

**Domestic Authorities  
for NOAA's International Activities**

**International Section  
Office of General Counsel  
National Oceanic and Atmospheric Administration  
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## INTRODUCTION

The compass of NOAA's mission and charge is decidedly outward-directed. As the nation's official steward of the oceans and atmosphere, NOAA is tasked with directing much of its creative energy toward the Global Commons. NOAA fulfills, on behalf of the United States, a critical role in the conservation and sustainable management of natural resources on which the world community relies for its general welfare. At the same time, NOAA's expertise and talents are in the forefront of efforts to protect human life and property against natural forces and against the effect which certain human endeavor can have on critical natural resources. It is an area of responsibility which calls for ongoing cooperation and interaction within the international community. Underlying the responsibilities given to the Agency by statute is an understanding that NOAA should encourage and support such cooperation and interaction wherever it can be most beneficial to global welfare – to urge other nations to join the United States in such efforts. NOAA officials represent the United States and perform leadership functions in the development and enhancement of international fisheries resources and in ecosystem-based management of international as well as domestic marine resources. They provide leadership in climate, space and weather monitoring, in observation and prediction, as well as in the application of science and prudent policy choices to the protection of shared global resources.

This digest is intended to bring together those many instances in which Congress and the President have provided NOAA with specific authority and responsibility to pursue that global mission. There are assembled here the statutes which bring the Department of Commerce – and in particular NOAA – into direct contact with the governments, the regulatory and enforcement agencies, and the legal and scientific experts of other nations for the purpose of conserving and managing the treasures of the natural and cultural environment. It describes every federal statute which has within it an authorization or direction to the Secretary of Commerce or to the NOAA Administrator to undertake international activities or to engage with foreign governments on matters relating to NOAA's mission. Each is described first in terms of its general purposes and scope, and then in a series of subparagraphs which identify and discuss NOAA's specific authority to engage in the international arena. Enactments which amend an existing statute (*e.g.*, The Shark Conservation Act) are not separately described; but if they impart an international authority, that aspect of the amendment will be touched upon in the description of the amended statute. Enactments which are embedded within an existing statute, but retain their distinctiveness in codification (*e.g.*, High Seas Driftnet Fisheries Enforcement Act) or which are reflected in a note to an existing statute (*e.g.*, Anadromous Fish Products Act) are separately described. Most of the statutes (36) relate to the National Marine Fisheries Service; eighteen relate to NOS; ten relate to NWS, NESDIS and OAR collectively; and there are seven of a more general purpose, which authorize relevant outreach efforts by unspecified agencies.

Twenty-two (22) statutes implement U.S. treaty and convention obligations, charging NOAA with the task of promulgating the necessary regulations and with

working to actually meet commitments which the United States has accepted. Included within these are bilateral agreements as well as multilateral conventions such as those establishing the regional fishery management organization to which the U.S. is a party. The direction given to NOAA in this context is largely nondiscretionary. Another five (5) statutes embody the U.S. follow-up to United Nations resolutions and initiatives, in some instances employing listing and certification schemes and directing application of the incentive of trade sanctions to obtain compliance by other nations. These also impose duties upon NOAA that are largely nondiscretionary.

Twenty-two (22) statutes direct NOAA to undertake the protection of identified species or categories of natural resource. These efforts are given an international scope. Included among these are not only recent measures for shark conservation and coral reef management, but older enactments such as the Endangered Species Act and the Marine Mammal Protection Act which, among other things, provide the Secretary of Commerce with discretion to enter into bilateral and multilateral agreements with other nations for the protection of targeted resources. Five (5) statutes authorize measures for the protection and enhancement of the American fishing industry; another four (4) facilitate U.S. access to fishery and other ocean resources. Ten (10) statutes direct NOAA to undertake categories of cooperative research; five (5) relate to charting, mapping, surveys and ocean geology; and an additional seven (7) provide authority and direction with respect to climate, weather research and monitoring. Finally, there are five (5) broadly applicable statutes which authorize international educational exchange and information sharing.

This digest will always be a work-in-progress. New legislative initiatives and revisions to existing statutes are continually emerging in this area of critically important endeavor. In a number of instances, the digest includes references to Executive Orders and Presidential Decision Directives where the President has exercised discretion given him to delegate international functions and responsibilities to the Secretary of Commerce or directly to NOAA.

One other distinction that is worth noting by way of introduction is the distinction between an inflexible direction to the Secretary to act and an authorization to exercise discretion to act. For example, in connection with the congressional goal of implementing the U.N. moratorium on the use of large-scale driftnets, the Secretary of Commerce is directed to seek to secure international agreements and, in consultation with the Secretary of State, to include specific types of provisions in those agreements. On the other hand, in connection with the conservation of Antarctic living marine resources, NOAA is given authority to establish a program to give effect to NOAA's strategic goal of managing the resources of the Southern Ocean through an ecosystem approach. Similarly, in pursuit of the goal of protecting marine mammals, the Secretary of Commerce may develop bilateral and multilateral agreements and may initiate discussions with foreign governments. Many of the statutes combine the two bases for engagement or action. For example, in fulfilling U.S. responsibilities under the Western and Central Pacific Fisheries Convention, the Secretary of Commerce is directed to establish a permanent advisory committee and to furnish it with information on



international fishery agreements. At the same time, the Secretary may cooperate with agencies of government and public and private organizations within the U.S. or abroad in carrying out responsibilities under the Act.

The international legal framework which addresses the protection and preservation of the marine environment and within which rights are allocated – a framework which includes the U.N. Convention on the Law of the Sea and the Convention on Biological Diversity – clearly reflects the principle that nations do not enjoy an absolute right to exploit the resources of the Global Commons. But the structure necessary to implement that principle is still being developed. In its preamble, UNCLOS recognizes the desirability of “a legal order for the seas and oceans” which will promote their peaceful uses, “the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.” No state on its own has the legal competence to regulate the use and exploitation of the Global Commons. That competence must, of necessity, rest with the international community as a whole. NOAA has been charged by Congress to represent the United States in reaching out to international community to encourage and support such common efforts – indeed, to lead and effectively participate in such cooperative endeavors.

## NATIONAL MARINE FISHERIES SERVICE

### ***Anadromous Fish Products Act, 16 U.S.C. § 1822 note, Section 801 of Pub. L. 101-627***

The Secretary of State shall commence negotiations with nations which import or export anadromous fish for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested. Section 801(a). The **Secretary of Commerce** shall promulgate regulations providing for the issuance of certificates of legal origin and, after consultation with the Secretary of the Treasury, shall submit to the Congress a report making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish; and identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary. Section 801(d), (e).

#### *Authority for International Activities/Engagement by NOAA/DOC:*

Efforts undertaken by the Secretary of State may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, with those nations which individually have in excess of \$1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products. Section 801(c). If the **Secretary of Commerce** finds that any foreign nation is engaged in trade in unlawfully taken anadromous fish or fish products, the Secretary shall certify that fact to the President. That certification will enable the President to impose trade sanctions. Section 801(f).

### ***Antarctic Conservation Act of 1978, 16 U.S.C. §§ 2401–2413, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Pub. L. 104-227***

The goal of this statute is to protect the native mammals, birds, and plants of Antarctica and to protect their ecosystems. The law applies to all U.S. citizens, whether or not they go to Antarctica with the U.S. Antarctic Program. It applies to all expeditions to Antarctica that originate from the United States. Unless authorized by permit, the Act makes it unlawful to: take native mammals or birds; engage in harmful interference; enter specially designated areas; introduce non-native species to Antarctica; introduce substances designated as pollutants; discharge designated pollutants; or import certain Antarctic items into the U.S. 16 U.S.C. § 2403. The National Science Foundation (NSF)

funds and manages the U.S. Antarctic Program and administers the Act and its permit system. 16 U.S.C. § 2404.

The Act directs each federal agency whose activities affect Antarctica (Treasury, **Commerce**, Interior, and Coast Guard) to utilize its authorities in furtherance of the purposes of this Act and to cooperate with the NSF in carrying out its purposes. Each of these agencies, as well as the NSF, may prescribe such regulations as may be appropriate to enforce the provisions of this Act and the provisions of any regulation prescribed or permit issued under this Act, and charge reasonable fees for the expenses incurred in carrying out boarding and inspections and in transferring, handling, or storing native mammals, native birds, native plants, as well as animals and plants not indigenous to Antarctica, and other evidentiary items seized or forfeited under this chapter. 16 U.S.C. §§ 2409, 2411. **NOAA**'s enforcement regulations, 15 CFR Part 904, specifically apply to the Antarctic Conservation Act.

The Protocol on Environmental Protection (the Protocol), which was signed in 1991 and which entered into force in 1998, strengthens Antarctic environmental standards. The U.S. has established a comprehensive system to implement Annex I of the Protocol. EPA, in consultation with other interested federal agencies, including State Department, Coast Guard and **NOAA**, is responsible for review of Environmental Impact Assessments prepared by nongovernmental operators, including tourism operators and scientific research expeditions. NSF provides scientific and Antarctic program management expertise, while EPA and **NOAA** provide environmental protection authority.

*Authority for International Activities/Engagement by NOAA/DOC:*

The statute contemplates “Antarctic Joint Activity,” or any Federal activity in Antarctica which is proposed to be conducted, or which is conducted by agencies such as **NOAA**, jointly or in cooperation with one or more foreign governments. Where the Secretary of State, in cooperation with the lead U. S. agency planning an Antarctic Joint Activity, determines that the major part of the joint activity is being contributed by another government; that such government is coordinating the implementation of environmental impact assessment procedures; and such government has signed, ratified, or acceded to the Protocol, then the requirements applicable to U.S. agency activity (essentially, NEPA) will not apply. 16 U.S.C. § 2403a(b).

***Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. §§ 2431-2444***

This Act provides the legislative authority necessary to implement the Convention on the Conservation of Antarctic Marine Living Resources (“Convention”), under which a Commission (CCAMLR) was established with responsibility to manage and protect

marine living resources south of the Antarctic convergence. 16 U.S.C. § 2431(b). The Act provides authority for **NOAA Fisheries** to establish the U.S. Antarctic Marine Living Resources (AMLR) Program, and to effect **NOAA's** strategic goal of managing the use of Southern Ocean living marine resources through an ecosystem approach. The AMLR Program (working with the Department of State) supports U.S. participation in both the Commission and the Scientific Committee of the CCAMLR, and conducts directed research towards achieving the conservation objectives of the Convention. The Act makes it illegal to harvest Antarctic marine living resources in violation of the Convention. 16 U.S.C. § 2435.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Designation of Representatives** – The Secretary of State, with the concurrence of the **Secretary of Commerce** and the Director of the National Science Foundation (NSF), shall appoint an officer or employee of the U.S. as the U.S. representative to the Commission. 16 U.S.C. § 2433(a). The **Secretary of Commerce** and the Director of NSF shall jointly designate the U.S. representative to the Scientific Committee for the Conservation of Antarctic Marine Living Resources established pursuant to the Convention. 16 U.S.C. § 2433(b).

**Communication with the Commission** – The Secretary of State, with the concurrence of the **Secretary of Commerce** and the Director of the NSF, is authorized to decide whether the United States is unable to accept or can no longer accept a conservation measure adopted by the Commission, 16 U.S.C. § 2434(a), and with the same concurrence, is authorized to agree on behalf of the United States to the establishment of a system of observation and inspection. 16 U.S.C. § 2434(b). The Secretary of State is further authorized to receive reports, requests, and other communications from the Commission and to take appropriate action on them, either directly or by reference to the appropriate authority. 16 U.S.C. § 2434(c).

**Secretary of Commerce** – The **Secretary of Commerce**, in consultation with the Secretary of State and the Director of the NSF, shall design and conduct a program of directed scientific research, and shall prepare a plan for conducting such research and submit an updated plan to Congress annually. 16 U.S.C. § 2441(a). The **Secretary of Commerce** is also responsible for promulgating regulations to implement the Act, 16 U.S.C. § 2436, and together with the Secretary of the Department of Homeland Security, to enforce the Act. 16 U.S.C. § 2439(a). The Secretaries of State and **Commerce** and the Director of the NSF are required to consult with other federal agencies and the Marine Mammal Commission as appropriate. 16 U.S.C. § 2441(b).

**Presidential Decision Directive/NSC-26 (June 9, 1994)  
("United States Policy on the Arctic and Antarctic  
Regions")**

This PDD directs implementation of a United States policy related to the Arctic and Antarctic regions, reflecting the importance of protecting these unique and fragile environments and recognizing the need for international cooperation and the leadership role of the U.S. in these cooperative international efforts. It has been superseded with respect to Arctic policy by the Directive which follows, but not with respect to Antarctic policy.

United States policy toward Antarctica has four fundamental objectives: (1) protecting the relatively unspoiled environment of Antarctica and its associated ecosystems, (2) preserving and pursuing unique opportunities for scientific research, (3) maintaining Antarctica as an area of international cooperation reserved exclusively for peaceful purposes, and (4) assuring the conservation and sustainable management of the living resources in the oceans surrounding Antarctica. The U.S. has taken the lead in negotiating and implementing related agreements concerning Antarctica and its surrounding waters. These agreements include the 1980 Convention on the Conservation of Antarctic Marine Living Resources and, the 1991 Protocol on Environmental Protection to the Antarctic Treaty. **NOAA** should maintain a strong scientific program that enables the United States to persuasively advocate effective conservation and sustainable management of these resources by fishing nations.

**National Security Presidential Directive/NSPD-66 and  
Homeland Security Presidential Directive-25 (January 9,  
2009) ("Arctic Region Policy")**

It is the policy of the United States to: meet national security and homeland security needs relevant to the Arctic region; protect the Arctic environment and conserve its biological resources; ensure that natural resource management and economic development in the region are environmentally sustainable; strengthen institutions for cooperation among the eight Arctic nations (the United States, Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, and Sweden); involve the Arctic's indigenous communities in decisions that affect them; and enhance scientific monitoring and research into local, regional, and global environmental issues.

In carrying out this policy as it relates to promoting scientific international cooperation, the **Secretary of Commerce** in cooperation with the Secretaries of State and the Interior and the Director of the

National Science Foundation shall continue to play a leadership role in research throughout the Arctic region.

In carrying out this policy as it relates to maritime transportation in the Arctic region, the **Secretary of Commerce** in coordination with heads of other relevant executive departments and agencies shall develop additional measures, in cooperation with other nations, to address issues that are likely to arise from expected increases in shipping into, out of, and through the Arctic region.

In carrying out this policy as it relates to economic issues, the **Secretary of Commerce**, in coordination with heads of other relevant executive departments and agencies, shall seek to increase efforts to study changing climate conditions, with a view to preserving and enhancing economic opportunity in the Arctic region.

In carrying out this policy as it relates to environmental protection and conservation of natural resources, the Secretaries of State, the Interior, Commerce, and Homeland Security and the Administrator of the Environmental Protection Agency, in coordination with heads of other relevant executive departments and agencies, shall, in cooperation with other nations, respond effectively to increased pollutants and other environmental challenges.

***Antarctic Protection Act of 1990, 16 U.S.C. § 2461-2466, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Pub. L. 104-227***

It is unlawful for any person to engage in, finance, or otherwise knowingly provide assistance to any Antarctic mineral resource activity. 16 U.S.C. § 2463. A violation of this chapter or any regulation promulgated under this chapter is deemed to be a violation of the Antarctic Marine Living Resources Convention Act (16 U.S.C. §§ 2431–2444) and shall be enforced under that Act by the **Under Secretary of Commerce for Oceans and Atmosphere** or another Federal official to whom the Under Secretary has delegated this responsibility. 16 U.S.C. § 2465(a).

*Authority for International Activities/Engagement by NOAA/DOC:*

**Purpose** – It is the purpose of this Act, among other things, to urge other nations to join the United States in immediately negotiating one or more new agreements to provide an indefinite ban on all Antarctic mineral resource activities and comprehensive protection for Antarctica and its associated and dependent ecosystems; and to urge all nations to consider a permanent ban on Antarctic mineral resource activities. 16 U.S.C. §

2461(b). The statute originally declared it to be the sense of Congress that the Secretary of State should negotiate international agreements relating to protection of the Antarctic environment.

**Madrid Protocol** – However, in October 1991, the Protocol on Environmental Protection to the Antarctic Treaty was adopted at Madrid and it received the advice and consent of the U.S. Senate in October 1992. Article 7 of the Protocol prohibited all mineral resource enterprises except for scientific purposes. The Protocol entered into force on January 14, 1998. On October 2, 1996, the President signed the Antarctic, Science, Tourism, and Conservation Act which repealed the direction that had been given to the Secretary of State as being superfluous. The other provisions of the Act described above remain in effect.

The Madrid Protocol, among other things, calls upon the parties to promote cooperative programs of scientific, technical and educational value concerning the protection of the Antarctic environment and dependent and associated ecosystems; to provide appropriate assistance to other Parties in the preparation of environmental impact assessments; and to provide to other Parties upon request information relevant to any potential environmental risk. These are efforts that could clearly involve **NOAA**.

Moreover, each Party shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Protocol. Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to this Protocol. Each Party shall draw the attention of all other Parties to any activity which in its opinion affects the implementation of the objectives and principles of this Protocol.

The Parties shall co-operate in the formulation and implementation of contingency plans; and establish procedures for immediate notification of, and co-operative response to, environmental emergencies. The Parties shall draw upon the advice of the appropriate international organizations. **NOAA's** enforcement regulations, 15 CFR Part 904, specifically address the Antarctic Protection Act of 1990. Enforcement of the protocol is subject to binding arbitration or compulsory International Court of Justice jurisdiction.

***Arctic Research and Policy Act of 1984, as amended, 15 U.S.C. §§ 4101-4111***

The purpose of this Act is to establish national policy, priorities, and goals, as well as to provide a federal program plan, for basic and applied scientific research with respect to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences, and to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy. Each federal agency, including the **Department of Commerce**, shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law.

*Authority for International Activities/Engagement by NOAA/DOC:*

The statute directs the President to establish an Interagency Arctic Research Policy Committee to be composed of representatives from specified federal agencies, including the **Department of Commerce**. This Interagency Committee shall survey research that has been done, help determine priorities for future Arctic research, work with the Commission to develop an integrated national Arctic research policy that will guide federal agencies, facilitate cooperation among entities in the U.S, and coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State. **But see, Presidential Memorandum – Arctic Research and Policy Act (July 22, 2010) described below.**

**Executive Order No. 12501 (January 28, 1985) (“Arctic Research”)**

With this Executive Order, the President fulfilled his obligation under the statute to establish the Arctic Research Commission, identifying its membership, functions, and responsibilities, as prescribed by the Act, and he established the Interagency Arctic Research Policy Committee – again, as prescribed by the Act.

**Presidential Memorandum – Arctic Research and Policy Act (July 22, 2010)**

With this memorandum, the President assigned to the Cabinet-level National Science and Technology Council (NSTC) responsibility to coordinate activities assigned in the Act to the Interagency Arctic Research Policy Committee, including through Committees of the NSTC. The **Secretary of Commerce** is a member of the NSTC. The **NOAA Administrator** is a Co-Chair of the NSTC’s Committee on Environment and Natural Resources.



## ***Atlantic Salmon Convention Act of 1982, 16 U.S.C. §§ 3601–3608***

This statute implements the various responsibilities to which the United States is committed as a signatory to the Convention for the Conservation of Salmon in the North Atlantic Ocean. It is illegal for a person or vessel to fish for salmon in certain Atlantic Ocean waters (seaward of the 12 mile territorial sea and north of 35 degrees north latitude), or to violate the Convention, the Act or any regulations enacted under the Act. Violations may be subject to civil and criminal penalties, and civil forfeiture of the vessel. 16 U.S.C. § 3606(a).

