

“(2) evaluating whether the design of the Marine Recreational Information Program for the purposes of stock assessment and the determination of stock management reference points is compatible with the needs of in-season management of annual catch limits; and

“(3) if the Marine Recreational Information Program is incompatible with the needs of in-season management of annual catch limits, determining an alternative method for in-season management.”

### § 1881a. Information collection

#### (a) Collection programs

##### (1) Council requests

If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

##### (2) Secretarial initiation

If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

#### (b) Confidentiality of information

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this chapter shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission em-

ployees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this chapter;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 468(a)(2) of title 6.

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this chapter, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this chapter or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

#### (c) Restriction on use of certain information

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this chapter, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information col-

lected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such chapter or Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

#### (d) Contracting authority

Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

#### (e) Resource assessments

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry—

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

(Pub. L. 94-265, title IV, § 402, as added Pub. L. 104-297, title II, § 203, Oct. 11, 1996, 110 Stat. 3607; amended Pub. L. 109-479, § 3(d)(1)(A), title II, §§ 202, 203(a), Jan. 12, 2007, 120 Stat. 3578, 3612, 3613.)

### Editorial Notes

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1), (3) and (c)(1), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Marine Mammal Protection Act of 1972, referred to in subsec. (c)(1), is Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (§1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

The Endangered Species Act, referred to in subsec. (c)(1), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 402 of Pub. L. 94-265 repealed former sections 1081 to 1086 and 1091 to 1094 of this title, prior to being amended generally by Pub. L. 104-297.

#### AMENDMENTS

2007—Subsec. (a). Pub. L. 109-479, § 202, substituted "Collection programs" for "Council requests" in heading, designated existing provisions as par. (1), inserted heading, realigned margins, in first sentence, struck out "(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)" after "additional information" and "types of information", in last sentence, substituted "paragraph" for "subsection", and added par. (2).

Subsec. (b). Pub. L. 109-479, § 203(a)(1), (2), added pars. (1) and (2), redesignated former par. (2) as (3) and realigned margins, and struck out former par. (1) which related to confidentiality of information submitted to the Secretary and exceptions.

Subsec. (b)(1)(D). Pub. L. 109-479, § 3(d)(1)(A), substituted "a limited access privilege" for "an individual fishing quota".

Subsec. (b)(3). Pub. L. 109-479, § 203(a)(3), substituted "(2)(A)." for "(1)(E)."

### § 1881b. Observers

#### (a) Guidelines for carrying observers

Within one year after October 11, 1996, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

#### (b) Training

The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall—

(1) establish programs to ensure that each observer receives adequate training in col-