(3) the United States Federal Aviation Administration;

(4) the United States Department of Transportation;

(5) the Federal Deposit Insurance Corporation (for the benefit only of the Bank of the Federated States of Micronesia); and

(6) the Department of Homeland Security, and the United States Agency for International Development, Office of Foreign Disaster Assistance.

Upon the effective date of this Compact, as amended, the United States Departments and Agencies named or having responsibility to provide these services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement referred to in section 231.

(b) PROGRAMS.—

(1) With the exception of the services and programs covered by subsection (a) of this section, and unless the Congress of the United States provides otherwise, the Government of the United States shall make available to the Federated States of Micronesia the services and programs that were available to the Federated States of Micronesia on the effective date of this Compact, as amended, to the extent that such services and programs continue to be available to State and local governments of the United States. As set forth in the Fiscal Procedures Agreement, funds provided under subsection (a) of section 211 will be considered to be local revenues of the Government of the Federated States of Micronesia when used as the local share required to obtain Federal programs and services.

(2) Unless provided otherwise by U.S. law, the services and programs described in paragraph (1) of this subsection shall be extended in accordance with the terms of the Federal Programs and Services Agreement referred to in section 231.

(c) The Government of the United States shall have and exercise such authority as is necessary to carry out its responsibilities under this Title and the separate agreements referred to in amended section 231, including the authority to monitor and administer all service and program assistance provided by the United States to the Federated States of Micronesia. The Federal Programs and Services Agreement referred to in amended section 231 shall also

set forth the extent to which services and programs shall be provided to the Federated States of Micronesia.

(d) Except as provided elsewhere in this Compact, as amended, under any separate agreement entered into under this Compact, as amended, or otherwise under U.S. law, all Federal domestic programs extended to or operating in the Federated States of Micronesia shall be subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs and services when operating in the United States.

(e) The Government of the United States shall make available to the Federated States of Micronesia alternate energy development projects, studies, and conservation measures to the extent provided for the Freely Associated States in the laws of the United States.

Section 222

The Government of the United States and the Government of the Federated States of Micronesia may agree from time to time to extend to the Federated States of Micronesia additional United States grant assistance, services and programs, as provided under the laws of the United States. Unless inconsistent with such laws, or otherwise specifically precluded by the Government of the United States at the time such additional grant assistance, services, or programs are extended, the Federal Programs and Services Agreement referred to section 231 shall apply to any such assistance, services or programs.

Section 223

The Government of the Federated States of Micronesia shall make available to the Government of the United States at no cost such land as may be necessary for the operations of the services and programs provided pursuant to this Article, and such facilities as are provided by the Government of the Federated States of Micronesia at no cost to the Government of the United States as of the effective date of this Compact, as amended, or as may be mutually agreed thereafter.

Section 224

The Government of the Federated States of Micronesia may request, from time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its laws. If technical assistance is granted pursuant to such a request, the Government of the United States shall provide the technical assistance in a manner which gives priority consideration to the Federated States of Micronesia over other recipients not a part of the United States, its territories or possessions, and equivalent consideration to the Federated States of Micronesia with respect to other states in Free Association with the United States. Such assistance shall be made available on a reimbursable or nonreimbursable basis to the extent provided by United States law.

Article III

Administrative Provisions

Section 231

The specific nature, extent and contractual arrangements of the services and programs provided for in section 221 of this Compact, as amended, as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in the Federated States of Micronesia, and other arrangements in connection with the assistance, services, or programs furnished by the Government of the United States, are set forth in a Federal Programs and Services Agreement which shall come into effect simultaneously with this Compact, as amended.

Section 232

The Government of the United States, in consultation with the Government of the Federated States of Micronesia, shall determine and implement procedures for the periodic audit of all grants and other assistance made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Further, in accordance with the Fiscal Procedures Agreement described in subsection (a) of section 211, the Comptroller General of the United States shall have such powers and authorities as described in sections 102 (c) and 110 (c) of Public Law 99–239, 99 Stat. 1777–78, and 99 Stat. 1799 (January 14, 1986).

Section 233

Approval of this Compact, as amended, by the Government of the United States, in accordance with its constitutional processes, shall constitute a pledge by the United States that the sums and amounts specified as sector grants in section 211 of this Compact, as amended, shall be appropriated and paid to the Federated States of Micronesia for such period as those provisions of this Compact, as amended, remain in force, subject to the terms and conditions of this Title and related subsidiary agreements.

Section 234

The Government of the Federated States of Micronesia pledges to cooperate with, permit, and assist if reasonably requested, designated and authorized representatives of the Government of the United States charged with investigating whether Compact funds, or any other assistance authorized under this Compact, as amended, have, or are being, used for purposes other than those set forth in this Compact, as amended, or its subsidiary agreements. In carrying out this investigative authority, such United States Government representatives may request that the Government of the Federated States of Micronesia subpoena documents and records and compel testimony in accordance with the laws and Constitution of the Federated States of Micronesia. Such assistance by the Government of the Federated States of Micronesia to the Government of the United States shall not be unreasonably withheld. The obligation of the Government of the Federated States of Micronesia to fulfill its pledge herein is a condition to its receiving payment of such funds or other assistance authorized under this Compact, as

amended. The Government of the United States shall pay any reasonable costs for extraordinary services executed by the Government of the Federated States of Micronesia in carrying out the provisions of this section.

Article IV

Trade

Section 241

The Federated States of Micronesia is not included in the customs territory of the United States.

Section 242

The President shall proclaim the following tariff treatment for articles imported from the Federated States of Micronesia which shall apply during the period of effectiveness of this title:

(a) Unless otherwise excluded, articles imported from the Federated States of Micronesia, subject to the limitations imposed under section 503(b) of title V of the Trade Act of 1974 (19 U.S.C. 2463(b)), shall be exempt from duty.

(b) Only tuna in airtight containers provided for in heading 1604.14.22 of the Harmonized Tariff Schedule of the United States that is imported from the Federated States of Micronesia and the Republic of the Marshall Islands during any calendar year not to exceed 10 percent of apparent United States consumption of tuna in airtight containers during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty-free treatment under this paragraph for any calendar year shall be counted against the aggregated quantity of tuna in airtight containers that is dutiable under rate column numbered 1 of such heading 1604.14.22 for that calendar year.

(c) The duty-free treatment provided under subsection (a) shall not apply to—

(1) watches, clocks, and timing apparatus provided for in Chapter 91, excluding heading 9113, of the Harmonized Tariff Schedule of the United States;

(2) buttons (whether finished or not finished) provided for in items 9606.21.40 and 9606.29.20 of such Schedule;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of the Federated States of Micronesia, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(a)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from the Federated States of Micronesia which are not exempt from duty under subsections (a), (b), (c), and (d) of section 242 shall be subject to the rates of duty set forth in column numbered 1-general of the Harmonized Tariff Schedule of the United States (HTSUS).

Section 244

(a) All products of the United States imported into the Federated States of Micronesia shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage or use.

(b) The provisions of subsection (a) shall not apply to advantages accorded by the Federated States of Micronesia by virtue of their full membership in the Pacific Island Countries Trade Agreement (PICTA), done on August 18, 2001, to those governments listed in Article 26 of PICTA, as of the date the Compact, as amended, is signed.

(c) Prior to entering into consultations on, or concluding, a free trade agreement with governments not listed in Article 26 of PICTA, the Federated States of Micronesia shall consult with the United States regarding whether or how subsection (a) of section 244 shall be applied.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of the Federated States of Micronesia. Should the Government of the Federated States of Micronesia act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of the Federated States of Micronesia may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as the Government of the Federated States of Micronesia deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact be made according to the United States Internal Revenue Code.

Section 253

A citizen of the Federated States of Micronesia, domiciled therein, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States, provided that such citizen of the Federated States of Micronesia is neither a citizen nor a resident of the United States.

Section 254

(a) In determining any income tax imposed by the Government of the Federated States of Micronesia, the Government of the Federated States of Micronesia shall have authority to impose tax

upon income derived by a resident of the Federated States of Micronesia from sources without the Federated States of Micronesia, in the same manner and to the same extent as the Government of the Federated States of Micronesia imposes tax upon income derived from within its own jurisdiction. If the Government of the Federated States of Micronesia exercises such authority as provided in this subsection, any individual resident of the Federated States of Micronesia who is subject to tax by the Government of the United States on income which is also taxed by the Government of the Federated States of Micronesia shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. However, the relief from liability to the United States Government referred to in the preceding sentence means only relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and relief in the form of the exclusion under section 911 of the Internal Revenue Code of 1986. For purposes of this section, the term "resident of the Federated States of Micronesia" shall be deemed to include any person who was physically present in the Federated States of Micronesia for a period of 183 or more days during any taxable year.

(b) If the Government of the Federated States of Micronesia subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in section 254(a).

Section 255

For purposes of section 274(h)(3)(A) of the United States Internal Revenue Code of 1986, the term "North American Area" shall include the Federated States of Micronesia.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

(a) The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia.

(b) This authority and responsibility includes:

(1) the obligation to defend the Federated States of Micronesia and its people from attack or threats thereof as the United States and its citizens are defended;

(2) the option to foreclose access to or use of the Federated States of Micronesia by military personnel or for the military purposes of any third country; and

(3) the option to establish and use military areas and facilities in the Federated States of Micronesia, subject to the terms of the separate agreements referred to in sections 321 and 323.

(c) The Government of the United States confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility.

Section 312

Subject to the terms of any agreements negotiated in accordance with sections 321 and 323, the Government of the United States may conduct within the lands, waters and airspace of the Federated States of Micronesia the activities and operations necessary for the exercise of its authority and responsibility under this Title.

Section 313

(a) The Government of the Federated States of Micronesia shall refrain from actions that the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia.

(b) The consultations referred to in this section shall be conducted expeditiously at senior levels of the two Governments, and the subsequent determination by the Government of the United States referred to in this section shall be made only at senior interagency levels of the Government of the United States.

(c) The Government of the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally regarding any determination made in accordance with this section.

Section 314

(a) Unless otherwise agreed, the Government of the United States shall not, in the Federated States of Micronesia:

(1) test by detonation or dispose of any nuclear weapon, nor test, dispose of, or discharge any toxic chemical or biological weapon; or

(2) test, dispose of, or discharge any other radioactive, toxic chemical or biological materials in an amount or manner which would be hazardous to public health or safety.

(b) Unless otherwise agreed, other than for transit or overflight purposes or during time of a national emergency declared by the President of the United States, a state of war declared by the Congress of the United States or as necessary to defend against an actual or impending armed attack on the United States, the Federated States of Micronesia or the Republic of the Marshall Islands, the Government of the United States shall not store in the Federated States of Micronesia or the Republic of the Marshall Islands any toxic chemical weapon, nor any radioactive materials nor any toxic chemical materials intended for weapons use.

(c) Radioactive, toxic chemical, or biological materials not intended for weapons use shall not be affected by section 314(b).

(d) No material or substance referred to in this section shall be stored in the Federated States of Micronesia except in an amount and manner which would not be hazardous to public health or safety. In determining what shall be an amount or manner which would be hazardous to public health or safety under this section,

the Government of the United States shall comply with any applicable mutual agreement, international guidelines accepted by the Government of the United States, and the laws of the United States and their implementing regulations.

(e) Any exercise of the exemption authority set forth in section 161(e) shall have no effect on the obligations of the Government of the United States under this section or on the application of this subsection.

(f) The provisions of this section shall apply in the areas in which the Government of the Federated States of Micronesia exercises jurisdiction over the living resources of the seabed, subsoil or water column adjacent to its coasts.

Section 315

The Government of the United States may invite members of the armed forces of other countries to use military areas and facilities in the Federated States of Micronesia, in conjunction with and under the control of United States Armed Forces. Use by units of the armed forces of other countries of such military areas and facilities, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval of the Government of the Federated States of Micronesia.

Section 316

The authority and responsibility of the Government of the United States under this Title may not be transferred or otherwise assigned.

Article II

Defense Facilities and Operating Rights

Section 321

(a) Specific arrangements for the establishment and use by the Government of the United States of military areas and facilities in the Federated States of Micronesia are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

(b) If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Federated States of Micronesia in addition to those for which specific arrangements are concluded pursuant to section 321(a), it may request the Government of the Federated States of Micronesia to satisfy those requirements through leases or other arrangements. The Government of the Federated States of Micronesia shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.

(c) The Government of the United States recognizes and respects the scarcity and special importance of land in the Federated States of Micronesia. In making any requests pursuant to section 321(b), the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.

Section 322

The Government of the United States shall provide and maintain fixed and floating aids to navigation in the Federated States of Micronesia at least to the extent necessary for the exercise of its authority and responsibility under this Title.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in the Federated States of Micronesia are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact, as amended, and its related agreements, the Government of the United States, exclusively, has assumed and enjoys, as to the Federated States of Micronesia, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands as of November 2, 1986.

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in the Federated States of Micronesia. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of the Federated States of Micronesia.

Article IV

Service in Armed Forces of the United States

Section 341

Any person entitled to the privileges set forth in Section 141 (with the exception of any person described in section 141(a)(5) who is not a citizen of the Federated States of Micronesia) shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States as long as such person has resided in the United States for a period of less than one year, provided that no time shall count towards this one year while a person admitted to the United States under the Compact, or the Compact, as amended, is engaged in full-time study in the United States. Any person described in section 141(a)(5) who is not a citizen of the Federated States of Micronesia shall be subject to United States laws relating to selective service.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Federated States

of Micronesia, as may be nominated by the Government of the Federated States of Micronesia, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195.

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of the Federated States of Micronesia shall continue to maintain a Joint Committee empowered to consider disputes arising under the implementation of this Title and its related agreements.

(b) The membership of the Joint Committee shall comprise selected senior officials of the two Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the Joint Committee. For the meetings of the Joint Committee, each of the two Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the Joint Committee shall meet annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The Joint Committee also shall meet promptly upon request of either of its members. The Joint Committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree. Upon notification by the Government of the United States, the Joint Committee of the United States and the Federated States of Micronesia shall meet promptly in a combined session with the Joint Committee established and maintained by the Government of the United States and the Republic of the Marshall Islands to consider matters within the jurisdiction of the two Joint Committees.

(d) Unresolved issues in the Joint Committee shall be referred to the Governments for resolution, and the Government of the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under Title Three, the Government of the United States shall accord due respect to the authority and responsibility of the Government of the Federated States of Micronesia under Titles One, Two and Four and to the responsibility of the Government of the Federated States of Micronesia to assure the well-being of its people.

Section 353

(a) The Government of the United States shall not include the Government of the Federated States of Micronesia as a named

party to a formal declaration of war, without that Government's consent.

(b) Absent such consent, this Compact, as amended, is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of the Federated States of Micronesia, which arise out of armed conflict subsequent to November 3, 1986, and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under section 353(b)(1) shall be treated as if they were made by citizens of the United States.

Section 354

(a) The Government of the United States and the Government of the Federated States of Micronesia are jointly committed to continue their security and defense relations, as set forth in this Title. Accordingly, it is the intention of the two countries that the provisions of this Title shall remain binding as long as this Compact, as amended, remains in effect, and thereafter as mutually agreed, unless earlier terminated by mutual agreement pursuant to section 441, or amended pursuant to Article III of Title Four. If at any time the Government of the United States, or the Government of the Federated States of Micronesia, acting unilaterally, terminates this Title, such unilateral termination shall be considered to be termination of the entire Compact, in which case the provisions of section 442 and 452 (in the case of termination by the Government of the United States) or sections 443 and 453 (in the case of termination by the Government of the Federated States of Micronesia), with the exception of paragraph (3) of subsection (a) of section 452 or paragraph (3) of subsection (a) of section 453, as the case may be, shall apply.

(b) The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Government of the Federated States of Micronesia, and in view of the existence of the separate agreement regarding mutual security concluded with the Government of the Federated States of Micronesia pursuant to sections 321 and 323, that, even if this Title should terminate, any attack on the Federated States of Micronesia during the period in which such separate agreement is in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to the Federated States of Micronesia in accordance with its constitutional processes.

(c) As reflected in Article 21(1)(b) of the Trust Fund Agreement, the Government of the United States and the Government of the Federated States of Micronesia further recognize, in view of the special relationship between their countries, that even if this Title should terminate, the Government of the Federated States of Micronesia shall refrain from actions which the Government of the United States determines, after appropriate consultation with that

Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia or the Republic of the Marshall Islands.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

Pursuant to section 432 of the Compact and subject to subsection (e) of section 461 of the Compact, as amended, the Compact, as amended, shall come into effect upon mutual agreement between the Government of the United States and the Government of the Federated States of Micronesia subsequent to completion of the following:

(a) Approval by the Government of the Federated States of Micronesia in accordance with its constitutional processes.

(b) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States shall confer promptly at the request of the Government of the Federated States of Micronesia and that Government shall confer promptly at the request of the Government of the United States on matters relating to the provisions of this Compact, as amended, or of its related agreements.

Section 422

In the event the Government of the United States or the Government of the Federated States of Micronesia, after conferring pursuant to section 421, determines that there is a dispute and gives written notice thereof, the two Governments shall make a good faith effort to resolve the dispute between themselves.

Section 423

If a dispute between the Government of the United States and the Government of the Federated States of Micronesia cannot be resolved within 90 days of written notification in the manner provided in section 422, either party to the dispute may refer it to arbitration in accordance with section 424.

Section 424

Should a dispute be referred to arbitration as provided for in section 423, an Arbitration Board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An Arbitration Board shall consist of a Chairman and two other members, each of whom shall be a citizen of a party

to the dispute. Each of the two Governments which is a party to the dispute shall appoint one member to the Arbitration Board. If either party to the dispute does not fulfill the appointment requirements of this section within 30 days of referral of the dispute to arbitration pursuant to section 423, its member on the Arbitration Board shall be selected from its own standing list by the other party to the dispute. Each Government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a Chairman within 15 days after selection of the other members of the Arbitration Board. Failing agreement on a Chairman, the Chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) Unless otherwise provided in this Compact, as amended, or its related agreements, the Arbitration Board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV and V of Title One, Title Two, Title Four, and their related agreements.

(c) Each member of the Arbitration Board shall have one vote. Each decision of the Arbitration Board shall be reached by majority vote.

(d) In determining any legal issue, the Arbitration Board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The Arbitration Board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact, as amended. Unless the parties provide otherwise by mutual agreement, the Arbitration Board shall endeavor to render its decision within 30 days after the conclusion of arguments. The Arbitration Board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the Arbitration Board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of the Federated States of Micronesia.

Article III

Amendment

Section 431

The provisions of this Compact, as amended, may be further amended by mutual agreement of the Government of the United States and the Government of the Federated States of Micronesia, in accordance with their respective constitutional processes.

Article IV

Termination

Section 441

This Compact, as amended, may be terminated by mutual agreement of the Government of the Federated States of Micronesia and the Government of the United States, in accordance with their respective constitutional processes. Such mutual termination of this Compact, as amended, shall be without prejudice to the continued application of section 451 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 442

Subject to section 452, this Compact, as amended, may be terminated by the Government of the United States in accordance with its constitutional processes. Such termination shall be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended. Such termination of this Compact, as amended, shall be without prejudice to the continued application of section 452 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 443

This Compact, as amended, shall be terminated by the Government of the Federated States of Micronesia, pursuant to its constitutional processes, subject to section 453 if the people represented by that Government vote in a plebiscite to terminate the Compact, as amended, or by another process permitted by the FSM constitution and mutually agreed between the Governments of the United States and the Federated States of Micronesia. The Government of the Federated States of Micronesia shall notify the Government of the United States of its intention to call such a plebiscite, or to pursue another mutually agreed and constitutional process, which plebiscite or process shall take place not earlier than three months after delivery of such notice. The plebiscite or other process shall be administered by the Government of the Federated States of Micronesia in accordance with its constitutional and legislative processes. If a majority of the valid ballots cast in the plebiscite or other process favors termination, the Government of the Federated States of Micronesia shall, upon certification of the results of the plebiscite or other process, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

(a) Should termination occur pursuant to section 441, economic and other assistance by the Government of the United States shall continue only if and as mutually agreed by the Governments of the

United States and the Federated States of Micronesia, and in accordance with the parties' respective constitutional processes.

(b) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement entered into consistent with those subsections, if termination occurs pursuant to section 441 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended.

(c) In view of the special relationship of the United States and the Federated States of Micronesia described in subsection (b) of this section, if termination occurs pursuant to section 441 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall be entitled to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement governing the distribution of such proceeds.

Section 452

(a) Should termination occur pursuant to section 442 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Should termination occur pursuant to section 442 before the twentieth anniversary of the effective date of the Compact, as amended:

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, economic and other assistance by the United States shall continue only if and as mutually agreed by the Governments of the United States and the Federated States of Micronesia.

(2) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(c) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 442 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall continue to be

eligible to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 453

(a) Should termination occur pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Upon receipt of notice of termination pursuant to section 443, the Government of the United States and the Government of the Federated States of Micronesia shall promptly consult with regard to their future relationship. Except as provided in subsection (c) and (d) of this section, these consultations shall determine the level of economic and other assistance, if any, which the Government of the United States shall provide to the Government of the Federated States of Micronesia for the period ending on the twentieth anniversary of the effective date of this Compact, as amended, and for any period thereafter, if mutually agreed.

(c) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(d) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall continue to be eligible to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 454

Notwithstanding any other provision of this Compact, as amended:

(a) The Government of the United States reaffirms its continuing interest in promoting the economic advancement and budgetary self-reliance of the people of the Federated States of Micronesia.

(b) The separate agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact, as amended, only, and without prejudice to the views of the Government of the United States or the Government of the Federated States of Micronesia as to the nature and extent of the jurisdiction of either of them under international law, the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the former administrative districts of Kosrae, Yap, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, section 1, in force on January 1, 1979. This term does not include the area of Palau or the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "The Federated States of Micronesia" and "the Republic of the Marshall Islands" are used in a geographic sense and include the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States.

(d) "Compact" means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99–239 (Jan. 14, 1986) and went into effect with respect to the Federated States of Micronesia on November 3, 1986.

(e) "Compact, as amended" means the Compact of Free Association Between the United States and the Federated States of Micronesia, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Federated States of Micronesia, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

(f) "Government of the Federated States of Micronesia" means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

(g) "Government of the Republic of the Marshall Islands" means the Government established and organized by the Constitution of the Republic of the Marshall Islands including all the political subdivisions and entities comprising that Government.

(h) The following terms shall be defined consistent with the 1998 Edition of the Radio Regulations of the International Telecommunications Union as follows:

(1) "Radiocommunication" means telecommunication by means of radio waves.

(2) "Station" means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service.

(3) "Broadcasting Service" means a radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission.

(4) "Broadcasting Station" means a station in the broadcasting service.

(5) "Assignment (of a radio frequency or radio frequency channel)" means an authorization given by an administration for a radio station to use a radio frequency or radio frequency channel under specified conditions.

(6) "Telecommunication" means any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

(i) "Military Areas and Facilities" means those areas and facilities in the Federated States of Micronesia reserved or acquired by the Government of the Federated States of Micronesia for use by the Government of the United States, as set forth in the separate agreements referred to in section 321.

(j) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(k) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

(a) The Government of the United States and the Government of the Federated States of Micronesia previously have concluded agreements pursuant to the Compact, which shall remain in effect and shall survive in accordance with their terms, as follows:

(1) Agreement Concluded Pursuant to Section 234 of the Compact;

(2) Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association; and

(3) Agreement Between the Government of the United States of America and the Federated States of Micronesia Regarding Aspects of the Marine Sovereignty and Jurisdiction of the Federated States of Micronesia.

(b) The Government of the United States and the Government of the Federated States of Micronesia shall conclude prior to the date of submission of this Compact, as amended, to the legislatures of the two countries, the following related agreements which shall come into effect on the effective date of this Compact, as amended, and shall survive in accordance with their terms, as follows:

(1) Federal Programs and Services Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Concluded Pursuant to Article III of Title One, Article II of Title Two (including Section 222), and Section 231 of the Compact of Free Association, as amended which includes:

(i) Postal Services and Related Programs;

(ii) Weather Services and Related Programs;

(iii) Civil Aviation Safety Service and Related Programs;

(iv) Civil Aviation Economic Services and Related Programs;

(v) United States Disaster Preparedness and Response Services and Related Programs;

(vi) Federal Deposit Insurance Corporation Services and Related Programs; and

(vii) Telecommunications Services and Related Programs.

(2) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175(a) of the Compact of Free Association, as amended;

(3) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia on Labor Recruitment Concluded Pursuant to Section 175(b) of the Compact of Free Association, as amended;

(4) Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact of Free Association, as Amended, of Free Association Between the Government of the United States of America and Government of the Federated States of Micronesia;

(5) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund;

(6) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 211(b), 321 and 323 of the Compact of Free Association, as Amended; and the

(7) Status of Forces Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Concluded Pursuant to Section 323 of the Compact of Free Association, as Amended.

Section 463

(a) Except as set forth in subsection (b) of this section, any reference in this Compact, as amended, to a provision of the United

States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended.

(b) Any reference in Articles IV and Article VI of Title One and Sections 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act, the Administrative Procedure Act or the Immigration and Nationality Act constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended, or as it may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

Article VII

Concluding Provisions

Section 471

Both the Government of the United States and the Government of the Federated States of Micronesia shall take all necessary steps, of a general or particular character, to ensure, no later than the entry into force date of this Compact, as amended, the conformity of its laws, regulations and administrative procedures with the provisions of this Compact, as amended, or in the case of subsection (d) of section 141, as soon as reasonably possible thereafter.

Section 472

This Compact, as amended, may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Federated States of Micronesia.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact of Free Association, as amended, which shall enter into force upon the exchange of diplomatic notes by which the Government of the United States of America and the Government of the Federated States of Micronesia inform each other about the fulfillment of their respective requirements for entry into force.

DONE at Pohnpei, Federated States of Micronesia, in duplicate, this fourteenth (14) day of May, 2003, each text being equally authentic.

Signed (May 14, 2003)
For the Government of the United States of America:

Ambassador Larry M. Dinger
U.S. Ambassador to the Federated States of Micronesia

Signed (May 14, 2003)
For the Government of the Federated States of Micronesia:

His Excellency Jesse B. Marehalau
Ambassador Extraordinary and Plenipotentiary

(b)[14] COMPACT OF FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE

[14] 48 U.S.C. 1921 note.

GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS.—The Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands is as follows:

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

Affirming that their Governments and their relationship as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the people of the Republic of the Marshall Islands have the right to enjoy self-government; and

Affirming the common interests of the United States of America and the Republic of the Marshall Islands in creating and maintaining their close and mutually beneficial relationship through the free and voluntary association of their respective Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and budgetary self-reliance of the Republic of the Marshall Islands; and

Recognizing that their relationship until the entry into force on October 21, 1986 of the Compact was based upon the International Trusteeship System of the United Nations Charter, and in particular Article 76 of the Charter; and that pursuant to Article 76 of the Charter, the people of the Republic of the Marshall Islands have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they, through their freely-expressed wishes, have adopted a Constitution appropriate to their particular circumstances; and

Recognizing that the Compact reflected their common desire to terminate the Trusteeship and establish a government-to-government relationship which was in accordance with the new political status based on the freely expressed wishes of the people of the Republic of the Marshall Islands and appropriate to their particular circumstances; and

Recognizing that the people of the Republic of the Marshall Islands have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of the Government of the Republic of the Marshall Islands into the Compact by the people of the Republic of the Marshall Islands constituted an exercise of their sovereign right to self-determination; and

Recognizing the common desire of the people of the United States and the people of the Republic of the Marshall Islands to maintain their close government-to-government relationship, the United States and the Republic of the Marshall Islands:

NOW, THEREFORE, MUTUALLY AGREE to continue and strengthen their relationship of free association by amending the Compact, which continues to provide a full measure of self-government for the people of the Republic of the Marshall Islands; and

FURTHER AGREE that the relationship of free association derives from and is as set forth in this Compact, as amended, by the

Governments of the United States and the Republic of the Marshall Islands; and that, during such relationship of free association, the respective rights and responsibilities of the Government of the United States and the Government of the Republic of the Marshall Islands in regard to this relationship of free association derive from and are as set forth in this Compact, as amended.

TITLE ONE

GOVERNMENTAL RELATIONS

Article I

Self-Government

Section 111

The people of the Republic of the Marshall Islands, acting through the Government established under their Constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Government of the Republic of the Marshall Islands has the capacity to conduct foreign affairs and shall do so in its own name and right, except as otherwise provided in this Compact, as amended.

(b) The foreign affairs capacity of the Government of the Republic of the Marshall Islands includes:

(1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law;

(2) the conduct of its commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting its individual citizens.

(c) The Government of the United States recognizes that the Government of the Republic of the Marshall Islands has the capacity to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of its foreign affairs, the Government of the Republic of the Marshall Islands confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support applications by the Government of the Republic of the Marshall Islands for

membership or other participation in regional or international organizations as may be mutually agreed.

Section 123

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of the Republic of the Marshall Islands shall consult, in the conduct of its foreign affairs, with the Government of the United States.

(b) In recognition of the foreign affairs capacity of the Government of the Republic of the Marshall Islands, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of the Republic of the Marshall Islands on matters that the Government of the United States regards as relating to or affecting the Government of the Republic of the Marshall Islands.

Section 124

The Government of the United States may assist or act on behalf of the Government of the Republic of the Marshall Islands in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of the Republic of the Marshall Islands undertaken with the assistance or through the agency of the Government of the United States pursuant to this section unless expressly agreed.

Section 125

The Government of the United States shall not be responsible for nor obligated by any actions taken by the Government of the Republic of the Marshall Islands in the area of foreign affairs, except as may from time to time be expressly agreed.

Section 126

At the request of the Government of the Republic of the Marshall Islands and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of the Republic of the Marshall Islands for travel outside the Republic of the Marshall Islands, the United States and its territories and possessions.

Section 127

Except as otherwise provided in this Compact, as amended, or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as Administering Authority which resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on October 20, 1986, are, as of that date, no longer assumed and enjoyed by the Government of the United States.

Article III

Communications

Section 131

(a) The Government of the Republic of the Marshall Islands has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communications assistance as mutually agreed.

(b) The Government of the Republic of the Marshall Islands has elected to undertake all functions previously performed by the Government of the United States with respect to domestic and foreign communications, except for those functions set forth in a separate agreement entered into pursuant to this section of the Compact, as amended.

Section 132

The Government of the Republic of the Marshall Islands shall permit the Government of the United States to operate telecommunications services in the Republic of the Marshall Islands to the extent necessary to fulfill the obligations of the Government of the United States under this Compact, as amended, in accordance with the terms of separate agreements entered into pursuant to this section of the Compact, as amended.

Article IV

Immigration

Section 141

(a) In furtherance of the special and unique relationship that exists between the United States and the Republic of the Marshall Islands, under the Compact, as amended, any person in the following categories may be admitted to lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions (the "United States") without regard to paragraphs (5) or (7)(B)(i)(II) of section 212(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5) or (7)(B)(i)(II):

(1) a person who, on October 21, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the Republic of the Marshall Islands;

(2) a person who acquires the citizenship of the Republic of the Marshall Islands at birth, on or after the effective date of the Constitution of the Republic of the Marshall Islands;

(3) an immediate relative of a person referred to in paragraphs (1) or (2) of this section, provided that such immediate relative is a naturalized citizen of the Republic of the Marshall Islands who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence, and further provided, that, in the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) of this section for at least five years, and further provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended;

(4) a naturalized citizen of the Republic of the Marshall Islands who was an actual resident there for not less than five years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence,

and whose name is included in a list furnished by the Government of the Republic of the Marshall Islands to the Government of the United States no later than the effective date of the Compact, as amended, in form and content acceptable to the Government of the United States, provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended; or

(5) an immediate relative of a citizen of the Republic of the Marshall Islands, regardless of the immediate relative's country of citizenship or period of residence in the Republic of the Marshall Islands, if the citizen of the Republic of the Marshall Islands is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

(b) Notwithstanding subsection (a) of this section, a person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact and the Compact, as amended. This subsection shall apply to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This subsection shall have no effect on the ability of the Government of the United States or any United States State or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

(c) Notwithstanding subsection (a) of this section, no person who has been or is granted citizenship in the Republic of the Marshall Islands, or has been or is issued a Republic of the Marshall Islands passport pursuant to any investment, passport sale, or similar program has been or shall be eligible for admission to the United States under the Compact or the Compact, as amended.

(d) A person admitted to the United States under the Compact, or the Compact, as amended, shall be considered to have the permission of the Government of the United States to accept employment in the United States. An unexpired Republic of the Marshall Islands passport with unexpired documentation issued by the Government of the United States evidencing admission under the Compact or the Compact, as amended, shall be considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1324a(b)(1)(B). The Government of the United States will take reasonable and appropriate steps to implement and publicize this provision, and the Government of the Republic of the Marshall Islands will also take reasonable and appropriate steps to publicize this provision.

(e) For purposes of the Compact and the Compact, as amended:

(1) the term "residence" with respect to a person means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(33), and

variations of the term "residence," including "resident" and "reside," shall be similarly construed;

(2) the term "actual residence" means physical presence in the Republic of the Marshall Islands during eighty-five percent of the five-year period of residency required by section 141(a)(3) and (4);

(3) the term "certificate of actual residence" means a certificate issued to a naturalized citizen by the Government of the Republic of the Marshall Islands stating that the citizen has complied with the actual residence requirement of section 141(a)(3) or (4);

(4) the term "nonimmigrant" means an alien who is not an "immigrant" as defined in section 101(a)(15) of such Act, 8 U.S.C. 1101(a)(15); and

(5) the term "immediate relative" means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

(f) The Immigration and Nationality Act, as amended, shall apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where such Act does not apply) under the Compact or the Compact, as amended, and nothing in the Compact or the Compact, as amended, shall be construed to limit, preclude, or modify the applicability of, with respect to such person:

(1) any ground of inadmissibility or deportability under such Act (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of such Act, as provided in subsection (a) of this section), and any defense thereto, provided that, section 237(a)(5) of such Act shall be construed and applied as if it reads as follows: "any alien who has been admitted under the Compact, or the Compact, as amended, who cannot show that he or she has sufficient means of support in the United States, is deportable;"

(2) the authority of the Government of the United States under section 214(a)(1) of such Act to provide that admission as a nonimmigrant shall be for such time and under such conditions as the Government of the United States may by regulations prescribe;

(3) except for the treatment of certain documentation for purposes of section 274A(b)(1)(B) of such Act as provided by subsection (d) of this section of the Compact, as amended, any requirement under section 274A, including but not limited to section 274A(b)(1)(E);

(4) section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, and actions taken pursuant to section 643; and

(5) the authority of the Government of the United States otherwise to administer and enforce the Immigration and Nationality Act, as amended, or other United States law.

(g) Any authority possessed by the Government of the United States under this section of the Compact or the Compact, as amended, may also be exercised by the Government of a territory

or possession of the United States where the Immigration and Nationality Act, as amended, does not apply, to the extent such exercise of authority is lawful under a statute or regulation of such territory or possession that is authorized by the laws of the United States.

(h) Subsection (a) of this section does not confer on a citizen of the Republic of the Marshall Islands the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, as amended, or to petition for benefits for alien relatives under that Act. Subsection (a) of this section, however, shall not prevent a citizen of the Republic of the Marshall Islands from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may be admitted to lawfully engage in occupations, and reside in the Republic of the Marshall Islands, subject to the rights of the Government of the Republic of the Marshall Islands to deny entry to or deport any such citizen or national as an undesirable alien. Any determination of inadmissibility or deportability shall be based on reasonable statutory grounds and shall be subject to appropriate administrative and judicial review within the Republic of the Marshall Islands. If a citizen or national of the United States is a spouse of a citizen of the Republic of the Marshall Islands, the Government of the Republic of the Marshall Islands shall allow the United States citizen spouse to establish residence. Should the Republic of the Marshall Islands citizen spouse predecease the United States citizen spouse during the marriage, the Government of the Republic of the Marshall Islands shall allow the United States citizen spouse to continue to reside in the Republic of the Marshall Islands.

(b) In enacting any laws or imposing any requirements with respect to citizens and nationals of the United States entering the Republic of the Marshall Islands under subsection (a) of this section, including any grounds of inadmissibility or deportability, the Government of the Republic of the Marshall Islands shall accord to such citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries.

(c) Consistent with subsection (a) of this section, with respect to citizens and nationals of the United States seeking to engage in employment or invest in the Republic of the Marshall Islands, the Government of the Republic of the Marshall Islands shall adopt immigration-related procedures no less favorable than those adopted by the Government of the United States with respect to citizens of the Republic of the Marshall Islands seeking employment in the United States.

Section 143

Any person who relinquishes, or otherwise loses, his United States nationality or citizenship, or his Republic of the Marshall Islands citizenship, shall be ineligible to receive the privileges set forth in sections 141 and 142. Any such person may apply for admission to the United States or the Republic of the Marshall Islands, as the case may be, in accordance with any other applicable laws of the United States or the Republic of the Marshall Islands

relating to immigration of aliens from other countries. The laws of the Republic of the Marshall Islands or the United States, as the case may be, shall dictate the terms and conditions of any such person's stay.

Article V

Representation

Section 151

Relations between the Government of the United States and the Government of the Republic of the Marshall Islands shall be conducted in accordance with the Vienna Convention on Diplomatic Relations. In addition to diplomatic missions and representation, the Governments may establish and maintain other offices and designate other representatives on terms and in locations as may be mutually agreed.

Section 152

(a) Any citizen or national of the United States who, without authority of the United States, acts as the agent of the Government of the Republic of the Marshall Islands with regard to matters specified in the provisions of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), that apply with respect to an agent of a foreign principal shall be subject to the requirements of such Act. Failure to comply with such requirements shall subject such citizen or national to the same penalties and provisions of law as apply in the case of the failure of such an agent of a foreign principal to comply with such requirements. For purposes of the Foreign Agents Registration Act of 1938, the Republic of the Marshall Islands shall be considered to be a foreign country.

(b) Subsection (a) of this section shall not apply to a citizen or national of the United States employed by the Government of the Republic of the Marshall Islands with respect to whom the Government of the Republic of the Marshall Islands from time to time certifies to the Government of the United States that such citizen or national is an employee of the Republic of the Marshall Islands whose principal duties are other than those matters specified in the Foreign Agents Registration Act of 1938, as amended, that apply with respect to an agent of a foreign principal. The agency or officer of the United States receiving such certifications shall cause them to be filed with the Attorney General, who shall maintain a publicly available list of the persons so certified.

Article VI

Environmental Protection

Section 161

The Governments of the United States and the Republic of the Marshall Islands declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Republic of the Marshall Islands. In order to carry out this policy, the

Government of the United States and the Government of the Republic of the Marshall Islands agree to the following mutual and reciprocal undertakings:

(a) The Government of the United States:

(1) shall, for its activities controlled by the U.S. Army at Kwajalein Atoll and in the Mid-Atoll Corridor and for U.S. Army Kwajalein Atoll activities in the Republic of the Marshall Islands, continue to apply the Environmental Standards and Procedures for United States Army Kwajalein Atoll Activities in the Republic of the Marshall Islands, unless and until those Standards or Procedures are modified by mutual agreement of the Governments of the United States and the Republic of the Marshall Islands;

(2) shall apply the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq., to its activities under the Compact, as amended, and its related agreements as if the Republic of the Marshall Islands were the United States;

(3) in the conduct of any activity not described in section 161(a)(1) requiring the preparation of an Environmental Impact Statement under section 161(a)(2), shall comply with standards substantively similar to those required by the following laws of the United States, taking into account the particular environment of the Republic of the Marshall Islands; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.; the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), as amended, 33 U.S.C. 1251 et seq.; Title I of the Marine Protection, Research and Sanctuaries Act of 1972 (the Ocean Dumping Act), 33 U.S.C. 1411 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq.; the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.; and such other environmental protection laws of the United States and the Republic of the Marshall Islands as may be agreed from time to time with the Government of the Republic of the Marshall Islands;

(4) shall, prior to conducting any activity not described in section 161(a)(1) requiring the preparation of an Environmental Impact Statement under section 161(a)(2), develop, as agreed with the Government of the Republic of the Marshall Islands, written environmental standards and procedures to implement the substantive provisions of the laws made applicable to U.S. Government activities in the Republic of the Marshall Islands, pursuant to section 161(a)(3).

(b) The Government of the Republic of the Marshall Islands shall continue to develop and implement standards and procedures to protect its environment. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Republic of the Marshall Islands, taking into account its particular environment, shall continue to develop and implement standards for environmental protection substantively similar to those required of the Government of

the United States by section 161(a)(3) prior to its conducting activities in the Republic of the Marshall Islands, substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 161(a), including any standard or procedure applicable thereunder, and section 161(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of the Republic of the Marshall Islands.

(d) In the event that an Environmental Impact Statement is no longer required under the laws of the United States for major Federal actions significantly affecting the quality of the human environment, the regulatory regime established under sections 161(a)(3) and 161(a)(4) shall continue to apply to such activities of the Government of the United States until amended by mutual agreement.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact, as amended, and its related agreements from any environmental standard or procedure which may be applicable under sections 161(a)(3) and 161(a)(4) if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact, as amended, and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of the Republic of the Marshall Islands shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of the Republic of the Marshall Islands.

(f) The laws of the United States referred to in section 161(a)(3) shall apply to the activities of the Government of the United States under this Compact, as amended, and its related agreements only to the extent provided for in this section.

Section 162

The Government of the Republic of the Marshall Islands may bring an action for judicial review of any administrative agency action or any activity of the Government of the United States pursuant to section 161(a) for enforcement of the obligations of the Government of the United States arising thereunder. The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction over such action or activity, and over actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees, governed by section 161, provided that:

(a) Such actions may only be civil actions for any appropriate civil relief other than punitive damages against the Government of the United States or, where required by law, its officers in their official capacity; no criminal actions may arise under this section.

(b) Actions brought pursuant to this section may be initiated only by the Government of the Republic of the Marshall Islands.

(c) Administrative agency actions arising under section 161 shall be reviewed pursuant to the standard of judicial review set forth in 5 U.S.C. 706.

(d) The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction to issue all necessary processes, and the Government of the United States agrees to submit itself to the jurisdiction of the court; decisions of the United States District Court shall be reviewable in the United States Court of Appeals for the Ninth Circuit or the United States Court of Appeals for the District of Columbia, respectively, or in the United States Supreme Court as provided by the laws of the United States.

(e) The judicial remedy provided for in this section shall be the exclusive remedy for the judicial review or enforcement of the obligations of the Government of the United States under this Article and actions brought under section 172(b), which relate to the activities of the Government of the United States and its officers and employees governed by section 161.

(f) In actions pursuant to this section, the Government of the Republic of the Marshall Islands shall be treated as if it were a United States citizen.

Section 163

(a) For the purpose of gathering data necessary to study the environmental effects of activities of the Government of the United States subject to the requirements of this Article, the Government of the Republic of the Marshall Islands shall be granted access to facilities operated by the Government of the United States in the Republic of the Marshall Islands, to the extent necessary for this purpose, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the United States under Title Three.

(b) The Government of the United States, in turn, shall be granted access to the Republic of the Marshall Islands for the purpose of gathering data necessary to discharge its obligations under this Article, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the Republic of the Marshall Islands under Title One, and to the extent necessary for this purpose shall be granted access to documents and other information to the same extent similar access is provided the Government of the Republic of the Marshall Islands under the Freedom of Information Act, 5 U.S.C. 552.

(c) The Government of the Republic of the Marshall Islands shall not impede efforts by the Government of the United States to comply with applicable standards and procedures.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact, as amended, or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceased with respect to the Marshall Islands on October 21, 1986, the date the Compact went into effect.

Section 172

(a) Every citizen of the Republic of the Marshall Islands who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any non-resident alien.

(b) The Government of the Republic of the Marshall Islands and every citizen of the Republic of the Marshall Islands shall be considered to be a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701–706, except that only the Government of the Republic of the Marshall Islands may seek judicial review under the Administrative Procedure Act or judicial enforcement under the Freedom of Information Act when such judicial review or enforcement relates to the activities of the Government of the United States governed by sections 161 and 162.

Section 173

The Governments of the United States and the Republic of the Marshall Islands agree to adopt and enforce such measures, consistent with this Compact, as amended, and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in the Republic of the Marshall Islands pursuant to this Compact, as amended, and its related agreements and by the Government of the Republic of the Marshall Islands in the United States pursuant to this Compact, Compact, as amended, and its related agreements.

Section 174

Except as otherwise provided in this Compact, as amended, and its related agreements:

(a) The Government of the Republic of the Marshall Islands, and its agencies and officials, shall be immune from the jurisdiction of the court of the United States, and the Government of the United States, and its agencies and officials, shall be immune from the jurisdiction of the courts of the Republic of the Marshall Islands.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the United States with regard to any cause of action arising as a result of acts or omissions of

the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to October 21, 1986;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of October 21, 1986; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of the Compact shall be adjudicated in the same manner as a claim adjudicated according to section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor courts, which shall have jurisdiction therefore, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of the Republic of the Marshall Islands shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of the Republic of the Marshall Islands in any civil case in which an exception to foreign state immunity is set forth in the Foreign Sovereign Immunities Act (28 U.S.C. 1602 et seq.) or its successor statutes.

Section 175

(a) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern mutual assistance and cooperation in law enforcement matters, including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners, as well as other law enforcement matters. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186, and 3188–95, shall be applicable to the extradition of fugitives under the separate agreement,

and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–15, shall be applicable to the transfer of prisoners under the separate agreement; and

(b) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern requirements relating to labor recruitment practices, including registration, reporting, suspension or revocation of authorization to recruit persons for employment in the United States, and enforcement for violations of such requirements.

Section 176

The Government of the Republic of the Marshall Islands confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of the Republic of the Marshall Islands to grant relief from judgments in appropriate cases.

Section 177

Section 177 of the Compact entered into force with respect to the Marshall Islands on October 21, 1986 as follows:

> "(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Micronesia, (or Palau) for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.
>
> "(b) The Government of the United States and the Government of the Marshall Islands shall set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have arisen in regard to the Marshall Islands and its citizens and which have not as yet been compensated or which in the future may arise, for the continued administration by the Government of the United States of direct radiation related medical surveillance and treatment programs and radiological monitoring activities and for such additional programs and activities as may be mutually agreed, and for the assumption by the Government of the Marshall Islands of responsibility for enforcement of limitations on the utilization of affected areas developed in cooperation with the Government of the United States and for the assistance by the Government of the United States in the exercise of such responsibility as may be mutually agreed. This separate agreement shall come into effect simultaneously with this Compact and shall remain in effect in accordance with its own terms.
>
> "(c) The Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the amount of $150 million to be paid and distributed in accordance with the separate agreement referred to in this Section, and shall provide the services and programs set forth in this separate agreement, the language of which is incorporated into this Compact.".

The Compact, as amended, makes no changes to, and has no effect upon, Section 177 of the Compact, nor does the Compact, as

amended, change or affect the separate agreement referred to in Section 177 of the Compact including Articles IX and X of that separate agreement, and measures taken by the parties thereunder.

Section 178

(a) The Federal agencies of the Government of the United States that provide services and related programs in the Republic of the Marshall Islands pursuant to Title Two are authorized to settle and pay tort claims arising in the Republic of the Marshall Islands from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in section 178(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under section 178(a) that cannot be settled under section 178(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of the Republic of the Marshall Islands shall, in the separate agreement referred to in section 231, provide for:

(1) the administrative settlement of claims referred to in section 178(a), including designation of local agents in each State of the Republic of the Marshall Islands; such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such separate agreements; and

(2) arbitration, referred to in section 178(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to section 178(a).

(d) The provisions of section 174(d) shall not apply to claims covered by this section.

(e) Except as otherwise explicitly provided by law of the United States, this Compact, as amended, or its related agreements, neither the Government of the United States, its instrumentalities, nor any person acting on behalf of the Government of the United States, shall be named a party in any action based on, or arising out of, the activity or activities of a recipient of any grant or other assistance provided by the Government of the United States (or the activity or activities of the recipient's agency or any other person or entity acting on behalf of the recipient).

Section 179

(a) The courts of the Republic of the Marshall Islands shall not exercise criminal jurisdiction over the Government of the United States, or its instrumentalities.

(b) The courts of the Republic of the Marshall Islands shall not exercise criminal jurisdiction over any person if the Government of the United States provides notification to the Government of the Republic of the Marshall Islands that such person was acting on behalf of the Government of the United States, for actions taken in furtherance of section 221 or 224 of this amended Compact, or any other provision of law authorizing financial, program, or service assistance to the Republic of the Marshall Islands.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211 - Annual Grant Assistance

(a) In order to assist the Government of the Republic of the Marshall Islands in its efforts to promote the economic advancement and budgetary self-reliance of its people, and in recognition of the special relationship that exists between the Republic of the Marshall Islands and the United States, the Government of the United States shall provide assistance on a grant basis for a period of twenty years in the amounts set forth in section 217, commencing on the effective date of this Compact, as amended. Such grants shall be used for assistance in education, health care, the environment, public sector capacity building, and private sector development, or for other areas as mutually agreed, with priorities in the education and health care sectors. Consistent with the medium-term budget and investment framework described in subsection (f) of this section, the proposed division of this amount among the identified areas shall require the concurrence of both the Government of the United States and the Government of the Republic of the Marshall Islands, through the Joint Economic Management and Financial Accountability Committee described in section 214. The Government of the United States shall disburse the grant assistance and monitor the use of such grant assistance in accordance with the provisions of this Article and an Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, of Free Association Between the Government of the United States of America and the Government of the Republic of the Marshall Islands ("Fiscal Procedures Agreement") which shall come into effect simultaneously with this Compact, as amended.

(1) EDUCATION.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support and improve the educational system of the Republic of the Marshall Islands and develop the human, financial, and material resources necessary for the Republic of the Marshall Islands to perform these services. Emphasis should be placed on advancing a quality basic education system.

(2) HEALTH.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support and improve the delivery of preventive, curative and environmental care and develop the human, financial, and material resources necessary for the Republic of the Marshall Islands to perform these services.

(3) PRIVATE SECTOR DEVELOPMENT.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support the efforts of the Republic of the Marshall Islands to

attract foreign investment and increase indigenous business activity by vitalizing the commercial environment, ensuring fair and equitable application of the law, promoting adherence to core labor standards, maintaining progress toward privatization of state-owned and partially state-owned enterprises, and engaging in other reforms.

(4) CAPACITY BUILDING IN THE PUBLIC SECTOR.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support the efforts of the Republic of the Marshall Islands to build effective, accountable and transparent national and local government and other public sector institutions and systems.

(5) ENVIRONMENT.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to increase environmental protection; establish and manage conservation areas; engage in environmental infrastructure planning, design construction and operation; and to involve the citizens of the Republic of the Marshall Islands in the process of conserving their country's natural resources.

(b) KWAJALEIN ATOLL.—

(1) Of the total grant assistance made available under subsection (a) of this section, the amount specified herein shall be allocated annually from fiscal year 2004 through fiscal year 2023 (and thereafter in accordance with the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) to advance the objectives and specific priorities set forth in subsections (a) and (d) of this section and the Fiscal Procedures Agreement, to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll. This United States grant assistance shall be made available, in accordance with the medium-term budget and investment framework described in subsection (f) of this section, to support and improve the infrastructure and delivery of services and develop the human and material resources necessary for the Republic of the Marshall Islands to carry out its responsibility to maintain such infrastructure and deliver such services. The amount of this assistance shall be $3,100,000, with an inflation adjustment as provided in section 218, from fiscal year 2004 through fiscal year 2013 and the fiscal year 2013 level of funding, with an inflation adjustment as provided in section 218, will be increased by $2 million for fiscal year 2014. The fiscal year 2014 level of funding, with an inflation adjustment as provided in section 218, will be made available from fiscal year 2015 through fiscal year 2023 (and thereafter as noted above).

(2) The Government of the United States shall also provide to the Government of the Republic of the Marshall Islands, in conjunction with section 321(a) of this Compact, as amended, an annual payment from fiscal year 2004 through fiscal year

2023 (and thereafter in accordance with the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) of $1.9 million. This grant assistance will be subject to the Fiscal Procedures Agreement and will be adjusted for inflation under section 218 and used to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll with emphasis on the Kwajalein landowners, as described in the Fiscal Procedures Agreement.

(3) Of the total grant assistance made available under subsection (a) of this section, and in conjunction with section 321(a) of the Compact, as amended, $200,000, with an inflation adjustment as provided in section 218, shall be allocated annually from fiscal year 2004 through fiscal year 2023 (and thereafter as provided in the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) for a grant to support increased participation of the Government of the Republic of the Marshall Islands Environmental Protection Authority in the annual U.S. Army Kwajalein Atoll Environmental Standards Survey and to promote a greater Government of the Republic of the Marshall Islands capacity for independent analysis of the Survey's findings and conclusions.

(c) HUMANITARIAN ASSISTANCE—REPUBLIC OF THE MARSHALL ISLANDS PROGRAM.—In recognition of the special development needs of the Republic of the Marshall Islands, the Government of the United States shall make available to the Government of the Republic of the Marshall Islands, on its request and to be deducted from the grant amount made available under subsection (a) of this section, a Humanitarian Assistance—Republic of the Marshall Islands ("HARMI") Program with emphasis on health, education, and infrastructure (including transportation), projects and such other projects as mutually agreed. The terms and conditions of the HARMI shall be set forth in the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended, which shall come into effect simultaneously with the amendments to this Compact.

(d) PUBLIC INFRASTRUCTURE.—

(1) Unless otherwise agreed, not less than 30 percent and not more than 50 percent of U.S. annual grant assistance provided under this section shall be made available in accordance with a list of specific projects included in the infrastructure improvement and maintenance plan prepared by the Government of the Republic of the Marshall Islands as part of the strategic framework described in subsection (f) of this section.

(2) INFRASTRUCTURE MAINTENANCE FUND.—Five percent of the annual public infrastructure grant made available under paragraph (1) of this subsection shall be set aside, with an equal contribution from the Government of the Republic of the

Marshall Islands, as a contribution to an Infrastructure Maintenance Fund. Administration of the Infrastructure Maintenance Fund shall be governed by the Fiscal Procedures Agreement.

(e) DISASTER ASSISTANCE EMERGENCY FUND.—Of the total grant assistance made available under subsection (a) of this section, an amount of two hundred thousand dollars ($200,000) shall be provided annually, with an equal contribution from the Government of the Republic of the Marshall Islands, as a contribution to a Disaster Assistance Emergency Fund ("DAEF"). Any funds from the DAEF may be used only for assistance and rehabilitation resulting from disasters and emergencies. The funds will be accessed upon declaration of a State of Emergency by the Government of the Republic of the Marshall Islands, with the concurrence of the United States Chief of Mission to the Republic of the Marshall Islands. Administration of the DAEF shall be governed by the Fiscal Procedures Agreement.

(f) BUDGET AND INVESTMENT FRAMEWORK.—The Government of the Republic of the Marshall Islands shall prepare and maintain an official medium-term budget and investment framework. The framework shall be strategic in nature, shall be continuously reviewed and updated through the annual budget process, and shall make projections on a multi-year rolling basis. Each of the sectors and areas named in subsections (a), (b), and (d) of this section, or other sectors and areas as mutually agreed, shall be accorded specific treatment in the framework. Those portions of the framework that contemplate the use of United States grant funds shall require the concurrence of both the Government of the United States and the Government of the Republic of the Marshall Islands.

Section 212 - Kwajalein Impact and Use

The Government of the United States shall provide to the Government of the Republic of the Marshall Islands in conjunction with section 321(a) of the Compact, as amended, and the agreement between the Government of the United States and the Government of the Republic of the Marshall Islands regarding military use and operating rights, a payment in fiscal year 2004 of $15,000,000, with no adjustment for inflation. In fiscal year 2005 and through fiscal year 2013, the annual payment will be the fiscal year 2004 amount ($15,000,000) with an inflation adjustment as provided under section 218. In fiscal year 2014, the annual payment will be $18,000,000 (with no adjustment for inflation) or the fiscal year 2013 amount with an inflation adjustment under section 218, whichever is greater. For fiscal year 2015 through fiscal year 2023 (and thereafter in accordance with the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) the annual payment will be the fiscal year 2014 amount, with an inflation adjustment as provided under section 218.

Section 213 - Accountability

(a) Regulations and policies normally applicable to United States financial assistance to its state and local governments, as set forth in the Fiscal Procedures Agreement, shall apply to each grant described in section 211, and to grants administered under section

221 below, except as modified in the separate agreements referred to in section 231 of this Compact, as amended, or by U.S. law. As set forth in the Fiscal Procedures Agreement, reasonable terms and conditions, including annual performance indicators that are necessary to ensure effective use of United States assistance and reasonable progress toward achieving program objectives may be attached. In addition, the United States may seek appropriate remedies for noncompliance with the terms and conditions attached to the assistance, or for failure to comply with section 234, including withholding assistance.

(b) The Government of the United States shall, for each fiscal year of the twenty years during which assistance is to be provided on a sector grant basis under section 211 (a), grant the Government of the Republic of the Marshall Islands an amount equal to the lesser of (i) one half of the reasonable, properly documented cost incurred during such fiscal year to conduct the annual audit required under Article VIII (2) of the Fiscal Procedures Agreement or (ii) $500,000. Such amount will not be adjusted for inflation under section 218 or otherwise.

Section 214 - Joint Economic Management and Financial Accountability Committee

The Governments of the United States and the Republic of the Marshall Islands shall establish a Joint Economic Management and Financial Accountability Committee, composed of a U.S. chair, two other members from the Government of the United States and two members from the Government of the Republic of the Marshall Islands. The Joint Economic Management and Financial Accountability Committee shall meet at least once each year to review the audits and reports required under this Title and the Fiscal Procedures Agreement, evaluate the progress made by the Republic of the Marshall Islands in meeting the objectives identified in its framework described in subsection (f) of section 211, with particular focus on those parts of the framework dealing with the sectors and areas identified in subsection (a) of section 211, identify problems encountered, and recommend ways to increase the effectiveness of U.S. assistance made available under this Title. The establishment and operations of the Joint Economic Management and Financial Accountability Committee shall be governed by the Fiscal Procedures Agreement.

Section 215 - Annual Report

The Government of the Republic of the Marshall Islands shall report annually to the President of the United States on the use of United States sector grant assistance and other assistance and progress in meeting mutually agreed program and economic goals. The Joint Economic Management and Financial Accountability Committee shall review and comment on the report and make appropriate recommendations based thereon.

Section 216 - Trust Fund

(a) The United States shall contribute annually for twenty years from the effective date of the Compact, as amended, in the amounts set forth in section 217 into a trust fund established in accordance with the Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Implementing Section 216 and Section 217 of the Compact,

as Amended, Regarding a Trust Fund ("Trust Fund Agreement"), which shall come into effect simultaneously with this Compact, as amended. Upon termination of the annual grant assistance under section 211 (a), (d) and (e), the earnings of the fund shall thereafter be used for the purposes described in section 211 or as otherwise mutually agreed.

(b) The United States contribution into the Trust Fund described in subsection (a) of this section is conditioned on the Government of the Republic of the Marshall Islands contributing to the Trust Fund at least $25,000,000, on the effective date of the Trust Fund Agreement or on October 1, 2003, whichever is later, $2,500,000 prior to October 1, 2004, and $2,500,000 prior to October 1, 2005. Any funds received by the Republic of the Marshall Islands under section 111(d) of Public Law 99–239 (January 14, 1986), or successor provisions, would be contributed to the Trust Fund as a Republic of the Marshall Islands' contribution.

(c) The terms regarding the investment and management of funds and use of the income of the Trust Fund shall be governed by the Trust Fund Agreement. Funds derived from United States investment shall not be subject to Federal or state taxes in the United States or any taxes in the Republic of the Marshall Islands. The Trust Fund Agreement shall also provide for annual reports to the Government of the United States and to the Government of the Republic of the Marshall Islands. The Trust Fund Agreement shall provide for appropriate distributions of trust fund proceeds to the Republic of the Marshall Islands and for appropriate remedies for the failure of the Republic of the Marshall Islands to use income of the Trust Fund for the annual grant purposes set forth in section 211. These remedies may include the return to the United States of the present market value of its contributions to the Trust Fund and the present market value of any undistributed income on the contributions of the United States. If this Compact, as amended, is terminated, the provisions of sections 451–453 of the Compact, as amended, and the Trust Fund Agreement shall govern treatment of any U.S. contributions to the Trust Fund or accrued income thereon.

Section 217 - Annual Grant Funding and Trust Fund Contributions

The funds described in sections 211, 212, 213(b), and 216 shall be made available as follows:

[In millions of dollars]

Fiscal year	Annual Grants Section 211	Audit Grant Section 213(b)	Trust Fund Section 216 (a&c)	Kwajalein Impact Section 212	Total
2004	35.2	.5	7	15.0	57.7
2005	34.7	.5	7.5	15.0	57.7
2006	34.2	.5	8	15.0	57.7
2007	33.7	.5	8.5	15.0	57.7
2008	33.2	.5	9	15.0	57.7
2009	32.7	.5	9.5	15.0	57.7
2010	32.2	.5	10	15.0	57.7
2011	31.7	.5	10.5	15.0	57.7
2012	31.2	.5	11	15.0	57.7
2013	30.7	.5	11.5	15.0	57.7
2014	32.2	.5	12	18.0	62.7
2015	31.7	.5	12.5	18.0	62.7
2016	31.2	.5	13	18.0	62.7

[In millions of dollars]

Fiscal year	Annual Grants Section 211	Audit Grant Section 213(b)	Trust Fund Section 216 (a&c)	Kwajalein Impact Section 212	Total
2017	30.7	.5	13.5	18.0	62.7
2018	30.2	.5	14	18.0	62.7
2019	29.7	.5	14.5	18.0	62.7
2020	29.2	.5	15	18.0	62.7
2021	28.7	.5	15.5	18.0	62.7
2022	28.2	.5	16	18.0	62.7
2023	27.7	.5	16.5	18.0	62.7

Section 218 - Inflation Adjustment

Except as otherwise provided, the amounts stated in this Title shall be adjusted for each United States Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or 5 percent, whichever is less in any one year, using the beginning of Fiscal Year 2004 as a base.

Section 219 - Carry-Over of Unused Funds

If in any year the funds made available by the Government of the United States for that year pursuant to this Article are not completely obligated by the Government of the Republic of the Marshall Islands, the unobligated balances shall remain available in addition to the funds to be provided in subsequent years.

Article II

Services and Program Assistance

Section 221

(a) SERVICES.—The Government of the United States shall make available to the Republic of the Marshall Islands, in accordance with and to the extent provided in the Federal Programs and Services Agreement referred to in Section 231, the services and related programs of:

(1) the United States Weather Service;

(2) the United States Postal Service;

(3) the United States Federal Aviation Administration;

(4) the United States Department of Transportation; and

(5) the Department of Homeland Security, and the United States Agency for International Development, Office of Foreign Disaster Assistance.

Upon the effective date of this Compact, as amended, the United States Departments and Agencies named or having responsibility to provide these services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement referred to in section 231.

(b) PROGRAMS.—

(1) Other than the services and programs covered by subsection (a) of this section, and to the extent authorized by the Congress of the United States, the Government of the United States shall make available to the Republic of the Marshall Islands the services and programs that were available to the Republic of the Marshall Islands on the effective date of this

Compact, as amended, to the extent that such services and programs continue to be available to State and local governments of the United States. As set forth in the Fiscal Procedures Agreement, funds provided under subsection (a) of section 211 shall be considered to be local revenues of the Government of the Republic of the Marshall Islands when used as the local share required to obtain Federal programs and services.

(2) Unless provided otherwise by U.S. law, the services and programs described in paragraph (1) of this subsection shall be extended in accordance with the terms of the Federal Programs and Services Agreement.

(c) The Government of the United States shall have and exercise such authority as is necessary to carry out its responsibilities under this Title and the Federal Programs and Services Agreement, including the authority to monitor and administer all service and program assistance provided by the United States to the Republic of the Marshall Islands. The Federal Programs and Services Agreement shall also set forth the extent to which services and programs shall be provided to the Republic of the Marshall Islands.

(d) Except as provided elsewhere in this Compact, as amended, under any separate agreement entered into under this Compact, as amended, or otherwise under U.S. law, all Federal domestic programs extended to or operating in the Republic of the Marshall Islands shall be subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs and services when operating in the United States.

(e) The Government of the United States shall make available to the Republic of the Marshall Islands alternate energy development projects, studies, and conservation measures to the extent provided for the Freely Associated States in the laws of the United States.

Section 222

The Government of the United States and the Government of the Republic of the Marshall Islands may agree from time to time to extend to the Republic of the Marshall Islands additional United States grant assistance, services and programs, as provided under the laws of the United States. Unless inconsistent with such laws, or otherwise specifically precluded by the Government of the United States at the time such additional grant assistance, services, or programs are extended, the Federal Programs and Services Agreement shall apply to any such assistance, services or programs.

Section 223

The Government of the Republic of the Marshall Islands shall make available to the Government of the United States at no cost such land as may be necessary for the operations of the services and programs provided pursuant to this Article, and such facilities as are provided by the Government of the Republic of the Marshall Islands at no cost to the Government of the United States as of the effective date of this Compact, as amended, or as may be mutually agreed thereafter.

Section 224

The Government of the Republic of the Marshall Islands may request, from the time to time, technical assistance from the Federal

agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its laws. If technical assistance is granted pursuant to such a request, the Government of the United States shall provide the technical assistance in a manner which gives priority consideration to the Republic of the Marshall Islands over other recipients not a part of the United States, its territories or possessions, and equivalent consideration to the Republic of the Marshall Islands with respect to other states in Free Association with the United States. Such assistance shall be made available on a reimbursable or non-reimbursable basis to the extent provided by United States law.

Article III

Administrative Provisions

Section 231

The specific nature, extent and contractual arrangements of the services and programs provided for in section 221 of this Compact, as amended, as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in the Republic of the Marshall Islands, and other arrangements in connection with the assistance, services, or programs furnished by the Government of the United States, are set forth in a Federal Programs and Services Agreement which shall come into effect simultaneously with this Compact, as amended.

Section 232

The Government of the United States, in consultation with the Government of the Republic of the Marshall Islands, shall determine and implement procedures for the periodic audit of all grants and other assistance made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Further, in accordance with the Fiscal Procedures Agreement described in subsection (a) of section 211, the Comptroller General of the United States shall have such powers and authorities as described in sections 103(m) and 110(c) of Public Law 99–239, 99 Stat. 1777–78, and 99 Stat. 1799 (January 14, 1986).

Section 233

Approval of this Compact, as amended, by the Government of the United States, in accordance with its constitutional processes, shall constitute a pledge by the United States that the sums and amounts specified as grants in section 211 of this Compact, as amended, shall be appropriated and paid to the Republic of the Marshall Islands for such period as those provisions of this Compact, as amended, remain in force, provided that the Republic of the Marshall Islands complies with the terms and conditions of this Title and related subsidiary agreements.

Section 234

The Government of the Republic of the Marshall Islands pledges to cooperate with, permit, and assist if reasonably requested, designated and authorized representatives of the Government of the United States charged with investigating whether Compact funds,

or any other assistance authorized under this Compact, as amended, have, or are being, used for purposes other than those set forth in this Compact, as amended, or its subsidiary agreements. In carrying out this investigative authority, such United States Government representatives may request that the Government of the Republic of the Marshall Islands subpoena documents and records and compel testimony in accordance with the laws and Constitution of the Republic of the Marshall Islands. Such assistance by the Government of the Republic of the Marshall Islands to the Government of the United States shall not be unreasonably withheld. The obligation of the Government of the Marshall Islands to fulfill its pledge herein is a condition to its receiving payment of such funds or other assistance authorized under this Compact, as amended. The Government of the United States shall pay any reasonable costs for extraordinary services executed by the Government of the Marshall Islands in carrying out the provisions of this section.

Article IV

Trade

Section 241

The Republic of the Marshall Islands is not included in the customs territory of the United States.

Section 242

The President shall proclaim the following tariff treatment for articles imported from the Republic of the Marshall Islands which shall apply during the period of effectiveness of this title:

(a) Unless otherwise excluded, articles imported from the Republic of the Marshall Islands, subject to the limitations imposed under section 503(b) of title V of the Trade Act of 1974 (19 U.S.C. 2463(b)), shall be exempt from duty.

(b) Only tuna in airtight containers provided for in heading 1604.14.22 of the Harmonized Tariff Schedule of the United States that is imported from the Republic of the Marshall Islands and the Federated States of Micronesia during any calendar year not to exceed 10 percent of apparent United States consumption of tuna in airtight containers during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty-free treatment under this paragraph for any calendar year shall be counted against the aggregated quantity of tuna in airtight containers that is dutiable under rate column numbered 1 of such heading 1604.14.22 for that calendar year.

(c) The duty-free treatment provided under subsection (a) shall not apply to:

(1) watches, clocks, and timing apparatus provided for in Chapter 91, excluding heading 9113, of the Harmonized Tariff Schedule of the United States;

(2) buttons (whether finished or not finished) provided for in items 9606.21.40 and 9606.29.20 of such Schedule;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of the Republic of the Marshall Islands, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(a)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from the Republic of the Marshall Islands which are not exempt from duty under subsections (a), (b), (c), and (d) of section 242 shall be subject to the rates of duty set forth in column numbered 1-general of the Harmonized Tariff Schedule of the United States (HTSUS).

Section 244

(a) All products of the United States imported into the Republic of the Marshall Islands shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage or use.

(b) The provisions of subsection (a) shall not apply to advantages accorded by the Republic of the Marshall Islands by virtue of their full membership in the Pacific Island Countries Trade Agreement (PICTA), done on August 18, 2001, to those governments listed in Article 26 of PICTA, as of the date the Compact, as amended, is signed.

(c) Prior to entering into consultations on, or concluding, a free trade agreement with governments not listed in Article 26 of PICTA, the Republic of the Marshall Islands shall consult with the United States regarding whether or how subsection (a) of section 244 shall be applied.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of the Republic of the Marshall Islands. Should the Government of the Republic of the Marshall Islands act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of the Republic of the Marshall Islands may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as the Government of the

Republic of the Marshall Islands deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact, as amended, be made according to the United States Internal Revenue Code.

Section 253

A citizen of the Republic of the Marshall Islands, domiciled therein, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States, provided that such citizen of the Republic of the Marshall Islands is neither a citizen nor a resident of the United States.

Section 254

(a) In determining any income tax imposed by the Government of the Republic of the Marshall Islands, the Government of the Republic of the Marshall Islands shall have authority to impose tax upon income derived by a resident of the Republic of the Marshall Islands from sources without the Republic of the Marshall Islands, in the same manner and to the same extent as the Government of the Republic of the Marshall Islands imposes tax upon income derived from within its own jurisdiction. If the Government of the Republic of the Marshall Islands exercises such authority as provided in this subsection, any individual resident of the Republic of the Marshall Islands who is subject to tax by the Government of the United States on income which is also taxed by the Government of the Republic of the Marshall Islands shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. However, the relief from liability to the United States Government referred to in the preceding sentence means only relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and relief in the form of the exclusion under section 911 of the Internal Revenue Code of 1986. For purposes of this section, the term "resident of the Republic of the Marshall Islands" shall be deemed to include any person who was physically present in the Republic of the Marshall Islands for a period of 183 or more days during any taxable year.

(b) If the Government of the Republic of the Marshall Islands subjects income to taxation substantially similar to that which was imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in section 254(a).

