

Public Law 105-384

[Select provisions of Public Law 105-384, Approved Nov. 13, 1998,
112 Stat. 3454]

[Amended through P.L. 110-386, Enacted October 10, 2008]

AN ACT To approve a governing international fishery agreement between the
United States and the Republic of Poland, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

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**TITLE II—MISCELLANEOUS FISHERIES
PROVISIONS**

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**SEC. 203. [16 U.S.C. 1856 note] AUTHORITY OF STATES OF WASH-
INGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGE-
NESS CRAB FISHERY.**

(a) IN GENERAL.—Subject to the provisions of this section and notwithstanding section 306(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1856(a)), each of the States of Washington, Oregon, and California may adopt and enforce State laws and regulations governing fishing and processing in the exclusive economic zone adjacent to that State in any Dungeness crab (Cancer magister) fishery for which there is no fishery management plan in effect under that Act.

(b) REQUIREMENT FOR STATE MANAGEMENT.—Any law or regulation adopted by a State under this section for a Dungeness crab fishery—

(1) except as provided in paragraph (2), shall apply equally to vessels engaged in the fishery in the exclusive economic zone and vessels engaged in the fishery in the waters of the State, and without regard to the State that issued the permit under which a vessel is operating;

(2) shall not apply to any fishing by a vessel in exercise of tribal treaty rights except as provided in United States v. Washington, D.C. No. CV-70-09213, United States District Court for the Western District of Washington; and

(3) shall include any provisions necessary to implement tribal treaty rights pursuant to the decision in United States v. Washington, D.C. No. CV-70-09213.

(c) LIMITATION ON ENFORCEMENT OF STATE LIMITED ACCESS SYSTEMS.—Any law of the State of Washington, Oregon, or California that establishes or implements a limited access system for

a Dungeness crab fishery may not be enforced against a vessel that is otherwise legally fishing in the exclusive economic zone adjacent to that State and that is not registered under the laws of that State, except a law regulating landings.

(d) STATE PERMIT OR TREATY RIGHT REQUIRED.—No vessel may harvest or process Dungeness crab in the exclusive economic zone adjacent to the State of Washington, Oregon, or California, except as authorized by a permit issued by any of those States or pursuant to any tribal treaty rights to Dungeness crab pursuant to the decision in *United States v. Washington*, D.C. No. CV–70–09213.

(e) STATE AUTHORITY OTHERWISE PRESERVED.—Except as expressly provided in this section, nothing in this section reduces the authority of any State under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to regulate fishing, fish processing, or landing of fish.

(f) TERMINATION OF AUTHORITY.—The authority of the States of Washington, Oregon, and California under this section with respect to a Dungeness crab fishery shall expire on the effective date of a fishery management plan for the fishery under the Magnuson-Stevens Fishery Conservation and Management Act.

(g) REPEAL.—Section 112(d) of Public Law 104–297 (16 U.S.C. 1856 note) is repealed.

(h) DEFINITIONS.—The definitions set forth in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) shall apply to this section.

(i) SUNSET.—This section shall have no force or effect on and after September 30, 2016.

(j) Not later than December 31, 2001, and every 2 years thereafter, the Pacific State Marine Fisheries Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report on the status and management of the Dungeness Crab fishery located off the coasts of the States of Washington, Oregon, and California, including—

- (1) stock status and trends throughout its range;
- (2) a description of applicable research and scientific review processes used to determine stock status and trends; and
- (3) measures implemented or planned that are designed to prevent or end overfishing in the fishery.

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TITLE III—NOAA HYDROGRAPHIC SERVICES

SEC. 301. [33 U.S.C. 851 note] SHORT TITLE.

This title may be cited as the “Hydrographic Services Improvement Act of 1998”.

SEC. 302. [33 U.S.C. 892] DEFINITIONS.

In this title:

- (1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the National Oceanic and Atmospheric Administration.

(2) ADMINISTRATION.—The term “Administration” means the National Oceanic and Atmospheric Administration.

(3)¹ HYDROGRAPHIC DATA.—The term “hydrographic data” means information that—

(A) is acquired through—

(i) hydrographic, bathymetric, photogrammetric, lidar, radar, remote sensing, or shoreline and other ocean- and coastal-related surveying;

(ii) geodetic, geospatial, or geomagnetic measurements;

(iii) tide, water level, and current observations; or

(iv) other methods; and

(B) is used in providing hydrographic services.

(4) HYDROGRAPHIC SERVICES.—The term “hydrographic services” means—

(A) the management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, shoreline, geodetic, geospatial, geomagnetic, and tide, water level, and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;

(B) the development of nautical information systems; and

(C) related activities.

(5) COAST AND GEODETIC SURVEY ACT.—The term “Coast and Geodetic Survey Act” means the Act entitled “An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes”, approved August 6, 1947 (33 U.S.C. 883a et seq.).

SEC. 303. [33 U.S.C. 892a] FUNCTIONS OF THE ADMINISTRATOR.

