

any person serving in a management capacity of the entity which owns the vessel; or

“(iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

“(B) shall not include the right to simply participate in the activities under subparagraph (A), or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary.

“(3) A fishery endorsement for a vessel that is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement and used as a fishing vessel shall be invalid immediately upon such use.

“(4)(A) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of indebtedness, secured by a mortgage of the vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee—

“(i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

“(ii) is authorized under those laws to exercise corporate trust powers;

“(iii) is subject to supervision or examination by an official of the United States Government or a State;

“(iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

“(v) meets any other requirements prescribed by the Secretary.

“(B) A vessel with a fishery endorsement may be operated by a trustee only with the approval of the Secretary.

“(C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

“(D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is voidable by the Secretary.

“(5) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a

purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

“(6) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capably of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title unless—

“(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

“(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; and

“(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

“(B) the owner of such vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council’s authority.”

(b) **Preferred Mortgage.** Section 31322(a) of title 46, United States Code, is amended—

(1) by striking “and” at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3)(B) and inserting in lieu thereof a semicolon and “and”; and

(3) by inserting at the end the following new paragraph:

“(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

“(A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;

“(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b)); or

“(C) a person that complies with the provisions of section 12102(c)(4) of this title.”

### **SEC. 203. ENFORCEMENT OF STANDARD.**

(a) **Effective Date.** The amendments made by section 202 shall take effect on October 1, 2001.

(b) **Regulations.** Final regulations to implement this subtitle shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency, identify transactions which do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

(c) **Vessels Measuring 100 Feet and Greater.** (1) The Administrator of the Maritime Administration shall administer section 12102(c) of title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of documentation for such vessel and to comply with this subsection and section 12102(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.

(2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the

purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(d) **Vessels Measuring Less Than 100 Feet.** The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.

(e) **Endorsements Revoked.** The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.

(f) **Penalty.** Section 12122 of title 46, United States Code, is amended by inserting at the end the following new subsection:

“(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to \$100,000 for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement.”

(g) **Certain Vessels.** The vessels EXCELLENCE (United States official number 967502), GOLDEN ALASKA (United States official number 651041), OCEAN PHOENIX (United States official number 296779), NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act) shall be exempt from section 12102(c), as amended by this Act, until such time after October 1, 2001 as more than 50 percent of the interest owned and controlled in the vessel changes, provided that the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect the day before the date of the enactment of this Act, and unless, in the case of the NORTHERN TRAVELER or the NORTHERN VOYAGER (or such replacement), the vessel is used in any fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1) (A) and (B)), or in the case of the

EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX, the vessel is used to harvest any fish.

**SEC. 204. REPEAL OF OWNERSHIP SAVINGS CLAUSE.**

(a) **Repeal.** Section 7(b) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12102 note) is hereby repealed.

(b) **Effective Date.** Subsection (a) shall take effect on October 1, 2001.

**Subtitle II - Bering Sea Pollock Fishery**

**SEC. 205. DEFINITIONS.**

As used in this subtitle—

(1) the term “Bering Sea and Aleutian Islands Management Area” has the same meaning as the meaning given for such term in part 679.2 of title 50, Code of Federal Regulations, as in effect on October 1, 1998.

(2) the term “catcher/processor” means a vessel that is used for harvesting fish and processing that fish;

(3) the term “catcher vessel” means a vessel that is used for harvesting fish and that does not process pollock onboard:

(4) the term “directed pollock fishery” means the fishery for the directed fishing allowances allocated under paragraphs (1), (2), and (3) of section 206(b).

(5) the term “harvest” means to commercially engage in the catching, taking, or harvesting of fish or any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(6) the term “inshore component” means the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area:

(A) shoreside processors, including those eligible under section 208(f); and

(B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod;

(7) the term “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(8) the term “mothership” means a vessel that receives and processes fish from other vessels in the exclusive economic zone of the United States and is not used for, or equipped to be used for, harvesting fish;

(9) the term “North Pacific Council” means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G));

(10) the term "offshore component" means all vessels not included in the definition of "inshore component" that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area.

(11) the term "Secretary" means the Secretary of Commerce; and

(12) the term "shoreside processor" means any person or vessel that receives unprocessed fish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving fish for personal consumption or bait.

#### **SEC. 206. ALLOCATIONS.**

(a) **Pollock Community Development Quota.** Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 505(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(b) **Inshore/Offshore.** Effective January 1, 1999, the remainder of the pollock total allowable catch in the Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows—

(1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;

(2) 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and

(3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

#### **SEC. 207. BUYOUT.**

(a) **Federal Loan.** Under the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and notwithstanding the requirements of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a), the Secretary shall, subject to the availability of appropriations for the cost of the direct loan, provide up to \$75,000,000 through a direct loan obligation for the payments required under subsection (d).