Section 255

For purposes of section 274(h)(3)(A) of the U.S. Internal Revenue Code of 1986, the term "North American Area" shall include the Republic of the Marshall Islands.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

(a) The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Republic of the Marshall Islands.

(b) This authority and responsibility includes:

(1) the obligation to defend the Republic of the Marshall Islands and its people from attack or threats thereof as the United States and its citizens are defended;

(2) the option to foreclose access to or use of the Republic of the Marshall Islands by military personnel or for the military purposes of any third country; and

(3) the option to establish and use military areas and facilities in the Republic of the Marshall Islands, subject to the terms of the separate agreements referred to in sections 321 and 323.

(c) The Government of the United States confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility.

Section 312

Subject to the terms of any agreements negotiated in accordance with sections 321 and 323, the Government of the United States may conduct within the lands, waters and airspace of the Republic of the Marshall Islands the activities and operations necessary for the exercise of its authority and responsibility under this Title.

Section 313

(a) The Government of the Republic of the Marshall Islands shall refrain from actions that the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Republic of the Marshall Islands.

(b) The consultations referred to in this section shall be conducted expeditiously at senior levels of the two Governments, and the subsequent determination by the Government of the United States referred to in this section shall be made only at senior interagency levels of the Government of the United States.

(c) The Government of the Republic of the Marshall Islands shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally regarding any determination made in accordance with this section.

Section 314

(a) Unless otherwise agreed, the Government of the United States shall not, in the Republic of the Marshall Islands:

(1) test by detonation or dispose of any nuclear weapon, nor test, dispose of, or discharge any toxic chemical or biological weapon; or

(2) test, dispose of, or discharge any other radioactive, toxic chemical or biological materials in an amount or manner that would be hazardous to public health or safety.

(b) Unless otherwise agreed, other than for transit or overflight purposes or during time of a national emergency declared by the President of the United States, a state of war declared by the Congress of the United States or as necessary to defend against an actual or impending armed attack on the United States, the Republic of the Marshall Islands or the Federated States of Micronesia, the Government of the United States shall not store in the Republic of the Marshall Islands or the Federated States of Micronesia any toxic chemical weapon, nor any radioactive materials nor any toxic chemical materials intended for weapons use.

(c) Radioactive, toxic chemical, or biological materials not intended for weapons use shall not be affected by section 314(b).

(d) No material or substance referred to in this section shall be stored in the Republic of the Marshall Islands except in an amount and manner which would not be hazardous to public health or safety. In determining what shall be an amount or manner which would be hazardous to public health or safety under this section, the Government of the United States shall comply with any applicable mutual agreement, international guidelines accepted by the Government of the United States, and the laws of the United States and their implementing regulations.

(e) Any exercise of the exemption authority set forth in section 161(e) shall have no effect on the obligations of the Government of the United States under this section or on the application of this subsection.

(f) The provisions of this section shall apply in the areas in which the Government of the Republic of the Marshall Islands exercises jurisdiction over the living resources of the seabed, subsoil or water column adjacent to its coasts.

Section 315

The Government of the United States may invite members of the armed forces of other countries to use military areas and facilities in the Republic of the Marshall Islands, in conjunction with and under the control of United States Armed Forces. Use by units of the armed forces of other countries of such military areas and facilities, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval of the Government of the Republic of the Marshall Islands.

Section 316

The authority and responsibility of the Government of the United States under this Title may not be transferred or otherwise assigned.

Article II

Defense Facilities and Operating Rights

Section 321

(a) Specific arrangements for the establishment and use by the Government of the United States of military areas and facilities in the Republic of the Marshall Islands are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

(b) If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Republic of the Marshall Islands in addition to those for which specific arrangements are concluded pursuant to section 321(a), it may request the Government of the Republic of the Marshall Islands to satisfy those requirements through leases or other arrangements. The Government of the Republic of the Marshall Islands shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.

(c) The Government of the United States recognizes and respects the scarcity and special importance of land in the Republic of the Marshall Islands. In making any requests pursuant to section 321(b), the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.

Section 322

The Government of the United States shall provide and maintain fixed and floating aids to navigation in the Republic of the Marshall Islands at least to the extent necessary for the exercise of its authority and responsibility under this Title.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in the Republic of the Marshall Islands are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact, as amended, and its related agreements, the Government of the United States, exclusively, has assumed and enjoys, as to the Republic of the Marshall Islands, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands as of October 20, 1986.

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in the Republic of the Marshall Islands. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of the Republic of the Marshall Islands.

Article IV

Service in Armed Forces of the United States

Section 341

Any person entitled to the privileges set forth in Section 141 (with the exception of any person described in section 141(a)(5) who is not a citizen of the Republic of the Marshall Islands) shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States as long as such person has resided in the United States for a period of less than one year, provided that no time shall count towards this one year while a person admitted to the United States under the Compact, or the Compact, as amended, is engaged in full-time study in the United States. Any person described in section 141(a)(5) who is not a citizen of the Republic of the Marshall Islands shall be subject to United States laws relating to selective service.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Republic of the Marshall Islands, as may be nominated by the Government of the Republic of the Marshall Islands, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195.

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of the Republic of the Marshall Islands shall continue to maintain a Joint Committee empowered to consider disputes arising under the implementation of this Title and its related agreements.

(b) The membership of the Joint Committee shall comprise selected senior officials of the two Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the Joint Committee. For the meetings of

the Joint Committee, each of the two Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the Joint Committee shall meet annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The Joint Committee also shall meet promptly upon request of either of its members. The Joint Committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree. Upon notification by the Government of the United States, the Joint Committee of the United States and the Republic of the Marshall Islands shall meet promptly in a combined session with the Joint Committee established and maintained by the Government of the United States and the Government of the Federated States of Micronesia to consider matters within the jurisdiction of the two Joint Committees.

(d) Unresolved issues in the Joint Committee shall be referred to the Governments for resolution, and the Government of the Republic of the Marshall Islands shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under Title Three, the Government of the United States shall accord due respect to the authority and responsibility of the Government of the Republic of the Marshall Islands under Titles One, Two and Four and to the responsibility of the Government of the Republic of the Marshall Islands to assure the well-being of its people.

Section 353

(a) The Government of the United States shall not include the Government of the Republic of the Marshall Islands as a named party to a formal declaration of war, without that Government's consent.

(b) Absent such consent, this Compact, as amended, is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of the Republic of the Marshall Islands, which arise out of armed conflict subsequent to October 21, 1986, and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under section 353(b)(1) shall be treated as if they were made by citizens of the United States.

Section 354

(a) The Government of the United States and the Government of the Republic of the Marshall Islands are jointly committed to continue their security and defense relations, as set forth in this Title. Accordingly, it is the intention of the two countries that the provisions of this Title shall remain binding as long as this Compact, as amended, remains in effect, and thereafter as mutually agreed,

unless earlier terminated by mutual agreement pursuant to section 441, or amended pursuant to Article III of Title Four. If at any time the Government of the United States, or the Government of the Republic of the Marshall Islands, acting unilaterally, terminates this Title, such unilateral termination shall be considered to be termination of the entire Compact, as amended, in which case the provisions of section 442 and 452 (in the case of termination by the Government of the United States) or sections 443 and 453 (in the case of termination by the Government of the Republic of the Marshall Islands), with the exception of paragraph (3) of subsection (a) of section 452 or paragraph (3) of subsection (a) of section 453, as the case may be, shall apply.

(b) The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Government of the Republic of the Marshall Islands, and in view of the existence of the separate agreement regarding mutual security concluded with the Government of the Republic of the Marshall Islands pursuant to sections 321 and 323, that, even if this Title should terminate, any attack on the Republic of the Marshall Islands during the period in which such separate agreement is in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to the Republic of the Marshall Islands in accordance with its constitutional processes.

(c) As reflected in Article 21(1)(b) of the Trust Fund Agreement, the Government of the United States and the Government of the Republic of the Marshall Islands further recognize, in view of the special relationship between their countries, that even if this Title should terminate, the Government of Republic of the Marshall Islands shall refrain from actions which the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Republic of the Marshall Islands or the Federated States of Micronesia.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

Pursuant to section 432 of the Compact and subject to subsection (e) of section 461 of the Compact, as amended, the Compact, as amended, shall come into effect upon mutual agreement between the Government of the United States and the Government of the Republic of the Marshall Islands subsequent to completion of the following:

(a) Approval by the Government of the Republic of the Marshall Islands in accordance with its constitutional processes.

(b) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States shall confer promptly at the request of the Government of the Republic of the Marshall Islands and that Government shall confer promptly at the request of the Government of the United States on matters relating to the provisions of this Compact, as amended, or of its related agreements.

Section 422

In the event the Government of the United States or the Government of the Republic of the Marshall Islands, after conferring pursuant to section 421, determines that there is a dispute and gives written notice thereof, the two Governments shall make a good faith effort to resolve the dispute between themselves.

Section 423

If a dispute between the Government of the United States and the Government of the Republic of the Marshall Islands cannot be resolved within 90 days of written notification in the manner provided in section 422, either party to the dispute may refer it to arbitration in accordance with section 424.

Section 424

Should a dispute be referred to arbitration as provided for in section 423, an Arbitration Board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An Arbitration Board shall consist of a Chairman and two other members, each of whom shall be a citizen of a party to the dispute. Each of the two Governments that is a party to the dispute shall appoint one member to the Arbitration Board. If either party to the dispute does not fulfill the appointment requirements of this section within 30 days of referral of the dispute to arbitration pursuant to section 423, its member on the Arbitration Board shall be selected from its own standing list by the other party to the dispute. Each Government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a Chairman within 15 days after selection of the other members of the Arbitration Board. Failing agreement on a Chairman, the Chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) Unless otherwise provided in this Compact, as amended, or its related agreements, the Arbitration Board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV and V of Title One, Title Two, Title Four, and their related agreements.

(c) Each member of the Arbitration Board shall have one vote. Each decision of the Arbitration Board shall be reached by majority vote.

(d) In determining any legal issue, the Arbitration Board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The Arbitration Board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact, as amended. Unless the parties provide otherwise by mutual agreement, the Arbitration Board shall endeavor to render its decision within 30 days after the conclusion of arguments. The Arbitration Board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the Arbitration Board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of the Republic of the Marshall Islands.

Article III

Amendment

Section 431

The provisions of this Compact, as amended, may be further amended by mutual agreement of the Government of the United States and the Government of the Republic of the Marshall Islands, in accordance with their respective constitutional processes.

Article IV

Termination

Section 441

This Compact, as amended, may be terminated by mutual agreement of the Government of the Republic of the Marshall Islands and the Government of the United States, in accordance with their respective constitutional processes. Such mutual termination of this Compact, as amended, shall be without prejudice to the continued application of section 451 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 442

Subject to section 452, this Compact, as amended, may be terminated by the Government of the United States in accordance with its constitutional processes. Such termination shall be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended. Such termination of this Compact, as amended, shall be without prejudice to the continued application of section 452 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 443

This Compact, as amended, shall be terminated by the Government of the Republic of the Marshall Islands, pursuant to its constitutional processes, subject to section 453 if the people represented by that Government vote in a plebiscite to terminate the Compact. The Government of the Republic of the Marshall Islands shall notify the Government of the United States of its intention to call such a plebiscite, which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by the Government of the Republic of the Marshall Islands in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, the Government of the Republic of the Marshall Islands shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

(a) Should termination occur pursuant to section 441, economic and other assistance by the Government of the United States shall continue only if and as mutually agreed by the Governments of the United States and the Republic of the Marshall Islands, and in accordance with the countries' respective constitutional processes.

(b) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement entered into consistent with those subsections, if termination occurs pursuant to section 441 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 216 of this Compact, as amended.

(c) In view of the special relationship of the United States and the Republic of the Marshall Islands described in subsection (b) of this section, if termination occurs pursuant to section 441 following the twentieth anniversary of the effective date of this Compact, as amended, the Republic of the Marshall Islands shall be entitled to receive proceeds from the Trust Fund described in section 216 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 452

(a) Should termination occur pursuant to section 442 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this amended Compact shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Article One and sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Should termination occur pursuant to section 442 before the twentieth anniversary of the effective date of this Compact, as amended:

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, economic and other assistance by the United States shall continue only if and as mutually agreed by the Governments of the United States and the Republic of the Marshall Islands.

(2) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, the United States shall continue to make contributions to the Trust Fund described in section 216 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(c) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 442 following the twentieth anniversary of the effective date of this Compact, as amended, the Republic of the Marshall Islands shall continue to be eligible to receive proceeds from the Trust Fund described in section 216 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 453

(a) Should termination occur pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Upon receipt of notice of termination pursuant to section 443, the Government of the United States and the Government of the Republic of the Marshall Islands shall promptly consult with regard to their future relationship. Except as provided in subsections (c) and (d) of this section, these consultations shall determine the level of economic and other assistance, if any, which the Government of the United States shall provide to the Government of the Republic of the Marshall Islands for the period ending on the twentieth anniversary of the effective date of this Compact, as amended, and for any period thereafter, if mutually agreed.

(c) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 216 of this Compact, as amended.

(d) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 following the twentieth anniversary of the effective date of this Compact, as amended, the Republic of the Marshall Islands shall continue to be eligible to receive proceeds from the Trust Fund described in section 216 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 454

Notwithstanding any other provision of this Compact, as amended:

(a) The Government of the United States reaffirms its continuing interest in promoting the economic advancement and budgetary self-reliance of the people of the Republic of the Marshall Islands.

(b) The separate agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact, as amended, only, and without prejudice to the views of the Government of the United States or the Government of the Republic of the Marshall Islands as to the nature and extent of the jurisdiction of either of them under international law, the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the former administrative districts of Kosrae, Yap, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, section 1, in force on January 1, 1979. This term does not include the area of Palau or the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "The Republic of the Marshall Islands" and "the Federated States of Micronesia" are used in a geographic sense

and include the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States.

(d) "Compact" means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99–239 (Jan. 14, 1986) and went into effect with respect to the Republic of the Marshall Islands on October 21, 1986.

(e) "Compact, as amended" means the Compact of Free Association Between the United States and the Republic of the Marshall Islands, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Republic of the Marshall Islands, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

(f) "Government of the Republic of the Marshall Islands" means the Government established and organized by the Constitution of the Republic of the Marshall Islands including all the political subdivisions and entities comprising that Government.

(g) "Government of the Federated States of Micronesia" means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

(h) The following terms shall be defined consistent with the 1978 Edition of the Radio Regulations of the International Telecommunications as follows:

(1) "Radiocommunication" means telecommunication by means of radio waves.

(2) "Station" means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service.

(3) "Broadcasting Service" means a radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission.

(4) "Broadcasting Station" means a station in the broadcasting service.

(5) "Assignment (of a radio frequency or radio frequency channel)" means an authorization given by an administration for a radio station to use a radio frequency or radio frequency channel under specified conditions.

(6) "Telecommunication" means any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

(i) "Military Areas and Facilities" means those areas and facilities in the Republic of the Marshall Islands reserved or acquired by the Government of the Republic of the Marshall Islands for use by the Government of the United States, as set forth in the separate agreements referred to in section 321.

(j) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(k) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

(a) The Government of the United States and the Government of the Republic of the Marshall Islands previously have concluded agreements, which shall remain in effect and shall survive in accordance with their terms, as follows:

(1) Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association;

(2) Agreement Between the Government of the United States and the Government of the Marshall Islands by Persons Displaced as a Result of the United States Nuclear Testing Program in the Marshall Islands;

(3) Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding the Resettlement of Enjebi Island;

(4) Agreement Concluded Pursuant to Section 234 of the Compact; and

(5) Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association.

(b) The Government of the United States and the Government of the Republic of the Marshall Islands shall conclude prior to the date of submission of this Compact to the legislatures of the two countries, the following related agreements which shall come into effect on the effective date of this Compact, as amended, and shall survive in accordance with their terms, as follows:

(1) Federal Programs and Services Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concluded Pursuant to Article III of Title One, Article II of Title Two (including Section 222), and Section 231 of the Compact of Free Association, as Amended, which include:

(i) Postal Services and Related Programs;

(ii) Weather Services and Related Programs;

(iii) Civil Aviation Safety Service and Related Programs;

(iv) Civil Aviation Economic Services and Related Programs;

(v) United States Disaster Preparedness and Response Services and Related Programs; and

(vi) Telecommunications Services and Related Programs.

(2) Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 (a) of the Compact of Free Association, as Amended;

(3) Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands on Labor Recruitment Concluded Pursuant to Section 175 (b) of the Compact of Free Association, as Amended;

(4) Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, of Free Association Between the Government of the United States of America and the Government of the Republic of the Marshall Islands;

(5) Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Implementing Section 216 and Section 217 of the Compact, as Amended, Regarding a Trust Fund;

(6) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended; and

(7) Status of Forces Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concluded Pursuant to Section 323 of the Compact of Free Association, as Amended.

Section 463

(a) Except as set forth in subsection (b) of this section, any reference in this Compact, as amended, to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended.

(b) Any reference in Article IV and VI of Title One, and Sections 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act, the Administrative Procedure Act or the Immigration and Nationality Act constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended, or as it may be amended thereafter on a nondiscriminatory basis according to the constitutional processes of the United States.

Article VII

Concluding Provisions

Section 471

Both the Government of the United States and the Government of the Republic of the Marshall Islands shall take all necessary steps, of a general or particular character, to ensure, no later than

the entry into force date of this Compact, as amended, the conformity of its laws, regulations and administrative procedures with the provisions of this Compact, as amended, or, in the case of subsection (d) of section 141, as soon as reasonably possible thereafter.

Section 472

This Compact, as amended, may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Republic of the Marshall Islands.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact of Free Association, as amended, which shall enter into force upon the exchange of diplomatic notes by which the Government of the United States of America and the Government of the Republic of the Marshall Islands inform each other about the fulfillment of their respective requirements for entry into force.

DONE at Majuro, Republic of the Marshall Islands, in duplicate, this thirtieth (30) day of April, 2003, each text being equally authentic.

Signed (April 30, 2003)
For the Government of the
United States of America:

Ambassador Michael J. Senko
U.S. Ambassador to the
Republic of the Marshall Islands

Signed (April 30, 2003)
For the Government of the
Republic of the Marshall Islands:

His Excellency Banny deBrum
Ambassador Extraordinary and
Plenipotentiary

b. Compact of Free Association Act of 1985

Partial text of Public Law 99–239 [H.J. Res. 187], 99 Stat. 1770, approved January 14, 1986; as amended by Public Law 99–514 [Tax Reform Act of 1986; H.R. 3838], 100 Stat. 2085, approved October 22, 1986; Public Law 99–658 [H.J. Res. 626], 100 Stat. 3672, approved November 14, 1986; Public Law 102–247 [Omnibus Insular Areas Act of 1992; H.R. 2927], 106 Stat. 33, approved February 24, 1992; Public Law 102–486 [Energy Policy Act of 1992; H.R. 775], 106 Stat. 2776, approved October 24, 1992; Public Law 102–572 [Federal Courts Administration Act of 1992; S. 1569], 106 Stat. 4506, approved October 29, 1992; Public Law 102–583 [International Narcotics Control Act of 1992; H.R. 6187], 106 Stat. 4914, approved November 2, 1992; Public Law 104–208 [Omnibus Consolidated Appropriations Act, 1997; H.R. 3610], 110 Stat. 3001, approved September 30, 1996; Public Law 105–209 [H.R. 1460], 112 Stat. 880, approved July 29, 1998; and Public Law 106–504 [H.R. 2462], 114 Stat. 2309, approved November 13, 2000

JOINT RESOLUTION To approve the "Compact of Free Association", and for other purposes.

Whereas the United States, in accordance with the Trusteeship Agreement, and Charter of the United Nations and the objectives of the international trusteeship system, has promoted the development of the peoples of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the people concerned; and

Whereas the United States, in response to the desires of the peoples of the Federated States of Micronesia and the Marshall Islands expressed through their freely-elected representatives and by the official pronouncements and enactments of their lawfully constituted governments, and in consideration of its own obligations under the Trusteeship Agreement to promote self-determination, entered into political status negotiations with representatives of the peoples of the Federated States of Micronesia, and the Marshall Islands; and

Whereas these negotiations resulted in the "Compact of Free Association" which, together with its related agreements, was signed by the United States and by the Federated States of Micronesia and the Republic of the Marshall Islands on October 1, 1982 and June 25, 1983, respectively; and

Whereas the Compact of Free Association was approved by majorities of the peoples of the Federated States of Micronesia and the Marshall Islands in United Nations-observed plebiscites conducted on June 21, 1983 and September 7, 1983, respectively; and

Whereas the Compact of Free Association has been approved by the Governments of the Federated States of Micronesia and the Marshall Islands in accordance with their respective constitutional

processes, thus completing fully for the Federated States of Micronesia and the Marshall Islands their domestic approval processes with respect to the Compact as contemplated in Compact Section 411: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This joint resolution, together with the Table of Contents in subsection (b) of this section, may be cited as the "Compact of Free Association Act of 1985".

(b) TABLE OF CONTENTS. * * *

TITLE I—APPROVAL OF COMPACT; INTERPRETATION OF, AND U.S. POLICIES REGARDING, COMPACT; SUPPLEMENTAL PROVISIONS

SEC. 101.[1] APPROVAL OF COMPACT OF FREE ASSOCIATION.

(a) FEDERATED STATES OF MICRONESIA.—The Compact of Free Association set forth in title II of this joint resolution between the United States and the Government of the Federated States of Micronesia is hereby approved, and Congress hereby consents to the subsidiary agreements as set forth on pages 115 through 391 of House Document 98–192 of March 30, 1984, as they relate to such Government. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the Compact, to an effective date for and thereafter to implement such Compact, having taken into account any procedures with respect to the United Nations for termination of the Trusteeship Agreement.

(b) MARSHALL ISLANDS.—The Compact of Free Association set forth in title II of this joint resolution between the United States and the Government of the Marshall Islands is hereby approved, and Congress hereby consents to the subsidiary agreements as set forth on pages 115 through 391 of House Document 98–192 of March 30, 1984, as they relate to such Government. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the Compact, to an effective date for and thereafter to implement such Compact, having taken into account any procedures with respect to the United Nations for termination of the Trusteeship Agreement.

(c) REFERENCE TO THE COMPACT.—Any reference in this joint resolution to "the Compact" shall be treated as a reference to the Compact of Free Association set forth in title II of this joint resolution.

(d)[2] AMENDMENT, CHANGE, OR TERMINATION IN THE COMPACT AND CERTAIN AGREEMENTS.—(1) Mutual agreement by the Government of the United States as provided in the Compact which results in amendment, change, or termination of all or any part

[1] 48 U.S.C. 1901.

[2] Public Law 101–62 (103 Stat. 162) provided the following:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, pursuant to section 101(d) of Public Law 99–239, the following agreements are approved and shall enter into force in accordance with their terms:

"(1) 'Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands to Amend the Governmental Representation Provisions of

thereof shall be effected only by Act of Congress and no unilateral action by the Government of the United States provided for in the Compact, and having such result, may be effected other than by Act of Congress.

(2) The provisions of paragraph (1) shall apply—

(A) to all actions of the Government of the United States under the Compact including, but not limited to, actions taken pursuant to sections 431, 432, 441, or 442;

(B) to any amendment, change, or termination in the Agreement between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association referred to in section 462(j) of the Compact and the Agreement between the Government of the United States and the Government of the Marshall Islands Concerning Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association referred to in section 462(k) of the Compact;

(C) to any amendment, change, or termination of the agreements concluded pursuant to Compact sections 175, 177, and 221(a)(5), the terms of which are incorporated by reference into the Compact; and

(D) to the following subsidiary agreements, or portions thereof:

(i) Article II of the agreement referred to in section 462(a) of the Compact;

(ii) Article II of the agreement referred to in section 462(b) of the Compact;

(iii) Article II and Section 7 of Article XI of the agreement referred to in section 462(e) of the Compact;

(iv) the agreement referred to in section 462(f) of the Compact;

(v) Articles III and IV of the agreement referred to in section 462(g) of the Compact;

(vi) Articles III and IV of the agreement referred to in section 462(h) of the Compact; and

(vii) Articles VI, XV, and XVII of the agreement referred to in section 462(i) of the Compact.

(e) SUBSIDIARY AGREEMENTS DEEMED BILATERAL.—For purposes of implementation of the Compact and this joint resolution, each of the subsidiary agreements referred to in subsections (a) and (b) (whether or not bilateral in form) shall be deemed to be bilateral agreements between the United States and each other party to such subsidiary agreement. The consent or concurrence of any other party shall not be required for the effectiveness of any actions taken by the United States in conjunction with either the Federated States of Micronesia or the Marshall Islands which are

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the Compact of Free Association Pursuant to section 432 of the Compact', signed on March 18, 1988; and

"(2) 'Agreement Between the Government of the United States and the Government of the Federated States of Micronesia to Amend the Governmental Representation Provisions of the Compact of Free Association Pursuant to section 432 of the Compact', signed on March 9, 1988.".

intended to affect the implementation, modification, suspension, or termination of any such subsidiary agreement (or any provision thereof) as regards the mutual responsibilities of the United States and the party in conjunction with whom the actions are taken.

(f) EFFECTIVE DATE.—(1) The President shall not agree to an effective date for the Compact, as authorized by this section, until after certifying to Congress that the agreements described in section 102 and section 103 of this title have been concluded.

(2) Any agreement concluded with the Federated States of Micronesia or the Marshall Islands pursuant to sections 102 and 103 of this title and any agreement which would amend, change, or terminate any subsidiary agreement or portion thereof as set forth in paragraph (4) of this subsection shall be submitted to the Congress. No such agreement shall take effect until after the expiration of 30 days after the date such agreement is so submitted (excluding days on which either House of Congress is not in session).

(3) No agreement described in paragraph (2) shall take effect if a joint resolution of disapproval is enacted during the period specified in paragraph (2). For the purpose of expediting the consideration of such a joint resolution, a motion to proceed to the consideration of any such joint resolution after it has been reported by an appropriate committee shall be treated as highly privileged in the House of Representatives. Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of Public Law 94–329.

(4) The subsidiary agreements or portions thereof referred to in paragraph (2) are as follows:

(A) Articles III and IV of the agreement referred to in section 462(b) of the Compact.

(B) Articles III, IV, V, VI, VII, VIII, IX, X, and XI (except for Section 7 thereof) of the agreement referred to in section 462(e) of the Compact.

(C) Articles IV, V, X, XIV, XVI, and XVIII of the agreement referred to in section 462(i) of the Compact.

(D) Articles II, V, VI, VII, and VIII of the agreement referred to in section 462(g) of the Compact.

(E) Articles II, V, VI, and VIII of the agreement referred to in section 462(h) of the Compact.

(F) The Agreement set forth on pages 388 through 391 of House Document 98–192 of March 30, 1984.

(5) No agreement between the United States and the Government of either the Federated States of Micronesia or the Marshall Islands which would amend, change, or terminate any subsidiary agreement or portion thereof, other than those set forth in subsection (d) of this section or paragraph (4) of this subsection shall take effect until the President has transmitted such agreement to the President of the Senate and the Speaker of the House of Representatives together with an explanation of the agreement and the reasons therefor.

SEC. 102.[3] AGREEMENTS WITH FEDERATED STATES OF MICRONESIA.

(a) LAW ENFORCEMENT ASSISTANCE.—

[3] 48 U.S.C. 1902.

(1) AGREEMENT.—The President of the United States shall negotiate with the Government of the Federated States of Micronesia an agreement pursuant to section 175 of the Compact which is in addition to the Agreement pursuant to such section dated October 1, 1982, and transmitted to the Congress by the President on February 20, 1985. Such additional agreement shall provide as follows:

(A) MUTUAL ASSISTANCE IN LAW ENFORCEMENT.—The law enforcement agencies of the United States and the Federated States of Micronesia shall assist one another, as mutually agreed, in the prevention and investigation of crimes and the enforcement of the laws of the United States and the Federated States of Micronesia specified in subparagraph (C) of this paragraph. The United States and the Federated States of Micronesia will authorize mutual assistance with respect to investigations, inquiries, audits and related activities by the law enforcement agencies of both Governments in the United States and the Federated States of Micronesia. In conducting activities authorized in accordance with this section, the United States and the Federated States of Micronesia will act in accordance with the constitution and laws of the jurisdiction in which such activities are conducted.

(B) NARCOTICS AND CONTROL OF ILLEGAL SUBSTANCES.—The United States and the Federated States of Micronesia will take all reasonable and necessary steps, as mutually agreed, based upon consultations in which the Attorney General or other designated official of each Government participates, to prevent the use of the lands, waters, and facilities of the United States or the Federated States of Micronesia for the purposes of cultivation of, production of, smuggling of, trafficking in, and abuse of any controlled substance as defined in section 102(6) of the United States Controlled Substances Act and Schedules I through V of Subchapter II of the Controlled Substances Act of the Federated States of Micronesia, or for the distribution of any such substance to or from the Federated States of Micronesia or to or from the United States or any of its territories or commonwealths.

(C) OTHER CRIMINAL LAWS.—Assistance provided pursuant to this subsection shall also extend to, but not be limited to, prevention and prosecution of violations of the laws of the United States and the laws of the Federated States of Micronesia related to terrorism, espionage, racketeer influenced and corrupt organizations, and financial transactions which advance the interests of any person engaging in unlawful activities, as well as the schedule of offenses set forth in Appendix A of the subsidiary agreement to section 175 of the Compact.

(2) TECHNICAL AND TRAINING ASSISTANCE.—Pursuant to sections 224 and 226 of the Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Federated States of Micronesia to develop and adequately enforce laws of the Federated States of Micronesia and to cooperate with the United States in the enforcement of criminal laws of the United States. Funds appropriated pursuant to section 105(l) of this title may be used to reimburse State or local agencies providing such assistance.

(3) CONSULTATION.—Any official, designated by this joint resolution or by the President to negotiate any agreement under this section, shall consult with affected law enforcement agencies prior to entering into such an agreement on behalf of the United States.

(4) REPORT.—The President shall report annually to Congress on the implementation of this subsection. Such report shall provide statistical and other information about the incidence of crimes in the Federated States of Micronesia which have an impact upon United States jurisdictions, and propose measures which the United States and the Federated States of Micronesia should take in order better to prevent and prosecute violations of the laws of the United States and the Federated States of Micronesia. The reports required under section 489[4] of the Foreign Assistance Act of 1961 shall include relevant information concerning the Federated States of Micronesia.

(b) ECONOMIC DEVELOPMENT PLANS REVIEW PROCESS.—

(1) SUBMISSION.—Notwithstanding section 211(b) of the Compact, the President may agree to an effective date for the Compact pursuant to section 101(a) of this title if the Government of the Federated States of Micronesia agrees to submit economic development plans consistent with section 211(b) of the Compact to the Government of the United States for concurrence at intervals no greater than every 5 years for the duration of the Compact. Any capital construction project and any planned independent purchase of aircraft which is to be financed (directly or indirectly) through the use of funds provided under section 211 of the Compact shall be identified in the economic development plans.

(2) UNITED STATES GOVERNMENT REVIEW.—The United States shall not concur in those development plans described in paragraph (1) of this subsection until—

(A) after the President of the United States has conducted a review and reported the findings of the President to the Congress; and

(B) the Congress has had 30 days (excluding days on which both Houses of Congress are not in session) to review the findings of the President.

[4] Formerly read "section 481(e)". Sec. 6(a) of Public Law 102–583 (106 Stat. 4932), however, provided that "Any reference in any provision of law enacted before the date of enactment of this Act to section 481(e) or section 481(i) of that Act shall be deemed to be a reference to section 489 or section 481(e) (as amended * * *)".

(3) REPORT.—The President shall complete the review under paragraph (2) and shall report the findings no later than 60 days after the President's receipt of such plans.

(4) VIEWS AND COMMENTS.—The report shall include the views of the Secretary of the Interior, the Administrator of the Agency for International Development, and the heads of such other Executive departments as the President may decide to include in the report, as well as any comments which the Federated States of Micronesia may wish to have included.

(c) AGREEMENT ON AUDITS.—In accordance with section 233 of the Compact, the President of the United States, in consultation with the Comptroller General of the United States, shall negotiate with the Government of the Federated States of Micronesia modifications to the "Agreement Concerning Procedures for the Implementation of United States Economic Assistance, Programs and Services Provided in the Compact of Free Association", which shall provide as follows:

(1) GENERAL AUTHORITY OF THE GAO TO AUDIT.—

(A) The Comptroller General of the United States (and his duly authorized representatives) shall have the authority to audit—

(i) all grants, program assistance, and other assistance provided to the Government of the Federated States of Micronesia under Articles I and II of Title Two of the Compact; and

(ii) any other assistance provided by the Government of the United States to the Government of the Federated States of Micronesia.

Such authority shall include authority for the Comptroller General to conduct or cause to be conducted any of the audits provided for in section 233 of the Compact. The authority provided in this paragraph shall continue for at least three years after the last such grant has been made or assistance has been provided.

(B) The Comptroller General (and his duly authorized representatives) shall also have authority to review any audit conducted by or on behalf of the Government of the United States. In this connection, the Comptroller General shall have access to such personnel and to such records, documents, working papers, automated data and files, and other information relevant to such review.

(2) GAO ACCESS TO RECORDS.—

(A) In carrying out paragraph (1), the Comptroller General (and his duly authorized representatives) shall have such access to the personnel and (without cost) to records, documents, working papers, automated data and files, and other information relevant to such audits. The Comptroller General may duplicate any such records, documents, working papers, automated data and files, or other information relevant to such audits.

(B) Such records, documents, working papers, automated data and files, and other information regarding each such grant or other assistance shall be maintained for at least three years after the date such grant or assistance was

provided and in a manner that permits such grants, assistance, and payments to be accounted for distinct from any other funds of the Government of the Federated States of Micronesia.

(3) REPRESENTATIVE STATUS FOR GAO REPRESENTATIVES.—The Comptroller General and his duly authorized representatives shall be accorded the status set forth in Article V of Title One of the Compact.

(4) ANNUAL FINANCIAL STATEMENTS.—As part of the annual report submitted by the Government of the Federated States of Micronesia under section 211 of the Compact, the Government shall include annual financial statements which account for the use of all of the funds provided by the Government of the United States to the Government under the Compact or otherwise. Such financial statements shall be prepared in accordance with generally accepted accounting procedures, except as may otherwise be mutually agreed. Not later than 180 days after the end of the United States fiscal year with respect to which such funds were provided, each such statement shall be submitted to the President for audit and transmission to the Congress.

(5) DEFINITION OF AUDITS.—As used in this subsection, the term "audits" includes financial, program, and management audits, including determining—

(A) whether the Government of the Federated States of Micronesia has met the requirements set forth in the Compact, or any related agreement entered into under the Compact, regarding the purposes for which such grants and other assistance are to be used; and

(B) the propriety of the financial transactions of the Government of the Federated States of Micronesia pursuant to such grants or assistance.

(6) COOPERATION BY FEDERATED STATES OF MICRONESIA.—The Government of the Federated States of Micronesia will cooperate fully with the Comptroller General of the United States in the conduct of such audits as the Comptroller General determines necessary to enable the Comptroller General to fully discharge his responsibilities under this joint resolution.

SEC. 103.[5] AGREEMENTS WITH AND OTHER PROVISIONS RELATED TO THE MARSHALL ISLANDS.

(a) LAW ENFORCEMENT ASSISTANCE.—

(1) AGREEMENT.—The President of the United States shall negotiate with the Government of the Marshall Islands an agreement pursuant to section 175 of the Compact which is in addition to the Agreement pursuant to such section dated May 30, 1982, and transmitted to the Congress by the President on February 20, 1985. Such additional agreement shall provide as follows:

(A) MUTUAL ASSISTANCE IN LAW ENFORCEMENT.—The law enforcement agencies of the United States and the Marshall Islands shall assist one another, as mutually agreed, in the prevention and investigation of crimes and

[5] 48 U.S.C. 1903.

the enforcement of the laws of the United States and the Marshall Islands specified in subparagraph (C) of this paragraph. The United States and the Marshall Islands will authorize mutual assistance with respect to investigations, inquiries, audits and related activities by the law enforcement agencies of both Governments in the United States and the Marshall Islands. In conducting activities authorized in accordance with this section, the United States and the Marshall Islands will act in accordance with the constitution and laws of the jurisdiction in which such activities are conducted.

(B) NARCOTICS AND CONTROL OF ILLEGAL SUBSTANCES.—The United States and the Marshall Islands will take all reasonable and necessary steps, as mutually agreed, based upon consultations in which the Attorney General or other designated official of each Government participates, to prevent the use of the lands, waters, and facilities of the United States or the Marshall Islands for the purposes of cultivation of, production of, smuggling of, trafficking in, and abuse of any controlled substance as defined in section 102(6) of the United States Controlled Substances Act and Schedules I through V of Subchapter II of the Controlled Substances Act of the Marshall Islands, or for the distribution of any such substance to or from the Marshall Islands or to or from the United States or any of its territories or commonwealths.

(C) OTHER CRIMINAL LAWS.—Assistance provided pursuant to this subsection shall also extend to, but not be limited to, prevention and prosecution of violations of the laws of the United States and the laws of the Marshall Islands related to terrorism, espionage, racketeer influenced and corrupt organizations, and financial transactions which advance the interests of any person engaging in unlawful activities, as well as the schedule of offenses set forth in Appendix A of the subsidiary agreement to section 175 of the Compact.

(2) TECHNICAL AND TRAINING ASSISTANCE.—Pursuant to sections 224 and 226 of the Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Marshall Islands to develop and adequately enforce laws of the Marshall Islands and to cooperate with the United States in the enforcement of criminal laws of the United States. Funds appropriated pursuant to section 105(l) of this title may be used to reimburse State or local agencies providing such assistance.

(3) CONSULTATION.—Any official, designated by this joint resolution or by the President to negotiate any agreement under this section, shall consult with affected law enforcement agencies prior to entering into such an agreement on behalf of the United States.

(4) REPORT.—The President shall report annually to Congress on the implementation of this subsection. Such report

shall provide statistical and other information about the incidence of crimes in the Marshall Islands which have an impact upon United States jurisdictions, and propose measures which the United States and the Marshall Islands should take in order better to prevent and prosecute violations of the laws of the United States and the Marshall Islands. The reports required under section 489[6] of the Foreign Assistance Act of 1961 shall include relevant information concerning the Marshall Islands.

(b) ECONOMIC DEVELOPMENT PLANS REVIEW PROCESS.—

(1) SUBMISSION.—Notwithstanding section 211(b) of the Compact, the President may agree to an effective date for the Compact pursuant to section 101(b) of this title if the Government of the Marshall Islands agrees to submit economic development plans consistent with section 211(b) of the Compact to the Government of the United States for concurrence at intervals no greater than every 5 years for the duration of the Compact. Any capital construction project and any planned independent purchase of aircraft which is to be financed (directly or indirectly) through the use of funds provided under section 211 of the Compact shall be identified in the economic development plans.

(2) UNITED STATES GOVERNMENT REVIEW.—The United States shall not concur in those development plans described in paragraph (1) of this subsection until—

(A) after the President of the United States has conducted a review and reported the findings of the President to the Congress; and

(B) the Congress has had 30 days (excluding days on which both Houses of Congress are not in session) to review the findings of the President.

(3) REPORT.—The President shall complete the review under paragraph (2) and shall report the findings no later than 60 days after the President's receipt of such plans.

(4) VIEWS AND COMMENTS.—The report shall include the views of the Secretary of the Interior, the Administrator of the Agency for International Development, and the heads of such other Executive departments as the President may decide to include in the report, as well as any comments which the Marshall Islands may wish to have included.

(c) EJIT.—(1) The President of the United States shall negotiate with the Government of the Marshall Islands an agreement whereby, without prejudice as to any claims which have been or may be asserted by any party as to rightful title and ownership of any lands on Ejit, the Government of the Marshall Islands shall assure that lands on Ejit used as of January 1, 1985, by the people of Bikini, will continue to be available without charge for their use, until such time as Bikini is restored and inhabitable and the continued use of Ejit is no longer necessary, unless a Marshall Islands

[6] Formerly read "section 481(e)". Sec. 6(a) of Public Law 102–583 (106 Stat. 4932), however, provided that "Any reference in any provision of law enacted before the date of enactment of this Act to section 481(e) or section 481(i) of that Act shall be deemed to be a reference to section 489 or section 481(e) (as amended * * *)".

court of competent jurisdiction finally determines that there are legal impediments to continued use of Ejit by the people of Bikini.

(2) If the impediments described in paragraph (1) do arise, the United States will cooperate with the Government of the Marshall Islands in assisting any person adversely affected by such judicial determination to remain on Ejit, or in locating suitable and acceptable alternative lands for such person's use.

(3) Paragraph (1) shall not be applied in a manner which would prevent the Government of the Marshall Islands from acting in accordance with its constitutional processes to resolve title and ownership claims with respect to such lands or from taking substitute or additional measures to meet the needs of the people of Bikini with their democratically expressed consent and approval.

(d) KWAJALEIN PAYMENTS.—

(1) STATEMENT OF POLICY.—The Congress of the United States hereby declares that it is the policy of the United States that payment of funds by the Government of the Marshall Islands to the landowners of Kwajalein Atoll in accordance with the land use agreement dated October 19, 1982, and the related allocation agreements, is required in order to ensure that the Government of the United States will be able to fulfill its obligations and responsibilities under Title Three of the Compact and the subsidiary agreements concluded pursuant thereto.

(2) FAILURE TO PAY.—In the event that the Government of the Marshall Islands fails to make payments in accordance with paragraph (1) of this subsection, the Government of the United States shall initiate procedures under Section 313 of the Compact and consult with the Government of the Marshall Islands with respect to the basis for such non-payment of funds. The United States shall expeditiously resolve the matter of any non-payment of funds as described in paragraph (1) of this subsection pursuant to Section 313 of the Compact and the authority and responsibility of the Government of the United States for security and defense matters in or relating to the Marshall Islands. This paragraph shall be enforced, as may be necessary, in accordance with section 105(g)(2) of this joint resolution.

(3) ASSISTANCE.—The President is hereby authorized to make loans and grants to the Government of the Marshall Islands for the sole use of the Kwajalein Atoll Development Authority for the benefit of the Kwajalein landowners of amounts sought by such authority for development purposes, pursuant to a development plan for Kwajalein Atoll which such authority has adopted in accordance with applicable laws of the Marshall Islands. Such loans and grants shall be subject to such other terms and conditions as the President, in his discretion, may determine appropriate and necessary.

(e) SECTION 177 AGREEMENT.—(1) In furtherance of the purposes of Article I of the Subsidiary Agreement for Implementation of Section 177 of the Compact, the payment of the amount specified therein shall be made by the United States under Article I of the Agreement between the Government of the United States and the

Government of the Marshall Islands for the Implementation of Section 177 of the Compact (hereafter in this subsection referred to as the "Section 177 Agreement") only after the Government of the Marshall Islands has notified the President of the United States as to which investment management firm has been selected by such Government to act as Fund Manager under Article I of the Section 177 Agreement.

(2) In the event that the President determines that an investment management firm selected by the Government of the Marshall Islands does not meet the requirements specified in Article I of the Section 177 Agreement, the United States shall invoke the conference and dispute resolution procedures of Article II of Title Four of the Compact. Pending the resolution of such a dispute and until a qualified Fund Manager has been designated, the Government of the Marshall Islands shall place the funds paid by the United States pursuant to Article I of the Section 177 Agreement into an interest-bearing escrow account. Upon designation of a qualified Fund Manager, all funds in the escrow account shall be transferred to the control of such Fund Manager for management pursuant to the Section 177 Agreement.

(3) If the Government of the Marshall Islands determines that some other investment firm should act as Fund Manager in place of the firm first (or subsequently) selected by such Government, the Government of the Marshall Islands shall so notify the President of the United States, identifying the firm selected by such Government to become Fund Manager, and the President shall proceed to evaluate the qualifications of such identified firm.

(4) At the end of 15 years after the effective date of the Compact, the firm then acting as Fund Manager shall transfer to the Government of the Marshall Islands, or to such account as such Government shall so notify the Fund Manager, all remaining funds and assets being managed by the Fund Manager under the Section 177 Agreement.

(5) An annual report concerning all actions of the Fund Manager pursuant to the Section 177 Agreement and this joint resolution, including information prepared by the Fund Manager, shall be transmitted by the Government of the Marshall Islands to the Congress. Such report shall include such information (whether received from the Fund Manager or any other source) as relates to the disbursements provided for in Article II of the Section 177 Agreement. Such report shall be made public.

(f) NUCLEAR TEST EFFECTS.—In approving the Compact, the Congress understands and intends that the peoples of Bikini, Enewetak, Rongelap, and Utrik, who were affected by the United States nuclear weapons testing program in the Marshall Islands, will receive the amounts of $75,000,000 (Bikini); $48,750,000 (Enewetak), $37,500,000 (Rongelap); and $22,500,000 (Utrik), respectively, which amounts shall be paid out of proceeds from the fund established under Article I, section 1 of the subsidiary agreement for the implementation of section 177 of the Compact. The amounts specified in this subsection shall be in addition to any amounts which may be awarded to claimants pursuant to Article IV of the subsidiary agreement for the implementation of Section 177 of the Compact.

(g) ESPOUSAL PROVISIONS.—(1) It is the intention of the Congress of the United States that the provisions of section 177 of the Compact of Free Association and the Agreement between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact (hereafter in this subsection referred to as the "Section 177 Agreement") constitute a full and final settlement of all claims described in Articles X and XI of the Section 177 Agreement, and that any such claims be terminated and barred except insofar as provided for in the Section 177 Agreement.

(2) In furtherance of the intention of Congress as stated in paragraph (1) of this subsection, the Section 177 Agreement is hereby ratified and approved. It is the explicit understanding and intent of Congress that the jurisdictional limitations set forth in Article XII of such Agreement are enacted solely and exclusively to accomplish the objective of Article X of such Agreement and only as a clarification of the effect of Article X, and are not to be construed or implemented separately from Article X.

(h) DOE RADIOLOGICAL HEALTH CARE PROGRAM; USDA AGRICULTURAL AND FOOD PROGRAMS.—

(1) MARSHALL ISLANDS PROGRAM.—Notwithstanding any other provision of law, upon the request of the Government of the Marshall Islands, the President (either through an appropriate department or agency of the United States or by contract with a United States firm) shall continue to provide special medical care and logistical support thereto for the remaining 174 members of the population of Rongelap and Utrik who were exposed to radiation resulting from the 1954 United States thermonuclear "Bravo" test, pursuant to Public Laws 95–134 and 96–205. Such medical care and its accompanying logistical support shall total $22,500,000 over the first 11 years of the Compact.

(2) AGRICULTURAL AND FOOD PROGRAMS.—Notwithstanding any other provision of law, upon the request of the Government of the Marshall Islands, for the fifteen[7] five years after the effective date of the Compact, the President (either through an appropriate department or agency of the United States or by contract with a United States firm) shall provide technical and other assistance—

(A) without reimbursement, to continue the planting and agricultural maintenance program on Enewetak;

(B) without reimbursement, to continue the food programs of the Bikini and Enewetak people described in section 1(d) of Article II of the Subsidiary Agreement for the Implementation of Section 177 of the Compact and for continued waterborne transportation of agricultural products to Enewetak including operations and maintenance of the vessel used for such purposes. The President shall ensure the assistance provided under these programs reflects the

[7] Sec. 2 of Public Law 105–209 (112 Stat. 880) struck out "ten", inserted in lieu thereof "fifteen", and added the last sentence of subpara. (B). Previously, sec. 304 of the Omnibus Insular Areas Act of 1992 (Public Law 102–247; 106 Stat. 33) struck out "five" and inserted in lieu thereof "ten".

changes in the population since the inception of such programs.[7]

(3) PAYMENTS.—Payments under this subsection shall be provided to such extent or in such amounts as are necessary for services and other assistance provided pursuant to this subsection. It is the sense of Congress that after the periods of time specified in paragraphs (1) and (2) of this subsection, consideration will be given to such additional funding for these programs as may be necessary.

(i) RONGELAP.—(1) Because Rongelap was directly affected by fallout from a 1954 United States thermonuclear test and because the Rongelap people remain unconvinced that it is safe to continue to live on Rongelap Island, it is the intent of Congress to take such steps (if any) as may be necessary to overcome the effects of such fallout on the habitability of Rongelap Island, and to restore Rongelap Island, if necessary, so that it can be safely inhabited. Accordingly, it is the expectation of the Congress that the Government of the Marshall Islands shall use such portion of the funds specified in Article II, section 1(e) of the subsidiary agreement for the implementation of section 177 of the Compact as are necessary for the purpose of contracting with a qualified scientist or group of scientists to review the data collected by the Department of Energy relating to radiation levels and other conditions on Rongelap Island resulting from the thermonuclear test. It is the expectation of the Congress that the Government of the Marshall Islands, after consultation with the people of Rongelap, shall select the party to review such data, and shall contract for such review and for submission of a report to the President of the United States and the Congress as to the results thereof.

(2) The purpose of the review referred to in paragraph (1) of this subsection shall be to establish whether the data cited in support of the conclusions as to the habitability of Rongelap Island, as set forth in the Department of Energy report entitled: "The Meaning of Radiation for Those Atolls in the Northern Part of the Marshall Islands That Were Surveyed in 1978", dated November 1982, are adequate and whether such conclusions are fully supported by the data. If the party reviewing the data concludes that such conclusions as to habitability are fully supported by adequate data, the report to the President of the United States and the Congress shall so state. If the party reviewing the data concludes that the data are inadequate to support such conclusions as to habitability or that such conclusions as to habitability are not fully supported by the data, the Government of the Marshall Islands shall contract with an appropriate scientist or group of scientists to undertake a complete survey of radiation and other effects of the nuclear testing program relating to the habitability of Rongelap Island. Such sums as are necessary for such survey and report concerning the results thereof and as to steps needed to restore the habitability of Rongelap Island are authorized to be made available to the Government of the Marshall Islands.

(3) It is the intent of Congress that such steps (if any) as are necessary to restore the habitability of Rongelap Island and return the Rongelap people to their homeland will be taken by the United States in consultation with the Government of the Marshall Islands

and, in accordance with its authority under the Constitution of the Marshall Islands, the Rongelap local government council.

(j) FOUR ATOLL HEALTH CARE PROGRAM.—(1) Services provided by the United States Public Health Service or any other United States agency pursuant to section 1(a) of Article II of the Agreement for the Implementation of Section 177 of the Compact (hereafter in this subsection referred to as the "Section 177 Agreement") shall be only for services to the people of the Atolls of Bikini, Enewetak, Rongelap, and Utrik who were affected by the consequences of the United States nuclear testing program, pursuant to the program described in Public Law 95–134 and Public Law 96–205 and their descendants (and any other persons identified as having been so affected if such identification occurs in the manner described in such public laws). Nothing in this subsection shall be construed as prejudicial to the views or policies of the Government of the Marshall Islands as to the persons affected by the consequences of the United States nuclear testing program.

(2) At the end of the first year after the effective date of the Compact and at the end of each year thereafter, the providing agency or agencies shall return to the Government of the Marshall Islands any unexpended funds to be returned to the Fund Manager (as described in Article I of the Section 177 Agreement) to be covered into the Fund to be available for future use.

(3) The Fund Manager shall retain the funds returned by the Government of the Marshall Islands pursuant to paragraph (2) of this subsection, shall invest and manage such funds, and at the end of 15 years after the effective date of the Compact, shall make from the total amount so retained and the proceeds thereof annual disbursements sufficient to continue to make payments for the provision of health services as specified in paragraph (1) of this subsection to such extent as may be provided in contracts between the Government of the Marshall Islands and appropriate United States providers of such health services.

(k) ENJEBI COMMUNITY TRUST FUND.—Notwithstanding any other provision of law, the Secretary of the Treasury shall establish on the books of the Treasury of the United States a fund having the status specified in Article V of the subsidiary agreement for the implementation of Section 177 of the Compact, to be known as the "Enjebi Community Trust Fund" (hereafter in this subsection referred to as the "Fund"), and shall credit to the Fund the amount of $7,500,000.[8] Such amount, which shall be ex gratia, shall be in addition to and not charged against any other funds provided for in the Compact and its subsidiary agreements, this joint resolution, or any other Act. Upon receipt by the President of the United States of the agreement described in this subsection, the Secretary of the Treasury, upon request of the Government of the Marshall Islands, shall transfer the Fund to the Government of the Marshall Islands, provided that the Government of the Marshall Islands agrees as follows:

(1) ENJEBI TRUST AGREEMENT.—The Government of the Marshall Islands and the Enewetak Local Government Council, in

[8] The Department of the Interior and Related Agencies Appropriations Act, 1989 (Public Law 100–446; 102 Stat. 1774 at 1798), provided $2,500,000 for this Fund, to remain available until expended.

consultation with the people of Enjebi, shall provide for the creation of the Enjebi Community Trust Fund and the employment of the manager of the Enewetak Fund established pursuant to the Section 177 Agreement as trustee and manager of the Enjebi Community Trust Fund, or, should the manager of the Enewetak Fund not be acceptable to the people of Enjebi, another United States investment manager with substantial experience in the administration of trusts and with funds under management in excess of 250 million dollars.

(2) MONITOR CONDITIONS.—Upon the request of the Government of the Marshall Islands, the United States shall monitor the radiation and other conditions on Enjebi and within one year of receiving such a request shall report to the Government of the Marshall Islands when the people of Enjebi may resettle Enjebi under circumstances where the radioactive contamination at Enjebi, including contamination derived from consumption of locally grown food products, can be reduced or otherwise controlled to meet whole body Federal radiation protection standards for the general population, including mean annual dose and mean 30-year cumulative dose standards.

(3) RESETTLEMENT OF ENJEBI.—In the event that the United States determines that the people of Enjebi can within 25 years of the date of the enactment of this joint resolution resettle Enjebi under the conditions set forth in paragraph (2) of this subsection, then upon such determination there shall be available to the people of Enjebi from the Fund such amounts as are necessary for the people of Enjebi to do the following, in accordance with a plan developed by the Enewetak Local Government Council and the people of Enjebi, and concurred with by the Government of the Marshall Islands to assure consistency with the government's overall economic development plan:

(A) Establish a community on Enjebi Island for the use of the people of Enjebi.

(B) Replant Enjebi with appropriate food-bearing and other vegetation.

(4) RESETTLEMENT OF OTHER LOCATION.—In the event that the United States determines that within 25 years of the date of the enactment of this joint resolution the people of Enjebi cannot resettle Enjebi without exceeding the radiation standards set forth in paragraph (2) of this subsection, then the fund manager shall be directed by the trust instrument to distribute the Fund to the people of Enjebi for their resettlement at some other location in accordance with a plan, developed by the Enewetak Local Government Council and the people of Enjebi and concurred with by the Government of the Marshall Islands, to assure consistency with the government's overall economic development plan.

(5) INTEREST FROM FUND.—Prior to and during the distribution of the corpus of the Fund pursuant to paragraphs (3) and (4) of this subsection, the people of Enjebi may, if they so request, receive the interest earned by the Fund on no less frequent a basis than quarterly.

(6) DISCLAIMER OF LIABILITY.—Neither under the laws of the Marshall Islands nor under the laws of the United States, shall the Government of the United States be liable for any loss or damage to person or property in respect to the resettlement of Enjebi by the people of Enjebi, pursuant to the provision of this subsection or otherwise.

(l) BIKINI ATOLL CLEANUP.—

(1) DECLARATION OF POLICY.—The Congress hereby determines and declares that it is the policy of the United States, to be supported by the full faith and credit of the United States, that because the United States, through its nuclear testing and other activities, rendered Bikini Atoll unsafe for habitation by the people of Bikini, the United States will fulfill its responsibility for restoring Bikini Atoll to habitability, as set forth in paragraphs (2) and (3) of this subsection.

(2) CLEANUP FUNDS.—There are hereby authorized to be appropriated[9] such sums as are necessary to implement the settlement agreement of March 15, 1985, in The People of Bikini, et al. against United States of America, et al., Civ. No. 84–0425 (D. Ha.).

(3) CONDITIONS OF FUNDING.—The funds referred to in paragraph (2) shall be made available pursuant to Article VI, Section 1 of the Compact Section 177 Agreement upon completion of the events set forth in the settlement agreement referred to in paragraph (2) of this subsection.

(m) AGREEMENT ON AUDITS.—In accordance with section 233 of the Compact, the President of the United States, in consultation with the Comptroller General of the United States, shall negotiate with the Government of the Marshall Islands an agreement which shall provide as follows:

(1) GENERAL AUTHORITY OF THE GAO TO AUDIT.—

(A) The Comptroller General of the United States (and his duly authorized representatives) shall have the authority to audit—

(i) all grants, program assistance, and other assistance provided to the Government of the Marshall Islands under Articles I and II of Title Two of the Compact; and

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[9] The Department of the Interior and Related Agencies Appropriations Act, 1989 (Public Law 100–446; 102 Stat. 1774 at 1798), contained the following provision:

"* * * *Provided further,* That in full satisfaction of the obligation of the United States to provide funds to assist in the resettlement and rehabilitation of Bikini Atoll by the People of Bikini, to which the full faith and credit of the United States is pledged pursuant to section 103(l) of Public Law 99–239, the United States shall deposit $90,000,000 into the Resettlement Trust Fund for the People of Bikini established pursuant to Public Law 97–257, and governed pursuant to the terms of such trust instrument, such deposit to be installments of $5,000,000 on October 1, 1988; $22,0000,000 on October 1, 1989; $21,000,000 on October 1, 1990; $21,000,000 on October 1, 1991; and $21,000,000 on October 1, 1992; * * * ".

Sec. 2 of the Bikini Resettlement and Relocation Act of 2000 (Public Law 106–188; 114 Stat. 228) further provided the following:

"Three percent of the market value as of June 1, 1999, of the Resettlement Trust Fund for the People of Bikini, established pursuant to Public Law 97–257, shall be made available for immediate ex gratia distribution to the people of Bikini, provided such distribution does not reduce the corpus of the trust fund. The amount of such distribution shall be deducted from any additional ex gratia payments that may be made by the Congress into the Resettlement Trust Fund.".

(ii) any other assistance provided by the Government of the United States to the Government of the Marshall Islands.

Such authority shall include authority for the Comptroller General to conduct or cause to be conducted any of the audits provided for in section 233 of the Compact. The authority provided in this paragraph shall continue for at least three years after the last such grant has been made or assistance has been provided.

(B) The Comptroller General (and his duly authorized representatives) shall also have authority to review any audit conducted by or on behalf of the Government of the United States. In this connection, the Comptroller General shall have access to such personnel and to such records, documents, working papers, automated data and files, and other information relevant to such review.

(2) GAO ACCESS TO RECORDS.—

(A) In carrying out paragraph (1), the Comptroller General (and his duly authorized representatives) shall have such access to the personnel and (without cost) to records, documents, working papers, automated data and files, and other information relevant to such audits. The Comptroller General may duplicate any such records, documents, working papers, automated data and files, or other information relevant to such audits.

(B) Such records, documents, working papers, automated data and files, and other information regarding each such grant or other assistance shall be maintained for at least three years after the date such grant or assistance was provided and in a manner that permits such grants, assistance, and payments to be accounted for distinct from any other funds of the Government of the Marshall Islands.

(3) REPRESENTATIVE STATUS FOR GAO REPRESENTATIVES.—The Comptroller General and his duly authorized representatives shall be accorded the status set forth in Article V of Title One of the Compact.

(4) ANNUAL FINANCIAL STATEMENTS.—As part of the annual report submitted by the Government of the Marshall Islands under section 211 of the Compact, the Government shall include annual financial statements which account for the use of all of the funds provided by the Government of the United States to the Government under the Compact or otherwise. Such financial statements shall be prepared in accordance with generally accepted accounting procedures, except as may otherwise be mutually agreed. Not later than 180 days after the end of the United States fiscal year with respect to which such funds were provided, each such statement shall be submitted to the President for audit and transmission to the Congress.

(5) DEFINITION OF AUDITS.—As used in this subsection, the term "audits" includes financial, program, and management audits, including determining—

(A) whether the Government of the Marshall Islands has met the requirements set forth in the Compact, or any related agreement entered into under the Compact, regarding the purposes for which such grants and other assistance are to be used; and

(B) the propriety of the financial transactions of the Government of the Marshall Islands pursuant to such grants or assistance.

(6) COOPERATION BY MARSHALL ISLANDS.—The Government of the Marshall Islands will cooperate fully with the Comptroller General of the United States in the conduct of such audits as the Comptroller General determines necessary to enable the Comptroller General to fully discharge his responsibilities under this joint resolution.

SEC. 104.[10] INTERPRETATION OF AND UNITED STATES POLICY REGARDING COMPACT OF FREE ASSOCIATION.

(a) HUMAN RIGHTS.—In approving the Compact, the Congress notes the conclusion in the Statement of Intent of the Report of The Future Political Status Commission of the Congress of Micronesia in July, 1969, that "our recommendation of a free associated state is indissolubly linked to our desire for such a democratic, representative, constitutional government" and notes that such desire and intention are reaffirmed and embodied in the Constitutions of the Federated States of Micronesia and the Marshall Islands. The Congress also notes and specifically endorses the preamble to the Compact, which affirms that the governments of the parties to the Compact are founded upon respect for human rights and fundamental freedoms for all. The Secretary of State shall include in the annual reports on the status of internationally recognized human rights in foreign countries, which are submitted to the Congress pursuant to sections 116 and 502B of the Foreign Assistance Act of 1961, a full and complete report regarding the status of internationally recognized human rights in the Federated States of Micronesia and the Marshall Islands.

(b) IMMIGRATION.—The rights of a bona fide naturalized citizen of the Marshall Islands or the Federated States of Micronesia to enter the United States, to lawfully engage therein in occupations, and to establish residence therein as a non-immigrant, pursuant to the provisions of section 141(a)(3) of the Compact, shall not extend to any such naturalized citizen with respect to whom circumstances associated with the acquisition of the status of a naturalized citizen are such as to allow a reasonable inference, on the part of appropriate officials of the United States and subject to United States procedural requirements, that such naturalized status was acquired primarily in order to obtain such rights.

(c) NONALIENATION OF LANDS.—The Congress endorses and encourages the maintenance of the policies of the Government of the Federated States of Micronesia and the Government of the Marshall Islands to regulate, in accordance with their Constitutions and laws, the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to

[10] 48 U.S.C. 1904.

persons of Federated States of Micronesia citizenship and Marshall Islands citizenship, respectively.

(d) NUCLEAR WASTE DISPOSAL.—In approving the Compact, the Congress understands that the Government of the Federated States of Micronesia and the Government of the Marshall Islands will not permit any other government or any nongovernmental party to conduct, in the Marshall Islands or in the Federated States of Micronesia, any of the activities specified in subsection (a) of section 314 of the Compact.

(e) IMPACT OF COMPACT ON U.S. AREAS.—

(1) STATEMENT OF CONGRESSIONAL INTENT.—In approving the Compact, it is not the intent of the Congress to cause any adverse consequences for the United States territories and commonwealths or the State of Hawaii.

(2) ANNUAL REPORTS AND RECOMMENDATIONS.—One year after the date of enactment of this joint resolution and at one year intervals thereafter, the Governor of any of the United States territories or commonwealths or the State of Hawaii may report to the Secretary of the Interior by February 1 of each year with respect to the impacts of the compacts of free association on the Governor's respective jurisdiction. The Secretary of the Interior shall review and forward any such reports to the Congress with the comments of the Administration. The Secretary of the Interior shall, either directly or, subject to available technical assistance funds, through a grant to the affected jurisdiction, provide for a census of Micronesians at intervals no greater than 5 years from each decennial United States census using generally acceptable statistical methodologies for each of the impact jurisdictions where the Governor requests such assistance, except that the total expenditures to carry out this sentence may not exceed $300,000 in any year.[11] Reports submitted pursuant to this paragraph (hereafter in this subsection referred to as "reports") shall identify any adverse consequences resulting from the Compact and shall make recommendations for corrective action to eliminate those consequences. The reports shall pay particular attention to matters relating to trade, taxation, immigration, labor laws, minimum wages, social systems and infrastructure, and environmental regulation. With regard to immigration, the reports shall include statistics concerning the number of persons availing themselves of the rights described in section 141(a) of the Compact during the year covered by each report. With regard to trade, the reports shall include an analysis of the impact on the economy of American Samoa resulting from imports of canned tuna into the United States from the Federated States of Micronesia and the Marshall Islands.

(3) OTHER VIEWS.—In preparing the reports, the President shall request the views of the Government of the State of Hawaii, and the governments of each of the United States territories and commonwealths, the Federated States of Micronesia,

[11] Sec. 2 of Public Law 106–504 (114 Stat. 2311) struck out "President shall report to the Congress with respect to the impact of the Compact on the United States territories and commonwealths and on the State of Hawaii." and inserted in lieu thereof the text to this point beginning with "Governor of any of the United States territories".

the Marshall Islands, and Palau, and shall transmit the full text of any such views to the Congress as part of such reports.

(4) COMMITMENT OF CONGRESS TO REDRESS ADVERSE CONSEQUENCES.—The Congress hereby declares that, if any adverse consequences to United States territories and commonwealths or the State of Hawaii result from implementation of the Compact of Free Association, the Congress will act sympathetically and expeditiously to redress those adverse consequences.

(5) DEFINITION OF U.S. TERRITORIES AND COMMONWEALTHS.—As used in this subsection, the term "United States territories and commonwealths" means the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) IMPACT COSTS.—There are hereby authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to cover the costs, if any, incurred by the State of Hawaii, the territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands resulting from any increased demands placed on educational and social services by immigrants from the Marshall Islands and the Federated States of Micronesia.

(f) FISHERIES MANAGEMENT.—In clarification of Title One, Article II, section 121(b)(1) of the Compact:

(1) Nothing in the Compact or this joint resolution shall be interpreted as recognition by the United States of any claim by the Federated States of Micronesia or by the Marshall Islands to jurisdiction or authority over highly migratory species of fish during the time such species of fish are found outside the territorial sea of the Federated States of Micronesia or the Marshall Islands.

(2) It is the understanding of Congress that none of the monies made available pursuant to the Compact or this joint resolution will be used by either the Federated States of Micronesia or the Marshall Islands for enforcement actions against any vessel of the United States on the basis of fishing by any such vessel for highly migratory species of fish outside the territorial sea of the Federated States of Micronesia or the Marshall Islands, respectively, in the absence of a licensing agreement.

(3) Appropriate United States officials shall apply the policies and provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)[12] and the Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) with regard to any action taken by the Federated States of Micronesia or the Marshall Islands affecting any vessel of the United States engaged in fishing for highly migratory species of fish in waters outside the territorial seas of the Federated States of Micronesia or the Marshall Islands, respectively. For

[12] Sec. 211(b) of the Department of Commerce and Related Agencies Appropriations Act, 1997 (title II of sec. 101(a) of title I of Public Law 104–208; 101 Stat. 3009), provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act [enacted October 11, 1996], all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.".

the purpose of applying the provisions of section 5 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1975), monies made available to either the Federated States of Micronesia or the Marshall Islands pursuant to the provisions of the Compact or this joint resolution shall be treated as "assistance to the government of such country under the Foreign Assistance Act of 1961". For purposes of this Act only, certification by the President in accordance with such section 5 shall be accompanied by a report to Congress on the basis for such certification, and such certification shall have no effect if by law Congress so directs prior to the expiration of 60 days during which Congress is in continuous session following the date of such certification.

(4) For the purpose of paragraphs (1) and (3) of this subsection—

(A) The term "vessel of the United States" has the same meaning as provided in the first section of the Fishermen's Protective Act of 1967 (22 U.S.C. 1971).

(B) The terms "fishing" and "highly migratory species" have the same meanings as provided in paragraphs (10) and (14), respectively, of section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(10) and (14)).[12]

(5)(A) It is the policy of the United States of America—

(i) to negotiate and conclude with the governments of the Central, Western, and South Pacific Ocean, including the Federated States of Micronesia and the Marshall Islands, a regional licensing agreement setting forth agreed terms of access for United States tuna vessels fishing in the region; and

(ii) that such an agreement should overcome existing jurisdictional differences and provide for a mutually beneficial relationship between the United States and the Pacific Island States that will promote the development of the tuna and other latent fisheries resources of the Central, Western, and South Pacific Ocean and the economic development of the region.

(B) At such time as an agreement referred to in subparagraph (A) is submitted to the Senate for advice and consent to ratification, the Secretary of State, after consultation with the Secretary of Commerce and other interested agencies and concerned governments, shall submit to the Congress a proposed long term regional fisheries development program which may include, but not be limited to—

(i) exploration for, and stock assessment of, tuna and other fish;

(ii) improvement of harvesting techniques;

(iii) gear development;

(iv) biological resource monitoring;

(v) education and training in the field of fisheries; and

(vi) regional and direct bilateral assistance in the field of fisheries.

(g) FOREIGN LOANS.—The Congress hereby reaffirms the United States position that the United States Government is not responsible for foreign loans or debt obtained by the Governments of the Federated States of Micronesia and the Marshall Islands.

SEC. 105.[13] SUPPLEMENTAL PROVISIONS.

(a) DOMESTIC PROGRAM REQUIREMENTS.—Except as may otherwise be provided in this joint resolution, all United States Federal programs and services extended to or operated in the Federated States of Micronesia or the Marshall Islands are and shall remain subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs when operating in the United States (including its territories and commonwealths).

(b) RELATIONS WITH THE FEDERATED STATES OF MICRONESIA AND THE MARSHALL ISLANDS.—

(1) The United States representatives to the Federated States of Micronesia and the Republic of the Marshall Islands pursuant to Article V of title I of the Compact shall be appointed by the President with the advice and consent of the Senate, and shall be under the supervision of the Secretary of State, who shall have responsibility for government to government relations between the United States and the Government with respect to whom they are appointed, consistent with the authority of the Secretary of the Interior as set forth in this section.

(2) Appropriations made pursuant to the Compact or any other provision of this joint resolution may be made only to the Secretary of the Interior, who shall coordinate and monitor any program or activity provided to the Federated States of Micronesia or the Republic of the Marshall Islands by departments and agencies of the Government of the United States and related economic development planning pursuant to the Compact or pursuant to any other authorization except for the provisions of sections 161(e), 313, and 351 of the Compact and the authorization of the President to agree to an effective date pursuant to this resolution. Funds appropriated to the Secretary of the Interior pursuant to this paragraph shall not be allocated to other Departments or agencies.

(3) All programs and services provided to the Federated States of Micronesia and the Republic of the Marshall Islands by Federal agencies may be provided only after consultation with and under the supervision of the Secretary of the Interior, and the head of each Federal agency is directed to cooperate with the Secretary of the Interior and to make such personnel and services available as the Secretary of the Interior may request.

(4) Any United States Government personnel assigned, on a temporary or permanent basis, to either the Federated States of Micronesia or the Marshall Islands shall, during the period of such assignment, be subject to the supervision of the United States representative to that area.

[13] 48 U.S.C. 1905.

(5) The President is hereby authorized to appoint an Interagency Group on Freely Associated States' Affairs to provide policy guidance to federal departments and agencies. Such interagency group shall include the Secretary of the Interior and the Secretary of State.

(c) CONTINUING TRUST TERRITORY AUTHORIZATION.—The authorization provided by the Act of June 30, 1954, as amended (68 Stat. 330) shall remain available after the effective date of the Compact with respect to the Federated States of Micronesia and the Marshall Islands for the following purposes:

(1) Prior to October 1, 1986, for any purpose authorized by the Compact or this joint resolution.