(a) RESPONSIBILITIES.—To fulfill the data gathering and dissemination duties of the Administration under the Coast and Geodetic Survey Act, promote safe, efficient and environmentally sound marine transportation, and otherwise fulfill the purposes of this Act, the Administrator shall—

(1) acquire and disseminate hydrographic data and provide hydrographic services;

(2) promulgate standards for hydrographic data used by the Administration in providing hydrographic services;

(3) promulgate standards for hydrographic services provided by the Administration;

(4) ensure comprehensive geographic coverage of hydrographic services, in cooperation with other appropriate Federal agencies;

(5) maintain a national database of hydrographic data, in cooperation with other appropriate Federal agencies;

(6) provide hydrographic services in uniform, easily accessible formats;

¹Section 2 of Public Law 110–386 amends “[s]ection 303 of the Hydrographic Services Improvement Act of 1998 (33 U.S.C. 892) is amended by striking paragraphs (3), (4), and (5)” and inserting new paragraphs (3) through (5). The amendment was carried out to section 302 in order to reflect the probable intent of Congress.

(7) participate in the development of, and implement for the United States in cooperation with other appropriate Federal agencies, international standards for hydrographic data and hydrographic services; and

(8) to the greatest extent practicable and cost-effective, fulfill the requirements of paragraphs (1) and (6) through contracts or other agreements with private sector entities.

(b) **AUTHORITIES.**—To fulfill the data gathering and dissemination duties of the Administration under the Coast and Geodetic Survey Act, promote safe, efficient, and environmentally sound marine transportation, and otherwise fulfill the purposes of this Act, subject to the availability of appropriations, the Administrator—

(1) may procure, lease, evaluate, test, develop, and operate vessels, equipment, and technologies necessary to ensure safe navigation and maintain operational expertise in hydrographic data acquisition and hydrographic services;

(2) shall, subject to the availability of appropriations, design, install, maintain, and operate real-time hydrographic monitoring systems to enhance navigation safety and efficiency; and

(3) where appropriate and to the extent that it does not detract from the promotion of safe and efficient navigation, may acquire hydrographic data and provide hydrographic services to support the conservation and management of coastal and ocean resources;

(4) where appropriate, may acquire hydrographic data and provide hydrographic services to save and protect life and property and support the resumption of commerce in response to emergencies, natural and man-made disasters, and homeland security and maritime domain awareness needs, including obtaining mission assignments (as defined in section 641 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 741));

(5) may create, support, and maintain such joint centers with other Federal agencies and other entities as the Administrator deems appropriate or necessary to carry out the purposes of this Act; and

(6) notwithstanding the existence of such joint centers, shall award contracts for the acquisition of hydrographic data in accordance with subchapter VI of chapter 10 of title 40, United States Code.

(c) **CONSERVATION AND MANAGEMENT OF COASTAL AND OCEAN RESOURCES.**—Where appropriate and to the extent that it does not detract from the promotion of safe and efficient navigation, the Secretary may use hydrographic data and services to support the conservation and management of coastal and ocean resources.

SEC. 304. [33 U.S.C. 892b] QUALITY ASSURANCE PROGRAM.

(a) **DEFINITION.**—For purposes of this section, the term “hydrographic product” means any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

(b) **PROGRAM.**—

(1) **IN GENERAL.**—The Administrator—

(A) by not later than 2 years after the date of enactment of the Hydrographic Services Improvement Act Amendments of 2002, shall, subject to the availability of appropriations, develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under section 303(a)(3) of this Act;

(B) may authorize the use of the emblem or any trademark of the Administration on a hydrographic product certified under subparagraph (A); and

(C) may charge a fee for such certification and use.

(2) **LIMITATION ON FEE AMOUNT.**—Any fee under paragraph (1)(C) shall not exceed the costs of conducting the quality assurance testing, evaluation, or studies necessary to determine whether the hydrographic product satisfies the standards adopted under section 303(a)(3), including the cost of administering such a program.

(c) **LIMITATION ON LIABILITY.**—The Government of the United States shall not be liable for any negligence by a person that produces hydrographic products certified under this section.

(d) **HYDROGRAPHIC SERVICES ACCOUNT.**—

(1) **ESTABLISHMENT.**—There is established in the Treasury a separate account, which shall be known as the “Hydrographic Services Account”.

(2) **CONTENT.**—The account shall consist of—

(A) amounts received by the United States as fees charged under subsection (b)(1)(C); and

(B) such other amounts as may be provided by law.

(3) **USE.**—Amounts in the account shall be available to the Administrator, without further appropriation, for hydrographic services.

(e) **LIMITATION ON NEW FEES AND INCREASES IN EXISTING FEES FOR HYDROGRAPHIC SERVICES.**—After the date of the enactment of this Act, the Administrator may not—

(1) establish any fee or other charge for the provision of any hydrographic service except as authorized by this section; or

(2) increase the amount of any fee or other charge for the provision of any hydrographic service except as authorized by this section and section 1307 of title 44, United States Code.