(b) **Inshore Fee System.** Notwithstanding the requirements of section 304(d) or 312 of the Magnuson-Stevens Act (16 U.S.C. 1854(d) and

1861a), the Secretary shall establish a fee for the repayment of such loan obligations which—

(1) shall be six-tenths (0.6) of one cent for each pound round-weight of all pollock harvested from the directed fishing allowance under section 206(b)(1); and

(2) shall begin with such pollock harvested on or after January 1, 2000, and continue without interruption until such loan obligation is fully repaid; and

(3) shall be collected in accordance with section 312(d)(2)(C) of the Magnuson-Stevens Act (16 U.S.C. 1861a(d)(2)(C) and in accordance with such other conditions as the Secretary establishes.

**(c) Federal Appropriation.** Under the authority of section 312(c)(1)(B) of the Magnuson-Stevens Act (16 U.S.C. 1861a(c)(1)(B)), there are authorized to be appropriated \$20,000,000 for the payments required under subsection (d).

**(d) Payments.** Subject to the availability of appropriations for the cost of the direct loan under subsection (a) and funds under subsection (c), the Secretary shall pay by not later than December 31, 1998—

(1) up to \$90,000,000 to the owner or owners of the catcher/processors listed in paragraphs (1) through (9) of section 209, in such manner as the owner or owners, with the concurrence of the Secretary, agree, except that—

(A) the portion of such payment with respect to the catcher/processor listed in paragraph (1) of section 209 shall be made only after the owner submits a written certification acceptable to the Secretary that neither the owner nor a purchaser from the owner intends to use such catcher/processor outside the exclusive economic zone of the United States to harvest any stock of fish (as such term is defined in section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802)) that occurs within the exclusive economic zone of the United States; and

(B) the portion of such payment with respect to the catcher/processors listed in paragraphs (2) through (9) of section 209 shall be made only after the owner or owners of such catcher/processors submit a written certification acceptable to the Secretary that such catcher/processors will be scrapped by December 31, 2000 and will not, before that date, be used to harvest or process any fish; and

(2)(A) if a contract has been filed under section 210(a) by the catcher/processors listed in section 208(e), \$5,000,000 to the owner or owners of the catcher/processors listed in paragraphs (10) through (14) of such section in such manner as the owner or owners, with the concurrence of the Secretary, agree; or

(B) if such a contract has not been filed by such date, \$5,000,000 to the owners of the catcher vessels eligible under section 208(b) and the

catcher/processors eligible under paragraphs (1) through (20) of section 208(e), divided based on the amount of the harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such manner as the Secretary deems appropriate, except that any such payments shall be reduced by any obligation to the federal government that has not been satisfied by such owner or owners of any such vessels.

(e) **Penalty.** If the catcher/processor under paragraph (1) of section 209 is used outside the exclusive economic zone of the United States to harvest any stock of fish that occurs within the exclusive economic zone of the United States while the owner who received the payment under subsection (d)(1)(A) has an ownership interest in such vessel, or if the catcher/processors listed in paragraphs (2) through (9) of section 209 are determined by the Secretary not to have been scrapped by December 31, 2000 or to have been used in a manner inconsistent with subsection (d)(1)(B), the Secretary may suspend any or all of the federal permits which allow any vessels owned in whole or in part by the owner or owners who received payments under subsection (d)(1) to harvest or process fish within the exclusive economic zone of the United States until such time as the obligations of such owner or owners under subsection (d)(1) have been fulfilled to the satisfaction of the Secretary.

(f) **Program Defined; Maturity.** For the purposes of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), the fishing capacity reduction program in this subtitle shall be within the meaning of the term "program" as defined and used in such section. Notwithstanding section 1111(b)(4) of such Act (46 U.S.C. App. 1279f(b)(4)), the debt obligation under subsection (a) of this section may have a maturity not to exceed 30 years.

(g) **Fishery Capacity Reduction Regulations.** The Secretary of Commerce shall by not later than October 15, 1998 publish proposed regulations to implement subsections (b), (c), (d) and (e) of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a) and sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

## **SEC. 208. ELIGIBLE VESSELS AND PROCESSORS.**

(a)<sup>2</sup> **Catcher Vessels Onshore.** Effective January 1, 2000, only catcher vessels which are—

(1) determined by the Secretary—

(A) to have delivered at least 250 metric tons of pollock; or

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<sup>2</sup> Note the exception for two catcher vessels provided by section 501 of Public Law 106-562, approved December 23, 2000 (114 STAT. 2794, 2808), the Pribilof Islands Transition Act.

(B) to be less than 60 feet in length overall and to have delivered at least 40 metric tons of pollock, for processing by the inshore component in the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(2) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(3) not listed in subsection (b), shall be eligible to harvest the directed fishing allowance under section 206(b)(1) pursuant to a federal fishing permit.

(b) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN CHALLENGER (United States official number 633219);

(2) FORUM STAR (United States official number 925863);

(3) MUIR MILACH (United States official number 611524);

(4) NEAHKAHNIE (United States official number 599534);

(5) OCEAN HARVESTER (United States official number 549892);

(6) SEA STORM (United States official number 628959);

(7) TRACY ANNE (United States official number 904859); and

(8) any catcher vessel—

(A) determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed pollock fishery in 1997 to catcher/processors for processing by the offshore component; and

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary.

