

§ 3632. United States Section**(a) Commissioners**

The United States shall be represented on the Commission by four United States Commissioners who are knowledgeable or experienced concerning Pacific salmon, to be appointed by and serve at the pleasure of the President. Of these, one shall be an official of the United States Government who shall be a nonvoting member of the United States Section; one shall be a resident of the State of Alaska and shall be appointed from a list of at least six qualified individuals nominated by the Governor of that State; one shall be a resident of the States¹ of Oregon,² or Washington and shall be appointed from a list of at least six qualified individuals nominated by the Governors of those States; and one shall be appointed from a list of at least six qualified individuals nominated by the treaty Indian tribes of the States of Idaho, Oregon or Washington. Two of the initial appointments shall be for two-year terms; all other appointments shall be for four-year terms. Each Commissioner is eligible for reappointment. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Unless otherwise agreed, the chairmanship of the United States Section shall rotate annually among all four members with the order of rotation determined by lot at the first meeting.

(b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary and the Secretary of the Interior, shall designate an Alternate Commissioner for each Commissioner from the respective lists referred to in subsection (a), and may designate an Alternate Commissioner for the Federal Commissioner. In the absence of a Commissioner, the Alternate Commissioner may exercise all functions of such Commissioner at any meeting of the Commission or of the United States Section. Alternate Commissioners are eligible for reappointment and may attend all meetings of the United States Section.

(c) Southern Panel

The United States shall be represented on the southern Panel by six Panel members, of whom—

- (1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;
- (2) one shall be an official of the State of Oregon, with salmon fishery management responsibility and expertise;
- (3) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;
- (4) two shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise; and
- (5) one shall be appointed from the commercial or recreational sector who is knowledgeable and experienced in the salmon fisheries for which the southern Panel is responsible.

(d) Northern Panel

The United States shall be represented on the northern Panel by six Panel members, of whom—

- (1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;
- (2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and
- (3) four shall be individuals knowledgeable and experienced in the salmon fisheries for which the northern Panel is responsible.

(e) Fraser River Panel

The United States shall be represented on the Fraser River Panel by four Panel members, of whom—

- (1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;
- (2) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;
- (3) one shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise for the fisheries for which the Fraser River Panel is responsible; and
- (4) one shall be appointed from the commercial sector of the salmon fishing industry concerned with fisheries for which the Fraser River Panel is responsible.

(f) Transboundary Panel

The United States shall be represented on the Transboundary Panel by seven panel members, of whom—

- (1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;
- (2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and
- (3) five shall be individuals knowledgeable and experienced in the salmon fisheries for which the Transboundary Panel is responsible.

(g) Panel appointments

Panel members described in subsections (c)(2), (c)(3), (d)(2), and (e)(2) shall be appointed by the Governor of the applicable State. Panel members described in subsections (c)(4) and (e)(3) shall be appointed by the Secretary of the Interior from lists of nominations provided by the appropriate treaty Indian tribes. All other Panel members shall be appointed by the Secretary: *Provided*, That at least one member of the northern Panel shall be a voting member of the North Pacific Fishery Management Council, at least one member of the southern Panel shall be a voting member of the Pacific Fishery Management Council; and the Panel members described in subsections (c)(5), (d)(3), and (e)(4) shall be appointed from lists of nominations provided by the Governors of the applicable States. For the northern, southern, and Fraser River panels, the appointing authorities listed above may also designate an alternate Panel member, meeting the same qualifications and having the same term of office, to service in the absence of a Panel member appointed under this subsection.

¹ So in original. Probably should be "State".

² So in original. The comma probably should not appear.

Panel members and alternate Panel members, other than the southern Panel member described in subsection (c)(5), shall serve four-year terms; except that the Secretary of State shall designate one-half of the initial appointments to each Panel as serving two-year terms. The southern Panel member described in subsection (c)(5) and the corresponding alternate shall each be appointed for one-year terms; the first such member shall be appointed from the commercial sector and an alternate shall be appointed from the recreational sector, with the alternate succeeding to the member position in the subsequent year; thereafter the member and alternate positions shall rotate between the commercial and recreational sectors on an annual basis. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Panel members and alternates shall be eligible for reappointment and may attend all meetings of the relevant United States Panel Section.