### *Authority for International Activities/Engagement by NOAA/DOC:*

**Contacts with the Commission** – The President is required to appoint three U.S. Commissioners to the North Atlantic Salmon Conservation Organization’s (NASCO’s) coordinating Council and to the Commissions established by the Convention for the Conservation of Salmon in the North Atlantic Ocean (Convention). 16 U.S.C. § 3602(a). There are three regional Commissions that are responsible for proposing regulatory measures and recommending scientific research. The U.S. is a member of two of the three Commissions. The Act authorizes the Secretary of State to receive reports, requests, recommendations and proposals from NASCO and, with the concurrence with the **Secretary of Commerce** and the Secretary of the Interior, to approve or object to regulatory measures proposed in accordance with the Convention, and to otherwise act upon communications received from NASCO. 16 U.S.C. § 3603(a). In the absence of concurrence, the President is to decide.

**Secretary of Commerce** – The Act directs the **Secretary of Commerce**, with the concurrence of the Secretaries of the Interior and Homeland Security, to promulgate regulations to carry out the Convention and this Act and the **Secretary** is responsible for implementing measures that are binding on the U.S. under the Convention. 16 U.S.C. § 3604(a). The **Secretary of Commerce**, in cooperation with the Secretary of the Interior, shall prepare all statements, reports, and notifications, required by Articles 14 (regarding enforcement actions) and 15 (regarding conservation, restoration, enhancement efforts) of the Convention and submit such documents to the Secretary of State for transmission to NASCO. 16 U.S.C. § 3604(b).

## ***Atlantic Tunas Convention Act of 1975, 16 U.S.C. §§ 971–971k***

The Act is the implementing statute for the International Convention for the Conservation of Atlantic Tunas (ICCAT), to which the United States is a party. ICCAT is a regional fishery management organization that manages and conserves bluefin tuna, swordfish,

and other tuna and tuna-like species in the Atlantic Ocean. The Act authorizes the Secretary of State, with the concurrence of the **Secretary of Commerce** (and for enforcement matters, the Secretary of the department in which the Coast Guard is operating), to take action in response to recommendations from the ICCAT Commission, and to enter into agreements with any contracting party. 16 U.S.C. § 971c.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Communications with the Commission** – The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council (which meets between meetings of the Commission) and Panels of the Commission as provided for in the Convention. 16 U.S.C. § 971c. The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. 16 U.S.C. § 971c(a). The Secretary of State, with the concurrence of the **Secretary of Commerce** and, for matters relating to enforcement, the Secretary of Homeland Security, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission relating to maintenance of tuna and tuna-like species in the Convention area. 16 U.S.C. § 971c(a).

**Agreements with Parties** – The Secretary of State, in consultation with the **Secretary of Commerce** and the Secretary of Homeland Security, is authorized to enter into agreements with any contracting party relating to cooperative enforcement of the provisions of the Convention, relating to recommendations in force for the U.S. and such party, and regulations adopted by the U.S. and such contracting party pursuant to recommendations of the Commission. 16 U.S.C. § 971c(b).

**Secretary of Commerce** – The **Secretary of Commerce** is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided. In carrying out such functions the **Secretary** is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and, with the concurrence of the Secretary of State, may cooperate with the duly authorized officials of the government of any party to the Convention. 16 U.S.C. § 971d(a).

**Seeking Commission Support** – Upon favorable action by the Secretary of State on any recommendation of the Commission made pursuant to Article VIII of the Convention (under which the Commission may make recommendations), the **Secretary of Commerce** shall promulgate such regulations as may be necessary and appropriate to carry out such

recommendation. 16 U.S.C. § 971d(c). The **Secretary of Commerce**, in consultation with the Secretary of State, shall also seek support for a recommendation by the Commission to ban large-scale driftnet fishing in the Convention area and, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. 16 U.S.C. § 971d(d).

### ***Central, Western, and South Pacific Fisheries Development Act, 16 U.S.C. §§ 758e-758e-5***

The **Secretary of Commerce** is authorized to carry out, directly or by contract with another agency or organization, a program for the development of the tuna and other latent fisheries resources of the Central, Western, and South Pacific Ocean. The program shall include, but not be limited to, exploration for, and stock assessment of, tuna and other fish; improvement of harvesting techniques; gear development; biological resource monitoring; and an economic evaluation of the potential for tuna and other fisheries in such area. 16 U.S.C. § 758e.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**Consultation** – In carrying out the purposes of sections 758e to 758e-5, the **Secretary of Commerce** shall consult, and may otherwise cooperate, with the Secretary of the Interior, the Secretary of State, the State of Hawaii and other affected States, the governments of American Samoa and Guam, the Office of the High Commissioner of the Trust Territory of the Pacific Islands (terminated in 1986; now comprising four separate, self-governing districts), the Commonwealth of the Northern Mariana Islands, educational institutions, the commercial fishing industry, and all appropriate member nations of a South Pacific regional fishery agency, if such an agency is formed (*see* note below). 16 U.S.C. § 758e-1.

[NOTE: On the formation of South Pacific regional fishery agency – In 1977, the island nations of the South Pacific Forum, including the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, Niue, Papua New Guinea, the Solomon Islands, Tonga, Tuvalu, Vanuatu, Western Samoa, Australia, and New Zealand, voted to declare a 200-mile EEZ and to establish the Forum Fisheries Agency in order that member countries might provide a united front in negotiations with other fishing nations.]

**Cooperative Program** – In addition to the authority granted in section 758e described above, the **Secretary of Commerce**, in consultation with

representatives of all interested member nations of the regional fishery agency, and those parties set forth in section 758e–1 who are identified above, may establish a cooperative program for the development of tuna and other latent fisheries resources of the Central, Western, and South Pacific Ocean to be submitted to the President and the Congress within one year following official formation of the regional fishery agency. 16 U.S.C. § 758e-1a. The **Secretary** shall make available to all interested member nations of the regional fishery agency the results and findings of research or development projects carried out under sections 758e to 758e–5 of this title. *Id.*

### ***Driftnet Act Amendments of 1990, 16 U.S.C. § 1826***

This statute incorporated and expanded upon the Driftnet Impact Monitoring, Assessment and Control Act, described below, declaring it to be the goal of the Congress to implement the moratorium on the use of large-scale driftnets called for by the United Nations General Assembly in Resolution Numbered 44–225; to support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and to secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation. 16 U.S.C. § 1826(c).

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**International Agreements** – The **Secretary of Commerce**, through the Secretary of State and the Secretary of Homeland Security, shall seek to secure international agreements to implement an international ban on large-scale driftnet fishing. The **Secretary**, through the Secretary of State shall include in any agreement which addresses the taking of living marine resources of the United States, provisions (among others) that require foreign driftnet vessels to be equipped with satellite transmitters, that authorize U.S. officials to board and inspect foreign driftnet vessels for violations of the agreement, that require reliable monitoring and documentation of all catches by foreign vessels, that impose time and area restrictions on driftnet use to prevent interception of anadromous species, that require that driftnets be constructed of biodegradable materials, that require driftnets to be clearly marked, that minimize the taking of non-target living resources, and that ensure definitive steps are taken to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the EEZ of any nation.. 16 U.S.C. § 1826(d).

**Report and Listing** – The **Secretary of Commerce** is directed to report annually to Congress on progress and impacts and, among other things, to list any nations that conduct high seas driftnet fishing in a manner inconsistent with any international agreement. 16 U.S.C. § 1826(e). If the **Secretary of Commerce** identifies a nation that warrants inclusion on such list, the **Secretary** shall certify that fact to the President who will then have discretion to embargo products imported into the United States from such nation, provided such action is consistent with U.S. obligations under the General Agreement on Tariffs and Trade. 16 U.S.C. § 1826(f).

***The Driftnet Impact Monitoring, Assessment, and Control Act, Pub. L 100-220, §§ 4001-4009, 16 U.S.C. § 1822 note***

This statute was expanded upon by the Driftnet Act Amendments of 1990 described above. The **Secretary of Commerce** is directed to seek agreements with foreign nations as described below.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Negotiations** – This statute authorizes the **Secretary of Commerce**, through the Secretary of State and in consultation with the Secretary of the Interior, to initiate negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation (*e.g.*, anadromous salmon). The purpose of such negotiations is to enter into agreements for statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed, retrieved, discarded or lost by the foreign government's driftnet fishing vessels. Pub. L. 100-220, Section 4004(a).

**Monitoring, Detection, Enforcement** – The **Secretary of Commerce** is also directed to initiate, through the Secretary of State and in consultation with the Secretary of the Department in which the Coast Guard is operating, negotiations with each such foreign government for the purpose of entering into agreements for effective enforcement of laws, regulations, and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels, for the effective monitoring and detection of violations, for the collection of evidence, and for reporting to the U.S. the penalties imposed by such foreign governments. Pub. L. 100-220, Section

4006(a). Agreements have been negotiated pursuant to this authority with the governments of Japan, Korea, and Taiwan.

**Sanctions** – If the **Secretary of Commerce** determines that a foreign government has failed to implement such an agreement, the **Secretary** shall certify that fact to the President who may impose trade sanctions pursuant to 22 U.S.C. § 1978(a) (The Fishermen’s Protective Act). Pub. L. 100-220, Section 4006(b).

### ***Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. §§ 972–972h***

The **Secretary of Commerce**, in cooperation with the Secretary of State and the Secretary of Homeland Security, shall issue such regulations as may be necessary to carry out the purposes and objectives of the Eastern Pacific Ocean Tuna Fishing Agreement and this act. Regulations may be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located. Regulations concerning the conservation of a designated species of tuna may be issued only to implement conservation recommendations made by the Council (which consists of representatives from each Contracting Party to the Agreement which is a Coastal State of the eastern Pacific Ocean or a member of the Inter-American Tropical Tuna Commission). 16 U.S.C. § 972e.

It is unlawful to engage in fishing for a designated species of tuna within the Agreement Area without a license or in contravention of regulations promulgated by the **Secretary of Commerce**; or to knowingly ship, transport, purchase, sell, offer for sale, export, or have in custody, possession, or control any designated species of tuna taken or retained in violation of regulations issued by the **Secretary**; or to fail to make, keep, or furnish any catch return, statistical record, or other report required by regulations. 16 U.S.C. § 972f(a).