(c) **Catchers Vessels to Motherships.** Effective January 1, 2000, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

(1) ALEUTIAN CHALLENGER (United States official number 603820);

(2) ALYESKA (United States official number 560237);

(3) AMBER DAWN (United States official number 529425);

(4) AMERICAN BEAUTY (United States official number 613847);

(5) CALIFORNIA HORIZON (United States official number 590758);

(6) MAR-GUN (United States official number 525608);

- (7) MARGARET LYN (United States official number 615563);
- (8) MARK I (United States official number 509552);
- (9) MISTY DAWN (United States official number 926647);
- (10) NORDIC FURY (United States official number 542651);
- (11) OCEAN LEADER (United States official number 561518);
- (12) OCEANIC (United States official number 602279);
- (13) PACIFIC ALLIANCE (United States official number 612084);
- (14) PACIFIC CHALLENGER (United States official number 618937);
- (15) PACIFIC FURY (United States official number 561934);
- (16) PAPADO II (United States official number 536161);
- (17) TRAVELER (United States official number 929356);
- (18) VESTERAALEN (United States official number 611642);
- (19) WESTERN DAWN (United States official number 524423);
- (20) any vessel-

(A) determined by the Secretary to have delivered at least 250 metric tons of pollock for processing by motherships in the offshore component of the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(C) not listed in subsection (b).

(d) **Motherships.** Effective January 1, 2000, only the following motherships shall be eligible to process the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

- (1) EXCELLENCE (United States official number 967502);
- (2) GOLDEN ALASKA (United States official number 651041);
- (3) OCEAN PHOENIX (United States official number 296779).

(e) **Catcher/Processors.** Effective January 1, 1999, only the following catcher/processers shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

- (1) AMERICAN DYNASTY (United States official number 951307);
- (2) KATIE ANN (United States official number 518441);
- (3) AMERICAN TRIUMPH (United States official number 646737);
- (4) NORTHERN EAGLE (United States official number 506694);
- (5) NORTHERN HAWK (United States official number 643771);
- (6) NORTHERN JAEGER (United States official number 521069);
- (7) OCEAN ROVER (United States official number 552100);

- (8) ALASKA OCEAN (United States official number 637856);
- (9) ENDURANCE (United States official number 592206);
- (10) AMERICAN ENTERPRISE (United States official number 594803);
- (11) ISLAND ENTERPRISE (United States official number 610290);
- (12) KODIAK ENTERPRISE (United States official number 579450);
- (13) SEATTLE ENTERPRISE (United States official number 904767);
- (14) US ENTERPRISE (United States official number 921112);
- (15) ARCTIC STORM (United States official number 903511);
- (16) ARCTIC FJORD (United States official number 940866);
- (17) NORTHERN GLACIER (United States official number 663457);
- (18) PACIFIC GLACIER (United States official number 933627);
- (19) HIGHLAND LIGHT (United States official number 577044);
- (20) STARBOUND (United States official number 944658); and
- (21) any catcher/processor not listed in this subsection and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary, except that catcher/processors eligible under this paragraph shall be prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2).

Notwithstanding section 213(a), failure to satisfy the requirements of section 4(a) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12108 note) shall not make a catcher/processor listed under this subsection ineligible for a fishery endorsement.

**(f) Shoreside Processors.** (1) Effective January 1, 2000 and except as provided in paragraph (2), the catcher vessels eligible under subsection (a) may deliver pollock harvested from the directed fishing allowance under section 206(b)(1) only to—

(A) shoreside processors (including vessels in a single geographic location in Alaska State waters) determined by the Secretary to have processed more than 2,000 metric tons round-weight of pollock in the inshore component of the directed pollock fishery during each of 1996 and 1997; and

(B) shoreside processors determined by the Secretary to have processed pollock in the inshore component of the directed pollock fishery in 1996 and 1997, but to have processed less than 2,000 metric

tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year;

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

**(g) Replacement Vessels.** In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that—

(1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(2) the replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.

(h) **Eligibility During Implementation.** In the event the Secretary is unable to make a final determination about the eligibility of a vessel under subsection (b)(8) or subsection (e)(21) before January 1, 1999, or a vessel or shoreside processor under subsection (a), subsection (c)(21), or subsection (f) before January 1, 2000, such vessel or shoreside processor, upon the filing of an application for eligibility, shall be eligible to participate in the directed pollock fishery pending final determination by the Secretary with respect to such vessel or shoreside processor.

(i) **Eligibility Not a Right.** Eligibility under this section shall not be construed—

(1) to confer any right of compensation, monetary or otherwise, to the owner of any catcher vessel, catcher/processor, mothership, or shoreside processor if such eligibility is revoked or limited in any way, including through the revocation or limitation of a fishery endorsement or any federal permit or license;

(2) to create any right, title, or interest in or to any fish in any fishery, or

(3) to waive any provision of law otherwise applicable to such catcher vessel, catcher/processor, mothership, or shoreside processor.