(2) Transition purposes, including but not limited to, completion of projects and fulfillment of commitments or obligations; termination of the Trust Territory Government and termination of the High Court; health and education as a result of exceptional circumstances; ex gratia contributions for the populations of Bikini, Enewetak, Rongelap, and Utrik; and technical assistance and training in financial management, program administration, and maintenance of infrastructure.

(d) MEDICAL REFERRAL DEBTS.—

(1) FEDERATED STATES OF MICRONESIA.—In addition to the funds provided in Title Two, Article II, section 221(b) of the Compact, following approval of the Compact with respect to the Federated States of Micronesia, the United States shall make available to the Government of the Federated States of Micronesia such sums as may be necessary for the payment of the obligations incurred for the use of medical facilities in the United States, including any territories and commonwealths, by citizens of the Federated States of Micronesia before September 1, 1985.

(2) MARSHALL ISLANDS.—In addition to the funds provided in Title Two, Article II, section 221(b) of the Compact, following approval of the Compact with respect to the Marshall Islands, the United States shall make available to the Government of the Marshall Islands such sums as may be necessary for the payment of the obligations incurred for the use of medical facilities in the United States, its territories and commonwealths by citizens of the Marshall Islands before September 1, 1985.

(3) USE OF FUNDS.—In making funds available pursuant to this subsection, the President shall take such actions as he deems necessary to assure that the funds are used only for the payment of the medical expenses described in paragraph (1) or (2) of this subsection, as the case may be.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(e) SURVIVABILITY.—In furtherance of the provisions of Title Four, Article V, sections 452 and 453 of the Compact, any provisions of the Compact which remain effective after the termination of the Compact by the act of any party thereto and which are affected in any manner by provisions of this title shall remain subject to such provisions.

(f) REGISTRATION FOR AGENTS OF MICRONESIAN GOVERNMENTS.—

(1) IN GENERAL.—Notwithstanding the provisions of Title One, Article V, section 153 of the Compact, after approval of the Compact any citizen of the United States who, without authority of the United States, acts as the agent of the Government of the Marshall Islands or the Federated States of Micronesia with regard to matters specified in the provisions of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.) that apply with respect to an agent of a foreign principal shall be subject to the requirements of such Act. Failure to comply with such requirements shall subject such citizen to the same penalties and provisions of law as apply in the case of the failure of such an agent of a foreign principal to comply with such requirements. For purposes of the Foreign Agents Registration Act of 1938, the Federated States of Micronesia and the Marshall Islands shall be considered to be foreign countries.

(2) EXCEPTION.—Paragraph (1) of this subsection shall not apply to a citizen of the United States employed by either the Government of the Marshall Islands or the Government of the Federated States of Micronesia with respect to whom the employing Government from time to time certifies to the Government of the United States that such citizen is an employee of the Government of the Marshall Islands or the Government of the Federated States of Micronesia (as the case may be) whose principal duties are other than those matters specified in the Foreign Agents Registration Act of 1938, as amended, that apply with respect to an agent of a foreign principal. The agency or officer of the United States receiving such certifications shall cause them to be filed with the Attorney General, who shall maintain a publicly available list of the persons so certified.

(3) RESIDENT REPRESENTATIVE EXEMPTION.—Nothing in this subsection shall be construed as amending section 152(b) of the Compact.

(g) NONCOMPLIANCE SANCTIONS.—

(1) AUTHORITY OF PRESIDENT.—The President of the United States shall have no authority to suspend or withhold payments or assistance with respect to—

(A) section 177, 213, 216(a)(2), 216(a)(3), 221(b), or 223 of the Compact, or

(B) any agreements made pursuant to such sections of the Compact,

unless such suspension or withholding is imposed as a sanction due to noncompliance by the Government of the Federated States of Micronesia or the Government of the Marshall Islands (as the case may be) with the obligations and requirements of such sections of the Compact or such agreements.

(2) ACTIONS INCOMPATIBLE WITH UNITED STATES AUTHORITY.—The Congress expresses its understanding that the Governments of the Federated States of Micronesia and the Marshall Islands will not act in a manner incompatible with the authority and responsibility of the United States for security and defense matters in or related to the Federated States of Micronesia or the Marshall Islands pursuant to the Compact,

including the agreements referred to in sections 462(j) and 462(k) thereof. The Congress further expresses its intention that any such act on the part of either such Government will be viewed by the United States as a material breach of the Compact. The Government of the United States reserves the right in the event of such a material breach of the Compact by the Government of the Federated States of Micronesia or the Government of the Marshall Islands to take action, including (but not limited to) the suspension in whole or in part of the obligations of the Government of the United States to that Government.

(h) CONTINUING PROGRAMS AND LAWS.—

(1) FEDERATED STATES OF MICRONESIA AND MARSHALL ISLANDS.—In addition to the programs and services set forth in section 221 of the Compact, and pursuant to section 224 of the Compact, the programs and services of the following agencies shall be made available to the Federated States of Micronesia and to the Marshall Islands:

(A) the Legal Services Corporation;

(B) the Public Health Service; and

(C) the Farmers Home Administration (in the Marshall Islands and each of the four States of the Federated States of Micronesia: *Provided,* That in lieu of continuation of the program in the Federated States of Micronesia, the President may agree to transfer to the Government of the Federated States of Micronesia without cost, the portfolio of the Farmers Home Loan Administration applicable to the Federated States of Micronesia and provide such technical assistance in management of the portfolio as may be requested by the Federated States of Micronesia).

(2) PALAU.—Upon the effective date of the Compact, the laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the Compact, as provided in appropriation Acts or other Acts of Congress.

(3) SECTION 219 DETERMINATION.—The determination by the Government of the United States under section 219 of the Compact shall be as provided in appropriation Acts.

(4) TORT CLAIMS.—(A) At such time as the Trusteeship Agreement ceases to apply to either the Federated States of Micronesia or the Marshall Islands, the provisions of Section 178 of the Compact regarding settlement and payment of tort claims shall apply to employees of any federal agency of the Government of the United States which provides any service or carries out any other function pursuant to or in furtherance of any provisions of the Compact or this Act, except for provisions of Title Three of the Compact and of the subsidiary agreements related to such Title, in such area to which such Agreement

formerly applied. For purposes of this subparagraph (B), persons providing such service or carrying out such function pursuant to a contract with a federal agency shall be deemed to be an employee of the contracting federal agency.

(B) For purposes of the Federal Tort Claims Act (28 U.S.C. 2671 et seq.), persons providing services to the people of the atolls of Bikini, Enewetak, Rongelap, and Utrik as described in Public Law 95–134 and Public Law 96–205 pursuant to a contract with a Department or agency of the federal government shall be deemed to be an employee of the contracting Department or agency working in the United States. This subparagraph (B) shall expire when the Trusteeship Agreement is terminated with respect to the Marshall Islands.

(5)[14] The programs and services of the Environmental Protection Agency regarding PCB's shall, to the extent applicable, as appropriate, and in accordance with applicable law, be construed to be made available to such islands.

(i) COLLEGE OF MICRONESIA; EDUCATION PROGRAMS.—

(1) COLLEGE OF MICRONESIA.—Notwithstanding any other provision of law, all funds which as of the date of the enactment of this joint resolution were appropriated for the use of the College of Micronesia System shall remain available for use by such college until expended. Until otherwise provided by Act of Congress, or until termination of the Compact, such college shall retain its status as a land-grant institution and its eligibility for all benefits and programs available to such land-grant institutions.

(2) FEDERAL EDUCATION PROGRAMS.—Pursuant to section 224 of the Compact and upon the request of the affected Government, any Federal program providing financial assistance for education which, as of January 1, 1985, was providing financial assistance for education to the Federated States of Micronesia or the Marshall Islands or to any institution, agency, organization, or permanent resident thereof, including the College of Micronesia System, shall continue to provide such assistance to such institutions, agencies, organizations, and residents as follows:

(A) For the fiscal year in which the Compact becomes effective, not to exceed $13,000,000;

(B) For the fiscal year beginning after the end of the fiscal year in which the Compact becomes effective, not to exceed $8,700,000; and

(C) For the fiscal year immediately following the fiscal year described in subparagraph (B), not to exceed $4,300,000.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as are necessary for purposes of this subsection.

(j) TRUST TERRITORY DEBTS TO U.S. FEDERAL AGENCIES.—Neither the Government of the Federated States of Micronesia nor the Government of the Marshall Islands shall be required to pay to any

[14] Sec. 2704 of the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 3120) added para. (5).

department, agency, independent agency, office, or instrumentality of the United States any amounts owed to such department, agency, independent agency, office, or instrumentality by the Government of the Trust Territory of the Pacific Islands as of the effective date of the Compact. There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

(k) USE OF DOD MEDICAL FACILITIES.—Following approval of the Compact, the Secretary of Defense shall make available the medical facilities of the Department of Defense for use by citizens of the Federated States of Micronesia and the Marshall Islands who are properly referred to such facilities by government authorities responsible for provision of medical services in the Federated States of Micronesia and the Marshall Islands. The Secretary of Defense is hereby authorized to cooperate with such authorities in order to permit use of such medical facilities for persons properly referred by such authorities. The Secretary of Health and Human Services is hereby authorized and directed to continue to make the services of the National Health Service Corps available to the residents of the Federated States of Micronesia and the Marshall Islands to the same extent and for so long as such services are authorized to be provided to persons residing in any other areas within or outside the United States.

(l) TECHNICAL ASSISTANCE.—Technical assistance may be provided pursuant to section 226 of the Compact by Federal agencies and institutions of the Government of the United States to the extent such assistance may be provided to States, territories, or units of local government. Such assistance by the Forest Service, the Soil Conservation Service, the Fish and Wildlife Service, the National Marine Fisheries Service, the United States Coast Guard, and the Advisory Council on Historic Preservation, the Department of the Interior, and other agencies providing assistance under the National Historic Preservation Act (80 Stat. 915; 16 U.S.C. 470–470t), shall be on a nonreimbursable basis. During the period the Compact is in effect, the grant programs under the National Historic Preservation Act shall continue to apply to the Federated States of Micronesia and the Marshall Islands in the same manner and to the same extent as prior to the approval of the Compact. Funds provided pursuant to sections 102(a), 103(a), 103(c), 103(h), 103(i), 103(j), 103(l), 105(c), 105(i), 105(j), 105(k), 105(l), 105(m), 105(n), and 105(o) of this joint resolution shall be in addition to and not charged against any amounts to be paid to either the Federated States of Micronesia or the Marshall Islands pursuant to the Compact or the subsidiary agreements.

(m) PRIOR SERVICE BENEFITS PROGRAM.—Notwithstanding any other provision of law, persons who on January 1, 1985, were eligible to receive payment under the Prior Service Benefits Program established within the Social Security System of the Trust Territory of the Pacific Islands because of their services performed for the United States Navy or the Government of the Trust Territory of the Pacific Islands prior to July 1, 1968, shall continue to receive such payments on and after the effective date of the Compact.

(n) INDEFINITE LAND USE PAYMENTS.—There are authorized to be appropriated such sums as may be necessary to complete repayment by the United States of any debts owed for the use of various lands in the Federated States of Micronesia and the Marshall Islands prior to January 1, 1985.

(o) COMMUNICABLE DISEASE CONTROL PROGRAM.—There are authorized to be appropriated for grants to the Government of the Federated States of Micronesia such sums as may be necessary for purposes of establishing or continuing programs for the control and prevention of communicable diseases, including (but not limited to) cholera and Hansen's Disease. The Secretary of the Interior shall assist the Government of the Federated States of Micronesia in designing and implementing such a program.

(p) TRUST FUNDS.—The responsibilities of the United States with regard to implementation of section 235 of the Compact shall be discharged by the Secretary of the Interior, who shall consult with the Government of the Marshall Islands and the designated beneficiaries of the funds held in trust by the High Commissioner of the Trust Territory of the Pacific Islands.

(q) ANNUAL REPORTS ON DETERMINATIONS UNDER COMPACT SECTION 313.—The President shall report annually to the Congress on determinations made by the United States in the exercise of its authority under section 313 of the Compact. Each such report shall describe the following, on a classified basis if necessary:

(1) The actions that the Government of the Federated States of Micronesia or the Government of the Marshall Islands were required to refrain from pursuant to the determinations of the United States.

(2) The justification for each determination by the United States, and the position of the other Government concerned with respect to such determination.

(3) The effect of the determination on the authority and responsibility of the other government to conduct foreign affairs in accordance with section 121 of the Compact.

(4) Any domestic effect in the Federated States of Micronesia or the Marshall Islands resulting from the determination, including any restriction on the civil and political rights of the citizens thereof.

(r) USER FEES.—Any person in the Federated States of Micronesia or the Marshall Islands shall be liable for user fees, if any, for services provided in the Federated States of Micronesia or the Marshall Islands by the Government of the United States to the same extent as any person in the United States would be liable for fees, if any, for such services in the United States.

SEC. 106.[15] CONSTRUCTION CONTRACT ASSISTANCE.

(a) ASSISTANCE TO U.S. FIRMS.—In order to assist the Governments of the Federated States of Micronesia and of the Marshall Islands through private sector firms which may be awarded contracts for construction or major repair of capital infrastructure within the Federated States of Micronesia or the Republic of the

[15] 48 U.S.C. 1906.

Marshall Islands, the President shall consult with the Governments of the Federated States of Micronesia and the Marshall Islands with respect to any such contracts, and the President shall enter into agreements with such firms whereby such firms will, consistent with applicable requirements of such Governments—

(1) to the maximum extent possible, employ citizens of the Federated States of Micronesia and the Marshall Islands;

(2) to the extent that necessary skills are not possessed by citizens of the Federated States of Micronesia and the Marshall Islands, provide on the job training, with particular emphasis on the development of skills relating to operation of machinery and routine and preventative maintenance of machinery and other facilities; and

(3) provide specific training or other assistance in order to enable the Government to engage in long-term maintenance of infrastructure.

Assistance by such firms pursuant to this section may not exceed 20 percent of the amount of the contract and shall be made available only to such firms which meet the definition of United States firm under the nationality rule for suppliers of services of the Agency for International Development (hereafter in this section referred to as "United States firms"). There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(b) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to cover any additional costs incurred by the Government of the Federated States of Micronesia or the Republic of the Marshall Islands if such Governments, pursuant to an agreement entered into with the United States, apply a preference on the award of contracts to United States firms, provided that the amount of such preference does not exceed 10 percent of the amount of the lowest qualified bid from a non-United States firm for such contract.

SEC. 107.[16] LIMITATIONS.

(a) PROHIBITION.—The provisions of Chapter 11 of title 18, United States Code, shall apply in full to any individual who has served as the President's Personal Representative for Micronesian Status Negotiations or who is or was an officer or employee of the Office for Micronesian Status Negotiations or who is or was assigned or detailed to that Office or who served on the Micronesia Interagency Group, except that for the purposes of this section, clauses (i) and (ii) of section 207(b) of such title shall read as follows: "(i) having been so employed, within three years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been

[16] 48 U.S.C. 1907.

so employed and as specified in subsection (d) of this section, within three years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—".

(b) TERMINATION.—Effective upon the date of the termination of the Trust Territory of the Pacific Islands with respect to Palau, the Office for Micronesian Status Negotiations is abolished and no department, agency, or instrumentality of the United States shall thereafter contribute funds for the support of such Office.

SEC. 108.[17] TRANSITIONAL IMMIGRATION RULES.

(a) CITIZEN OF NORTHERN MARIANA ISLANDS.—Any person who is a citizen of the Northern Mariana Islands, as that term is defined in section 24(b) of the Act of December 8, 1983 (97 Stat. 1465), is considered a citizen of the United States for purposes of entry into, permanent residence, and employment in the United States and its territories and possessions.

(b) TERMINATION.—The provisions of this section shall cease to be effective when section 301 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States (Public Law 94–241) becomes effective pursuant to section 1003(c) of the Covenant.

SEC. 109.[18] TIMING.

No payment may be made pursuant to the Compact nor under any provision of this joint resolution prior to October 1, 1985.

SEC. 110.[19] IMPLEMENTATION OF AUDIT AGREEMENTS.

(a) TRANSMISSION OF ANNUAL FINANCIAL STATEMENT.—Upon receipt of the annual financial statement described in sections 102(c)(4) and 103(m)(4), the President shall promptly transmit a copy of such statement to the Congress.

(b) ANNUAL AUDITS BY THE PRESIDENT.—(1) The President shall cause an annual audit to be conducted of the annual financial statements described in sections 102(c)(4) and 103(m)(4). Such audit shall be conducted in accordance with the Generally Accepted Government Auditing Standards promulgated by the Comptroller General of the United States. Such audit shall be submitted to the Congress not later than 180 days after the end of the United States fiscal year.

(2) The President shall develop and implement procedures to carry out such audits. Such procedures shall include the matters described in sections 102(c)(2) and 103(m)(2) of this title.

(c) AUTHORITY OF GAO.—The Comptroller General of the United States shall have the authority to conduct the audits referred to in sections 102(c)(1) and 103(m)(1) of this title.

SEC. 111.[20] COMPENSATORY ADJUSTMENTS.

(a) ADDITIONAL PROGRAMS AND SERVICES.—In addition to the programs and services set forth in Section 221 of the Compact, and pursuant to Section 224 of the Compact, the services and programs

[17] 48 U.S.C. 1908.
[18] 48 U.S.C. 1909.
[19] 48 U.S.C. 1910.

of the following U.S. agencies shall be made available to the Federated States of Micronesia and the Marshall Islands: The Federal Deposit Insurance Corporation, Small Business Administration, Economic Development Administration, the Rural Electrification Administration, Job Partnership Training Act, Job Corps, and the programs and services of the Department of Commerce relating to tourism and to marine resource development.

(b)(1) INVESTMENT DEVELOPMENT FUNDS.—In order to further close economic and commercial relations between the United States and the Federated States of Micronesia and the Marshall Islands, and in order to encourage the presence of the United States private sector in such areas, there are hereby created two Investment Development Funds, to be established and administered by the Federated States of Micronesia and the Marshall Islands respectively in consultation with the United States as follows:

(i) For the Investment Development Fund for the Federated States of Micronesia there is hereby authorized to be appropriated for fiscal 1986, $20 million, backed by the full faith and credit of the United States, of which $12 million shall be made available for obligation for the first full fiscal year after the effective date of the Compact, and of which $8 million shall be made available for obligation for the third full fiscal year after the effective date of the Compact.

(ii) For the Investment Development Fund for the Marshall Islands there is hereby authorized to be appropriated $10 million for fiscal 1986, backed by the full faith and credit of the United States, of which $6 million for the first full fiscal year after the effective date of the Compact, and of which $4 million shall be made available for obligation for the third full fiscal year after the effective date of the Compact.

(2) The amounts specified in subsection (b) of this section shall be in addition to the sums and amounts specified in Articles I and III of Title Two of the Compact, and shall be deemed to be included in the sums and amounts referred to in section 236 of the Compact.

(c) BOARD OF ADVISORS.—To provide policy guidance for the Funds established by subsection (b) of this section, the President is hereby authorized to establish a Board of Advisors, pursuant to appropriate agreements between the United States and the Federated States of Micronesia and the Marshall Islands.

(d) FURTHER AMOUNTS.—The governments of the Federated States of Micronesia and the Marshall Islands may submit to Congress reports concerning the overall financial and economic impacts on such areas resulting from the effect of Title IV of this joint resolution upon Title Two of the Compact. There are hereby authorized to be appropriated for fiscal years beginning after September 30, 1990, such amounts as may be necessary, but not to exceed $40 million for the Federated States of Micronesia and $20 million for the Marshall Islands, as provided in appropriation acts, to further compensate the governments of such islands (in addition to the compensation provided in subsections (a) and (b) of this section) for adverse impacts, if any, on the finances and economies of such areas resulting from the effect of Title IV of this joint resolution upon Title Two of the Compact. At the end of the initial fifteen-year term of the Compact, should any portion of the total amount

of funds authorized in this subsection not have been appropriated, such amount not yet appropriated may be appropriated, without regard to divisions between amounts authorized in this subsection for the Federated States of Micronesia and for the Marshall Islands, based on either or both such government's showing of such adverse impact, if any, as provided in this subsection.

TITLE II—COMPACT OF FREE ASSOCIATION

SEC. 201.[21] COMPACT OF FREE ASSOCIATION.

* * * * * * *

SEC. 202.[22] JURISDICTION.

(a) With respect to section 321 of the Compact of Free Association and its related agreements, the jurisdictional provisions set forth in subsection (b) of this section shall apply only to the citizens and nationals of the United States and aliens lawfully admitted to the United States for permanent residence who are in the Marshall Islands or the Federated States of Micronesia.

(b)(1) The defense sites of the United States established in the Marshall Islands or the Federated States of Micronesia in accordance with the Compact of Free Association and its related agreements are within the special maritime and territorial jurisdiction of the United States as set forth in section 7, title 18, United States Code.

(2) Any person referred to in subsection (a) of this section who within or upon such defense sites is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State of Hawaii by the laws thereof, in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(3) The United States District Court for the District of Hawaii shall have jurisdiction to try all criminal offenses against the United States, including the laws of the State of Hawaii made applicable to the defense sites in the Marshall Islands or the Federated States of Micronesia by virtue of paragraph (2) of this subsection, committed by any person referred to in subsection (a) of this section.

(4) The United States District Court for the District of Hawaii may appoint one or more Magistrates for the defense sites in the Marshall Islands. Such Magistrates shall have the power and the status of Magistrates appointed pursuant to chapter 43, title 28, United States Code, provided, however that such Magistrates shall have the power to try persons accused of and sentence persons convicted of petty offenses, as defined in section 1(3), title 18, United States Code, including violations of regulations for the maintenance of peace, order, and health issued by the Commanding Officer on such defense sites, without being subject to the restrictions provided for in section 3401(b), title 18, United States Code.

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[21] Sec. 201 set out the text of the Compact of Free Association. Sec. 201 of the Compact of Free Association Amendments Act of 2003 (Public Law 108–188; 117 Stat. 2757) provides the current text of the Compact of Free Association, as amended.

[22] 48 U.S.C. 1912.

TITLE III—PACIFIC POLICY REPORTS

SEC. 301.[23] FINDINGS.

The Congress finds that—

(1) the United States does not have a clearly defined policy for United States noncontiguous Pacific areas (including the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the State of Hawaii, and the State of Alaska) and for United States-associated noncontiguous Pacific areas (including the Federated States of Micronesia, the Marshall Islands, and Palau);

(2) the Federal Government has often failed to consider the implications for, effects on, and potential of noncontiguous Pacific areas in the formulation and conduct of foreign and domestic policy, to the detriment of both the attainment of the objectives of Federal policy and noncontiguous Pacific areas;

(3) policies and programs designed for the United States as a whole may impose inappropriate standards on noncontiguous Pacific areas because of their unique circumstances and needs; and

(4) the present Federal organizational arrangements for liaison with (and providing assistance to) the insular areas may not be adequate—

(A) to coordinate the delivery of Federal programs and services to noncontiguous Pacific areas;

(B) to provide a consistent basis for administration of programs;

(C) to adapt policy to the special requirements of each area and modify the application of Federal programs, laws, and regulations accordingly;

(D) to be responsive to the Congress in the discharge of its responsibilities; and

(E) to attain the international obligations of the United States.

SEC. 302.[24] REPORTS.

(a) SUBMISSION.—Not later than one year after the date of the enactment of this joint resolution and each five years thereafter, the Secretary of the Interior, in consultation with the Secretary of State, shall submit to the Congress and the President a report on United States noncontiguous Pacific areas policy together with such recommendations as may be necessary to accomplish the objectives of such policy.

(b) CONTENTS.—The reports required in subsection (a) of this section shall set forth clearly defined policies regarding United States, and United States associated, noncontiguous Pacific areas, including—

(1) the role of and impacts on the noncontiguous Pacific areas in the formulation and conduct of foreign policy;

(2) the applicability of standards contained in Federal laws, regulations, and programs to the noncontiguous Pacific areas and any modifications which may be necessary to achieve the

[23] 48 U.S.C. 2001.
[24] 48 U.S.C. 2002.

intent of such laws, regulations, and programs consistent with the unique character of the noncontiguous Pacific areas;

(3) the effectiveness of the Federal executive organizational arrangements for—

(A) providing liaison between the Federal Government and the governments of the noncontiguous Pacific areas;

(B) coordinating Federal actions in a manner which recognizes the unique circumstances and needs of the noncontiguous Pacific areas; and

(C) achieving the objective of Federal policy and ensuring that the Congress receives the information necessary to discharge its responsibilities; and

(4) actions which may be needed to facilitate the economic and social health and development of the noncontiguous Pacific areas, consistent with their self-determined objectives.

SEC. 303.[25] CONFERENCE.

(a) MEETING.—Prior to submitting the reports required under section 302(b), the Secretary of the Interior, in consultation with the Secretary of State, shall convene a conference to obtain the views of the noncontiguous Pacific areas on the matters required to be addressed in such reports.

(b) PARTICIPANTS.—Representatives of each of the noncontiguous Pacific areas; and the heads of all executive departments and agencies, and other public and private organizations concerned with the noncontiguous Pacific areas as requested by the Secretary of the Interior shall be entitled to be participants in the conference.

(c) WRITTEN COMMENTS.—The Secretary of the Interior shall afford participants in the conference an opportunity to submit written comments for inclusion in the reports required under section 302.

SEC. 304.[26] ADMINISTRATIVE MATTERS.

(a) ADMINISTRATIVE SUPPORT.—The Secretary of the Interior shall provide all necessary administrative support to accomplish the requirements of sections 302 and 303.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

TITLE IV—CLARIFICATION OF CERTAIN TRADE AND TAX PROVISIONS OF THE COMPACT[27]

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SEC. 405.[28] THE MARSHALL ISLANDS AND THE FEDERATED STATES OF MICRONESIA TREATED AS NORTH AMERICAN AREA.

For purposes of section 274(h)(3)(A) of the Internal Revenue Code of 1954, the term "North American Area" shall include the Marshall Islands and the Federated States of Micronesia.

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[25] 48 U.S.C. 2003.

[26] 48 U.S.C. 2004.

[27] For the most part, title IV clarified certain provisions of the Compact, as set out in Public Law 99–239. For the current text of the Compact, see Public Law 108–188.

[28] 48 U.S.C. 1901 note.

SEC. 406.[28] EFFECTIVE DATE.

This title shall apply to income earned, and transactions occurring, after September 30, 1985, in taxable years ending after such date.

SEC. 407.[28] STUDY OF TAX PROVISIONS.

The Secretary of the Treasury or his delegate—

(1) shall conduct a study of the effects of the tax provisions of the Compact (as clarified by the foregoing provisions of this title), and

(2) shall report the results of such study before October 1, 1987, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 408.[28] COORDINATION WITH OTHER PROVISIONS.

Nothing in any provision of this joint resolution (other than this title) which is inconsistent with any provision of this title shall have any force or effect.

TITLE V—COMPACT OF FREE ASSOCIATION WITH PALAU

* * * [Repealed—1986][29]

[29] Sec. 103 of the Approval of Compact of Free Association: United States–Palau (Public Law 99–658; 100 Stat. 3672 at 3675) repealed title V.

c. Implementation of the Compact of Free Association With Palau

Partial text of Public Law 101–219 [H.J. Res. 175], 103 Stat. 1870, approved December 12, 1989

A JOINT RESOLUTION To authorize entry into force of the Compact for Free Association between the United States and the Government of Palau, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—IMPLEMENTATION OF COMPACT OF FREE ASSOCIATION WITH PALAU

SEC. 101.[1] ENTRY INTO FORCE OF COMPACT.

Notwithstanding the provisions of Section 101(d)(1)(B) of Public Law 99–658, entry into force of the Compact of Free Association between the United States and Palau (set forth in title II of Public Law 99–658 and hereafter in this joint resolution referred to as the "Compact") in accordance with subsections (a) and (d) of section 101 of Public Law 99–658 (100 Stat. 3673) is hereby authorized—

(1) subject to the condition that the Compact, as approved by the Congress in Public Law 99–658, is approved by the requisite percentage of the votes cast in a referendum conducted pursuant to the Constitution of Palau, and such approval is free from any legal challenge, and

(2) upon expiration of 30 days, in which either the House of Representatives or the Senate of the United States is in session, after the President notifies the Committees on Interior and Insular Affairs and Foreign Affairs[2] of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the effective date of the Compact.

SEC. 102.[3] FISCAL PROCEDURES ASSISTANCE.

Upon request of the Government of Palau, the Secretary of the Interior shall provide assistance to the Government of Palau to develop and promulgate regulations for the effective expenditure of funds received pursuant to this joint resolution, Public Laws 99–658 and 99–239, or any other Act of Congress.

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[1] 48 U.S.C. 1951 (formerly at 48 U.S.C. 1681 note). The President issued Proclamation 6726 on September 27, 1994 (59 F.R. 49777), placing into full force and effect the Compact of Free Association With the Republic of Palau.

[2] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[3] 48 U.S.C. 1952 (formerly at 48 U.S.C. 1681 note).

SEC. 103.[4] ANTIDRUG PROGRAM.

(a) PLAN.—The Department of the Interior shall develop, in cooperation with the Government of Palau and the National Drug Control Policy Office, a plan for an antidrug program in Palau. The plan shall be submitted to the Committees on Interior and Insular Affairs, Foreign Affairs,[2] and Appropriations of the House of Representatives and the Committees on Energy and Natural Resources and Appropriations of the Senate by April 1, 1990. The plan shall: (1) identify the specific needs and costs of such an antidrug program; (2) shall identify all existing resources to be allocated for its implementation by the Government of the United States and the Government of Palau; and (3) shall recommend priority use for additional resources, assuming such resources are made available.

(b) AGREEMENT.—Following completion of the plan, the President and the Government of Palau shall negotiate an agreement to facilitate implementation of the plan. Such agreement may include—

(1) that the Government of Palau may request, on a long-term or case-by-case basis, that the officers of United States law enforcement agencies may conduct investigations consistent with implementation of the plan in cooperation with the law enforcement agencies of the Government of Palau;

(2) that the Government of Palau or the Government of the United States may agree to provide specific resources, on a one-time or a multiyear basis, to strengthen the antidrug program; and

(3) a specific description of the technical assistance, training, and equipment to be provided to Palau by the United States necessary to implement the plan.

SEC. 104.[5] PUBLIC AUDITOR AND SPECIAL PROSECUTOR.

(a) Upon request of the Government of Palau the President shall provide, on a nonreimbursable basis, appropriate technical assistance to the public auditor or special prosecutor. The assistance provided pursuant to this subsection for the first five years after the effective date of the Compact shall, upon the request of the Government of Palau, and to the extent personnel are available, include (but not be limited to) the full services of—

(1) an auditor or accountant, as determined by the public auditor, for the office of public auditor; and

(2) an attorney or investigator, as determined by the special prosecutor, for the office of special prosecutor.

SEC. 105.[6] POWER GENERATION. * * *

SEC. 106.[7] AUDIT CERTIFICATION.

The chief officer of any agency conducting an audit pursuant to paragraph (1) of sections 102(c) and 103(m) of the Compact of Free Association Act of 1985 (Public Law 99–239) and section 101(d)(1)(C) of Public Law 99–658 shall certify that audit.

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[4] 48 U.S.C. 1953 (formerly at 48 U.S.C. 1681 note).
[5] 48 U.S.C. 1954 (formerly at 48 U.S.C. 1681 note). As enrolled; no subsec. (b).
[6] Sec. 105 amended sec. 104(e) of Public Law 99–658.
[7] 48 U.S.C. 1955 (formerly at 48 U.S.C. 1681 note).

SEC. 107.[8] ACQUISITION OF DEFENSE SITES.

The provisions of title III of the Compact relating to future use by the United States of defense sites in Palau do not restrict the authority of the President of the United States to—

(1) request additional funding, subject to appropriation, related to the use of privately owned land in Palau pursuant to article II of title III of the Compact as may be appropriate in light of actual land use requirements, independent appraisals of such privately owned land accepted by both governments, and other appropriate documentation of actual land use costs; and

(2) consent to an extension of the time set forth in a subsidiary agreement to such article in which the Government of Palau is required to make such land available to the United States.

SEC. 108.[9] FEDERAL PROGRAMS COORDINATION PERSONNEL.

The Secretary of the Interior shall station at least one professional staff person in each of the offices of the United States Representatives in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands to provide Federal program coordination and technical assistance to such governments as authorized under Public Laws 99–239 and 99–658. In meeting the purposes of this section the Secretary shall select qualified persons following consultations with the Interagency Group on Freely Associated State Affairs.

SEC. 109.[10] REFERENDUM COSTS.

The Secretary of the Interior shall provide such sums as may be necessary for a further referendum on approval of the compact, if one is required, or other appropriate costs associated with the approval process in Palau.

SEC. 110.[11] AGREEMENTS.

(a) EFFECTIVE DATE OF CERTAIN AGREEMENTS.—An agreement between the United States and the Government of the Republic of Palau consistent with the agreements approved by Public Law 101–62 (103 Stat. 162) shall take effect without further authorization thirty days after submission to Congress.

(b) EXTENSIONS.—The provisions of article IX, paragraph 5(a) of the Agreement referred to in section 462(e) of the compact of Free Association as approved by Public Law 99–239, and article IX, paragraph 5(a) of the agreement referred to in section 462(f) of the Compact of Free Association for Palau as approved by Public Law 99–658, are extended, in accordance with the terms thereof, until October 1, 1998, unless earlier terminated or further extended by the laws of the United States.

(c) AUTHORIZATION.—Funding to implement the provisions of this title, and for assistance to the central health care facility and the prison in Palau, and the offices of Public Auditor and Special Prosecutor as proposed in the agreement entitled "Agreement Concerning Special Programs related to the Entry into Force of the

[8] 48 U.S.C. 1956 (formerly at 48 U.S.C. 1681 note).
[9] 48 U.S.C. 1957 (formerly at 48 U.S.C. 1681 note).
[10] 48 U.S.C. 1958 (formerly at 48 U.S.C. 1681 note).
[11] 48 U.S.C. 1959 (formerly at 48 U.S.C. 1681 note).

Compact of Free Association Between the Government of the United States and the Government of the Republic of Palau" signed on May 26, 1989, shall be available pursuant to the authorization in section 105(c) of Public Law 99–239 as referenced by section 102(b) of Public Law 99–658 or from funds appropriated for technical assistance to the Secretary of the Interior.

SEC. 111.[12] MODIFICATION OF ENERGY ASSISTANCE FUNDING.

(a) The President is authorized to negotiate and conclude an agreement, including the obligation of United States funds, with the Government of Palau which shall provide the following:

(1) the sum of $28,000,000, adjusted by section 215 of the Compact at the time of its availability to Palau, shall be provided to Palau pursuant to section 211(b) of the Compact and upon entry into force of the Compact.

(2) Palau shall pay to the United States, on or before the 15th anniversary of the effective date of the Compact, an amount equal to the net economic cost to the United States of making available the section 211(b) funds in the manner specified in this subsection rather than as provided in section 211(b).

(3) Such economic cost shall reflect the time value of money and be determined using the date determined for a equivalent loan by the Federal Financing Bank as of the date these funds are advanced, and using an inflation rate consistent with the determinations made under the provisions of section 215 of the Compact.

(4) If the Government of Palau has not paid such net economic costs to the United States by the 15th anniversary of the effective date of the Compact, then the United States shall be automatically paid such sums from the fund established under section 211(f) of the Compact.

(5) The provision of section 211(b) funds, as appropriated by Public Law 99–349 and pursuant to this subsection, shall be in fulfillment of all United States obligations under such section 211(b) of the Compact and shall be subject to section 236 of the compact.

(b) Subject to the provisions of subsection (a) and upon the request of the Government of Palau, the sum of $28 million appropriated by Public Law 99–349 to fulfill the obligations of the United States under section 211(b) of the Compact (approved in Public Law 99–658), adjusted by section 215 of such Compact, shall be provided to Palau upon entry into force of the Compact.

(c) Funding provided in Public Law 101–121 under the "Trust Territory of the Pacific Islands" appropriation account shall remain available until expended.

SEC. 112.[13] SUBMISSION OF AGREEMENTS.

Any agreement concluded with the Government of Palau pursuant to this joint resolution including the agreement entitled "Agreement Concerning Special Programs related to the Entry into Force of the Compact of Free Association Between the Government of the

[12] 48 U.S.C. 1960 (formerly at 48 U.S.C. 1681 note).
[13] 48 U.S.C. 1961 (formerly at 48 U.S.C. 1681 note).

United States and the Government of the Republic of Palau" signed on May 26, 1989, and any agreement which would amend, change, or terminate any such agreement, or portion thereof, shall be submitted to the Congress and may not take effect until the 30 days after the date on which such agreement is so submitted. An amendment or agreement substituting or in addition to the subsidiary agreement negotiated under section 212(a) of the compact or its annex shall take effect only when approved by an Act of Congress.

SEC. 113.[14] TRANSITION FUNDING.

For the purposes of applying section 105(c)(2) of the Compact of Free Association Act of 1985 (99 Stat. 1792) to Palau, the terms "fiscal year 1987", "fiscal year 1988", and "fiscal year 1989" in section 104(c) of Public Law 99–658 shall be deemed to be the first, second, and third fiscal years, respectively, beginning after the effective date of the Compact.

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[14] 48 U.S.C. 1962 (formerly at 48 U.S.C. 1681 note).

d. Omnibus Insular Areas Act of 1992

Partial text of Public Law 102–247 [H.R. 2927], 106 Stat. 33, approved February 24, 1992; as amended by Public Law 103–437 [U.S.C. Technical Amendments; H.R. 4777], 108 Stat. 4594, approved November 2, 1994

AN ACT To provide for the establishment of the St. Croix, Virgin Islands Historical Park and Ecological Preserve, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Omnibus Insular Areas Act of 1992".

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TITLE II—INSULAR AREAS DISASTER SURVIVAL AND RECOVERY

SEC. 201.[2] DEFINITIONS.

As used in this title—

(1) the term "insular area" means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands;

(2) the term "disaster" means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 202.[3] AUTHORIZATION.

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to—

(1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to the date of the enactment of this Act; and

(2) enhance the survivability of essential public facilities in the event of disasters in the insular areas, except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated aggregate amount of grants to be made under sections 403 and 406 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172) for such disaster. Such sums shall remain available until expended.

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[1] 16 U.S.C. 410tt note.
[2] 42 U.S.C. 5204.
[3] 42 U.S.C. 5204a.

SEC. 203.[4] TECHNICAL ASSISTANCE.

(a) Upon the declaration by the President of a disaster in an insular area, the President, acting through the Director of the Federal Emergency Management Agency, shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources[5] a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

SEC. 204.[6] HAZARD MITIGATION.

The total of contributions under the last sentence of section 404 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) for the insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 403, 406, 407, 408, and 411 of such Act for any disaster: *Provided,* That the President shall require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 406 of such Act for any disaster.

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TITLE III—MISCELLANEOUS PROVISIONS

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SEC. 302.[7] INSULAR GOVERNMENT PURCHASES.

The Governments of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are authorized to make purchases through the General Services Administration.

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[4] 42 U.S.C. 5204b.

[5] Sec. 15(p) of Public Law 103–437 (108 Stat. 4594) struck out "Interior and Insular Affairs" and inserted in lieu thereof "Natural Resources". Sec. 1(a)(8) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Natural Resources of the House of Representatives shall be treated as referring to the Committee on Resources of the House of Representatives.

[6] 42 U.S.C. 5204c.

[7] 48 U.S.C. 1469e.

SEC. 303.[8] FREELY ASSOCIATED STATE CARRIER.

(a) In furtherance of the objectives of the Compact of Free Association Act of 1985 (Public Law 99–239) and notwithstanding any other provision of law, a Freely Associated State Air Carrier shall not be precluded from providing transportation, between a place in the United States and a place in a state in free association with the United States or between two places in such a freely associated state, by air of persons (and their personal effects) and property procured, contracted for, or otherwise obtained by any executive department or other agency or instrumentality of the United States for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted, or utilized by or otherwise established for the account of the United States, or shall be furnished to or for the account of any foreign nation, or any international agency, or other organization of whatever nationality, without provisions for reimbursement.

(b) The term "Freely Associated State Air Carrier" shall apply exclusively to a carrier referred to in Article IX(5)(b) of the Federal Programs and Services Agreement concluded pursuant to Article II of Title Two and Section 232 of the Compact of Free Association.

SEC. 304. MARSHALL ISLANDS FOOD ASSISTANCE.

Section 103(h)(2) of the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note) is amended by striking out "five" and inserting in lieu thereof "ten".

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[8] 48 U.S.C. 1973 (formerly at 48 U.S.C. 1681 note).

e. Interior Appropriations for Compact of Free Association

Partial text of Public Law 109–54 [Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006; H.R. 2361], 119 Stat. 499, approved August 2, 2005

AN ACT Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

TITLE I—DEPARTMENT OF THE INTERIOR

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DEPARTMENTAL OFFICES

INSULAR AFFAIRS

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COMPACT OF FREE ASSOCIATION

For grants and necessary expenses, $5,362,000, to remain available until expended, as provided for in sections 221(a), 221(b), and 233 of the Compact of Free Association for the Republic of Palau and section 221(a)(2) of the Compact of Free Association, as authorized by Public Law 99–658 and Public Law 108–188.

* * * * * * *

f. Approval of Agreement Between United States and Marshall Islands, and Between United States and Micronesia to Amend Governmental Representation Provisions of the Compact of Free Association

Public Law 101–62 [H.R. 2214], 103 Stat. 162, approved July 26, 1989

AN ACT To ratify certain agreements relating to the Vienna Convention on Diplomatic Relations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, pursuant to section 101(d) of Public Law 99–239, the following agreements are approved and shall enter into force in accordance with their terms:

(1) "Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands to Amend the Governmental Representation Provisions of the Compact of Free Association Pursuant to section 432 of the Compact", signed on March 18, 1988; and

(2) "Agreement Between the Government of the United States and the Government of the Federated States of Micronesia to Amend the Governmental Representation Provisions of the Compact of Free Association Pursuant to section 432 of the Compact", signed on March 9, 1988.

g. Approval of Compact of Free Association: United States-Palau

Public Law 99–658 [H.J. Res. 626], 100 Stat. 3672, approved November 14, 1986; as amended by Public Law 99–514 [Tax Reform Act of 1986; H.R. 3838], 100 Stat. 2085, approved October 22, 1986; Public Law 101–219 [Palau Compact of Free Association Implementation Act; H.J. Res. 175], 103 Stat. 1870, approved December 12, 1989; Public Law 101–650 [Civil Justice Reform Act of 1990; H.R. 5316], 104 Stat. 5117, approved December 1, 1990; and Public Law 102–572 [Federal Courts Administration Act of 1992; S. 1569], 106 Stat. 4506, approved October 29, 1992

JOINT RESOLUTION To approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the Trusteeship Agreement for the former Japanese Mandated Islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

Whereas the United States, in accordance with the Trusteeship Agreement, the Charter of the United Nations and the objectives of the international trusteeship system, has promoted the development of the peoples of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of Palau expressed through their freely-elected representatives and by the official pronouncements and enactments of their lawfully constituted government, and in consideration of its own obligations under the Trusteeship Agreement to promote self-determination, entered into political status negotiations with representatives of the people of Palau; and

Whereas these negotiations resulted in the "Compact of Free Association" between the United States and Palau which, together with its related agreements, was signed by the United States and by Palau on January 10, 1986; and

Whereas the Compact of Free Association received a favorable vote of a majority of the people of Palau voting in a United Nations-observed plebiscite conducted on February 21, 1986; and

Whereas the Supreme Court of Palau has ruled that the constitutional process of Palau for approval of the Compact of Free Association in accordance with section 411 of the Compact has not yet been completed; and

Whereas the President of Palau has requested the United States to complete the process of United States approval of the Compact of Free Association in accordance with section 411 of the Compact through enactment of an appropriate joint resolution: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—APPROVAL OF COMPACT; INTERPRETATION OF, AND UNITED STATES POLICIES REGARDING, COMPACT; SUPPLEMENTAL PROVISIONS

APPROVAL OF COMPACT OF FREE ASSOCIATION

SEC. 101.[1] (a) APPROVAL.—The Compact of Free Association set forth in title II of this joint resolution between the United States and the Government of Palau is hereby approved, and Congress hereby consents to the agreements as set forth on pages 154 through 405 of House Document 99–193 of April 9, 1986 (hereafter in this joint resolution referred to as subsidiary or related agreements), as they relate to such Government. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the Compact, to an effective date for and thereafter to implement such Compact, having taken into account any procedures with respect to the United Nations for termination of the Trusteeship Agreement.

(b) REFERENCE TO THE COMPACT.—Any reference in this joint resolution to the "Compact" shall be treated as a reference to the Compact of Free Association set forth in title II of this joint resolution.

(c) AMENDMENT, CHANGE, OR TERMINATION OF THE COMPACT AND CERTAIN AGREEMENTS.—(1) Mutual agreement by the Government of the United States as provided in the Compact which results in amendment, change, or termination of all or any part thereof shall be affected only by Act of Congress and no unilateral action by the Government of the United States provided for in the Compact, and having such result, may be effected other than by Act of Congress.

(2) The provisions of paragraph (1) shall apply—

(A) to all actions of the Government of the United States under the Compact including, but not limited to, actions taken pursuant to sections 431, 432, 441, or 442;

(B) to any amendment, change, or termination in any agreement that may be concluded at any time between the Government of the United States and the Government of Palau regarding friendship, cooperation and mutual security concluded pursuant to sections 321 and 323 of the Compact referred to in section 462(h);

(C) to any amendment, change, or termination of the agreements concluded pursuant to Compact sections 175 and 221(a)(4), the terms of which are incorporated by reference into the Compact; and

(D) to the following subsidiary agreements, or portions thereof:

(i) Article II of the agreement referred to in section 462(a) of the Compact;

(ii) Article II of the agreement referred to in section 462(b) of the Compact;

[1] 48 U.S.C. 1931 (formerly at 48 U.S.C. 1681 note).

(iii) Article II and Section 7 of Article X of the agreement referred to in section 462(f) of the Compact;

(iv) the agreement referred to in section 462(g) of the Compact;

(v) Articles II, III, IV, V, VI, and VII of the agreement referred to in section 462(h) of the Compact; and

(vi) Articles VI, XV, and XVII of the agreement referred to in section 462(i) of the Compact.

(d) EFFECTIVE DATE.—(1) The authority of the President to agree to an effective date for the Compact of Free Association between the United States and Palau concurrently with termination of the Trusteeship shall be carried out in accordance with this section, and the Compact shall not take effect until after—

(A) The President has certified to the Congress that the Compact has been approved in accordance with Section 411 (a) and (b) of the Compact, and that there exists no legal impediment to the ability of the United States to carry out fully its responsibilities and to exercise its rights under Title Three of the Compact, as set forth in this Act, and

(B) enactment of a joint resolution which has been reported by the Committee on Energy and Natural Resources of the Senate and the Committees on Interior and Insular Affairs and Foreign Affairs[2] and other appropriate Committees of the House of Representatives authorizing entry into force of the Compact, and

(C) agreements have been concluded with Palau which satisfy the requirements of Section 102 of Public Law 99–239. For the purpose of this subsection the word "Palau" shall be substituted for "Federated States of Micronesia" whenever it appears in Section 102 of Public Law 99–239.

(2) Any agreement concluded with Palau pursuant to subparagraph 101(d)(1)(C) of this title and any agreement which would amend, change, or terminate any subsidiary agreement or related agreement, or portion thereof, as set forth in paragraph (4) of this subsection shall be submitted to the Congress. No such agreement shall take effect until after the expiration of 30 days after the date such agreement is so submitted (excluding days on which either House of Congress is not in session).

(3) No agreement described in paragraph (2) shall take effect if a joint resolution of disapproval is enacted during the period specified in paragraph (2). For the purpose of expediting the consideration of such a joint resolution, a motion to proceed to the consideration of any such joint resolution after it has been reported by an appropriate committee shall be treated as highly privileged in the House of Representatives. Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of Public Law 94–329.

(4) The subsidiary agreement of portions thereof referred to in paragraph (2) are as follows:

(A) Articles III and IV of the agreement referred to in section 462(b) of the Compact.

[2] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(B) Articles III, IV, V, VI, VII, VIII, IX, and X (except for section 7 thereof) of the agreement referred to in section 462(f) of the Compact.

(C) Articles IV, V, X, XIV, XVI, and XVIII of the agreement referred to in section 462(i) of the Compact.

(D) Articles II, V, VI, VII, and VIII of the agreement referred to in section 462(h) of the Compact.

(E) The agreement referred to in section 462(j) of the Compact.

(5) No agreement between the United States and the Government of Palau which would amend, change, or terminate any subsidiary or related agreement, or portion thereof, other than those set forth in subsection (d) of this section or paragraph (4) of this subsection, shall take effect until the President has transmitted such an agreement to the President of the Senate and the Speaker of the House of Representatives, together with an explanation of the agreement and the reasons therefor.

EXTENSION OF COMPACT OF FREE ASSOCIATION TO PALAU

SEC. 102.[3] (a) The interpretation of and United States Policy Regarding the Compact of Free Association set forth in section 104 of Public Law 99–239 shall apply to the Compact of Free Association with Palau.

(b) The provisions of section 105, except for subsection (i), section 106, section 110, and section 111 (a) and (d) of Public Law 99–239, as amended, shall apply to Palau in the same manner and to the same extent as such sections apply to the Marshall Islands.

REPEAL OF TITLE V OF THE COMPACT OF FREE ASSOCIATION ACT (PUBLIC LAW 99–239)

SEC. 103. Title V of Public Law 99–239 is repealed.

SUPPLEMENTAL PROVISIONS

SEC. 104.[4] (a) CIVIC ACTION TEAMS.—In recognition of the special development needs of Palau and the Marshall Islands, the United States shall make available United States military Civic Action Teams for use in Palau or the Marshall Islands under terms and conditions mutually agreed upon by the Government of the United States and the Governments of Palau or the Marshall Islands, as appropriate. The Government of Palau may use the amount of $250,000 annually from current account funds provided pursuant to section 211 of the Compact to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection. The Government of the Marshall Islands may use the amount of $250,000 annually from current account funds provided under section 211 of Title Two of the Compact of Free Association with the Marshall Islands to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection.

[3] 48 U.S.C. 1932 (formerly at 48 U.S.C. 1681 note).
[4] 48 U.S.C. 1933 (formerly at 48 U.S.C. 1681 note).

(b) INVENTORY AND STUDY OF NATURAL, HISTORIC, AND OTHER RESOURCES.—The Secretary of the Interior shall conduct, upon request of Palau, the Federated States of Micronesia or the Marshall Islands, and through the Director of the National Park Service, a comprehensive inventory and study of the most unique and significant natural, historical, cultural, and recreational resources of Palau, the Federated States of Micronesia or the Marshall Islands. Areas or sites exhibiting such qualities shall be described and evaluated with the objective of the preservation of their values and their careful use and appreciation by the public, along with a determination of their potential for attracting tourism. Alternative methodologies for such preservation and use shall be developed for each area or site (including continued assistance from the National Park Service); current or impending damage or threats to the resources of such areas or sites shall be identified and evaluated; and authorities needed to properly protect and allow for public use and appreciation shall be identified and discussed. Such inventory and study shall be conducted in full cooperation and consultation with affected governmental officials and the interested public. A full report on such inventory and study shall be transmitted to Palau or the Federated States of Micronesia or the Marshall Islands, the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no later than two complete calendar years after the date of enactment of this joint resolution. The inventory and study shall also identify areas or sites which, if they were located in the United States, would qualify to be listed on the Registry of Natural Landmarks and the National Register of Historic Places.

(c) AUTHORIZATION FOR TRANSITION PURPOSES.—Section 105(c)(2) of Public Law 99–239 is amended by deleting "infrastructure." and inserting in lieu thereof "infrastructure, except that, for purposes of an orderly reduction of United States programs and services in the Federated States of Micronesia, the Marshall Islands, and Palau, United States programs or services not specifically authorized by the Compact of Free Association or by other provisions of law may continue but, unless reimbursed by the respective freely associated state, not in excess of the following amounts:

"(1) For fiscal year 1987, an amount not to exceed 75 per centum of the total amount appropriated for such programs for fiscal year 1986;

"(2) For fiscal year 1988, an amount not to exceed 50 per centum of the total amount appropriated for such programs for fiscal year 1986;

"(3) For fiscal year 1989, an amount not to exceed 25 per centum of the total amount appropriated for such programs for fiscal year 1986.".

(d) PELELIU AND ANGAUR.—Not later than one year after the date of enactment of this joint resolution, the Secretary of Agriculture, after appropriate studies conducted in consultation with the Government of Palau, shall report to the President and the Congress concerning the feasibility and cost of rehabilitating and restoring the fertility of the topsoil of the islands of Peleliu and

Angaur. Upon the request of the Government of Palau, the President shall make the report of the Secretary of Agriculture available to the Government of Palau. Technical assistance to accomplish such rehabilitation and restoration, if feasible, may be provided to the Government of Palau on a nonreimbursable basis, subject to the availability of appropriated funds.

(e)[5] Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sums and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under the procedures established by the Compact and its related agreements. No funds appropriated pursuant to the Compact, this Act, or any other Act for grants or other assistance to Palau may be used to satisfy any obligation or expense incurred by Palau prior to November 14, 1986, with respect to any contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau which has not been specifically authorized by Congress in advance, except that the Government of Palau may use any portion of the annual grant under section 211(b) not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facilities and any portion of the funds under section 212(b) of the Compact for such purpose.

(f) Amounts appropriated to be paid pursuant to section 177 of Article I of Title One or Articles I and III of Title Two of the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands, as set forth in Title II of the Compact of Free Association Act of 1985, or pursuant to section 103(h), 103(k), or 105(m) of such Act (Public Law 99–239), or pursuant to Article I of Title Two of the Compact with Palau, as set forth in Title II of this joint resolution, or section 104(*l*) of this joint resolution shall not be reduced, notwithstanding Public Law 99–177, Public Law 99–366, and other law enacted to implement Public Law 99–177, or any other provision of law.

(g) The Congress reaffirms all of the understandings, interpretations, and policy statements contained in Public Law 99–239 (99 Stat. 1770). Congressional Resolution 4–60 adopted by the 4th Congress of the Federated States of Micronesia on March 26, 1986 and Resolution No. 62 adopted by the Nitijela of the Marshall Islands on February 18, 1986 do not exclude, limit or modify any provision of the Compact of Free Association as approved by the United States. To the extent that any understandings, interpretations, and policy statements contained in such Resolutions are inconsistent with the provisions of Public Law 99–239, the United States does not concur therein. The President shall take such steps, including but not limited to, communicating with the Governments of the Federated States of Micronesia and the Republic of the Marshall

[5] Sec. 105 of Public Law 101–219 (103 Stat. 1871) amended and restated subsec. (e), which previously read as follows:

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sums and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau. The provisions of section 174(a) of the Compact shall apply with respect to any action based on a contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau prior to the date of enactment of this joint resolution.".

Islands, as may be necessary to preserve all rights of the United States in connection with interpretation and implementation of such Public Law.

(h) ADDITIONAL PROVISIONS RELATING TO TITLE THREE OF THE COMPACT.—

(1) The Government of the United States recognizes and respects the scarcity and special importance of land in Palau. In making any designation of land pursuant to section 322 of the Compact, the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy the requirement through public real property, where available, rather than through private real property.

(2) The Armed Forces of other nations invited to use military areas and facilities in Palau pursuant to section 312 of the Compact shall be permitted only as it is incident to the authority and under the control of the United States. The activities of such third country forces shall be subject to the same limitations and restrictions applicable to the authority of the United States under the terms of the Compact.

(3) The Government of the United States considers "Exclusive use" areas established for the United States pursuant to Title Three of the Compact to be "within the jurisdiction of Palau," as that term is used in section 324 of the Compact.

(i) Notwithstanding any other provision of law, funds appropriated for the Compact of Free Association, Public Law 99–239, or this joint resolution, in the act of making supplemental appropriations for fiscal year 1986, shall remain available until expended.

(j)(1) Section 4(c) of the Act of December 27, 1974 (88 Stat. 1784; 16 U.S.C. 460ff–3(c)) is amended by inserting "(1)" after "(c)" and by adding the following at the end thereof:

"(2) The Secretary is authorized and directed, in cooperation with the Secretary of Agriculture, the State of Ohio, and affected local governments, to undertake a program of and treatment for the purpose of restoring suitable vegetative cover to substantially eliminate erosion from all lands, public and private, within the authorized boundaries of the recreation area. In the case of any private lands, within such authorized boundaries such treatment may be undertaken only with the consent of the owner thereof and shall be contingent upon assurances that such land treatment will be maintained by the owner for a period of not less than ten years. The Secretary shall, in conjunction with such program, take such actions as may be required to correct areas of ecological degradation which create hazards to health and safety.".

(2) Section 6 of such Act (16 U.S.C. 460ff–5) is amended by adding the following at the end thereof:

"(c) There are hereby authorized to be appropriated not more than $500,000 for fiscal year 1986, $1,000,000 for fiscal year 1987, $1,500,000 for fiscal year 1988, and $1,750,000 for fiscal year 1989, to carry out the provisions of section 4(c)(2) of this Act. Any amounts authorized to be appropriated for any fiscal year under

this subsection which are not appropriated for that fiscal year shall remain available for appropriation in succeeding fiscal years.".

(3) No authority under this subsection to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this subsection which authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

(k) The Departments of Energy and Interior are directed to provide the Committees on Appropriations of the House and Senate with a report by December 1 of each fiscal year detailing how funds were spent during the previous fiscal year for the special medical care and logistical support program for Rongelap and Utrik and for the agriculture and food programs for Eniwetok and Bikini as referenced in Section 103(h) of Public Law 99–239. The report shall also specify the anticipated needs during the current and following fiscal years in order to meet the radiological health care and logistical support program for Rongelap and Utrik and the planting, agricultural maintenance, and food programs for Eniwetok and Bikini. It is the sense of the Congress that the special medical care and logistical support program for Rongelap and Utrik and for the agriculture and food programs for Eniwetok and Bikini described in section 103(h) of Public Law 99–239 represent special and continuing moral commitments of the United States which will be annually funded to the extent of the need of the populations of such atolls for such assistance.

TITLE II—COMPACT OF FREE ASSOCIATION

COMPACT OF FREE ASSOCIATION

SEC. 201. Compact of Free Association is as follows:

COMPACT OF FREE ASSOCIATION

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PALAU

Affirming that their Governments and the relationship between their Governments are founded upon respect for human rights and fundamental freedoms for all: and

Affirming the common interests of the United States of America and the people of Palau in creating close and mutually beneficial relationships through a free and voluntary association of their Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and self-sufficiency of the people of Palau; and

Recognizing that their previous relationship has been based upon the International Trusteeship System of the United Nations Charter; and that pursuant to Article 76 of the Charter, the peoples of the Trust Territory have progressively developed their institutions of self-government, and that in the exercise of their sovereign right

to self-determination they have, through their free-expressed wishes, adopted a Constitution appropriate to their particular circumstances; and

Recognizing their common desire to terminate the Trusteeship and establish a new government-to-government relationship in accordance with a new political status based on the freely-expressed wishes of the people of Palau and appropriate to their particular circumstances; and

Recognizing that the people of Palau have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of their Government into this Compact of Free Association by the people of Palau constitutes an exercise of their sovereign right to self-determination;

NOW, THEREFORE, AGREE to enter into relationship of free association which provides a full measure of self-government for the people of Palau; and

FURTHER AGREE that the relationships of free association derives from and is as set forth in this Compact; and that, during such relationships of free association, the respective rights and responsibilities of the Government of the United States and the Government of the freely associated state of Palau in regard to this relationship of free association derives from and is as set forth in this Compact.

TITLE ONE

GOVERNMENT RELATIONS

Article I

Self-government

Section 111

The people of Palau, acting through their duly elected government established under their constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Republic of Palau has the capacity to conduct foreign affairs in its own name and right, except as otherwise provided in this Compact and the Government of the United States recognizes that the Government of Palau, in the exercise of this capacity, may enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(b) In the conduct of its foreign affairs the Government of Palau confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support application by the Government of Palau for membership or other participation in regional or international organizations as may be mutually agreed. The Government of the United States agrees to accept citizens of Palau for training and instruction at the United States Foreign Service Institute, established under 22 U.S.C. 4021, or similar training under terms and conditions to be mutually agreed.

Section 123

In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of Palau shall consult with the Government of the United States. The Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of Palau on matters which the Government of the United States regards as relating to or affecting the Government of Palau, and shall provide, on a regular basis, information on regional foreign policy matters.

Section 124

(a) The Government of Palau has authority to conduct its foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and nonliving resources from the sea, seabed or subsoil to the full extent recognized under international law.

(b) The Government of Palau has jurisdiction and sovereignty over its territory, including its land and internal waters, territorial seas, the airspace superjacent thereto only to the extent recognized under international law.

Section 125

Except as otherwise provided in this Compact or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as administering authority which have resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact are no longer assumed and enjoyed by the Government of the United States.

Section 126

The Government of the United States shall accept responsibility for those actions taken by the Government of Palau in the area of foreign affairs, only as may from time to time be expressly and mutually agreed.

Section 127

The Government of the United States may assist or act on behalf of the Government of Palau in the area of foreign affairs as may

be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of Palau undertaken with the assistance or through the agency of the Government of the United States pursuant to this Section unless expressly agreed.

Section 128

At the request of the Government of Palau and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of Palau for travel outside of Palau, the Marshall Islands, the Federated States of Micronesia, the United States and its territories and possessions.

Article III

Communications

Section 131

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations in Palau; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations in Palau in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 et seq., and the Communications Satellite Act of 1962, 47 U.S.C. 721 et seq., over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.

(b) The Government of Palau may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the Government of Palau the notification authority referred to in Section 131(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

Section 132

The Government of Palau shall permit the Government of the United States to operate telecommunications services in Palau to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of related agreements which shall come into effect simultaneously with this Compact.

Article IV

Immigration

Section 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26):

(1) a person who, on the day preceding the effective date of this Compact, is a citizen of Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of Palau;

(2) a person who acquires the citizenship of Palau, at birth, on or after the effective date of the Constitution of Palau; or

(3) a naturalized citizen of Palau, who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States.

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for:

(1) in statutes or regulations of the United States; or

(2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

(c) Section 141(a) does not confer on a citizen of Palau, the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of Palau from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in Palau, subject to the right of that Government to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual residence or domicile in Palau only in accordance with the laws of Palau. This subsection

is without prejudice to the right of the Government of Palau to regulate occupations in Palau in a nondiscriminatory manner.

(b) With respect to the subject matter of this Section, the Government of Palau shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

Section 143

(a) The privileges set forth in Section 141 shall not apply to any person who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of Palau.

(b) Every person having the privileges set forth in Sections 141 and 142 who possesses a citizenship or nationality other than that of Palau or the United States ceases to have these privileges two years after the effective date of this Compact, or within six months after becoming 21 years of age, whichever comes later, unless such person executes an oath of renunciation of that other citizenship or nationality.

Section 144

(a) A citizen or national of the United States who, after notification to the Government of the United States of an intention to employ such person by the Government of Palau, commences employment with that Government shall not be deprived of his United States nationality pursuant to Section 349 (a)(2) and (a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(2) and (a)(4).

(b) Upon such notification by the Government of Palau, the Government of the United States may consult with or provide information to the notifying Government concerning the prospective employee, subject to the provisions of the Privacy Act, 5 U.S.C. 552a.

(c) The requirement of prior notification shall not apply to those citizens or nationals of the United States who are employed by the Government of Palau on the effective date of this Compact with respect to the positions held by them at that time.

Article V

Representation

Section 151

The Government of the United States and the Government of Palau may establish and maintain representative offices in the capitals of the other.

Section 152

(a) The premises of such representatives offices, and their archives wherever located, shall be inviolable. The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived. Official communications in transit shall be inviolable and accorded the freedom and protections accorded by

recognized principles of international law to official communications of a diplomatic mission.

(b) Persons designated by the sending Government may serve in the capacity of its resident representatives with the consent of the receiving Government. Such designated persons shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions as such representatives, except insofar as such immunity may be expressly waived by the sending Government. While serving in a resident representative capacity, such designated persons shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents.

(c) The sending Governments and their respective assets, income and other property shall be exempt from all direct taxes, except those direct taxes representing payment for specific goods and services, and shall be exempt from all customs duties and restrictions on the import or export of articles required for the official functions and personal use of their representatives and representative offices.

(d) Persons designated by the sending Government to serve in the capacity of its resident representatives shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations.

(e) The privileges, exemptions and immunities accorded under this Section are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government to which they are assigned.

Article VI

Environmental Protection

Section 161

The Government of the United States and the Government of Palau declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Palau.

Section 162

(a)[6] The Government of the United States and the Government of Palau agree that with respect to the activities of the Government of the United States in Palau, and with respect to substantively

[6] As enrolled; no subsec. (b).

equivalent activities of the Government of Palau, each of the Governments shall be bound by such environmental protection standards as may be mutually agreed for the purpose of carrying out the policy set forth in this Compact.

Section 163

In order to carry out the policy set forth in this Article, the Government of the United States and the Government of Palau agree to the following undertakings.

(a) The Government of the United States:

(1) shall apply environmental standards substantively similar to those in effect on the day preceding the effective date of this Compact to any activity requiring the preparation of an Environmental Impact Statement under the provisions of the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq.

(2) shall develop, prior to conducting any activity included within the category described in this Section, appropriate mechanisms, including regulations or other standards and procedures, to regulate such activity in Palau in a manner appropriate to the special governmental relationship set forth in this Compact. The Government of the United States shall provide the Government of Palau with the opportunity to comment formally during the development of such mechanisms.

(b) The Government of Palau shall develop standards and procedures to protect the environment of Palau. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Government of Palau, taking into account the particular environment of Palau, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 163(a)(1) prior to conducting activities in Palau substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 163(a), including any standard or procedure applicable thereunder, and Section 163(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of Palau.

(d) Disputes arising under this Article, except for Section 163(e), shall be resolved exclusively in accordance with Article II of Title Four.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under this Article if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of Palau shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with

his reasons for granting such exemption shall be given promptly to the Government of Palau.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to Palau as of the effective date of this Compact.

Section 172

(a) Every citizen of Palau who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any nonresident alien.

(b) The Government and every citizen of Palau shall be considered a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701–706.

Section 173

The Government of the United States and the Government of Palau, agree to adopt and enforce such measures, consistent with this Compact and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in Palau pursuant to this Compact and its related agreements and by that Government in the United States pursuant to this Compact and its related agreements.

Section 174

Except as otherwise provided in this Compact and its related agreements:

(a) The Government of Palau shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of Palau.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the Trust Territory of the Pacific Islands or the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the effective date of this Compact; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands, pending as of the effective date of this Compact, against the Government of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in Section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in Section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of Palau, shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of Palau in any case in which the action is based on a commercial activity of the defendant Government carried out where the action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought. This subsection shall apply only to actions based on commercial activities entered into or injuries or losses suffered on or after the effective date of this Compact.

Section 175

A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Government of Palau regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners. The separate agreement shall have the force of law. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188–3195, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–4115, shall be applicable to the transfer of prisoners under the separate agreement.

Section 176

The Government of Palau confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of Palau to grant relief from judgments in appropriate cases.

Section 177

(a) Federal agencies of the Government of the United States which provide services and related programs in Palau are authorized to settle and pay tort claims arising in Palau from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in Section 177(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under Section 177(a) which cannot be settled under Section 177(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of Palau shall provide for:

(1) the administrative settlement of claims referred to in Section 177(a), including designation of local agents in Palau, such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such related agreements; and

(2) arbitration, referred to in Section 177(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to Section 177(a).

(d) The provisions of Section 174(d) shall not apply to claims covered by this Section.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211

In order to assist the Government of Palau in its efforts to advance the well-being of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide to the Government of Palau on a grant basis the following amounts:

(a) $12 million annually for ten years commencing on the effective date of this Compact, and $11 million annually for five years commencing on the tenth anniversary of the effective date of this Compact, for current account operations and maintenance purposes, which amounts commencing on the fourth anniversary of the effective date of this Compact shall include a minimum annual distribution of $5 million from the fund specified in Section 211(f).

(b) $2 million annually for fourteen years commencing on the first anniversary of the effective date of this Compact as a contribution to efforts aimed at achieving increased self-sufficiency in energy production, of which annual amounts not less than $500,000 shall be devoted to the energy needs of those parts of Palau not served by its central power-generating facility.

(c) $150,000 annually for fifteen years commencing on the effective date of this Compact as a contribution to current account operations and maintenance of communications systems, and the sum of $1.5 million, to be made available concurrently with the grant assistance provided during the first year after the effective date of this Compact, for the purpose of acquiring such communications hardware as may be located within Palau or for such other current or capital account activity as the Government of Palau may select.

(d) $631,000 annually on a current account basis for fifteen years commencing on the effective date of this Compact for the purposes set forth below:

(1) for the surveillance and enforcement by Government of Palau of its maritime zone;

(2) for health and medical programs, including referrals to hospital and treatment centers; and

(3) for a scholarship fund to support the post-secondary education of citizens of Palau attending United States accredited, post-secondary institutions in Palau, the United States, its territories and possessions, and states in free association with the United States. The curricular criteria for the award of scholarships shall be designed to advance the purposes of the plan referred to in Section 231.

(e) The sum of $666,800 as a contribution to the commencement of activities pursuant to Section 211(d)(1).

(f) The sum of $66 million on the effective date of this Compact, and the sum of $4 million concurrently with the grant assistance to be made available during the third year after the effective date of this Compact, to create a fund to be invested by the Government of Palau in issues of bonds, notes or other redeemable instruments of the Government of the United States or other qualified instruments which may be identified by mutual agreement of the Government of the United States and the Government of Palau. Investment of the fund in qualified instruments of United States nationality, and the distribution of sums derived from such investment to the Government of Palau, shall not be subject to any form of taxation by the United States or its political subdivisions. The Government of the United States and the Government of Palau shall set forth in a separate agreement, which shall come into effect simultaneously with this Compact, provisions for the investment, management and review of the fund so as to allow for an agreed minimum annual distribution from its accrued principal and interest commencing upon the effective date of this Compact for fifty years. The objective of this sum is to produce an average annual distribution of $15 million commencing on the fifteenth anniversary of this Compact for thirty-five years. Any excess or variance from the agreed minimum annual distributions which may be produced from these sums shall accrue to or be absorbed by the Government of Palau unless otherwise mutually agreed in accordance with the

provisions of the separate agreement referred to in this paragraph. The annual distributions produced from these sums are not subject to Sections 215 and 236.

Section 212

In order to assist the Government of Palau in its efforts to advance the economic development and self-sufficiency of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide:

(a) To the people of Palau, a road system in accordance with mutually agreed specifications, the construction of which shall be completed prior to the sixth anniversary of the effective date of this Compact; and

(b) To the Government of Palau, the sum of $36 million, during the first year after the effective date of this Compact, for capital account purposes.

Section 213

The Government of the United States shall provide on a grant basis to the Government of Palau the sum of $5.5 million in conjunction with Article II of Title Three. This sum shall be made available concurrently with the grant assistance provided pursuant to this Article during the first year after the effective date of this Compact. The Government of Palau, in its use of such funds, shall take into account the impact of the activities of the Government of the United States in Palau.

