

(d) Superseded by enactment and implementation of State laws governing State responsibility; consideration of recommendations by State rulemaking authority

The Secretary shall not implement subsections (a), (b), and (c) of this section if the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 3113, 3114, and 3115 of this title, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this subchapter for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with this section shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

(e) Reimbursement to State; limitation; report to Congress

(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 3114 of this title.

(Pub. L. 96-487, title VIII, §805, Dec. 2, 1980, 94 Stat. 2424; Pub. L. 105-83, title III, §316(b)(6), (d),

Nov. 14, 1997, 111 Stat. 1593, 1595; Pub. L. 105-277, div. A, §101(e) [title III, §339(c)], Oct. 21, 1998, 112 Stat. 2681-231, 2681-296.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277, §101(e) [title III, §339(c)(1)], struck out “one year after December 2, 1980,” before “the Secretary” in introductory provisions.

Subsec. (d). Pub. L. 105-277, §101(e) [title III, §339(c)(2)], struck out “within one year from December 2, 1980,” before “the State enacts” in first sentence.

1997—Subsec. (a). Pub. L. 105-83, §316(b)(6)(A), which directed the amendment of subsec. (a) by striking out “one year after December 2, 1980,” before “the Secretary” in introductory provisions, was repealed by Pub. L. 105-83, §316(d). See Effective and Termination Dates of 1997 Amendment note below.

Subsec. (d). Pub. L. 105-83, §316(b)(6)(B), which directed the amendment of subsec. (d) generally to provide for supersedure by enactment and implementation of State laws governing State responsibility, consideration of recommendations by State rulemaking authority, and for the creation of regional advisory councils, was repealed by Pub. L. 105-83, §316(d). See Effective and Termination Dates of 1997 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1997
AMENDMENT

Until laws are adopted in Alaska which provide for definition, preference, and participation specified in sections 3113 to 3115 of this title, amendment by Pub. L. 105-83 was effective only for purpose of determining whether State's laws provide for such definition, preference, and participation, and such amendment was repealed on Dec. 1, 1998, because such laws had not been adopted, see section 316(d) of Pub. L. 105-83 set out as a note under section 3102 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§3116. Federal monitoring; reports to State and Congressional committees

The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 3114 of this title and shall advise the State and the Committees on Natural Resources and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as he deems necessary of his views on the effectiveness of the implementation of this subchapter including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

(Pub. L. 96-487, title VIII, §806, Dec. 2, 1980, 94 Stat. 2425; Pub. L. 103-437, §6(y), Nov. 2, 1994, 108 Stat. 4587.)

AMENDMENTS

1994—Pub. L. 103-437 substituted “the Committees on Natural Resources” for “Committee on Interior and Insular Affairs”.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 3117. Judicial enforcement**(a) Exhaustion of administrative remedies; civil action; parties; preliminary injunctive relief; other relief; costs and attorney's fees**

Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 3114 of this title (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 3115(d) of this title) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 3114 of this title; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

(b) Repealed. Pub. L. 98-620, title IV, § 402(22)(A), Nov. 8, 1984, 98 Stat. 3358**(c) Section as sole Federal judicial remedy**

This section is the sole Federal judicial remedy created by this subchapter for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 3114 of this title.

(Pub. L. 96-487, title VII, § 807, Dec. 2, 1980, 94 Stat. 2426; Pub. L. 98-620, title IV, § 402(22)(A), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 105-83, title III, § 316(b)(7), (d), Nov. 14, 1997, 111 Stat. 1594, 1595.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-83, § 316(b)(7), which directed amendment of section by adding subsec. (b) reading as follows: “State agency actions may be declared invalid by the court only if they are arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with law. When reviewing any action within the specialized knowledge of a State agency, the court shall give the decision of the State agency the same deference it would give the same decision of a comparable Federal agency.”, was repealed by Pub. L. 105-83, § 316(d). See Effective and Termination Dates of 1997 Amendments note below.

1984—Subsec. (b). Pub. L. 98-620 struck out subsec. (b) which had provided that a civil action filed pursuant to this section was to be assigned for hearing at the earliest possible date, was to take precedence over other matters pending on the docket of the United States district court at that time, and was to be expedited in every way by such court and any appellate court.

EFFECTIVE AND TERMINATION DATES OF 1997 AMENDMENT

Until laws are adopted in Alaska which provide for definition, preference, and participation specified in sections 3113 to 3115 of this title, amendment by Pub. L. 105-83 was effective only for purpose of determining whether State's laws provide for such definition, preference, and participation, and such amendment was repealed on Dec. 1, 1998, because such laws had not been adopted, see section 316(d) of Pub. L. 105-83 set out as a note under section 3102 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 3118. Park and park monument subsistence resource commissions**(a) Appointment of members; development of subsistence hunting program; annual review of program**

Within one year from December 2, 1980, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 3115 of this title which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from December 2, 1980, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and