

(A) a fishery resource for which a fishery occurs in waters under the jurisdiction of one or more States and the exclusive economic zone established by Proclamation Numbered 5030, dated March 10, 1983;

(B) a fishery resource for which there exists an interstate fishery management plan; or

(C) a fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

For purposes of applying section 4104(a)(3) of this title during fiscal year 1987, a Federal fishery management plan or an interstate fishery management plan for the fishery resource need not be in existence, but a plan of either kind for that resource must be in the development process during that year.

(4) The term "interstate fishery management plan" means a plan for managing fisheries developed and adopted by an interstate commission.

(5) The term "interstate commission" means a commission or other administrative body established by an interstate compact.

(6) The term "interstate compact" means a compact that has been entered into by two or more States, established for the purposes of conserving and managing interjurisdictional fishery resources throughout their range, and consented to and approved by Congress.

(7) The term "project" means a program for research in support of the management of an interjurisdictional fishery resource or an interstate cooperative fishery management agreement.

(8) The term "Secretary" means the Secretary of Commerce.

(9) The term "State" means any of the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Northern Mariana Islands.

(10) The term "State agency" means any department, agency, commission, or official of a State authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

(Pub. L. 99-659, title III, §303, Nov. 14, 1986, 100 Stat. 3732; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 99-659, Nov. 14, 1986, 100 Stat. 3731, which is classified principally to this chapter. For complete classification of title III to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in par. (1), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Proclamation Numbered 5030, referred to in par. (3)(A), is set out under section 1453 of this title.

AMENDMENTS

1996—Par. (1). Pub. L. 104-208 substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery".

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

§ 4103. Apportionment

(a) Time when apportionments made

Funds appropriated under section 4107(a) of this title shall be apportioned by the Secretary among the States on October 1 of each fiscal year, or as soon thereafter as practicable.

(b) Apportionment formula

The amount of funds apportioned to each State shall be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and received within such State during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen received within all of the States during those calendar years.

(c) Limitations

(1) No State may receive an apportionment under subsection (b) of this section for either fiscal year 1987 or fiscal year 1988 which is less than one-half of one percent of the total amount of funds available for that fiscal year.

(2) For any fiscal year after fiscal year 1988, no State that, under the apportionment formula in subsection (b) of this section, has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.

(3) For any fiscal year after fiscal year 1988, no State may receive an apportionment under this section for any fiscal year if that State's ratio under the apportionment formula in subsection (b) of this section is less than one-third of one percent, unless the State—

(A) is signatory to an interstate fishery compact;

(B) has entered into an agreement with the Secretary or the Secretary of the Interior under which the personnel, services, and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources which are managed under an interstate fishery management plan;

(C) borders one or more of the Great Lakes; or

(D) has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management or interstate fisheries research program.

(4) No State that, under the apportionment formula in subsection (b) of this section, has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraph (1)(A), (B), (C), or (D) may receive an apportionment for any fiscal year which is less than one-half of one percent of the total amount of funds available for apportionment for such fiscal year.

(5) No State may receive an apportionment for any fiscal year under this section which is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(d) Unused apportionments

Any part of an apportionment for any fiscal year to any State—

- (1) that is not obligated during that year;
- (2) with respect to which the State notifies the Secretary that it does not wish to receive that part; or
- (3) that is returned to the Secretary by the State,

may not be considered to be apportioned to that State and shall be added to such funds as are appropriated pursuant to section 4107(a) of this title for the next fiscal year (and shall be treated as having been appropriated for such next year) for apportionment under subsection (a) of this section. Any notification or return of funds referred to in paragraph (2) or (3) by a State is irrevocable.

(Pub. L. 99-659, title III, §304, Nov. 14, 1986, 100 Stat. 3733; Pub. L. 101-627, title V, §501, Nov. 28, 1990, 104 Stat. 4462.)

AMENDMENTS

1990—Subsec. (c)(3)(B). Pub. L. 101-627 inserted “which are managed under an interstate fishery management plan” before semicolon at end.

§ 4104. State projects

(a) In general

(1) Any State may, through its State agency or an interstate commission, submit to the Secretary a proposal for a project which includes full plans, specifications, and cost estimates for such project. The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the State as a part of its contribution to the total cost of the works.

(2) No part of any funds appropriated under any authorization contained in section 4107 of this title may be obligated with respect to any project until the proposal for such project has been submitted under paragraph (1) and approved by the Secretary. The Secretary, before approving any proposal for a project, must evaluate the proposal as to—

- (A) the soundness of design;
- (B) the possibilities of securing productive results;
- (C) the minimization of duplication with other research projects in support of the management of interjurisdictional fishery resources and carried out under this chapter or under any other law or regulation;
- (D) the organization and management of the project;
- (E) the methods proposed for monitoring and evaluating the success or failure of the project;
- (F) the consistency of the project with the purposes of this chapter specified in section 4101 of this title; and

(G) such other criteria as the Secretary may prescribe.

(3) The Federal share of the cost of any project conducted under this chapter shall not exceed 75 percent of the total estimated cost of the project, unless—

(A) the State has adopted an interstate fishery management plan for the resource to which the project applies; or

(B) the State has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies;

in which case the Federal share shall not exceed 90 percent of the total estimated cost of the project.

(4)(A) If the Secretary approves or disapproves a proposal for a project, the Secretary shall promptly give written notification, including, if disapproved, a detailed explanation of the reasons for the disapproval, to the State agency submitting the proposal or, if the proposal is submitted through an interstate commission, such commission and the State.

(B) For the purposes of this chapter, funds apportioned under this section to any State shall be treated as having been obligated with respect to a project during the fiscal year in which the written notification of approval required under subparagraph (A) for the project proposal is made.

(b) Restriction

The expenditure of funds under this chapter shall be applied only to projects for which a proposal has been approved under subsection (a) of this section, except that up to \$25,000 each fiscal year may be obligated for a State to carry out an agreement with the Secretary or the Secretary of the Interior under which the personnel, services and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources. If otherwise applied, such funds shall be replaced by the State before the State may receive any additional funds under this chapter.

(c) Payment

When the Secretary determines that a project carried out under a proposal approved by the Secretary has been completed, or where the Secretary otherwise deems it appropriate, the Secretary shall cause to be paid to the proper authority of the State, or to the official or depository designated by the interstate commission if the State agency specifies that payment is to be made to the interstate commission, the Federal share of the project. Any payment made to an interstate commission shall be charged against the apportionment of the State concerned.

(Pub. L. 99-659, title III, §305, Nov. 14, 1986, 100 Stat. 3734.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(C), (F), (3), (4)(B) and (b), was in the original “this title”, meaning title III of Pub. L. 99-659, Nov. 14, 1986, 100 Stat. 3731, which is classified principally to this chapter. For com-