Section 214

All funds previously appropriated to the Trust Territory of the Pacific Islands for the Government of Palau which are unobligated by the Government of the Trust Territory as of the effective date of this Compact shall accrue to the Government of Palau for the purposes for which such funds were originally appropriated as determined by the Government of the United States.

Section 215

Except as otherwise provided, the amounts stated in Sections 211(a), 211(b), 211(c) and 212(b) shall be adjusted for each fiscal year by the percent which equals two-thirds of the percentage change in the United States Gross National Product Implicit Price Deflator, or seven percent, whichever is less in any one year, using the beginning of Fiscal Year 1981 as the base.

Article II

Program Assistance

Section 221

(a) The Government of the United States shall make available to Palau, in accordance with and to the extent provided in the separate agreement referred to in Section 232, without compensation

and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:

(1) of the United States Weather Service;

(2) provided pursuant to the Postal Reorganization Act, 39 U.S.C. 101 et seq.;

(3) of the United States Federal Aviation Administration; and

(4) of the United States Civil Aeronautics Board or its successor agencies which has the authority to implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact.

(b) The Government of the United States, recognizing the special needs of the Palau particularly in the fields of education and health care, shall make available, as provided by the laws of the United States,

(1) the annual amount of $2 million which shall be allocated in accordance with the provisions of the separate agreement referred to in Section 232; and

(2) the sums of $4.3 million, $2.9 million and $1.5 million, respectively, during the first, second and third years after the effective date of this Compact, which sums shall be used by the Government of Palau as current account funds to finance programs similar to those programs of the United States that applied to Palau prior to the effective date of this Compact and that provided financial assistance for education to any institution, agency, organization or permanent resident of Palau or to the College of Micronesia.

(c) The Government of the United States shall make available to Palau such alternate energy development projects, studies and conservation measures as are applicable to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact, for the purposes and duration provided in the laws of the United States.

(d) The Government of the United States shall have and exercise such authority as is necessary for the purposes of this Article and as is set forth in the related agreements referred to in Section 232, which shall also set forth the extent to which services and programs shall be provided to Palau.

Section 222

The Government of Palau may request, from time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its law and which shall grant such technical assistance in a manner which gives priority consideration to Palau over other recipients not a part of the United States, its territories or possessions and equivalent consideration to Palau with respect to other states in Free Association with the United States.

Section 223

The citizens of Palau who are receiving post-secondary education assistance from the Government of the United States on the day preceding the effective date of this Compact shall continue to be eligible, if otherwise qualified, to receive such assistance to complete their academic programs for a maximum of four years after the effective date of this Compact.

Section 224

The Government of the United States and the Government of Palau may agree from time to time to the extension to Palau of additional United States grant assistance and of United States services and programs as provided by the laws of the United States.

Article III

Administrative Provisions

Section 231

(a) The annual expenditure by the Government of Palau of the grant amounts specified in Article I of this Title shall be in accordance with an official national development plan promulgated by the Government of Palau and concurred in by the Government of the United States prior to the effective date of this Compact. This plan may be amended from time to time by the Government of Palau.

(b) The Government of the United States and the Government of Palau recognize that the achievement of the goals of the plan referred to in this Section depends upon the availability of adequate internal revenue as well as economic assistance from sources outside of Palau, including the Government of the United States, and may, in addition, be affected by the impact of exceptional, economically adverse circumstances. The Government of Palau shall therefore report annually to the President of the United States and to the Congress of the United States on the implementation of this plan and on its use of the funds specified in this Article. This report shall outline the achievements of the plan to date and the need, if any, for an additional authorization and appropriation of economic assistance for that year to account for any exceptional, economically adverse circumstances. The availability of such additional economic assistance from the Government of the United States shall be subject to the authorization and appropriation of funds by the Government of the United States.

Section 232

The specific nature, extent and contractual arrangements of the services and programs provided for in Section 221 as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in Palau, and other arrangements in connection with a service or program furnished by the Government of the United States, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 233

The Government of the United States, in consultation with the Government of Palau, shall determine and implement procedures for the periodic audit of all grants and other assistance made under this Title. Such audits shall be conducted at no cost to the Government of Palau.

Section 234

Title to the property of the Government of the United States situated in the Trust Territory of the Pacific Islands and in Palau or acquired for or used by the Government of the Trust Territory of the Pacific Islands on or before the day preceding the effective date of this Compact shall, without reimbursement or transfer of funds, vest in the Government of Palau as set forth in a separate agreement which shall come into effect simultaneously with this Compact. The provisions of this Section shall not apply to the personal property of the Government of the United States for which the Government of the United States determines a continuing requirement.

Section 235

(a) Funds held in trust by the High Commissioner of the Trust Territory of the Pacific Islands, in his official capacity, as of the effective date of this Compact shall remain available as trust funds to their designated beneficiaries. The Government of the United States, in consultation with the Government of Palau, shall appoint a new trustee who shall exercise the functions formerly exercised by the High Commissioner of the Trust Territory of the Pacific Islands.

(b) To provide for the continuity of administration, and to assure the Governments of Palau that the purposes of the laws of the United States are carried out and that the funds of any other trust fund in which the High Commissioner of the Trust Territory of the Pacific Islands has authority of a statutory or customary nature shall remain available as trust funds to their designated beneficiaries, the Government of the United States agrees to assume the authority formerly vested in the High Commissioner of the Trust Territory of the Pacific Islands.

Section 236

Except as otherwise provided, approval of this Compact by the Government of the United States shall constitute a pledge of the full faith and credit of the United States for the full payment of the sums and amounts specified in Article I of this Title. The obligation of the Government of the United States under Article I of this Title shall be enforceable in the United States Court of Federal Claims,[7] or its successor court, which shall have jurisdiction in cases arising under this Section, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States.

[7] Sec. 902(b)(1) of Public Law 102–572 (106 Stat. 4516) provided that reference to the "United States Claims Court" in any Federal law or document shall be deemed to refer to the "United States Court of Federal Claims".

Article IV

Trade

Section 241

Palau is not included in the customs territory of the United States.

Section 242

The President of the United States shall proclaim the following tariff treatment for articles imported from Palau which shall apply during the period of effectiveness of this Title:

(a) Unless otherwise excluded, articles imported from Palau, subject to the limitations imposed under sections 503(b) and 504(c) of title 5 of the Trade Act of 1974 (19 U.S.C. 2463(b): 2464(c)), shall be exempt from duty.

(b) Only canned tuna provided for in item 112.30 of the Tariff Schedules of the United States that is imported from the Federated States of Micronesia, the Marshall Islands and Palau during any calendar year not to exceed 10 percent of the United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty free treatment under this paragraph for any calendar year shall be counted against the aggregate quantity of canned tuna that is dutiable under rate column numbered 1 of such item 112.30 for that calendar year.

(c) The duty-free treatment provided under paragraph (1) shall not apply to:

(1) watches, clocks and timing apparatus provided for in subpart E of part 2 of schedule 7 of the Tariff Schedules of the United States;

(2) buttons (whether finished or not finished) provided for in item 745.32 of such Schedules;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of Palau, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(b)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from Palau which are not exempt from any duty under paragraphs (a), (b), (c) and (d) of Section 242 shall be subject to the rates of duty set forth in column numbered 1 of the Tariff Schedules of the United States and all products of the

United States imported into Palau shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage, or use.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of Palau. Should the Government of Palau act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of Palau may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as such Government deems appropriate. The determination of the source of any income, or the situs of any property, shall, for purposes of this Compact, be made according to the United States Internal Revenue Code.

Section 253

A citizen of Palau, domiciled therein and who is a nonresident and not a citizen of the United States, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States.

Section 254

(a) In determining any income tax imposed by the Government of Palau, the Government of Palau shall have authority to impose tax upon income derived by a resident of Palau from sources without Palau in the same manner and to the same extent as the Government of Palau imposes tax upon income derived from within its jurisdiction. If the Government of Palau exercises such authority as provided in this subsection, any individual resident of Palau who is subject to tax by the Government of the United States on income which is also taxed by the Government of Palau shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. For purposes of this Section, the term "resident of Palau" shall be deemed to include any person who was physically present in Palau for a period of 183 or more days during any taxable year. The relief from liability referred to in this subsection means only:

(1) relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and

(2) relief in the form of the exclusion under section 911 of the United States Internal Revenue Code of 1986.[8]

(b) If the Government of Palau subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in Section 254(a).

Section 255

(a) For purposes of section 936 of the Internal Revenue Code of 1986[8] Palau shall be treated as if it was a possession of the United States.

(b) Subsection (a) of this Section shall not apply to Palau for any period after December 31, 1986, during which there is not in effect between Palau and the United States an exchange of information agreement of the kind described in section 274(h)(6)(C) (other than clause (ii) thereof) of the Internal Revenue Code of 1986.[8]

(c) If the tax incentives extended to Palau under subsection (a) of this Section are, at any time during which the Compact is in effect, reduced, the United States Secretary of the Treasury shall negotiate an agreement with the Government of Palau under which, when such agreement is approved by law, Palau will be provided with benefits substantially equivalent to such reduction in benefits. If within the 1-year period after the date of the enactment of the Act making the reduction in benefits, an agreement negotiated under the preceding sentence is not approved by law, the matter shall be submitted to the Arbitration Board established pursuant to Section 424. For purposes of Article V of this Title, the Secretary of the Treasury or his delegate shall be the member of such Board representing the Government of the United States. Any decision of such Board in the matter when approved by law shall be binding on the United States, except that such decision rendered is binding only as to whether the United States has provided the substantially equivalent benefits referred to in this subsection.

(d) For purposes of section 274(h)(3)(A) of the Internal Revenue Code of 1986,[8] the term "North American area" shall include Palau.

Section 256

This Article shall apply to income earned, and transactions occurring, after September 30, 1985, in taxable years ending after such date.

[8] Sec. 2 of the Tax Reform Act of 1986 (Public Law 99–514; 100 Stat. 2095) struck out "Internal Revenue Code of 1954" and inserted in lieu thereof "Internal Revenue Code of 1986", wherever it is cited in any law.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

The territorial jurisdiction of the Republic of Palau shall be completely foreclosed to the military forces and personnel or for the military purposes of any nation except the United States of America, and as provided for in Section 312.

Section 312

The Government of the United States has full authority and responsibility for security and defense matters in or relating to Palau. Subject to the terms of any agreements negotiated pursuant to Article II of this Title, the Government of the United States may conduct within the lands, water and airspace of Palau the activities and operations necessary for the exercise of its authority and responsibility under this Title. The Government of the United States may invite the armed forces of other nations to use military areas and facilities in Palau in conjunction with and under the control of United States Armed Forces.

Section 313

The Government of Palau shall refrain from actions which the Government of the United States determines, after consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to Palau.

Article II

Defense Sites and Operating Rights

Section 321

The Government of the United States may establish and use defense sites in Palau, and may designate for this purpose land and water areas and improvements in accordance with the provisions of a separate agreement which shall come into force simultaneously with this Compact.

Section 322

(a) When the Government of the United States desires to establish or use such a defense site specifically identified in the separate agreement referred to in Section 321, it shall so inform the Government of Palau which shall make the designated site available to the Government of the United States for the duration and level of use specified.

(b) With respect to any site not specifically identified in the separate agreement referred to in Section 321, the Government of the United States shall inform the Government of Palau, which shall make the designated site available to the Government of the

United States for the duration and level of use specified, or shall make available one alternative site acceptable to the Government of the United States. If such alternative site is unacceptable to the Government of the United States, the site first designated shall be made available after such determination.

(c) Compensation in full for designation, establishment or use of defense sites is provided in Title Two of this Compact.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in Palau, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 324

In the exercise in Palau of its authority and responsibility under this Title, the Government of the United States shall not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare and the Government of Palau assures the Government of the United States that in carrying out its security and defense responsibilities under this Title, the Government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to Palau, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as administering authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of this Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in Palau. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of Palau.

Article IV

Service in the Armed Forces of the United States

Section 341

Any citizen of Palau entitled to the privileges of Section 141 of this Compact shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States so long as such

person does not establish habitual residence in the United States, its territories or possessions.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from Palau as may be nominated by the Government of Palau, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195; and

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295b(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to Section 342(b) of this Compact.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of Palau shall establish a joint committee empowered to consider disputes which may arise under the implementation of this Title and its related agreements.

(b) The membership of the joint committee shall comprise selected senior officials of each of the participating Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the joint committee. For the meetings of the joint committee, each of the Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the joint committee shall meet semi-annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The joint committee also shall meet promptly upon request of either of its members. Upon notification by the Government of the United States, the joint committee shall meet promptly in combined session with other such joint committees so notified. The joint committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree.

(d) Unresolved issues in the joint committee shall be referred to the Government of the United States and the Government of Palau for resolution, and the Government of Palau shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under this Compact, the Government of the United States shall accord due respect to the authority and responsibility of the Government of Palau under this Compact and to the responsibility of the Government of Palau to assure the well-being of Palau and its people. The

Government of the United States and the Government of Palau agree that the authority and responsibility of the United States set forth in this Title are exercised for the mutual security and benefit of Palau and the United States, and that any attack on Palau would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, or threat thereof, the Government of the United States would take action to meet the danger to the United States and Palau in accordance with its constitutional processes.

Section 353

(a) The Government of the United States shall not include the Government of Palau as a named party to a formal declaration of war, without the consent of the Government of Palau.

(b) Absent such consent, this Compact is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of Palau which arise out of armed conflict subsequent to the effective date of this Compact and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under Section 353(b)(1) shall be treated as if they were made by citizens of the United States.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

This Compact shall come into effect upon mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of Palau, subsequent to completion of the following:

(a) Approval by the Government of Palau in accordance with its constitutional processes;

(b) Approval by the people of Palau in a referendum called on this Compact; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States and the Government of Palau shall confer promptly at the request of the other on matters

relating to the provisions of this Compact or of its related agreements.

Section 422

In the event the Government of the United States or the Government of Palau, after conferring pursuant to Section 421, determines that there is a dispute and gives written notice thereof, the Governments shall make a good faith effort to resolve the dispute among themselves.

Section 423

If a dispute between the Government of the United States and the Government of Palau cannot be resolved within 90 days of written notification in the manner provided in Section 422, either party to the dispute may refer it to arbitration in accordance with Section 424.

Section 424

Should a dispute be referred to arbitration as provided for in Section 423, an arbitration board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An arbitration board shall consist of a chairman and two other members, each of whom shall be a citizen of a party to the dispute and each of the two parties to the dispute shall appoint one member to the arbitration board. If either party to the dispute does not fulfill the appointment requirements of this Section within 30 days of referral of the dispute to arbitration pursuant to Section 423, its member on the arbitration board shall be selected from its own standing list by the other party to the dispute. Each government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a chairman within 15 days after selection of the other members of the arbitration board. Failing agreement on a chairman, the chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) The arbitration board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV, and VI of Title One, Title Two, Title Four and their related agreements.

(c) Each member of the arbitration board shall have one vote. Each decision of the arbitration board shall be reached by majority vote.

(d) In determining any legal issue, the arbitration board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The arbitration board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact. Unless the parties provide otherwise by mutual agreement, the arbitration board shall endeavor to render its decision within 30 days after the

conclusion of arguments. The arbitration board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the arbitration board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of Palau.

Article III

Amendment and Review

Section 431

The provisions of this Compact may be amended at any time by mutual agreement of the Government of the United States and the Government of Palau in accordance with their respective constitutional processes.

Section 432

Upon the fifteenth and thirtieth and fortieth anniversaries of the effective date of this Compact, the Government of the United States and the Government of Palau shall formally review the terms of this Compact and its related agreements and shall consider the overall nature and development of their relationship. In these formal reviews, the governments shall consider the operating requirements of the Government of Palau and its progress in meeting the development objectives set forth in the plan referred to in Section 231(a). The governments commit themselves to take specific measures in relation to the findings of conclusions resulting from the review. Any alteration to the terms of this Compact or its related agreements shall be made by mutual agreement and the terms of this Compact and its related agreements shall remain in force until otherwise amended or terminated pursuant to Title Four of this Compact.

Article IV

Termination

Section 441

This Compact may be terminated by mutual agreement and subject to Section 451.

Section 442

This Compact may be terminated by the Government of the United States subject to Section 452, such termination to be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended.

Section 443

This Compact shall be terminated, pursuant to its constitutional processes, by the Government of Palau subject to Section 452 if the people of Palau vote in a plebiscite to terminate. The Government

of Palau shall notify the Government of the United States of its intention to call such a plebiscite which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by such government in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, such government shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

Should termination occur pursuant to Section 441, economic assistance by the Government of the United States shall continue on mutually agreed terms.

Section 452

Should termination occur pursuant to Section 442 or 443, the following provisions of this Compact shall remain in full force and effect until the fiftieth anniversary of the effective date of this Compact and thereafter as mutually agreed:

(a) Article I and Section 233 of Title Two;

(b) Title Three; and

(c) Articles II, III, V and VI of Title Four.

Section 453

Notwithstanding any other provision of this Compact:

(a) The provisions of Section 311, even if Title Three should terminate, are binding and shall remain in effect for a period of 50 years and thereafter until terminated or otherwise amended by mutual consent;

(b) The related agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms; and

(c) The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of Palau.

Section 454

Any provision of this Compact which remains in effect by operation of Section 452 shall be construed and implemented in the same manner as prior to any termination of this Compact pursuant to Section 442 or 443.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the administrative districts of Kosrae, Yap, Palau, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, Section 1, in force on January 1, 1979. This term does not include the area of the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "Palau" is used in a geographic sense and includes the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States consistent with the Compact and its related agreements.

(d) "Government of Palau" means the Government established and organized by the Constitution of Palau including all the political subdivisions and entities comprising that Government.

(e) "Habitual Residence" means a place of general abode or a principal, actual dwelling place of a continuing or lasting nature; provided, however, that this term shall not apply to the residence of any person who entered the United States for the purpose of full time studies as long as such person maintains that status, or who has been physically present in the United States or Palau for less than one year, or who is a dependent of a resident representative, as described in Section 152.

(f) For the purposes of Article IV of Title One of this Compact:

(1) "Actual Residence" means physical presence in Palau during eighty-five percent of the period of residency required by Section 141(a)(3); and

(2) "Certificate of Actual Residence" means a certificate issued to a naturalized citizen by the Government which has naturalized him stating that the citizen has complied with the actual residence requirement of Section 141(a)(3).

(g) "Defense Sites" means those land and water areas and improvements thereon in Palau reserved or acquired by the Government of Palau for use by the Government of the United States, as set forth in the related agreements referred to in Section 321.

(h) "Capital Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for:

(1) the construction or major repair of capital infrastructure; or

(2) public and private sector projects identified in the official overall economic development plan.

(i) "Current Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for recurring operational activities including infrastructure maintenance as identified in the annual budget justifications submitted yearly to the Government of the United States.

(j) "Official National Development Plan" means the documented program of annual development which identifies the specific policy and project activities necessary to achieve a specified set of economic goals and objectives during the period of free association, consistent with the economic assistance authority in Title Two. Such a document should include an analysis of population trends, manpower requirements, social needs, gross national product estimates, resource utilization, infrastructure needs and expenditures, and the specific private sector projects required to develop the local economy of Palau. Project identification should include initial cost estimates, with project purposes related to specific development goals and objectives.

(k) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(l) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

The Government of the United States and the Government of Palau shall conclude related agreements which shall come into effect and shall survive in accordance with their terms, and which shall be construed and implemented in a manner consistent with this Compact, as follows:

(a) Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to Palau Concluded Pursuant to Section 131 of the Compact of Free Association;

(b) Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in Palau, Concluded Pursuant to Section 132 of the Compact of Free Association;

(c) Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;

(d) Agreement Regarding United States Economic Assistance to the Government of Palau Concluded Pursuant to Section 211(f) of the Compact of Free Association;

(e) Agreement Regarding Construction Projects in Palau Concluded Pursuant to Section 212(a) of the Compact of Free Association;

(f) Agreement Regarding Federal Programs and Services, and Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association;

(g) Agreement Regarding Property Turnover, Concluded Pursuant to Section 234 of the Compact of Free Association;

(h) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in Palau Concluded Pursuant to Sections 321 and 322 of the Compact of Free Association; and

(i) Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association.

(j) Agreement regarding the Jurisdiction and Sovereignty of the Republic of Palau over its Territory and the Living and Non-living Resources of the Sea.

Article VII

Concluding Provisions

Section 471

(a) The Government of the United States and the Government of Palau agree that they have full authority under their respective constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.

(b) The Government of the United States and the Government of Palau shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, that their laws, regulations and administrative procedures are such as to effect the commitments referred to in Section 471(a).

(c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

Section 472

This Compact may be accepted, by signature or otherwise, by the Government of the United States and the Government of Palau. Each government shall possess an original English language version.

IN WITNESS THEREOF, the undersigned, duly authorized, have signed this Compact of Free Association which shall come into effect in accordance with its terms between the Government of the United States and the Government of Palau.

DONE AT _____, THIS _____ DAY

OF _____, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

_____

DONE AT _____, THIS _____ DAY

OF ____, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT

OF

THE REPUBLIC OF PALAU

JURISDICTION

SEC. 202.[8] (a) MARITIME AND TERRITORIAL JURISDICTION.—With respect to section 321 of the Compact of Free Association and its related agreements, the jurisdictional provisions set forth in subsection (b) of this section shall apply only to the citizens and nationals of the United States and aliens lawfully admitted to the United States for permanent residence who are in Palau.

(b) DEFENSE SITES.—The defense sites of the United States established in Palau in accordance with the Compact of Free Association and its related agreements are within the special maritime and territorial jurisdiction of the United States as set forth in section 7, title 18, United States Code.

(c) OFFENSES.—(1) Any person referred to in subsection (a) of this section who within or upon such defense sites is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the territory of Guam by the laws thereof, in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(2) The District Court of Guam shall have jurisdiction to try all criminal offenses against the United States, including the laws of Guam made applicable to the defense sites in Palau by virtue of subsection (c)(1) of this section, committed by any person referred to in subsection (a) of this section.

(3) The District Court of Guam may appoint one or more magistrate judges[9] for the defense sites in Palau. Such Magistrate Judges[9] shall have the power and the status of Magistrate Judges[9] appointed pursuant to chapter 43, title 28, United States Code: Provided however, That such Magistrate Judges[9] shall have the power to try persons accused of, and sentence persons convicted of, petty offenses, as defined in section 1(3), title 18, United States Code, including violations of regulations for the maintenance of peace, order, and health issued by the Commanding Officer on such defense sites, without being subject to the restrictions provided for in section 3401(b), title 18, United States Code.

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[8] 48 U.S.C. 1934 (formerly at 48 U.S.C. 1681 note).

[9] Sec. 321 of Public Law 101–650 (104 Stat. 5117) struck out "magistrates" and "Magistrates" each place they appeared in para. (3) and inserted in lieu thereof "magistrate judges" and Magistrate Judges", respectively.

h. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America

Public Law 94–241 [H.J. Res. 549], 90 Stat. 263, approved March 24, 1976; as amended by Public Law 98–213 [S. 589], 97 Stat. 1459, approved December 8, 1983; Public Law 99–396 [H.R. 2478], 100 Stat. 837, approved August 27, 1986; Public Law 104–134 [Department of the Interior and Related Agencies Appropriations Act, 1996; title I of sec. 101(c) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996; H.R. 3019], 110 Stat. 1321, approved April 26, 1996; and Public Law 104–208 [Department of the Interior and Related Agencies Appropriations Act, 1997; title I of sec. 101(d) of title I of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of the Northern Mariana Islands clearly expressed over the past twenty years through public petition and referendum, and in response to its own obligations under the trusteeship agreement to promote self-determination, entered into political status negotiations with representatives of the people of the Northern Mariana Islands; and

Whereas, on February 15, 1975, a "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Haydn Williams for the United States of America, following which the covenant was approved by the unanimous vote of the Mariana Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975: Now be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That[1] the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

"COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

"Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

"Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

"Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by the consent of the governed, individual freedom and democracy; and

"Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

"Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

"ARTICLE I

"POLITICAL RELATIONSHIP

"SECTION 101. The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the 'Commonwealth of the Northern Mariana Islands', in political union with and under the sovereignty of the United States of America.

"SECTION 102. The relations between the Northern Mariana Islands and the United States will be governed by this Covenant which, together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands.

[1] 48 U.S.C. 1801.

"SECTION 103. The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption.

"SECTION 104. The United States will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands.

"SECTION 105. The United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands. In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.

"ARTICLE II

"CONSTITUTION OF THE NORTHERN MARIANA ISLANDS

"SECTION 201. The people of the Northern Mariana Islands will formulate and approve a Constitution and may amend their Constitution pursuant to the procedures provided therein.

"SECTION 202. The Constitution will be submitted to the Government of the United States for approval on the basis of its consistency with this Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. The Constitution will be deemed to have been approved six months after its submission to the President on behalf of the Government of the United States unless earlier approved or disapproved. If disapproved the Constitution will be returned and will be resubmitted in accordance with this Section. Amendments to the Constitution may be made by the people of the Northern Mariana Islands without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.

"SECTION 203. (a) The Constitution will provide for a republican form of government with separate executive, legislative and judicial branches, and will contain a bill of rights.

"(b) The executive power of the Northern Mariana Islands will be vested in a popularly elected Governor and such other officials as the Constitution or laws of the Northern Mariana Islands may provide.

"(c) The legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature and will extend to all rightful subjects of legislation. The Constitution of the Northern Mariana Islands will provide for equal representation for each of

the chartered municipalities of the Northern Mariana Islands in one house of a bicameral legislature, notwithstanding other provisions of this Covenant or those provisions of the Constitution or laws of the United States applicable to the Northern Mariana Islands.

"(d) The judicial power of the Northern Mariana Islands will be vested in such courts as the Constitution or laws of the Northern Mariana Islands may provide. The Constitution or laws of the Northern Mariana Islands may vest in such courts jurisdiction over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction.

"SECTION 204. All members of the legislature of the Northern Mariana Islands and all officers and employees of the Government of the Northern Mariana Islands will take an oath or affirmation to support this Covenant, those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution and laws of the Northern Mariana Islands.

"ARTICLE III

"CITIZENSHIP AND NATIONALITY

"SECTION 301. The following persons and their children under the age of 18 years on the effective date of this Section, who are not citizens or nationals of the United States under any other provision of law, and who on that date do not owe allegiance to any foreign state, are declared to be citizens of the United States, except as otherwise provided in Section 302:

"(a) all persons born in the Northern Mariana Islands who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

"(b) all persons who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Marianas Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975; and

"(c) all persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

"SECTION 302. Any person who becomes a citizen of the United States solely by virtue of the provisions of Section 301 may within six months after the effective date of that Section or within six months after reaching the age of 18 years, whichever date is the later, become a national but not a citizen of the United States by making a declaration under oath before any court established by

the Constitution or laws of the United States or any court of record in the Commonwealth in the form as follows:

"'I XXXXXXXX being duly sworn, hereby declare my intention to be a national but not a citizen of the United States.'

"SECTION 303. All persons born in the Commonwealth on or after the effective date of this Section and subject to the jurisdiction of the United States will be citizens of the United States at birth.

"SECTION 304. Citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several States of the United States.

"ARTICLE IV

"JUDICIAL AUTHORITY

"SECTION 401. The United States will establish for and within the Northern Mariana Islands a court of record to be known as the 'District Court for the Northern Mariana Islands'. The Northern Mariana Islands will constitute a part of the same judicial circuit of the United States as Guam.

"SECTION 402. (a) The District Court for the Northern Mariana Islands will have the jurisdiction of a district court of the United States, except that in all causes arising under the Constitution, treaties or laws of the United States it will have jurisdiction regardless of the sum or value of the matter in controversy.

"(b) The District Court will have original jurisdiction in all causes in the Northern Mariana Islands not described in Subsection (a) jurisdiction over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. In causes brought in the District Court solely on the basis of this subsection, the District Court will be considered a court of the Northern Mariana Islands for the purposes of determining the requirements of indictment by grand jury or trial by jury.

"(c) The District Court will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide. When it sits as an appellate court, the District Court will consist of three judges, at least one of whom will be a judge of a court of record of the Northern Mariana Islands.

"SECTION 403. (a) The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings, except as otherwise provided in this Article; provided that for the first fifteen years following the establishment of an appellate court of the Northern Mariana Islands the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jurisdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands

from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, or any authority exercised thereunder, unless those cases are reviewable in the District Court for the Northern Mariana Islands pursuant to Subsection 402(c).

"(b) Those portions of Title 28 of the United States Code which apply to Guam or the District Court of Guam will be applicable to the Northern Mariana Islands or the District Court for the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

"ARTICLE V

"APPLICABILITY OF LAWS

"SECTION 501. (a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3, and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26; provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with approval of the Government of the Northern Mariana Islands and of the Government of the United States.

"(b) The applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of and the power of the Congress of the United States to consent to Sections 203, 506 and 805 and the proviso in Subsection (a) of this Section.

"Section 502. (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

"(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

"(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

"(3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the

Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

"(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

"SECTION 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

"(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

"SECTION 504. The President will appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least four of whom will be citizens of the Trust Territory of the Pacific Islands who are and have been for at least five years domiciled continuously in the Northern Mariana Islands at the time of their appointments) who will be representative of the federal, local, private and public interests in the applicability of laws of the United States to the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within one year after the termination of the Trusteeship Agreement, and before that time will make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status. In formulating its recommendations the Commission will take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of this Covenant. The United States will bear the cost of the work of the Commission.

"SECTION 505. The laws of the Trust Territory of the Pacific Islands, of the Mariana Islands District and its local municipalities, and all other Executive and District orders of a local nature applicable to the Northern Mariana Islands on the effective date of this Section and not inconsistent with this Covenant or with those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands.

"SECTION 506. (a) Notwithstanding the provisions of Subsection 503(a), upon the effective date of this Section the Northern Mariana Islands will be deemed to be a part of the United States under the Immigration and Nationality Act, as amended for the following purposes only, and the said Act will apply to the Northern Mariana Islands to the extent indicated in each of the following Subsections of this Section.

"(b) With respect to children born abroad to United States citizen or non-citizen national parents permanently residing in the Northern Mariana Islands the provisions of Sections 301 and 308 of the said Act will apply.

"(c) With respect to aliens who are 'immediate relatives' (as defined in Subsection 201(b) of the said Act) of United States citizens who are permanently residing in the Northern Mariana Islands all the provisions of the said Act will apply, commencing when a claim is made to entitlement to 'immediate relative' status. A person who is certified by the Government of the Northern Mariana Islands both to have been a lawful permanent resident of the Northern Mariana Islands and to have had the 'immediate relative' relationship denoted herein on the effective date of this Section will be presumed to have been admitted to the United States for lawful permanent residence as of that date without the requirement of any of the usual procedures set forth in the said Act. For the purpose of the requirements of judicial naturalization, the Northern Mariana Islands will be deemed to constitute a State as defined in Subsection 101(a) paragraph (36) of the said Act. The Courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands will be included among the courts specified in Subsection 310(a) of the said Act and will have jurisdiction to naturalize persons who become eligible under this Section and who reside within their respective jurisdictions.

"(d) With respect to persons who will become citizens or nationals of the United States under Article III of this Covenant or under this Section the loss of nationality provisions of the said Act will apply.

"ARTICLE VI

"REVENUE AND TAXATION

"SECTION 601. (a) The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the effective date of this Section, in the same manner as those laws are in force in Guam.

"(b) Any individual who is a citizen or a resident of the United States, of Guam, or of the Northern Mariana Islands (including a national of the United States who is not a citizen), will file only one income tax return with respect to his income, in a manner similar to the provisions of Section 935 of Title 26, United States Code.

"(c) References in the Internal Revenue Code to Guam will be deemed also to refer to the Northern Mariana Islands, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof or of this Covenant.

"SECTION 602. The Government of the Northern Mariana Islands may by local law impose such taxes, in addition to those imposed under Section 601, as it deems appropriate and provide for the rebate of any taxes received by it, except that the power of the Government of the Northern Mariana Islands to rebate collections of the local territorial income tax received by it will be limited to taxes on income derived from sources within the Northern Mariana Islands.

"SECTION 603. (a) The Northern Mariana Islands will not be included within the customs territory of the United States.

"(b) The Government of the Northern Mariana Islands may, in a manner consistent with the international obligations of the United States, levy duties on goods imported into its territory from any area outside the customs territory of the United States and impose duties on exports from its territory.

"(c) Imports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States.

"(d) The Government of the United States will seek to obtain from foreign countries favorable treatment for exports from the Northern Mariana Islands and will encourage other countries to consider the Northern Mariana Islands a developing territory.

"SECTION 604. (a) The Government of the United States may levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam.

"(b) The Government of the Northern Mariana Islands will have the authority to impose excise taxes upon goods manufactured, sold or used or services rendered within its territory or upon goods imported into its territory, provided that such excise taxes imposed on goods imported into its territory will be consistent with the international obligations of the United States.

"SECTION 605. Nothing in this Article will be deemed to authorize the Government of the Northern Mariana Islands to impose any customs duties on the property of the United States or on the personal property of military or civilian personnel of the United States Government or their dependents entering or leaving the Northern Mariana Islands pursuant to their contract of employment or orders assigning them to or from the Northern Mariana Islands or to impose any taxes on the property, activities or instrumentalities of the United States which one of the several States could not impose; nor will any provision of this Article be deemed to affect the operation of the Soldiers and Sailors Civil Relief Act of 1940, as amended, which will be applicable to the Northern Mariana Islands as it is applicable to Guam.

"SECTION 606. (a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a separate fund to be known as the 'Northern Mariana Islands Social Security Retirement Fund'. This fund will be administered by the United States in accordance with the social security laws of the Trust Territory of the Pacific Islands in effect at the time of

such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between the social security laws of the Trust Territory of the Pacific Islands and the laws described in Subsection (b). The United States will supplement such fund if necessary to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions thereto also remains comparable.

"(b) Those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System will on January 1 of the first calendar year following the termination of the Trusteeship Agreement or upon[2] such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

"(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

"(1) the Northern Mariana Islands Social Security Retirement Fund will be transferred into the appropriate Federal Social Security Trust Funds;

"(2) prior contributions by or on behalf of persons domiciled in the Northern Mariana Islands to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the appropriate Federal Social Security Trust Funds for the purpose of determining eligibility of those persons in the Northern Mariana Islands for benefits under those laws; and

"(3) persons domiciled in the Northern Mariana Islands who are eligible for or entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be eligible for or entitled to benefits under the laws described in Subsection (b).

"SECTION 607. (a) All bonds or other obligations issued by the Government of the Northern Mariana Islands or by its authority will be exempt, as to principal and interest, from taxation by the United States, or by any State, territory or possession of the United States, or any political subdivision of any of them.

"(b) During the initial seven year period of financial assistance provided for in Section 702, and during such subsequent periods of financial assistance as may be agreed, the Government of the Northern Mariana Islands will authorize no public indebtedness (other than bonds or other obligations of the Government payable solely from revenues derived from any public improvement or undertaking) in excess of ten percentum of the aggregate assessed valuation of the property within the Northern Mariana Islands.

[2] Sec. 9 of Public Law 98–213 (97 Stat. 1461) struck out "upon termination of the Trusteeship Agreement or" and inserted in lieu thereof "on January 1 of the first calendar year following the termination of the Trusteeship Agreement or upon".

"ARTICLE VII

"UNITED STATES FINANCIAL ASSISTANCE

"SECTION 701. The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end, the United States will provide direct multi-year financial support to the Government of the Northern Mariana Islands for local government operations, for capital improvement programs and for economic development. The initial period of such support will be seven years, as provided in Section 702.

"SECTION 702. Approval of this Covenant by the United States will constitute a commitment and pledge of the full faith and credit of the United States for the payment, as well as an authorization for the appropriation, of the following guaranteed annual levels of direct grant assistance to the Government of the Northern Mariana Islands for each of the seven fiscal years following the effective date of this Section:

"(a) $8.25 million for budgetary support for government operations, of which $250,000 each year will be reserved for a special education training fund connected with the change in the political status of the Northern Mariana Islands;

"(b) $4 million for capital improvement projects, of which $500,000 each year will be reserved for such projects on the Island of Tinian and $500,000 each year will be reserved for such projects on the Island of Rota; and

"(c) $1.75 million for an economic development loan fund, of which $500,000 each year will be reserved for small loans to farmers and fishermen and to agricultural and marine cooperatives, and of which $250,000 each year will be reserved for a special program of low interest housing loans for low income families.

"SECTION 703. (a) The United States will make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States. Funds provided under Section 702 will be considered to be local revenues[3] when used as the local share required to obtain federal programs and services.

"(b) There will be paid into the Treasury of the Government of the Northern Mariana Islands, to be expended to the benefit of the people thereof as that Government may by law prescribe, the proceeds of all customs duties and federal income taxes derived from the Northern Mariana Islands, the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions, or consumed in the Northern Mariana Islands, the proceeds of any other taxes which

[3] The Department of the Interior Appropriations Act, 1997 (title I of sec. 101(d) of title I of Public Law 104–208; 110 Stat. 3009), struck out "of the Government of the Northern Mariana Islands" after "local revenues".

may be levied by the Congress on the inhabitants of the Northern Mariana Islands, and all quarantine, passport, immigration and naturalization fees collected in the Northern Mariana Islands, except that nothing in this Section shall be construed to apply to any tax imposed by Chapters 2 or 21 of Title 26, United States Code.

"SECTION 704. (a) Funds provided under Section 702 not obligated or expended by the Government of the Northern Mariana Islands during any fiscal year will remain available for obligation or expenditure by that Government in subsequent fiscal years for the purposes for which the funds were appropriated.

"(b) Approval of this Covenant by the United States will constitute an authorization for the appropriation of a pro-rata share of the funds provided under Section 702 for the period between the effective date of this Section and the beginning of the next succeeding fiscal year.

"(c) The amounts stated in Section 702 will be adjusted for each fiscal year by a percentage which will be the same as the percentage change in the United States Department of Commerce composite price index using the beginning of Fiscal Year 1975 as the base.

"(d) Upon expiration of the seven year period of guaranteed annual direct grant assistance provided by Section 702, the annual level of payments in each category listed in Section 702 will continue until Congress appropriates a different amount or otherwise provides by law.

"ARTICLE VIII

"PROPERTY

"SECTION 801. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to all personal property on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be distributed equitably in a manner to be determined by the Government of the Trust Territory of the Pacific Islands in consultation with those concerned, including the Government of the Northern Mariana Islands.

"SECTION 802. (a) The following property will be made available to the Government of the United States by lease to enable it to carry out its defense responsibilities:

"(1) on Tinian Island, approximately 17,799 acres (7,203 hectares) and the waters immediately adjacent thereto;

"(2) on Saipan Island, approximately 177 acres (72 hectares) at Tanapag Harbor; and

"(3) on Farallon de Medinilla Island, approximately 206 acres (83 hectares) encompassing the entire island, and the waters immediately adjacent thereto.

"(b) The United States affirms that it has no present need for or present intention to acquire any greater interest in property listed above than that which is granted to it under Subsection 803(a), or to acquire any property in addition to that listed in Subsection (a), above, in order to carry out its defense responsibilities.

"SECTION 803. (a) The Government of the Northern Mariana Islands will lease the property described in Subsection 802(a) to the Government of the United States for a term of fifty years, and the Government of the United States will have the option of renewing this lease for all or part of such property for an additional term of fifty years if it so desires at the end of the first term.

"(b) The Government of the United States will pay to the Government of the Northern Mariana Islands in full settlement of this lease, including the second fifty year term of the lease if extended under the renewal option, the total sum of $19,520,600, determined as follows:

"(1) for that property on Tinian Island, $17.5 million;

"(2) for that property at Tanapag Harbor on Saipan Island, $2 million; and

"(3) for that property known as Farallon de Medinilla, $20,600.

The sum stated in this Subsection will be adjusted by a percentage which will be the same as the percentage change in the United States Department of Commerce composite price index from the date of signing the Covenant.

"(c) A separate Technical Agreement Regarding Use of Land To Be Leased by the United States in the Northern Mariana Islands will be executed simultaneously with this Covenant. The terms of the lease to the United States will be in accordance with this Section and with the terms of the Technical Agreement. The Technical Agreement will also contain terms relating to the leaseback of property, to the joint use arrangements for San Jose Harbor and West Field on Tinian Island, and to the principles which will govern the social structure relations between the United States military and the Northern Mariana Islands civil authorities.

"(d) From the property to be leased to it in accordance with this Covenant the Government of the United States will lease back to the Government of the Northern Mariana Islands, in accordance with the Technical Agreement, for the sum of one dollar per acre per year, approximately 6,458 acres (2,614 hectares) on Tinian Island and approximately 44 acres (18 hectares) at Tanapag Harbor on Saipan Island, which will be used for purposes compatible with their intended military use.

"(e) From the property to be leased to it at Tanapag Harbor on Saipan Island the Government of the United States will make available to the Government of the Northern Mariana Islands 133 acres (54 hectares) at no cost. This property will be set aside for public use as an American memorial park to honor the American and Marianas dead in the World War II Marianas Campaign. The $2 million received from the Government of the United States for the lease of this property will be placed into a trust fund, and used for the development and maintenance of the park in accordance with the Technical Agreement.

"SECTION 804. (a) The Government of the United States will cause all agreements between it and the Government of the Trust Territory of the Pacific Islands which grant to the Government of the United States use or other rights in real property in the Northern Mariana Islands to be terminated upon or before the effective date of the Section. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to any real property with respect to which the Government of the United States enjoys such use or other rights will be transferred to the Government of the Northern Mariana Islands at the time of such termination. From the time such right, title and interest is so transferred the Government of the Northern Mariana Islands will assure the Government of the United States the continued use of the real property then actively used by the Government of the United States for civilian governmental purposes on terms comparable to those enjoyed by the Government of the United States under its arrangements with the Government of the Trust Territory of the Pacific Islands on the date of the signature of this Covenant.

"(b) All facilities at Isely Field developed with federal aid and all facilities at that field usable for the landing and take-off of aircraft will be available to the United States for use by military and naval aircraft, in common with other aircraft, at all times without charge, except, if the use by military and naval aircraft shall be substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities so used may be charged at a rate established by agreement between the Government of the Northern Mariana Islands and the Government of the United States.

"SECTION 805. Except as otherwise provided in this Article, and notwithstanding the other provisions of this Covenant, or those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands, the Government of the Northern Mariana Islands, in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency:

"(a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent; and

"(b) may regulate the extent to which a person may own or hold land which is now public land.

"SECTION 806. (a) The United States will continue to recognize and respect the scarcity and special importance of land in the Northern Mariana Islands. If the United States must acquire any interest in real property not transferred to it under this Covenant, it will follow the policy of seeking to acquire only the minimum area necessary to accomplish the public purpose for which the real property is required, of seeking only the minimum interest in real property necessary to support such public purpose, acquiring title

only if the public purpose cannot be accomplished if a lesser interest is obtained, and of seeking first to satisfy its requirement by acquiring an interest in public rather than private real property.

"(b) The United States may, upon prior written notice to the Government of the Northern Mariana Islands, acquire for public purposes in accordance with federal laws and procedures any interest in real property in the Northern Mariana Islands by purchase, lease, exchange, gift or otherwise under such terms and conditions as may be negotiated by the parties. The United States will in all cases attempt to acquire any interest in real property for public purposes by voluntary means under this Subsection before exercising the power of eminent domain. No interest in real property will be acquired unless duly authorized by the Congress of the United States and appropriations are available therefor.

"(c) In the event it is not possible for the United States to obtain an interest in real property for public purposes by voluntary means, it may exercise within the Commonwealth the power of eminent domain to the same extent and in the same manner as it has and can exercise the power of eminent domain in a State of the Union. The power of eminent domain will be exercised within the Commonwealth only to the extent necessary and in compliance with applicable United States laws, and with full recognition of the due process required by the United States Constitution.

"ARTICLE IX

"NORTHERN MARIANA ISLANDS REPRESENTATIVE AND CONSULTATION

"SECTION 901. The Constitution or laws of the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States, whose term of office will be two years, unless otherwise determined by local law, and who will be entitled to receive official recognition as such Representative by all of the departments and agencies of the Government of the United States upon presentation through the Department of State of a certificate of selection from the Governor. The Representative must be a citizen and resident of the Northern Mariana Islands, at least twenty-five years of age, and, after termination of the Trusteeship Agreement, a citizen of the United States.

"SECTION 902. The Government of the United States and the Government of the Northern Mariana Islands will consult regularly on all matters affecting the relationship between them. At the request of either Government, and not less frequently than every ten years, the President of the United States and the Governor of the Northern Mariana Islands will designate special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto. Special representatives will be appointed in any event to consider and to make recommendations regarding future multi-year financial assistance to the Northern Mariana Islands pursuant to Section 701, to meet at least one year prior to the expiration of every period of such financial assistance.

"SECTION 903. Nothing herein shall prevent the presentation of cases or controversies arising under this Covenant to courts established by the Constitution or laws of the United States. It is intended that any such cases or controversies will be justifiable in such courts and that the undertakings by the Government of the United States and by the Government of the Northern Mariana Islands provided for in this Covenant will be enforceable in such courts.

"SECTION 904. (a) The Government of the United States will give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters directly affecting the Northern Mariana Islands and will provide opportunities for the effective presentation of such views to no less extent than such opportunities are provided to any other territory or possession under comparable circumstances.

"(b) The United States will assist and facilitate the establishment by the Northern Mariana Islands of offices in the United States and abroad to promote local tourism and other economic or cultural interests of the Northern Mariana Islands.

"(c) On its request the Northern Mariana Islands may participate in regional and other international organizations concerned with social, economic, educational, scientific, technical and cultural matters when similar participation is authorized for any other territory or possession of the United States under comparable circumstances.

"ARTICLE X

"APPROVAL, EFFECTIVE DATES, AND DEFINITIONS

"SECTION 1001. (a) This Covenant will be submitted to the Mariana Islands District Legislature for its approval. After its approval by the Mariana Islands District Legislature, this Covenant will be submitted to the people of the Northern Mariana Islands for approval in a plebiscite to be called by the United States. Only persons who are domiciled exclusively in the Northern Mariana Islands and who meet such other qualifications, including timely registration, as are promulgated by the United States as administering authority will be eligible to vote in the plebiscite. Approval must be by a majority of at least 55% of the valid votes cast in the plebiscite. The results of the plebiscite will be certified to the President of the United States.

"(b) This Covenant will be approved by the United States in accordance with its constitutional processes and will thereupon become law.

"SECTION 1002. The President of the United States will issue a proclamation announcing the termination of the Trusteeship Agreement, or the date on which the Trusteeship Agreement will terminate, and the establishment of the Commonwealth in accordance with this Covenant. Any determination by the President that the Trusteeship Agreement has been terminated or will be terminated on a day certain will be final and will not be subject to review by any authority, judicial or otherwise, of the Trust Territory of the Pacific Islands, the Northern Mariana Islands or the United States.

"SECTION 1003. The provisions of this Covenant will become effective as follows, unless otherwise specifically provided:

"(a) Sections 105, 201–203, 503, 504, 606, 801, 903 and Article X will become effective on approval of this Covenant;

"(b) Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601–605, 607, Article VII, Sections 802–805, 901 and 902 will become effective on a date to be determined and proclaimed by the President of the United States which will be not more than 180 days after this Covenant and the Constitution of the Northern Mariana Islands have both been approved; and

"(c) The remainder of this Covenant will become effective upon the termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Mariana Islands.

"SECTION 1004. (a) The application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the Trusteeship Agreement if the President finds and declares that the application of such provision prior to termination would be inconsistent with the Trusteeship Agreement.

"(b) The Constitution of the Northern Mariana Islands will become effective in accordance with its terms on the same day that the provisions of this Covenant specified in Subsection 1003(b) become effective, provided that if the President finds and declares that the effectiveness of any provision of the Constitution of the Northern Mariana Islands prior to termination of the Trusteeship Agreement would be inconsistent with the Trusteeship Agreement such provision will be ineffective until termination of the Trusteeship Agreement. Upon the establishment of the Commonwealth of the Northern Mariana Islands the Constitution will become effective in its entirety in accordance with its terms as the Constitution of the Commonwealth of the Northern Mariana Islands.

"SECTION 1005. As used in this Covenant:

"(a) 'Trusteeship Agreement' means the Trusteeship Agreement for the former Japanese Mandated Islands concluded between the Security Council of the United Nations and the United States of America, which entered into force on July 18, 1947;

"(b) 'Northern Mariana Islands' means the area now known as the Mariana Islands District of the Trust Territory of the Pacific Islands, which lies within the area north of 14 degrees north latitude, south of 21 degrees north latitude, west of 150 degrees east longitude and east of 144 degrees east longitude;

"(c) 'Government of the Northern Mariana Islands' includes, as appropriate, the Government of the Mariana Islands District of the Trust Territory of the Pacific Islands at the time this Covenant is signed, its agencies and instrumentalities, and its successors, including the Government of the Commonwealth of the Northern Mariana Islands;

"(d) 'Territory or possession' with respect to the United States includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa;

"(e) 'Domicile' means that place where a person maintains a residence with the intention of continuing such residence for

an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

"Signed at Saipan, Mariana Islands on the fifteenth day of February, 1975.

"For the people of the Northern Mariana Islands:

Edward DLG. Pangelinan,
Chairman, Marianas Political Status Commission.

Vicente N. Santos.
Vice Chairman, Marianas Political Status Commission.

"For the United States of America:

Ambassador F. Haydn Williams,
Personal Representative of the President of the United States.

"Members of the Marianas Political Status Commission:

Juan LG. Cabrera.
Vicente T. Camacho.
Jose R. Cruz.
Bernard V. Hofschneider.
Benjamin T. Manglona.
Daniel T. Muna.
Dr. Francisco T. Palacios.
Joaquin I. Pangelinan.
Manuel A. Sablan.
Joannes B. Taimanao.
Pedro A. Tenorio.".

SEC. 2. It is the sense of the Congress that pursuant to section 902 of the foregoing Covenant, and in any case within ten years from the date of the enactment of this resolution, the President of the United States should request, on behalf of the United States, the designation of special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.

SEC. 3.[4] Pursuant to section 701 of the foregoing Covenant, enactment of this section shall constitute a commitment and pledge of the full faith and credit of the United States for the payment of $228 million at guaranteed annual amounts of direct grant assistance for the Government of the Northern Mariana Islands for an additional period of seven fiscal years after the expiration of the initial seven-year period specified in section 702 of said Covenant, which assistance shall be provided according to the schedule of payments contained in the Agreement of the Special Representatives on Future United States Financial Assistance for the Government of the Northern Mariana Islands, executed July 10, 1985, between the special representative of the President of the United

[4] Sec. 10 of Public Law 99–396 (100 Stat. 840) added secs. 3, 4, and 5.

States and the special representatives of the Governor of the Northern Mariana Islands. The islands of Rota and Tinian shall each receive no less than a 1/8 share and the island of Saipan shall receive no less than a 1/4 share of annualized capital improvement project funds, which shall be no less than 80 per centum of the capital development funds identified in the schedule of payments in paragraph 2 of part II of the Agreement of the Special Representatives. Funds shall be granted according to such regulations as are applicable to such grants.

SEC. 4.[4] (a) Section 704(c) of the foregoing Covenant shall not apply to the Federal financial assistance which is provided to the Government of the Northern Mariana Islands pursuant to section 3 of this Act.

(b) Upon the expiration of the period of Federal financial assistance which is provided to the Government of the Northern Mariana Islands pursuant to section 3 of this Act, payments of direct grant assistance shall continue at the annual level provided for the last fiscal year of the additional period of seven fiscal years[5] except that, for fiscal years 1996 through 2002, payments to the Commonwealth of the Northern Mariana Islands pursuant to the multi-year funding agreements contemplated under the Covenant shall be $11,000,000 annually, subject to an equal local match and all other requirements set forth in the Agreement of the Special Representatives on Future Federal Financial Assistance of the Northern Mariana Islands, executed on December 17, 1992 between the special representative of the President of the United States and special representatives of the Governor of the Northern Mariana Islands with any additional amounts otherwise made available under this section in any fiscal year and not required to meet the schedule of payments in this subsection to be provided as set forth in subsection (c) until Congress otherwise provides by law.

(c) The additional amounts referred to in subsection (b) shall be made available to the Secretary for obligation as follows:

(1) for fiscal years 1996 through 2001, $4,580,000 annually for capital infrastructure projects as Impact Aid for Guam under section 104(c)(6) of Public Law 99–239;

(2) for fiscal year 1996, $7,700,000 shall be provided for capital infrastructure projects in American Samoa; $4,420,000 for resettlement of Rongelap Atoll; and

(3) for fiscal years 1997 and thereafter, all such amounts shall be available solely for capital infrastructure projects in Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands: *Provided,* That, in fiscal year 1997, $3,000,000 of such amounts shall be made available to the College of the Northern Marianas and beginning in fiscal year 1997, and in each year thereafter, not to exceed $3,000,000 may be allocated, as provided in appropriations Acts, to the Secretary of the Interior for use by Federal agencies or the Commonwealth of the Northern Mariana Islands to address

[5] Sec. 118 of the Department of Interior and Related Agencies Appropriations Act, 1996 (title I of sec. 101(c) of Public Law 104–134; 110 Stat. 1321–178) struck out "until Congress otherwise provides by law." and inserted text from this point through subsec. (d).

immigration, labor, and law enforcement issues in the Northern Mariana Islands. The specific projects to be funded in American Samoa shall be set forth in a five-year plan for infrastructure assistance developed by the Secretary of the Interior in consultation with the American Samoa Government and updated annually and submitted to the Congress concurrent with the budget justifications for the Department of the Interior. In developing budget recommendations for capital infrastructure funding, the Secretary shall indicate the highest priority projects, consider the extent to which particular projects are part of an overall master plan, whether such project has been reviewed by the Corps of Engineers and any recommendations made as a result of such review, the extent to which a set-aside for maintenance would enhance the life of the project, the degree to which a local cost-share requirement would be consistent with local economic and fiscal capabilities, and may propose an incremental set-aside, not to exceed $2,000,000 per year, to remain available without fiscal year limitation, as an emergency fund in the event of natural or other disasters to supplement other assistance in the repair, replacement, or hardening of essential facilities: *Provided further,* That the cumulative amount set aside for such emergency fund may not exceed $10,000,000 at any time.

(d) Within the amounts allocated for infrastructure pursuant to this section, and subject to the specific allocations made in subsection (c), additional contributions may be made, as set forth in appropriations Acts, to assist in the resettlement of Rongelap Atoll: *Provided,* That the total of all contributions from any Federal source after enactment of this Act may not exceed $32,000,000 and shall be contingent upon an agreement, satisfactory to the President, that such contributions are a full and final settlement of all obligations of the United States to assist in the resettlement of Rongelap Atoll and that such funds will be expended solely on resettlement activities and will be properly audited and accounted for. In order to provide such contributions in a timely manner, each Federal agency providing assistance or services, or conducting activities, in the Republic of the Marshall Islands, is authorized to make funds available through the Secretary of the Interior, to assist in the resettlement of Rongelap. Nothing in this subsection shall be construed to limit the provision of ex gratia assistance pursuant to section 105(c)(2) of the Compact of Free Association Act of 1985 (Public Law 99–239, 99 Stat. 1770, 1792) including for individuals choosing not to resettle at Rongelap, except that no such assistance for such individuals may be provided until the Secretary notifies the Congress that the full amount of all funds necessary for resettlement at Rongelap has been provided.

SEC. 5.[4] Should the Secretary of the Interior believe that the performance standards of the agreement identified in section 3 of this Act are not being met, he shall notify the Government of the Northern Mariana Islands in writing with the intent to resolve such issue in a mutually agreeable and expeditious manner and notify the Committee on Interior and Insular Affairs of the House of

Representatives and the Committee on Energy and Natural Resources of the Senate. Should the issue not be resolved within thirty days after the notification is received by the Government of the Northern Mariana Islands, the Secretary of the Interior may request authority from Congress to withhold payment of an appropriate amount of the operations funds identified in the schedule of payments in paragraph 2 of part II of the Agreement of the Special Representatives for a period of less than one year but no funds shall be withheld except by Act of Congress.

i. Relations With the Northern Mariana Islands

Executive Order 12572 of November 3, 1986, 51 F.R. 40401, 48 U.S.C. 1801 note

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that, consistent with the Joint Resolution to approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," approved March 24, 1976 (Public Law 94–241; 90 Stat. 263), the relation of the United States with the Government of the Northern Mariana Island shall, in all matters not the program responsibility of another Federal department or agency, be under the general administrative supervision of the Secretary of the Interior.

j. Management of the Compact of Free Association With the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau

Executive Order 12569, October 16, 1986, 51 F.R. 37171, 48 U.S.C. 1901 note; as amended by Executive Order 12877, November 3, 1993, 58 F.R. 59159

By the authority vested in me as President by the Constitution and laws of the United States, including the Compact of Free Association (the Compact) and Public Law 99–239, (the Act), it is ordered as follows:

Section 1. *Responsibility of the Secretary of State.* The Secretary of State shall conduct the government-to-government relations of the United States with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (the "Freely Associated States"), including any subdivisions, officials or persons thereof, and may delegate or allocate such of his authority under this Order to such other United States officials as he may from time to time deem desirable. The authority of the Secretary of State shall include, consistent with Article V of Title One of the Compact and section 105(b)(1) of the Act, the establishment and maintenance of representative officers in the Freely Associated States and supervision of the United States representatives and their staff. The Secretary also shall provide, in accordance with applicable law, for appropriate privileges, immunities, and assistance to representatives to the United States designated by the Governments of the Freely Associated States, together with their offices and staff. In accordance with applicable law and the provisions of this Order, the Secretary also shall have the authority and responsibility to take such other actions as may be necessary and appropriate to ensure that the authorities and obligations of the United States set forth in the Compact and its related agreements and in the laws of the United States as they relate to the conduct of government-to-government relations with the Freely Associated States are carried out. The Secretary shall provide from appropriations made to the Department of State such funds as may be necessary to carry out the provisions of this Order in relation to the activities of the Department of State.

Sec. 2. *Responsibility of the Secretary of the Interior.* The Secretary of the Interior shall be responsible for seeking the appropriation of funds for and, in accordance with the laws of the United States, shall make available to the Freely Associated States the United States economic and financial assistance appropriated pursuant to Article I of Title Two of the Compact; the grant, service, and program assistance appropriated pursuant to Article II of Title Two of the Compact; and all other United States assistance appropriated pursuant to the Compact and its related agreements. The Secretary shall coordinate and monitor any program or any activity by any department or agency of the United States provided to the

Freely Associated States and shall coordinate and monitor related economic development planning. This Section shall not apply to services provided by the Department of Defense to the Freely Associated States or to activities pursuant to Section 1 of this Order, including activities under the Peace Corps Act.

Sec. 3. *Interagency Group on Freely Associated State Affairs and the Office of Freely Associated State Affairs.*

(a) There is established an Interagency Group on Freely Associated State Affairs for the purpose of providing guidance and oversight with respect to the establishment and implementation of policy concerning the Compact and United States relations with the Freely Associated States.

(b) The Interagency Group shall consist of the Secretary of State or his designee, who shall chair the Group, and of the principal officers or their designees from the Departments of the Interior, Defense, Commerce, Energy, and Justice, the Organization of the Joint Chiefs of Staff, the Office of Management and Budget, the National Security Council, and such other departments and agencies as may from time to time be appropriate.

(c) The Interagency Group shall make such recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States relations with the Freely Associated States. The Interagency Group also shall provide such guidance as it deems appropriate to departments and agencies delegated authority by this Order concerning administration of laws with respect to the Freely Associated States.

(d) If any department or agency charged by this Order with implementation of the Compact or other laws of the United States with respect to the Freely Associated States concludes that noncompliance sanctions pursuant to section 105(g) of the Act are appropriate, it shall make appropriate recommendations to the Interagency Group. The Interagency Group shall consider these recommendations and report its findings to the President for his review in making that determination.

(e)(1)[1] The Secretary of State shall be responsible for the conduct of United States relations with the Freely Associated States, carry out related matters, and provide appropriate support to the Interagency Group, bearing in mind the continued special relationship between the United States and the Freely Associated States.

(2)[1] The Secretaries of Defense and Interior may, to the extent permitted by law, delegate any or all of their respective authorities

[1] Sec. 1 of Executive Order 12877 (November 3, 1993; 58 F.R. 59159) amended and restated paras. 1 through 3 of subsec. (e), which formerly read as follows:

"(1) There shall be in the Department of State an Office of Freely Associated State Affairs to conduct United States relations with the Freely Associated States and carry out related matters, as the Secretary of State shall direct or delegate, and provide appropriate support to the Interagency Group.

"(2) The Office shall be headed by a Director designated by the Secretary of State, to whom the Secretaries of State, Defense, and the Interior may, to the extent permitted by law, delegate any or all of their respective authorities and responsibilities as described in this Order, including the authority to supervise the United States representatives referred to in Section 4 of this Order. The Director shall serve as Executive Secretary of the Interagency Group.

"(3) Personnel additional to that provided by the Secretary of State may be detailed to the Office by the Executive departments and agencies that are members of the Interagency Group, and by other agencies as appropriate. Executive departments and agencies shall, to the extent permitted by law, provide such information, advice, and administrative services and facilities as may be necessary for the fulfillment of the functions of the Office.".

and responsibilities as described in this Order to the Secretary of States or his or her designee. The Secretary of State or his or her designee shall serve as Executive Secretary of the Interagency Group.

(3)[1] Personnel additional to that provided by the Secretary of State may be detailed to the Department of State by the Executive departments and agencies that are members of the Interagency Group, and by other agencies as appropriate. Executive departments and agencies shall, to the extent permitted by law, provided such information, advice, and administrative services and facilities to the Secretary of State as may be necessary to conduct United States relations with the Freely Associated States.

Sec. 4. *United States Representatives to the Freely Associated States.* The United States Representatives assigned to a Freely Associated State in accordance with Article V of Title One of the Compact shall represent the Government of the United States in an official capacity in that Freely Associated State, and shall supervise the actions of any Executive department or agency personnel assigned permanently or temporarily to that Freely Associated State.

Sec. 5.[2] *Cooperation among Executive Departments and Agencies.* All Executive departments and agencies shall cooperate in the effectuation of the provisions of this Order. The Interagency Group and the Secretary of State shall facilitate such cooperative measures. Nothing in this Order shall be construed to impair the authority and responsibility of the Secretary of Defense for security and defense matters in or relating to the Freely Associated States.

Sec. 6. *Delegation to the Secretary of the Interior.* The following authorities are delegated to the Secretary of the Interior:

(a) Reporting to the Congress on economic development plans prepared by the Government of the Federated States of Micronesia and the Government of the Marshall Islands, pursuant to sections 102(b) and 103(b) of the Act;

(b) The determination required by section 103(e) of the Act concerning the qualifications of the investment management firm selected by the Government of the Marshall Islands;

(c) Reporting to the Congress with respect to the impact of the Compact of Free Association on the United States territories and commonwealths and on the State of Hawaii, pursuant to section 104(e)(2) of the Act; and

(d) Causing an annual audit to be conducted of the annual financial statements of the Government of the Federated States of Micronesia and the Government of the Marshall Islands, pursuant to section 110(b) of the Act.

Sec. 7. *Delegation to the Secretary of State.* The following authorities are delegated to the Secretary of State:

(a) Reporting to the Congress on crimes in the Federated States of Micronesia and the Marshall Islands which have an impact upon

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[2] Sec. 2 of Executive Order 12877 (November 3, 1993; 58 F.R. 59159) amended and restated sec. 5, which formerly read as follows:

"**Sec. 5.** *Cooperation among Executive Departments and Agencies.* All Executive departments and agencies shall cooperate in the effectuation of the provisions of this Order. The Interagency Group and Office of Freely Associated State Affairs shall facilitate such cooperative measures. Nothing in this Order shall be construed to impair the authority and responsibility of the Secretary of Defense for security and defense matters in or relating to the Freely Associated State.".

United States jurisdictions, pursuant to sections 102(a)(4) and 103(a)(4) of the Act;

(b) Submitting the certification and report to the Congress for purposes of section 5 of the Fishermen's Protective Act of 1967, pursuant to section 104(f)(3) of the Act; and

(c) Reporting, with the concurrence of the Secretary of Defense, to the Congress on determinations made regarding security and defense, pursuant to section 105(q) of the Act.

Sec. 8. *Supersession and Saving Provisions.*

(a) Subject to the provisions of Section 9 of this Order, prior Executive orders concerning the former Trust Territory of the Pacific Islands are hereby superseded and rendered inapplicable, except that the authority of the Secretary of the Interior as provided in applicable provisions of Executive Order No. 11021, as amended, shall remain in effect, in a manner consistent with this Order and pursuant to section 105(c)(2) of the Act, to terminate the trust territory government and discharge its responsibilities, at which time the entirety of Executive Order No. 11021 shall be superseded.

(b) Nothing in this Order shall be construed as modifying the rights or obligations of the United States under the provisions of the Compact or as affecting or modifying the responsibility of the Secretary of State and the Attorney General to interpret the rights and obligations of the United States arising out of or concerning the Compact.

Sec. 9. *Effective Date.* This Order shall become effective with respect to a Freely Associated State simultaneously with the entry into force of the Compact for that State.

k. Placing Into Full Force and Effect the Covenant With the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association With the Federated States of Micronesia and the Republic of the Marshall Islands

Proclamation 5564, November 3, 1986, 51 F.R. 40399, 48 F.R. 1801 note

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which includes the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On February 15, 1975, after extensive status negotiations, the United States and the Marianas Political Status Commission concluded a Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"). Sections 101, 1002, and 1003(c) of the Covenant provide that the Northern Mariana Islands will become a self-governing Commonwealth in political union with and under the sovereignty of the United States. This Covenant was approved by the Congress by Public Law 94–241 of March 24, 1976, 90 Stat. 263. Although many sections of the Covenant became effective in 1976 and 1978, certain sections have not previously entered into force.

On October 1, 1982, the Government of the United States and the Government of the Federated States of Micronesia concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. On June 25, 1983, the Government of the United States and the Government of the Marshall Islands concluded a compact of Free Association, establishing a relationship of Free Association between the two Governments. Pursuant to Sections 111 and 121 of the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands become self-governing and have the right to conduct foreign affairs in their own name and right upon the effective date of their respective Compacts. Each Compact comes into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the other Government; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the conduct of a plebiscite in that jurisdiction. In the Federated States of Micronesia, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on June 21, 1983, a sovereign act of self-determination. In the Marshall Islands, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on September 7, 1983, a sovereign act of self-determination. In the United States the Compacts have been approved by Public law 99–239 of January 14, 1986, 99 Stat. 1770.

On January 10, 1986, the Government of the United States and the Government of the Republic of Palau concluded a Compact of Free Association, establishing a similar relationship of Free Association between the two Governments. On October 16, 1986, the Congress of the United States approved the Compact of Free Association with the Republic of Palau. In the Republic of Palau, the Compact approval process has not yet been completed. Until the future political status of Palau is resolved, the United States will continue to discharge its responsibilities in Palau as Administering Authority under the Trusteeship Agreement.

On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands had freely exercised their right to self-determination, and considered that it was appropriate for that Agreement to be terminated. The Council asked the United States to consult with the governments concerned to agree on a date for entry into force of their respective new status agreements.

On October 15, 1986, the Government of the United States and the Government of the Republic of the Marshall Islands agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Republic of the Marshall Islands, the effective date of the Compact shall be October 21, 1986.

On October 24, 1986, the Government of the United States and the Government of the Federated States of Micronesia agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Federated States of Micronesia, the effective date of the Compact shall be November 3, 1986.

On October 24, 1986, the United States advised the Secretary General of the United Nations that, as a consequence of consultations held between the United States Government and the Government of the Marshall Islands, agreement had been reached that the Compact of Free Association with the Marshall Islands entered fully into force on October 21, 1986. The United States further advised the Secretary General that, as a result of consultations with their governments, agreement had been reached that the Compact of Free Association with the Federated States of Micronesia and the Covenant with the Commonwealth of the Northern Mariana Islands would enter into force on November 3, 1986.

As of this day, November 3, 1986, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the peoples of the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1002 of the Covenant

to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association", and for other purposes approved on January 14, 1986 (Public Law 99–239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Northern Mariana Islands. This constitutes the determination referred to in Section 1002 of the Covenant.

Sec. 2. (a) Sections 101, 104, 301, 302, 303, 506, 806, and 904 of the Covenant are effective as of 12:01 a.m., November 4, 1986, Northern Mariana Islands local time.

(b) The Commonwealth of the Northern Mariana Islands in political union with and under the sovereignty of the United States of America is fully established on the date and at the time specified in Section 2(a) of this Proclamation.

(c) The domiciliaries of the Northern Mariana Islands are citizens of the United States to the extent provided for in Sections 301 through 303 of the Covenant on the date and at the time specified in this Proclamation.

(d) I welcome the Commonwealth of the Northern Mariana Islands into the American family and congratulate our new fellow citizens.

Sec. 3. (a) The Compact of Free Association with the Republic of the Marshall Islands is in full force and effect as of October 21, 1986, and the Compact of Free Association with the Federated States of Micronesia is in full force and effect as of November 3, 1986.

(b) I am gratified that the people of the Federated States of Micronesia and the Republic of the Marshall Islands, after nearly forty years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

l. Placing Into Full Force and Effect the Compact of Free Association With the Republic of Palau

Proclamation 6726, September 27, 1994, 59 F.R. 49777, 48 U.S.C. 1931 note

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which has included the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On November 3, 1986, a Covenant between the United States and the Northern Mariana Islands came into force. This Covenant established the Commonwealth of the Northern Mariana Islands as a self-governing Commonwealth in political union with and under the sovereignty of the United States.

On October 21, 1986, in the case of the Republic of the Marshall Islands, and on November 3, 1986, in the case of the Federated States of Micronesia, Compacts of Free Association with the United States became effective. Under the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands became self-governing sovereign states, in free association with the United states. Following the changes in political status of the Northern Mariana Islands, the Marshall Islands, and the Federated States of Micronesia, the Trusteeship Agreement ceased to be applicable to those entities and only Palau remained as a Trust Territory of the Pacific Islands.

On January 10, 1986, the Government of the United States and the Government of the Republic of Palau concluded a Compact of Free Association similar to those that the United States entered into with the Republic of the Marshall Islands and with the Federated States of Micronesia. As in those instances, it was specified that the Compact with Palau would come into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of Palau; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the approval of the Compact by plebiscite in Palau.

In Palau the Compact has been approved by the Government in accordance with its constitutional processes and by a United Nations-observed plebiscite on November 9, 1993, a sovereign act of self-determination. In the United States the Compact was approved by Public Law 99–658 of November 14, 1986, and Public Law 101–219 of December 12, 1989.

On May 25, 1994, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of Palau had freely exercised their right to self-determination and considered that it was appropriate for the Trusteeship Agreement

to be terminated. The Council asked the United States to consult with the Government of Palau and to agree on a date, on or about October 1, 1994, for entry into force of their new status agreement.

On July 15, 1994, the Government of the United States and the Government of the Republic of Palau agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Republic of Palau, the effective date of the Compact shall be October 1, 1994.

As of this day, September 27, 1994, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Republic of Palau. On October 1, 1994, the Compact will enter into force between the United States and the Republic of Palau, and Palau will thereafter be self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the people of Palau.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes, approved on November 14, 1986 (Public Law 99–658), and section 101 of the Joint Resolution to authorize entry into force of the Compact of Free Association between the united states and the Government of Palau, and for other purposes, approved on December 12, 1989 (Public Law 101–219), and pursuant to section 1002 of the Covenant to Establish a commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and consistent with sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association" and for other purposes, approved on January 14, 1986 (Public Law 99–239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands will be no longer in effect with respect to the Republic of Palau as of October 1, 1994, at one minute past one o'clock p.m. local time in Palau. This constitutes the determination referred to in section 1002 of the Covenant with the Northern Mariana Islands (Public Law 94–241).