(h) Voting requirements

(1) Except as provided in paragraph (2), the United States Section shall operate with the objective of attaining consensus decisions in the development and exercise of its single vote within the Commission. A decision of the United States Section shall be taken when there is no dissenting vote.

(2) A decision of the United States Section with respect to any salmon fishery regime covered by chapter 1 or 2 (except paragraph 4 of chapter 2) of Annex IV to the Pacific Salmon Treaty of 1985 shall be taken upon the affirmative vote of the United States Commissioner appointed from the list submitted by the Governor of Alaska pursuant to subsection (a). A decision of the United States Section with respect to any salmon fishery regime covered by chapter 4, 5 (except paragraph 2(b) of chapter 5), or 6 of the Pacific Salmon Treaty of 1985 shall be taken upon the affirmative vote of both the United States Commissioner appointed from the list submitted by the Governors of Washington and Oregon pursuant to subsection (a) and the United States Commissioner appointed from the list submitted by the treaty Indian tribes of the State of Idaho, Oregon, or Washington pursuant to subsection (a). Before a decision of the United States Section is made under this paragraph, the voting Commissioner or Commissioners shall consult with the Commissioner who is an official of the United States Government under subsection (a).³

(3) All decisions and recommendations of the United States Section of the northern, southern, and transboundary Panels shall require the concurring vote of a majority of the United States Panel members present and voting, except that decisions and recommendations of the southern Panel shall require the concurring vote of the members designated in subsections (c)(2) and (c)(3) and one of those members designated in subsection (c)(4).

(4) All decisions and recommendations of the United States Section of the Fraser River Panel

shall require the concurring vote of all United States Panel members present and voting, except that orders referred to in article VI(6) of the Treaty may be agreed to on the basis of a majority, provided that the Panel members representing the State and Tribal fishery management authorities concur.

(5) All decisions and recommendations of any joint Panel shall require the concurring votes of each Panel under the voting rules specified in paragraphs (2) and (3).

(6) To assist in the resolution of disputes affecting decisions of the United States Section or of the United States Panel sections, a three-person Conciliation Board may be established. The members of the Conciliation Board shall be selected by the United States Section as follows: each non-Federal Commissioner shall submit a list of no fewer than three qualified nominees; one person shall be selected from each list by consensus decision of the Federal Commissioner and the other two non-Federal Commissioners. The Conciliation Board shall operate under such bylaws as may be established by the United States Section.

(7) In any matter where the Fraser River Panel is unable to act because the United States Fraser River Panel members have been unable to reach a decision in accordance with paragraph (3) of this subsection, and upon a determination by the Chairman of the United States Section that an action of the Panel is required, the United States Section shall act for the United States Panel members in the Fraser River Panel.

(8) In any matter where the Secretary of State determines that the United States is in jeopardy of not fulfilling its international obligations under the Treaty, the Secretary of State shall so certify to the United States Section. Such certification shall include the reasons for such determination and shall specify the date by which a decision by the United States Section is desired. If the United States Section has not reached a decision by the date specified, the Secretary of State, after consultation with the Secretary and the Secretary of the Interior, shall report on the matter to the President.

(i) Consultation

In carrying out their functions under the Treaty, the Commissioners and Panel members may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act [5 U.S.C. App.] shall not apply.

(Pub. L. 99-5, §3, Mar. 15, 1985, 99 Stat. 8; Pub. L. 99-5, §16(c), formerly Pub. L. 106-113, div. B, §1000(a)(1) [title VI, §623(c)], Nov. 29, 1999, 113 Stat. 1535, 1501A-59, renumbered Pub. L. 109-479, title III, §302(d)(1), Jan. 12, 2007, 120 Stat. 3623; Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(c)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (i), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

³ So in original. Probably should be followed by a period.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(c)(5)(A)], added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(c)(5)(B), (C)], redesignated subsec. (f) as (g) and substituted “For the northern, southern, and Fraser River panels, the appointing authorities” for “The appointing authorities”. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(c)(5)(B)], redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(3). Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(c)(5)(D)], substituted “northern, southern, and transboundary” for “northern and southern”.

Subsec. (i). Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(c)(5)(B)], redesignated subsec. (h) as (i).

