

§ 7802. Appointment or designation of United States Commissioners

(a) Appointment

(1) In general

The United States shall be represented on the Commission by not more than 3 Commissioners. In making each appointment, the President shall select a Commissioner from among individuals who are knowledgeable or experienced concerning fishery resources in the South Pacific Ocean.

(2) Representation

At least 1 of the Commissioners shall be—

(A) serving at the pleasure of the President, an officer or employee of—

- (i) the Department of Commerce;
- (ii) the Department of State; or
- (iii) the Coast Guard; and

(B) the chairperson or designee of the Council.

(b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time considered appropriate an alternate Commissioner to the Commission. An alternate Commissioner may exercise all powers and duties of a Commissioner in the absence of a Commissioner appointed under subsection (a).

(c) Administrative matters

(1) Employment status

An individual serving as a Commissioner, or as an alternate Commissioner, other than an officer or employee of the United States Government, shall not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

(2) Compensation

An individual serving as a Commissioner or an alternate Commissioner, although an officer of the United States while so serving, shall receive no compensation for the individual's services as such Commissioner or alternate Commissioner.

(3) Travel expenses

(A) In general

The Secretary of State shall pay the necessary travel expenses of a Commissioner or an alternate Commissioner in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5.

(B) Reimbursement

The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this paragraph.

(d) Advisory Committee

(1) Establishment of permanent Advisory Committee

(A) Membership

There is established an advisory committee which shall be composed of 7 members appointed by the Secretary as follows:

(i) A member engaging in commercial fishing in the management area of the Council.

(ii) Two members from the indigenous population of the Pacific, including a Native Hawaiian and a native-born inhabitant of any State in the Pacific.

(iii) A member that is a marine fisheries scientist and a member of the Council's Scientific and Statistical Committee.

(iv) A member representing a non-governmental organization active in fishery issues in the Pacific.

(v) A member nominated by the Governor of the State of Hawaii.

(vi) A member designated by the Council.

(B) Terms and privileges

Each member of the Advisory Committee shall serve for a term of 2 years and shall be eligible for reappointment for not more than 3 consecutive terms. The Commissioners shall notify the Advisory Committee in advance of each meeting of the Commissioners. The Advisory Committee may attend each meeting and may examine and be heard on all proposed programs, investigations, reports, recommendations, and regulations of the Commissioners.

(C) Procedures

(i) In general

The Advisory Committee shall determine its organization and prescribe its practices and procedures for carrying out its functions under this chapter, the South Pacific Fisheries Convention, and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(ii) Public availability of procedures

The Advisory Committee shall publish and make available to the public a statement of its organization, practices, and procedures.

(iii) Quorum

A majority of the members of the Advisory Committee shall constitute a quorum to conduct business.

(iv) Public meetings

Meetings of the Advisory Committee, except when in executive session, shall be open to the public. Prior notice of each non-executive meeting shall be made public in a timely fashion. The Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(v) Cost savings

In order to reduce the cost of Advisory Committee meetings, the Advisory Committee shall, to the extent practicable, utilize teleconferences and webinars for that purpose.

(D) Provision of information

The Secretary and the Secretary of State shall furnish the Advisory Committee with relevant information concerning fishery resources and international fishery agreements.

(2) Administrative matters**(A) Support services**

The Secretary shall provide to the Advisory Committee in a timely manner such administrative and technical support services as are necessary to function effectively.

(B) Compensation; status; expenses

An individual appointed to serve as a member of the Advisory Committee—

- (i) shall serve without pay; and
- (ii) shall not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

(Pub. L. 114-327, title II, §202, Dec. 16, 2016, 130 Stat. 1987.)

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (d)(1)(C)(i), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, 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.

The Federal Advisory Committee Act, referred to in subsec. (d)(1)(C)(iv), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 7803. Authority and responsibility of the Secretary of State

The Secretary of State may—

- (1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, decisions, and other communications of and to the Commission;
- (2) in consultation with the Secretary, act upon, or refer to other appropriate authority, any communication pursuant to paragraph (1); and
- (3) with the concurrence of the Secretary, and in accordance with the South Pacific Fishery Resources Convention, object to decisions of the Commission.

(Pub. L. 114-327, title II, §203, Dec. 16, 2016, 130 Stat. 1989.)

§ 7804. Responsibility of the Secretary and rule-making authority**(a) Responsibilities**

The Secretary may—

- (1) administer this chapter and any regulations issued under this chapter, except to the extent otherwise provided for in this chapter;
- (2) issue permits to vessels subject to the jurisdiction of the United States, and to owners and operators of such vessels, to fish in the Convention Area, under such terms and conditions as the Secretary may prescribe; and
- (3) if recommended by the United States Commissioners, assess and collect fees, not to exceed 3 percent of the ex-vessel value of fisheries resources harvested by vessels of the United States in fisheries conducted in the Convention Area, to recover the actual costs to the United States to carry out the functions of the Secretary under this chapter.

(b) Promulgation of regulations**(1) In general**

The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations as may be necessary and appropriate to carry out the international obligations of the United States under the South Pacific Fishery Resources Convention and this chapter, including decisions adopted by the Commission.

(2) Applicability

Regulations promulgated under this subsection shall be applicable only to a person or fishing vessel that is or has engaged in fishing, and fishery resources covered by the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean under this chapter.

(c) Consistency with other laws

The Secretary shall ensure the consistency, to the extent practicable, of fishery management programs administered under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq.), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.), section 401 of Public Law 108-219 (16 U.S.C. 1821 note) (relating to Pacific albacore tuna), the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.), the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102-567) and the amendments made by that Act, and Public Law 100-629 (102 Stat. 3286).

(d) Judicial review of regulations**(1) In general**

Regulations promulgated by the Secretary under this chapter shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5 if a petition for such review is filed not later than 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable.

(2) Responses

Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1) not later than 30 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(3) Copies of administrative record

A response of the Secretary under paragraph (2) shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) Expedited hearings

Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date.

(Pub. L. 114-327, title II, §204, Dec. 16, 2016, 130 Stat. 1989.)