Sec. 2 The Compact of Free Association with the Republic of Palau will be in full force and effect as of October 1, 1994, at one minute past one o'clock p.m. local time in Palau.

Sec. 3. I am gratified that the people of the Republic of Palau, after 47 years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

5. Registration of Foreign Agents

a. Foreign Agents Registration Act of 1938, as amended [1]

PART I—REGISTRATION OF FOREIGN PROPAGANDISTS

Public Law 75–583 [H.R. 1591], 52 Stat. 631, approved June 8, 1938; as amended by Public Law 76–319 [H.R. 5988], 53 Stat. 1244, approved August 7, 1939; Public Law 77–532 [S. 2399], 56 Stat. 248, approved April 29, 1942; Public Law 81–642 [H.R. 4386], 64 Stat. 399, approved August 3, 1950; Public Law 82–414 [H.R. 5678], 66 Stat. 163 at 276, approved June 27, 1952; Public Law 87–366 [H.R. 470], 75 Stat. 784, approved October 4, 1961; Public Law 89–486 [S. 693], 80 Stat. 244, approved July 4, 1966; Public Law 91–375 [H.R. 17070], 84 Stat. 719 at 782, approved August 12, 1970; Public Law 98–620 [H.R. 6163], 98 Stat. 3335 at 3359, approved November 11, 1984; Public Law 104–65 [Lobbying Disclosure Act of 1995; S. 1060], 109 Stat. 691, approved December 19, 1995; Public Law 104–208 [Illegal Immigration Reform and Immigrant Responsibility Act of 1996; division C of title II of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; and Public Law 105–166 [Lobbying Disclosure Technical Amendments Act of 1998; S. 758], 112 Stat. 38, approved April 6, 1998

AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy and purpose of this Act to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in light of their associations and activities.[2]

Section 1.[3] **Definitions.**[4]—Used in and for the purposes of this Act—

(a) The term "person" includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

(b)[5] The term "foreign principal" includes—

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not

[1] The Foreign Agents Registration Act of 1938, as amended, will be referred to as the FAR Act and "this Act" in footnotes.

[2] The Act of April 29, 1942 (56 Stat. 248) added the declaration of policy and purpose.

[3] 22 U.S.C. 611.

[4] The Act of August 7, 1939 (53 Stat. 1244); the Act of January 24, 1942 (56 Stat. 248), and the Act of July 4, 1966 (80 Stat. 244), generally redefined the terms of this Act.

[5] Public Law 89–486 (80 Stat. 244) amended and restated subsec. (b).

an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(3) a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(c)[6] Except as provided in subsection (d) hereof, the term "agent of a foreign principal" means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages with the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

(d)[7] The term "agent of a foreign principal" does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of title 39 published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefore, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in section 1(b) hereof, or by any agent of a foreign principal required to register under this Act;

[6] Public Law 89–486 (80 Stat. 244) deleted paras. (3) and (4). The Act of August 1, 1956 (70 Stat. 899) deleted para. (5) which had been added by the Act of September 23, 1950 (64 Stat. 1005). The subject of para. (5) is now covered by 50 U.S.C. 851–858.

[7] Public Law 89–486 (80 Stat. 244) amended and restated subsecs. (d) and (g), which had been added by the Act of April 29, 1942 (56 Stat. 248).

(e)[8] The term "government of a foreign country" includes any person or group of persons exercising sovereign *de facto* or *de jure* political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign *de facto* or *de jure* authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

(f)[8] The term "foreign political party" includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof;

(g)[7,8] The term "public-relations counsel" includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal;

(h)[8] The term "publicity agent" includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

(i)[8] The term "information-service employee" includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

(j)[8,9] * * * [Repealed—1995]

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[8] The Act of April 29, 1942 (56 Stat. 248) added subsecs. (d) through (n).

[9] Sec. 9(1)(A) of Public Law 104–65 (109 Stat. 699) struck out subsec. (j), which previously read as follows:

"(j) The term 'political propaganda' includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, covert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this section 1(j) the term 'disseminating' includes transmitting or causing to be transmitted in the United States mails

Continued

(k)[8] The term "registration statement" means the registration statement required to be filed with the Attorney General under section 2(a) hereof, and any supplements thereto required to be filed under section 2(b) hereof, and includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

(l)[8] The term "American republic" includes any of the States which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940;[10]

(m)[8] The term "United States," when used in a geographical sense includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States;[11]

(n)[8] The term "prints" means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimilable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter.

(o)[12] The term "political activities" means any activity that the person engaging in believes will, or that the person intends to, in any way influence[13] any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

(p)[12] The term "political consultant" means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.[14]

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or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails;".

[10] The Act of Habana, E.A.S. Doc. No. 199 is found at 54 Stat. 2491. The 21 signatories were Honduras, Haiti, Costa Rica, Mexico, Argentina, Uruguay, Ecuador, Bolivia, Chile, Brazil, Cuba, Paraguay, Panama, Colombia, Venezuela, El Salvador, Dominican Republic, Peru, Nicaragua, Guatemala, and the United States of America.

[11] Pursuant to Proclamation No. 2695 (11 F.R. 7517; 60 Stat. 1352), granting independence to the Philippines, the words "including the Philippine Islands" were deleted from the definition of the United States.

[12] The Act of July 4, 1966 (80 Stat. 244) added subsecs. (o) through (q). Subsequently, sec. 9(1)(D) of Public Law 104–65 (109 Stat. 699) deleted subsec. (q).

[13] Sec. 9(1)(B) of Public Law 104–65 (109 Stat. 699) struck out "the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence" and inserted in lieu thereof "any activity that the person engaging in believes will, or that the person intends to, in any way influence".

[14] Sec. 9(1)(C) and (D) of Public Law 104–65 (109 Stat. 699) replaced a semicolon at the end of subsec. (p) with a period, and struck out subsec. (q), which had formerly read as follows:

(q)[14] * * * [Repealed—1995]

Sec. 2.[15] **Registration.**—(a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General[16] a true and complete registration statement and supplements thereto as required by this section 2(a) and section 2(b) hereof or unless he is exempt from registration under the provisions of this Act. Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal. The registration statement shall include the following which shall be regarded as material for the purposes of this Act:

(1)[17] Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(2)[17] Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

"(q) For the purpose of section (3)(d) hereof, activities in furtherance of the bona fide commercial, industrial or financial interests of a domestic person engaged in substantial commercial, industrial or financial operations in the United States shall not be deemed to serve predominantly a foreign interest because such activities also benefit the interests of a foreign person engaged in bona fide trade or commerce which is owned or controlled by, or which owns or controls, such domestic person: *Provided,* That (i) such foreign person is not, and such activities are not directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in substantial part by, a government of a foreign country or a foreign political party, (ii) the identity of such foreign person is disclosed to the agency or official of the United States with whom such activities are conducted, and (iii) whenever such foreign person owns or controls such domestic person, such activities are substantially in furtherance of the bona fide commercial, industrial or financial interests of such domestic person.".

[15] 22 U.S.C. 612. The Act of July 4, 1966 (80 Stat. 244 at 245) amended and restated sec. 2. Previously, Public Law 81–642 (64 Stat. 400) amended and restated sec. 2.

[16] Pursuant to sec. 2 of the Act of April 29, 1942 (56 Stat. 251), and by virtue of Executive Order 9176 (7 F.R. 4127), effective June 1, 1942, registration functions under this Act were transferred from the Secretary of State to the Attorney General. Under 18 U.S.C. 951, it is a criminal offense for one, other than a diplomatic or consular officer, to act as a foreign agent without prior notification to the Secretary of State.

[17] The Act of April 29, 1942 (56 Stat. 249) added paras. (1) through (11).

(3)[17] A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each;[18] the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party, or by any other foreign principal;

(4)[17] Copies of each written agreement, and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal, including a detailed statement of any such activity which is a political activity;[19]

(5)[17] The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(6)[17] A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder, including a detailed statement of any such activity which is a political activity;[19]

(7)[17, 20] The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from

[18] The Act of July 4, 1966 (80 Stat. 244, 245) deleted "unless, and to the extent, this requirement is waived in writing by the Attorney General;" which previously appeared at this point.

[19] The Act of July 4, 1966 (80 Stat. 244, 245) inserted "including a detailed statement of any such activity which is a political activity".

[20] The Act of July 4, 1966 (80 Stat. 244, 245–246) amended and restated para. (7).

each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(8)[17] A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person or in connection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613[21] of Title 18, United States Code) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;

(9)[17] Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

(10)[17] Such other statements, information, or documents pertinent to the purposes of this Act as the Attorney General, having due regard for the national security and the public interests, may from time to time require;

(11)[17] Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(b)[22] Every agent of a foreign principal who has filed a registration statement required by section 2(a) hereof shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under section 2 hereof accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), and (9) of section 2(a) hereof, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this Act, he may, in any particular case, require supplements to the registration statement to be filed at

[21] Public Law 94–283 (90 Stat. 496) repealed sec. 613.
[22] Public Law 77–352 (56 Stat. 248) amended and restated subsecs. (b), (d), and (e).

more frequent intervals in respect to all or particular items of information to be furnished.

(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority of the board of directors thereof or persons performing the functions of directors, if any.

(d)[22] The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this Act and the regulations thereunder on the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this Act, for a willful failure to file a registration statement or supplement thereto when due or for willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(e)[22] If any agent of a foreign principal, required to register under the provisions of this Act, has previously thereto registered with the Attorney General under the provisions of section 2386 of title 18,[23] the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of said section.[23]

(f)[24] The Attorney General may, by regulation, provide for the exemption—

(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, and

(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,

where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this Act.

Sec. 3.[25] **Exemptions.**—The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while

[23] The Act of June 25, 1948 (62 Stat. 838), struck out "sections 14 to 17 of title 18" and inserted in lieu thereof "section 2386 of title 18".

[24] The Act of July 4, 1966 (80 Stat. 244, 246) added subsec. (f).

[25] 22 U.S.C. 613. The Act of April 29, 1942 (56 Stat. 248) amended and restated sec. 3. Subsequently, the Act of July 4, 1966 (80 Stat. 244, 246) further amended and restated sec. 3.

said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

(b) Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

(c) Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

(d)[26] Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 4),[27] and such rules and regulations as may be prescribed thereunder;

(e) Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

(f) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while, (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communication or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to, and retention for the duration of

[26] The Act of October 4, 1961 (75 Stat. 784) amended and restated subsec. (d). Subsequently, the Act of July 4, 1966 (80 Stat. 244, 246) further amended and restated subsec. (d).

[27] 22 U.S.C. 441 though 457.

this Act by, the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the government of which such person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee;[28]

(g)[29] Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided,* That for the purpose of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulations to be conducted on the record.[30]

(h)[31] Any agent of a person described in section 1(b)(2) or an entity described in section 1(b)(3) if the agent has engaged in lobbying activities and has registered[32] under the Lobbying Disclosure Act of 1995 in connection with the agent's representation of such person or entity.

Sec. 4.[33] **Filing and Labeling of Political Propaganda.**—(a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any informational materials[34] for or in the interests of such foreign principal[35] (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof.[36]

(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register

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[28] By letter dated September 30, 1946, the President withdrew from consideration all countries previously designated as entitled to the exemption provided by subsec. (f).

[29] The Act of July 4, 1966 (80 Stat. 244, 246) added subsec. (g).

[30] Sec. 9(2) of Public Law 104–65 (109 Stat. 700) struck out "established agency proceedings, whether formal or informal," and inserted in lieu thereof "judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulations to be conducted on the record.".

[31] Sec. 9(3) of Public Law 104–65 (109 Stat. 700) added subsec. (h).

[32] Sec. 5 of the Lobbying Disclosure Technical Amendments Act of 1998 (Public Law 105–166; 112 Stat. 39) struck out "agent is required to register and does register" and inserted in lieu thereof "has engaged in lobbying activities and has registered".

[33] 22 U.S.C. 614. The Act of April 29, 1942 (56 Stat. 248, 254, and 255) amended and restated sec. 4.

[34] Sec. 9(4)(A) of Public Law 104–65 (109 Stat. 700) struck out "political propaganda" and inserted in lieu thereof "informational materials".

[35] The Act of July 4, 1966 (80 Stat. 244, 246) inserted "for or in the interests of such foreign principal".

[36] The Act of July 4, 1966 (80 Stat. 244, 246) struck out "sent to the Librarian of Congress two copies thereof and file with the Attorney General one copy thereof" and inserted in lieu thereof "file with the Attorney General two copies thereof". Subsequently, sec. 9(4)(B) of Public Law 104–65 (109 Stat. 700) struck out "and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal" after "thereof".

under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any informational materials[37] for or in the interests of such foreign principal without placing in such informational materials a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice, Washington, District of Columbia. The Attorney General may by rule define what constitutes a conspicuous statement for the purposes of this subsection.[38]

(c)[39] The copies of informational materials[40] required by this Act to be filed with the Attorney General shall be available for public inspection under such regulations as he may prescribe.

(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688),[41] and of all foreign prints excluded from the mails under authority of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230).[42]

Notwithstanding the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688),[41] and of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230),[42] the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

(e)[43] It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this Act to transmit, convey, or otherwise furnish

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[37] Sec. 9(5)(A) of Public Law 104–65 (109 Stat. 700) struck out "political propaganda" and inserted in lieu thereof "informational materials".

[38] Sec. 9(5)(B) of Public Law 104–65 (109 Stat. 700) struck out "(i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons, unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda; that the person transmitting such political propaganda or causing it to be transmitted is registered under this Act with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of such foreign principal; that, as required by this Act, his registration statement is available for inspection at and copies of such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the Act does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.", and inserted in lieu thereof the text to the end of the subsec., beginning at "without placing in such".

[39] The Act of July 4, 1966 (80 Stat. 244 at 247) amended and restated subsec. (c).

[40] Sec. 9(6) of Public Law 104–65 (109 Stat. 700) struck out "political propaganda" and inserted in lieu thereof "informational materials".

[41] 19 U.S.C. 1305.

[42] 18 U.S.C. 1717.

[43] The Act of July 4, 1966 (80 Stat. 244 at 247) added subsecs. (e) and (f).

to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interest of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this Act.

(f)[43] Whenever any agent of a foreign principal required to register under this Act appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony.

Sec. 5.[44] **Books and Records.**—Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, in accordance with such business and accounting practices,[45] as the Attorney General having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such status. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

Sec. 6.[46] **Public Examination of Official Record.**—(a) The Attorney General shall retain in permanent form one copy of all registration statements[47] furnished until this Act, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statements of any agent of a foreign principal whose activities have

[44] 22 U.S.C. 615. The Act of April 29, 1942 (56 Stat. 248) amended and restated sec. 5.

[45] Public Law 89–486 (80 Stat. 244) inserted "in accordance with such business and accounting practices".

[46] 22 U.S.C. 616. The Act of April 29, 1942 (56 Stat. 248) amended and restated subsec. (a).

[47] Sec. 9(7)(A) of Public Law 104–65 (109 Stat. 700) struck out "and all statements concerning the distribution of political propaganda" after "all registration statements".

ceased to be of a character which requires registration under the provisions of this Act.

(b)[48] The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto[49] filed hereunder to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act.

(c)[48] The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this Act, including the names of registrants under this Act, copies of registration statements, or parts thereof,[50] or other documents or information filed under this Act, as may be appropriate in the light of the purposes of this Act.

Sec. 7.[51] **Liability of Officers.**—Each officer, or person performing the functions of an officer, and each director or person performing the functions of a director, of an agent of a foreign principal which is not an individual shall be under obligation to cause such agent to execute and file a registration statement and supplements thereto as and when such filing is required under sections 2(a) and 2(b) hereof and shall also be under obligation to cause such agent to comply with all the requirements of sections 4(a), 4(b), and 5 and all other requirements of this Act. Dissolution of any organization acting as an agent of a foreign principal shall not relieve any officer, or person performing the functions of an officer, or any director, or person performing the functions of a director, from complying with the provisions of this section. In case of failure of any such agent of a foreign principal to comply with any of the requirements of this Act, each of its officers, or persons performing the functions of officers, and each of its directors, or persons performing the functions of directors, shall be subject to prosecution therefor.

Sec. 8.[52] **Enforcement and Penalties.**—(a) Any person who—

(1) willfully violates any provisions of this Act or any regulations thereunder, or

(2) in any registration statement or supplement thereto[53] or in any other documents filed with or furnished to the Attorney General under the provisions of this Act willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith

[48] Public Law 89–486 (80 Stat. 244) added subsecs. (b) and (c).

[49] Sec. 9(7)(B) of Public Law 104–65 (109 Stat. 700) struck out ", and one copy of every item of political propaganda" after "supplement thereto".

[50] Sec. 9(7)(C) of Public Law 104–65 (109 Stat. 700) struck out "copies of political propaganda," after "or parts thereof,".

[51] 22 U.S.C. 617. The Act of April 29, 1942 (56 Stat. 248) amended and restated sec. 7. Subsequently, sec. 2 of Public Law 81–642 (64 Stat. 400) further amended and restated sec. 7.

[52] 22 U.S.C. 618. The Act of April 29, 1942 (56 Stat. 248) added sec. 8.

[53] Sec. 9(8)(A) of Public Law 104–65 (109 Stat. 700) struck out "or in any statement under section 4(a) hereof concerning the distribution of political propaganda" after "supplement thereto".

not misleading, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, except that in case of a violation of subsection (b), (e), or (f) section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than $5,000 or imprisonment for not more than six months, or both.[54]

(b) In any proceeding under this Act in which it is charged that a person is an agent of a foreign principal with respect to a foreign principal outside of the United States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

(c)[55] Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provisions of this Act or any regulation thereunder shall be subject to removal pursuant to chapter 4 of title II of the Immigration and Nationality Act.[56]

(d)[57] * * * [Repealed—1995]

(e)[58] Failure to file any such registration statement or supplements thereto as is required by either section 2(a) or section 2(b) shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

(f)[59] Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this Act or the regulations issued thereunder, or otherwise is in violation of the Act, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper.[60]

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[54] Sec. 7(1) of Public Law 89–486 (80 Stat. 248) inserted "except that in case of a violation of subsection (b), (e), or (f) section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than $5,000 or imprisonment for not more than six months, or both".

[55] Sec. 402(d) of the Immigration and Nationality Act of 1952 (66 Stat. 276) amended and restated subsec. (c).

[56] Sec. 308(e)(19) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of title II of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997; Public Law 104–208; 110 Stat. 3009) struck out "deportation in the manner provided by sections 241–243 of the Immigration and Nationality Act of 1952 (66 Stat. 204)." and inserted in lieu thereof "removal pursuant to chapter 4 of title II of the Immigration and Nationality Act.".

[57] Sec. 9(8)(B) of Public Law 104–65 (109 Stat. 700) struck out subsec. (d), which had previously read as follows:

"(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 1(j) hereof in the form of prints or in any other form reasonably adapted to, or reasonably appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited diplomatic representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.".

[58] The Act of September 23, 1950 (64 Stat. 1005) added subsec. (e).

[59] The Act of July 4, 1966 (80 Stat. 244, 248) added subsecs. (f) through (h).

[60] Sec. 402(26) of Public Law 98–620 (98 Stat. 3359) deleted "The proceedings shall be made a preferred cause and shall be expedited in every way." which previously appeared at this point.

(g)[59] If the Attorney General determines that a registration statement does not comply with the requirements of this Act or the regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full compliance with the requirements of this Act and the regulations issued thereunder.

(h)[59] It shall be unlawful for any agent of a foreign principal required to register under this Act to be a party to any contract, agreement, or understanding, either expressed or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent.

Sec. 9.[61] **Applicability of Act.**—This Act shall be applicable in the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.[62]

Sec. 10.[63, 64] **Rules and Regulations.**—The Attorney General may at any time make, prescribe, amend, and rescind such rules, regulations, and forms as he may deem necessary to carry out the provisions of this Act.

Sec. 11.[63, 65] **Reports to the Congress.**—The Attorney General shall every six months report to the Congress concerning administration of this Act, including registrations filed pursuant to the Act, and the nature, sources and content of political propaganda disseminated and distributed.

Sec. 12.[63, 66] **Separability of Provisions.**—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 13.[63, 66] This Act is in addition to and not in substitution for any other existing statute.

Sec. 14.[63, 66] **Short Title.**—The Act may be cited as the "Foreign Agents Registration Act of 1938, as amended".

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[61] 22 U.S.C. 619. The Act of April 29, 1942 (56 Stat. 257) added sec. 9.

[62] Pursuant to Proclamation No. 2695 (11 F.R. 7517; 60 Stat. 1352), granting independence to the Philippines, the words "including the Philippine Islands" were deleted from the definition of the United States.

[63] The Act of April 29, 1942 (56 Stat. 257) added secs. 10 through 14.

[64] 22 U.S.C. 620.

[65] 22 U.S.C. 621. Sec. 19 of Public Law 104–65 (109 Stat. 704) amended and restated sec. 11. Sec. 1(20) of Public Law 106–197 (114 Stat. 246) provided that sec. 3003(a) of the Federal Reports Elimination and Sunset Act of 1995 would not apply to this reporting requirement.

[66] 22 U.S.C. 611 note.

b. U.S. Public Officials and Employees Acting as Agents of Foreign Principals

Sec. 219 of title 18, United States Code, as added by Public Law 89–486 [S. 693], 80 Stat. 248, approved July 4, 1966; and amended by Public Law 98–473 [H.J. Res. 648], 98 Stat. 2149, approved October 12, 1984; Public Law 99–646 [S. 1236], 100 Stat. 3598, approved November 10, 1986; Public Law 101–647 [S. 3266], 104 Stat. 4922, approved November 29, 1990; and Public Law 104–65 [Lobbying Disclosure Act of 1995; S. 1060], 109 Stat. 691, approved December 19, 1995

§ 219. Officers and employees acting as agents of foreign principals

(a)[1] Whoever, being a public official,[2] is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act[3] shall be fined under this title or imprisoned for not more than two years, or both.

(b)[1] Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that

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[1] Sec. 30 of Public Law 99–646 (100 Stat. 3598) redesignated the first two paras. of sec. 219 as subsecs. (b) and (c), and added a new subsec. (a).

Sec. 8(a) of Public Law 89–486 added a new sec. 613 to ch. 20 of title 18, U.S.C., concerning contributions by foreign nationals. However, sec. 201(a) of the Federal Election Campaign Act (Public Law 94–283; 90 Stat. 496) repealed sec. 613. Public Law 94–283 further added a new sec. 324 (2 U.S.C. 441e), subsequently redesignated as sec. 319, to the Federal Election Campaign Act of 1971 which became the new law regarding contributions of foreign nationals. The text of sec. 319 is as follows:

"CONTRIBUTIONS AND DONATIONS BY FOREIGN NATIONALS

"SEC. 319. (a) PROHIBITION.—It shall be unlawful for—

"(1) a foreign national, directly or indirectly, to make—

"(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

"(B) a contribution or donation to a committee of a political party; or

"(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 434(f)(3) of this title); or

"(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.

"(b) 'FOREIGN NATIONAL' DEFINED.—As used in this section, the term 'foreign national' means—

"(1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term 'foreign national' shall not include any individual who is a citizen of the United States; or

"(2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a) (20) of title 8.".

[2] Sec. 1116 of Public Law 98–473 (98 Stat. 2149) struck out "an officer or employee" and inserted in lieu thereof "a public official".

[3] Sec. 12(b)(1) of Public Law 104–65 (109 Stat. 701) inserted "or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act".

Sec. 12(b)(2) of Public Law 104–65 (109 Stat. 701) struck out ", as amended," after the newly added language.

such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(c)[1, 4] For the purpose of this section "public official" means Member of Congress, Delegate,[5] or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government[6] thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

[4] Sec. 1116(2) of Public Law 98–473 (98 Stat. 2149) added subsec. (c), as redesignated.

[5] Sec. 30 of Public Law 99–646 (100 Stat. 3598) struck out "the Delegate from the District of Columbia" and inserted in lieu thereof "Delegate", and struck out ", or a juror".

[6] Sec. 3511 of Public Law 101–647 (104 Stat. 4922) struck out "Governments" and inserted in lieu thereof "Government".

c. Agents of Foreign Governments

Title 18, United States Code[1]

§ 951. Agents of foreign governments

(a) Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be fined under this title[2] or imprisoned not more than ten years, or both.

(b) The Attorney General shall promulgate rules and regulations establishing requirements for notification.

(c) The Attorney General shall, upon receipt, promptly transmit one copy of each notification statement filed under this section to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this section.

(d) For purposes of this section, the term "agent of a foreign government" means an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include—

(1) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

(2) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

(3) any officially and publicly acknowledged and sponsored member of the staff of, or employer of, an officer, official, or representative described in paragraph (1) or (2), who is not a United States citizen; or

(4) any person engaged in a legal commercial transaction.

(e)[3] Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—

(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

(2) such person—

(A) is an agent of Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the

[1] Sec. 951 was enacted as part of Public Law 80–772 (62 Stat. 743).

[2] Sec. 330016(1)(R) of Public Law 103–322 (108 Stat. 2148) struck out "not more than $75,000" and inserted in lieu thereof "under this title".

[3] Sec. 703 of Public Law 99–569 (100 Stat. 3205) added subsec. (e).

United States for purposes of this section,[4] unless the Attorney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11[5] of the Export Administration Act of 1979, except that the provisions of the subsection shall not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere, as the case may be.

[4] Sec. 202 of Public Law 103–199 (107 Stat. 2321) struck out "the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania, or Cuba" and inserted in lieu thereof "Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the United States for purposes of this section".

[5] 50 U.S.C. app. 2410.

6. Neutrality Act and Related Material

a. Neutrality Act of 1939, as amended

Public Resolution 76–54 [H.J. Res. 306], 54 Stat. 4, approved November 4, 1939; as amended by Public Resolution 76–87 [S.J. Res. 279], 54 Stat. 611, approved June 26, 1940; Public Law 76–776 [H.R. 10213], 54 Stat. 866, approved August 27, 1940; Public Law 77–294 [H.J. Res. 237], 55 Stat. 764, approved November 17, 1941; Public Law 77–459 [S.J. Res. 133], 56 Stat. 95, approved February 21, 1942; Presidential Proclamation 2695, 11 F.R. 7517, 60 Stat. 1352, approved July 4, 1946; and Public Law 83–665 [Mutual Security Act of 1954; H.R. 9678], 68 Stat. 861, approved August 26, 1954

JOINT RESOLUTION To preserve the neutrality and the peace of the United States and to secure the safety of its citizens and their interests.

Whereas the United States, desiring to preserve its neutrality in wars between foreign states and desiring also to avoid involvement therein, voluntarily imposes upon its nationals by domestic legislation the restrictions set out in this joint resolution; and

Whereas by so doing the United States waives none of its own rights or privileges, or those of any of its nationals, under international law, and expressly reserves all the rights and privileges to which it and its nationals are entitled under the law of nations; and

Whereas the United States hereby expressly reserves the right to repeal, change or modify this joint resolution or any other domestic legislation in the interests of the peace, security or welfare of the United States and its people: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

PROCLAMATION OF A STATE OF WAR BETWEEN FOREIGN STATES

Section 1.[1] (a) That whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war.

(b) Whenever the state of war which shall have caused the President to issue any proclamation under the authority of this section shall have ceased to exist with respect to any state named in such proclamation, he shall revoke such proclamation with respect to such state.

Sec. 2.[2] * * * [Repealed—1941]

[1] 22 U.S.C. 441.

[2] Public Law 77–294 (55 Stat. 764) repealed sec. 2, which concerned commerce with states engaged in armed conflict.

Sec. 3.[3] * * * [Repealed—1941]

AMERICAN RED CROSS

Sec. 4.[4] (a) The provisions of section 2(a)[2] shall not prohibit the transportation by vessels, unarmed and not under convoy, under charter or other direction and control of the American Red Cross of officers and American Red Cross personnel, medical personnel, and medical supplies, food, and clothing, for the relief of human suffering: *Provided,* That where permission has not been given by the blockading power, no American Red Cross vessel shall enter a port where a blockade by aircraft, surface vessel, or submarine is being attempted through the destruction of vessels, or into a port of any country where such blockade of the whole country is being so attempted: *Provided further,* That such American Red Cross vessel shall be on a mission of mercy only and carrying only Red Cross materials and personnel.

(b)[5] The provisions of sections 2(a)[2] and 3[3] shall not prohibit a vessel, in ballast, unarmed, and not under convoy, and transporting refugee children, under sixteen years of age, from war zones, or combat areas, and shall not prohibit such vessel entering into such war zones or combat areas for this purpose, together with such necessary American citizen adult personnel in charge as may be approved by the Secretary of State, subject to the provisions of the immigration laws, if such vessel is proceeding under safe conduct granted by all of the states named in the proclamations issued under the authority of section 1(a), and if such vessel has painted on a large scale prominently, distinctly, and unmistakably on each side thereof and upon the superstructure thereof plainly visible from the air and American flag and a statement to the effect that such vessel is a refugee-child rescue ship of the United States or under United States registry: *Provided,* That every such child so brought into the United States shall, previous to departure from the port of embarkation, have been so sponsored by some responsible American person, natural or corporate, that he will not become a public charge.

TRAVEL ON VESSELS OF BELLIGERENT STATES

Sec. 5.[6] (a) Whenever the President shall have issued a proclamation under the authority of section 1(a) it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

(b) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

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[3] Public Law 77–294 (55 Stat. 764) repealed sec. 3, which related to combat areas.
[4] 22 U.S.C. 444. Public Resolution 76–87 (54 Stat. 611) amended and restated subsec. (a).
[5] Public Law 76–776 (54 Stat. 866) added subsec. (b).
[6] 22 U.S.C. 445.

Sec. 6.[7] * * * [Repealed—1941]

FINANCIAL TRANSACTIONS

Sec. 7.[8] (a) Whenever the President shall have issued a proclamation under the authority of section 441(a) of this title, it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any state for any person within the United States to purchase, sell, or exchange named in such proclamation, or of any political subdivision of any such state, or of any person acting for or on behalf of the government of any such state, or political subdivision thereof, issued after the date of such proclamation, or to make any loan or extend any credit (other than necessary credits accruing in connection with the transmission of telegraph, cable, wireless and telephone services) to any such government, political subdivision, or person. The provisions of this subsection shall also apply to the sale by any person within the United States to any person in a state named in any such proclamation of any articles or materials listed in a proclamation referred to in or issued under the authority of section 12(i).[9]

(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of such proclamation.

(c) Whoever shall knowingly violate any of the provisions of this section or of any regulations issued thereunder shall, upon conviction thereof, be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or director thereof participating in the violation shall be liable to the penalty herein prescribed.

(d) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

(e)[10] This section shall not be operative when the United States is at war.

SOLICITATION AND COLLECTION OF FUNDS AND CONTRIBUTIONS

Sec. 8.[11] (a) Whenever the President shall have issued a proclamation under the authority of section 1(a), it shall thereafter be unlawful for any person within the United States to solicit or receive any contribution for or on behalf of the government of any state named in such proclamation or for or on behalf of any agent or instrumentality of any such state.

(b) Nothing in this section shall be construed to prohibit the solicitation or collection of funds and contributions to be used for

[7] Public Law 77–294 (55 Stat. 764) repealed sec. 6, which prohibited the arming of American merchant vessels.
[8] 22 U.S.C. 447.
[9] Sec. 542(a)(12) of the Mutual Security Act of 1954 (Public Law 83–665; 68 Stat. 861) repealed sec. 12 of this Act.
[10] Public Law 77–459 (56 Stat. 95) added subsec. (e).
[11] 22 U.S.C. 448.

medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds and contributions is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, but all such solicitations and collections of funds and contributions shall be in accordance with and subject to such rules and regulations as may be prescribed.

(c) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

AMERICAN REPUBLICS

Sec. 9.[12] This joint resolution (except section 12) shall not apply to any American republic engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war.

RESTRICTIONS ON USE OF AMERICAN PORTS

Sec. 10.[13] (a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches or information to any warship, tender, or supply ship of a state named in the proclamation issued under the authority of section 1(a), but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U.S.C., 1934 edition, title 18, sec. 31),[14] and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign states or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power, and it shall be his duty, to require the owner, master, or person in command thereof, before departing from a port or from the jurisdiction of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any fuel, supplies, dispatches, information, or any part of the cargo to any warship, tender or supply ship of a state named in a proclamation issued under the authority of section 1(a).

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously departed from a port or from the jurisdiction of the United States during such war and delivered men, fuel, supplies, dispatches, information, or any part of its cargo to a warship, tender, or supply ship of a state named in a proclamation issued

[12] 22 U.S.C. 449.
[13] 22 U.S.C. 550.
[14] The Act of June 25, 1948 (63 Stat. 862) repealed 18 U.S.C. 31.

under the authority of section 1(a), he may prohibit the departure of such vessel during the duration of the war.

(c) Whenever the President shall have issued a proclamation under section 1(a) he may, while such proclamation is in effect, require the owner, master, or person in command of any vessel, foreign or domestic, before departing from the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that no alien seaman who arrived on such vessel shall remain in the United States for a longer period than that permitted under the regulations, as amended from time to time, issued pursuant to section 33 of the Immigration Act of February 5, 1917 (U.S.C., title 8, sec. 168).[15] Notwithstanding the provisions of said section 33, the President may issue such regulations with respect to the landing of such seamen as he deems necessary to insure their departure either on such vessel or another vessel at the expense of such owner, master, or person in command.

SUBMARINES AND ARMED MERCHANT VESSELS

Sec. 11.[16] Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation.

Sec. 12.[17] * * * [Repealed—1954]

REGULATIONS

Sec. 13.[18] The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct.

[15] The Act of June 27, 1952 (66 Stat. 279) repealed 8 U.S.C. 168.
[16] 22 U.S.C. 451.
[17] Sec. 542(a)(12) of the Mutual Security Act of 1954 (Public Law 83–665; 68 Stat. 861) repealed sec. 12, which established the National Munitions Control Board.
[18] 22 U.S.C. 453.

UNLAWFUL USE OF THE AMERICAN FLAG

Sec. 14.[19] (a) It shall be unlawful for any vessel belonging to or operating under the jurisdiction of any foreign state to use the flag of the United States thereon, or to make use of any distinctive signs or marking, indicating that the same is an American vessel.

(b) Any vessel violating the provisions of subsection (a) of this section shall be denied for a period of three months the right to enter the ports or territorial waters of the United States except in cases of force majeure.

GENERAL PENALTY PROVISION

Sec. 15.[20] In every case of the violation of any of the provisions of this joint resolution or of any rule or regulation issued pursuant thereto where a specific penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more than $10,000, or imprisoned not more than two years, or both.

DEFINITIONS

Sec. 16.[21] For the purposes of this joint resolution—

(a) The term "United States", when used in a geographical sense, includes the several States and Territories, the insular possessions of the United States,[22] the Canal Zone, and the District of Columbia.

(b) The term "person" includes a partnership, company, association, or corporation, as well as a natural person.

(c) The term "vessel" means every description of watercraft and aircraft capable of being used as a means of transportation on, under, or over water.

(d) The term "American vessel" means any vessel documented, and any aircraft registered or licensed, under the laws of the United States.

(e) The term "state" shall include nation, government, and country.

(f) The term "citizen" shall include any individual owing allegiance to the United States, a partnership, company, or association composed in whole or in part of citizens of the United States, and any corporation organized and existing under the laws of the United States as defined in subsection (a) of this section.

SEPARABILITY OF PROVISIONS

Sec. 17. If any of the provisions of this joint resolution, or the application thereof to any person or circumstance, is held invalid, the remainder of the joint resolution, and the application of such provision to other persons or circumstances, shall not be affected thereby.

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[19] 22 U.S.C. 454.
[20] 22 U.S.C. 455.
[21] 22 U.S.C. 456.
[22] Pursuant to the authority of Presidential Proclamation 2695, July 4, 1946 (11 F.R. 7517; 60 Stat. 1352), the words "(including the Philippine Islands)" were struck out at this point.

APPROPRIATIONS

Sec. 18.[23] There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this joint resolution.

REPEALS

Sec. 19. The joint resolution of August 31, 1935, as amended, and the joint resolution of January 8, 1937, are hereby repealed; but offenses committed and penalties, forfeitures, or liabilities incurred under either of such joint resolutions prior to the date of enactment of this joint resolution may be prosecuted and punished, and suits and proceedings for violations of either of such joint resolutions or of any rule or regulation issued pursuant thereto may be commenced and prosecuted, in the same manner and with the same effect as if such joint resolutions had not been repealed.

SHORT TITLE

Sec. 20. This joint resolution may be cited as the "Neutrality Act of 1939".

[23] 22 U.S.C. 457.

b. Enlistment in Foreign Service

Title 18, United States Code[1]

§ 959. Enlistment in foreign service

(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined under this title[2] or imprisoned not more than three years, or both.

(b) This section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this subsection shall be under regulations prescribed by the Secretary of the Army.

(c) This section and sections 960 and 961 of this title shall not apply to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

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[1] Sec. 959 was enacted as part of Public Law 80–772 (62 Stat. 745).

[2] Sec. 330016(1)(H) of Public Law 103–322 (108 Stat. 2147) struck out "not more than $1,000" and inserted in lieu thereof "under this title".

c. Expedition Against Friendly Nation—Arming Vessel Against Friendly Nation

Title 18, United States Code[1]

§ 960. Expedition against friendly nation

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined under this title[2] or imprisoned not more than three years, or both.

* * * * * * *

§ 962. Arming vessel against friendly nation

Whoever, within the United States, furnishes, fits out, arms, or attempts to furnish, fit out or arm, any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; or

Whoever issues or delivers a commission within the United States for any vessel, to the intent that she may be so employed—

Shall be fined under this title[3] or imprisoned not more than three years, or both.

Every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of the informer and the other half to the use of the United States.

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[1] Secs. 960 and 962 were enacted as part of Public Law 80–772 (62 Stat. 745).

[2] Sec. 330016(1)(J) of Public Law 103–322 (108 Stat. 2147) struck out "not more than $3,000" and inserted in lieu thereof "under this title".

[3] Sec. 330016(1)(L) of Public Law 103–322 (108 Stat. 2147) struck out "fined not more than 10,000" and inserted in lieu thereof "fined under this title".

d. Strengthening Armed Vessel of Foreign Nation

Title 18, United States Code[1]

§ 961. Strengthening armed vessel of foreign nation

Whoever, within the United States, increases or augments the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States is at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined under this title[2] or imprisoned not more than one year, or both.

[1] Sec. 961 was enacted as part of Public Law 80–772 (62 Stat. 745).

[2] Sec. 330016(1)(H) of Public Law 103–322 (108 Stat. 2147) struck out "fined not more than 1,000" and inserted in lieu thereof "fined under this title".

7. National Security Act of 1947

Partial text of Public Law 80–253 [S. 758], 61 Stat. 495, approved July 26, 1947; as amended by Public Law 81–216, 63 Stat. 578, approved August 10, 1949; Public Law 82–165, 65 Stat. 373, approved October 10, 1951; Public Law 99–169 [Intelligence Authorization Act for Fiscal Year 1986; H.R. 2419], 99 Stat. 1002, approved December 4, 1985; Public Law 99–433, [Department of Defense Reorganization Act of 1986; H.R. 3622], 100 Stat. 992, approved October 1, 1986; Public Law 99–500 [Continuing Appropriations for Fiscal Year 1987; H.J. Res. 738], 100 Stat. 1783, approved October 18, 1986; Public Law 99–569 [Intelligence Authorization Act for Fiscal Year 1987; H.R. 4759], 100 Stat. 3190, approved October 27, 1986; Public Law 100–690 [H.R. 5210], 102 Stat. 4181 at 4182, approved November 18, 1988; Public Law 102–88 [Intelligence Authorization Act, Fiscal Year 1991; H.R. 1455], approved August 14, 1991; Public Law 102–496 [Intelligence Authorization Act for Fiscal Year 1993; H.R. 5095], 106 Stat. 3180, approved October 24, 1992; Public Law 103–160 [National Defense Authorization Act for Fiscal Year 1994; H.R. 2410], 107 Stat. 1715, approved November 30, 1993; Public Law 103–178 [Intelligence Authorization Act for Fiscal Year 1994; H.R. 2330], 107 Stat. 2024, approved December 3, 1993; Public Law 103–359 [Intelligence Authorization Act for Fiscal Year 1995; H.R. 4299], 108 Stat. 3423, approved October 14, 1994; Public Law 104–201 [National Defense Authorization Act for Fiscal Year 1997; H.R. 3230], 110 Stat. 2422, approved September 23, 1996; Public Law 104–293 [Intelligence Authorization Act for Fiscal Year 1997; H.R. 3259], 110 Stat. 3461, approved October 11, 1996; Public Law 105–107 [Intelligence Authorization Act for Fiscal Year 1998; S. 858], 111 Stat. 2248, approved November 20, 1997; Public Law 105–292 [International Religious Freedom Act of 1998; H.R. 2431], 112 Stat. 2787, approved October 27, 1998; Public Law 106–65 [National Defense Authorization Act for Fiscal Year 2000; S. 1059], 113 Stat. 512, approved October 5, 1999; Public Law 106–120 [Intelligence Authorization Act for Fiscal Year 2000; H.R. 1555], 113 Stat. 1606, approved December 3, 1999; Public Law 106–567 [Intelligence Authorization Act for Fiscal Year 2001; H.R. 5630], 114 Stat. 2831, approved December 27, 2000; Public Law 107–56 [Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001; H.R. 3162], 115 Stat. 272, approved October 26, 2001; Public Law 107–108 [Intelligence Authorization Act for Fiscal Year 2002; H.R. 2883], 115 Stat. 1394, approved December 28, 2001; Public Law 107–296 [Homeland Security Act of 2002; H.R. 5005], 116 Stat. 2149, approved November 25, 2002; Public Law 107–306 [Intelligence Authorization Act for Fiscal Year 2003; H.R. 4628], 116 Stat. 2383, approved November 27, 2002; Public Law 108–136 [National Defense Authorization Act for Fiscal Year 2004; H.R. 1588], 117 Stat. 1392, approved November 24, 2003; Public Law 108–177 [Intelligence Authorization Act for Fiscal Year 2004; H.R. 2417], 117 Stat. 2599, approved December 13, 2003; and Public Law 108–458 [Intelligence Reform and Terrorism Prevention Act of 2004; S. 2845], 118 Stat. 3638, approved December 17, 2004

AN ACT To promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

SHORT TITLE

That this Act may be cited as the "National Security Act of 1947".

CONGRESSIONAL DECLARATION OF PURPOSE

Sec. 2.[1] In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

DEFINITIONS

SEC. 3.[2] As used in this Act—

(1) The term "intelligence" includes foreign intelligence and counterintelligence.

(2) The term 'foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.[3]

(3) The term "counterintelligence" means information gathered, and activities conducted,[4] to protect against espionage, other intelligence activities, sabotage, or assassinations conduct by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

[1] 50 U.S.C. 401. Sec. 412 of the Act of August 10, 1949 (63 Stat. 579) amended and restated sec. 2. Sec. 2 of Public Law 85–599 (72 Stat. 514) further amended and restated sec. 2.

[2] 50 U.S.C. 401a. Added by sec. 702 of Public Law 102–496 (106 Stat. 3188).

[3] Sec. 902(1) of Public Law 107–56 (115 Stat. 387) added ", or international terrorist activities".

[4] Sec. 902(2) of Public Law 107–56 (115 Stat. 387) struck out "and activities conducted" and inserted in lieu thereof ", and activities conducted,".

(4)[5] The term "intelligence community" includes the following:

(A) The Office of the Director of National Intelligence.

(B) The Central Intelligence Agency.

(C) The National Security Agency.

(D) The Defense Intelligence Agency.

(E) The National Geospatial-Intelligence Agency.

(F) The National Reconnaissance Office.

(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

(I) The Bureau of Intelligence and Research of the Department of State.

(J) The Office of Intelligence and Analysis of the Department of the Treasury.

(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

(L) Such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(5)[6] The terms "national intelligence" and "intelligence related to national security" refer to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that—

(A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and

(B) that involves—

(i) threats to the United States, its people, property, or interests;

(ii) the development, proliferation, or use of weapons of mass destruction; or

(iii) any other matter bearing on United States national or homeland security.

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[5] Sec. 1073 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3693) amended and restated para. (4). Previously, para. (4) was amended by sec. 501(a)(1) of Public Law 103–359 (108 Stat. 3428), sec. 1122(b)(1) of Public Law 104–201 (110 Stat. 2687), sec. 105 of Public Law 107–108 (115 Stat. 1397), sec. 921(e)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1569), and sec. 105(d)(1) of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2603).

[6] Sec. 1012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3662) amended and restated para. (5). It previously read as follows:

"(5) The terms 'national intelligence' and 'intelligence related to the national security'—

"(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

"(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title."

(6) The term "National[7] Intelligence Program" refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department of agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

(7)[8] The term "congressional intelligence committees" means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

Sec. 101.[9] (a) ESTABLISHMENT; PRESIDING OFFICER; FUNCTIONS; COMPOSITION

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided,* That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

(1) the President;

(2) the Vice-President;[10]

(3) the Secretary of State;

(4) the Secretary of Defense;

(5) the Director for Mutual Security;[11]

(6) the Chairman of the National Security Resources Board;[11] and

[7] Sec. 1074(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3693) struck out "Foreign" that previously appeared at this point.

[8] Sec. 353(a) of Public Law 107–306 (116 Stat. 2401) added para. (7).

[9] 50 U.S.C. 402.

[10] The National Security Act Amendments of 1949 (Public Law 81–216; 63 Stat. 578) made the Vice President a member of the Council.

[11] The Mutual Security Act of 1951 (Public Law 82–165; 65 Stat. 373) made the Director for Mutual Security a member of the Council. The Chairman of the National Security Resources Board was a member under the original Act. Both positions and their function with respect to being a member of the National Security Council were abolished in 1953.

(7) the Secretaries and Under Secretaries of other executive departments and of the military departments,[12] the Chairman of the Munitions Board and the Chairman of the Research and Development Board,[13] when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) ADDITIONAL FUNCTIONS.

In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) EXECUTIVE SECRETARY; APPOINTMENT AND COMPENSATION: STAFF EMPLOYEES

The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized, subject to the civil-service laws and Chapter 51 and subchapter III of chapter 53 of Title 5, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) RECOMMENDATIONS AND REPORTS

The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

(e)[14] The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(f)[15] The Director of National Drug Control Policy may, in the role of the Director as principal adviser to the National Security Council on national drug control policy, and subject to the direction

[12] The Secretaries of the Army, Navy and Air Force were members under the 1947 Act. The National Security Act Amendments of 1949 (Public Law 81–216; 63 Stat. 578) abolished their memberships.

[13] Sec. 2 of Reorganization Plan No. 6 of 1953 (5 U.S.C. App; 67 Stat. 638) abolished the Munitions Board and the Research and Development Board, together with their respective offices of the Chairman. All functions of each board were transferred to the Secretary of Defense.

[14] Sec. 203 of the DOD Reorganization Act of 1986 (Public Law 99–433; 100 Stat. 1011) added subsec. (e).

[15] Sec. 1003 of the Anti-Drug Abuse Act of 1988 (Public Law 100–690; 102 Stat. 4182) added subsec. (f). Sec. 1009 of Public Law 100–690 (102 Stat. 4188), however, provided that this amendment would be repealed automatically 5 years after the date of enactment, or 1993. Sec. 713(b) of Public Law 105–277 (112 Stat. 2681–693) redesignated subsec. (f) as subsec. (g), and added a new subsec. (f).

of the President, attend and participate in meetings of the National Security Council.

(g)[16] The President shall establish within the National Security Council a board to be known as the "Board for Low Intensity Conflict". The principal function of the board shall be to coordinate the policies of the United States for low intensity conflict.

(h)[17] (1) There is established within the National Security Council a committee to be known as the Committee on Foreign Intelligence (in this subsection referred to as the "Committee").

(2) The Committee shall be composed of the following:

(A) The Director of National Intelligence.[18]

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(E) Such other members as the President may designate.

(3) The function of the Committee shall be to assist the Council in its activities by—

(A) identifying the intelligence required to address the national security interests of the United States as specified by the President;

(B) establishing priorities (including funding priorities) among the programs, projects, and activities that address such interests and requirements; and

(C) establishing policies relating to the conduct of intelligence activities of the United States, including appropriate roles and missions for the elements of the intelligence community and appropriate targets of intelligence collection activities.

(4) In carrying out its function, the Committee shall—

(A) conduct an annual review of the national security interests of the United States;

(B) identify on an annual basis, and at such other times as the Council may require, the intelligence required to meet such interests and establish an order of priority for the collection and analysis of such intelligence; and

(C) conduct an annual review of the elements of the intelligence community in order to determine the success of such elements in collecting, analyzing, and disseminating the intelligence identified under subparagraph (B).

(5) The Committee shall submit each year to the Council and to the Director of National Intelligence[18] a comprehensive report on its activities during the preceding year, including its activities under paragraphs (3) and (4).

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[16] Originally added as subsec. (f) by Public Law 99–500 (100 Stat. 1783–82) (see also Public Law 99–591 at 100 Stat. 3341–82, and Public Law 99–661 at 100 Stat. 3986); redesignated as subsec. (g) by sec. 1003(a)(3) of Public Law 100–690 (102 Stat. 4182), effective January 21, 1989.

[17] Sec. 801(2) of Public Law 104–293 (110 Stat. 3474) added subsec. (h).

[18] Sec. 1071(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3693) struck out "Director of Central Intelligence" and inserted in lieu thereof "Director of National Intelligence".

(i)[19] (1) There is established within the National Security Council a committee to be known as the Committee on Transnational Threats (in this subsection referred to as the "Committee").

(2) The Committee shall include the following members:

(A) The Director of National Intelligence.[18]

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Attorney General.

(E) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(F) Such other members as the President may designate.

(3) The function of the Committee shall be to coordinate and direct the activities of the United States Government relating to combatting transnational threats.

(4) In carrying out its function, the Committee shall—

(A) identify transnational threats;

(B) develop strategies to enable the United States Government to respond to transnational threats identified under subparagraph (A);

(C) monitor implementation of such strategies;

(D) make recommendations as to appropriate responses to specific transnational threats;

(E) assist in the resolution of operational and policy differences among Federal departments and agencies in their responses to transnational threats;

(F) develop policies and procedures to ensure the effective sharing of information about transnational threats among Federal departments and agencies, including law enforcement agencies and the elements of the intelligence community; and

(G) develop guidelines to enhance and improve the coordination of activities of Federal law enforcement agencies and elements of the intelligence community outside the United States with respect to transnational threats.

(5) For purposes of this subsection, the term "transnational threat" means the following:

(A) Any transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and the delivery systems for such weapons, and organized crime) that threatens the national security of the United States.

(B) Any individual or group that engages in an activity referred to in subparagraph (A).

(j)[20] The Director of National Intelligence[18] (or, in the Director's absence, the Principal Deputy Director of National Intelligence)[21] may, in the performance of the Director's duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

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[19] Sec. 804 of Public Law 104–293 (110 Stat. 3476) added subsec. (i).

[20] Sec. 703 of Public Law 102–496 (106 Stat. 3189) added subsec. (h), redesignated as subsec. (j) by sec. 802(1) of Public Law 104–293 (110 Stat. 3474).

[21] Sec. 1072(a)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3693) struck out "Deputy Director of Central Intelligence" and inserted in lieu thereof "Principal Deputy Director of National Intelligence".

(i)[22] It is the sense of the Congress that there should be within the staff of the National Security Council a Special Adviser to the President on International Religious Freedom, whose position should be comparable to that of a director within the Executive Office of the President. The Special Adviser should serve as a resource for executive branch officials, compiling and maintaining information on the facts and circumstances of violations of religious freedom (as defined in section 3 of the International Religious Freedom Act of 1998), and making policy recommendations. The Special Adviser should serve as liaison with the Ambassador at Large for International Religious Freedom, the United States Commission on International Religious Freedom, Congress and, as advisable, religious nongovernmental organizations.

SEC. 101A.[23] (a) JOINT INTELLIGENCE COMMUNITY COUNCIL.—There is a Joint Intelligence Community Council.

(b) MEMBERSHIP.—The Joint Intelligence Community Council shall consist of the following:

(1) The Director of National Intelligence, who shall chair the Council.

(2) The Secretary of State.

(3) The Secretary of the Treasury.

(4) The Secretary of Defense.

(5) The Attorney General.

(6) The Secretary of Energy.

(7) The Secretary of Homeland Security.

(8) Such other officers of the United States Government as the President may designate from time to time.

(c) FUNCTIONS.—The Joint Intelligence Community Council shall assist the Director of National Intelligence in developing and implementing a joint, unified national intelligence effort to protect national security by—

(1) advising the Director on establishing requirements, developing budgets, financial management, and monitoring and evaluating the performance of the intelligence community, and on such other matters as the Director may request; and

(2) ensuring the timely execution of programs, policies, and directives established or developed by the Director.

(d) MEETINGS.—The Director of National Intelligence shall convene regular meetings of the Joint Intelligence Community Council.

(e) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Intelligence Community Council (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Director of National Intelligence to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman

[22] Should be designated as subsec. (k). Sec. 301 of Public Law 105–292 (112 Stat. 2800) added it as subsec. (i).

[23] 50 U.S.C. 402–1. Sec. 1031 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3677) added sec. 101A.

to the President or the National Security Council, as the case may be.

(2) The Chairman shall establish procedures to ensure that the presentation of the advice of the Chairman to the President or the National Security Council is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Council.

(f) RECOMMENDATIONS TO CONGRESS.—Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence community as such member considers appropriate.

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ANNUAL NATIONAL SECURITY STRATEGY REPORT

Sec. 108.[24] (a)(1) The President shall transmit to Congress each year a comprehensive report on the national security strategy of the United States (hereinafter in this section referred to as a "national security strategy report").

(2) The national security strategy report for any year shall be transmitted on the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31, United States Code.

(3)[25] Not later than 150 days after the date on which a new President takes office, the President shall transmit to congress a national security strategy report under this section. That report shall be in addition to the report for that year transmitted at the time specified in paragraph (2).

(b) Each national security strategy report shall set forth the national security strategy of the United States and shall include a comprehensive description and discussion of the following:

(1) The worldwide interests, goals, and objectives of the United States that are vital to the national security of the United States.

(2) The foreign policy, worldwide commitments, and national defense capabilities of the United States necessary to deter aggression and to implement the national security strategy of the United States.

(3) The proposed short-term and long-term uses of the political, economic, military, and other elements of the national power of the United States to protect or promote the interests and achieve the goals and objectives referred to in paragraph (1).

(4) The adequacy of the capabilities of the United States to carry out the national security strategy of the United States, including an evaluation of the balance among the capabilities of all elements of the national power of the United States to support the implementation of the national security strategy.

[24] 50 U.S.C. 404a. Sec. 603 of Public Law 99–433 (100 Stat. 1074) added sec. 108, originally as sec. 104. Sec. 705(a)(2) of Public Law 102–496 (106 Stat. 3190) redesignated sec. 104 as sec. 108.

[25] Sec. 901(b) of Public Law 106–65 (113 Stat. 717) added para. (3).

(5) Such other information as may be necessary to help inform Congress on matters relating to the national security strategy of the United States.

(c) Each national security strategy report shall be transmitted in both a classified and an unclassified form.

ANNUAL REPORT ON INTELLIGENCE [26]

SEC. 109.[27] (a) IN GENERAL.—(1)[28] (A) Not later each year than the date provided in section 507, the President shall submit to the congressional intelligence committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

(B) Not later than January 31 each year, and included with the budget of the President for the next fiscal year under section 1105(a) of title 31 United States Code, the President shall submit to the appropriate congressional committees the report described in subparagraph (A).

(2) The purpose of the report is to facilitate an assessment of the activities of the intelligence community during the preceding fiscal year and to assist in the development of a mission and a budget for the intelligence community for the fiscal year beginning in the year in which the report is submitted.

(3) The report shall be submitted in unclassified form, but may include a classified annex.

(b)[27] MATTERS COVERED.—(1) Each report under subsection (a) shall—

(A) specify the intelligence required to meet the national security interests of the United States, and set forth an order of priority for the collection and analysis of intelligence required to meet such interests, for the fiscal year beginning in the year in which the report is submitted; and

(B) evaluate the performance of the intelligence community in collecting and analyzing intelligence required to meet such interests during the fiscal year ending in the year preceding the year in which the report is submitted, including a description of the significant successes and significant failures of the intelligence community in such collection and analysis during that fiscal year.

(2) The report shall specify matters under paragraph (1)(A) in sufficient detail to assist Congress in making decisions with respect to the allocation of resources for the matters specified.

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[26] Sec. 803(b) of Public Law 104–293 (110 Stat. 3476) struck out "COMMUNITY ACTIVITIES" following "INTELLIGENCE" in the section catchline.

[27] 50 U.S.C. 404d. Sec. 304(a) of the Intelligence Authorization Act for Fiscal Year 1994 (Public Law 103–178; 107 Stat. 2034) added sec. 109. Sec. 803(a) of Public Law 104–293 (110 Stat. 3475) amended and restated subsecs. (a) and (b), and added a new subsec. (c) relating to definitions, resulting in two subsecs. (c). Subsequently, sec. 811(b) of Public Law 107–306 (116 Stat. 2422) struck out the second subsec. (c), which had read as follow:

"(c) TIME FOR SUBMISSION.—The report under this section for any year shall be submitted at the same time that the President submits the budget for the next fiscal year pursuant to section 1105 of title 31, United States Code.".

[28] Sec. 811(b) of Public Law 107–306 (116 Stat. 2422) amended and restated para. (1). It formerly read as follows:

"(1) Not later than January 31 each year, the President shall submit to the appropriate congressional committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.".

(c)[27] DEFINITION.—In this section, the term "appropriate congressional committees" means the following:

(1) The Committee on Appropriations[29] and the Committee on Armed Services of the Senate.

(2) The Committee on Appropriations[30] and the Committee on Armed Services[31] of the House of Representatives.

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RESTRICTIONS ON INTELLIGENCE SHARING WITH THE UNITED NATIONS

SEC. 112.[32] (a) PROVISION OF INTELLIGENCE INFORMATION TO THE UNITED NATIONS.—(1) No United States intelligence information may be provided to the United Nations or any organization affiliated with the United Nations, or to any officials or employees thereof, unless the President certifies to the appropriate committees of Congress that the Director of National Intelligence,[33] in consultation with the Secretary of State and the Secretary of Defense, has established and implemented procedures, and has worked with the United Nations to ensure implementation of procedures, for protecting from unauthorized disclosure United States intelligence sources and methods connected to such information.

(2) Paragraph (1) may be waived upon written certification by the President to the appropriate committees of Congress that providing such information to the United Nations or an organization affiliated with the United Nations, or to any officials or employees thereof, is in the national security interests of the United States.

(b) ANNUAL AND SPECIAL REPORTS.[34]—(1) The President shall report annually[35] to the appropriate committees of Congress on the types and volume of intelligence provided to the United Nations and the purposes for which it was provided during the period covered by the report. The President shall also report to the appropriate committees of Congress within 15 days after it has become known to the United States Government that there has been an unauthorized disclosure of intelligence provided by the United States to the United Nations.

(2) The requirement for periodic reports under the first sentence of paragraph (1) shall not apply to the provision of intelligence that is provided only to, and for the use of, appropriately cleared United States Government personnel serving with the United Nations.

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[29] Sec. 811(b) of Public Law 107–306 (116 Stat. 2422) struck out "The Select Committee on Intelligence, the Committee on Appropriations," and inserted in lieu thereof "The Committee on Appropriations".

[30] Sec. 811(b) of Public Law 107–306 (116 Stat. 2422) struck out "The Select Committee on Intelligence, the Committee on Appropriations," and inserted in lieu thereof "The Committee on Appropriations".

[31] Sec. 1067(16) of Public Law 106–65 (113 Stat. 775) struck out "Committee on National Security" and inserted in lieu thereof "Committee on Armed Services".

[32] 50 U.S.C. 404g. Added as sec. 110 by sec. 308(a) of Public Law 104–293 (110 Stat. 3466). Redesignated as sec. 112 by sec. 303(b) of Public Law 105–107 (111 Stat. 2252).

[33] Sec. 1071(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3689) struck out "Director of Central Intelligence" and inserted in lieu thereof "Director of National Intelligence.

[34] Sec. 361(b)(1) of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2625) struck out "PERIODIC" and inserted in lieu thereof "ANNUAL" in the subsec. catchline.

[35] Sec. 361(b)(2) of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2625) struck out "semiannually" and inserted in lieu thereof "annually".

(3)[36] In the case of the annual[37] reports required to be submitted under the first sentence of paragraph (1) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.

(c) DELEGATION OF DUTIES.—The President may not delegate or assign the duties of the President under this section.

(d) RELATIONSHIP TO EXISTING LAW.—Nothing in this section shall be construed to—

(1) impair or otherwise affect the authority of the Director of National Intelligence[33] to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(7)[38] of this Act; or

(2) supersede or otherwise affect the provisions of title V of this Act.

(e) DEFINITION.—As used in this section, the term "appropriate committees of Congress" means the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on Foreign Relations[39] and the Permanent Select Committee on Intelligence of the House of Representatives.

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LIMITATION ON ESTABLISHMENT OR OPERATION OF DIPLOMATIC INTELLIGENCE SUPPORT CENTERS

Sec. 115.[40] (a) IN GENERAL.—(1) A diplomatic intelligence support center may not be established, operated, or maintained without the prior approval of the Director of National Intelligence.[41]

(2) The Director may only approve the establishment, operation, or maintenance of a diplomatic intelligence support center if the Director determines that the establishment, operation, or maintenance of such center is required to provide necessary intelligence support in furtherance of the national security interests of the United States.

(b) PROHIBITION OF USE OF APPROPRIATIONS.—Amounts appropriated pursuant to authorizations by law for intelligence and intelligence-related activities may not be obligated or expended for the establishment, operation, or maintenance of a diplomatic intelligence support center that is not approved by the Director of National Intelligence.[41]

(c) DEFINITIONS.—In this section:

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[36] Sec. 811(b)(1)(C) of Public Law 107–306 (116 Stat. 2422) added para. (3).

[37] Sec. 361(b)(3) of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2625) struck out "periodic" and inserted in lieu thereof "the annual".

[38] Sec. 377(a) of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2630) struck out "section 103(c)(6)" and inserted in lieu thereof "section 103(c)(7)". Subsequently, sec. 1072(4) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3692) sought to strike out "section 103(c)(6)" and insert in lieu thereof "section 102A(i)". This latter amendment is not executable, as "section (c)(6)" is not in the text.

[39] As enrolled. Should read "Committee on International Relations" (and subsequently, "Committee on Foreign Affairs").

[40] 50 U.S.C. 404j. Sec. 303 of the Intelligence Authorization Act for Fiscal Year 2000 (Public Law 106–120; 113 Stat. 1610) added sec. 115.

[41] Sec. 1071(a)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3689) struck out "Director of Central Intelligence" and inserted in lieu thereof "Director of National Intelligence".

(1) The term "diplomatic intelligence support center" means an entity to which employees of the various elements of the intelligence community (as defined in section 3(4)) are detailed for the purpose of providing analytical intelligence support that—

(A) consists of intelligence analyses on military or political matters and expertise to conduct limited assessments and dynamic taskings for a chief of mission; and

(B) is not intelligence support traditionally provided to a chief of mission by the Director of National Intelligence.[41]

(2) The term "chief of mission" has the meaning given that term by section 102(3) of the Foreign Service Act of 1980 (22 U.S.C. 3902(3)), and includes ambassadors at large and ministers of diplomatic missions of the United States, or persons appointed to lead United States offices abroad designated by the Secretary of State as diplomatic in nature.

(d) TERMINATION.—This section shall cease to be effective on October 1, 2000.

TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

GENERAL CONGRESSIONAL OVERSIGHT PROVISIONS

SEC. 501.[42, 43] (a)(1) The President shall ensure that the congressional intelligence committees[44] are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title.

(2)[45] Nothing in this title shall be construed as requiring the approval of the congressional intelligence committees[44] as a condition precedent to the initiation of any significant anticipated intelligence activity.

(b) The President shall ensure that any illegal intelligence activity is reported promptly to the congressional intelligence committees,[44] as well as any corrective action that has been taken or is planned in connection with such illegal activity.

(c) The President and the congressional intelligence committees[44] shall each establish such procedures as may be necessary to carry out the provisions of this title.

(d) The House of Representatives and the Senate shall each establish, by rule or resolution of such House, procedures to protect

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[42] 50 U.S.C. 413.

[43] Sec. 602(a) of Public Law 102–88 (105 Stat. 441) redesignated secs. 502 and 503 as secs. 504 and 505, and added new secs. 502 and 503. Such section further struck out sec. 501 and inserted a new sec. 501.

[44] Sec. 353(b)(3) of Public Law 107–306 (116 Stat. 2402) struck out "intelligence committees" and inserted in lieu thereof "congressional intelligence committees".

[45] Sec. 353(b)(7) of Public Law 107–306 (116 Stat. 2402) struck out para. (2) and redesignated para. (3) as para. (2). Former para. (2) defined the term "congressional intelligence committees" as "the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives".

from unauthorized disclosure all classified information, and all information relating to intelligence sources and methods, that is furnished to the congressional intelligence committees[44] or to Members of Congress under this title. Such procedures shall be established in consultation with the Director of National Intelligence.[41] In accordance with such procedures, each of the congressional intelligence committees[44] shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the congressional intelligence committees[44] on the grounds that providing the information to the congressional intelligence committees[44] would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

(f) As used in this section, the term "intelligence activities" includes covert actions as defined in section 503(e), and includes financial intelligence activities.[46]

REPORTING OF INTELLIGENCE ACTIVITIES OTHER THAN COVERT ACTIONS

SEC. 502.[43, 47] (a)[48] IN GENERAL.—To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of National Intelligence[41] and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—

(1) keep the congressional intelligence committees[49] fully and currently informed of all intelligence activities, other than a covert action (as defined in section 503(e)), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United

[46] Sec. 342(b) of Public Law 107–306 (116 Stat. 2399) inserted "and includes financial intelligence activities".

[47] 50 U.S.C. 413a. Sec. 405 of Public Law 102–88 (105 Stat. 434) provided the following:

"SEC. 405. FURNISHING OF INTELLIGENCE INFORMATION TO THE SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE.

"(a) FURNISHING OF SPECIFIC INFORMATION.—In accordance with title V of the National Security Act of 1947, the head of any department or agency of the United States involved in any intelligence activities which may pertain to United States military personnel listed as prisoner, missing, or unaccounted for in military actions shall furnish any information or documents in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the Permanent Select Committee on Intelligence of the House of Representatives or the Select Committee on Intelligence of the Senate.

"(b) ACCESS BY COMMITTEES AND MEMBERS OF CONGRESS.—In accordance with Senate Resolution 400, Ninety-Fourth Congress, and House Resolution 658, Ninety-fifth Congress, the committees named in subsection (a) shall, upon request and under such regulations as the committees have prescribed to protect the classification of such information, make any information described in subsection (a) available to any other committee or any other Member of Congress and appropriately cleared staff.".

[48] Sec. 305(1) of Public Law 107–108 (115 Stat. 1398) inserted "(a) IN GENERAL.—".

[49] Sec. 353(b)(3) of Public Law 107–306 (116 Stat. 2402) struck out "intelligence committees" and inserted in lieu thereof "congressional intelligence committees".

States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and

(2) furnish the congressional intelligence committees[49] any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the congressional intelligence committees[49] in order to carry out its authorized responsibilities.

(b)[50] FORM AND CONTENTS OF CERTAIN REPORTS.—Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the intelligence committees for purposes of subsection (a)(1) shall be in writing, and shall contain the following:

(1) A concise statement of any facts pertinent to such report.

(2) An explanation of the significance of the intelligence activity or intelligence failure covered by such report.

(c)[50] STANDARDS AND PROCEDURES FOR CERTAIN REPORTS.—The Director of National Intelligence,[41] in consultation with the heads of the departments, agencies, and entities referred to in subsection (a), shall establish standards and procedures applicable to reports covered by subsection (b).

PRESIDENTIAL APPROVAL AND REPORTING OF COVERT ACTIONS

SEC. 503.[43, 51] (a) The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made.

(2) Except as permitted by paragraph (1), a finding may not authorize or sanction a covert action, or any aspect of any such action, which already has occurred.

(3) Each finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action. Any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation.

(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or

[50] Sec. 305(2) of Public Law 107–108 (115 Stat. 1398) added subsecs. (b) and (c).
[51] 50 U.S.C. 413b.

contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

(5) A finding may not authorize any action that would violate the Constitution or any statute of the United States.

(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of National Intelligence[41] and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

(1) shall keep the congressional intelligence committees[49] fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and

(2) shall furnish to the congressional intelligence committees[49] any information or material concerning covert actions which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the congressional intelligence committees[49] in order to carry out its authorized responsibilities.

(c)(1) The President shall ensure that any finding approved pursuant to subsection (a) shall be reported to the congressional intelligence committees[49] as soon as possible after such approval and before the initiation of the covert action authorized by the finding, except as otherwise provided in paragraph (2) and paragraph (3).

(2) If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairmen and ranking minority members of the congressional intelligence committees,[49] the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President.

(3) Whenever a finding is not reported pursuant to paragraph (1) or (2) of this section, the President shall fully inform the congressional intelligence committees[49] in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

(4) In a case under paragraph (1), (2), or (3), a copy of the finding, signed by the President, shall be provided to the chairman of each congressional intelligence committee.[49] When access to a finding is limited to the Members of Congress specified in paragraph (2), a statement of the reasons for limiting such access shall also be provided.

(d) The President shall ensure that the congressional intelligence committees,[49] or, if applicable, the Members of Congress specified

in subsection (c)(2), are notified of any significant change in a previously approved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c).

(e) As used in this title, the term "covert action" means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include—

(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) traditional diplomatic or military activities or routine support to such activities;

(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(f) No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

FUNDING OF INTELLIGENCE ACTIVITIES

SEC. 504.[52] (a) Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 503[53] of this Act concerning any significant

[52] 50 U.S.C. 414. Added as sec. 502 by sec. 401(a) of Public Law 99–169 (99 Stat. 1004), redesignated as sec. 504 by sec. 602(a)(1) of Public Law 102–88 (105 Stat. 441). Sec. 8089 of the Department of Defense Appropriations Act, 1992 (Public Law 102–172; 105 Stat. 1193), provided the following:

"SEC. 8089. During the current fiscal year and hereafter, none of the funds appropriated for intelligence programs to the Department of Defense which are transferred to another Federal agency for execution shall be expended by the Department of Defense in any fiscal year in excess of amounts required for expenditure during such fiscal year by the Federal agency to which such funds are transferred.".

Sec. 701 of the Intelligence Authorization Act, Fiscal Year 1992 (Public Law 102–183; 105 Stat. 1270), provided the following:

"SEC. 701. SENSE OF CONGRESS REGARDING DISCLOSURE OF ANNUAL INTELLIGENCE BUDGET.

"It is the sense of Congress that, beginning in 1993, and in each year thereafter, the aggregate amount requested and authorized for, and spent on, intelligence and intelligence-related activities should be disclosed to the public in an appropriate manner.".