#### *Authority for International Activities/Engagement by NOAA/DOC:*

The Secretary of State shall appoint a United States representative to the Council. 16 U.S.C. § 972a. The Secretary of State shall receive, on behalf of the United States Government, reports, requests, recommendations and other communications of the Council, and, in consultation with the **Secretary of Commerce**, shall act directly thereon or by reference to the appropriate authorities. 16 U.S.C. § 972b. The protections afforded to U.S. vessels under the Fishermen's Protective Act of 1967 [22 U.S.C. §§ 1971-1980b] apply with respect to a seizure by a Contracting Party to the Agreement of a vessel of the United States within the Agreement Area for violation of the Agreement if the Secretary of State determines that the violation is not of such seriousness as to diminish the effectiveness of the Agreement.

### ***Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1543***

The Endangered Species Act establishes a comprehensive program to limit harm to and promote the survival and recovery of endangered and threatened species within the United States. Species and their critical habitat are to be protected if, in the case of marine species, the **Secretary of Commerce** determines, pursuant to regulation, that the species is endangered or threatened because of the present or threatened destruction or modification of its habitat or range; because of overutilization for commercial, recreational, scientific, or educational purposes; because of disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors. 16 U.S.C. § 1533. Federal agencies are also required, through consultation with **NOAA Fisheries** or Fish and Wildlife Service, to ensure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. §§ 1536.

It is unlawful for any person subject to the jurisdiction of the United States to import any endangered species of fish or wildlife (or endangered plants) into, or to export any such species from, the United States; to take any such species within the United States; to take any such species upon the high seas; to possess, sell, deliver, carry, transport, or ship any such species; to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity, any such species; to sell or offer for sale in interstate or foreign commerce any such species; or to violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to the Act. 16 U.S.C. §§ 1538(a).

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**Treaties and Assistance** – The Act established an Endangered Species Committee to consider applications for exemption for federal agency actions. No application for a federal agency exemption from the requirements of the Act will be considered by the Committee if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. 16 U.S.C. § 1536(i).

**Foreign Assistance** – The President may provide development and management assistance to any foreign country that the **Secretary of Commerce** determines to be necessary or useful to endangered or threatened species conservation. 16 U.S.C. § 1537(a). The **Secretary of Commerce**, through the Secretary of State, may enter into agreements

with foreign countries to conserve threatened and endangered species, as well as encourage foreign persons who import animals or plants to use conservation practices that enhance the habitat of the animals or plants being imported. 16 U.S.C. § 1537(b). The **Secretary of Commerce**, through the Secretary of State, may also provide personnel or financial assistance in order to cooperate with foreign countries and international organizations in promoting the conservation of fish or wildlife or plants. 16 U.S.C. § 1537(c). The **Secretary of Commerce**, after consulting with the Secretaries of State and Treasury, may also conduct such law enforcement investigations and research abroad as the **Secretary** deems necessary in order to conserve endangered or threatened species. 16 U.S.C. § 1537(d).

**Conservation of Sea Turtles** – The Secretary of State, in consultation with the **Secretary of Commerce**, shall, with respect to those species of sea turtles the conservation of which is the subject of regulations promulgated by the **Secretary of Commerce** initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of such species of sea turtles; initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which, as determined by the **Secretary of Commerce**, may affect adversely such species of sea turtles, for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species of sea turtles; initiate the amendment of any existing international treaty for the protection and conservation of such species of sea turtles; and provide to the Congress a list of each nation which conducts commercial shrimp fishing operations which may affect adversely such species of sea turtles. 16 U.S.C. § 1537 note, Section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990, Pub. L. 101–162 (Nov. 21, 1989).

The importation of shrimp or products from shrimp which have been harvested with commercial fishing technology which may affect adversely such species of sea turtles shall be prohibited unless the Secretary of State shall certify that the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. *Id.*



### ***Fish and Seafood Promotion Act of 1986, 16 U.S.C. §§ 4001–4017***

The purpose of this statute is to strengthen the competitive position of the United States commercial fishing industry in the domestic and international marketplace; to encourage the development and utilization of all species of fish available for harvest by the United States fishing industry; to encourage the utilization of domestically-produced fish through enhancement of markets, promotion, and public relations; to help the United States fishing industry develop methods to improve quality and efficiency in the marketplace; and to develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs. 16 U.S.C. § 4002.

#### **Authority for International Activities/Engagement by NOAA/DOC:**

Persons meeting specified requirements may file with the **Secretary of Commerce** an application for a charter to establish a “seafood marketing council” for one or more species of fish and fish products. 16 U.S.C. § 4009(a). Marketing and promotion plans and amendments to such plans prepared by such council shall be designed to increase the general demand for fish and fish products described in accordance with section 4009(b)(3) of this Act 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. 16 U.S.C. § 4010(b). The **Secretary** shall review marketing and promotion plans for consistency with the provisions of this Act and other applicable law and approve or disapprove such plans,. 16 U.S.C. § 4011(a).

### ***Fisherman’s Protective Act of 1967, 22 U.S.C. §§ 1971-1980b***

This statute establishes a Fisherman’s Protective Fund and a Fishing Vessel and Gear Damage Compensation Fund which shall be used to reimburse owners of U.S. vessels who sustain losses that are certified to be reimbursable under the Act. 22 U.S.C. §§ 1979, 1980(f). If any vessel of the United States is seized by a foreign country on the basis of claims to jurisdiction that are not recognized by the United States or if it is seized in a manner inconsistent with international law, or if a U.S. vessel is seized based on any general claim of any foreign country to exclusive fishery management authority, but the vessel is seized pursuant to conditions and restrictions that are unrelated to fishery conservation and management, or that fail to consider traditional fishing practices of vessels of the United States, or are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels, then the Secretary of State shall take steps to protect the vessels and crew, secure their release, and determine the amount of any appropriate reimbursement to the owner, while seeking payment of the claim by the foreign nation. 22 U.S.C. § 1972.

The owner or operator of any U.S. fishing vessel is eligible for monetary compensation under this section for any damage to, loss of, or destruction of such vessel, or any fishing gear used with such vessel, or if the damage, loss, or destruction occurs when such vessel is engaged, or when such fishing gear is being used, in any fishery subject to the exclusive fishery management authority of the United States and is attributable to any vessel (or its crew or fishing gear) other than a vessel of the United States. 22 U.S.C. §§ 1980(b)

*Authority for International Activities/Engagement by NOAA/DOC:*

**Operations Adversely Affecting Fisheries Conservation** – When the **Secretary of Commerce** determines that nationals of a foreign country are, directly or indirectly, conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the **Secretary of Commerce** shall certify such fact to the President. 22 U.S.C. §§ 1978(a)(1). When the **Secretary of Commerce** or the Secretary of the Interior finds that nationals of a foreign country are, directly or indirectly, engaging in trade or a taking which diminishes the effectiveness of any international program for endangered or threatened species, the **Secretary** making such finding shall certify such fact to the President. 22 U.S.C. §§ 1978(a)(2). Upon receipt of any such certification, the President may direct the Secretary of the Treasury to prohibit the importation into the United States of any products from the offending country for any duration that the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization or multilateral trade agreements. 22 U.S.C. §§ 1978(a)(4).

**Conditions Inconsistent with International Law** – If the Secretary of State finds that the government of any nation imposes conditions on the operation or transit of U.S. fishing vessels which the United States regards as being inconsistent with international law or an international agreement, the Secretary of State shall certify that fact to the President. 22 U.S.C. §§ 1980b(a). Upon receipt of such a certification, the President shall direct the heads of Federal agencies to impose similar conditions on the operation or transit of fishing vessels registered under the laws of the nation which has imposed such conditions on United States fishing vessels. 22 U.S.C. §§ 1980b(b).

***Fur Seal Act of 1966, 16 U.S.C. §§ 1151–1175***

This statute makes it unlawful, except as expressly provided therein, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United

States, or to use any port or other place under the jurisdiction of the United States for any purpose connected with such taking. It is also unlawful for any person to transport, import, offer for sale, or possess at any place or on any vessel subject to the jurisdiction of the United States, fur seals or the parts thereof taken contrary to the provisions of this Act or the Convention on Conservation of North Pacific Fur Seals, as amended. 16 U.S.C. § 1152. Furthermore, it is unlawful for any person subject to the jurisdiction of the United States to refuse to permit, except within the EEZ of the United States, a duly authorized official of Canada, Japan, or Russia to board and search any vessel which is outfitted for the harvesting of living marine resources and which is subject to the jurisdiction of the United States in order to determine whether such vessel is engaged in sealing contrary to the provisions of the Convention. *Id.* Seals may be taken for subsistence purposes by native populations, as defined in the Marine Mammal Protection Act.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Appointments** – The President shall appoint a United States Commissioner to the North Pacific Fur Seal Commission and may appoint one Native from each of the two inhabited Pribilof Islands to serve as Advisors to the Commissioner and as liaisons between the Commissioner and the Natives of the Pribilof Islands. The President may also appoint other interested parties as Advisors to the Commissioner. 16 U.S.C. § 1157.

**Communications with the Commission** – The Secretary of State, with the concurrence of the **Secretary of Commerce**, is authorized to accept or reject, on behalf of the United States, recommendations made by the Commission pursuant to article V of the Convention. 16 U.S.C. § 1158. The head of any Federal agency is authorized to consult with and provide technical assistance to the **Secretary of Commerce** or to the Commission whenever such assistance is needed and reasonably can be furnished in carrying out the provisions of this Act. 16 U.S.C. § 1159.

***High Seas Driftnet Fisheries Enforcement Act, 16 U.S.C. § 1826a-c***

The goal of this statute is to implement UN General Assembly Resolution 46/215 which called for a worldwide moratorium on use of large-scale driftnets beyond the EEZ of any nation beginning December 31, 1992, for a cessation of any expansion of large-scale driftnet fishing, and for a 50% reduction in existing large-scale driftnet fishing effort. 16 U.S.C. 1826a note (congressional statement of findings and policy), Pub. L. 102-582, Section 101(a), (b). The **Secretary of Commerce**, in consultation with the Secretary of State, is directed to publish a list of nations whose nationals are conducting large-scale driftnet fishing beyond the EEZ of any nation. The Secretary of State must notify such nation of the effect of such publication and any sanctions and requirements that may

apply. The Secretary of the Treasury must then withhold or revoke clearance and deny entry of that nation's large-scale driftnet vessels into U.S. ports and navigable waters. 16 U.S.C. § 1826a(a). Not later than 30 days after the **Secretary of Commerce** identifies a nation as one whose vessels are conducting large-scale driftnet fishing or illegal, unreported, or unregulated (IUU) fishing beyond the EEZ of any nation, the President is directed to undertake the consultations described below. 16 U.S.C. § 1826a(b).