#### **SEC. 209. LIST OF INELIGIBLE VESSELS.**

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished:

- (1) AMERICAN EMPRESS (United States official number 942347);
- (2) PACIFIC SCOUT (United States official number 934772);
- (3) PACIFIC EMPLOYER (United States official number 942592);
- (4) PACIFIC NAVIGATOR (United States official number 592204);
- (5) VICTORIA ANN (United States official number 592207);
- (6) ELIZABETH ANN (United States official number 534721);
- (7) CHRISTINA ANN (United States official number 653045);
- (8) REBECCA ANN (United States official number 592205);
- (9) BROWNS POINT (United States official number 587440).

## **SEC. 210. FISHERY COOPERATIVE LIMITATIONS.**

(a) **Public Notice.** (1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall—

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including by catch) in the directed pollock fishery on a vessel-by-vessel basis.

### **(b) Catcher Vessels Onshore—**

(1) *Catcher Vessel Cooperatives.* Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock,

the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock

fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

(2) *Voluntary Participation.* Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) *Qualified Catcher Vessel.* For the purposes of this subsection, a catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) *Consideration of Certain Vessels.* Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processers or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) *Open Access.* A catcher vessel eligible under section 208(a) the catch history of which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(f). A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) *Transfer of Cooperative Harvest.* A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(c) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of the section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) **Catcher Vessels to Motherships—**

(1) *Processing.* Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (48 STAT. 1213 and 1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) *Voluntary Participation.* Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) **Excessive Shares.**

(1) *Harvesting.* No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) *Processing.* Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be

allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under section 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) *Review by Maritime Administration.* At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) **Landing Tax Jurisdiction.** Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) **Penalties.** The violation of any of the requirements of this subtitle or any regulation or permit issued pursuant to this subtitle shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857), and sections 308, 309, 310, and 311 of such Act (16 U.S.C. 1858, 1859, 1860, and 1861) shall apply to any such violation in the same manner as to the commission of an act prohibited by section 307 of such Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), 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 violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

## **SEC. 211. PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES.**

(a) **General.** The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

### **(b) Catcher/Processor Restrictions.**

(1) *General.* The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superseded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) *Bering Sea Fishing.* The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997.

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery—

- (i) 11.5 percent in the central area; and
- (ii) 20 percent in the western area.

(3) *Bering Sea Processing.* The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—

(A) processing any of the directed fishing allowances under paragraphs (1) or (3) of section 206(b); and

(B) processing any species of crab harvested in the Bering Sea and Aleutian Islands Management Area.

(4) *Gulf of Alaska*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—

(A) harvesting any fish in the Gulf of Alaska.

(B) processing any groundfish harvested from the portion of the exclusive economic zone off Alaska known as area 630 under the fishery management plan for Gulf of Alaska groundfish; or

(C) processing any pollock in the Gulf of Alaska (other than as by catch in non-pollock groundfish fisheries) or processing, in the aggregate, a total of more than 10 percent of the cod harvested from areas 610, 620, and 640 of the Gulf of Alaska under the fishery management plan for Gulf of Alaska groundfish.

(5) *Fisheries Other than North Pacific*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) and motherships eligible under section 208(d) are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management council other than the North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a fishery management plan recommended by the regional fishery management council of jurisdiction and approved by the Secretary.

(6) *Observers and Scales*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) shall—

(A) have two observers onboard at all times while groundfish is being harvested, processed, or received from another vessel in any fishery under the authority of the North Pacific Council; and

(B) weight its catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council.

This paragraph shall take effect on January 1, 1999 for catcher/processors eligible under paragraphs (1) through (20) of section 208(e) that will harvest pollock allocated under section 206(a) in 1999, and shall take effect on January 1, 2000 for all other catcher/processors eligible under such paragraphs of section 208(e).

**(c) Catcher Vessel and Shoreside Processor Restrictions.**

(1) *Required Council Recommendations*. By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fisheries; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessels in a fishery cooperative under section 210(b) may deliver pollock.

(2) *Bering Sea Crab and Groundfish.*

(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, and 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

(C) The catcher vessels eligible under section 208(b) are hereby prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless

the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible to harvest such crab in such directed fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary. The North Pacific Council is directed to recommend measures for approval by the Secretary to eliminate latent licenses under such program, and nothing in this subparagraph shall preclude the Council from recommending measures more restrictive than under this paragraph.

(3) *Fisheries Other than North Pacific.*

(A) By not later than July 1, 2000, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852 (a)(1)(F)) shall recommend for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery.

(B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.

(d) **By catch information.** Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a), the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and Secretary deem appropriate, the public disclosure of any information from the groundfish fisheries under the authority of such Council that would be beneficial in the implementation of section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(9) and 1853(a)(11)).