Identical language was contained in sec. 303 of the Intelligence Authorization Act, Fiscal Year 1993 (Public Law 102–496; 106 Stat. 3183).

[53] Sec. 602(c) of Public Law 102–88 (105 Stat. 444) struck out "section 501" and inserted in lieu thereof "section 503".

anticipated intelligence activity, the Director of the Central Intelligence Agency[54] has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the need for funds for such activity is based on unforeseen requirements; and

(C) the Director of National Intelligence,[55] the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

(b) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c)[56] No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 503(e), unless and until a Presidential finding required by subsection (a) of section 503 has been signed or otherwise issued in accordance with that subsection.

(d)[56] (1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—

(A) the types of activities for which nonappropriated funds may be expended; and

(B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.

(2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the congressional intelligence committees[49] and, as appropriate, the Director of National Intelligence[55] or the Secretary of Defense.

(e)[56] As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

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[54] Sec. 1071(a)(5) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3690) struck out "Director of Central Intelligence" and inserted in lieu thereof "Director of the Central Intelligence Agency".

[55] Sec. 1071(a)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3689) struck out "Director of Central Intelligence" and inserted in lieu thereof "Director of National Intelligence".

[56] Sec. 603 of Public Law 102–88 (105 Stat. 444) redesignated subsec. (c) as (e), and added new subsecs. (c) and (d).

(2) the term "appropriate congressional committees" means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and

(3) the term "specifically authorized by the Congress" means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

NOTICE TO CONGRESS OF CERTAIN TRANSFER OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 505.[57] (a)(1) The transfer of a defense article or defense service, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services,[58] exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of this title.[59]

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(a)[60] of that title), or the Federal Property and Administrative Services Act of 1949, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

[57] 50 U.S.C. 415. Added by sec. 602(a) of Public Law 99–569 (100 Stat. 3203) as sec. 503; redesignated as sec. 505 by sec. 602(a)(1) of Public Law 102–88 (105 Stat. 441).

[58] Sec. 604 of Public Law 102–88 (105 Stat. 445) inserted ", or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services,".

[59] Sec. 602(c)(2) of Public Law 102–88 (105 Stat. 444) struck out "section 501 of this Act" and inserted in lieu thereof "this title".

[60] Sec. 828(d)(1) of Public Law 103–160 (107 Stat. 1715) struck out "section 7307(b)(1)" and inserted in lieu thereof "section 7307(a)".

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms "defense articles" and "defense services" mean the items of the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 12);

(3) the term "transfer" means—

(A) in the case of defense articles, the transfer of possession of those articles; and

(B) in the case of defense services, the provision of those services; and

(4) the term "value" means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

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TITLE XI—ADDITIONAL MISCELLANEOUS PROVISIONS[61]

APPLICABILITY TO UNITED STATES INTELLIGENCE ACTIVITIES OF FEDERAL LAWS IMPLEMENTING INTERNATIONAL TREATIES AND AGREEMENTS

Sec. 1101.[61] (a) IN GENERAL.—No Federal law enacted on or after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2001 that implements a treaty or other international agreement shall be construed as making unlawful an otherwise lawful and authorized intelligence activity of the United States Government or its employees, or any other person to the extent such other person is carrying out such activity on behalf of, and at the direction of, the United States, unless such Federal law specifically addresses such intelligence activity.

(b) AUTHORIZED INTELLIGENCE ACTIVITIES.—An intelligence activity shall be treated as authorized for purposes of subsection (a) if the intelligence activity is authorized by an appropriate official of the United States Government, acting within the scope of the official duties of that official and in compliance with Federal law and any applicable Presidential directive.

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[61] 50 U.S.C. 442. Sec. 308 of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567; 114 Stat. 2840) added title XI and sec. 1101, originally as title X and sec. 1001, respectively. Subsequently, sec. 331(a) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–307; 116 Stat. 2394) redesignated title X as title XI and sec. 1001 as sec. 1101.

8. Intelligence Authorization Provisions

a. Kosova Liberation Army

Partial text of Public Law 106–120 [Intelligence Authorization Act for Fiscal Year 2000; H.R. 1555], 113 Stat. 1606, approved December 3, 1999

AN ACT To authorize appropriations for fiscal year 2000 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 312. REPORT ON KOSOVA LIBERATION ARMY.

(a) REPORT.—Not later than 30 days after the date of the enactment of this Act, the Director of Central Intelligence shall submit to the appropriate congressional committees a report (in both classified and unclassified form) on the organized resistance in Kosovo known as the Kosova Liberation Army. The report shall include the following:

(1) A summary of the history of the Kosova Liberation Army.

(2) As of the date of the enactment of this Act—

(A) the number of individuals currently participating in or supporting combat operations of the Kosova Liberation Army (fielded forces), and the number of individuals in training for such service (recruits);

(B) the types, and quantity of each type, of weapon employed by the Kosova Liberation Army, the training afforded to such fielded forces in the use of such weapons, and the sufficiency of such training to conduct effective military operations; and

(C) minimum additional weaponry and training required to improve substantially the efficacy of such military operations.

(3) An estimate of the percentage of funding (if any) of the Kosova Liberation Army that is attributable to profits from the sale of illicit narcotics.

(4) A description of the involvement (if any) of the Kosova Liberation Army in terrorist activities.

(5) A description of the number of killings of noncombatant civilians (if any) carried out by the Kosova Liberation Army since its formation.

(6) A description of the leadership of the Kosova Liberation Army, including an analysis of—

(A) the political philosophy and program of the leadership; and

(B) the sentiment of the leadership toward the United States.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—As used in this section, the term "appropriate congressional committees" means the Committee on International Relations and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate.

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b. Limitation on State Department Handling of Classified Materials

Partial text of Public Law 106–567 [Intelligence Authorization Act for Fiscal Year 2001; H.R. 5630], 114 Stat. 2831, approved December 27, 2000

AN ACT To authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 309.[1] LIMITATION ON HANDLING, RETENTION, AND STORAGE OF CERTAIN CLASSIFIED MATERIALS BY THE DEPARTMENT OF STATE.

(a) CERTIFICATION REGARDING FULL COMPLIANCE WITH REQUIREMENTS.—The Director of Central Intelligence[2] shall certify to the appropriate committees of Congress whether or not each covered element of the Department of State is in full compliance with all applicable directives of the Director of Central Intelligence[2] relating to the handling, retention, or storage of covered classified material.

(b) LIMITATION ON CERTIFICATION.—The Director of Central Intelligence[2] may not certify a covered element of the Department of State as being in full compliance with the directives referred to in subsection (a) if the covered element is currently subject to a waiver of compliance with respect to any such directive.

(c) REPORT ON NONCOMPLIANCE.—Whenever the Director of Central Intelligence[2] determines that a covered element of the Department of State is not in full compliance with any directive referred to in subsection (a), the Director shall promptly notify the appropriate committees of Congress of such determination.

(d) EFFECTS OF CERTIFICATION OF NON-FULL COMPLIANCE.—(1) Subject to subsection (e), effective as of January 1, 2001, a covered element of the Department of State may not retain or store covered classified material unless the Director has certified under subsection (a) as of such date that the covered element is in full compliance with the directives referred to in subsection (a).

(2) If the prohibition in paragraph (1) takes effect in accordance with that paragraph, the prohibition shall remain in effect until the date on which the Director certifies under subsection (a) that

[1] 50 U.S.C. 435a.

[2] Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community is deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency is deemed to be a reference to the Director of the Central Intelligence Agency. See sec. 1081(a) and (b) of Public Law 108–458 (118 Stat. 3696) under sec. 401 of this title.

the covered element involved is in full compliance with the directives referred to in that subsection.

(e) WAIVER BY DIRECTOR OF CENTRAL INTELLIGENCE.[2]—(1) The Director of Central Intelligence[2] may waive the applicability of the prohibition in subsection (d) to an element of the Department of State otherwise covered by such prohibition if the Director determines that the waiver is in the national security interests of the United States.

(2) The Director shall submit to appropriate committees of Congress a report on each exercise of the waiver authority in paragraph (1).

(3) Each report under paragraph (2) with respect to the exercise of authority under paragraph (1) shall set forth the following:

(A) The covered element of the Department of State addressed by the waiver.

(B) The reasons for the waiver.

(C) The actions that will be taken to bring such element into full compliance with the directives referred to in subsection (a), including a schedule for completion of such actions.

(D) The actions taken by the Director to protect any covered classified material to be handled, retained, or stored by such element pending achievement of full compliance of such element with such directives.

(f) DEFINITIONS.—In this section:

(1) The term "appropriate committees of Congress" means the following:

(A) The Select Committee on Intelligence and the Committee on Foreign Relations of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committee on International Relations of the House of Representatives.

(2) The term "covered classified material" means any material classified at the Sensitive Compartmented Information (SCI) level.

(3) The term "covered element of the Department of State" means each element of the Department of State that handles, retains, or stores covered classified material.

(4) The term "material" means any data, regardless of physical form or characteristic, including written or printed matter, automated information systems storage media, maps, charts, paintings, drawings, films, photographs, engravings, sketches, working notes, papers, reproductions of any such things by any means or process, and sound, voice, magnetic, or electronic recordings.

(5) The term "Sensitive Compartmented Information (SCI) level", in the case of classified material, means a level of classification for information in such material concerning or derived from intelligence sources, methods, or analytical processes that requires such information to be handled within formal access control systems established by the Director of Central Intelligence.[2]

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c. Evaluation of State Department Protection of Classified Materials

Partial text of Public Law 107–306 [Intelligence Authorization Act for Fiscal Year 2003; H.R. 4628], 116 Stat. 2383, approved November 27, 2002

AN ACT To authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 832.[1] EVALUATION OF POLICIES AND PROCEDURES OF DEPARTMENT OF STATE ON PROTECTION OF CLASSIFIED INFORMATION AT DEPARTMENT HEADQUARTERS.

(a) EVALUATION REQUIRED.—Not later than December 31 of 2002, 2003, and 2004, the Inspector General of the Department of State shall conduct an evaluation of the policies and procedures of the Department on the protection of classified information at the Headquarters of the Department, including compliance with the directives of the Director of Central Intelligence (DCIDs) regarding the storage and handling of Sensitive Compartmented Information (SCI) material.

(b) ANNUAL REPORT.—Except as provided in subsection (c), not later than February 1 of 2003, 2004, and 2005, the Inspector General shall submit to the following committees a report on the evaluation conducted under subsection (a) during the preceding year:

(1) The congressional intelligence committees.

(2) The Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(c) EXCEPTION.—The date each year for the submittal of a report under subsection (b) may be postponed in accordance with section 507(d) of the National Security Act of 1947, as added by section 811 of this Act.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term "congressional intelligence committees" means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

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[1] 22 U.S.C. 4861 note.

d. Coordination of Federal Government Research on Security Evaluations

Partial text of Public Law 108–487 [Intelligence Authorization Act for Fiscal Year 2004; H.R. 4548], 117 Stat. 2559, approved December 13, 2003

AN ACT To authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 375. COORDINATION OF FEDERAL GOVERNMENT RESEARCH ON SECURITY EVALUATIONS.

(a) WORKSHOPS FOR COORDINATION OF RESEARCH.—The National Science Foundation and the Office of Science and Technology Policy shall jointly sponsor not less than two workshops on the coordination of Federal Government research on the use of behavioral, psychological, and physiological assessments of individuals in the conduct of security evaluations.

(b) DEADLINE FOR COMPLETION OF ACTIVITIES.—The activities of the workshops sponsored under subsection (a) shall be completed not later than March 1, 2004.

(c) PURPOSES.—The purposes of the workshops sponsored under subsection (a) are as follows:

(1) To provide a forum for cataloging and coordinating federally funded research activities relating to the development of new techniques in the behavioral, psychological, or physiological assessment of individuals to be used in security evaluations.

(2) To develop a research agenda for the Federal Government on behavioral, psychological, and physiological assessments of individuals, including an identification of the research most likely to advance the understanding of the use of such assessments of individuals in security evaluations.

(3) To distinguish between short-term and long-term areas of research on behavioral, psychological, and physiological assessments of individuals in order to maximize the utility of short-term and long-term research on such assessments.

(4) To identify the Federal agencies best suited to support research on behavioral, psychological, and physiological assessments of individuals.

(5) To develop recommendations for coordinating future federally funded research for the development, improvement, or enhancement of security evaluations.

(d) ADVISORY GROUP.—(1) In order to assist the National Science Foundation and the Office of Science and Technology Policy in carrying out the activities of the workshops sponsored under subsection (a), there is hereby established an interagency advisory group with respect to such workshops.

(2) The advisory group shall be composed of the following:

(A) A representative of the Social, Behavioral, and Economic Directorate of the National Science Foundation.

(B) A representative of the Office of Science and Technology Policy.

(C) The Secretary of Defense, or a designee of the Secretary.

(D) The Secretary of State, or a designee of the Secretary.

(E) The Attorney General, or a designee of the Attorney General.

(F) The Secretary of Energy, or a designee of the Secretary.

(G) The Secretary of Homeland Security, or a designee of the Secretary.

(H) The Director of Central Intelligence, or a designee of the Director.

(I) The Director of the Federal Bureau of Investigation, or a designee of the Director.

(J) The National Counterintelligence Executive, or a designee of the National Counterintelligence Executive.

(K) Any other official assigned to the advisory group by the President for purposes of this section.

(3) The members of the advisory group under subparagraphs (A) and (B) of paragraph (2) shall jointly head the advisory group.

(4) The advisory group shall provide the Foundation and the Office such information, advice, and assistance with respect to the workshops sponsored under subsection (a) as the advisory group considers appropriate.

(5) The advisory group shall not be treated as an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) FOIA EXEMPTION.—All files of the National Science Foundation and the Office of Science and Technology Policy for purposes of administering this section, including any files of a Federal, State, or local department or agency or of a private sector entity provided to or utilized by a workshop or advisory group under this section, shall be exempt from the provisions of section 552 of title 5, United States Code, that require publication, disclosure, search, or review in connection therewith.

(f) REPORT.—Not later than March 1, 2004, the National Science Foundation and the Office of Science and Technology Policy shall jointly submit to Congress a report on the results of activities of the workshops sponsored under subsection (a), including the findings and recommendations of the Foundation and the Office as a result of such activities.

(g) FUNDING.—(1) Of the amount authorized to be appropriated for the Intelligence Community Management Account by section 104(a), $500,000 shall be available to the National Science Foundation and the Office of Science and Technology Policy to carry out this section.

(2) The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

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9. Reporting Requirements

a. Federal Reports Elimination and Sunset Act of 1995

Partial text of Public Law 104–66 [S. 790], 109 Stat. 707, approved December 21, 1995

AN ACT To provide for the modification or elimination of Federal reporting requirements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Reports Elimination and Sunset Act of 1995".

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TITLE I—DEPARTMENTS

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SUBTITLE B—DEPARTMENT OF COMMERCE

SEC. 1021. REPORTS ELIMINATED.

(a) * * *

(b) REPORT ON STATUS, ACTIVITIES, AND EFFECTIVENESS OF UNITED STATES COMMERCIAL CENTERS IN ASIA, LATIN AMERICA, AND AFRICA AND PROGRAM RECOMMENDATIONS.—Section 401(j) of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a(j)) is repealed.

(c) REPORT ON KUWAIT RECONSTRUCTION CONTRACTS.—Section 606(f) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 is repealed.

(d) REPORT ON UNITED STATES-CANADA FREE-TRADE AGREEMENT.—Section 409(a)(3) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended to read as follows:

"(3) The United States members of the working group established under article 1907 of the Agreement shall consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 regarding—

"(A) the issues being considered by the working group; and

"(B) as appropriate, the objectives and strategy of the United States in the negotiations.".

(e) REPORT ON ESTABLISHMENT OF AMERICAN BUSINESS CENTERS AND ON ACTIVITIES OF THE INDEPENDENT STATES BUSINESS AND AGRICULTURE ADVISORY COUNCIL.—Section 305 of the Freedom for

Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5825) is repealed.

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SUBTITLE K—DEPARTMENT OF STATE

SEC. 1111. REPORTS ELIMINATED.

(a) REPORT ON AUDIT OF USE OF FUNDS FOR UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES.—Section 8 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2606) is amended by striking subsection (b), and redesignating subsection (c) as subsection (b).

(b) REPORT ON MATTERS RELATING TO FOREIGN RELATIONS AND SCIENCE AND TECHNOLOGY.—Section 503(b) of the Foreign Relations Authorization Act, Fiscal Year 1979 is repealed.

SEC. 1112. INTERNATIONAL NARCOTICS CONTROL.

(a) Section 489A of the Foreign Assistance Act of 1961 (22 U.S.C. 2291I) is repealed.

(b) Section 490A of that Act (22 U.S.C. 2991k) is repealed.

(c) Section 489 of that Act (22 U.S.C. 2291h) is amended:

(1) in the section heading by striking "for fiscal year 1995"; and

(2) by striking subsection (c).

(d) Section 490 of that Act (22 U.S.C. 2291j) is amended:

(1) in the section heading by striking "for fiscal year 1995"; and

(2) by striking subsection (i).

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TITLE II—INDEPENDENT AGENCIES

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SUBTITLE X—UNITED STATES INFORMATION AGENCY

SEC. 2241. REPORTS ELIMINATED.

Notwithstanding section 601(c)(4) of the Foreign Service Act of 1980 (22 U.S.C. 4001(c)(4)), the reports otherwise required under such section shall not cover the activities of the United States Information Agency.

TITLE III—REPORTS BY ALL DEPARTMENTS AND AGENCIES

* * * * * * *

SEC. 3003.[1] TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2) of this subsection and subsection (d), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual, or other regular periodic report specified on the list described under subsection (c) shall

[1] 31 U.S.C. 1113 note.

cease to be effective, with respect to that requirement, 4 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576), including provisions enacted by the amendments made by that Act.

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives for the first session of the One Hundred Third Congress under clause 2 of rule III of the Rules of the House of Representatives (House Document No. 103–7).

(d) SPECIFIC REPORTS EXEMPTED.—Subsection (a)(1) shall not apply to any report required under—

(1) section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n);

(2) section 306 of that Act (22 U.S.C. 2226);

(3) section 489 of that Act (22 U.S.C. 2291h);

(4) section 502B of that Act (22 U.S.C. 2304);

(5) section 634 of that Act (22 U.S.C. 2394);

(6) section 406 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 2414a);

(7) section 25 of the Arms Export Control Act (22 U.S.C. 2765);

(8) section 28 of that Act (22 U.S.C. 2768);

(9) section 36 of that Act (22 U.S.C. 2776);

(10) section 6 of the Multinational Force and Observers Participation Resolution (22 U.S.C. 3425);

(11) section 104 of the FREEDOM Support Act (22 U.S.C. 5814);

(12) section 508 of that Act (22 U.S.C. 5858);

(13) section 4 of the War Powers Resolution (50 U.S.C. 1543);

(14) section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703);

(15) section 14 of the Export Administration Act of 1979 (50 U.S.C. App. 2413);

(16) section 207 of the International Economic Policy Act of 1972 (Public Law 92–412; 86 Stat. 648);

(17) section 4 of Public Law 93–121 (87 Stat. 448);

(18) section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(19) section 704 of the Support for East European Democracy (SEED) Act of 1989 (22 U.S.C. 5474);

(20) section 804 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246; 104 Stat. 72);

(21) section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f);

(22) section 2 of the Act of September 21, 1950 (Chapter 976; 64 Stat. 903);

(23) section 3301 of the Panama Canal Act of 1979 (22 U.S.C. 3871);

(24) section 2202 of the Export Enhancement Act of 1988 (15 U.S.C. 4711);

(25) section 1504 of Public Law 103–160 (10 U.S.C. 402 note);

(26) section 502 of the International Security and Development Coordination Act of 1985 (22 U.S.C. 2349aa-7);

(27) section 23 of the Act of August 1, 1956 (Chapter 841; 22 U.S.C. 2694(2));

(28) section 5(c)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2404(c)(5));

(29) section 14 of the Export Administration Act of 1979 (50 U.S.C. App. 2413);

(30) section 50 of Public Law 87–297 (22 U.S.C. 2590);

(31) section 240A of the Foreign Assistance Act of 1961 (22 U.S.C. 2200a); or

(32) section 604 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1469).

b. Continuation of Reports Terminated by the Federal Reports Elimination and Sunset Act of 1995

Partial text of Public Law 106–113 [Consolidated Appropriations Act, 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999

AN ACT Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 2000, and for other purposes, namely:

APPENDIX G—H.R. 3427

SECTION 1. SHORT TITLE.

This Act may be cited as the "Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001".

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TITLE II—DEPARTMENT OF STATE AUTHORITIES AND ACTIVITIES

SUBTITLE A—BASIC AUTHORITIES AND ACTIVITIES

* * * * * * *

SEC. 209. CONTINUATION OF REPORTING REQUIREMENTS.

(a) REPORTS ON CLAIMS BY UNITED STATES FIRMS AGAINST THE GOVERNMENT OF SAUDI ARABIA.—Section 2801(b)(1) of the Foreign Affairs Reform and Restructuring Act of 1998 (as enacted by division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277) is amended by striking "third" and inserting "seventh".

(b) REPORTS ON DETERMINATIONS UNDER TITLE IV OF THE LIBERTAD ACT.—Section 2802(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (as enacted by division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277) is amended by striking "September 30, 1999," and inserting "September 30, 2001,".

(c) RELATIONS WITH VIETNAM.—Section 2805 of the Foreign Affairs Reform and Restructuring Act of 1998 (as enacted by division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277) is amended by striking "September 30, 1999," and inserting "September 30, 2001,".

(d) REPORTS ON BALLISTIC MISSILE COOPERATION WITH RUSSIA.—Section 2705(d) of the Foreign Affairs Reform and Restructuring

Act of 1998 (as enacted by division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277) is amended by striking "and January 1, 2000," and inserting "January 1, 2000, and January 1, 2001,".

(e) CONTINUATION OF REPORTS TERMINATED BY THE FEDERAL REPORTS ELIMINATION AND SUNSET ACT OF 1995.—Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66; 31 U.S.C. 1113 note) does not apply to any report required to be submitted under any of the following provisions of law:

(1) Section 1205 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 22 U.S.C. 2346 note) (relating to annual reports on economic conditions in Egypt, Israel, Turkey, and Portugal).

(2) Section 1307(f)(1)(A) of the International Financial Institutions Act (Public Law 95–118) (relating to an assessment of the environmental impact of proposed multilateral development bank actions).

(3) Section 118(f) of the Foreign Assistance Act of 1961 (Public Law 87–195; 22 U.S.C. 2151p-1) (relating to the protection of tropical forests).

(4) Section 586J(c)(4) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513) (relating to sanctions taken by other nations against Iraq).

(5) Section 3 of the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102–1; 105 Stat. 3) (relating to the status of efforts to obtain Iraqi compliance with United Nations Security Council resolutions).

(6) Section 124 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204; 22 U.S.C. 2680 note) (relating to expenditures for emergencies in the diplomatic and consular service).

(7) Section 620C(c) of the Foreign Assistance Act of 1961 (Public Law 87–195; 22 U.S.C. 2373(c)) (relating to progress made toward the conclusion of a negotiated solution to the Cyprus problem).

(8) Section 533(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513) (relating to international natural resource management initiatives).

(9) Section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 22 U.S.C. 5352) (relating to foreign treatment of United States financial institutions).

(10) Section 1702 of the International Financial Institutions Act (Public Law 95–118; 22 U.S.C. 262r-1) (relating to operating summaries of the multilateral development banks).

(11) Section 1303(c) of the International Financial Institutions Act (Public Law 95–118; 22 U.S.C. 262m-2(c)) (relating to international environmental assistance programs).

(12) Section 1701(a) of the International Financial Institutions Act (Public Law 95–118; 22 U.S.C. 262r) (relating to United States participation in international financial institutions).

(13) Section 163(a) of the Trade Act of 1974 (Public Law 93–618; 19 U.S.C. 2213) (relating to the trade agreements program and national trade policy agenda).

(14) Section 8 of the Export-Import Bank Act (Public Law 79–173; 12 U.S.C. 635g) (relating to Export-Import Bank activities).

(15) Section 407(f) of the Agricultural Trade Development and Assistance Act of 1954 (Public Law 83–480; 7 U.S.C. 1736a) (relating to Public Law 480 programs and activities).

(16) Section 239(c) of the Foreign Assistance Act of 1961 (Public Law 87–195; 22 U.S.C. 2199(c)) (relating to OPIC audit report).

(17) Section 504(i) of the National Endowment for Democracy Act (Public Law 98–164; 22 U.S.C. 4413(i)) (relating to the activities of the National Endowment for Democracy).

(18) Section 5(b) of the Japan-United States Friendship Act (Public Law 94–118; 22 U.S.C. 2904(b)) (relating to Japan-United States Friendship Commission activities).

* * * * * * *

c. To Prevent the Elimination of Certain Reports

Partial text of Public Law 107–74 [H.R. 1042], 115 Stat. 701, approved November 28, 2001

AN ACT To prevent the elimination of certain reports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] REPORTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) does not apply to any report required to be submitted under any of the following provisions of law:

* * * * * * *

(18) Section 102(e)(7) of the Global Change Research Act of 1990 (15 U.S.C. 2932(e)(7)).

* * * * * * *

[1] 31 U.S.C. 1113 note.

10. Logan Act, as amended—Private Correspondence With Foreign Governments

Partial text of Public Law 80–772 [H.R. 3190], 62 Stat. 744, approved June 25, 1948 (original legislation approved January 30, 1799, 1 Stat. 613), as amended

AN ACT To revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title 18 of the United States Code, entitled "Crimes and Criminal Procedure", is hereby revised, codified, and enacted into positive law, and may be cited as "Title 18, U.S.C., §——",[1] as follows:

* * * * * * *

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined under this title[2] or imprisoned not more than three years, or both.

This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

* * * * * * *

[1] 18 U.S.C. 953.

[2] Sec. 330016(1)(K) of Public Law 103–322 (108 Stat. 2147) struck out "not more than $5,000" and inserted in lieu thereof "under this title".

11. Resolution Establishing a Select Committee on Intelligence

Partial text of S. Res. 400, 94th Congress, approved May 19, 1976

A RESOLUTION ESTABLISHING A SELECT COMMITTEE ON INTELLIGENCE

Resolved, That it is the purpose of this resolution to establish a new select committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolution referred to as the "select committee"). The select committee shall be composed of fifteen members appointed as follows:

(A) two members from the Committee on Appropriations;

(B) two members from the Committee on Armed Services;

(C) two members from the Committee on Foreign Relations; and

(D) two members from the Committee on the Judiciary; and

(E) seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (A) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Four of the members appointed under clause (E) of paragraph (1) shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate and three shall be appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(3) The majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but

shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

* * * * * * *

SEC. 4. (a) The select committee, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters requiring the attention of the Senate or such other committee or committees. In making such reports, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

* * * * * * *

12. Permanent Select Committee on Intelligence

Clause 11 of House Rule X [H. Res. 5], adopted January 6, 1999, as amended [1]

RULE X

Permanent Select Committee on Intelligence

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the "select committee"). The select committee shall be composed of not more than 21 Members, Delegates, or the Resident Commissioner, of whom not more than 12 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

(A) the Committee on Appropriations;

(B) the Committee on Armed Services;

(C) the Committee on International Relations; and

(D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a member of his leadership staff to assist him in his capacity as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner, other than the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) In the case of a Member, Delegate, or Resident Commissioner appointed to serve as the chairman or the ranking minority member of the select committee, tenure on the select committee shall not be limited.

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[1] The Permanent Select Committee on Intelligence was first established pursuant to House Rule XLVIII [H. Res. 658], adopted July 14, 1977. When the House recodified its rules in the 106th Congress, the Permanent Select Committee on Intelligence became Clause 11 of Rule X [H. Res. 5], adopted January 6, 1999. House Rule XLVIII, and subsequently Clause 11 of Rule X, has been amended by H. Res. 5, adopted January 15, 1979; H. Res. 70, adopted January 25, 1979; H. Res. 89, adopted February 5, 1979; H. Res. 165, adopted March 29, 1979; H. Res. 58, adopted March 1, 1983; H. Res. 33, adopted January 30, 1985; H. Res. 5, adopted January 6, 1987; H. Res. 5, adopted January 3, 1989; H. Res. 268, adopted November 14, 1989, H. Res. 5, adopted January 3, 1991; H. Res. 6, adopted January 4, 1995; H. Res. 5, adopted January 3, 2001; H. Res. 5, adopted January 7, 2003; and H. Res. 51, adopted January 26, 2005

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D)(i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chairman of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such

report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources ofinformation on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Standards of Official Conduct and of the select committee concerning the security of classified information during and after the period of his employment or contractual agreement with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of Central Intelligence, that is commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the

possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of his objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House under subdivision (C), the chairman shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chairman of the select committee does not offer in the House a motion to consider in closed session a matter reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision (C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one thatthe House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a

recess subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?".

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chairman and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Standards of Official Conduct shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence and intelligence-related activities of the Department of State.

(6) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities

now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

13. David L. Boren National Security Education Act of 1991

Partial text of Public Law 102–183 [Intelligence Authorization Act, Fiscal Year 1992; H.R. 2038], 105 Stat. 1260 at 1271, approved December 4, 1991; as amended by Public Law 102–496 [Intelligence Authorization Act for Fiscal Year 1993; H.R. 5095], 106 Stat. 3180, approved October 24, 1992; Public Law 103–160 [National Defense Authorization Act for Fiscal Year 1994; H.R. 2401], 107 Stat. 1547, approved November 30, 1993; Public Law 103–178 [Intelligence Authorization Act for Fiscal Year 1994; H.R. 2330], 107 Stat. 2024, approved December 3, 1993; Public Law 104–201 [National Defense Authorization Act for Fiscal Year 1997; H.R. 3230], 110 Stat. 2422, approved September 23, 1996; Public Law 105–244 [Higher Education Amendments of 1998; H.R. 6], 112 Stat. 1581, approved October 7, 1998; Public Law 105–272 [Intelligence Authorization Act for Fiscal Year 1999; H.R. 3694], 112 Stat. 2396, approved October 20, 1998; Public Law 105–277 [Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681, approved October 21, 1998; Public Law 107–296 [Homeland Security Act of 2002; H.R. 5005], 116 Stat. 2135, approved November 25, 2002; Public Law 107–306 [Intelligence Authorization Act for Fiscal Year 2003; H.R. 4628], 116 Stat. 2383, approved November 27, 2002; Public Law 108–136 [National Defense Authorization Act for Fiscal Year 2004; H.R. 1588], 117 Stat. 1392, approved November 24, 2003; Public Law 108–271 [GAO Human Capital Reform Act of 2004; H.R. 2751], 118 Stat. 811, approved July 7, 2004; and Public Law 108–487 [Intelligence Authorization Act for Fiscal Year 2005; H.R. 4548], 118 Stat. 3939, approved December 23, 2004

AN ACT To authorize appropriations for fiscal year 1992 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE VIII—NATIONAL SECURITY SCHOLARSHIPS, FELLOWSHIPS, AND GRANTS

SEC. 801.[1] SHORT TITLE, FINDINGS, AND PURPOSES.

(a) SHORT TITLE.—This title may be cited as the "David L. Boren National Security Education Act of 1991".[2]

(b) FINDINGS.—The Congress makes the following findings:

(1) The security of the United States is and will continue to depend on the ability of the United States to exercise international leadership.

(2) The ability of the United States to exercise international leadership is, and will increasingly continue to be, based on the political and economic strength of the United States, as well as on United States military strength around the world.

[1] 50 U.S.C. 1901.

[2] Sec. 404(a) of Public Law 102–496 (106 Stat. 3185) restated subsec. (a) to insert "David L. Boren" into the name of the Act.

(3) Recent changes in the world pose threats of a new kind to international stability as Cold War tensions continue to decline while economic competition, regional conflicts, terrorist activities, and weapon proliferations have dramatically increased.

(4) The future national security and economic well-being of the United States will depend substantially on the ability of its citizens to communicate and compete by knowing the languages and cultures of other countries.

(5) The Federal Government has an interest in ensuring that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this changing international environment.

(6) The Federal Government also has an interest in taking actions to alleviate the problem of American undergraduate and graduate students being inadequately prepared to meet the challenges posed by increasing global interaction among nations.

(7) American colleges and universities must place a new emphasis on improving the teaching of foreign languages, area studies, counterproliferation studies,[3] and other international fields to help meet those challenges.

(c) PURPOSES.—The purposes of this title are as follows:

(1) To provide the necessary resources, accountability, and flexibility to meet the national security education needs of the United States, especially as such needs change over time.

(2) To increase the quantity, diversity, and quality of the teaching and learning of subjects in the fields of foreign languages, area studies, and other international fields that are critical to the Nation's interest.

(3) To produce an increased pool of applicants for work in the departments and agencies of the United States Government with national security responsibilities.

(4) To expand, in conjunction with other Federal programs, the international experience, knowledge base, and perspectives on which the United States citizenry, Government employees, and leaders rely.

(5) To permit the Federal Government to advocate the cause of international education.

SEC. 802.[4] SCHOLARSHIP, FELLOWSHIP, AND GRANT PROGRAM.

(a) PROGRAM REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall carry out a program for—

(A)[5] awarding scholarships to undergraduate students who—

[3] Sec. 305(a)(1) of the Intelligence Authorization Act for Fiscal Year 1999 [Public Law 105–272; 112 Stat. 2400) inserted "counterproliferation studies,".

[4] 50 U.S.C. 1902.

[5] Sec. 1078(b)(1) of Public Law 104–201 (110 Stat. 2664) amended and restated subpara. (A). It formerly read as follows:

Continued

(i) are United States citizens in order to enable such students to study, for at least one academic semester or equivalent term, in foreign countries that are critical countries (as determined under section 803(d)(4)(A)) in those languages and study areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 806(d)); and

(ii) pursuant to subsection (b)(2)(A), enter into an agreement to work in a national security position or work in the field of higher education in the area of study for which the scholarship was awarded;

(B) awarding fellowships to graduate students who—

(i) are United States citizens to enable such students to pursue education as part of a graduate degree program of a United States institution of higher education[6] in the disciplines of foreign languages, area studies, counterproliferation studies,[3] and other international fields relating to the national security interests of the United States[7] that are critical areas of those disciplines (as determined under section 803(d)(4)(B)) and in which deficiencies exist (as identified in the assessments undertaken pursuant to section 806(d));[8] and

(ii) pursuant to subsection (b)(2)(B),[9] enter into an agreement to work in a national security position or work in[10] the field of education in the area of study for which the fellowship was awarded;[11]

(C) awarding grants to institutions of higher education to enable such institutions to establish, operate, or improve programs in foreign languages, area studies, counterproliferation studies,[3] and other international fields that are critical areas of those disciplines (as determined under section 803(d)(4)(C));[11]

(D)[11] awarding grants to institutions of higher education to carry out activities under the National Flagship Language Initiative (described in subsection (i)); and[11]

(E)[11] awarding scholarships to students who—

"(A) awarding scholarships to undergraduate students who are United States citizens in order to enable such students to study, for at least one academic semester, or equivalent term in foreign countries that are critical countries (as determined under section 803(d)(4)(A)) in those language and study areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 806(d));".

[6] Sec. 404(b)(2) of Public Law 102–496 (106 Stat. 3185) struck out "in the United States" and inserted in lieu thereof "as part of a graduate degree program of a United States institution of higher education".

[7] Sec. 1078(b)(2)(A) of Public Law 104–201 (110 Stat. 2664) inserted "relating to the national security interests of the United States" after "international fields".

[8] Sec. 311(b)(2)(B) of Public Law 103–178 (107 Stat. 2037) added "and in which deficiencies exist (as identified in the assessments undertaken pursuant to section 806(d))".

[9] Sec. 1078(b)(2)(B)(i) of Public Law 104–201 (110 Stat. 2664) struck out "subsection (b)(2)" and inserted in lieu thereof "subsection (b)(2)(B)".

[10] Sec. 1078(b)(2)(B)(ii) of Public Law 104–201 (110 Stat. 2664) struck out "work for an agency or office of the Federal Government or in" and inserted in lieu thereof "work in a national security position or work in".

[11] Sec. 333(a)(1) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2396) struck out "and" at the end of subpara. (B)(ii), struck out a period at the end of subpara. (C) and inserted in lieu thereof "; and", and added a new subpara. (D). Subsequently, sec. 603(a)(1) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487; 118 Stat. 3953) struck out "and" at the end of subpara. (C), struck out a period at the end of subpara. (D) and inserted in lieu thereof "; and", and added a new subpara. (E).

(i) are United States citizens who—

(I) are native speakers (referred to as "heritage community citizens") of a foreign language that is identified as critical to the national security interests of the United States who should be actively recruited for employment by Federal security agencies with a need for linguists; and

(II) are not proficient at a professional level in the English language with respect to reading, writing, and other skills required to carry out the national security interests of the United States, as determined by the Secretary,

to enable such students to pursue English language studies at an institution of higher education of the United States to attain proficiency in those skills; and

(ii) enter into an agreement to work in a position in a similar manner (as determined by the Secretary) as agreements entered into pursuant to subsection (b)(2)(A).

(2) FUNDING ALLOCATIONS.—Of the amount available for obligation out of the National Security Education Trust Fund or from a transfer under section 810(c)[12] for any fiscal year for the purposes stated in paragraph (1), the Secretary shall have a goal of allocating—

(A) 1/3 of such amount for the awarding of scholarships pursuant to paragraph (1)(A);

(B) 1/3 of such amount for the awarding of fellowships pursuant to paragraph (1)(B); and

(C) 1/3 of such amount for the awarding of grants pursuant to paragraph (1)(C).

The funding allocation under this paragraph shall not apply to grants under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i) or for the scholarship program under paragraph (1)(E).[13] For the authorization of appropriations for the National Flagship Language Initiative, see section 811.[14] For the authorization of appropriations for the scholarship program under paragraph (1)(E), see section 812.[13]

(3) CONSULTATION WITH NATIONAL SECURITY EDUCATION BOARD.—The program required under this title shall be carried out in consultation with the National Security Education Board established under section 803.

(4) CONTRACT AUTHORITY.—The Secretary may enter into one or more contracts, with private national organizations having an expertise in foreign languages, area studies, counterproliferation studies,[3] and other international fields, for the awarding of the scholarships, fellowships, and grants described in paragraph (1) in accordance with the provisions of this title. The Secretary may enter into such contracts without

[12] Sec. 601(b) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487; 118 Stat. 3952) inserted "or from a transfer under section 810(c)".

[13] Sec. 603(a)(2) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487; 118 Stat. 3954) inserted "or for the scholarship program under paragraph (1)(E)" and added the final sentence of para. (2).

[14] Sec. 333(a)(3) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2396) added these two sentences.

regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provision of law that requires the use of competitive procedures. In addition, the Secretary may enter into personal service contracts for periods up to one year for program administration, except that not more than 10 such contracts may be effect at any one time.[15]

(b) SERVICE AGREEMENT.—In awarding a scholarship or fellowship under the program, the Secretary or contract organization referred to in subsection (a)(4), as the case may be, shall require a recipient of any fellowship or any scholarship[16] to enter into an agreement that, in return for such assistance, the recipient—

(1) will maintain satisfactory academic progress, as determined in accordance with regulations issued by the Secretary, and agrees that failure to maintain such progress shall constitute grounds upon which the Secretary or contract organization referred to in subsection (a)(4) may terminate such assistance;

(2)[17] will—

(A)[18] in the case of a recipient of a scholarship, after the recipient's completion of the study for which scholarship assistance was provided under the program, work in a position in the Department of Defense or other element of the intelligence community that is certified by the Secretary as appropriate to utilize the unique language and region expertise acquired by the recipient pursuant to such study for a period specified by the Secretary, which period shall include one year of service for each year, or portion thereof, for which such scholarship assistance was provided; or

(B)[18] in the case of a recipient of a fellowship, after the recipient's completion of the study for which the fellowship assistance was provided under the program, work in a position described in subparagraph (A) that is certified by the Secretary as appropriate to utilize the unique language and region expertise acquired by the recipient pursuant to

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[15] Sec. 404(b)(3) of Public Law 102–496 (106 Stat. 3185) added the last sentence in para. (4).

[16] Sec. 1078(c)(1) of Public Law 104–201 (110 Stat. 2665) struck out ", or of scholarships that provide assistance for periods that aggregate 12 months or more," and inserted in lieu thereof "or any scholarship".

[17] Sec. 1078(c)(2) of Public Law 104–201 (110 Stat. 2665) amended and restated para. (2). It formerly read as follows:

"(2) will, upon completion of such recipient's baccalaureate degree or education under the program, as the case may be, and in accordance with regulations issued by the Secretary, work for the Federal Government or in the field of education in the area of study for which the scholarship or fellowship was awarded for a period specified by the Secretary, which period for the recipients of scholarships shall be no more than the same period for which scholarship assistance was provided and for the recipients of fellowships shall be not less than one and not more than three times the period for which the fellowship assistance was provided; and".

[18] Sec. 925(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1578) struck out subparas. (A) and (B) and added new subparas. (A) and (B). Sec. 925(b) of Public Law 108–136 further provided that:

"(b) APPLICABILITY.—(1) The amendment made by subsection (a) shall apply with respect to service agreements entered into under the David L. Boren National Security Education Act of 1991 on or after the date of the enactment of this Act.

"(2) The amendment made by subsection (a) shall not affect the force, validity, or terms of any service agreement entered into under the David L. Boren National Security Education Act of 1991 before the date of the enactment of this Act that is in force as of that date."

Previously, subparas. (A) and (B) had been amended by sec. 305(a)(1) of the Intelligence Authorization Act for Fiscal Year 1999 (Public Law 105–272; 112 Stat. 2400) and sec. 1332 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2300).

such study for a period specified by the Secretary, which period shall (at the discretion of the Secretary) include not less than one nor more than three years for each year, or portion thereof, for which such fellowship assistance was provided; and

(3) if the recipient fails to meet either of the obligations set forth in paragraph (1) or (2), will reimburse the United States Government for the amount of the assistance provided the recipient under the program, together with interest at a rate determined in accordance with regulations issued by the Secretary.

(c)[19] EVALUATION OF PROGRESS IN LANGUAGE SKILLS.—The Secretary shall, through the National Security Education Program office, administer a test of the foreign language skills of each recipient of a scholarship or fellowship under this title before the commencement of the study or education for which the scholarship or fellowship is awarded and after the completion of such study or education. The purpose of these tests is to evaluate the progress made by recipients of scholarships and fellowships in developing foreign language skills as a result of assistance under this title.

(d)[19] DISTRIBUTION OF ASSISTANCE.—In selecting the recipients for awards of scholarships, fellowships, or grants pursuant to this title, the Secretary or a contract organization referred to in subsection (a)(4), as the case may be, shall take into consideration (1) the extent to which the selections will result in there being an equitable geographic distribution of such scholarships, fellowships, or grants (as the case may be) among the various regions of the United States, and (2) the extent to which the distribution of scholarships and fellowships to individuals reflects the cultural, racial, and ethnic diversity of the population of the United States.

(e)[19] MERIT REVIEW.—The Secretary shall award scholarships, fellowships, and grants under the program based upon a merit review process.

(f)[20] LIMITATION ON USE OF PROGRAM PARTICIPANTS.—No person who receives a grant, scholarship, or fellowship or any other type of assistance under this title shall, as a condition of receiving such assistance or under any other circumstances, be used by any department, agency, or entity of the United States Government engaged in intelligence activities to undertake any activity on its behalf during the period such person is pursuing a program of education for which funds are provided under the program carried out under this title.

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[19] Sec. 1078(d) of Public Law 104–201 (110 Stat. 2665) redesignated subsecs. (c), (d), and (e) as subsecs. (d), (e), and (f), and added a new subsec. (c).

[20] Sec. 404(c) of Public Law 102–496 (106 Stat. 3185) struck out subsec. (e) and redesignated subsec. (f) as subsec. (e). Sec. 1078(d)(1) of Public Law 104–201 (110 Stat. 2665) redesignated subsec. (e) as subsec. (f). Former subsec. (e) read as follows:

"(e) ADMINISTRATION OF PROGRAM THROUGH THE DEFENSE INTELLIGENCE COLLEGE.—The Secretary shall administer the program through the Defense Intelligence College.".

(g)[21] DETERMINATION OF AGENCIES AND OFFICES OF THE FEDERAL GOVERNMENT HAVING NATIONAL SECURITY RESPONSIBILITIES.—(1) The Secretary, in consultation with the Board, shall annually determine and develop a list identifying each agency or office of the Federal Government having national security responsibilities at which a recipient of a fellowship or scholarship under this title will be able to make the recipient's foreign area and language skills available to such agency or office. The Secretary shall submit the first such list to the Congress and include each subsequent list in the annual report to the Congress, as required by section 806(b)(6).

(2) Notwithstanding section 804, funds may not be made available from the Fund to carry out this title for fiscal year 1997 until 30 days after the date on which the Secretary of Defense submits to the Congress the first such list required by paragraph (1).

(h)[22] USE OF AWARDS TO ATTEND THE FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE.—(1) The Secretary shall provide for the admission of award recipients to the Foreign Language Center of the Defense Language Institute (hereinafter in this subsection referred to as the "Center"). An award recipient may apply a portion of the applicable scholarship or fellowship award for instruction at the Center on a space-available basis as a Department of Defense sponsored program to defray the additive instructional costs.

(2) Except as the Secretary determines necessary, an award recipient who receives instruction at the Center shall be subject to the same regulations with respect to attendance, discipline, discharge, and dismissal as apply to other persons attending the Center.

(3) In this subsection, the term "award recipient" means an undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) who—

(A) is in good standing;

(B) has completed all academic study in a foreign country, as provided for under the scholarship or fellowship; and

(C) would benefit from instruction provided at the Center.

(i)[23] NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—(1) Under the National Flagship Language Initiative, institutions of higher education shall establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical in the interests of the national security of the United States.

(2) An undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) may participate in the activities carried out under the National Flagship Language Initiative.

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[21] Sec. 1078(f)(2) of Public Law 104–201 (110 Stat. 2666) added subsec. (g).

[22] Sec. 332 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2395) added subsec. (h).

[23] Sec. 333(a)(2) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2396) added subsec. (i).

(3) An institution of higher education that receives a grant pursuant to subsection (a)(1)(D) shall give special consideration to applicants who are employees of the Federal Government.

(4) For purposes of this subsection, the Foreign Language Center of the Defense Language Institute and any other educational institution that provides training in foreign languages operated by the Department of Defense or an agency in the intelligence community is deemed to be an institution of higher education, and may carry out the types of activities permitted under the National Flagship Language Initiative.

(5)[24] An undergraduate or graduate student who participates in training in a program under paragraph (1) and has not already entered into a service agreement under subsection (b) shall enter into a service agreement under subsection (b) applicable to an undergraduate or graduate student, as the case may be, with respect to participation in such training in a program under paragraph (1).

(6)[24](A) An employee of a department or agency of the Federal Government who participates in training in a program under paragraph (1) shall agree in writing—

(i) to continue in the service of the department or agency of the Federal Government employing the employee for the period of such training;

(ii) to continue in the service of such department or agency, following completion by the employee of such training, for a period of two years for each year, or part of the year, of such training;

(iii) if, before the completion by the employee of such training, the employment of the employee is terminated by such department or agency due to misconduct by the employee, or by the employee voluntarily, to reimburse the United States for the total cost of such training (excluding the employee's pay and allowances) provided to the employee; and

(iv) if, after the completion by the employee of such training but before the completion by the employee of the period of service required by clause (ii), the employment of the employee by such department or agency is terminated either by such department or agency due to misconduct by the employee, or by the employee voluntarily, to reimburse the United States in an amount that bears the same ratio to the total cost of such training (excluding the employee's pay and allowances) provided to the employee as the unserved portion of such period of service bears to the total period of service required by clause (ii).

(C) Subject to subparagraph (D), the obligation to reimburse the United States under an agreement under subparagraph (A) is for all purposes a debt owing the United States.

(D) The head of the element of the intelligence community concerned may release an employee, in whole or in part, from the obligation to reimburse the United States under an agreement under

[24] Sec. 602(a) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487; 118 Stat. 3952) added paras. (5) and (6).

subparagraph (A) when, in the discretion of the head of the element, the head of the element determines that equity or the interests of the United States so require.

SEC. 803.[25] NATIONAL SECURITY EDUCATION BOARD.

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a National Security Education Board.

(b) COMPOSITION.—The Board shall be composed of the following individuals or the representatives of such individuals:

(1) The Secretary of Defense, who shall serve as the chairman of the Board.

(2) The Secretary of Education.

(3) The Secretary of State.

(4) The Secretary of Commerce.

(5) The Director of Central Intelligence.

(6)[26] The Chairperson of the National Endowment for the Humanities.

(7)[26] Six[26] individuals appointed by the President, by and with the advice and consent of the Senate, who shall be experts in the fields of international, language, area, and counterproliferation[27] studies education and who may not be officers or employees of the Federal Government.[26]

(c) TERM OF APPOINTEES.—Each individual appointed to the Board pursuant to subsection (b)(6)[28] shall be appointed for a period specified by the President at the time of the appointment, but not to exceed four years. Such individuals shall receive no compensation for service on the Board but may receive reimbursement for travel and other necessary expenses.

(d) FUNCTIONS.—The Board shall perform the following functions:

(1) Develop criteria for awarding scholarships, fellowships, and grants under this title, including an order of priority in such awards that favors individuals expressing an interest in national security issues or pursuing a career in a national security position.[29]

(2) Provide for wide dissemination of information regarding the activities assisted under this title.

(3) Establish qualifications for students desiring scholarships or fellowships, and institutions of higher education desiring

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[25] 50 U.S.C. 1903.

[26] Sec. 1335(g)(1) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 107–277); 112 Stat. 2681–788) struck out para. (6), which referred to the Secretary of Energy, and redesignated paras. (7) and (8) as paras. (6) and (7).

Previously, sec. 305(b) of the Intelligence Authorization Act for Fiscal Year 1999 (Public Law 105–272; 112 Stat. 2401) amended para. (6) by striking out "The Director of the United States Information Agency" and inserting in lieu thereof "Secretary of Energy".

Prior to this, sec. 404(d) of Public Law 102–496 (106 Stat. 3186) redesignated former para. (7) as para. (8), inserted new para. (7), and further amended newly designated para. (8), by striking "Four" and inserting in lieu thereof "Six", and by inserting at the end of para. (8) the following before the period: "and who may not be officers or employees of the Federal Government".

[27] Sec. 305(a)(3) of the Intelligence Authorization Act for Fiscal Year 1999 (Public Law 105–272; 112 Stat. 2401) struck out "and area" and inserted in lieu thereof "area, and counterproliferation".

[28] Sec. 1335(g)(2) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 107–277); 112 Stat. 2681–788) struck out "subsection (b)(7)" and inserted in lieu thereof "subsection (b)(6)".

[29] Sec. 1078(e)(1) of Public Law 104–201 (110 Stat. 2666) inserted ", including an order of priority in such awards that favors individuals expressing an interest in national security issues or pursuing a career in a national security position".

grants, under this title, including, in the case of students desiring a scholarship or fellowship, a requirement that the student have a demonstrated commitment to the study of the discipline for which the scholarship or fellowship is to be awarded.

(4) After taking into account the annual analyses of trends in language, international, area, and counterproliferation[27] studies under section 806(b)(1), make recommendations[30] to the Secretary regarding—

(A) which countries are not emphasized in other United States study abroad programs, such as countries in which few United States students are studying and countries which are of importance to the national security interests of the United States,[31] and are, therefore, critical countries for the purposes of section 802(a)(1)(A);

(B) which areas within the disciplines described in section 802(a)(1)(B) relating to the national security interests of the United States[32] are areas of study in which United States students are deficient in learning and are, therefore, critical areas within those disciplines for the purposes of that section;

(C) which areas within the disciplines described in section 802(a)(1)(C) are areas in which United States students, educators, and Government employees are deficient in learning and in which insubstantial numbers of United States institutions of higher education provide training and are, therefore, critical areas within those disciplines for the purposes of that section;[33]

(D) how students desiring scholarships or fellowships can be encouraged to work for an agency or office of the Federal Government involved in national security affairs or national security policy upon completion of their education; and[33]

(E)[33] which foreign languages are critical to the national security interests of the United States for purposes of section 802(a)(1)(D) (relating to grants for the National Flagship Language Initiative).

(5)[34] Encourage applications for fellowships under this title from graduate students having an educational background in any academic discipline, particularly in the areas of science or technology.

(6)[34] Provide the Secretary biennially with a list of scholarship recipients and fellowship recipients, including an assessment of their foreign area and language skills, who are available to work in a national security position.

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[30] Sec. 1078(e)(2)(A) of Public Law 104–201 (110 Stat. 2666) struck out "Make recommendations" and inserted in lieu thereof "After taking into account the annual analyses of trends in language, international, and area studies under section 806(b)(1), make recommendations".

[31] Sec. 1078(e)(2)(B) of Public Law 104–201 (110 Stat. 2666) inserted "and countries which are of importance to the national security interests of the United States".

[32] Sec. 1078(e)(2)(C) of Public Law 104–201 (110 Stat. 2666) inserted "relating to the national security interests of the United States".

[33] Sec. 333(a)(4) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2396) struck out "and" at the end of subpara. (C), struck out a period at the end of subpara. (D) and inserted in lieu thereof "; and", and added a new subpara. (E).

[34] Sec. 1078(e) of Public Law 104–201 (110 Stat. 2666) redesignated para. (5) as para. (8), and added new paras. (5), (6), and (7).

(7)[34] Not later than 30 days after a scholarship or fellowship recipient completes the study or education for which assistance was provided under the program, provide the Secretary with a report fully describing the foreign area and language skills obtained by the recipient as a result of the assistance.

(8)[34] Review the administration of the program required under this title.

SEC. 804.[35] NATIONAL SECURITY EDUCATION TRUST FUND.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a trust fund to be known as the "National Security Education Trust Fund". The assets of the Fund consist of amounts appropriated to the Fund and amounts credited to the Fund under subsection (e).

(b)[36] AVAILABILITY OF SUMS IN THE FUND.—Sums in the Fund shall, to the extent provided in appropriations Acts, be available—

(1) for awarding scholarships, fellowships, and grants in accordance with the provisions of this title; and

(2) for properly allocable costs of the Federal Government for the administration of the program under this title.

(c) INVESTMENT OF FUND ASSETS.—The Secretary of the Treasury shall invest in full the amount in the Fund that is not immediately necessary for expenditure.[37] Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of 1/8 of 1 percent, the rate of interest of such special obligations shall be the multiple of 1/8 of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchases of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue or at the market price, is not in the public interest.

(d) AUTHORITY TO SELL OBLIGATIONS.—Any obligation acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold by the Secretary of the Treasury at the market

[35] 50 U.S.C. 1904.

[36] Sec. 375(b) of Public Law 103–160 (107 Stat. 1637) struck out para. designation "(1)", struck out para. (2), and redesignated clauses (A) and (B) as paras. (1) and (2). Former para. (2) had read as follows:

"(2) No amount may be appropriated to the Fund, or obligated from the Fund, unless authorized by law.".

[37] Sec. 404(e) of Public Law 102–496 (106 Stat. 3186) struck out "obligation" and inserted in lieu thereof "expenditure".

price, and such special obligations may be redeemed at par plus accrued interest.

(e) AMOUNTS CREDITED TO FUND.—(1) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(2) Any amount paid to the United States under section 802(b)(3) shall be credited to and form a part of the Fund.

(3)[38] any gifts of money shall be credited to and form a part of the Fund.

SEC. 805.[39] REGULATIONS AND ADMINISTRATIVE PROVISIONS[40]

(a) REGULATIONS.—The Secretary may prescribe regulations to carry out the program required by this title. Before prescribing any such regulations, the Secretary shall submit a copy of the proposed regulations to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives. Such proposed regulations may not take effect until 30 days after the date on which they are submitted to those committees.

(b) ACCEPTANCE AND USE OF GIFTS.—In order to conduct the program required by this title, the Secretary may—

(1) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purpose of conducting the program required by this title; and

(2) may use, sell, or otherwise dispose of such property for that purpose.

(c) VOLUNTARY SERVICES.—In order to conduct the program required by this title, the Secretary may accept and use the services of voluntary and noncompensated personnel.

(d) NECESSARY EXPENDITURES.—Expenditures necessary to conduct the program required by this title shall be paid from the Fund, subject to section 804(b).

SEC. 806.[41] ANNUAL REPORT.

(a) ANNUAL REPORT.—(1)[42] The Secretary shall submit to the President and to the congressional intelligence committees[42] an annual report of the conduct of the program required by this title.

(2)[42] The report submitted to the President[42] shall be submitted each year at the time that the President's budget for the next fiscal year is submitted to Congress pursuant to section 1105 of title 31, United States Code.

(3)[42] The report submitted to the congressional intelligence committees shall be submitted on the date provided in section 507 of the National Security Act of 1947.

(b) CONTENTS OF REPORT.—Each such report shall contain—

(1) an analysis of the trends within language, international, area, and counterproliferation[27] studies, along with a survey of

[38] Sec. 375(a) of Public Law 103–160 (107 Stat. 1637) added para. (3).
[39] 50 U.S.C. 1905.
[40] Enrolled without a period.
[41] 50 U.S.C. 1906.
[42] Sec. 811(a)(7)(A) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2425) redesignated the first and second sentences of subsec. (a) as paras. (1) and (2), added a new para. (3), struck out "the Congress" in para. (1) and inserted in lieu thereof "congressional intelligence committees", and inserted "submitted to the President" in para. (2).

such areas as the Secretary determines are receiving inadequate attention;

(2) the effect on those trends of activities under the program required by this title;

(3) an analysis of the assistance provided under the program for the previous fiscal year, to include the subject areas being addressed and the nature of the assistance provided;

(4) an analysis of the performance of the individuals who received assistance under the program during the previous fiscal year, to include the degree to which assistance was terminated under the program and the extent to which individual recipients failed to meet their obligations under the program;

(5) an analysis of the results of the program for the previous fiscal year, and cumulatively, to include, at a minimum—

(A) the percentage of individuals who have received assistance under the program who subsequently became employees of the United States Government;

(B) in the case of individuals who did not subsequently become employees of the United States Government, an analysis of the reasons why they did not become employees and an explanation as to what use, if any, was made of the assistance by those recipients; and

(C) the uses made of grants to educational institutions;[43]

(6)[43] the current list of agencies and offices of the Federal Government required to be developed by section 802(g); and

(7)[43] any legislative changes recommended by the Secretary to facilitate the administration of the program or otherwise to enhance its objectives.

(c) SUBMISSION OF INITIAL REPORT.—The first report under this section shall be submitted at the time the budget for fiscal year 1994 is submitted to Congress.

(d)[44] CONSULTATION.—During the preparation of each report required by subsection (a), the Secretary shall consult with the members of the Board specified in paragraphs (1) through (7) of section 803(b). Each such member shall submit to the Secretary an assessment of their hiring needs in the areas of language and area studies and a projection of the deficiencies in such areas. The Secretary shall include all assessments in the report required by subsection (a).

SEC. 807.[45] GENERAL ACCOUNTING OFFICE AUDITS.[46]

The conduct of the program required by this title may be audited by the General Accounting Office[46] under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the General Accounting Office[46] shall have access to all books, accounts, records, reports, and files

[43] Sec. 1078(f)(3) of Public Law 104–201 (110 Stat. 2667) struck out "and" at the end of subpara. (C), redesignated para. (6) as para. (7), and added a new para. (6).

[44] Sec. 311(b)(1) of Public Law 103–178 (107 Stat. 2037) added subsec. (d).

[45] 50 U.S.C. 1907.

[46] Sec. 8(b) of the GAO Human Capital Reform Act of 2004 (Public Law 108–271; 118 Stat. 814) provided that "Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office."

and all other papers, things, or property of the Department of Defense pertaining to such activities and necessary to facilitate the audit.

SEC. 808.[47] DEFINITIONS.

For the purpose of this title:

(1) The term "Board" means the National Security Education Board established pursuant to section 803.

(2) The term "Fund" means the National Security Education Trust Fund established pursuant to section 804.

(3) The term "institution of higher education" has the meaning given that term by section 101[48] of the Higher Education Act of 1965.[48]

(4)[49] The term "national security position" means a position—

(A) having national security responsibilities in a[50] agency or office of the Federal Government that has national security responsibilities, as determined under section 802(g); and

(B) in which the individual in such position makes their foreign language skills available to such agency or office.

(5)[51] The term "congressional intelligence committees" means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 809.[52] FISCAL YEAR 1992 FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS TO THE FUND.—There is hereby authorized to be appropriated to the Fund for fiscal year 1992 the sum of $150,000,000.[53]

(b) AUTHORIZATION OF OBLIGATIONS FROM THE FUND.—During fiscal year 1992, there may be obligated from the Fund such amounts as may be provided in appropriations Acts, not to exceed $35,000,000. Amounts made available for obligation from the Fund for fiscal year 1992 shall remain available until expended.

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[47] 50 U.S.C. 1908.

[48] Sec. 102(a)(15) of the Higher Education Amendments of 1998 (Public Law 105–244; 112 Stat. 1622) struck out "1201(a)" and inserted in lieu thereof "101", and struck out "(20 U.S.C. 1141(a))" at the end of para. (3).

[49] Sec. 1078(f)(1) of Public Law 104–201 (110 Stat. 2666) added para. (4).

[50] As enrolled.

[51] Sec. 811(a)(7)(B) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2426) added para. (5).

[52] 50 U.S.C. 1909.

[53] Sec. 404(f) of Public Law 102–496 (106 Stat. 3186) provided the following new authorization:

"(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1993 to the National Security Education Trust Fund established by section 804 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1904) the sum of $30,000,000.".

Title VII of the Department of Defense Appropriations Act, 1992 (Public Law 102–172; 105 Stat. 1170), provided the following:

"NATIONAL SECURITY EDUCATION TRUST FUND

"Of the funds appropriated in this Act, $150,000,000 shall be made available only for the National Security Education Trust Fund pursuant to the provisions of title VIII of the Intelligence Authorization Act (H.R. 2038), for fiscal year 1992.".

Public Law 104–6 (109 Stat. 79) rescinded $75,000,000 of the funds made available for the National Security Education Trust Fund under Public Law 102–172.

SEC. 810.[54] **FUNDING.**

(a)[55] FISCAL YEARS 1993 AND 1994.—Amounts appropriated to carry out this title for fiscal years 1993 and 1994 shall remain available until expended.

(b) FISCAL YEARS 1995 AND 1996.—There is authorized to be appropriated from, and may be obligated from, the Fund for each of the fiscal years 1995 and 1996 not more than the amount credited to the Fund in interest only for the preceding fiscal year under section 804(e).

(c)[56] FUNDING FROM INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT FOR FISCAL YEARS BEGINNING WITH FISCAL YEAR 2005.—In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated for the Intelligence Community Management Account for each fiscal year, beginning with fiscal year 2005, $8,000,000 to carry out the scholarship, fellowship, and grant programs under subparagraphs (A), (B), and (C), respectively, of section 802(a)(1).

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[54] 50 U.S.C. 1910. Sec. 311(c) of Public Law 103–178 (107 Stat. 2037) added sec. 810.

[55] Appropriations: FY1993—$10 million (Supplemental Appropriations Act of 1993; Public Law 103–50; 107 Stat. 249); FY1994—$10 million (Public Law 103–139; 107 Stat. 1437); FY1995—$8.5 million (Public Law 335; 108 Stat. 2616); FY1996—$7.5 million (Public Law 104–61; 109 Stat. 651); FY1997—$5.1 million (Public Law 104–208; 110 Stat. 3009); FY1998—$2 million (Public Law 105–56; 112 Stat. 1219); FY1999—$3 million (Public Law 105–262; 112 Stat. 2296; FY2000—$8 million (Public Law 106–79; 113 Stat. 1230); FY2001—$6.95 million (Public Law 106–259; 114 Stat. 674); FY2002—$8 million (Public Law 107–117; 115 Stat. 2247); FY2003—$8 million (Public Law 107–248; 116 Stat. 1536); FY2004—$8 million (Public Law 108–87; 117 Stat. 1071); and FY2005—$8 million (Public Law 108–287; 118 Stat. 968).

Public Law 104–61 further provided: "That any individual accepting a scholarship or fellowship from the program agrees to be employed by the Department of Defense or the Intelligence Community in accordance with Federal employment standards.".

[56] Sec. 601(a) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487; 118 Stat. 3951) added subsec. (c).

14. Inspector General Act of 1978

Partial text of Public Law 95–452 [H.R. 8588], 99 Stat. 1101, approved October 12, 1978, as amended

Title 5 App. United States Code

§ 1. Short title

That this Act be cited as the "Inspector General Act of 1978".[1]

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the establishments listed in section 11(2);

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is established—

(A) in each of such establishments an office of Inspector General, subject to subparagraph (B); and

(B) in the establishment of the Department of the Treasury—

(i) an Office of Inspector General of the Department of the Treasury; and

(ii) an Office of Treasury Inspector General for Tax Administration.

§ 3. Appointment of Inspectors General: supervision; removal; political activities; appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General

[1] 5 U.S.C. App.

shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(c) For the purposes of section 7324 of Title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

§ 4. Duties and responsibilities; report of criminal violations to Attorney General

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse

in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by Offices of Inspector General of establishments defined under section 11(2), Offices of Inspector General of designated Federal entities defined under section 8E(a)(2), and any audit office established within a Federal entity defined under section 8E(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accountability Office or the Office of Inspector General of each establishment defined under section 11(2), or the Office of Inspector General of each designated Federal entity defined under section 8E(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

§ 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prospective authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period;

(6) a listing, subdivided according to subject matter, of each audit report issued by the Office during the reporting period and for each audit report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports and the total dollar value of questioned costs (including a separate category for the dollar value of supported costs), for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management, for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit report issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made,

and a statement concerning the desired timetable for achieving a management decision on each such report;

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period; and

(12) information concerning any significant management decision with which the Inspector General is in disagreement.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing—

(1) any comments such head determines appropriate;

(2) statistical tables showing the total number of audit reports and the dollar value of disallowed costs, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and

(ii) the dollar value of disallowed costs that were written off by management; and

(D) for which no final action has been taken by the end of the reporting period;

(3) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of recommendations that were actually completed; and

(ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and

(D) for which no final action has been taken by the end of the reporting period; and

(4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing—

(A) a list of such audit reports and the date each such report was issued;

(B) the dollar value of disallowed costs for each report;

(C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and

(D) an explanation of the reasons final action has not been taken with respect to each such audit report, except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense of national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986, nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) as used in this section—

(1) the term "questioned costs" means a costs that is questioned by the Office because of—

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term "unsupported cost" means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term "disallowed cost" means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including—

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term "management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary; and

(6) the term "final action" means—

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made.

§ 6. Authority of Inspector Generals; information and assistance from Federal agencies; unreasonable refusal; office space and equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided,* That procedures other than subpena shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

(6) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(7) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(8) to obtain services as authorized by section 3109 of Title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of Title 5, United States Code; and

(9) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d) For purposes of the provisions of title 5, United States Code, governing the Senior Executive Service, any reference in such provisions to the "appointing authority" for a member of the Senior Executive Service or for a Senior Executive Service position shall, if such member or position is or would be within the Office of an Inspector General, be deemed to be a reference to such Inspector General.

(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics

and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.

§ 7. Complaints by employees; disclosure of identity; reprisals

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

§ 8. Additional provisions with respect to the Inspector General of the Department of Defense

(a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

(A) sensitive operational plans;

(B) intelligence matters;

(C) counterintelligence matters;

(D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations[2] of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government

[2] Sec. 1(a)(6) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Government Operations of the House of Representatives shall be treated as referring to the Committee on Government Reform and Oversight of the House of Representatives.

Operations[2] of the House of Representatives and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—

(1) be the principal advisor to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense, except that, when the Coast Guard operates as a service of another department or agency of the Federal Government, a member of the Coast Guard shall be deemed to be an employee of such department or agency.

(f)(1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate

and the Committees on Armed Services and Government Operations[2] of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified in such section, to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations[2] of the House of Representatives.

(g) The provisions of section 1385 of title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.

§ 8A. Special provisions relating to the Agency for International Development

(a) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency.

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the performance of security activities relating to programs and operations of the Agency for International Development.

(c) In addition to the officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(d) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the Monitoring Overseas Direct Employment policy.

(e) The Inspector General of the Agency for International Development shall be in addition to the officers provided for in section 624(a) of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2384(a)].

(f) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2151 et seq.].

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15. Assignment of National Security and Emergency Preparedness Telecommunications Functions

Executive Order 12472, April 3, 1984, 49 F.R. 13471; as amended by Executive Order 13286, February 28, 2003, 68 F.R. 10619 [1]

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Communications Act of 1934, as amended (47 U.S.C. 151), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251), the Disaster Relief Act of 1974 (42 U.S.C. 5121), Section 5 of Reorganization Plan No. 1 of 1977 (3 C.F.R. 197, 1978 Comp.), and Section 203 of Reorganization Plan No. 3 of 1978 (3 C.F.R. 389, 1978 Comp.), and in order to provide for the consolidation of assignment and responsibility for improved execution of national security and emergency preparedness telecommunications functions, it is hereby ordered as follows:

Section 1. The National Communications System. (a) There is hereby established the National Communications System (NCS). The NCS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals shall consist of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

(b) The mission of the NCS shall be to assist the President, the National Security Council, the Homeland Security Council,[2] the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget in:

(1) The exercise of the telecommunications functions and responsibilities set forth in Section 2 of this Order; and

(2) The coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(c) The NCS shall seek to ensure that a national telecommunications infrastructure is developed which:

[1] 42 U.S.C. 5195 note (transferred from 50 U.S.C. app. 2251 note).

[2] Sec. 46(a) of Executive Order 13286 (68 F.R. 10627) inserted "the Homeland Security Council,".

(1) Is responsive to the national security and emergency preparedness needs of the President and the Federal departments, agencies and other entities, including telecommunications in support of national security leadership and continuity of government;

(2) Is capable of satisfying priority telecommunications requirements under all circumstances through use of commercial, government and privately owned telecommunications resources;

(3) Incorporates the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency preparedness telecommunications in all circumstances, including conditions of crisis or emergency; and

(4) Is consistent, to the maximum extent practicable, with other national telecommunications policies.

(d) To assist in accomplishing its mission, the NCS shall:

(1) serve as a focal point for joint industry-government national security and emergency preparedness telecommunications planning; and

(2) establish a joint industry-government National Coordinating Center which is capable of assisting in the initiation, coordination, restoration and reconstitution of national security or emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(e) The Secretary of Homeland Security[3] is designated as the Executive Agent for the NCS. The Executive Agent shall:

(1) Designate the Manager of the NCS;

(2) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness telecommunications needs of the Federal government;

(3) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Department of Homeland Security;[4]

(4) Recommend, in consultation with the NCS Committee of Principals, to the National Security Council, the Homeland Security Council,[2] the Director of the Office of Science and Technology Policy, or the Director of the Office of Management and Budget, as appropriate:

a. The assignment of implementation or other responsibilities to NCS member entities;

b. New initiatives to assist in the exercise of the functions specified in Section 2; and

c. Changes in the composition or structure of the NCS.

(5) Oversee the activities of and provide personnel and administrative support to the Manager of the NCS;

[3] Sec. 46(b) of Executive Order 13286 (68 F.R. 10627) struck out "Secretary of Defense" and inserted in lieu thereof "Secretary of Homeland Security".