SEC. 305. [33 U.S.C. 892c] HYDROGRAPHIC SERVICES REVIEW PANEL.

(a) **ESTABLISHMENT.**—No later than 1 year after the date of enactment of the Hydrographic Services Improvement Act Amendments of 2002, the Secretary shall establish the Hydrographic Services Review Panel.

(b) **DUTIES.**—

(1) **IN GENERAL.**—The panel shall advise the Administrator on matters related to the responsibilities and authorities set forth in section 303 of this Act and such other appropriate matters as the Administrator refers to the panel for review and advice.

(2) ADMINISTRATIVE RESOURCES.—The Administrator shall make available to the panel such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

(c) MEMBERSHIP.—

(1) IN GENERAL.—

(A) The panel shall consist of 15 voting members who shall be appointed by the Administrator. The Co-directors of the Center for Coastal and Ocean Mapping/Joint Hydrographic Center and no more than 2 employees of the National Oceanic and Atmospheric Administration appointed by the Administrator shall serve as nonvoting members of the panel. The voting members of the panel shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in 1 or more of the disciplines and fields relating to hydrographic data and hydrographic services, marine transportation, port administration, vessel pilotage, coastal and fishery management, and other disciplines as determined appropriate by the Administrator.

(B) An individual may not be appointed as a voting member of the panel if the individual is a full-time officer or employee of the United States.

(C) Any voting member of the panel who is an applicant for, or beneficiary (as determined by the Secretary) of, any assistance under this Act shall disclose to the panel that relationship, and may not vote on any matter pertaining to that assistance.

(2) TERMS.—

(A) The term of office of a voting member of the panel shall be 4 years, except that of the original appointees, five shall be appointed for a term of 2 years, five shall be appointed for a term of 3 years, and five shall be appointed for a term of 4 years, as specified by the Administrator at the time of appointment.

(B) Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve after the date of the expiration of the term of office for which appointed until his or her successor has taken office.

(3) NOMINATIONS.—At least once each year, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the panel.

(4) CHAIRMAN AND VICE CHAIRMAN.—

(A) The panel shall select one voting member to serve as the Chairman and another voting member to serve as the Vice Chairman.

(B) The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman.

(d) COMPENSATION.—Voting members of the panel shall—

(1) receive compensation at a rate established by the Secretary, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when actually engaged in the performance of duties for such panel; and

(2) be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

(e) MEETINGS.—The panel shall meet on a biannual basis and, at any other time, at the call of the Chairman or upon the request of a majority of the voting members or of the Secretary.

(f) POWERS.—The panel may exercise such powers as are reasonably necessary in order to carry out its duties under subsection (b).

SEC. 306. [33 U.S.C. 892d] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator the following:

(1) To carry out nautical mapping and charting functions under sections 304 and 305, except for conducting hydrographic surveys—

- (A) \$55,000,000 for fiscal year 2009;
- (B) \$56,000,000 for fiscal year 2010;
- (C) \$57,000,000 for fiscal year 2011; and
- (D) \$58,000,000 for fiscal year 2012.

(2) To contract for hydrographic surveys under section 304(b)(1), including the leasing or time chartering of vessels—

- (A) \$32,130,000 for fiscal year 2009;
- (B) \$32,760,000 for fiscal year 2010;
- (C) \$33,390,000 for fiscal year 2011; and
- (D) \$34,020,000 for fiscal year 2012.

(3) To operate hydrographic survey vessels owned by the United States and operated by the Administration—

- (A) \$25,900,000 for fiscal year 2009;
- (B) \$26,400,000 for fiscal year 2010;
- (C) \$26,900,000 for fiscal year 2011; and
- (D) \$27,400,000 for fiscal year 2012.

(4) To carry out geodetic functions under this title—

- (A) \$32,640,000 for fiscal year 2009;
- (B) \$33,280,000 for fiscal year 2010;
- (C) \$33,920,000 for fiscal year 2011; and
- (D) \$34,560,000 for fiscal year 2012.

(5) To carry out tide and current measurement functions under this title—

- (A) \$27,000,000 for fiscal year 2009;
- (B) \$27,500,000 for fiscal year 2010;
- (C) \$28,000,000 for fiscal year 2011; and
- (D) \$28,500,000 for fiscal year 2012.

(6) To acquire a replacement hydrographic survey vessel capable of staying at sea continuously for at least 30 days \$75,000,000.

SEC. 307. AUTHORIZED NUMBER OF NOAA CORPS COMMISSIONED OFFICERS.

[(a) AUTHORIZED NUMBER.—Amends section 2 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853a).]

[(b) OFFICER RESPONSIBLE FOR COMMISSIONED OFFICERS AND VESSEL FLEET.—Amends section 24(a) of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853u(a)).]

(c) RELIEF FROM MORATORIUM ON NEW APPOINTMENTS.—The Secretary of Commerce immediately shall terminate the moratorium on new appointments of commissioned officers to the National Oceanic and Atmospheric Administration Corps.