(e) **Community Development Loan Program.** Under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), and subject to the availability of appropriations, the Secretary is authorized to provide direct loan obligations to communities eligible to participate in the western Alaska community development quota program established under section 304(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)) for the purposes of purchasing all or part of an ownership interest in vessels and shoreside processors eligible under subsections (a), (b), (c), (d), (e), or (f) of section 208. Notwithstanding the eligibility criteria in section 208(a) and section 208(c), the LISA MARIE (United States offi-

cial number 1038717) shall be eligible under such sections in the same manner as other vessels eligible under such sections.

**SEC. 212. RESTRICTION ON FEDERAL LOANS.** Section 302(b) of the Fisheries Financing Act (46 U.S.C. 1274 note) is amended—

(1) by inserting “(1)” before “Until October 1, 2001”; and

(2) by inserting at the end the following new paragraph: “(2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more than 750 gross registered tons, or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional fisheries Treaty.”

**SEC. 213. DURATION.**

(a)<sup>3</sup> **General.** Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. There are authorized to be appropriated \$6,700,000 per year to carry out the provisions of this Act through fiscal year 2004.

(b) **Existing Authority.** Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.

(c) **Changes to Fishery Cooperative Limitations and Pollock CDQ Allocation.** The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this subtitle, except for section 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitable to the extent practicable among and within the sectors in the directed pollock fishery.

<sup>3</sup> As amended by Section 211 of Public Law 107-77, approved November 28, 2001 (115 STAT. 779), the Departments of Justice, and State, the Judiciary, and related agencies appropriations Act, 2002.

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this subtitle; or

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

(d) **Report to Congress.** Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on by catch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.

(e) **Report on Fillet Production.** Not later than June 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and the Congress on whether this Act has negatively affected the market for fillets and fillet blocks, including through the reduction in the supply of such fillets and fillet blocks. If the report determines that such market has been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects.

(f) **Severability.** If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) **International Agreements.** In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date.

## **46 APP. U.S.C. 251 (2001). VESSELS EMPLOYED IN COASTING TRADE OR FISHERIES**

**(a) Landing of catch of fish by foreign-flag vessels; regulations.**

Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. The Secretary of Commerce may issue any regulations that the Secretary considers necessary to obtain information on the transportation of fish products by vessels of the United States for foreign fish processing vessels to points in the United States.

**(b) Sale or transfer for immediate consumption.** Subsection (a) of this section shall not be deemed to prohibit the landing by a foreign-flag vessel of not more than fifty feet overall length in a port of the Virgin Islands of the United States for immediate consumption in such islands of its catch of fresh fish, whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced. No fish landed under this authorization shall be sold or transferred except for immediate consumption. Sale or transfer to an agent, representative, or employee of a freezer or cannery shall be deemed to be prohibited in the absence of satisfactory evidence that such sale or transfer is for immediate consumption. For the purposes of this subsection, the term "immediate consumption" shall not preclude the freezing, smoking, or other processing of such fresh fish by the ultimate consumer thereof.

**(c) Forfeitures and penalties.** Any fish landed in the Virgin Islands of the United States which are retained, sold, or transferred other than as authorized in subsection (b) of this section shall be liable to forfeiture and any person or persons retaining, selling, transferring, purchasing, or receiving such fish shall severally be liable to a penalty of \$ 1,000 for each offense, in addition to any other penalty provided in law.

## ARTIFICIAL REEF PROGRAM

### **16 U.S.C. 1220 (2001). State applications for obsolete ships for use as offshore reefs.**

(a) **Conservation of marine life.** Any State may apply to the Secretary of Transportation (hereafter referred to in this Act as the "Secretary") for obsolete ships which, but for the operation of this Act, would be designated by the Secretary for scrapping if the State intends to sink such ships for use as an offshore artificial reef for the conservation of marine life.

(b) **Manner and form of applications; minimum requirements.** A State shall apply for obsolete ships under this Act in such manner and form as the Secretary shall prescribe, but such application shall include at least (1) the location at which the State proposes to sink the ships, (2) a certificate from the Administrator, Environmental Protection Agency, that the proposed use of the particular vessel or vessels requested by the State will be compatible with water quality standards and other appropriate environmental protection requirements, and (3) statements and estimates with respect to the conservation goals which are sought to be achieved by use of the ships.

(c) **Copies to Federal officers for official comments and views.** Before taking any action with respect to an application submitted under this Act, the Secretary shall provide copies of the application to the Secretary of the Interior, the Secretary of Defense, and any other appropriate Federal officer, and shall consider comments and views of such officers with respect to the application.

**16 U.S.C. 1220a (2001). Transfer of title; terms and conditions.** If, after consideration of such comments and views as are received pursuant to section 3(c), the Secretary finds that the use of obsolete ships proposed by a State will not violate any Federal law, contribute to degradation of the marine environment, create undue interference with commercial fishing or navigation, and is not frivolous, he may transfer without consideration to the State all right, title, and interest of the United States in and to any obsolete ships which are available for transfer under this Act if—

(1) the State gives to the Secretary such assurances as he deems necessary that such ships will be utilized and maintained only for the purposes stated in the application and, when sunk, will be charted and marked as a hazard to navigation;

(2) the State agrees to secure any licenses or permits which may be required under the provisions of any other applicable Federal law;

(3) the State agrees to such other terms and conditions as the Secretary shall require in order to protect the marine environment and other interests of the United States; and

(4) the transfer would be at no cost to the Government with the State taking delivery of such obsolete ships at fleetside of the National Defense Reserve Fleet in an “as is—where is” condition.