*Authority for International Activities/Engagement by NOAA/DOC:*

If, at any time, the **Secretary of Commerce** has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing or IUU fishing beyond the exclusive economic zone of any nation, the **Secretary of Commerce** shall identify that nation and notify the President and that nation of such identification. 16 U.S.C. § 1826a(b)(1). The President must then enter consultations with that identified nation to obtain an agreement that will effect an immediate termination of such activity. 16 U.S.C. § 1826a(b)(2). If such consultations are not satisfactorily concluded within 90 days of identification, the Secretary of the Treasury will be directed to prohibit (within 45 days) importation of fish, fish products, and sport fishing equipment from such nation. 16 U.S.C. § 1826a(b)(3).

If the **Secretary of Commerce** determines that such sanction is insufficient to cause termination of large-scale high seas driftnet or IUU fishing, or if such nation retaliates against the U.S, the **Secretary** will certify this fact to the President who may direct the Secretary of the Treasury to prohibit the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization or multilateral trade agreements. 16 U.S.C. § 1826a(b)(4).

***High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. § 1826d-k***

The United States, or anyone acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas (as expressed in UNGA Resolution 46/215). 16 U.S.C. § 1826d. The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction

of the United States, to the fullest extent permitted under international law. 16 U.S.C. § 1826g. The **Secretary of Commerce** shall report to Congress biennially on the state of our knowledge of international living marine resources, providing a list of offending nations, describing efforts taken by those nations to comply, describing efforts to strengthen international fishery management organizations, and describing efforts by the **Secretary** on the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing on protected living marine resources. 16 U.S.C. § 1826h.

*Authority for International Activities/Engagement by NOAA/DOC:*

**UNGA Resolution** – The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations. 16 U.S.C. § 1826e.

**Seeking International Measures** – The **Secretary of Commerce**, in consultation with the Secretary of State, shall take actions to improve the effectiveness of international fishery management organizations, including urging international fishery management organizations to adopt multilateral market-related measures against governments whose vessels engage in illegal, unreported, or unregulated (IUU) fishing; seeking adoption of IUU lists that can be shared; seeking international adoption of a centralized vessel monitoring system; seeking the increase in use of observers and technologies needed to monitor; seeking adoption of stronger port state controls in all nations; urging adoption of shark conservation measures, including measures to prohibit the removal of any of the fins of the shark and discarding the carcass at sea, and seeking to enter international agreements that require measures to conserve sharks; urging adoption and expanded use of market-related measures to combat IUU fishing, including import prohibitions, landing restrictions, and catch documentation and certification schemes to improve tracking and identification of the catch of vessels engaged in IUU fishing. 16 U.S.C. § 1826i.

**Identification of Nations, Sanctions** -- The Act further requires the **Secretary of Commerce** to: (1) identify nations whose vessels have been engaged in IUU fishing or bycatch of protected living marine resources, or whose vessels have engaged in fishing that target or incidentally take sharks and have not adopted a regulatory program for protection of sharks, (2) notify the President and that nation of such identification, (3) initiate consultations with identified nations and encourage them to take appropriate corrective action to address IUU fishing or bycatch and to protect sharks, (4) certify to Congress whether

appropriate corrective action is being taken by identified nations, and (5) produce a biennial report describing progress in implementing these international provisions. 16 U.S.C. §§ 1826j(a)-(c), (d)(1), 1826k(a). If an identified nation fails to take appropriate corrective action and receives a negative certification, the fishing vessels of that nation may be denied port privileges in the United States, the importation of certain fish or fish products into the United States may be prohibited, and additional economic sanctions may be imposed. 16 U.S.C. § 1826j(d)(3) (*see* § 1826a(a), (b)(3), (b)(4)).

**Negotiations, Certification of Nations** – The **Secretary of Commerce**, acting through the Secretary of State, shall initiate discussions as soon as possible with all foreign governments which have persons engaged in fishing activities that result in bycatch of a protected living marine resource or result in targeted or incidental bycatch of sharks, where the relevant international organization or the foreign government itself has not adopted a regulatory program to end or reduce such bycatch. 16 U.S.C. § 1826k(a), (b). The goal of this effort is to enter into bilateral and multilateral treaties with such countries to protect such species or to initiate the amendment of any existing international treaty. 16 U.S.C. § 1826k(b). The **Secretary** shall certify to the Congress biennially whether each such nation has provided the documentary evidence of adoption of a regulatory program for conservation of protected living marine resources. 16 U.S.C. § 1826k(c)(1), (3). Any nation that is not so certified or which receives a negative certification shall be denied port privilege in the U.S.; importation of their fish and fish products into the U.S. will be prohibited; and such nation may be subject to other economic sanctions, consistent with international law. 16 U.S.C. § 1826k(c)(5).

**Providing Assistance** – To the greatest extent possible, the **Secretary of Commerce** shall provide appropriate assistance to nations and their international organizations to enable those nations to qualify for certification. The Secretary shall undertake cooperative research activities on species statistics and improved harvesting techniques, to encourage and facilitate the transfer of appropriate technology to those nations or organizations, and to provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans. 16 U.S.C. § 1826k(d).

### ***High Seas Fishing Compliance Act of 1995, 16 U.S.C. §§ 5501-5509***

This statute implements the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High

Seas (Agreement) and establishes a system of permitting, reporting, and regulation for vessels of the United States engaged in such fishing. 16 U.S.C. § 5501. No high seas fishing vessel shall engage in harvesting operations on the high seas unless the vessel has on board a valid permit issued under this Act. 16 U.S.C. § 5503. The **Secretary of Commerce** shall establish such conditions and restrictions on each permit issued under this Act as are necessary and appropriate to carry out the obligations of the United States under the Agreement. The **Secretary of Commerce**, after 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 to carry out the purposes of the Agreement and this Act. 16 U.S.C. § 5504(d). The **Secretary of Commerce** shall coordinate such regulations with any other entities regulating high seas fishing vessels, in order to minimize duplication of permit application and reporting requirements. Such regulations shall also be consistent with regulations implementing fishery management plans under the Magnuson-Stevens Fishery Conservation and Management Act. The **Secretary**, in consultation with the Secretary of State, shall, from time to time, publish in the Federal Register a notice listing international conservation and management measures recognized by the United States. 16 U.S.C. § 5504(e).

*Authority for International Activities/Engagement by NOAA/DOC:*

**Availability of Information** – The **Secretary of Commerce**, in cooperation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating shall make available to U.N. Food and Agriculture Organization (FAO) information contained in the record of permitted fishing vessels which shall be maintained by the **Secretary**; promptly notify FAO of changes to the record and of additions to or deletions from the record and the reason for any deletion; convey to FAO information relating to any permit granted to a vessel that had been previously restricted by another nation, including the vessel's identity, owner or operator, and factors relevant to the **Secretary's** determination to issue the permit; report promptly to FAO all relevant information regarding any activities of high seas fishing vessels that undermine the effectiveness of international conservation and management measures, including the identity of the vessels and any sanctions imposed; and provide to the FAO a summary of evidence regarding any activities of foreign vessels that undermine the effectiveness of international conservation and management measures. 16 U.S.C. § 5504(b).

**Notification of Flag Nation** – If the **Secretary of Commerce**, in cooperation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, has reasonable grounds to believe that a foreign vessel has engaged in activities undermining the effectiveness of international conservation and management measures, the **Secretary** shall provide to the flag nation information, including appropriate evidentiary material, relating to those activities; and when such foreign vessel is voluntarily in a United States

port, promptly notify the flag nation and, if requested by the flag nation, make arrangements to undertake such lawful investigatory measures as may be considered necessary to establish whether the vessel has been used contrary to the provisions of the Agreement. 16 U.S.C. § 5504(c).

### ***International Dolphin Conservation Program Act of 1997, 16 U.S.C. §§ 1411-1418***

This statute amended the Marine Mammal Protection Act to give domestic effect to the Declaration of Panama, under which 12 signatory nations, including the United States, agreed to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits, and with the goal ultimately of eliminating dolphin mortality. 16 U.S.C. § 1411(a). The **Secretary of Commerce** is directed to issue regulations which, among other things, establish per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits and which require the use of observers. 16 U.S.C. § 1413(a). The **Secretary** shall issue permits to U.S. vessels authorizing participation in the International Dolphin Conservation Program (Program). 16 U.S.C. § 1416(a).

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**Consultation** -- In developing any regulation under this section, the **Secretary of Commerce** shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission (IATTC). 16 U.S.C. § 1413(b). If the **Secretary of Commerce** determines, on the basis of the best scientific information available, that the incidental mortality and serious injury of marine mammals that is authorized under this subchapter is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the **Secretary** shall notify the IATTC and provide the Commission with recommendations to reduce incidental mortality and serious injury and to mitigate adverse impact, and shall prescribe emergency regulations to that effect. Before taking such action, the **Secretary of Commerce** shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the IATTC. 16 U.S.C. § 1413(c).

**Reporting to IATTC** – Within 120 days after the **Secretary of Commerce** notifies the United States Commissioners of the **Secretary's** determination, the United States Commissioners shall call for a special meeting of the Commission to consider the actions necessary to address the Secretary's finding and recommendations. The Commissioners shall



report the results of the special meeting in writing to the **Secretary of Commerce** and to the Secretary of State describing actions taken by harvesting nations or under the Program to reduce mortality and injury and to mitigate adverse impacts, indicating whether those actions are adequate and, if not, recommending additional action. *Id.*

***International Fisheries Agreement Clarification Act of 2011, 16 U.S.C. § 1854 note, Pub. L. 111-348, §§ 201-204***

This Act provides direction to the **Secretary of Commerce** and the New England Fishery Management Council regarding the rebuilding of certain portions of fish stocks. The Act of which these provisions are a part is also sometimes referred to as the Shark Conservation Act, as portions of the enactment amended the High Seas Driftnet Fishing Moratorium Protection Act to improve conservation of sharks.