1999—Subsec. (g)(1). Pub. L. 99-5, §16(c)(1), formerly Pub. L. 106-113, §1000(a)(1) [title II, §623(c)(1)], as renumbered by Pub. L. 109-479, §302(d)(1), substituted “Except as provided in paragraph (2), the” for “The”.

Subsec. (g)(2) to (8). Pub. L. 99-5, §16(c)(2), (3), formerly Pub. L. 106-113, §1000(a)(1) [title II, §623(c)(2), (3)], as renumbered by Pub. L. 109-479, §302(d)(1), added par. (2) and redesignated former pars. (2) to (7) as (3) to (8), respectively.

§ 3633. Authority and responsibility**(a) Secretary of State**

The Secretary of State is authorized to—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of and to the Commission and Panels;

(2) in consultation with the Secretary and the Secretary of the Interior, approve, disapprove, object to, or withdraw objections to fishery regimes, including enhancement programs and Fraser River Panel regulations proposed in accordance with the Treaty, on the condition that the United States shall be obligated to carry out such regimes or regulations only to the extent that funds are made available for such purposes in appropriation Acts; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed fishery regime or Fraser River Panel regulation.

(b) States and treaty Indian tribes

Recommendations of the Commission on fishery regimes or Fraser River Panel regulations approved by the Secretary of State pursuant to subsection (a)(2) shall be forwarded immediately to the States of Alaska, Oregon, Washington, and Idaho and to the treaty Indian tribes, as appropriate. In the exercise of their general fishery management authority, the States and treaty Indian tribes may adopt corresponding laws, regulations, or orders within their respective jurisdictions.

(c) Secretary of Commerce

In cooperation with the appropriate Regional Fishery Management Councils, States and treaty Indian tribes, the Secretary shall prepare, as appropriate, all statements, reports, and information required by the Treaty and submit such documents to the Secretary of State, who shall transmit them to the Commission.

(Pub. L. 99-5, §4, Mar. 15, 1985, 99 Stat. 10.)

§ 3634. Interagency cooperation**(a) States, United States agencies, treaty Indian tribes, private institutions and organizations**

In carrying out the provisions of the Treaty and this chapter, the Secretary, in consultation with the Secretary of the Interior, may arrange for cooperation with agencies of the United States, the States, treaty Indian tribes, private institutions and organizations, and may execute such memoranda as may be necessary to reflect such agreements.

(b) United States agencies; facilities and personnel

Agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Commission and Panels in carrying out their responsibilities under the Treaty. Such agencies may accept reimbursement from the Commission for providing such services, facilities, and personnel.

(Pub. L. 99-5, §5, Mar. 15, 1985, 99 Stat. 11.)

§ 3635. Preemption

If any State or treaty Indian tribe has taken any action, or omitted to take any action, the results of which place the United States in jeopardy of not fulfilling its international obligations under the Treaty, or any fishery regime or Fraser River Panel regulation adopted thereunder, the Secretary shall inform the State or tribe of the manner in which the action or inaction places the United States in jeopardy of not fulfilling its international obligations under the Treaty, of any remedial action which would relieve this concern, and of the intention to promulgate Federal regulations if such remedial actions are not undertaken within fifteen days unless an earlier action is required to avoid violation of United States Treaty obligations. Should United States action be required to meet Treaty obligations to Canada in respect to treaty Indian fisheries conducted in terminal areas subject to the continuing jurisdiction of a United States district court, such action shall be taken within the framework of such court jurisdiction. Otherwise, regulations may be promulgated by the Secretary pursuant to section 3636(a) of this title which shall supersede any State or treaty Indian tribal law, regulation or order determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty. Timely notice of all such determinations shall be disseminated by electronic media and shall be published in local newspapers in the major fishing ports affected and in the Federal Register. In order to enable the United States to fulfill its obligations under article IV(7) of the Treaty, the States of Alaska, Idaho, Oregon and Washington and the treaty Indian tribes shall advise the Secretary of all pertinent laws or regulations pertaining to the harvest of Pacific salmon, together with such amendments thereto as may be adopted from time to time.

(Pub. L. 99-5, §6, Mar. 15, 1985, 99 Stat. 11.)