**16 U.S.C. 1220b (2001). Obsolete ships available; number; equitable administration.** A State may apply for more than one obsolete ship under this Act. The Secretary shall, however, taking into account the number of obsolete ships which may be or become available for transfer under this Act, administer this Act in an equitable manner with respect to the various States.

**16 U.S.C. 1220c (2001). Denial of applications; finality of decision.** A decision by the Secretary denying any application for a [an] obsolete ship under this Act is final.

**16 U.S.C. 1220d (2001). Definition of “obsolete ship.”** For purposes of sections 3, 4, 5, and 6, the term “obsolete ship” means any vessel owned by the Department of Transportation that has been determined to be of insufficient value for commercial or national defense purposes to warrant its maintenance and preservation in the national defense reserve fleet and has been designated as an artificial reef candidate.

## CABOTAGE

**JONES ACT - TRANSPORTATION OF MERCHANDISE.** See Section 27 of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883), page 202, supra.

**TRANSPORTATION OF PASSENGERS. THE ACT OF JUNE 19, 1886, AS AMENDED.**<sup>1</sup> (46 App. U.S.C. 289 (2001)). No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of two hundred dollars for each passenger so transported and landed.

**COASTWISE TRADE VESSEL REQUIREMENT. 46 U.S.C. 3704 (2001).** Coastwise trade vessels.

A segregated ballast tank, a crude oil washing system, or an inert gas system, required by this chapter<sup>2</sup> or a regulation prescribed under this chapter, on a vessel entitled to engage in the coastwise trade under section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), shall be installed in the United States (except the trust territories). A vessel failing to comply with this section may not engage in the coastwise trade.

**BOWATERS AMENDMENT - TRANSPORTATION OF MERCHANDISE.** See Section 27A of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883-1), page 207, supra. .

**PUERTO RICO PASSENGER SHIP ACT. PUBLIC LAW 98-563 (46 App. U.S.C. 289c (2001)).**

(a) **Authorization of Transportation.** Notwithstanding any other provision of law, passengers may be transported on passenger vessels not qualified to engage in the coastwise trade between ports in Puerto Rico and other ports in the United States, directly or by way of a foreign port, except as otherwise provided in this Act.

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<sup>1</sup> 19 CFR 4.80 provides in part: "(a) No vessel shall transport, either directly or by way of a foreign port, any passenger . . . between points in the United States embraced within the coastwise laws, including points within a harbor, . . . unless it is: (1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in the coastwise trade; (2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement. (3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. . . . (b) Penalties for violating coastwise laws. . . . (2) The penalty imposed for the unlawful transportation of passengers between coastwise points is \$ 200 for each passenger so transported and landed"

<sup>2</sup> Title 46, Chapter 37. Carriage of Liquid Bulk Dangerous Cargoes.

**(b) Notification by Secretary; Termination of Services.**

(1) Upon a showing to the Secretary of Transportation, by the vessel owner or charterer, that service aboard a United States passenger vessel qualified to engage in the coastwise trade is being offered or advertised pursuant to a certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each vessel transporting passengers under authority of this Act that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator under this Act shall expire on the 270th day following the Secretary's notification.

(2) Upon a showing to the Secretary, by the vessel owner or charterer, that service aboard a United States passenger vessel not qualified to engage in the coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each foreign-flag vessel transporting passengers under authority of this Act that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator of a foreign-flag vessel transporting passengers under authority of this Act shall expire on the 270th day following the Secretary's notification.

(c) **Extension of Termination Period.** If, at the expiration of the 270-day period specified in subsections (b)(1) and (b)(2) of this Act, the vessel that has been offering or advertising service pursuant to a certificate described in either of those subsections has not entered the coastwise passenger trade between ports in Puerto Rico and other ports in the United States, then the termination of service required by either of those subsections shall not be required until 90 days following the entry into that trade by the United States vessel.

(d) **Reinstatement of Coastwise Privileges.** Any coastwise privileges granted in this Act that expire under subsection (b)(1) or (b)(2) shall be reinstated upon a determination by the Secretary that the service on which the expiration of the privileges was based is no longer available.

(e) **"Passenger Vessel" Defined.** For the purposes of subsections (b)(1) and (b)(2), the term "passenger vessel" means any vessel of similar size or offering service comparable to any other vessel transporting passengers under authority of this Act.