*Authority for International Activities/Engagement by NOAA/DOC:*

Consistent with the intent of provisions of the Magnuson-Stevens Act relating to international agreements, the **Secretary of Commerce** and the New England Fishery Management Council are given flexibility with respect to the rebuilding those portions of fish stocks covered on the date of enactment of this Act [Jan. 4, 2011] by the United States-Canada Transboundary Resource Sharing Understanding (Understanding). They may take into account the Understanding and decisions made under that Understanding in the application of requirements of Magnuson that specify, for fisheries that are overfished, the time periods within which the rebuilding of the fishery must be accomplished (inasmuch as the Understanding provides the applicable management measures on that subject pursuant to an international agreement).

The **Secretary of Commerce** may also establish catch levels for those portions of fish stocks within their respective geographic areas covered by the Understanding on the date of enactment of this Act [Jan. 4, 2011] that exceed the catch levels otherwise required under the Northeast Multispecies Fishery Management Plan if overfishing ends immediately and if the fishing mortality level ensures rebuilding within a specified time period, taking into account the Understanding, and if such catch levels are consistent with the Understanding. Pub. L. 111-348, Section 202.

### ***Lacey Act Amendments of 1981, 16 U.S.C. §§ 3371–3378***

This statute makes it unlawful for any person to import, export, transport, sell, receive, acquire, or purchase fish, wildlife or plants taken, possessed, transported or sold in violation of any federal law, treaty or regulation or any tribal law. It is also unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish, wildlife, or plant taken, possessed, transported or sold in violation of any state law or regulation or in violation of any foreign law. 16 U.S.C. § 3372(a). Thus, there are two necessary components to a Lacey Act violation – one is to illegally take, possess, transport or sell fish or wildlife (the predicate violation) – the other is to then import, export, transport, sell, receive, acquire, or purchase the fish or wildlife. It's important to note that the person who commits the Lacey Act violation doesn't have to be the person who took the fish illegally. The **Secretary of Commerce**, after consultation with the Secretary of the Treasury, is authorized to issue such regulations as may be necessary to carry out the provisions of this Act, except as described below with respect to marking. 16 U.S.C. § 3376(a)(1).

The Act also addresses marking violations. It prohibits import, export or transport of fish that is not plainly labeled with names and addresses of shipper and consignee, the contents by species, and the number of each species. 16 U.S.C. § 3372(b). Another section addresses the documents that must accompany the shipment. It is illegal to make or submit a false record, account, or label or false identification of fish that is or will be imported, exported, transported, sold, purchased or received from a foreign country or transported in interstate or foreign commerce. 16 U.S.C. § 3372(d). The Secretary of the Interior and the **Secretary of Commerce** shall jointly promulgate regulations to implement the provisions of this Act for the marking and labeling of containers or packages containing fish or wildlife. 16 U.S.C. § 3376(a)(2).

The Act provides for civil and criminal penalties, as well as forfeiture of the illegal fish and, if there is a felony conviction, of vessels and vehicles.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

The Lacey Act was intended by Congress to regulate trade in wildlife that has been illegally taken, possessed, transported or sold – including international trade in such wildlife. Lacey makes it a violation of U.S. law to import fish or wildlife from another country in violation of that country's law – its statutes, regulations, resolutions, or edicts. This necessarily requires that U.S. courts determine the meaning and scope of foreign statutes and regulations. A threshold question has always been whether the foreign law is to be characterized as a matter of fact, to be pleaded and proved as such, or whether it should be characterized as a matter of law. The U.S. has recently taken the latter approach. In determining the meaning of foreign law, federal courts may consider any relevant evidence – statutes, expert testimony, administrative materials, judicial decisions, foreign treaties – even material that cannot be submitted under the Federal Rules of Evidence.

**Burden of Proof** – When the predicate violation is a violation of foreign law or regulation, the federal court must determine whether a foreign law or regulation has actually been violated. The government bears the burden of establishing that wildlife protection is one of the purposes of the underlying foreign law. 16 U.S.C. § 3371(d); *see United States v. Sohappy*, 770 F.2d 816, 823-24 (9th Cir. 1985). As noted above, in determining foreign law, the court may consider any relevant material or source, including testimony provided by an official or legal expert from the foreign nation. Thus, in the case of *U.S. v. McNab*, 331 F.3d 1228 (11<sup>th</sup> Cir. 2003), three Honduran laws served as the basis for the Lacey Act prosecutions. As part of its investigation, NOAA Fisheries made direct contact with Honduran officials charged with regulating and enforcing fisheries laws and these officials provided evidence and verification that the laws were valid and applicable. Moreover, during a pretrial hearing, Honduran government officials testified as to the validity of the laws and confirmed that they were in effect and legally binding during the time in question.

**Obtaining Evidence** – There is some sentiment, both within the U.S. government and among certain affected foreign nations, to arrange some equitable sharing of penalties and the proceeds of forfeitures taken under Lacey. Although the predicate violation may involve the illegal taking of another nation's natural resource, the proceeds of fines, penalties and forfeitures are currently entirely retained by the United States. Recent discussions with the Russian government, for example, have begun a dialogue on the issue of sharing such proceeds, particularly as recent experience has shown the necessity of Russian cooperation in obtaining convictions under the Act.

### ***Magnuson-Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. §§ 1801–1891d***

The Magnuson-Stevens Act establishes exclusive Federal management authority over fishery resources in the U.S. Exclusive Economic Zone (EEZ). Magnuson-Stevens requires, among other things, rebuilding overfished stocks and preventing overfishing while maintaining optimum yield from fisheries. 16 U.S.C. §§ 1811, 1853a. Most fishery management plans are developed by regional fishery management councils and must comply with ten National Standards reflected in the statute, 16 U.S.C. §§ 1851(a), 1852. The **Secretary of Commerce** is responsible for reviewing and implementing these fishery management plans through regulations. 16 U.S.C. § 1854.

Authority for International Activities/Engagement by NOAA/DOC:

**The Importance of International Cooperation** -- Even the most cursory glance at the text of Magnuson-Stevens will reveal the critical importance that Congress has placed, and increasingly continues to place, on international cooperation in the management and protection of the world's ocean resources. The Act notes at the outset, as one of its findings, that international cooperation is absolutely necessary to address illegal fishing practices which may harm the sustainability of living marine resources and disadvantage the United States fishing industry. 16 U.S.C. § 1801(a)(12). Among the purposes of the Act is the goal of supporting and encouraging the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of any additional agreements as necessary. 16 U.S.C. § 1801(b)(2). It is declared to be the policy of the United States to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation. 16 U.S.C. § 1801(c)(5).

**Highly Migratory Species** -- With respect to highly migratory species, the Act affirms that the United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view toward ensuring resource conservation and shall promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone of any nation. 16 U.S.C. § 1812(a). If a relevant international fisheries organization does not have a process for developing a formal plan to rebuild a depleted stock, an overfished stock, or a stock that is approaching a condition of being overfished, the provisions of this chapter in this regard shall be communicated to and promoted by the United States in the international or regional fisheries organization. 16 U.S.C. § 1812(c).

**Foreign Fishing in U.S. Waters** -- Foreign fishing within the exclusive economic zone of the U.S., or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone, may be conducted if authorized by permit or pursuant to an international fishery agreement (other than a treaty) which meets the requirements of the Act. Each international fishery agreement shall acknowledge the exclusive fishery management authority of the United States. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with certain enumerated terms and conditions. 16 U.S.C. § 1821(a), (c), (d). The Secretary of State, in cooperation with the **Secretary of**

**Commerce**, shall make allocations for the allowable level of foreign fishing based on a number of conditions, such as whether the foreign nation restricts market access, and only if the relevant foreign nations allow reciprocal fishing in its waters. 16 U.S.C. § 1821(e), (f). A U.S. observer shall be stationed on board each such vessel. 16 U.S.C. § 1821(h).

**International Agreements** -- The Secretary of State, in cooperation with the **Secretary of Commerce** (hereafter “the Secretaries”), should negotiate international fishery and boundary agreements to properly protect the fishery resources of the U.S., as well as the boundaries of the U.S. EEZ in relation to other nations; and should renegotiate any treaty appertaining thereto that may be inconsistent with the provisions of the Act. 16 U.S.C. § 1822(a)-(d). The **Secretaries** shall evaluate the effectiveness of international fishery agreements regarding highly migratory species and shall conduct negotiations as necessary to correct inadequacies and to obtain access for vessels of the United States to tuna species within the exclusive economic zones of other nations. The **Secretaries** shall initiate negotiations in order to obtain such access for vessels of the U.S. 16 U.S.C. § 1822(e)(1), (2), (4). The **Secretaries** shall seek to secure an international agreement, where necessary and appropriate and subject to approval by Congress, to establish standards and measures for bycatch reduction comparable to those applicable to U.S. fishermen. The **Secretary of Commerce** shall report annually to Congress describing actions taken under this section. 16 U.S.C. § 1822(h).

**Nonrecognition** -- It is the sense of Congress that the United States shall not recognize the claim of any foreign nation to an exclusive economic zone if such nation fails to consider and take into account traditional fishing activity of U.S. fishing vessels; fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or imposes on U.S. fishing vessels any conditions or restrictions which are unrelated to fishery conservation and management. 16 U.S.C. § 1822(f).

**Northern Pacific and Bering Sea Fisheries** -- The Secretary of State shall establish an advisory body on the fisheries of the North Pacific and the Bering Sea, which shall advise the United States representative to the International Consultative Committee created in accordance with Article XIV of the governing international fishery agreement entered into between the United States and the Union of Soviet Socialist Republics, as contained in the message to Congress from the President of the United States dated June 22, 1988. 16 U.S.C. § 1823 note, Pub. L. 100-629.