[4] Sec. 46(c) of Executive Order 13286 (68 F.R. 10627) struck out "Federal Emergency Management Agency" and inserted in lieu thereof "Department of Homeland Security".

(6) Provide staff support and technical assistance to the National Security Telecommunications Advisory Committee established by Executive Order No. 12382, as amended; and

(7) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(f) The NCS Committee of Principals shall:

(1) Serve as the forum in which each member of the Committee may review, evaluate, and present views, information and recommendations concerning ongoing or prospective national security or emergency preparedness telecommunications programs or activities of the NCS and the entities represented on the Committee;

(2) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security or emergency preparedness telecommunications objectives;

(3) Provide comments or recommendations, as appropriate, to the National Security Council, the Homeland Security Council,[2] the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS; and

(4) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(g) The Manager of the NCS shall:

(1) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

a. A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements;

b. Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency;

c. Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially-provided telecommunications systems;

d. Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security or emergency preparedness telecommunications requirements; and

e. Alternative mechanisms for funding, through the budget review process, national security or emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Director of the Office of Management and Budget.

(2) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of communications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation;

(3) Chair the NCS Committee of Principals and provide staff support and technical assistance thereto;

(4) Serve as a focal point for joint industry-government planning, including the dissemination of technical information, concerning the national security or emergency preparedness telecommunications requirements of the Federal government;

(5) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security or emergency preparedness telecommunications objectives;

(6) Pursuant to the Federal Standardization Program of the General Services Administration, and in consultation with other appropriate entities of the Federal government including the NCS Committee of Principals, manage the Federal Telecommunications Standards Program, ensuring wherever feasible that existing or evolving industry, national, and international standards are used as the basis for Federal telecommunications standards; and

(7) Provide such reports and perform such other duties as are from time to time assigned by the President or his authorized designee, the Executive Agent, or the NCS Committee of Principals. Any such assignments of responsibility to, or reports made by, the Manager shall be transmitted through the Executive Agent.

Sec. 2. Executive Office Responsibilities. (a) *Wartime Emergency Functions.* (1) The National Security Council shall provide policy direction for the exercise of the war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under Section 606 (a), (c)–(e), of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) *Non-Wartime Emergency Functions.* (1) The National Security Council, in consultation with the Homeland Security Council,[5] shall:

a. Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal government for the identification, allocation, and use

[5] Sec. 46(d) of Executive Order 13286 (68 F.R. 10627) inserted ", in consultation with the Homeland Security Council,".

of the Nation's telecommunications resources by the Federal government, and by State and local governments, private industry and volunteer organizations upon request, to the extent practicable and otherwise consistent with law, during those crises or emergencies in which the exercise of the President's war power function is not required or permitted by law; and

b. Provide policy direction for the exercise of the President's non-wartime emergency telecommunications functions, should the President's so instruct.

(2) The Director of the Office of Science and Technology Policy shall provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law;

(3) The Director of the Office of Science and Technology Policy shall establish a Joint Telecommunications Resources Board (JTRB) to assist him in the exercise of the functions specified in this subsection. The Director of the Office of Science and Technology Policy shall serve as chairman of the JTRB; select those Federal departments, agencies, or entities which shall be members of the JTRB; and specify the functions it shall perform.

(c) *Planning and Oversight Responsibilities.* (1) The National Security Council shall advise and assist the President in:

a. Coordinating the development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources, in order to meet national security or emergency preparedness requirements;

b. Providing policy oversight and direction of the activities of the NCS; and

c. Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by this Order.

(2) The Director of the Office of Science and Technology Policy shall make recommendations to the President with respect to the test, exercise and evaluation of the capability of existing and planned communication systems, networks or facilities to meet national security or emergency preparedness requirements and report the results of any such test or evaluations and any recommended remedial actions to the President and to the National Security Council;

(3) The Director of the Office of Science and Technology Policy or his designee shall advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security or emergency preparedness functions. The Director also shall certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities, under all conditions of crisis or emergency; and

(4) The National Security Council, the Homeland Security Council,[2] the Director of the Office of Science and Technology Policy and

the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(d) *Consultation with Federal Departments and Agencies.* In performing the functions assigned under this Order, the National Security Council, the Homeland Security Council,[6] and the Director of the Office of Science and Technology Policy, in consultation with each other, shall:

(1) Consult, as appropriate, with the Director of the Office of Management and Budget; the Secretary of Homeland Security[7] with respect to the emergency management responsibilities assigned pursuant to Executive Order No. 12148, as amended; the Secretary of Commerce, with respect to responsibilities assigned pursuant to Executive Order No. 12046; the Secretary of Defense, with respect to communications security responsibilities assigned pursuant to Executive Order No. 12333; and the Chairman of the Federal Communications Commission or his authorized designee; and

(2) Establish arrangements for consultation among all interested Federal departments, agencies or entities to ensure that the national security and emergency preparedness communications needs of all Federal Government entities are identified; that mechanisms to address such needs are incorporated into pertinent plans and procedures; and that such needs are met in a manner consistent, to the maximum extent practicable, with other national telecommunications policies.

(e) *Budgetary Guidelines.* The Director of the Office of Management and Budget, in consultation with the National Security Council, the Homeland Security Council,[6] and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities.

Sec. 3. Assignment of Responsibilities to Other Departments and Agencies. In order to support and enhance the capability to satisfy the national security and emergency preparedness telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances including those of crisis or emergency, the Federal departments and agencies shall perform the following functions:

(a) *Department of Commerce.* The Secretary of Commerce shall, for all conditions of crisis or emergency:

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[6] Sec. 46(e) of Executive Order 13286 (68 F.R. 10627) inserted ", the Homeland Security Council,".

[7] Sec. 46(f) of Executive Order 13286 (68 F.R. 10627) struck out "the Director of the Federal Emergency Management Agency" and inserted in lieu thereof "the Secretary of Homeland Security".

(1) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(2) Develop, maintain and publish policy, plans, and procedures for the control and allocation of frequency assignments, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum assigned to the Federal government.

(b) *Department of Homeland Security.* The Secretary of Homeland Security shall:[8]

(1) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities;

(2) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their national security or emergency preparedness telecommunications requirements;

(3) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive and consistent with the planning of the Federal government; and

(4) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by the agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(c) *Department of State.* The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications System, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security or emergency preparedness responsibilities.

(d) *Department of Defense.* In addition to the other responsibilities assigned by this Order, the Secretary of Defense shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute the responsibilities assigned by Executive Order No. 12333; and

(2) Ensure that the Director of the National Security Agency provides the technical support necessary to develop

[8] Sec. 46(g) of Executive Order 13286 (68 F.R. 10627) struck out "*Federal Emergency Management Agency.* The Director of the Federal Emergency Management Agency shall:" and inserted in lieu thereof "*Department of Homeland Security.* The Secretary of Homeland Security shall:".

and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(3)[9] Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.

(e) *Department of Justice.* The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to responsibilities assigned by this Order.

(f) *Central Intelligence Agency.* The Director of Central Intelligence shall plan for and provide, operate, and maintain telecommunications services adequate to support its assigned responsibilities, including the dissemination of intelligence within the Federal Government.

(g) *General Services Administration.* Except as otherwise assigned by this Order, the Administrator of General Services, consistent with policy guidance provided by the Director of the Office of Management and Budget, shall ensure that Federally owned or managed domestic communications facilities and services meet the national security and emergency preparedness requirements of the Federal civilian departments, agencies and entities.

(h) *Federal Communications Commission.* The Federal Communications Commission shall, consistent with Section 4(c) of this Order:

(1) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security or emergency preparedness communications services, in order to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity;

(2) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions;

(3) Develop policy, plans and procedures adequate to execute the responsibilities assigned in this Order under all conditions or crisis or emergency; and

[9] Sec. 46(h) of Executive Order 13286 (68 F.R. 10627) added para. (3).

(4) Consult as appropriate with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of their respective national security and emergency preparedness activities.

(i) All Federal departments and agencies, to the extent consistent with law (including those authorities and responsibilities set forth in Section 4(c) of this Order), shall:

(1) Determine their national security and emergency preparedness telecommunications requirements, and provide information regarding such requirements to the Manager of the NCS;

(2) Prepare policies, plans and procedures concerning telecommunications facilities, services or equipment under their management or operational control to maximize their capability of responding to the national security or emergency preparedness needs of the Federal Government;

(3) Provide, after consultation with the Director of the Office of Management and Budget, resources to support their respective requirements for national security and emergency preparedness telecommunications; and provide personnel and staff support to the Manager of the NCS as required by the President;

(4) Make information available to, and consult with, the Manager of the NCS regarding agency telecommunications activities in support of national security or emergency preparedness;

(5) Consult, consistent with the provisions of Executive Order No. 12046, as amended, and in conjunction with the Manager of the NCS, with the Federal Communications Commission regarding execution of responsibilities assigned by this Order;

(6) Submit reports annually, or as otherwise requested, to the Manager of the NCS, regarding agency national security or emergency preparedness telecommunications activities; and

(7) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this Order, furnishing them such information, support and assistance as may be required.

(j) Each Federal department or agency shall execute the responsibilities assigned by this Order in conjunction with the emergency management activities of the Department of Homeland Security,[4] and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of NCS and individual agency telecommunications activities.

Sec. 4. General Provisions. (a) All Executive departments and agencies may issue such rules and regulations as may be necessary to carry out the functions assigned under this Order.

(b) In order to reflect the assignments of responsibility provided by this Order:

(1) Sections 2–414, 4–102, 4–103, 4–202, 4–302, 5–3, and 6–101 of Executive Order No. 12046, as amended, are revoked;

(2) The Presidential Memorandum of August 21, 1963, as amended, entitled "Establishment of the National Communications System", is hereby superseded; and

(3) Section 2–411 of Executive Order No. 12046, as amended, is further amended by deleting the period and inserting ", except as otherwise provided by Executive Order No. " and inserting the number assigned to this Order.

(c) Nothing in this Order shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended; or under and other law; or any function vested by law in the Federal Communications Commission.

Sec. 5. This Order shall be effective upon publication in the Federal Register.

16. National Security Emergency Preparedness Responsibilities

Partial text of Executive Order 12656, November 18, 1988, 54 F.R. 47491; as amended by Executive Order 13074, February 9, 1998, 63 F.R. 7277; Executive Order 13228, October 8, 2001, 66 F.R. 51816; and Executive Order 13286, February 28, 2003, 68 F.R. 10626 [1]

Whereas our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and

Whereas effective national preparedness planning to meet such emergency, including a massive nuclear attack, is essential to our national survival; and

Whereas effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and

Whereas the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof;

Now, therefore, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, and the Federal Civil Defense Act, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:

PART 1—PREAMBLE

Sec. 101. National Security Emergency Preparedness Policy.

(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency or other emergency, that seriously degrades or seriously threatens the national security of the

[1] 42 U.S.C. 5195 note (transferred from 50 U.S.C. app. 2251 note). Sec. 42 of Executive Order 13286 (68 F.R. 10627) provided:

"Without prejudice to subsections (a) through (i) of this section, all responsibilities assigned to specific Federal officials pursuant to Executive Order 12656 that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002 (regardless of whether such responsibility or function is expressly required to be carried out through another official of the Department of Homeland Security or not pursuant to such Act), or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, are hereby reassigned to the Secretary of Homeland Security.".

United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy, except that the Homeland Security Council shall be responsible for administering such policy with respect to terrorist threats and attacks within the United States.[2] All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States.

(b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for performing these functions; and development of the capability to execute those plans.

Sec. 102. Purpose.

(a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies.

(b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.

Sec. 103. Scope.

(a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedures, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency.

(b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency.

(c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness.

(d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are otherwise assigned by Executive Order 12427.

Sec. 104. Management of National Security Emergency Preparedness.

(a) The National Security Council is the principal forum for consideration of national security emergency preparedness policy, except that the Homeland Security Council is the principal forum for

[2] Sec. 9(a) of Executive Order 13228 (66 F.R. 51816) inserted ", except that the Homeland Security Council shall be responsible for administering such policy with respect to terrorist threats and attacks within the United States."

consideration of policy relating to terrorist threats and attacks within the United States.[3]

(b) The National Security Council and the Homeland Security Council[4] shall arrange for Executive branch liaison with, and assistance to, the Congress and Federal judiciary on national security emergency preparedness matters.

(c) The Secretary of Homeland Security[5] shall serve as an advisor to the National Security Council and the Homeland Security Council[6] on issues of national security emergency preparedness, including mobilization preparedness civil defense, continuity of government, technological disasters, and other issues, as appropriate. Pursuant to such procedures for the organization and management of the National Security Council and Homeland Security Council processes as the President may establish, the Secretary of Homeland Security[7] also shall assist in the implementation of and management of those processes as the President may establish. The Secretary of Homeland Security[5] also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council and the Homeland Security Council on implementation of national security emergency preparedness policy.[8]

(d) National security emergency preparedness functions that are shared by more than one agency shall be coordinated by the head of the Federal department or agency having primary responsibility and shall be supported by the heads of other departments and agencies having related responsibilities.

(e) There shall be a national security emergency exercise program that shall be supported by the heads of all appropriate Federal departments and agencies.

(f) Plans and procedures will be designed and developed to provide maximum flexibility to the President for his implementation of emergency actions.

Sec. 105. Interagency Coordination.

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[3] Sec. 9(b) of Executive Order 13228 (66 F.R. 51816) inserted ", except that the Homeland Security Council is the principal forum for consideration of policy relating to terrorist threats and attacks within the United States".

[4] Sec. 9(c) of Executive Order 13228 (66 F.R. 51816) inserted "and the Homeland Security Council".

[5] Sec. 42(a) of Executive Order 13286 (68 F.R. 10626) struck out "The Director of the Federal Emergency Management Agency" and inserted in lieu thereof "The Secretary of Homeland Security".

[6] Sec. 9(d) of Executive Order 13228 (66 F.R. 51816) inserted "and the Homeland Security Council".

[7] Sec. 42(b) of Executive Order 13286 (68 F.R. 10626) struck out "the Director of the Federal Emergency Management Agency" and inserted in lieu thereof "the Secretary of Homeland Security".

[8] Sec. 9(e) of Executive Order 13228 (66 F.R. 51816) struck out "Pursuant to such procedures for the organization and management of the National Security Council process as the President may establish, the Director of the Federal Emergency Management Agency also shall assist in the implementation of and management of the National Security Council process as the President may establish, the Director of the Federal Emergency Management Agency also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council on implementation of national security emergency preparedness policy." and inserted in lieu thereof the previous two sentences.

(a) All appropriate Cabinet members and agency heads shall be consulted regarding national security emergency preparedness programs and policy issues. Each department and agency shall support interagency coordination to improve preparedness and response to a national security emergency and shall develop and maintain decentralized capabilities wherever feasible and appropriate.

(b) Each Federal department and agency shall work within the framework established by, and cooperate with those organizations assigned responsibility in, Executive Order No. 12472, to ensure adequate national security emergency preparedness telecommunications in support of the functions and activities addressed by this Order.

PART 2—GENERAL PROVISIONS

Sec. 201. General. The head of each Federal department and agency, as appropriate, shall:

(1) Be prepared to respond adequately to all national security emergencies, including those that are international in scope, and those that may occur within any region of the Nation;

(2) Consider national security emergency preparedness factors in the conduct of his or her regular functions, particularly those functions essential in time of emergency. Emergency plans and programs, and an appropriate state of readiness, including organizational infrastructure, shall be developed as an integral part of the continuing activities of each Federal department and agency;

(3) Appoint a senior policy official as Emergency Coordinator, responsible for developing and maintaining a multi-year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements;

(4) Design preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(a) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies;

(b) Identification of actions that could be take in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the lead times associated with full emergency action implementation;

(5) Base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems to the maximum extent practicable;

(6) Identify areas where additional legal authorities may be needed to assist management and, consistent with applicable Executive orders, take appropriate measures toward acquiring those authorities;

(7) Make policy recommendations to the National Security Council and the Homeland Security Council[9] regarding national security emergency preparedness activities and functions of the Federal Government;

(8) Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in response to national security emergencies;

(9) Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response;

(10) Cooperate, to the extent appropriate, in compiling, evaluating, and exchanging relevant data related to all aspects of national security emergency preparedness;

(11) Develop programs regarding congressional relations and public information that could be used during national security emergencies;

(12) Ensure a capability to provide, during a national security emergency, information concerning Acts of Congress, presidential proclamations, Executive orders, regulations, and notices of other actions to the Archivist of the United States, for publication in the Federal Register, or to each agency designated maintain the Federal Register in an emergency;

(13) Develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

(14) Ensure that plans consider the consequences for essential services provided by State and local governments, and by the private sector, if the flow of Federal funds is disrupted;

(15) Consult and coordinate with the Secretary of Homeland Security[7] to ensure that those activities and plans are consistent with current Presidential guidelines and policies.[10]

Sec. 202. Continuity of Government. The head of each Federal department and agency shall ensure the continuity of essential functions in any national security emergency by providing for: succession to office and emergency delegation of authority in accordance with applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities.

Sec. 203. Resource Management. The head of each Federal department and agency, as appropriate within assigned areas of responsibility, shall:

(1) Develop plans and programs to mobilize personnel (including reservist programs), equipment, facilities, and other resources;

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[9] Sec. 9(f) of Executive Order 13228 (66 F.R. 51817) inserted "and the Homeland Security Council".

[10] Sec. 42(c) of Executive Order 13286 (68 F.R. 10626) struck out "consistent with current National Security Council guidelines and policies" and inserted in lieu thereof "'consistent with current Presidential guidelines and policies".

(2) Assess essential emergency requirements and plan for the possible use of alternative resources to meet essential demands during and following national security emergencies;

(3) Prepare plans and procedures to share between and among the responsible agencies resources such as energy, equipment, food, land, materials, minerals, services, supplies, transportation, water, and workforce needed to carry out assigned responsibilities and other essential functions, and cooperate with other agencies in developing programs to ensure availability of such resources in a national security emergency;

(4) Develop plans to set priorities and allocate resources among civilian and military claimants;

(5) Identify occupations and skills for which there may be a critical need in the event of a national security emergency.

Sec. 204. Protection of Essential Resources and Facilities. The head of each Federal department and agency, within assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies.

Sec. 205. Federal Benefit, Insurance, and Loan Programs. The head of each Federal department and agency that administers a loan, insurance, or benefit program that relies upon the Federal Government payment system shall coordinate with the Secretary of the Treasury in developing plans for continuation or restoration, to the extent feasible, of such programs in national security emergencies.

Sec. 206. Research. The Director of the Office of Science and Technology Policy and the heads of Federal departments and agencies having significant research and development programs shall advise the National Security Council and the Homeland Security Council[11] of scientific and technological developments that should be considered in national security emergency preparedness planning.

Sec. 207. Redelegation. The head of each Federal department and agency is hereby authorized, to the extent otherwise permitted by law, to redelegate the functions assigned by this Order, and to authorize successive redelegations to organizations, officers, or employees within that department or agency.

Sec. 208. Transfer of Functions. Recommendations for interagency transfer of any emergency preparedness function assigned

[11] Sec. 9(g) of Executive Order 13228 (66 F.R. 51817) inserted "and the Homeland Security Council".

under this Order or for assignment of any new emergency preparedness function shall be coordinated with all affected Federal departments and agencies before submission to the National Security Council and the Homeland Security Council.[12]

Sec. 209. Retention of Existing Authority. Nothing in this Order shall be deemed to derogate from assignments of functions to any Federal department or agency or department thereof made by law.

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PART 4—DEPARTMENT OF COMMERCE

Sec. 401. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Commerce shall:

(1) Develop control systems for priorities, allocation, production, and distribution of materials and other resources that will be available to support both national defense and essential civilian programs in a national security emergency;

(2) In cooperation with the Secretary of Defense and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(3) In cooperation with the Secretary of Defense and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(4) In cooperation with the Secretary of Defense, perform industry analyses to assess capabilities of the commercial industrial base to support the national defense, and develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs;

(5) In cooperation with the Secretary of the Treasury, develop plans for providing emergency assistance to the private sector through direct or participation loans for the financing of production facilities and equipment;

(6) In cooperation with the Secretaries of State, Defense, Transportation, and the Treasury, prepare plans to regulate and control exports and imports in national security emergencies;

(7) Provide for the collection and reporting of census information on human and economic resources, and maintain a capability to conduct emergency surveys to provide information on the status of these resources as required for national security purposes;

[12] Sec. 9(h) of Executive Order 13228 (66 F.R. 51817) inserted "and the Homeland Security Council".

(8) Develop overall plans and programs to ensure that the fishing industry continues to produce and process essential protein in national security emergencies;

(9) Develop plans to provide meteorological, hydrologic, marine weather, geodetic, hydrographic, climatic, seismic, and oceanographic data and services to Federal, State, and local agencies, as appropriate;

(10) In coordination with the Secretary of State and the Secretary of Homeland Security,[7] represent the United States in industry-related international (NATO and allied) civil emergency preparedness planning and related activities.

Sec. 402. Support Responsibilities. The Secretary of Commerce shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical materials;

(2) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest and fishery products;

(3) Assist, in consultation with the Secretaries of State and Defense, the Secretary of the Treasury in the formulation and execution of economic measures affecting other nations.

PART 5—DEPARTMENT OF DEFENSE

Sec. 501. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Defense shall:

(1) Ensure military preparedness and readiness to respond to national security emergencies;

(2) In coordination with the Secretary of Commerce, develop, with industry, government, and the private sector, reliable capabilities for the rapid increase of defense production to include industrial resources required for that production;

(3) Develop and maintain, in cooperation with the heads of other departments and agencies, national security emergency plans, programs, and mechanisms to ensure effective mutual support between and among the military, civil government, and private sector;

(4) Develop and maintain damage assessment capabilities and assist the Secretary of Homeland Security[7] and the heads of other departments and agencies in developing and maintaining capabilities to assess attack damage and to estimate the effects of potential attack on the Nation;

(5) Arrange, through agreements with the heads of other Federal departments and agencies, for the transfer of certain Federal resources to the jurisdiction and/or operational control of the Department of Defense in national security emergencies;

(6) Acting through the Secretary of the Army, develop, with the concurrence of the heads of all affected departments and agencies, overall plans for the management, control, and allocation of all usable waters from all sources within the jurisdiction of the United States. This includes:

(a) Coordination of national security emergency water resource planning at the national, regional, State, and local levels;

(b) Development of plans to assure emergency provision of water from public works projects under the jurisdiction of the Secretary of the Army to public water supply utilities and critical defense production facilities during national security emergencies;

(c) Development of plans to assure emergency operation of waterways and harbors; and

(d) Development of plans to assure the provision of potable water;

(7) In consultation with the Secretaries of State and Energy, the Secretary of Homeland Security,[7] and others, as required, develop plans and capabilities for identifying, analyzing, mitigating, and responding to hazards related to nuclear weapons, materials, and devices; and maintain liaison, as appropriate, with the Secretary of Energy and the Members of the Nuclear Regulatory Commission to ensure the continuity of nuclear weapons production and the appropriate allocation of scarce resources, including the recapture of special nuclear materials from Nuclear Regulatory Commission licensees when appropriate;

(8) Coordinate with the Administrator of the National Aeronautics and Space Administration and the Secretary of Energy, as appropriate, to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies;

(9) Develop, in coordination with the Secretaries[13] of Labor and Homeland Security,[13] the Directors of the Selective Service System, the Office of Personnel Management, and the Federal Emergency Management Agency, plans and systems to ensure that the Nation's human resources are available to meet essential military and civilian needs in national security emergencies;

(10) Develop national security emergency operational procedures, and coordinate with the Secretary of Housing and Urban Development with respect to residential property, for the control, acquisition, leasing, assignment and priority of occupancy of real property within the jurisdiction of the Department of Defense;

(11) Review the priorities and allocations systems developed by other departments and agencies to ensure that they meet Department of Defense needs in a national security emergency; and develop and maintain the Department of Defense programs necessary for effective utilization of all priorities and allocations systems;

[13] Sec. 42 of Executive Order 13286 (68 F.R. 10626) struck out "Secretary", inserted in lieu thereof "Secretaries", and inserted "and Homeland Security".

(12) Develop, in coordination with the Attorney General of the United States, specific procedures by which military assistance to civilian law enforcement authorities may be requested, considered, and provided;

(13) In cooperation with the Secretary of Commerce and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(14) In cooperation with the Secretary of Commerce and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(15) With the assistance of the heads of other Federal departments and agencies, provide management direction for the stockpiling of strategic and critical materials, conduct storage, maintenance, and quality assurance operations for the stockpile of strategic and critical materials, and formulate plans, programs, and reports relating to the stockpiling of strategic and critical materials.

(16)[14] Subject to the direction of the President, and pursuant to procedures to be developed jointly by the Secretary of Defense and the Secretary of State, be responsible for the deployment and use of military forces for the protection of United States citizens and nationals and, in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas.

Sec. 502. Support Responsibilities. The Secretary of Defense shall:

(1) Advise and assist the heads of other Federal departments and agencies in the development of plans and programs to support national mobilization. This includes, providing, as appropriate:

(a) Military requirements, prioritized and time-phased to the extent possible, for selected end-items and supporting services, materials and components;

(b) Recommendations for use of financial incentives and other methods to improve defense production as provided by law; and

(c) Recommendations for export and import policies;

(2) Advise and assist the Secretary of State and the heads of other Federal departments and agencies; as appropriate, in planning for the protection, evacuation, and repatriation of United States citizens in threatened areas overseas;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate in the development of plans to restore community facilities;

(4) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

[14] Executive Order 13074 (63 F.R. 7277) added para. (16).

(5) In consultation with the Secretaries of State and Commerce, assist the Secretary of the Treasury in the formulation and execution of economic measures that affect other nations;

(6) Support the Secretary of State and the heads of other Federal departments and agencies as appropriate in the formulation and implementation of foreign policy, and the negotiation of contingency and post-emergency plans, intergovernmental agreements, and arrangements with allies and friendly nations, which affect national security;

(7) Coordinate with the Secretary of Homeland Security[7] the development of plans for mutual civil-military support during national security emergencies;

(8) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills.

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PART 13—DEPARTMENT OF STATE

Sec. 1301. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of State shall:

(1) Provide overall foreign policy coordination in the formulation and execution of continuity of government and other national security emergency preparedness activities that affect foreign relations;

(2) Prepare to carry out Department of State responsibilities in the conduct of the foreign relations of the United States during national security emergencies, under the direction of the President and in consultation with the heads of other appropriate Federal departments and agencies, including, but not limited to:

(a) Formulation and implementation of foreign policy and negotiation regarding contingency and post-emergency plans, intergovernmental agreements, and arrangements with United States' allies;

(b) Formulation, negotiation, and execution of policy affecting the relationships of the United States with neutral states;

(c) Formulation and execution of political strategy toward hostile or enemy states;

(d) Conduct of mutual assistance activities;

(e) Provision of foreign assistance, including continuous supervision and general direction of authorized economic and military assistance programs;

(f) Protection or evacuation of United States citizens and nationals abroad and safeguarding their property abroad, in consultation with the Secretaries of Defense and Health and Human Services;

(g) Protection of international organizations and foreign diplomatic, consular, and other official personnel and property, and other assets, in the United States, in coordination with the Attorney General and the Secretary of the Treasury;

(h) Formulation of policies and provisions for assistance to displaced persons and refugees abroad;

(i) Maintenance of diplomatic and consular representation abroad; and

(j) Reporting of and advising on conditions overseas that bear upon national security emergencies.

Sec. 1302. Support Responsibilities. The Secretary of State shall:

(1) Assist appropriate agencies in developing planning assumptions concerning accessibility of foreign sources of supply;

(2) Support the Secretary of the Treasury, in consultation, as appropriate, with the Secretaries of Commerce and Defense, in the formulation and execution of economic measures with respect to other nations;

(3) Support the Secretary of Energy in the international liaison activities pertaining to nuclear materials facilities;

(4) Support the Secretary of Homeland Security[7] in the coordination and integration of United States policy regarding the formulation and implementation of civil emergency resources and preparedness planning;

(5) Assist the Attorney General of the United States in the formulation of national security emergency plans for the control of persons entering or leaving the United States.

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PART 25—UNITED STATES INFORMATION AGENCY

Sec. 2501. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the United States Information Agency shall:

(1) Plan for the implementation of information programs to promote an understanding abroad of the status of national security emergencies within the United States;

(2) In coordination with the Secretary of State's exercise of telecommunications functions affecting United States diplomatic missions and consular offices overseas, maintain the capability to provide television and simultaneous direct radio broadcasting in major languages to all areas of the world, and the capability to provide wireless file to all United States embassies during national security emergencies.

Sec. 2502. Support Responsibility. The Director of the United States Information Agency shall assist the heads of other Federal departments and agencies in planning for the use of media resources and foreign public information programs during national security emergencies.

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PART 29—GENERAL

Sec. 2901. Executive Order Nos. 10421 and 11490, as amended, are hereby revoked. This Order shall be effective immediately.

17. U.S. Government Opposition to the Practice of Torture

Public Law 98–447 [H.J. Res. 605], 98 Stat. 1721, approved October 4, 1984

JOINT RESOLUTION Regarding the implementation of the policy of the United States Government in opposition to the practice of torture by any foreign government.

Whereas international human rights organizations have investigated and reported on the use of torture in many countries throughout the world;

Whereas the Department of State in its annual country reports on human rights practices has reported that torture is all too frequent in many countries of the world;

Whereas torture knows no ideological boundaries and is practiced in countries in every region of the world;

Whereas torture is absolutely prohibited by international legal standards;

Whereas in those countries where torture is practiced systematically, it is possible to identify laws, institutions, and other forms of political organization that contribute to the practice and allow its continuation;

Whereas legal, medical, religious, and other groups seeking to combat torture emphasize that access to detainees, the civil and criminal prosecution of torturers, and the rehabilitation of victims of torture are critical steps in reducing the practice and effects of torture;

Whereas the United States Government has supported the work of the United Nations Commission on Human Rights in developing the draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which is intended to reduce the practice of torture and lead to its eventual abolition, and the United States Government is supportive of the United Nations Voluntary Fund for Victims of Torture; and

Whereas the good will of the peoples of the world toward the United States can be increased when the United States distances itself from the practice of torture by governments friendly to the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That[1] the Congress reaffirms that it is the continuing policy of the United States Government to oppose the practice of torture by foreign governments through public and private diplomacy and, when necessary and appropriate, through the enactment and vigorous implementation of laws intended to reinforce United States policies with respect to torture. The United States Government opposes acts of torture wherever they occur, without regard to ideological or regional

[1] 22 U.S.C. 2656 note.

considerations, and will make every effort to work cooperatively with other governments and with nongovernmental organizations to combat the practice of torture worldwide.

Sec. 2.[1] (a) The President is requested—

(1) to instruct the Permanent Representative of the United States to the United Nations to continue to raise the issue of torture practiced by governments; and

(2) to continue to involve the United States Government in the formulation of international standards and effective implementing mechanisms, particularly the draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.

(b) In order to implement the policy expressed in the first section of this resolution, the Secretary of State is requested to issue formal instructions to each United States chief of mission regarding United States policy with respect to torture, including—

(1) instructions—

(A) to examine allegations of the practice of torture, particularly allegations concerning the existence of secret detention, extended incommunicado detention, and restriction on access by family members, lawyers, and independent medical personnel to detainees; and

(B) to forward such information as may be gathered, including information regarding any efforts made by the host government to reduce and eliminate the practice of torture, to the Assistant Secretary of State for Human Rights and Humanitarian Affairs for analysis in preparing the Department's annual country reports on human rights practices;

(2) in the case of a chief of mission assigned to a country where torture is regularly practiced, instructions to report on a periodic basis as circumstances require to the Assistant Secretary of State for Human Rights and Humanitarian Affairs regarding efforts made by the respective United States diplomatic mission to implement United States policy with respect to combating torture;

(3) instructions to meet with indigenous human rights monitoring groups knowledgeable about the practice of torture for the purpose of gathering information about such practice; and

(4) instructions to express concern in individual cases of torture brought to the attention of a United States diplomatic mission including, whenever feasible, sending United States observers to trials when there is reason to believe that torture has been used against the accused.

(c) The Secretary of Commerce should continue to enforce vigorously the current restrictions on the export of crime control equipment pursuant to the Export Administration Act of 1979.

(d) The heads of the appropriate departments of the United States Government that furnish military and law enforcement training to foreign personnel, particularly personnel from countries where the practice of torture has been a documented concern, shall include in such training, when relevant, instruction regarding international human rights standards and the policy of the United States with respect to torture.

18. Commission on the Ukraine Famine Act

Partial text of Public Law 99–180 [The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1986; H.R. 2965], 99 Stat. 1136 at 1157, approved December 13, 1985; as amended by Public Law 100–340 [S. 2304], 102 Stat. 622, approved June 17, 1988

NOTE.—Sec. 136 of Public Law 98–473 (Continuing Appropriations Act, 1985; 98 Stat. 1973) appropriated $400,000 to carry out the provisions of S. 2456, a bill to establish a commission to study the 1932–1933 Ukraine famine. S. 2456 passed the Senate on September 21, 1984 but was not enacted. Subsequently, Title V of Public Law 99–180 (Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1986), modified the Commission as established by S. 2456 and appropriated funds as set forth below.

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TITLE V—RELATED AGENCIES

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COMMISSION ON THE UKRAINE FAMINE

For necessary expenses of the Commission on the Ukraine Famine to carry out the provisions of S. 2456 (98th Congress) as passed the Senate on September 21, 1984, $400,000, to remain available until expended, and the Commission on the Ukraine Famine as contained in S. 2456, is hereby established, with modifications as follows:

ESTABLISHMENT

SECTION 1. There is established a commission to be known as the "Commission on the Ukraine Famine" (in this Act referred to as the "Commission").

PURPOSE OF THE COMMISSION

SEC. 2. The purpose of the Commission is to conduct a study of the 1932–1933 Ukraine famine in order to—

(1) expand the world's knowledge of the famine; and

(2) provide the American public with a better understanding of the Soviet system by revealing the Soviet role in the Ukraine famine.

DUTIES OF THE COMMISSION

SEC. 3. The duties of the Commission are to—

(1) conduct a study of the 1932–1933 Ukraine famine (in this Act referred to as the "famine study"), in accordance with section 6 of this Act, in which the Commission shall—

(A) gather all available information about the 1932–1933 famine in Ukraine;

(B) analyze the causes of such famine and the effects it has had on the Ukrainian nation and other countries; and

(C) study and analyze the reaction by the free countries of the world to such famine; and

(2) submit to Congress for publication a final report on the results of the famine study no later than June 22, 1990[1] of this Act.

MEMBERSHIP

SEC. 4. (a) The Commission shall be composed of fifteen members, who shall be appointed within thirty days after the date of enactment of this Act, as follows:

(1) Four members shall be Members of the House of Representatives and shall be appointed by the Speaker of the House of Representatives. Two such members shall be selected from the majority party of the House of Representatives and two such members shall be selected, after consultation with the minority leader of the House, from the minority party of the House of Representatives. The Speaker also shall designate one of the House Members as Chairman of the Commission.

(2) Two members shall be Members of the Senate and shall be appointed by the President pro tempore of the Senate. One such member shall be selected from the majority party of the Senate and one such member shall be selected, after consultation with the minority leader of the Senate, from the minority party of the Senate.

(3) One member shall be from among officers and employees of each of the Departments of State, Education, and Health and Human Services and shall be appointed by the President, after consultation with the Secretaries of the respective departments.

(4) Six members shall be from the Ukrainian-American community at large and Ukrainian-American chartered human rights groups and shall be appointed by the Chairman of the Commission in consultation with congressional members of the Commission, the Ukrainian-American community at large, and executive boards of Ukrainian-American chartered human rights groups.

[1] Sec. (1) of Public Law 100–340 (102 Stat. 622) struck out "two years after the organizational meeting of the Commission held under section 6(a)" and inserted in lieu thereof "June 22, 1990". The words "of this Act" which follow this point should probably have been struck out as well.

(b) The term of office of each member shall be for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.[2]

(c) Each member of the Commission who is not otherwise employed by the United States Government shall be paid from the sum appropriated to carry out this Act, the daily equivalent of the rate of basic pay payable for GS–18 of the General Schedule for each day, including travel time, during which he or she is attending meetings or hearings of the Commission or otherwise performing Commission related duties as requested by the Chairman of the Commission. A member of the Commission who is an officer or employee of the United States Government or a Member of Congress shall serve without additional compensation. Each member of the Commission shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

ADMINISTRATIVE PROVISIONS

SEC. 5. (a) Not later than thirty days after all members have been appointed to the Commission, the Commission shall hold an organizational meeting to establish the rules and procedures under which it will carry out its responsibilities.

(b) The Commission shall hire experts and consultants in accordance with section 3109 of title 5, United States Code, from the academic community to assist in carrying out the famine study. Such experts and consultants shall be chosen by a majority vote of the Commission members on the basis of their academic background and their experience relevant to research on the Ukraine famine. No person shall be otherwise employed by the Federal Government while serving as an expert or consultant to the Commission.

(c) The Commission shall have a staff director, who shall be appointed by the Chairman.

POWERS OF THE COMMISSION

SEC. 6. (a) The Commission or any member it authorizes may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, request such attendance, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission or any such member may administer oaths or affirmations to witnesses appearing before it.

(b)(1) The Commission may issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission. Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(2) The subpenas of the Commission may be issued by the Chairman of the Commission or any member designated by him and may be served by any person designated by the Chairman or such member. The subpenas of the Commission shall be served in the same

[2] Sec. (2) of Public Law 100–340 (102 Stat. 622) added this sentence.

manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(3) If a person issued a subpena under paragraph (1) refuses to obey such subpena, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished as a contempt of the court.

(4) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(c) The Commission may obtain from any department or agency of the United States information that it considers useful in the discharge of its duties. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission to the extent permitted by law.

(d) The Commission may appoint and fix the pay of such personnel as it considers appropriate. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter 53 of such title, relating to classification and General Schedule pay rates. No individual so appointed may receive pay in excess of the maximum annual rate of pay payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(e) The Commission may solicit, accept, use, and dispose of donations of money, property, or services.

(f) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(g) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h) The Commission may procure by contract any supplies, services, and property, including the conduct of research and the preparation of reports by Government agencies and private firms, necessary to discharge the duties of the Commission, in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts.

TERMINATION

SEC. 7. The Commission shall terminate sixty days after the report of the Commission is submitted to Congress under section 4(4) of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There is authorized to be appropriated the sum of $400,000, to remain available until expended, to carry out this Act.

19. Nazi War Crimes and Holocaust Assets

a. Nazi War Crimes Disclosure Act

Public Law 105–246 [S. 1379], 112 Stat. 1859, approved October 8, 1998; as amended by Public Law 106–567 [Japanese Imperial Government Disclosure Act of 2000; H.R. 5630], 114 Stat. 2831), approved December 27, 2000

AN ACT To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Nazi War Crimes Disclosure Act".

SEC. 2.[1] ESTABLISHMENT OF NAZI WAR CRIMINAL RECORDS INTERAGENCY WORKING GROUP.

(a) DEFINITIONS.—In this section the term—

(1) "agency" has the meaning given such term under section 551 of title 5, United States Code;

(2) "Interagency Group" means the Nazi War Criminal Records Interagency Working Group established under subsection (b);

(3) "Nazi war criminal records" has the meaning given such term under section 3 of this Act; and

(4) "record" means a Nazi war criminal record.

(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the President shall establish the Nazi War Criminal Records Interagency Working Group, which shall remain in existence for 3 years after the date the Interagency Group is established.

(2) MEMBERSHIP.—The President shall appoint to the Interagency Group individuals whom the President determines will most completely and effectively carry out the functions of the Interagency Group within the time limitations provided in this section, including the Director of the Holocaust Museum, the Historian of the Department of State, the Archivist of the United States, the head of any other agency the President considers appropriate, and no more than 4 other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998.[2] The head of an agency appointed by the President may

[1] 5 U.S.C. 522 note.

[2] Sec. 802(b)(2) of the Japanese Imperial Government Disclosure Act of 2000 (title VIII of Public Law 106–567; 114 Stat. 2865) struck out "3 other persons" and inserted in lieu thereof "4

designate an appropriate officer to serve on the Interagency Group in lieu of the head of such agency.

(3) INITIAL MEETING.—Not later than 90 days after the date of enactment of this Act, the Interagency Group shall hold an initial meeting and begin the functions required under this section.

(c) FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 3 of this Act—

(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Nazi war criminal records of the United States;

(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

(3) submit a report to Congress, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

(d) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 3.[1] REQUIREMENT OF DISCLOSURE OF RECORDS REGARDING PERSONS WHO COMMITTED NAZI WAR CRIMES.

(a) NAZI WAR CRIMINAL RECORDS.—For purposes of this Act, the term "Nazi war criminal records" means classified records or portions of records that—

(1) pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(A) the Nazi government of Germany;

(B) any government in any area occupied by the military forces of the Nazi government of Germany;

(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

(D) any government which was an ally of the Nazi government of Germany; or

(2) pertain to any transaction as to which the United States Government, in its sole discretion, has grounds to believe—

(A) involved assets taken from persecuted persons during the period beginning on March 23, 1933, and ending on

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other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998.".

Sec. 802(b)(1) of Public Law 106–567 further provided that "Not later than 60 days after the date of the enactment of this Act, the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105–246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 3 years after the date on which this title takes effect. Such Working Group is redesignated as the 'Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group'.".

May 8, 1945, by, under the direction of, on behalf of, or under authority granted by the Nazi government of Germany or any nation then allied with that government; and

(B) such transaction was completed without the assent of the owners of those assets or their heirs or assigns or other legitimate representatives.

(b) RELEASE OF RECORDS.—

(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), the Nazi War Criminal Records Interagency Working Group shall release in their entirety Nazi war criminal records that are described in subsection (a).

(2) EXCEPTION FOR PRIVACY, ETC.—An agency head may exempt from release under paragraph (1) specific information, that would—

(A) constitute a clearly unwarranted invasion of personal privacy;

(B) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

(C) reveal information that would assist in the development or use of weapons of mass destruction;

(D) reveal information that would impair United States cryptologic systems or activities;

(E) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

(F) reveal actual United States military war plans that remain in effect;

(G) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

(H) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

(I) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

(J) violate a treaty or international agreement.

(3) APPLICATION OF EXEMPTIONS.—

(A) IN GENERAL.—In applying the exemptions listed in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes

such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight of the House of Representatives. The exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

(B) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption listed in subparagraphs (B) through (I) of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

(4) LIMITATION ON APPLICATION.—This subsection shall not apply to records—

(A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

(B) solely in the possession, custody, or control of that office.

(c) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

SEC. 4.[1] EXPEDITED PROCESSING OF FOIA REQUESTS FOR NAZI WAR CRIMINAL RECORDS.

(a) EXPEDITED PROCESSING.—For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any requester of a Nazi war criminal record shall be deemed to have a compelling need for such record.

(b) REQUESTER.—For purposes of this section, the term "requester" means any person who was persecuted in the manner described under section 3(a)(1) of this Act who requests a Nazi war criminal record.

SEC. 5.[1] EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date that is 90 days after the date of enactment of this Act.

b. Making Public Nazi War Crimes Records—Sense of the Congress

Public Law 104–309 [H.R. 1281], 110 Stat. 3815, approved October 19, 1996

AN ACT To express the sense of the Congress that United States Government agencies in possession of records about individuals who are alleged to have committed Nazi war crimes should make these records public.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) during the 104th Congress, Americans commemorated the 50th anniversary of the conclusion of the Second World War and the end of the Holocaust, one of the worst tragedies in history;

(2) it is important to learn all that we can about this terrible era so that we can prevent such a catastrophe from ever happening again;

(3) the cold war is over;

(4) numerous nations, including those of the former Soviet Union, are making public their files on Nazi war criminals as well as crimes committed by agencies of their own governments;

(5) on April 17, 1995, President Clinton signed Executive Order 12958, which will make available certain previously classified national security documents that are at least 25 years old;

(6) that Executive Order stated: "Our democratic principles require that the American people be informed of the activities of their Government.";

(7) this year marks the 30th anniversary of the passage of the Freedom of Information Act;

(8) agencies of the United States Government possess information on individuals who ordered, incited, assisted, or otherwise participated in Nazi war crimes;

(9) some agencies have routinely denied Freedom of Information Act requests for information about individuals who committed Nazi war crimes;

(10) United States Government agencies may have been in possession of material about the war crimes facilitated by Kurt Waldheim but did not make this information public;

(11) it is legitimate not to disclose certain material in Government files if the disclosure would seriously and demonstrably harm current or future national defense, intelligence, or foreign relations activities of the United States and if protection of these matters from disclosure outweighs the public interest of disclosure;

(12) the disclosure of most Nazi war crimes information should not harm United States national interests; and

(13) the Office of Special Investigations of the Department of Justice is engaged in vital work investigating and expelling Nazi war criminals from the United States, accordingly, the records created by these investigations and other actions should not be disclosed, and the investigations and other actions should not be interfered with.

SEC. 2. SENSE OF THE CONGRESS.

It is the sense of the Congress that United States Government agencies in possession of records about individuals who are alleged to have committed Nazi war crimes should make these records public.

c. U.S. Holocaust Assets Commission Act of 1998

Public Law 105–186 [S. 1900], 112 Stat. 611, approved June 23, 1998; as amended by Public Law 106–155 [U.S. Holocaust Assets Commission Extension Act of 1999; H.R. 2401], 113 Stat. 1740, approved December 9, 1999

AN ACT To establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "U.S. Holocaust Assets Commission Act of 1998".

SEC. 2.[1] ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Presidential Commission, to be known as the "Presidential Advisory Commission on Holocaust Assets in the United States" (hereafter in this Act referred to as the "Commission").

(b) MEMBERSHIP.—

(1) NUMBER.—The Commission shall be composed of 21 members, appointed in accordance with paragraph (2).

(2) APPOINTMENTS.—Of the 21 members of the Commission—

(A) eight shall be private citizens, appointed by the President;

(B) four shall be representatives of the Department of State, the Department of Justice, the Department of the Army, and the Department of the Treasury (one representative of each such Department), appointed by the President;

(C) two shall be Members of the House of Representatives, appointed by the Speaker of the House of Representatives;

(D) two shall be Members of the House of Representatives, appointed by the minority leader of the House of Representatives;

(E) two shall be Members of the Senate, appointed by the majority leader of the Senate;

(F) two shall be Members of the Senate, appointed by the minority leader of the Senate; and

(G) one shall be the Chairperson of the United States Holocaust Memorial Council.

(3) CRITERIA FOR MEMBERSHIP.—Each private citizen appointed to the Commission shall be an individual who has a record of demonstrated leadership on issues relating to the

[1] 22 U.S.C. 1621 note.

Holocaust or in the fields of commerce, culture, or education that would assist the Commission in analyzing the disposition of the assets of Holocaust victims.

(4) ADVISORY PANELS.—The Chairperson of the Commission may, in the discretion of the Chairperson, establish advisory panels to the Commission, including State or local officials, representatives of organizations having an interest in the work of the Commission, or others having expertise that is relevant to the purposes of the Commission.

(5) DATE.—The appointments of the members of the Commission shall be made not later than 90 days after the date of enactment of this Act.

(c) CHAIRPERSON.—The Chairperson of the Commission shall be selected by the President from among the members of the Commission appointed under subparagraph (A) or (B) of subsection (b)(2).

(d) PERIOD OF APPOINTMENT.—Members of the Commission shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy in the membership of the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(f) MEETINGS.—The Commission shall meet at the call of the Chairperson at any time after the date of appointment of the Chairperson.

(g) QUORUM.—11 members of the Commission shall constitute a quorum, but a lesser number of members may hold meetings.

SEC. 3.[1] DUTIES OF THE COMMISSION.

(a) ORIGINAL RESEARCH.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (3), the Commission shall conduct a thorough study and develop a historical record of the collection and disposition of the assets described in paragraph (2), if such assets came into the possession or control of the Federal Government, including the Board of Governors of the Federal Reserve System and any Federal reserve bank, at any time after January 30, 1933—

(A) after having been obtained from victims of the Holocaust by, on behalf of, or under authority of a government referred to in subsection (c);

(B) because such assets were left unclaimed as the result of actions taken by, on behalf of, or under authority of a government referred to in subsection (c); or

(C) in the case of assets consisting of gold bullion, monetary gold, or similar assets, after such assets had been obtained by the Nazi government of Germany from governmental institutions in any area occupied by the military forces of the Nazi government of Germany.

(2) TYPES OF ASSETS.—Assets described in this paragraph include—

(A) gold, including gold bullion, monetary gold, or similar assets in the possession of or under the control of the Board of Governors of the Federal Reserve System or any Federal reserve bank;

(B) gems, jewelry, and nongold precious metals;

(C) accounts in banks in the United States;

(D) domestic financial instruments purchased before May 8, 1945, by individual victims of the Holocaust, whether recorded in the name of the victim or in the name of a nominee;

(E) insurance policies and proceeds thereof;

(F) real estate situated in the United States;

(G) works of art; and

(H) books, manuscripts, and religious objects.

(3) COORDINATION OF ACTIVITIES.—In carrying out its duties under paragraph (1), the Commission shall, to the maximum extent practicable, coordinate its activities with, and not duplicate similar activities already being undertaken by, private individuals, private entities, or government entities, whether domestic or foreign.

(4) INSURANCE POLICIES.—

(A) IN GENERAL.—In carrying out its duties under this Act, the Commission shall take note of the work of the National Association of Insurance Commissioners with regard to Holocaust-era insurance issues and shall encourage the National Association of Insurance Commissioners to prepare a report on the Holocaust-related claims practices of all insurance companies, both domestic and foreign, doing business in the United States at any time after January 30, 1933, that issued any individual life, health, or property-casualty insurance policy to any individual on any list of Holocaust victims, including the following lists:

(i) The list maintained by the United States Holocaust Memorial Museum in Washington, D.C., of Jewish Holocaust survivors.

(ii) The list maintained by the Yad Vashem Holocaust Memorial Authority in its Hall of Names of individuals who died in the Holocaust.

(B) INFORMATION TO BE INCLUDED.—The report on insurance companies prepared pursuant to subparagraph (A) should include the following, to the degree the information is available:

(i) The number of policies issued by each company to individuals described in such subparagraph.

(ii) The value of each policy at the time of issue.

(iii) The total number of policies, and the dollar amount, that have been paid out.

(iv) The total present-day value of assets in the United States of each company.

(C) COORDINATION.—The Commission shall coordinate its work on insurance issues with that of the international Washington Conference on Holocaust-Era Assets, to be convened by the Department of State and the United States Holocaust Memorial Council.

(b) COMPREHENSIVE REVIEW OF OTHER RESEARCH.—Upon receiving permission from any relevant individuals or entities, the Commission shall review comprehensively any research by private individuals, private entities, and non-Federal government entities, whether domestic or foreign, into the collection and disposition of

the assets described in subsection (a)(2), to the extent that such research focuses on assets that came into the possession or control of private individuals, private entities, or non-Federal government entities within the United States at any time after January 30, 1933, either—

(1) after having been obtained from victims of the Holocaust by, on behalf of, or under authority of a government referred to in subsection (c); or

(2) because such assets were left unclaimed as the result of actions taken by, on behalf of, or under authority of a government referred to in subsection (c).

(c) GOVERNMENTS INCLUDED.—A government referred to in this subsection includes, as in existence during the period beginning on March 23, 1933, and ending on May 8, 1945—

(1) the Nazi government of Germany;

(2) any government in any area occupied by the military forces of the Nazi government of Germany;

(3) any government established with the assistance or cooperation of the Nazi government of Germany; and

(4) any government which was an ally of the Nazi government of Germany.

(d) REPORTS.—

(1) SUBMISSION TO THE PRESIDENT.—Not later than December 31, 2000,[2] the Commission shall submit a final report to the President that shall contain any recommendations for such legislative, administrative, or other action as it deems necessary or appropriate. The Commission may submit interim reports to the President as it deems appropriate.

(2) SUBMISSION TO THE CONGRESS.—After receipt of the final report under paragraph (1), the President shall submit to the Congress any recommendations for legislative, administrative, or other action that the President considers necessary or appropriate.

SEC. 4.[1] POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairperson of the Commission, the head of any such department or agency shall furnish such information to the Commission as expeditiously as possible.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

[2] Sec. 2(a) of the U.S. Holocaust Assets Commission Extension Act of 1999 (Public Law 106–155; 113 Stat. 1740) struck out "December 31, 1999" and inserted in lieu thereof "December 31, 2000".

(e) ADMINISTRATIVE SERVICES.—For the purposes of obtaining administrative services necessary to carry out the purposes of this Act, including the leasing of real property for use by the Commission as an office, the Commission shall have the power to—

(1) enter into contracts and modify, or consent to the modification of, any contract or agreement to which the Commission is a party; and

(2) acquire, hold, lease, maintain, or dispose of real and personal property.

SEC. 5.[1] COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION.—No member of the Commission who is a private citizen shall be compensated for service on the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) EXECUTIVE DIRECTOR, DEPUTY EXECUTIVE DIRECTOR, GENERAL COUNSEL, AND OTHER STAFF.—

(1) IN GENERAL.—Not later than 90 days after the selection of the Chairperson of the Commission under section 2, the Chairperson shall, without regard to the civil service laws and regulations, appoint an executive director, a deputy executive director, and a general counsel of the Commission, and such other additional personnel as may be necessary to enable the Commission to perform its duties under this Act.

(2) QUALIFICATIONS.—The executive director, deputy executive director, and general counsel of the Commission shall be appointed without regard to political affiliation, and shall possess all necessary security clearances for such positions.

(3) DUTIES OF EXECUTIVE DIRECTOR.—The executive director of the Commission shall—

(A) serve as principal liaison between the Commission and other Government entities;

(B) be responsible for the administration and coordination of the review of records by the Commission; and

(C) be responsible for coordinating all official activities of the Commission.

(4) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director, deputy executive director, general counsel, and other personnel employed by the Commission, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that—

(A) the rate of pay for the executive director of the Commission may not exceed the rate payable for level III of the

Executive Schedule under section 5314 of title 5, United States Code; and

(B) the rate of pay for the deputy executive director, the general counsel of the Commission, and other Commission personnel may not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(5) EMPLOYEE BENEFITS.—

(A) IN GENERAL.—An employee of the Commission shall be an employee for purposes of chapters 83, 84, 85, 87, and 89 of title 5, United States Code, and service as an employee of the Commission shall be service for purposes of such chapters.

(B) NONAPPLICATION TO MEMBERS.—This paragraph shall not apply to a member of the Commission.

(6) OFFICE OF PERSONNEL MANAGEMENT.—The Office of Personnel Management—

(A) may promulgate regulations to apply the provisions referred to under subsection (a) to employees of the Commission; and

(B) shall provide support services, on a reimbursable basis, relating to—

(i) the initial employment of employees of the Commission; and

(ii) other personnel needs of the Commission.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement to the agency of that employee, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) STAFF QUALIFICATIONS.—Any person appointed to the staff of or employed by the Commission shall be an individual of integrity and impartiality.

(g) CONDITIONAL EMPLOYMENT.—

(1) IN GENERAL.—The Commission may offer employment on a conditional basis to a prospective employee pending the completion of any necessary security clearance background investigation. During the pendency of any such investigation, the Commission shall ensure that such conditional employee is not given and does not have access to or responsibility involving classified or otherwise restricted material.

(2) TERMINATION.—If a person hired on a conditional basis as described in paragraph (1) is denied or otherwise does not qualify for all security clearances necessary for the fulfillment of the responsibilities of that person as an employee of the Commission, the Commission shall immediately terminate the employment of that person with the Commission.

(h) EXPEDITED SECURITY CLEARANCE PROCEDURES.—A candidate for executive director or deputy executive director of the Commission and any potential employee of the Commission shall, to the maximum extent possible, be investigated or otherwise evaluated for and granted, if applicable, any necessary security clearances on an expedited basis.

SEC. 6.[1] ADMINISTRATIVE SUPPORT SERVICES.

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

SEC. 7.[1] TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its final report under section 3.

SEC. 8.[1] MISCELLANEOUS PROVISIONS.

(a) INAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Commission.

(b) PUBLIC ATTENDANCE.—To the maximum extent practicable, each meeting of the Commission shall be open to members of the public.

SEC. 9.[1] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than $6,000,000,[3] in total, for the interagency funding of activities of the Commission under this Act for fiscal years 1998, 1999, 2000, and 2001,[3] of which, notwithstanding section 1346 of title 31, United States Code, and section 611 of the Treasury and General Government Appropriations Act, 1998, $537,000 shall be made available in equal amounts from funds made available for fiscal year 1998 to the Departments of Justice, State, and the Army that are otherwise unobligated. Funds made available to the Commission pursuant to this section shall remain available for obligation until December 31, 1999.

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[3] Sec. 2(b) of the U.S. Holocaust Assets Commission Extension Act of 1999 (Public Law 106–155; 113 Stat. 1740) struck out "$3,500,000" and inserted in lieu thereof "$6,000,000"; and struck out "1999, and 2000," and inserted in lieu thereof "1999, 2000, and 2001,".

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277; 112 Stat. 2681–52) provided: "That $813,333 of funds made available to the Department of Justice in this Act shall be transferred by the Attorney General to the Presidential Advisory Commission on Holocaust Assets in the United States:"; and "That, of this amount [Salaries and Expenses, Department of State], $813,333 shall be transferred to the Presidential Advisory Commission on Holocaust Assets in the United States.".

The Consolidated Appropriations for Fiscal Year 2000 (Public Law 106–113; 113 Stat. 1501) provided: "That of the amount appropriated under this heading [Legal Activities of the Department of Justice] $582,000 shall be transferred to, and merged with, funds available to the Presidential Advisory Commission on Holocaust Assets in the United States and shall be made available for the same purposes for which such funds are available:" and "That of the amount made available under this heading [Administration of Foreign Affairs, Department of State], not to exceed $1,162,000 shall be available for transfer to the Presidential Advisory Commission on Holocaust Assets in the United States:".

The Department of Defense Appropriations Act, 2000 (Public Law 106–79; 113 Stat. 1212) provided: "That notwithstanding section 2215 of title 10, United States Code, of the funds appropriated in this paragraph, $975,666 is authorized to be transferred to the Presidential Advisory Commission on Holocaust Assets in the United States, to remain available until March 31, 2001.".

An Act making appropriations for the government of the District of Columbia and other activities for fiscal year 2001 (Public Law 106–553; 114 Stat. 2762) provided: "That of the amount made available under this heading [Administration of Foreign Affairs, Department of State], not to exceed $1,400,000 shall be available for transfer to the Presidential Advisory Commission on Holocaust Assets in the United States:".

d. Holocaust Victims Redress Act

Public Law 105–158 [S. 1564], 112 Stat. 15, approved February 13, 1998

AN ACT To provide redress for inadequate restitution of assets seized by the United States Government during World War II which belonged to victims of the Holocaust, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Holocaust Victims Redress Act".

TITLE I—HEIRLESS ASSETS

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) Among the $198,000,000 in German assets located in the United States and seized by the United States Government in World War II were believed to be bank accounts, trusts, securities, or other assets belonging to Jewish victims of the Holocaust.

(2) Among an estimated $1,200,000,000 in assets of Swiss nationals and institutions which were frozen by the United States Government during World War II (including over $400,000,000 in bank deposits) were assets whose beneficial owners were believed to include victims of the Holocaust.

(3) In the aftermath of the war, the Congress recognized that some of the victims of the Holocaust whose assets were among those seized or frozen during the war might not have any legal heirs, and legislation was enacted to authorize the transfer of up to $3,000,000 of such assets to organizations dedicated to providing relief and rehabilitation for survivors of the Holocaust.

(4) Although the Congress and the Administration authorized the transfer of such amount to the relief organizations referred to in paragraph (3), the enormous administrative difficulties and cost involved in proving legal ownership of such assets, directly or beneficially, by victims of the Holocaust, and proving the existence or absence of heirs of such victims, led the Congress in 1962 to agree to a lump-sum settlement and to provide $500,000 for the Jewish Restitution Successor Organization of New York, such sum amounting to ⅙th of the authorized maximum level of "heirless" assets to be transferred.

(5) In June of 1997, a representative of the Secretary of State, in testimony before the Congress, urged the reconsideration of the limited $500,000 settlement.

(6) While a precisely accurate accounting of "heirless" assets may be impossible, good conscience warrants the recognition that the victims of the Holocaust have a compelling moral

claim to the unrestituted portion of assets referred to in paragraph (3).

(7) Furthermore, leadership by the United States in meeting obligations to Holocaust victims would strengthen—

(A) the efforts of the United States to press for the speedy distribution of the remaining nearly 6 metric tons of gold still held by the Tripartite Commission for the Restitution of Monetary Gold (the body established by France, Great Britain, and the United States at the end of World War II to return gold looted by Nazi Germany to the central banks of countries occupied by Germany during the war); and

(B) the appeals by the United States to the 15 nations claiming a portion of such gold to contribute a substantial portion of any such distribution to Holocaust survivors in recognition of the recently documented fact that the gold held by the Commission includes gold stolen from individual victims of the Holocaust.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To provide a measure of justice to survivors of the Holocaust all around the world while they are still alive.

(2) To authorize the appropriation of an amount which is at least equal to the present value of the difference between the amount which was authorized to be transferred to successor organizations to compensate for assets in the United States of heirless victims of the Holocaust and the amount actually paid in 1962 to the Jewish Restitution Successor Organization of New York for that purpose.

(3) To facilitate efforts by the United States to seek an agreement whereby nations with claims against gold held by the Tripartite Commission for the Restitution of Monetary Gold would contribute all, or a substantial portion, of that gold to charitable organizations to assist survivors of the Holocaust.

SEC. 102. DISTRIBUTIONS BY THE TRIPARTITE GOLD COMMISSION.

(a) DIRECTIONS TO THE PRESIDENT.—The President shall direct the commissioner representing the United States on the Tripartite Commission for the Restitution of Monetary Gold, established pursuant to Part III of the Paris Agreement on Reparation, to seek and vote for a timely agreement under which all signatories to the Paris Agreement on Reparation, with claims against the monetary gold pool in the jurisdiction of such Commission, contribute all, or a substantial portion, of such gold to charitable organizations to assist survivors of the Holocaust.

(b) AUTHORITY TO OBLIGATE THE UNITED STATES.—

(1) IN GENERAL.—From funds otherwise unobligated in the Treasury of the United States, the President is authorized to obligate subject to paragraph (2) an amount not to exceed $30,000,000 for distribution in accordance with subsections (a) and (b).

(2) CONFORMANCE WITH BUDGET ACT REQUIREMENT.—Any budget authority contained in paragraph (1) shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

SEC. 103. FULFILLMENT OF OBLIGATION OF THE UNITED STATES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President such sums as may be necessary for fiscal years 1998, 1999, and 2000, not to exceed a total of $25,000,000 for all such fiscal years, for distribution to organizations as may be specified in any agreement concluded pursuant to section 102.

(b) ARCHIVAL RESEARCH.—There are authorized to be appropriated to the President $5,000,000 for archival research and translation services to assist in the restitution of assets looted or extorted from victims of the Holocaust and such other activities that would further Holocaust remembrance and education.

TITLE II—WORKS OF ART

SEC. 201. FINDINGS.

Congress finds as follows:

(1) Established pre-World War II principles of international law, as enunciated in Articles 47 and 56 of the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, prohibited pillage and the seizure of works of art.

(2) In the years since World War II, international sanctions against confiscation of works of art have been amplified through such conventions as the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which forbids the illegal export of art work and calls for its earliest possible restitution to its rightful owner.

(3) In defiance of the 1907 Hague Convention, the Nazis extorted and looted art from individuals and institutions in countries it occupied during World War II and used such booty to help finance their war of aggression.

(4) The Nazis' policy of looting art was a critical element and incentive in their campaign of genocide against individuals of Jewish and other religious and cultural heritage and, in this context, the Holocaust, while standing as a civil war against defined individuals and civilized values, must be considered a fundamental aspect of the world war unleashed on the continent.

(5) Hence, the same international legal principles applied among states should be applied to art and other assets stolen from victims of the Holocaust.

(6) In the aftermath of the war, art and other assets were transferred from territory previously controlled by the Nazis to the Union of Soviet Socialist Republics, much of which has not been returned to rightful owners.

SEC. 202. SENSE OF THE CONGRESS REGARDING RESTITUTION OF PRIVATE PROPERTY, SUCH AS WORKS OF ART.

It is the sense of the Congress that consistent with the 1907 Hague Convention, all governments should undertake good faith efforts to facilitate the return of private and public property, such as

works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner.

20. Japanese Imperial Government Disclosure Act of 2000

Partial text of Public Law 106–567 [Intelligence Authorization Act for Fiscal Year 2001; H.R. 5630], 114 Stat. 2831, approved December 27, 2000; as amended by Public Law 108–199 [Consolidated Appropriations Act, 2004; H.R. 2673], 118 Stat. 3, approved January 23, 2003; and Public Law 109–5 [S. 384], 119 Stat. 19, approved March 25, 2005

AN ACT To authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE VIII—DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT

SEC. 801.[1] SHORT TITLE.

This title may be cited as the "Japanese Imperial Government Disclosure Act of 2000".

SEC. 802. DESIGNATION.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term "agency" has the meaning given such term under section 551 of title 5, United States Code.

(2) INTERAGENCY GROUP.—The term "Interagency Group" means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

(3) JAPANESE IMPERIAL GOVERNMENT RECORDS.—The term "Japanese Imperial Government records" means classified records or portions of records that pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with—

(A) the Japanese Imperial Government;

(B) any government in any area occupied by the military forces of the Japanese Imperial Government;

(C) any government established with the assistance or cooperation of the Japanese Imperial Government; or

(D) any government which was an ally of the Japanese Imperial Government.

[1] 5 U.S.C. 552 note.

(4) RECORD.—The term "record" means a Japanese Imperial Government record.

(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105–246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 6 years[2] after the date on which this title takes effect. Such Working Group is redesignated as the "Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group".

(2) MEMBERSHIP.—Section 2(b)(2) of such Act is amended by striking "3 other persons" and inserting "4 other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998.".

(c) FUNCTIONS.—Not later than 1 year after the date of the enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 803—

(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the United States;

(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

(3) submit a report to Congress, including the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

(d) FUNDING.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.

(a) RELEASE OF RECORDS.—Subject to subsections (b), (c), and (d), the Japanese Imperial Government Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.

(b) EXEMPTIONS.—An agency head may exempt from release under subsection (a) specific information, that would—

(1) constitute an unwarranted invasion of personal privacy;

(2) reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;

[2] Sec. 163 of the Consolidated Appropriations Act, 2004 (Public Law 108–199) struck out "3 years" and inserted in lieu thereof "4 years".

Subsequently, sec. 1 of Public Law 109–5 (119 Stat. 19) struck out "4 years" and inserted in lieu thereof "6 years".

(3) reveal information that would assist in the development or use of weapons of mass destruction;

(4) reveal information that would impair United States cryptologic systems or activities;

(5) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

(6) reveal United States military war plans that remain in effect;

(7) reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;

(8) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;

(9) reveal information that would impair current national security emergency preparedness plans; or

(10) violate a treaty or other international agreement.

(c) APPLICATIONS OF EXEMPTIONS.—

(1) IN GENERAL.—In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption provided in paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

(d) RECORDS RELATED TO INVESTIGATIONS OR PROSECUTIONS.—This section shall not apply to records—

(1) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

(2) solely in the possession, custody, or control of the Office of Special Investigations.

SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.

For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

SEC. 805. EFFECTIVE DATE.

The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act.

21. To Locate and Secure the Return of Zachary Baumel

Public Law 106–89 [H.R. 1175], 113 Stat. 1305, approved November 8, 1999

AN ACT To locate and secure the return of Zachary Baumel, a United States citizen, and other Israeli soldiers missing in action.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) Zachary Baumel, a United States citizen serving in the Israeli military forces, has been missing in action since June 1982 when he was captured by forces affiliated with the Palestinian Liberation Organization (PLO) following a tank battle with Syrian forces at Sultan Ya'akub in Lebanon;

(2) Yehuda Katz and Zvi Feldman, Israeli citizens serving in the Israeli military forces, have been missing in action since June 1982 when they were also captured by these same forces in a tank battle with Syrian forces at Sultan Ya'akub in Lebanon;

(3) these three soldiers were last known to be in the hands of a Palestinian faction splintered from the PLO and operating in Syrian-controlled territory, thus making this a matter within the responsibility of the Government of Syria;

(4) diplomatic efforts to secure the release of these individuals have been unsuccessful, although PLO Chairman Yasser Arafat delivered one-half of Zachary Baumel's dog tag to Israeli Government authorities; and

(5) in the Gaza-Jericho agreement between the Palestinian Authority and the Government of Israel of May 4, 1994, Palestinian officials agreed to cooperate with Israel in locating and working for the return of Israeli soldiers missing in action.

SEC. 2. ACTIONS WITH RESPECT TO MISSING SOLDIERS.

(a) CONTINUING COMMUNICATION WITH CERTAIN GOVERNMENTS.—The Secretary of State shall continue to raise the matter of Zachary Baumel, Yehuda Katz, and Zvi Feldman on an urgent basis with appropriate government officials of Syria, Lebanon, the Palestinian Authority, and with other governments in the region and elsewhere that, in the determination of the Secretary, may be helpful in locating and securing the return of these soldiers.

(b) PROVISION OF ASSISTANCE TO CERTAIN GOVERNMENTS.—In deciding whether or not to provide United States assistance to any government or authority which the Secretary of State believes has information concerning the whereabouts of the soldiers described in subsection (a), and in formulating United States policy towards

such government or authority, the President should take into consideration the willingness of the government or authority to assist in locating and securing the return of such soldiers.

SEC. 3. REPORTS BY SECRETARY OF STATE.

(a) INITIAL REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall prepare and submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a written report that describes the efforts of the Secretary pursuant to section 2(a) and United States policies affected pursuant to section 2(b).

(b) SUBSEQUENT REPORTS.—Not later than 15 days after receiving from any source any additional credible information relating to the individuals described in section 2(a), the Secretary of State shall prepare and submit to the committees described in subsection (a) a written report that contains such additional information.

(c) FORM OF REPORTS.—A report submitted under subsection (a) or (b) shall be made available to the public and may include a classified annex.

22. Taiwan's Participation in the World Health Organization

a. Participation of Taiwan in the World Health Organization, 2003

Public Law 108–28 [S. 243], 117 Stat. 769, approved May 29, 2003

AN ACT Concerning participation of Taiwan in the World Health Organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONCERNING THE PARTICIPATION OF TAIWAN IN THE WORLD HEALTH ORGANIZATION (WHO).

(a) FINDINGS.—The Congress makes the following findings:

(1) Good health is important to every citizen of the world and access to the highest standards of health information and services is necessary to improve the public health.

(2) Direct and unobstructed participation in international health cooperation forums and programs is beneficial for all parts of the world, especially with today's greater potential for the cross-border spread of various infectious diseases such as the human immunodeficiency virus (HIV), tuberculosis, and malaria.

(3) Taiwan's population of 23,500,000 people is greater than that of three-fourths of the member states already in the World Health Organization (WHO).

(4) Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, the eradication of such infectious diseases as cholera, smallpox, and the plague, and the first to eradicate polio and provide children with hepatitis B vaccinations.

