

section 4009(b)(3) of this title by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

(4) Consumer education and other marketing and promotion activities carried out by a council under a marketing and promotion plan and amendments to such plan may not contain references to any private brand or trade name and shall avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(b) Authority of a council

A council may—

- (1) sue and be sued;
- (2) enter into contracts;
- (3) employ and determine the salary of an executive director who may, with the approval of the council, employ and determine the salary of such additional staff as may be necessary;
- (4) collaborate with other councils and with the National Council in establishing and implementing a national marketing and promotion plan for one or more species of fish or fish products; and
- (5) establish a reserve fund from monies collected and received under section 4012 of this title to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(c) Quality standards

(1) A council may develop and submit to the Secretary for approval, or upon the request of a council the Secretary shall develop, quality standards for a fish or fish product described in accordance with section 4009(b)(3) of this title. Any quality standard developed under this paragraph shall be consistent with the purposes of this chapter.

(2) A quality standard developed under paragraph (1) of this subsection may be adopted by a council by a majority of the members of the council if first approved, in a referendum conducted by the council, by a majority of the sector participants of the sector concerned voting and the majority collectively accounted for, in the twelve-month period immediately preceding the month in which the referendum is held, not less than sixty-six percent of the value of the fish or fish products described in accordance with section 4009(b)(3) of this title that were handled by that sector during such period.

(3) With respect to a quality standard adopted under paragraph (2) of this subsection, the council shall develop and file with the Secretary an official identification in the form of a symbol, stamp, label, or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is

affixed to or printed on the packaging material of the fish or fish product.

(4) The Secretary shall establish by regulation procedures for the use of an official identification filed with the Secretary under paragraph (3) of this subsection. Misuse of an official identification established under this section shall constitute a violation of this chapter.

(5) Prior to issuing final regulations under paragraph (4) of this subsection, the Secretary shall—

- (A) publish the proposed regulations by such means as will result in wide publicity in affected regions; and
- (B) provide for public comment and the opportunity for a public hearing.

(6) A council may receive, investigate and report to the Secretary accounts of violations of regulations issued under paragraph (4) of this subsection.

(7) Any regulation issued under paragraph (4) of this subsection shall be repealed immediately by the Secretary upon the termination under section 4015 of this title of the council that developed the official identification to which the regulations apply.

(8) The procedures applicable to the adoption and the taking effect of a quality standard developed under this subsection also apply to a subsequent amendment or the termination of such standard.

(d) Amendment of a charter

A council may submit to the Secretary amendments to the text of the council's charter. Any proposed amendments to a charter shall be approved or disapproved in the same manner as the original charter was approved under section 4009(d) and (e) of this title, with the exception of section 4009(d)(1)(B) of this title.

(Pub. L. 99-659, title II, §211, Nov. 14, 1986, 100 Stat. 3724.)

§ 4011. Functions and powers of Secretary

(a) Duties of the Secretary

In addition to the duties prescribed under section 4009 of this title, the Secretary shall—

- (1) review, for consistency with the provisions of this chapter and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within sixty days after their submission by a council;
- (2) immediately notify a council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;
- (3) issue orders and amendments to such orders that are necessary to implement quality standards under section 4010(c) of this title;
- (4) promulgate regulations necessary to carry out the purposes of this chapter;
- (5) enforce the provisions of this chapter, as provided under section 4016 of this title; and
- (6) make all appointments to councils in accordance with section 4009(f) of this title.

(b) Assistance

The Secretary may provide, on a reimbursable or other basis, such administrative or technical assistance as a council may request for purposes

of the initial organization and subsequent operation of the council.

(Pub. L. 99-659, title II, §212, Nov. 14, 1986, 100 Stat. 3726.)

§ 4012. Assessments

(a) Authority

A council shall impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the council in carrying out its functions under this chapter.

(b) Method of imposition

(1) Assessments shall be imposed on sector participants in the receiving sector or the importing sector, or both, as specified in an approved council charter.

(2) An assessment on sector participants in the receiving sector shall be—

(A) except for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 4009(b)(3) of this title when purchased by such participants from fish harvesters; and

(B) for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 4009(b)(3) of this title and harvested by such a vessel that is no less than the value of such fish, if such fish had been purchased by a receiver other than an owner of such a vessel.

(3) An assessment on sector participants in the importing sector shall be in the form of a percentage of the value, as determined for the purposes of the customs laws, of the fish or fish products described in accordance with section 4009(b)(3) of this title when entered, or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(c) Prohibition on assessment

A council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the council under section 4009(e) of this title by reason of failure to meet the requirements specified under section 4009(b)(6) of this title, unless such person, after the date on which such referendum is held, meets the requirements of section 4009(b)(6) of this title.

(d) Voluntary payments

Any person may make voluntary payments or in-kind contributions to a council for purposes of assisting the council in carrying out its functions.

(e) Deposit of funds

All funds collected or received by a council under this section shall be deposited by the council in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council shall be limited to those authorized under this section.

(f) Information

(1) Sector participants shall make available to the Secretary such information and data as is necessary for the effectuation, administration

or enforcement of this chapter or any order or regulation issued pursuant to this chapter. Except as provided in paragraphs (2) and (3) of this subsection, any information obtained in carrying out this subsection shall be kept confidential by all officers and employees of the Department of Commerce, independent accountants and other persons who have access to such information.

(2) If the Secretary or an employee of the United States Government is a party to a suit or administrative action involving an assessment, order, or regulation issued under this chapter, the Secretary may disclose information obtained under paragraph (1) of this subsection to the extent allowed by the judicial or administrative officer presiding over such suit or action.

(3) This subsection shall not prohibit—

(A) the issuance of general or statistical statements based upon reports of a number of persons subject to the provisions of this chapter which do not identify the information furnished by any person; or

(B) the publication by direction of the Secretary of the name of any person violating a requirement relating to an assessment imposed under subsection (a) of this section or to quality standards implemented by the Secretary under section 4010(c) of this title, and a statement of the particular provisions of the requirement violated by such person.

(4) Any individual who is required to keep information confidential under this subsection and who knowingly violates this subsection shall, upon conviction, be—

(A) subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or both; and

(B) removed from office if an officer or employee of a council or the Department of Commerce.

(Pub. L. 99-659, title II, §213, Nov. 14, 1986, 100 Stat. 3727.)

§ 4013. Petitions

(a) Filing of petition

Any person subject to assessment under section 4012 of this title may file a written petition with the Secretary alleging that—

(1) the assessment,

(2) the plan approved under section 4011(a)(1) of this title on which the assessment is based, or

(3) any obligation imposed under the plan,

is not in accordance with law and requesting the Secretary to modify or take other appropriate action regarding the assessment or plan.

(b) Form of petition

Any such petition shall be in writing and filed within the period prescribed by the Secretary. A person who files a petition under this section shall be given an opportunity for a hearing regarding the petition in accordance with regulations issued by the Secretary. After such a hearing, or if no hearing is requested, after consideration of all documentation and other evidence, the Secretary shall make a ruling upon such petition.