**VESSELS THAT MAY ENGAGE IN DREDGING <sup>3</sup> (46 App. U.S.C. 292 (2001)).**

(a) **In General.** Except as provided in subsection (b), a vessel may engage in dredging in the navigable waters of the United States only if—

(1) the vessel meets the requirements of section 27 of the Merchant Marine Act, 1920 and section 2 of the Shipping Act, 1916 for engaging in the coastwise trade;

(2) when chartered, the charterer of the vessel is a citizen of the United States under section 2 of the Shipping Act, 1916<sup>4</sup> for engaging in the coastwise trade; and

(3) for a vessel that is at least 5 net tons, the vessel is documented under chapter 121 of title 46, United States Code, with a coastwise endorsement.

(b) **Exception.** A documented vessel with a registry endorsement may engage in the dredging of gold in Alaska.

(c) **Penalty.** When a vessel is operated in knowing violation of this section, that vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

**USE OF FOREIGN VESSELS IN UNITED STATES PORTS. (46 App. U.S.C. 316 (2001)).**

(a) **Towing United States Vessels; Fines and Penalties.** It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels<sup>5</sup> and not having in force a certificate of documentation issued under section 12106 of title 46, United States Code, to tow any vessel other than a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point with-

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<sup>3</sup> Section 422 of Public Law 105-383, approved November 13, 1998 (112 STAT. 3411, 3439), the Coast Guard Authorization Act of 1998, amended Section 5209(b) of the Oceans Act of 1992 (46 U.S.C. 2101 note), to provide that a vessel shall not be considered a tank vessel for the purposes of any law if the vessel is "(A) configured, outfitted, and operated primarily for dredging operations; and (B) engaged in dredging operations which transfers fuel to other vessels engaged in the same dredging operations without charge."

<sup>4</sup> Section 2 of the Shipping Act, 1916 (followed by provisions that affect Section 2 citizenship requirements), is set forth at page 182, supra.

<sup>5</sup> "A citizen of the United States within the meaning of the laws respecting the documentation of vessels," is set forth in 46 U.S.C. 12102(a), at page 287 infra. 46 U.S.C. 12106 is set forth at page 293, infra.

in the harbors of such places, or to tow any vessel transporting valueless material or any dredged material, regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than \$ 250 nor more than \$ 1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of \$ 50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

(b) **“Person” Defined.** The term “person” as used in subsection (a) of this section, shall be held to include persons, firms, partnerships, associations, organizations, and corporations, doing business or existing under or by the authority of the laws of the United States, or of any State, Territory, district, or other subdivision thereof.

(c) **Foreign Railroad Companies using Ferries, Tugboats, or Towboats.** Any foreign railroad company or corporation, whose road enters the United States by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country: Provided, That except as authorized by section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., 1934 edition, Supp. IV, title 46, sec. 883), such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same.

(d) **Salvaging Operations by Foreign Vessels.** No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the

provisions of the Act of June 19, 1878, as amended (U. S. C., 1934 edition, title 46, sec. 725): Provided, however, That if, on investigation, the Secretary of Commerce<sup>6</sup> is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to the Act of June 7, 1918, as amended (U. S. C., 1934 edition, Supp. IV, title 46, sec. 288), is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use.

(e) **Operations Permitted by Treaty.** Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by article II of the treaty between the United States and Great Britain "concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage" signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the United States and Mexico "to facilitate assistance to and salvage of vessels in territorial waters," signed at Mexico City, June 13, 1935 (49 Stat. 3359).

#### **SEC. 1119. VESSEL ESCORT OPERATIONS AND TOWING ASSISTANCE.<sup>7</sup>**

(a) **IN GENERAL.** Except in the case of a vessel in distress, only a vessel of the United States (as that term is defined in section 2101 of title 46, United States Code) may perform the following vessel escort operations and vessel towing assistance within the navigable waters of the United States:

- (1) Operations or assistance that commences or terminates at a port or place in the United States.
- (2) Operations or assistance required by United States law or regulation.
- (3) Operations provided in whole or in part for the purpose of escorting or assisting a vessel within or through navigation facilities owned, maintained, or operated by the United States Government or the approaches to such facilities, other than facilities operated by the St. Lawrence Seaway Development Corporation on the St. Lawrence River portion of the Seaway.

(b) **DEFINITIONS.** Unless otherwise defined by a provision of law or regulation requiring that towing assistance or escort be rendered to

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<sup>6</sup> The term "Secretary of Commerce" should be read to mean the Commissioner of Customs pursuant to sections 101 to 104 of Reorganization Plan No. 3 of 1946 (60 STAT. 1097).

<sup>7</sup> Section 1119 of Public Law 106-554, approved December 21, 2000 (114 STAT. 2763A-209), the Consolidated Appropriations Act, 2001.

vessels transiting United States waters or navigation facilities, for purposes of this section—

(1) the term "towing assistance" means operations by an assisting vessel in direct contact with an assisted vessel (including hull-to-hull, by towline, including if only pre-tethered, or made fast to that vessel by 1 or more lines) for purposes of exerting force on the assisted vessel to control or to assist in controlling the movement of the assisted vessel; and

(2) the term "escort operations" means accompanying a vessel for the purpose of providing towing or towing assistance to the vessel.