**Permits for Foreign Vessels** -- No foreign fishing vessel shall engage in fishing within the exclusive economic zone of the U.S., or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section. The **Secretary of Commerce** shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating and, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council, may approve the application if he determines that the fishing described in the application will meet the requirements of the Act, 16 U.S.C. § 1824(a)-(c). The **Secretary of Commerce** may also issue a transshipment permit which authorizes a foreign fishing vessel to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the U.S. EEZ, with the concurrence of a State, within the boundaries of that State, to a point outside the United States. 16 U.S.C. § 1824(d). The Secretary of State with the concurrence of the **Secretary of Commerce**, and in consultation with any appropriate council, may negotiate a Pacific Insular Area fishery agreement to authorize foreign fishing within the EEZ adjacent to a U.S. Pacific Insular Area. 16 U.S.C. § 1824(e). If a foreign nation enters into such an agreement with the U.S., its vessels may fish in the EEZ adjacent to the islands covered, pursuant to specified terms and conditions. Permits for foreign fishing authorized under such agreement shall include any conditions and restrictions established by the **Secretary of Commerce** in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council. 16 U.S.C. § 1824(e).

**Observers on Foreign Fishing Vessels** -- The **Secretary of Commerce** shall establish a program under which a United States observer will be stationed on board each foreign fishing vessel while that vessel is in waters that are within the exclusive economic zone of the U.S. and within the ICCAT Convention area and is taking or attempting to take any species of fish where such taking or attempting to take may result in the incidental taking of billfish. 16 U.S.C. § 1827.

**International Monitoring and Compliance** -- The **Secretary of Commerce** may undertake activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements. These include sharing information on harvesting and processing capacity as well as illegal, unreported and unregulated fishing on the high seas; participating in global and regional efforts to build an international network for monitoring, control, and surveillance of high seas fishing and fishing under regional or global agreements; supporting efforts to create an

international registry or database of fishing vessels; enhancing enforcement capabilities; providing technical or other assistance to developing countries to improve their monitoring, control, and surveillance capabilities; and supporting coordinated international efforts to ensure that all large-scale fishing vessels operating on the high seas are required by their flag State to be fitted with vessel monitoring systems. 16 U.S.C. § 1829.

**Fishery Management Plans for Atlantic, Gulf and Caribbean Highly Migratory Species** – The **Secretary of Commerce** has authority over any highly migratory species that is within the geographical area of more than one of the Regional Fishery Management Councils covering the Atlantic, the Gulf of Mexico and the Caribbean and shall diligently pursue through international entities, such as ICCAT, comparable international fishery management measures with respect to fishing for highly migratory species. 16 U.S.C. § 1854(g)(1)(F), (G).

**International Overfishing** -- When the **Secretary of Commerce** determines that a fishery is overfished or approaching a condition of being overfished because of excessive international fishing pressure, and that there are no management measures in place to end such overfishing under any international agreement to which the United States is a party, the **Secretary of Commerce**, in cooperation with the Secretary of State, shall immediately take appropriate action at the international level to end the overfishing; and within 1 year after the Secretary's determination, shall develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock. 16 U.S.C. § 1854(i). [Please note that, because of a textual error, there are two subsections denoted as “(i).” This is the second of those subsections.]

**Action Against IUU Vessels and Owners** – The **Secretary of Commerce** may develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization, whether or not the United States is a party to the agreement establishing such organization; and may take appropriate action against listed vessels and vessel owners, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management and trade agreements. Actions taken by the **Secretary** that include measures to restrict use of or access to ports or port services shall apply to all ports of the United States and its territories. Pub. L. 110-161, Consolidated Appropriations Act of 2008, div. B, title I, § 113, 16 U.S.C. § 1861 note.

**Seabird Mortality** -- The **Secretary of Commerce**, in coordination with the Secretary of the Interior, is authorized to undertake projects in cooperation with industry to improve information and technology to reduce seabird bycatch, including outreach to industry, projects to mitigate seabird mortality, and actions at appropriate international fishery organizations to reduce seabird interactions in fisheries. 16 U.S.C. § 1865(c).

*See also* the following, which are separate enactments that were inserted into the span of 16 U.S.C. §§ 1801-1891d, either within the Code itself or as notes to sections of Code or in an appendix. They are each separately described elsewhere in this compendium because the codifiers kept them as distinct units:

- **Anadromous Fish Products Act, 16 U.S.C. § 1822 note, Section 801 of Pub. L. 101-627**
- **Driftnet Act Amendments of 1990, 16 U.S.C. § 1826**
- **The Driftnet Impact Monitoring, Assessment, and Control Act, Pub. L. 100-220, as amended, 16 U.S.C. § 1822 note**
- **High Seas Driftnet Fisheries Enforcement Act, 16 U.S.C. § 1826a-c**
- **High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. § 1826d-k**
- **Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Miscellaneous Amendments, Pub. L. 109-479, 16 U.S.C. §§ 1891-1891d, and uncodified provisions**
- **Shark Finning Prohibition Act, 16 U.S.C. §§ 1822 note, 1857(1)(P), Pub. L. 106 557, as amended**

***Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Miscellaneous Amendments, Pub. L. 109-479, 16 U.S.C. §§ 1891-1891d, and uncodified provisions***

The following provisions were enacted as part of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, not as part of the Magnuson-Stevens Fishery Conservation and Management Act, and are reflected here because of their international implications.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Catch Histories** -- In establishing catch allocations under international fisheries agreements, the **Secretary of Commerce**, in consultation with the Secretary of the Department in which the Coast Guard is operating, and the Secretary of State, shall ensure that all catch history associated with a vessel of the United States remains with the United States and is not transferred or credited to any other nation or vessel of such nation,



even when a vessel of the United States is sold or transferred to a citizen of another nation. The catch history, and the catch allocations resulting therefrom, will remain a U.S. asset. 16 U.S.C. § 1891c.

**Secretarial Representative for International Fisheries** -- The **Secretary of Commerce**, in consultation with the **Under Secretary of Commerce for Oceans and Atmosphere**, shall designate a Senate-confirmed, senior official within NOAA to perform the duties of the **Secretary** with respect to international agreements involving fisheries and other living marine resources, including policy development and representation as a U.S. Commissioner, under any such international agreements. This official shall advise the **Secretary of Commerce**, the **Undersecretary of Commerce for Oceans and Atmosphere**, and other senior officials of the **Department of Commerce** and **NOAA** on development of policy on international fisheries conservation and management matters. This designated official shall also consult with the Senate Committee on Commerce, Science, and Transportation and the House Committee on Resources on matters pertaining to any regional or international negotiation concerning living marine resources, including shellfish. This official may delegate and authorize successive re-delegation of such functions, powers, and duties to such officers and employees of **NOAA** as deemed necessary to discharge the responsibility of the Office. 16 U.S.C. § 1891d.

### ***Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361–1423h***

The Marine Mammal Protection Act was enacted to protect all species and stocks of marine mammals and to achieve healthy populations of marine mammals. Except as provided in the Act, it is unlawful for any person or any vessel subject to the jurisdiction of the United States to take any marine mammal on the high seas. Except as expressly provided in an international treaty, convention, or agreement to which the United States is a party, it is unlawful for any person or vessel to take any marine mammal in waters or on lands under the jurisdiction of the United States; or to import marine mammals or marine mammal products into the U.S. It is unlawful for any person to possess a marine mammal or marine mammal product that is taken in violation of the Act or to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product that is taken in violation of the Act. It is unlawful for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations issued by the **Secretary of Commerce** for that fishery to achieve the purposes of this Act. 16 U.S.C. § 1372(a).

The **Secretary of Commerce**, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal

(including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks. In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on (1) existing and future levels of marine mammal species and population stocks; (2) existing international treaty and agreement obligations of the United States; (3) the marine ecosystem and related environmental considerations; (4) the conservation, development, and utilization of fishery resources; and (5) the economic and technological feasibility of implementation. 16 U.S.C. § 1373(a), (b).

*Authority for International Activities/Engagement by NOAA/DOC:*

**International Negotiations** – The **Secretary of Commerce**, through the Secretary of State, shall develop bilateral or multilateral agreements with other nations for the protection and conservation of marine mammals covered by this statute. 16 U.S.C. § 1378(a)(1). The **Secretary of Commerce** shall initiate negotiations with foreign governments which have persons engaged in commercial fishing operations which are found by the **Secretary** to be unduly harmful to marine mammals, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals. 16 U.S.C. § 1378(a)(2)(A).

**Harvesters of Yellowfin** – The **Secretary of Commerce** shall initiate discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna and for cooperative research into alternative methods of locating and catching yellowfin tuna that do not involve such incidental take, and for research into the status of marine mammal stocks, as well as limitations on incidental take and to promote the use of the best marine mammal safety techniques and equipment to reduce the incidental kill and serious injury of marine mammals. 16 U.S.C. § 1378(a)(2)(B).

**Research Funding** – The **Secretary of Commerce** shall initiate discussions with those countries participating in the International Dolphin Conservation Program for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins. 16 U.S.C. § 1378(a)(2)(D).

**Making Treaties Consistent with the Act** – The **Secretary of Commerce** shall encourage such other agreements with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals and shall

initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act. 16 U.S.C. § 1378(a)(3), (4).

*See also* the following, which was a separate enactment that was inserted within 16 U.S.C. §§ 1361-1423h and is separately described elsewhere in this compendium:

- **International Dolphin Conservation Program Act of 1997, 16 U.S.C. §§ 1411-1418**

***Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, 16 U.S.C. §§ 4701-4751.***

The Act has five primary purposes. These are: (1) to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other measures; (2) to coordinate federally conducted, funded or authorized research, prevention control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species; (3) to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange; (4) to understand and minimize economic and ecological impacts of nonindigenous aquatic nuisance species that become established, including the zebra mussel; and (5) to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels. 16 U.S.C. § 4701(b). The Act establishes an Aquatic Nuisance Species Task Force (Task Force), co-chaired by the **Under Secretary of Commerce for Oceans and Atmosphere** and the Director of the Fish and Wildlife Service. 16 U.S.C. § 4721. The Task Force is to develop an aquatic nuisance species program and implement measures for the prevention and control of these species. 16 U.S.C. § 4722.

*Authority for International Activities/Engagement by NOAA/DOC:*

The Task Force, which is under the co-chairmanship of the **Under Secretary of Commerce for Oceans and Atmosphere**, is directed to request the Great Lakes Commission to convene a panel of Great Lakes regional representatives to identify priorities, make recommendations, coordinate aquatic nuisance species program activities in the Great Lakes, and to invite representatives of the provincial and territorial governments of Canada to participate. 16 U.S.C. § 4723(a). The Task Force is directed to provide timely advice to the Secretary of State concerning aquatic nuisance species that infest waters shared with other countries. 16 U.S.C. § 4726(a).