(5) The United States Centers for Disease Control and Prevention and its Taiwan counterpart agencies have enjoyed close collaboration on a wide range of public health issues.

(6) In recent years Taiwan has expressed a willingness to assist financially and technically in international aid and health activities supported by the WHO.

(7) On January 14, 2001, an earthquake, registering between 7.6 and 7.9 on the Richter scale, struck El Salvador. In response, the Taiwanese Government sent 2 rescue teams, consisting of 90 individuals specializing in firefighting, medicine, and civil engineering. The Taiwanese Ministry of Foreign Affairs also donated $200,000 in relief aid to the Salvadoran Government.

(8) The World Health Assembly has allowed observers to participate in the activities of the organization, including the Palestine Liberation Organization in 1974, the Order of Malta, and the Holy See in the early 1950s.

(9) The United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations.

(10) Public Law 106–137 required the Secretary of State to submit a report to the Congress on efforts by the executive branch to support Taiwan's participation in international organizations, in particular the WHO.

(11) In light of all benefits that Taiwan's participation in the WHO can bring to the state of health not only in Taiwan, but also regionally and globally, Taiwan and its 23,500,000 people should have appropriate and meaningful participation in the WHO.

(12) On May 11, 2001, President Bush stated in his letter to Senator Murkowski that the United States "should find opportunities for Taiwan's voice to be heard in international organizations in order to make a contribution, even if membership is not possible", further stating that his Administration "has focused on finding concrete ways for Taiwan to benefit and contribute to the WHO".

(13) In his speech made in the World Medical Association on May 14, 2002, Secretary of Health and Human Services Tommy Thompson announced "America's work for a healthy world cuts across political lines. That is why my government supports Taiwan's efforts to gain observership status at the World Health Assembly. We know this is a controversial issue, but we do not shrink from taking a public stance on it. The people of Taiwan deserve the same level of public health as citizens of every nation on earth, and we support them in their efforts to achieve it".

(14) The Government of the Republic of China on Taiwan, in response to an appeal from the United Nations and the United States for resources to control the spread of HIV/AIDS, donated $1,000,000 to the Global Fund to Fight AIDS, Tuberculosis and Malaria in December 2002.

(b) PLAN.—The Secretary of State is authorized—

(1) to initiate a United States plan to endorse and obtain observer status for Taiwan at the annual week-long summit of the World Health Assembly in May 2003 in Geneva, Switzerland; and

(2) to instruct the United States delegation to Geneva to implement that plan.

(c) REPORT.—Not later than 14 days after the date of the enactment of this Act, the Secretary of State shall submit a report to Congress in unclassified form describing the action taken under subsection (b).

b. Participation of Taiwan in the World Health Organization, 2001

Public Law 107–10 [H.R. 428], 115 Stat. 17, approved May 28, 2001; as amended by Public Law 107–158 [H.R. 2739}, 116 Stat. 121, approved April 4, 2002

AN ACT Concerning participation of Taiwan in the World Health Organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONCERNING THE PARTICIPATION OF TAIWAN IN THE WORLD HEALTH ORGANIZATION (WHO).

(a) FINDINGS.—The Congress makes the following findings:

(1) Good health is important to every citizen of the world and access to the highest standards of health information and services is necessary to improve the public health.

(2) Direct and unobstructed participation in international health cooperation forums and programs is beneficial for all parts of the world, especially with today's greater potential for the cross-border spread of various infectious diseases such as the human immunodeficiency virus (HIV), tuberculosis, and malaria.

(3) Taiwan's population of 23,500,000 people is greater than that of three-fourths of the member states already in the World Health Organization (WHO).

(4) Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, the eradication of such infectious diseases as cholera, smallpox, and the plague, the eradication of such infectious diseases as cholera, smallpox, and the plague, and the first to eradicate polio and provide children with hepatitis B vaccinations.

(5) The United States Centers for Disease Control and Prevention and its Taiwan counterpart agencies have enjoyed close collaboration on a wide range of public health issues.

(6) In recent years Taiwan has expressed a willingness to assist financially and technically in international aid and health activities supported by the WHO.

(7) On January 14, 2001, an earthquake, registering between 7.6 and 7.9 on the Richter scale, struck El Salvador. In response, the Taiwanese government sent 2 rescue teams, consisting of 90 individuals specializing in firefighting, medicine, and civil engineering. The Taiwanese Ministry of Foreign Affairs also donated $200,000 in relief aid to the Salvadoran Government.

(8) The World Health Assembly has allowed observers to participate in the activities of the organization, including the Palestine Liberation Organization in 1974, the Order of Malta, and the Holy See in the early 1950's.

(9) The United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations.

(10) Public Law 106–137 required the Secretary of State to submit a report to the Congress on efforts by the executive branch to support Taiwan's participation in international organizations, in particular the WHO.

(11) In light of all benefits that Taiwan's participation in the WHO can bring to the state of health not only in Taiwan, but also regionally and globally, Taiwan and its 23,500,000 people should have appropriate and meaningful participation in the WHO.

(12)[1] On May 11, 2001, President Bush stated in his letter to Senator Murkowski that the United States "should find opportunities for Taiwan's voice to be heard in international organizations in order to make a contribution, even if membership is not possible", further stating that his Administration "has focused on finding concrete ways for Taiwan to benefit and contribute to the WHO.".

(13)[1] On May 16, 2001, as part of the United States delegation to the World Health Assembly meeting in Geneva, Switzerland, Secretary of Health and Human Services Tommy Thompson announced to the American International Club the Administration's support of Taiwan's participation in the activities of the WHO.

(b) PLAN.—The Secretary of State is authorized—

(1) to initiate a United States plan to endorse and obtain observer status for Taiwan at the annual week-long summit of the World Health Assembly in May 2002[2] in Geneva, Switzerland; and

(2) to instruct the United States delegation to Geneva to implement that plan.

(c) REPORT.—Not later than 14 days after the date of the enactment of this Act, the Secretary of State shall submit a written report to the Congress in unclassified form containing the plan authorized under subsection (b).

[1] Sec. 1(a) of Public Law 107–158 (116 Stat. 121) added paras. (12) and (13).

[2] Sec. 1(b) of Public Law 107–158 (116 Stat. 121) struck out "May 2001" and inserted in lieu thereof "May 2002".

c. Participation of Taiwan in the World Health Organization, 1999

Public Law 106–137 [H.R. 1794], 113 Stat. 1691, approved December 7, 1999

AN ACT Concerning participation of Taiwan in the World Health Organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONCERNING THE PARTICIPATION OF TAIWAN IN THE WORLD HEALTH ORGANIZATION (WHO).

(a) FINDINGS.—The Congress makes the following findings:

(1) Good health is a basic right for every citizen of the world and access to the highest standards of health information and services is necessary to help guarantee this right.

(2) Direct and unobstructed participation in international health cooperation forums and programs is therefore crucial, especially with today's greater potential for the cross-border spread of various infectious diseases such as AIDS.

(3) The World Health Organization (WHO) set forth in the first chapter of its charter the objective of attaining the highest possible level of health for all people.

(4) In 1977, the World Health Organization established "Health For All By The Year 2000" as its overriding priority and reaffirmed that central vision with the initiation of its "Health For All" renewal process in 1995.

(5) Taiwan's population of 21,000,000 people is larger than that of three-fourths of the member states already in the World Health Organization.

(6) Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, the eradication of such infectious diseases as cholera, smallpox, and the plague, and the first to be rid of polio and provide children with free hepatitis B vaccinations.

(7) The World Health Organization was unable to assist Taiwan with an outbreak of enterovirus 71 which killed 70 Taiwanese children and infected more than 1,100 Taiwanese children in 1998.

(8) In recent years Taiwan has expressed a willingness to assist financially or technically in WHO-supported international aid and health activities, but has ultimately been unable to render such assistance.

(9) The World Health Organization allows observers to participate in the activities of the organization.

(10) The United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations.

(11) In light of all of the benefits that Taiwan's participation in the World Health Organization could bring to the state of health not only in Taiwan, but also regionally and globally, Taiwan and its 21,000,000 people should have appropriate and meaningful participation in the World Health Organization.

(b) REPORT.—Not later than January 1, 2000, the Secretary of State shall submit a report to the Congress on the efforts of the Secretary to fulfill the commitment made in the 1994 Taiwan Policy Review to more actively support Taiwan's participation in international organizations, in particular the World Health Organization (WHO).

23. Czech Republic Memorial Honoring Tomas G. Masaryk

Public Law 107–61 [H.R. 1161], 115 Stat. 410, approved November 5, 2001

AN ACT To authorize the Government of the Czech Republic to establish a memorial to honor Tomas G. Masaryk in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,[1]

SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.

(a) IN GENERAL.—The Government of the Czech Republic is authorized to establish a memorial to honor Tomas G. Masaryk on the Federal land in the District of Columbia.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Commemorative Works Act (40 U.S.C. 1001 et seq.), except that sections 2(c), 6(b), 8(b), and 10(c) of that Act shall not apply with respect to the memorial.

SEC. 2. LIMITATION ON PAYMENT OF EXPENSES.

The United States Government shall not pay any expense for the establishment of the memorial or its maintenance.

[1] 40 U.S.C. 1003 note.

24. Investigation of Those Missing From Cyprus Since 1974

Public Law 103–372 [H.R. 2826], 108 Stat. 3487, approved October 19, 1994

AN ACT To provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. UNITED STATES CITIZENS MISSING FROM CYPRUS.

(a) INVESTIGATION.—As soon as is practicable, the President shall undertake, in cooperation with appropriate international organizations or nongovernmental organizations, a thorough investigation of the whereabouts of the United States citizens who have been missing from Cyprus since 1974. Any information on others missing from Cyprus that is learned or discovered during this investigation shall be reported to the appropriate international or nongovernmental organizations. The investigation shall focus on the countries and communities which were combatants in Cyprus in 1974, all of which currently receive United States foreign assistance.

(b) REPORT TO THE FAMILIES.—The President shall report the findings of this investigation of the missing Americans to the family of each of the United States citizens. Such reports shall include the whereabouts of the missing.

(c) REPORT TO THE CONGRESS.—The information learned or discovered during this investigation shall be reported to the Congress.

(d) RETURNING THE MISSING.—The President, in cooperation with appropriate international organizations or nongovernmental organizations, shall do everything possible to return to their families, as soon as is practicable, the United States citizens who have been missing from Cyprus since 1974, and others who have been missing, including returning the remains of those who are no longer alive.

25. Proclamations

a. Designating September 11 as Patriot Day

Public Law 107–89 [H.J. Res. 71] 115 Stat. 876, approved December 18, 2001

JOINT RESOLUTION Amending title 36, United States Code, to designate September 11 as Patriot Day.

Whereas on September 11, 2001, terrorists hijacked four civilian aircraft, crashing two of them into the towers of the World Trade Center in New York City, and a third into the Pentagon outside Washington, D.C.;

Whereas the fourth hijacked aircraft crashed in southwestern Pennsylvania after passengers tried to take control of the aircraft in order to prevent the hijackers from crashing the aircraft into an important symbol of democracy and freedom;

Whereas these attacks were by far the deadliest terrorist attacks ever launched against the United States, killing thousands of innocent people; and

Whereas in the aftermath of the attacks the people of the United States stood united in providing support for those in need: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF SEPTEMBER 11 AS PATRIOT DAY.

Chapter 1 of title 36, United States Code, is amended by adding at the end the following new section:

"§ 144. Patriot Day

"(a) DESIGNATION.—September 11 is Patriot Day.

"(b) PROCLAMATION.—The President is requested to issue each year a proclamation calling on—

"(1) State and local governments and the people of the United States to observe Patriot Day with appropriate programs and activities;

"(2) all departments, agencies, and instrumentalities of the United States and interested organizations and individuals to display the flag of the United States at halfstaff on Patriot Day in honor of the individuals who lost their lives as a result of the terrorist attacks against the United States that occurred on September 11, 2001; and

"(3) the people of the United States to observe a moment of silence on Patriot Day in honor of the individuals who lost their lives as a result of the terrorist attacks against the United States that occurred on September 11, 2001.".

SEC. 2. CONFORMING AMENDMENT.

The table of contents for chapter 1 of title 36, United States Code, is amended by adding at the end the following new item:

"§ 144. Patriot Day.".

b. Free and Fair Elections in Peru

Public Law 106–186 [S.J. Res. 43], 114 Stat. 226, approved April 25, 2000

JOINT RESOLUTION Expressing the sense of Congress that the President of the United States should encourage free and fair elections and respect for democracy in Peru.

Whereas presidential and congressional elections are scheduled to occur in Peru on April 9, 2000;

Whereas independent election monitors, including the Organization of American States, the National Democratic Institute, and the Carter Center, have expressed grave doubts about the fairness of the electoral process due to the Peruvian Government's control of key official electoral agencies, systematic restrictions on freedom of the press, manipulation of the judicial processes to stifle independent reporting on radio, television, and newspaper outlets, and harassment and intimidation of opposition politicians, which have greatly limited the ability of opposing candidates to campaign freely; and

Whereas the absence of free and fair elections in Peru would constitute a major setback for the Peruvian people and for democracy in the hemisphere, could result in instability in Peru, and could jeopardize United States antinarcotics objectives in Peru and the region: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that the President of the United States should promptly convey to the President of Peru that if the April 9, 2000, elections are not deemed by the international community to have been free and fair, the United States will review and modify as appropriate its political, economic, and military relations with Peru, and will work with other democracies in this hemisphere and elsewhere toward a restoration of democracy in Peru.

c. Captive Nations Week

Public Law 86–90 [S.J. Res. 111], 73 Stat. 212, approved July 17, 1959

JOINT RESOLUTION Providing for the designation of the third week of July as "Captive Nations Week".

Whereas the greatness of the United States is in large part attributable to its having been able, through the democratic process, to achieve a harmonious national unity of its people, even thought they stem from the most diverse of racial, religious, and ethnic backgrounds; and

Whereas this harmonious unification of the diverse elements of out free society has led the people of the United States to possess a warm understanding and sympathy for the aspirations of peoples everywhere and to recognize the natural interdependency of the peoples and nations of the world; and

Whereas the enslavement of a substantial part of the world's population by Communist imperialism makes a mockery of the idea of peaceful coexistence between nations and constitutes a detriment to the natural bonds of understanding between the people of the United States and other peoples; and

Whereas since 1918 the imperialistic and aggressive policies of Russian communism have resulted in the creation of a vast empire which poses a dire threat to the security of the United States and of all the free peoples of the world; and

Whereas the imperialistic policies of Communist Russia have led, through direct and indirect aggression, to the subjugation of the national independence of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Tibet, Cossackia, Turkestan, North Vietnam, and others; and

Whereas these submerged nations look to the United States, as the citadel of human freedom, for leadership in bringing about their liberation and independence and in restoring to them the enjoyment of their Christian, Jewish, Moslem, Buddhist, or other religious freedoms, and of their individual liberties; and

Whereas it is vital to the national security of the Untied States that the desire for liberty and independence on the part of the peoples of these conquered nations should be steadfastly kept alive; and

Whereas the desire for liberty and independence by the overwhelming majority of the people of these submerged nations constitutes a powerful deterrent to war and one of the best hopes for a just and lasting peace; and

Whereas it is fitting that we clearly manifest to such peoples through an appropriate and official means the historical fact that the people of the United States share with them their aspirations

for the recovery of their freedom and independence: Now, therefor, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that:

The President of the United States is authorized and requested to issue a proclamation designating the third week in July 1959 as "Captive Nations Week" and inviting the people of the United States to observe such week with appropriate ceremonies and activities. The President is further authorized and requested to issue a similar proclamation each year until such time as freedom and independence shall have been achieved for all the captive nations of the world.[1]

[1] The President issued the most recent proclamation on July 15, 2005 (Proclamation 7913; 70 F.R. 41931).

d. Asian/Pacific American Heritage Month

Partial text of Public Law 105–225 [H.R. 1085], 112 Stat. 1253, approved August 12, 1998

AN ACT To revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observances, ceremonies, and organizations, as title 36, United States Code, "Patriotic and National Observances, Ceremonies, and Organizations".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

§ Sec. 102.[1] Asian/Pacific American Heritage Month

(a) DESIGNATION.—May is Asian/Pacific American Heritage Month.

(b)[2] PROCLAMATIONS.—The President is requested to issue each year a proclamation calling on the people of the United States, and the chief executive officers of each State of the United States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Marshall Islands, Micronesia, and Palau are requested to issue each year proclamations calling on the people of their respective jurisdictions, to observe Asian/Pacific American Heritage Month with appropriate programs, ceremonies, and activities.

* * * * * * *

[1] 36 U.S.C. 102. Prior to enactment of Public Law 105–225, Public Law 102–450 (36 U.S.C. 169k; 106 Stat. 2251) designated May of each year as Asian/Pacific American Heritage Month. Public Law 105–225 revised the text of Public Law 102–450 and recodified it as 36 U.S.C. 102.

[2] The President issued the most recent proclamation on May 3, 2005 (Proclamation 7894; 70 F.R. 23917).

Appendix I

NOTE.—Appendix I lists Public Laws included in *Legislation on Foreign Relations Through 2005*, either as free-standing law or in amendments, arranged by Public Law number with corresponding short title or popular name.

Public Law No.	Short Title
109–169	United States-Bahrain Free Trade Agreement Implementation Act
109–167	Passport Services Enhancement Act of 2005
109–165	Torture Victims Relief Reauthorization Act of 2005
109–164	Trafficking Victims Protection Reauthorization Act of 2005
109–163	National Defense Authorization Act for Fiscal Year 2006
109–163	United States Policy in Iraq Act (section 1227)
109–163	Detainee Treatment Act of 2005 (title XIV)
109–159	Transfer of Items To War Reserves Stockpile for Allies, Korea
109–148	Department of Defense, Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006
109–148	Department of Defense Appropriations Act, 2006 (division A)
109–148	Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (division B)
109–140	To Provide Certain Authorities for the Department of State
109–134	Naval Vessels Transfer Act of 2005
109–121	Senator Paul Simon Water for the Poor Act of 2005
109–112	Iran Nonproliferation Amendments Act of 2005
109–108	Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006
109–108	Department of State and Related Agencies Appropriations Act, 2006 (title IV)
109–102	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006

109–97	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006
109–95	Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005
109–77	Continuing Appropriations, Fiscal Year 2006
109–58	Energy Policy Act of 2005
109–58	Set America Free Act of 2005 (SAFE Act) (title XIV, subtitle B)
109–54	Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006
109–53	Dominican Republic-Central America-United States Free Trade Agreement Implementation Act
109–39	Renewal of Import Restrictions—Burmese Freedom and Democracy Act of 2003
109–13	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005
108–497	Comprehensive Peace in Sudan Act of 2004
108–484	Microenterprise Results and Accountability Act of 2004
108–458	Intelligence Reform and Terrorism Prevention Act of 2004
108–458	9/11 Commission Implementation Act of 2004 (title VII)
108–458	Afghanistan Freedom Support Act Amendments of 2004 (sec. 7104)
108–447	Consolidated Appropriations Act, 2005
108–447	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (division D)
108–447	Migratory Bird Treaty Reform Act of 2004 (division E, sec. 143)
108–447	Miscellaneous Appropriations and Offsets Act, 2005 (division J, title I)
108–429	Miscellaneous Trade and Technical Corrections Act of 2004
108–429	Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (title III)
108–429	Wool Suit and Textile Trade Extension Act of 2004 (title IV)
108–375	Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005
108–370	Prevention of Child Abduction Partnership Act
108–347	Belarus Democracy Act of 2004
108–333	North Korean Human Rights Act of 2004
108–332	Global Anti-Semitism Review Act of 2004
108–323	Tropical Forest Conservation Act Reauthorization
108–302	United States-Morocco Free Trade Agreement Implementation Act
108–297	Cape Town Treaty Implementation Act of 2004
108–286	United States-Australia Free Trade Agreement Implementation Act
108–283	Northern Uganda Crisis Response Act
108–274	AGOA Acceleration Act of 2004

108–272	Approving the Renewal of Import Restrictions—Burma
108–266	Marine Turtle Conservation Act of 2004
108–235	Taiwan's Participation in the World Health Organization
108–215	Amendments to U.S.–Mexico Agreement Establishing a Border Environment Cooperation Commission and North American Development Bank
108–200	Congo Basin Forest Partnership Act of 2004
108–199	Consolidated Appropriations, 2004
108–199	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (division D)
108–199	HELP Commission Act (division B, sec. 637)
108–199	Millennium Challenge Act of 2003 (division D, title VI)
108–175	Syria Accountability and Lebanese Sovereignty Restoration Act of 2003
108–136	National Defense Authorization Act for Fiscal Year 2004
108–136	Nuclear Security Initiative Act of 2003 (title XXXVI)
108–106	Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004
108–77	United States-Chile Free Trade Agreement Implementation Act
108–31	Microenterprise Report to Congress
108–28	Taiwan's Participation in the World Health Organization
108–25	United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003
108–19	Clean Diamond Trade Act
108–11	Emergency Wartime Supplemental Appropriations Act, 2003
108–7	Consolidated Appropriations, 2003
107–365	Caribbean National Forest Wild and Scenic Rivers Act of 2002
107–327	Afghanistan Freedom Support Act of 2002
107–314	Bob Stump National Defense Authorization Act for Fiscal Year 2003
107–258	Persian Gulf POW/MIA Accountability Act of 2002
107–246	Russian Democracy Act of 2002
107–245	Sudan Peace Act
107–243	Authorization for Use of Military Force Against Iraq Resolution of 2002
107–228	Foreign Relations Authorization Act, Fiscal Year 2003
107–228	Department of State Authorization Act, Fiscal Year 2003 (division A)
107–228	Security Assistance Act of 2002 (division B)
107–228	Middle East Peace Commitments Act of 2002 (division A, title VI, subtitle A)
107–228	Tibetan Policy Act of 2002 (division A, title VI, subtitle B)
107–228	East Timor Transition to Independence Act of 2002 (division A, title VI, subtitle C)

107–228	Clean Water for the Americas Partnership Act of 2002 (division A, title VI, subtitle D)
107–228	Freedom Investment Act of 2002 (division A, title VI, subtitle E)
107–228	Russian Federation Debt for Nonproliferation Act of 2002 (division B, title XIII, subtitle B)
107–228	Nonproliferation Assistance Coordination Act of 2002 (division B, title XIII, subtitle C)
107–228	Iran Nuclear Proliferation Prevention Act of 2002 (division B, title XIII, subtitle D)
107–210	Trade Act of 2002
107–210	Customs Border Security Act of 2002 (title III)
107–210	Bipartian Trade Promotion Authority Act of 2002 (title XXI)
107–210	Andean Trade Promotion and Drug Eradication Act (title XXXI)
107–206	2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States
107–206	American Servicemembers Protection Act (title II)
107–197	Terrorist Bombings Convention Implementation Act of 2002
107–189	Export-Import Bank Reauthorization Act of 2002
107–187	Gerald B. H. Solomon Freedom Consolidation Act of 2002
107–173	Ehanced Border Security and Visa Entry Reform Act of 2002
107–148	Radio Free Afghanistan Act
107–141	Asian Elephant Conservation Reauthorization Act of 2002
107–117	Department of Defense and Emergency Supplemental Appropriations for Recovery From and Response To Terrorist Attacks on the United States Act, 2002
107–115	Kenneth M. Ludden Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002
107–112	Rhinoceros and Tiger Conservation Reauthorization Act of 2001
107–111	African Elephant Conservation Reauthorization Act of 2001
107–107	National Defense Authorization Act for Fiscal Year 2002
107–99	Zimbabwe Democracy and Economic Recovery Act of 2001
107–81	Afghan Women and Children Relief Act of 2001
107–56	Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001
107–56	International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 (title III)
107–43	United States-Jordan Free Trade Area Implementation Act
107–40	Authorization for Use of Military Force in Response to Terrorist Attacks of September 11, 2001

107–39	Condemnation of Terrorist Attacks
107–24	ILSA [Iran and Libya Sanctions Act] Extension Act of 2001
106–570	Assistance for International Malaria Control Act
106–570	International Malaria Control Act (title I)
106–570	United States-Macau Policy Act of 2000 (title II)
106–570	Pacific Charter Commission Act of 2000 (title IV)
106–570	Paul D. Coverdell World Wise Schools Act of 2000 (title VI)
106–567	Intelligence Authorization Act for Fiscal Year 2001
106–567	Japanese Imperial Government Disclosure Act of 2000 (title VIII)
106–557	Shark Finning Prohibition Act
106–555	Striped Bass Conservation, Atlantic Coastal Fisheries Management and Marine Mammal Rescue Assistance Act of 2000
106–554	Consolidated Appropriations Act, 2001
106–554	Vietnam Education Foundation Act of 2000 (title II)
106–553	Department of State and Related Agency Appropriations Act, 2001
106–531	Reports Consolidation Act of 2000
106–484	Bring Them Home Alive Act of 2000
106–476	Tariff Suspension and Trade Act of 2000
106–450	Yukon River Salmon Act of 2000
106–429	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001
106–411	Great Ape Conservation Act of 2000
106–398	Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001
106–387	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001
106–387	Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX)
106–386	Victims of Trafficking and Violence Protection Act of 2000
106–386	Trafficking Victims Protection Act of 2000 (division A)
106–373	Famine Prevention and Freedom From Hunger Improvement Act of 2000
106–346	National Terrorist Asset Trading Center
106–309	Microenterprise for Self-Reliance and International Anti-Corruption Act of 2000
106–309	Microenterprise for Self-Reliance Act of 2000 (title I)
106–309	International Anti-Corruption and Good Governance Act of 2000 (title II)
106–309	International Academic Opportunities Act of 2000 (title III)
106–309	Support for Overseas Cooperative Development Act (sec. 401)
106–309	Paul D. Coverdell Fellows Program Act of 2000 (sec. 408)
106–286	U.S.-China Relations Act of 2000
106–280	Security Assistance Act of 2000
106–279	Intercountry Adoption Act of 2000

106–264	Global AIDS and Tuberculosis Relief Act of 2000
106–264	Global AIDS Research and Relief Act of 2000 (title I)
106–264	International Tuberculosis Control Act of 2000 (title II)
106–256	Oceans Act of 2000
106–247	Neotropical Migratory Bird Conservation Act
106–212	American Institute in Taiwan Facilities Enhancement Act
106–200	Trade and Development Act of 2000
106–200	African Growth and Opportunity Act (title I)
106–200	U.S.-Caribbean Basin Trade Partnership Act (title II)
106–178	Iran and Syria Nonproliferation Act (formerly Iran Nonproliferation Act of 2000)
106–158	Export Enhancement Act of 1999
106–120	Intelligence Authorization Act for Fiscal Year 2000
106–120	Foreign Narcotics Kingpin Designation Act (title VIII)
106–113	Consolidated Appropriations, Fiscal Year 2000
106–113	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (H.R. 3422, enacted by reference)
106–113	Silk Road Strategy Act of 1999 (sec. 596, H.R. 3422, enacted by reference)
106–113	Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference)
106–113	Secure Embassy Construction and Counterterrorism Act of 1999 (title VI, division A, H.R. 3427, enacted by reference)
106–113	North Korea Threat Reduction Act of 1999 (subtitle B, title VIII, division A, H.R. 3427, enacted by reference)
106–113	United Nations Reform Act of 1999 (title IX, division A, H.R. 3427, enacted by reference)
106–113	Arms Control, Nonproliferation, and Security Assistance Act of 1999 (division B, H.R. 3427, enacted by reference)
106–113	Arms Control and Nonproliferation Act of 1999 (title XI, division B, H.R. 3427, enacted by reference)
106–113	National Security and Corporate Fairness under the Biological Weapons Convention Act (chapter 2, subtitle A, title XI, division B, H.R. 3427, enacted by reference)
106–113	Security Assistance Act of 1999 (title XII, H.R. 3427, enacted by reference)
106–113	Defense Offsets Disclosure Act of 1999 (subtitle D, title XII, H.R. 3427, enacted by reference)
106–113	Proliferation Prevention Enhancement Act of 1999 (subtitle E, title XII, H.R. 3427, enacted by reference)
106–113	International Arms Sales Code of Conduct Act of 1999 (subtitle F, title XII, H.R. 3427, enacted by reference)
106–108	Arctic Tundra Habitat Emergency Conservation Act
106–87	Torture Victims Relief Reauthorization Act of 1999

106–79	Department of Defense Appropriations Act, 2000
106–65	National Defense Authorization Act for Fiscal Year 2000
106–65	Panama Canal Commission Authorization Act for Fiscal Year 2000 (title XXXV)
106–38	National Missile Defense Act of 1999
106–36	Miscellaneous Trade and Technical Corrections Act of 1999
106–35	Western Hemisphere Drug Elimination Technical Corrections Act
106–30	Peace Corps Reauthorization
105–385	Africa: Seeds of Hope Act of 1998
105–384	Governing International Fisheries Agreement with Poland
105–382	Department of State Special Agents Retirement Act of 1998
105–366	International Anti-Bribery and Fair Competition Act of 1998
105–362	Federal Reports Elimination Act of 1998
105–338	Iraq Liberation Act of 1998
105–323	Extradition Treaties Interpretation Act of 1998
105–319	Irish Peace Process Cultural and Training Program Act of 1998
105–312	Rhinoceros and Tiger Conservation Act of 1998
105–303	Commercial Space Act of 1998
105–292	International Religious Freedom Act of 1998
105–277	Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999
105–277	Haitian Refugee Immigration Fairness Act of 1998 (division A, sec. 101(h), title IX)
105–277	Trade Deficit Review Commission Act (division A, sec. 127)
105–277	Office of National Drug Control Policy Reauthorization Act of 1998 (division C, title VII)
105–277	Western Hemisphere Drug Elimination Act (division C, title VIII)
105–277	Foreign Affairs Reform and Restructuring Act of 1998 (division G)
105–277	Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A)
105–277	Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (division G, subdivision B)
105–277	United Nations Reform Act of 1998 (division G, subdivision C)
105–277	European Security Act of 1998 (division G, title XXVII)
105–277	Chemical Weapons Convention Implementation Act of 1998 (division I)
105–262	Department of Defense Appropriations Act, 1999
105–261	Strom Thurmond National Defense Authorization Act for Fiscal Year 1999
105–261	Defense Against Weapons of Mass Destruction Act of 1998 (title XIV)

105–261	Panama Canal Commission Authorization Act for Fiscal Year 1999 (title XXXV)
105–261	Radio Free Asia Act of 1998 (title XXXIX)
105–246	Nazi War Crimes Disclosure Act
105–235	Finding the Government of Iraq in Unacceptable and Material Breach of Its International Obligations
105–217	African Elephant Conservation Reauthorization Act of 1998
105–194	Agriculture Export Relief Act of 1998
105–186	U.S. Holocaust Assets Commission Act of 1998
105–174	1998 Supplemental Appropriations and Rescissions Act
105–173	International Parental Kidnapping Crime Act
105–158	Holocaust Victims Redress Act
105–119	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998
105–107	Intelligence Authorization Act for Fiscal Year 1998
105–100	Nicaraguan Adjustment and Central American Relief Act (title II)
105–96	Asian Elephant Conservation Act of 1997
105–85	National Defense Authorization Act for Fiscal Year 1998
105–42	International Dolphin Conservation Program Act
104–319	Human Rights, Refugee, and Other Foreign Relations Provisions Act of 1996
104–309	Records Relating to Nazi War Crimes
104–297	Sustainable Fisheries Act
104–293	Intelligence Authorization Act for Fiscal Year 1997
104–293	Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII)
104–269	Release of USIA Materials: VOA, Radio Marti Recordings
104–264	Federal Aviation Reauthorization Act of 1996
104–227	Antarctic Science, Tourism, and Conservation Act of 1996
104–208	Omnibus Consolidated Appropriations for Fiscal Year 1997
104–208	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (title I, sec. 101(c))
104–208	NATO Enlargement Facilitation Act of 1996 (title VI, sec. 101(c))
104–203	Most-Favored-Nation Treatment for Cambodia
104–201	National Defense Authorization Act for Fiscal Year 1997
104–201	Defense Against Weapons of Mass Destruction Act of 1996 (title XIV)
104–201	Panama Canal Commission Authorization Act for Fiscal Year 1997 (title XXXV, subtitle A)
104–201	Panama Canal Act Amendments of 1996 (title XXXV, subtitle B)
104–172	Iran and Libya Sanctions Act of 1996
104–171	Most-Favored-Nation Treatment for Romania

104–164	Miscellaneous Amendments and Authorization—FYs 1996 and 1997
104–162	Most-Favored-Nation Treatment for People's Republic of Bulgaria
104–161	Release of USIA Materials: "Fragile Ring of Life"
104–134	USEC Privatization Act
104–132	Antiterrorism and Effective Death Penalty Act of 1996
104–127	Federal Agriculture Improvement and Reform Act of 1996
104–114	Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996
104–106	National Defense Authorization Act for Fiscal Year 1996
104–106	Ballistic Missile Defense Act of 1995 (title II, subtitle C)
104–93	Intelligence Authorization Act for Fiscal Year 1996
104–72	Au Pair Extension
104–66	Federal Reports Elimination and Sunset Act of 1995
104–45	Jerusalem Embassy Act of 1995
104–43	Fisheries Act of 1995
104–43	High Seas Fishing Compliance Act of 1995 (title I)
104–43	Northwest Atlantic Fisheries Convention Act of 1995 (title II)
104–43	Atlantic Tunas Convention Act of 1995 (title III)
104–43	Sea of Okhotsk Fisheries Enforcement Act of 1995 (title V)
104–43	High Seas Driftnet Fishing Moratorium Protection Act (title VI)
104–43	Yukon River Salmon Act of 1995 (title VII) Act for Fiscal Year 1997
104–6	Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995
104–6	Mexican Debt Disclosure Act of 1995 (title IV)
103–465	Uruguay Rounds Agreements Act
103–465	Export Enhancement Program Amendments of 1994 (title IV, subtitle A, part II, sec. 411(a))
103–447	International Narcotics Control Corrections Act of 1994
103–447	NATO Participation Act of 1994 (title II)
103–423	United States Policy Toward Haiti
103–416	Visa for Officials of Taiwan
103–392	Jobs Through Trade Expansion Act of 1994
103–391	Rhinoceros and Tiger Conservation Act of 1994
103–381	African Conflict Resolution Act
103–372	To Provide for an Investigation of the Whereabouts of U.S. Citizens Missing From Cyprus Since 1974
103–337	National Defense Authorization Act for Fiscal Year 1995
103–306	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995
103–294	Helsinki Human Rights Day
103–236	Foreign Relations Authorization Act, Fiscal Years 1994 and 1995

103–236	Mike Mansfield Fellowship Act (title II, part C)
103–236	United States International Broadcasting Act of 1994 (title III)
103–236	Spoils of War Act of 1994 (title V, part B)
103–236	Anti-Economic Discrimination Act of 1994 (title V, part C)
103–236	Cambodian Genocide Justice Act (title V, part D)
103–236	Middle East Peace Facilitation Act of 1994 (title V, part E)
103–236	Arms Control and Nonproliferation Act of 1994 (title VII, part A)
103–236	Nuclear Proliferation Prevention Act of 1994 (title VIII)
103–236	Protection and Reduction of Government Secrecy Act (title IX)
103–206	Coast Guard Authorization Act of 1993
103–199	Act For Reform in Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and Other New Independent States (FRIENDSHIP Act)
103–182	North American Free Trade Agreement Implementation Act
103–160	National Defense Authorization Act for Fiscal Year 1994
103–160	Cooperative Threat Reduction Act of 1993 (title XII)
103–160	Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993 (title XIII)
103–160	National Shipbuilding and Shipyard Conversion Act of 1993 (title XIII, subtitle D)
103–160	Panama Canal Commission Authorization Act for Fiscal Year 1994 (title XXXV)
103–158	Act to Honor the Victims of the Bombing of Pan Am Flight 103
103–149	South African Democratic Transition Support Act of 1993
103–133	Nondiscriminatory Treatment Toward Products of Romania
103–125	Middle East Peace Facilitation Act of 1993
102–588	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993
102–587	Oceans Act of 1992
102–587	North Pacific Anadromous Stocks Convention Act of 1992 (title VIII)
102–582	High Seas Driftnet Fisheries Enforcement Act
102–582	Central Bering Sea Fisheries Enforcement Act of 1992 (title III)
102–567	North Pacific Anadromous Stocks Act of 1992 (title VIII)
102–565	Peace Corps Authorization for Fiscal Year 1993
102–549	Jobs Through Exports Act of 1992
102–549	Aid, Trade, and Competitiveness Act of 1992 (title III)
102–549	Enterprise for the Americas Act of 1992 (title VI)
102–532	Enterprise for the Americas Initiative Act of 1992
102–523	International Dolphin Conservation Act of 1992

102–511	Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act)
102–509	Soviet Scientists Immigration Act of 1992
102–486	Energy Policy Act of 1992
102–484	National Defense Authorization Act for Fiscal Year 1993
102–484	Former Soviet Union Demilitarization Act of 1992 (title XIV)
102–484	Weapons of Mass Destruction Control Act of 1992 (title XV)
102–484	Iran-Iraq Arms Non-Proliferation Act of 1992 (title XVI)
102–484	Cuban Democracy Act of 1992 (title XVII)
102–484	Panama Canal Commission Authorization Act for Fiscal Year 1993 (title XXXV)
102–454	Distribution of USIA Materials
102–450	Asian/Pacific American Heritage Month—Designation
102–429	Export Enhancement Act of 1992
102–420	Withdrawal of MFN From Serbia and Montenegro
102–404	Chinese Student Protection Act of 1992
102–396	Department of Defense Appropriations Act, 1993
102–391	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993
102–383	United States-Hong Kong Policy Act of 1992
102–372	Tourism Policy and Export Promotion Act of 1992
102–363	Nondiscriminatory Treatment Toward Products of Albania
102–311	International Peacekeeping Act of 1992
102–274	Horn of Africa Recovery and Food Security Act
102–270	Peace Process in Liberia
102–256	Torture Victim Protection Act of 1991
102–247	Omnibus Insular Areas Act of 1992
102–237	Food, Agriculture, Conservation, and Trade Act Amendments of 1991
102–228	Conventional Forces in Europe Treaty Implementation Act of 1991
102–228	Soviet Nuclear Threat Reduction Act of 1991 (title II)
102–197	Most-Favored Nation Treatment for the Union of Soviet Socialist Republics
102–195	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992
102–190	National Defense Authorization Act for Fiscal Years 1992 and 1993
102–190	Missile Defense Act of 1991 (title II, part C)
102–190	Panama Canal Commission Authorization Act for Fiscal Year 1992 (title XXXV)
102–183	David L. Boren National Security Education Act of 1991 (title VIII)
102–182	Termination of Trade Restrictions to Czechoslovakia and Hungary
102–182	Andean Trade Preference Act (title II)
102–182	Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III)

102–158	Most-Favored Nation Treatment for People's Republic of Bulgaria
102–157	Most-Favored Nation Treatment for Mongolian People's Republic
102–138	Foreign Relations Authorization Act, Fiscal Years 1992 and 1993
102–138	Dante B. Fascell North-South Center Act of 1991 (sec. 208)
102–21	Emergency Supplemental Assistance for Israel Act of 1991
102–20	Foreign Relations Persian Gulf Conflict Emergency Supplemental Authorization Act, Fiscal Year 1991
102–1	Authorization for Use of U.S. Armed Forces Pursuant to U.N. Security Council Resolution 678
101–649	Immigration Act of 1990
101–647	Crime Control Act of 1990
101–646	Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990
101–627	Fishery Conservation Amendments of 1990
101–627	Dolphin Protection Consumer Information Act (title IX)
101–624	Food, Agriculture, Conservation, and Trade Act of 1990
101–624	Agricultural Development and Trade Act of 1990 (title XV)
101–624	Global Climate Change Prevention Act of 1990 (title XXIV)
101–623	International Narcotics Control Act of 1990
101–620	Protection of Antarctica
101–611	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991
101–610	National and Community Service Act of 1990
101–606	Global Change Research Act of 1990
101–606	International Cooperation in Global Change Research Act of 1990 (title II)
101–604	Aviation Security Improvement Act of 1990
101–594	Antarctic Protection Act of 1990
101–549	Clean Air Act Amendments
101–541	Most-Favored-Nation Treatment for Czechoslovakia
101–533	Foreign Direct Investment and International Financial Date Improvements Act of 1990
101–513	Foreign Operations, Export Financing, and Related Programs Appropriations Act 1991
101–513	European Bank for Reconstruction and Development Act (sec. 562(c))
101–513	Iraq Sanctions Act of 1990 (secs. 586–586J)
101–513	International Forestry Cooperation Act of 1990 (title VI)
101–511	Department of Defense Appropriations Act, 1991
101–510	National Defense Authorization Act for Fiscal Year 1991
101–510	Panama Canal Commission Authorization Act for Fiscal Year 1991 (title XXXV)
101–454	Eisenhower Exchange Fellowship Act of 1990

101–454	Fascell Fellowship Amendments Act of 1990 (sec. 9)
101–438	Rio Grande American Canal Extension Act of 1990
101–382	Customs and Trade Act of 1990
101–382	Caribbean Basin Economic Recovery Expansion Act of 1990 (title II)
101–382	Forest Resources Conservation and Shortage Relief Act of 1990 (title IV)
101–380	Oil Pollution Act of 1990
101–328	National Space Council Authorization Act of 1990
101–298	Biological Weapons Anti-Terrorism Act of 1989
101–246	Foreign Relations Authorization Act, Fiscal Years 1990 and 1991
101–246	PLO Commitments Compliance Act of 1989 (title VIII)
101–243	Urgent Assistance for Democracy in Panama Act of 1990
101–240	International Development and Finance Act of 1989
101–240	Foreign Debt Reserving Act of 1989 (title IV)
101–240	Global Environmental Protection Assistance Act of 1989 (title VII)
101–231	International Narcotics Control Act of 1989
101–219	Implementation of Compact of Free Association With Palau
101–216	Arms Control and Disarmament Amendments Act of 1989
101–215	Survival Assistance for Victims of Civil Strife in Central America
101–189	National Defense Authorization Act for Fiscal Years 1990 and 1991
101–179	Support for East European Democracy (SEED) Act of 1989
101–167	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990
101–162	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990
101–62	Implementing Agreement for Vienna Convention on Diplomatic Relations
100–705	Panama Canal Commission Compensation Fund Act of 1988
100–690	International Narcotics Control Act of 1988 (title IV)
100–685	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989
100–629	U.S.-U.S.S.R. Fishing Agreement
100–576	Bangladesh Disaster Assistance Act of 1988
100–530	International Cooperation to Protect Biological Diversity
100–478	African Elephant Conservation Act (title II)
100–465	Rio Grande Pollution Correction Act of 1987
100–463	Department of Defense Appropriations Act, 1989
100–461	Overseas Private Investment Corporation Amendments Act of 1988 (H.R. 5263, enacted by reference)
100–461	Miscellaneous International Affairs Authorization Act of 1988 (S. 2757, enacted by reference)

100–460	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989
100–456	National Defense Authorization Act, Fiscal Year 1989
100–449	United States-Canada Free Trade Agreement Implementation Act of 1988
100–418	Omnibus Trade and Competitiveness Act of 1988
100–418	Telecommunications Trade Act of 1988 (title I, subtitle C, part 4)
100–418	Export Enhancement Act 1988 (title II)
100–418	Fair Trade in Auto Parts Act of 1988 (title II, subtitle A, part II)
100–418	American Aid to Poland Act of 1988 (title II, subtitle B, part II)
100–418	Multilateral Export Control Enhancement Amendments Act (title II, subtitle D, part II)
100–418	Exchange Rates and International Economic Policy Coordination Act of 1988 (title III, subtitle A)
100–418	International Debt Management Act of 1988 (title III, subtitle B)
100–418	Multilateral Development Banks Procurement Act (title III, subtitle C)
100–418	Export-Import Bank and Tied Aid Credit Amendments of 1988 (title III, subtitle D)
100–418	Primary Dealers Act of 1988 (title III, subtitle F)
100–418	Financial Reports Act of 1988 (title III, subtitle G)
100–418	Agricultural Competitiveness and Trade Act of 1988 (title IV)
100–418	Pesticide Monitoring Improvements Act of 1988 (title IV, subtitle G)
100–418	Foreign Corrupt Practices Act Amendments of 1988 (title V, subtitle A, part I)
100–418	Competitiveness Policy Council Act (title V, part I, subtitle C)
100–418	Small Business International Trade and Competitiveness Act (title VII)
100–418	Foreign Shipping Practices Act of 1988 (title X)
100–393	Dire Emergency Supplemental Appropriations Act, 1988
100–373	International Energy Emergency Authorities: Extension
100–350	German Democratic Republic Fishery Agreement
100–330	South Pacific Tuna Act of 1988
100–300	International Child Abduction Remedies Act
100–276	Central American Peace Assistance
100–220	United States-Japan Fishery Agreement Approval Act of 1987
100–220	Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV)
100–213	Arms Control and Disarmament Amendments Act of 1987
100–204	Foreign Relations Authorization Act, Fiscal Years 1988 and 1989
100–204	United States Information Agency Authorization Act, Fiscal Years 1988 and 1989 (title II)

100–204	Board for International Broadcasting Authorization Act, Fiscal Years 1988 and 1989 (title V)
100–204	Anti-Terrorism Act of 1987 (title X)
100–204	Global Climate Protection Act of 1987 (title XI)
100–203	Omnibus Budget Reconciliation Act of 1987
100–202	Continuing Appropriations, Fiscal Year 1988
100–202	Cuban Political Prisoners and Immigrants (sec. 101(a), title VII)
100–202	Indochinese Refugee and Resettlement Act of 1987 (sec. 101(a), title VIII)
100–202	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e))
100–202	Multilateral Investment Guarantee Agency Act (sec. 101(e), H.R. 3570, enacted by reference, title IV)
100–180	National Defense Authorization Act for Fiscal Years 1988 and 1989
100–147	National Aeronautics and Space Administration Authorization Act of 1988
100–113	Federal Triangle Development Act
100–66	United States-Korea Fishery Agreement
99–661	National Defense Authorization Act, Fiscal Year 1987
99–661	Department of Defense Authorization Act, 1987 (Division A)
99–658	Approval of the Compact of Free Association With the Government of Palau
99–630	Humpback Whales Wildlife Sanctuary (West Indies)
99–603	Immigration Reform and Control Act of 1986
99–570	International Narcotics Control Act of 1986 (title II)
99–529	Special Foreign Assistance Act of 1986
99–513	R.M.S. Titanic Maritime Memorial Act of 1986
99–498	Higher Education Amendments of 1986
99–475	Release of USIA Materials to Museums
99–472	Export-Import Bank Act Amendments of 1986
99–415	Anglo-Irish Agreement Support Act of 1986
99–399	Omnibus Diplomatic Security and Antiterrorism Act of 1986
99–399	Diplomatic Security Act (titles I–IV)
99–399	Victims of Terrorism Compensation Act (title VIII)
99–399	International Maritime and Port Security Act (title IX)
99–399	Fascell Fellowship Act (title X)
99–239	Compact of Free Association Act of 1985
99–198	Food Security Act of 1985
99–198	Food for Progress Act of 1985 (sec. 1110)
99–190	Further Continuing Appropriations, 1985
99–190	Multilateral Development Bank Act of 1985 (sec. 101(i), H.R. 2253, enacted by reference)
99–183	Agreement for Nuclear Cooperation Between the United States and China
99–180	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1986
99–177	Balanced Budget and Emergency Deficit Control Act of 1985 [Gramm-Rudman-Hollings Act]

99–162	Sales of Arms to Jordan
99–145	Department of Defense Authorization Act, 1986
99–145	Relating to the approval and implementation of the proposed agreement for nuclear cooperation between the United States and the People's Republic of China
99–93	Foreign Relations Authorization Act, Fiscal Years 1986 and 1987
99–93	United States Information Agency Authorization Act, Fiscal Years 1986 and 1987 (title II)
99–93	Board for International Broadcasting Authorization Act, Fiscal Years 1986 and 1987 (title III)
99–93	Iran Claims Settlement (title V)
99–93	United States Scholarship Program for Developing Countries Authorization, Fiscal Years 1986 & 1987 (title VI)
99–93	Arms Control and Disarmament Act Authorization for Fiscal Years 1986 and 1987 (title VII)
99–88	Supplemental Appropriations Act, 1985
99–88	Jordan Supplemental Economic Assistance Authorization Act of 1985 (title IV)
99–85	Authorization for an Improved U.S./Soviet Direct Communications Link
99–83	International Security and Development Cooperation Act of 1985
99–83	International Narcotics Control Act of 1985 (title VI)
99–83	Peace Corps Authorization for Fiscal Years 1986 and 1987 (title XI)
99–64	Export Administration Amendments Act of 1985
99–47	United States-Israel Free Trade Area Implementation Act of 1985
99–8	African Famine Relief and Recovery Act of 1985
99–5	Pacific Salmon Treaty Act of 1985
98–623	Governing International Fishery Agreements With Iceland and the European Economic Community (title I)
98–623	Antarctic Marine Living Resources Convention Act of 1984 (title III)
98–618	Intelligence Authorization Act for Fiscal Year 1985
98–573	Trade and Tariff Act of 1984
98–573	International Trade and Investment Act (title III)
98–573	Generalized System of Preferences Renewal Act of 1984 (title V)
98–573	Steel Import Stabilization Act (title VIII)
98–573	Wine Equity and Export Expansion Act of 1984 (title IX)
98–562	Cooperative East-West Ventures in Space
98–533	1984 Act to Combat International Terrorism
98–525	Department of Defense Authorization Act, 1985
98–525	United States Institute for Peace Act (title XVII)
98–473	Continuing Appropriations, 1985
98–473	Inter-American Investment Corporation Act (title II, S. 2416, enacted by reference)

98–473	President's Emergency Food Assistance Act of 1984 (title III)
98–447	United States Government Opposition to the Practice of Torture
98–445	Eastern Pacific Tuna Licensing Act of 1984
98–373	Arctic Research and Policy Act of 1984 (title I)
98–373	National Critical Materials Act of 1984 (title II)
98–266	Clement J. Zablocki Memorial Outpatient Facility, American Children's Hospital, Krakow, Poland
98–258	Agricultural Programs Adjustment Act of 1984
98–258	Agricultural Exports (title V)
98–198	Child Health Revolution
98–181	Supplemental Appropriations Act, 1984
98–181	Trade and Development Enhancement Act of 1983 (title VI, part C)
98–181	International Lending Supervision Act of 1983 (title IX)
98–181	Multilateral Development Banks: Sense of Congress (title X)
98–164	Department of State Authorization Act, Fiscal Years 1984 and 1985 (titles I, X)
98–164	United States Information Agency Authorization Act, Fiscal Years 1984 and 1985 (title II)
98–164	Board for International Broadcasting Authorization Act, Fiscal Years 1984 and 1985 (title III)
98–164	Asia Foundation Act (title IV)
98–164	National Endowment for Democracy Act (title V)
98–164	Foreign Missions Amendments Act (title VI)
98–164	International Environmental Protection Act of 1983 (title VII)
98–164	Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983 (title VIII)
98–164	United States-India Fund for Cultural, Educational, and Scientific Cooperation Act (title IX)
98–151	Continuing Resolution, 1984
98–151	Foreign Assistance and Related Programs Appropriations Act, 1984 (sec. 101(b)(1))
98–151	International Security and Development Assistance Authorization Act of 1983 (sec. 101(b)(2))
98–119	Multinational Force in Lebanon Resolution
98–111	Radio Broadcasting to Cuba Act
98–94	Department of Defense Authorization Act, 1984
98–67	Caribbean Basin Economic Recovery Act (title II)
98–43	Lebanon Emergency Assistance Act of 1983
97–446	Convention on Cultural Property Implementation Act (title III)
97–425	Nuclear Waste Policy Act of 1982
97–418	Protection of Foreign Missions
97–389	Fisheries Amendments of 1982
97–389	Atlantic Salmon Convention Act of 1982 (title III)
97–389	Governing International Fishery Agreements with Japan and Spain (title IV)
97–325	International Carriage of Perishable Foodstuffs Act

97–290	Export Trading Company Act of 1982 (title I)
97–290	Bank Export Services Act (title II)
97–252	Department of Defense Authorization Act, 1983
97–241	Department of State Authorization Act, Fiscal Years 1982 and 1983
97–241	Foreign Missions Act (title II)
97–241	United States Information Agency Authorization Act, Fiscal Years 1982 and 1983 (title III)
97–241	Board for International Broadcasting Authorization Act, Fiscal Years 1982 and 1983 (title IV)
97–229	Energy Emergency Preparedness Act of 1982
97–145	Export Administration Amendments Act of 1981
97–132	Multinational Force and Observers Participation Resolution
97–127	Czechoslovakian Claims Settlement Act of 1981
97–113	International Security and Development Cooperation Act of 1981
97–98	Agriculture and Food Act of 1981
97–98	Agriculture Trade and Export Policy Commission Act (title XII, subtitle C)
97–35	African Development Bank Act (title XIII, subtitle B, part 3)
96–599	International Coffee Agreement Act of 1980
96–561	American Fisheries Promotion Act (title II)
96–533	International Security and Development Cooperation Act of 1980
96–533	African Development Foundation Act (title V)
96–494	Agriculture Act of 1980
96–494	Agricultural Trade Suspension Adjustment Act of 1980 (title II)
96–494	Bill Emerson Humanitarian Trust Act (title III)
96–487	Alaska National Interests Lands Conservation Act
96–478	Act to Prevent Pollution from Ships
96–465	Foreign Service Act of 1980
96–449	Hostage Relief Act of 1980
96–422	Refugee Education Assistance Act of 1980
96–389	Bretton Woods Agreements Act Amendments, 1980
96–339	Atlantic Tunas Convention Act of 1975, Appropriation Authorization
96–323	North Atlantic Treaty Organization Mutual Support Act of 1979
96–283	Deep Seabed Hard Mineral Resources Act
96–283	Deep Seabed Hard Mineral Removal Tax Act of 1979 (title IV)
96–280	Nuclear Non-Proliferation Act of 1978—Agreements for Cooperation
96–271	International Natural Rubber Agreement Appropriation Authorization for Fiscal Year 1981
96–259	Providing for Increased Participation by the United States in the Inter-American and Asian Development Banks and African Development Fund
96–236	International Sugar Agreement, 1977, Implementation
96–212	Refugee Act of 1980

96–175	Strategic and Critical Materials Transaction Authorization Act of 1979
96–133	Energy Policy and Conservation Act Amendments
96–92	International Security Assistance Act of 1979
96–72	Export Administration Act of 1979
96–70	Panama Canal Act of 1979
96–60	Department of State Authorization Act, Fiscal Years 1980 and 1981 (title I)
96–60	International Communication Agency Authorization Act, Fiscal Years 1980 and 1981 (title II)
96–53	International Development Cooperation Act of 1979
96–39	Trade Agreements Act of 1979
96–35	Special International Security Assistance Act of 1979
96–9	Reaffirming North Atlantic Alliance—United States Commitment
96–8	Taiwan Relations Act
95–630	Financial Institutions Regulatory and Interest Rate Control Act of 1978
95–630	Export-Import Bank Act Amendments of 1978 (title XIX)
95–561	Education Amendments of 1978
95–561	National Academy of Peace and Conflict Resolution (title XV, part B)
95–511	Foreign Intelligence Surveillance Act of 1978
95–501	Agricultural Trade Act of 1978
95–485	Department of Defense Appropriation Authorization Act, 1979
95–452	Inspector General Act of 1978
95–435	Bretton Woods Agreements Act Amendments, 1978
95–426	Foreign Relations Authorization Act, Fiscal Year 1979
95–426	International Communication Agency Authorization for Fiscal Year 1979 (title II)
95–424	International Development and Food Assistance Act of 1978
95–393	Diplomatic Relations Act
95–384	International Security Assistance Act of 1978
95–287	Reaffirming the Unity of the North Atlantic Alliance Commitment
95–242	Nuclear Non-Proliferation Act of 1978
95–238	Department of Energy Act of 1978
95–223	International Emergency Economic Powers Act (title II)
95–213	Foreign Corrupt Practices Act of 1977 (title I)
95–118	International Financial Institutions Act
95–113	Food and Agriculture Act of 1977
95–105	Foreign Relations Authorization Act, Fiscal Year 1978
95–105	United States Information Agency Authorization for Fiscal Year 1978 (title II)
95–92	International Security Assistance Act of 1977
95–88	International Development and Food Assistance Act of 1977
95–6	Fishery Conservation Zone Transition Act
94–583	Foreign Sovereign Immunities Act of 1976

94–472	International Investment and Trade in Services Survey Act
94–412	National Emergencies Act
94–350	Foreign Relations Authorization Act, Fiscal Year 1977
94–350	United States Information Agency Authorization for Fiscal Year 1977 (title II)
94–350	Foreign Service Retirement Amendments of 1976 (title V)
94–329	International Security Assistance and Arms Export Control Act of 1976
94–304	Establishing a Commission on Security and Cooperation in Europe
94–302	African Development Fund Act (title II)
94–265	Magnuson-Stevens Fishery Conservation and Management Act of 1976
94–265	Driftnet Act Amendments of 1990 (sec. 206)
94–163	Energy Policy and Conservation Act
94–161	International Development and Food Assistance Act of 1975
94–141	Foreign Relations Authorization Act, Fiscal Year 1976
94–118	Japan-United States Friendship Act
94–110	Joint Resolution to Implement the United States Proposal for the Early-Warning System in Sinai
94–70	Atlantic Tunas Convention Act of 1975
94–39	National Aeronautics and Space Administration Authorization Act, 1976
93–627	Deepwater Port Act of 1974
93–618	Trade Act of 1974
93–618	Narcotics Control Trade Act (title VIII)
93–559	Foreign Assistance Act of 1974
93–479	Foreign Investment Study Act of 1974
93–475	State Department/USIA Authorization Act, Fiscal Year 1975
93–366	Antihijacking Act of 1974
93–365	Department of Defense Appropriation Authorization Act, 1975
93–248	Intervention on the High Seas Act
93–205	Endangered Species Act of 1973
93–199	Emergency Security Assistance Act of 1973
93–189	Foreign Assistance Act of 1973
93–188	United Nations Environment Program Participation Act of 1973
93–153	Trans-Alaska Pipeline Authorization Act
93–148	War Powers Resolution
93–129	Board for International Broadcasting Act of 1973
93–126	Department of State Appropriations Authorization Act of 1973
93–110	Par Value Modification Act—Foreign Currency Reports (title II)
92–544	Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations Act, 1973
92–522	Marine Mammal Protection Act of 1972

92–499	Act to Extend Diplomatic Privileges to the Commission of the European Communities
92–403	Case Act—Transmittal of International Agreements
92–352	Foreign Relations Authorization Act of 1972
92–268	Par Value Modification Act
92–257	Trust Territory of the Pacific Islands Act
92–226	Foreign Assistance Act of 1971
92–39	Micronesian Claims Act of 1971
91–672	Foreign Military Sales Act Amendments, 1971
91–652	Special Foreign Assistance Act of 1971
91–441	Armed Forces Appropriation Authorization, 1971
91–269	United States Recognition and Participation in International Expositions
91–175	Foreign Assistance Act of 1969, as amended
90–629	Arms Export Control Act
90–554	Foreign Assistance Act of 1968
90–553	International Center Act
90–390	Export Loans—Assistance
90–349	Special Drawing Rights Act
90–137	Foreign Assistance Act of 1967
89–732	Cuban Refugee Adjustment Act
89–673	Foreign Gifts and Decorations Act of 1966
89–583	Foreign Assistance Act of 1966
89–532	Convention on the Settlement of Investment Disputes Act of 1966
89–486	Foreign Agents Registration Act Amendments
89–369	Asian Development Bank Act
89–296	Ryukyu Islands Claims Settlement Act
89–259	Cultural Objects—Importation for Temporary Display
89–171	Foreign Assistance Act of 1965
89–134	Peace Corps Act Amendments
88–633	Foreign Assistance Act of 1964
88–408	Tonkin Gulf Resolution
88–205	Foreign Assistance Act of 1963
87–826	Collection and Publication of Foreign Commerce and Trade Statistics
87–794	Trade Expansion Act of 1962
87–733	Cuban Resolution
87–565	Foreign Assistance Act of 1962
87–510	Migration and Refugee Assistance Act of 1962
87–297	Arms Control and Disarmament Act
87–293	Peace Corps Act
87–256	Mutual Educational and Cultural Exchange Act of 1961
87–195	Foreign Assistance Act of 1961
87–195	Tropical Forest Conservation Act of 1998 (part V)
87–125	General Government Matters, Department of Commerce, and Related Agencies Appropriation Act, 1962
86–735	Latin American Development Act
86–628	Legislative Branch Appropriation Act, 1961
86–565	International Development Association Act
86–472	Mutual Security Act of 1960

86–472	Center for Cultural and Technical Interchange Between East and West Act of 1960 (chapter VII)
86–420	Mexico-United States Interparliamentary Group
86–147	Inter-American Development Bank Act
86–108	Mutual Security Act of 1959
86–42	Canada-United States Interparliamentary Group
85–931	Agricultural Trade Development and Assistance Act of 1954—Extension and Amendment
85–846	EURATOM Cooperation Act of 1958
85–568	National Aeronautics and Space Act of 1958
85–474	Departments of State and Justice, the Judiciary, and Related Agencies Appropriation Act, 1959
85–177	International Atomic Energy Agency Participation Act of 1957
85–7	Resolution To Promote Peace and Stability in the Middle East
84–885	State Department Basic Authorities Act of 1956
84–689	United States Group of the North Atlantic Treaty Parliamentary Conferences—Participation Resolution
84–350	International Finance Corporation Act
83–703	Atomic Energy Act of 1954
83–680	Fisherman's Protective Act of 1967
83–665	Mutual Security Act of 1954
83–480	Agricultural Trade Development and Assistance Act of 1954
83–451	Civil Government for the Trust Territory of the Pacific Islands
82–486	Extending Certain Privileges to Representatives of Organization of American States
82–414	Immigration and Nationality Act
81–806	U.S. Participation in Certain International Organizations
81–764	Tuna Conventions Act of 1950
81–676	Whaling Convention Act of 1949
81–507	National Science Foundation Act of 1950
81–455	International Claims Settlement Act of 1949
81–439	Agricultural Act of 1949
80–772	Act of June 25, 1948
80–772	Logan Act—Private Correspondence With Foreign Governments
80–772	Johnson Act—Financial Transactions With Foreign Governments
80–402	United States Information and Educational Exchange Act of 1948
80–357	United Nations Headquarters Agreement Act
80–253	National Security Council
79–547	Act of July 25, 1946
79–291	International Organizations Immunities Act
79–264	United Nations Participation Act of 1945
79–173	Export-Import Bank Act of 1945
79–171	Bretton Woods Agreements Act
76–54	Neutrality Act of 1939
75–583	Foreign Agents Registration Act of 1938

75–543	Act of May 25, 1938
71–361	Tariff Act of 1930
69–186	Foreign Service Buildings Act, 1926
65–91	Trading With the Enemy Act

Appendix II

NOTE.—Appendix II lists Public Laws included in *Legislation on Foreign Relations Through 2005*, either as free-standing law or in amendments, arranged alphabetically by short title or popular name with corresponding Public Law number.

Short Title	Public Law No.
1984 Act to Combat International Terrorism	98–533
1998 Supplemental Appropriations and Rescissions Act	105–174
2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States	107–206
9/11 Commission Implementation Act of 2004 (title VII)	108–458
AGOA Acceleration Act of 2004	108–274
Act For Reform In Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and Other New Independent States (FRIENDSHIP Act)	103–199
Act of May 25, 1938	75–543
Act of July 25, 1946	79–547
Act of June 25, 1948	80–772
Act to Extend Diplomatic Privileges to the Commission of the European Communities	92–499
Act to Honor the Victims of the Bombing of Pan Am Flight	103–158
Act to Prevent Pollution from Ships	96–478
Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference)	106–113
Afghan Women and Children Relief Act of 2001	107–81
Afghanistan Freedom Support Act of 2002	107–327
Africa: Seeds of Hope Act of 1998	105–385
African Conflict Resolution Act	103–381
African Development Bank Act (title XIII, subtitle B, part 3)	97–35
African Development Foundation Act (title V)	96–533

African Development Fund Act (title II) 94–302
African Elephant Conservation Act (title II) 100–478
African Elephant Conservation Reauthorization Act of 1998 105–217
African Elephant Conservation Reauthorization Act of 2001 107–111
African Famine Relief and Recovery Act of 1985 99–8
African Growth and Opportunity Act (title I) 106–200
Agreement for Nuclear Cooperation Between the United States and China 99–183
Agricultural Act of 1949 81–439
Agricultural Competitiveness and Trade Act of 1988 (title IV) 100–418
Agricultural Development and Trade Act of 1990 (title XV) 101–624
Agricultural Exports (title V) 98–258
Agricultural Programs Adjustment Act of 1984 98–258
Agricultural Trade Act of 1978 95–501
Agricultural Trade Development and Assistance Act of 1954 83–480
Agricultural Trade Development and Assistance Act of 1954—Extension and Amendment 85–931
Agricultural Trade Suspension Adjustment Act of 1980 (title II) 96–494
Agriculture and Food Act of 1981 97–98
Agriculture Export Relief Act 105–194
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 109–97
Agriculture Trade and Export Policy Commission Act (title XII, subtitle C) 97–98
Aid, Trade, and Competitiveness Act of 1992 (title III) 102–549
Alaska National Interests Lands Conservation Act 96–487
Amendments to U.S.–Mexico Agreement Establishing a Border Environment Cooperation Commission and North American Development Bank 108–215
American Aid to Poland Act of 1988 (title II, subtitle B, part II) 100–418
American Fisheries Promotion Act (title II) 96–561
American Institute in Taiwan Facilities Enhancement Act 106–212
American Servicemembers Protection Act (title II) 107–206
Andean Trade Preference Act (title II) 102–182
Andean Trade Promotion and Drug Eradication Act (title XXXI) 107–210
Anglo-Irish Agreement Support Act of 1986 99–415
Antarctic Marine Living Resources Convention Act of 1984 (title III) 98–623
Antarctic Protection Act of 1990 101–594
Antarctic Science, Tourism, and Conservation Act of 1996 104–227
Anti-Economic Discrimination Act of 1994 (title V, part C) 103–236
Anti-Terrorism Act of 1987 (title X) 100–204

Antiterrorism and Effective Death Penalty Act of 1996 104–132
Antihijacking Act of 1974 93–366
Approval of the Compact of Free Association With the Government of Palau 99–658
Approving the Renewal of Import Restrictions—Burma 108–272
Arctic Research and Policy Act of 1984 (title I) 98–373
Arctic Tundra Habitat Emergency Conservation Act ... 106–108
Armed Forces Appropriation Authorization, 1971 91–441
Arms Control and Disarmament Act 87–297
Arms Control and Disarmament Act Authorization for Fiscal Years 1986 and 1987 (title VII) 99–93
Arms Control and Disarmament Amendments Act of 1987 100–213
Arms Control and Disarmament Amendments Act of 1989 101–216
Arms Control and Nonproliferation Act of 1994 (title VII, part A) 103–236
Arms Control and Nonproliferation Act of 1999 (title XI, division B, H.R. 3427, enacted by reference) 106–113
Arms Control, Nonproliferation, and Security Assistance Act of 1999 (division B, H.R. 3427, enacted by reference) 106–113
Arms Export Control Act 90–629
Asia Foundation Act (title IV) 98–164
Asian Development Bank Act 89–369
Asian Elephant Conservation Act of 1997 105–96
Asian Elephant Conservation Reauthorization Act of 2002 107–141
Asian/Pacific American Heritage Month—Designation 102–450
Assistance for International Malaria Control Act 106–570
Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005 109–95
Atlantic Salmon Convention Act of 1982 (title III) 97–389
Atlantic Tunas Convention Act of 1975 94–70
Atlantic Tunas Convention Act of 1975, Appropriation Authorization 96–339
Atlantic Tunas Convention Act of 1995 (title III) 104–43
Atlantic Tunas Convention Authorization Act of 1995 (title III) 104–43
Atomic Energy Act of 1954 83–703
Au Pair Extension 104–72
Authorization for an Improved U.S./Soviet Direct Communications Link 99–85
Authorization for Use of Military Force [international terrorism] 107–40
Authorization for Use of Military Force Against Iraq Resolution of 2002 107–243
Authorization for Use of U.S. Armed Forces Pursuant to U.N. Security Council Resolution 678 102–1
Aviation Security Improvement Act of 1990 101–604
Balanced Budget and Emergency Deficit Control Act of 1985 [Gramm-Rudman-Hollings Act] 99–177

Ballistic Missile Defense Act of 1995 (title II, subtitle C) 104–106
Bangladesh Disaster Assistance Act of 1988 100–576
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Belarus Democracy Act of 2004 108–347
Bill Emerson Humanitarian Trust Act (title III) 96–494
Biological Weapons Anti-Terrorism Act of 1989 101–298
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Board for International Broadcasting Authorization Act, Fiscal Years 1984 and 1985 (title III) 98–164
Board for International Broadcasting Authorization Act, Fiscal Years 1986 and 1987 (title III) 99–93
Board for International Broadcasting Authorization Act, Fiscal Years 1988 and 1989 (title V) 100–204
Bob Stump National Defense Authorization Act for Fiscal Year 2003 107–314
Bretton Woods Agreements Act 79–171
Bretton Woods Agreements Act Amendments, 1978 95–435
Bretton Woods Agreements Act Amendments, 1980 96–389
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Cambodian Genocide Justice Act (title V, part D) 103–236
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Cape Town Treaty Implementation Act of 2004 108–297
Caribbean Basin Economic Recovery Act (title II) 98–67
Caribbean Basin Economic Recovery Expansion Act of 1990 (title II) 101–382
Caribbean National Forest Wild and Scenic Rivers Act of 2002 107–365
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Center for Cultural and Technical Interchange Between East and West Act of 1960 (chapter VII) 86–472
Central American Peace Assistance 100–276
Central Bering Sea Fisheries Enforcement Act of 1992 (title III) 102–582
Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III) 102–182
Chemical Weapons Convention Implementation Act of 1998 (division I) 105–277
Child Health Revolution 98–198
Chinese Student Protection Act of 1992 102–404
Civil Government for the Trust Territory of the Pacific Islands 83–451
Clean Air Act Amendments 101–549
Clean Diamond Trade Act 108–19
Clean Water for the Americas Partnership Act of 2002 (division A, title VI, subtitle D) 107–228
Clement J. Zablocki Memorial Outpatient Facility, American Children's Hospital, Krakow, Poland 98–266

Coast Guard Authorization Act of 1993 103–206
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Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII) 104–293
Commercial Space Act of 1998 105–303
Compact of Free Association Act of 1985 99–239
Competitiveness Policy Council Act (title V, part I, subtitle C) 100–418
Comprehensive Peace in Sudan Act of 2004 108–497
Congo Basin Forest Partnership Act of 2004 108–200
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Czechoslovakian Claims Settlement Act of 1981 97–127
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Defense Against Weapons of Mass Destruction Act of 1996 (title XIV) 104–201
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Demilitarization of the Former Soviet Union Act of 1992 (title XIV) 102–484

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Department of Defense Appropriation Act, 1976 94–212
Department of Defense Appropriation Authorization Act, 1975 93–365
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Department of Defense, Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 109–148
Department of Energy Act of 1978 95–238
Department of State and Related Agencies Appropriations Act, 2006 (title IV) 109–108
Department of State Appropriations Authorization Act of 1973 93–126
Department of State Authorization Act, Fiscal Year 2003 (division A) 107–228
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