**WRECKED VESSELS ACT (46 App. U.S.C. 14 (2001)).**

The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for any vessel wrecked on the coasts of the United States or her possessions or adjacent waters, when purchased by a citizen or citizens of the United States and thereupon repaired in a shipyard in the United States or her possessions, if it shall be proved to the satisfaction of the Secretary of Transportation, if he deems it necessary, through a board of three appraisers appointed by him, that the said repairs put upon such vessels are equal to three times the appraised salved value of the vessel: Provided, That the expense of the appraisal herein provided for shall be borne by the owner of the vessel: Provided further, That if any of the material matters of fact sworn to or represented by the owner, or at his instance, to obtain the register of any vessel are not true, there shall be a forfeiture to the United States of the vessel in respect to which the oath shall have been made, together with tackle, apparel, and furniture thereof.

**SEC. 1117. USE OF FOREIGN REGISTRY OIL SPILL**

**RESPONSE VESSELS.**<sup>8</sup> Notwithstanding any other provision of law, an oil spill response vessel documented under the laws of a foreign country may operate in waters of the United States on an emergency and temporary basis, for the purpose of recovering, transporting, and unloading in a United States port oil discharged as a result of an oil spill in or near those waters, if—

(1) an adequate number and type of oil spill response vessels documented under the laws of the United States cannot be engaged to recover oil from an oil spill in or near those waters in a timely manner, as determined by the Federal On-Scene Coordinator for a discharge or threat of a discharge of oil; and

(2) that foreign country has by its laws accorded to vessels of the United States the same privileges accorded to vessels of that foreign country under this section.

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<sup>8</sup> Section 1117 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3973).

## **VESSEL TO TRANSPORT LNG TO PUERTO RICO.<sup>9</sup>**

(f) **Certificate of Documentation for a Liquefied Gas Tanker.**— Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 12106 of title 46, United States Code, section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156) and any agreement with the United States Government, the Secretary of Transportation may issue a certificate of documentation with a coast-wise endorsement for a vessel to transport liquefied natural gas or liquefied petroleum gas to the Commonwealth of Puerto Rico from other ports in the United States, if the vessel—

(1) is a foreign built vessel that was built prior to the date of enactment of this Act; or

(2) is documented under chapter 121 of title 46, United States Code, before the date of enactment of this Act, even if the vessel is placed under a foreign registry and subsequently redocumented under that chapter for operation under this section.

**WAIVER OF NAVIGATION AND VESSEL INSPECTION LAWS.<sup>10</sup>** The head of each department or agency responsible for the administration of the navigation and vessel-inspection laws is directed to waive compliance with such laws upon the request of the Secretary of Defense to the extent deemed necessary in the interest of national defense by the Secretary of Defense. The head of such department or agency is authorized to waive compliance with such laws to such extent and in such manner and upon such terms as he may prescribe, either upon his own initiative or upon the written recommendation of the head of any other agency, whenever he deems that such action is necessary in the interest of national defense.

*Sec. 2.* The authority granted by this Act shall terminate at such time as the Congress by concurrent resolution or the President may designate.

**46 APP. U.S.C. 446b(2001). SAILING SCHOOL VESSEL WITHOUT STATUS OF MERCHANT VESSEL OR VESSEL ENGAGED IN TRADE OR COMMERCE.** For the purposes of section 3 of the Act of February 17, 1898 (46 U.S.C. 291), section 11101(a)-(c) of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), a sailing school vessel shall not be deemed to be a merchant vessel or a vessel engaged in trade or commerce.

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<sup>9</sup> Section 1120(f) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3978).

<sup>10</sup> Public Law 81-891, approved December 27, 1950 (64 STAT. 1120) (Note preceding 46 App. U.S.C. 1).

## **MISCELLANEOUS PROVISIONS:**

**46 App. U.S.C. 289a (2001). Transportation of passengers in Canadian vessels between Rochester and Alexandria Bay.** Until such time as passenger service shall be established by vessels of the United States between the port of Rochester, New York, and the port of Alexandria Bay, New York, the Secretary of Commerce<sup>11</sup> is authorized in his discretion to issue annually permits to Canadian passenger vessels to transport passengers between these ports; such Canadian vessels holding such permits not to be subject to the provisions of section 8 of the Act of June 19, 1886, as amended by section 2 of the Act of February 17, 1898.

**46 App. U.S.C. 289b (2001). Transportation of passengers and merchandise in Canadian vessels between points in Alaska and the United States.** Notwithstanding the provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port in the United States to another port of the United States, passengers may be transported on Canadian vessels between ports in southeastern Alaska, and passengers and merchandise may be transported on Canadian vessels between Hyder, Alaska, and other points in southeastern Alaska, and between Hyder, Alaska, and other points in the United States outside Alaska, either directly or via a foreign port, or for any part of the transportation until the Secretary of Transportation determines that United States-flag service is available to provide such transportation.

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<sup>10</sup> The term "Secretary of Commerce" should be read to mean the Commissioner of Customs pursuant to sections 101 to 104 of Reorganization Plan No. 3 of 1946 (60 STAT. 1097).