Additionally, the Secretary of State, in consultation with the Task Force, is encouraged to initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, monitoring, research, education, and control programs related to aquatic nuisance species infesting shared water resources. 16 U.S.C. § 4726(b). In developing guidelines and regulations promulgated under this act, the Secretary of the Department in which the Coast Guard is operating is encouraged to consult with the Government of Canada, the Government of Mexico, and any other government of a foreign country that the Secretary, in consultation with the Task Force, determines to be necessary to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species. 16 U.S.C. § 4711.

### **Executive Order No. 13112 (February 3, 1999) (“Invasive Species”)**

This Executive Order gives direction to federal agencies whose actions may affect invasive species. It also created the National Invasive Species Council and the Invasive Species Advisory Committee, which work together with stakeholders, concerned members of the public, and member departments to address invasive species. The Council includes the **Secretary of Commerce** who serves as Co-Chair. The Council is directed, among other things, to develop recommendations for international cooperation in addressing invasive species. The Advisory Committee is a group of non-federal experts and stakeholders. They assist the Council in formulating a Management Plan for the nation. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

### ***North Pacific Anadromous Stocks Convention Act of 1992, 16 U.S.C. §§ 5001–5012***

This Act implements the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean which was signed in Moscow, February 11, 1992. 16 U.S.C. § 5001. The **Secretary of Commerce** is responsible for administering provisions of the Convention, this Act, and regulations issued under this Act. The Secretary of State, in consultation with the **Secretary of Commerce** and the Secretary of Transportation, shall be responsible for coordinating the participation of the United States in the Commission. 16 U.S.C. § 5006(a). It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to fish for any anadromous fish in the Convention area;

to retain on board any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area; to fail to return immediately to the sea any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area; to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any anadromous fish taken or retained in violation of the Convention, this Act, or any regulation issued under this Act. 16 U.S.C. § 5009.

*Authority for International Activities/Engagement by NOAA/DOC:*

The United States is represented on the North Pacific Anadromous Fish Commission by not more than three United States Commissioners to be appointed by the President. 16 U.S.C. § 5003(a). The Secretary of State, in consultation with the **Secretary of Commerce**, may designate Alternate United States Commissioners to the Commission. The Secretary of State, with the concurrence of the **Secretary of Commerce**, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article IX of the Convention. 16 U.S.C. § 5005.

The **Secretary of Commerce** shall be responsible for administering provisions of the Convention, this Act, and regulations issued under this Act. 16 U.S.C. § 5006(a). In carrying out such functions, the **Secretary of Commerce** shall issue such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act and may, with the concurrence of the Secretary of State, cooperate with the authorized officials of the government of any Party. 16 U.S.C. § 5006(b). Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties. 16 U.S.C. § 5007(a). In carrying out the provisions of the Convention and this Act, the **Secretary of Commerce** may arrange for cooperation with agencies of the United States, the States, private institutions and organizations, and agencies of the government of any Party, to conduct scientific and other programs, and may execute such memoranda as may be necessary to reflect such agreements. 16 U.S.C. § 5007(b).

***Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773–773k***

It is unlawful for any person subject to the jurisdiction of the United States to violate any provision of the Convention between the U. S. and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, any provision of this Act, or any regulation adopted under this Act; to ship, transport, offer for sale, sell, purchase,

import, export or have custody, control or possession of any fish taken or retained in violation of these requirements; or for any foreign fishing vessel, and for the owner or operator of any foreign fishing vessel, to engage in fishing for halibut in the fishery conservation zone, unless such fishing is authorized by, and conducted in accordance with, the Convention, this Act and regulations adopted under this Act. 16 U.S.C. § 773e. The Convention, this Act, and any regulation adopted under this Act, shall be enforced by the **Secretary of Commerce** and the Secretary of the department in which the Coast Guard is operating. 16 U.S.C. § 773i(a).

*Authority for International Activities/Engagement by NOAA/DOC:*

The United States shall be represented on the International Pacific Halibut Commission by three U. S. Commissioners to be appointed by the President. One Commissioner shall be an official of **NOAA**. 16 U.S.C. § 773a(a). The Secretary of State, with the concurrence of the **Secretary of Commerce**, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article III of the Convention and paragraphs 14 and 15 of the annex to the Convention. 16 U.S.C. § 773b.

The **Secretary of Commerce** shall have general responsibility to carry out the Convention and this Act. In fulfilling this responsibility, the **Secretary** shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act; and may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the Government of Canada. 16 U.S.C. § 773c(a), (b). Any agency of the Federal Government is authorized upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish on a reimbursable basis, facilities and personnel for the purposes of assisting the Commission in carrying out its duties under the Convention. 16 U.S.C. § 773d.

***Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. §§ 5601-5612***

It is unlawful for any person or vessel that is subject to the jurisdiction of the United States to violate any measure that is legally binding on the United States under the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, or to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act. 16 U.S.C. § 5606(a). The **Secretary of Commerce** shall promulgate regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act. Any such regulation may

be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located. 16 U.S.C. § 5605.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Appointments** – The **Secretary of Commerce** shall appoint not more than three individuals to serve as United States Commissioners to the Northwest Atlantic Fisheries Organization (NAFO) and not more than three individuals to serve as the representatives of the United States on the Scientific Council provided for in the Convention. 16 U.S.C. § 5601(a), (c).

**Communications with NAFO** – The Secretary of State may, on behalf of the Government of the United States, receive and transmit reports, requests, recommendations, proposals, and other communications of and to NAFO and its subsidiary organs; object, or withdraw an objection, to the proposal of the Fisheries Commission provided for in the Convention; give or withdraw notice of intent not to be bound by a measure of the Fisheries Commission; object or withdraw an objection to an amendment to the Convention; and act upon, or refer to any other appropriate authority, any other communication. 16 U.S.C. § 5603. The Secretary of State and the **Secretary of Commerce** shall jointly establish a consultative committee to advise the Secretaries on issues related to the Convention and to attend meetings of the General Council of the Fisheries Commission. 16 U.S.C. § 5607(a), (c).

**Quota Allocations** – The **Secretary of Commerce**, acting through the Secretary of State, shall promptly seek to establish a new practice for allocating quotas under the Convention that is predictable and transparent; that provides fishing opportunities for all members of NAFO; and is consistent with the Straddling Fish Stocks Agreement. The **Secretary of Commerce** shall include in annual reports to Congress a description of the results of negotiations relating to quota allocation; an identification of barriers to achieving a new allocation practice; and recommendations for any further legislation that is necessary to achieve such a new practice. 16 U.S.C. § 5612(a), (b).

**Cooperation** – In carrying out the provisions of the Convention and this chapter, the **Secretary of Commerce** may arrange for cooperation with other agencies of the United States, the States, the New England and the Mid-Atlantic Fishery Management Councils, and private institutions and organizations. The head of any Federal agency may cooperate in the conduct of scientific and other programs, and furnish facilities and personnel, for the purposes of assisting NAFO in carrying out its duties under the Convention. 16 U.S.C. § 5604.

***Pacific Albacore Tuna Treaty Implementation, 16 U.S.C. § 1821 note, Pub. L. 108-219, § 401***

Notwithstanding anything to the contrary in section 201, 204, or 307(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821, 1824, and 1857(2)), foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.

*Authority for International Activities/Engagement by NOAA/DOC:*

The **Secretary of Commerce**, with the concurrence of the Secretary of State, may (1) promulgate regulations necessary to discharge the obligations of the United States under the Treaty and its Annexes; and (2) provide for the application of any such regulation to any person or vessel subject to the jurisdiction of the United States, wherever that person or vessel may be located.

***Pacific Salmon Treaty Act of 1985, 16 U.S.C. §§ 3631–3645***

This Act authorizes the **Secretary of Commerce** to issue and enforce regulations necessary for implementing the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985. The Treaty requires the United States and Canada to develop periodic bilateral agreements to implement the Treaty’s conservation and harvest-sharing principles, creating an arrangement for cooperative management, research, and enhancement of shared Pacific salmon stocks to ensure sustainable fisheries and maximize long-term benefits to both Parties. The Treaty established a Pacific Salmon Commission to make recommendations to the Parties concerning management of the salmon fishing regime. The Commission meets annually to review fishing activities of the previous year, to advise the Treaty Parties on the status of the fishery, and to suggest any necessary adjustments to the regime. The **Secretary of Commerce**, in consultation with the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating, and the appropriate Regional Fishery Management Council, shall promulgate such regulations as may be necessary to carry out the United States international obligations under the Treaty and this Act. 16 U.S.C. § 3636(a).

*Authority for International Activities/Engagement by NOAA/DOC:*

**Appointments** – The United States shall be represented on the Pacific Salmon Commission by four United States Commissioners who are



knowledgeable or experienced concerning Pacific salmon, to be appointed by the President. 16 U.S.C. § 3632(a). The Secretary of State, in consultation with the **Secretary of Commerce** and the Secretary of the Interior, shall designate Alternate Commissioners. 16 U.S.C. § 3632(b).

**Communications** – The Secretary of State is authorized to receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of and to the Commission and their panels. In consultation with the **Secretaries of Commerce** and the Interior, the Secretary of State may approve, disapprove, object to, or withdraw objections to fishery regimes, including enhancement programs proposed in accordance with the Treaty; and act upon, or refer to other appropriate authority, any Commission of panel communication. 16 U.S.C. § 3633(a). In cooperation with the appropriate Regional Fishery Management Councils, States and treaty Indian tribes, the **Secretary of Commerce** 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. 16 U.S.C. § 3633(c).

**Agency Cooperation** -- In carrying out the provisions of the Treaty and this Act, the **Secretary of Commerce**, 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. 16 U.S.C. § 3634(a). 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. 16 U.S.C. § 3634(b).

**1999 Agreement** – On June 30, 1999, U.S. and Canadian officials signed a comprehensive agreement to resolve long-standing disputes relating to Pacific salmon and Treaty implementation. The agreement establishes *abundance-based* fishing regimes for the Pacific salmon fisheries under the jurisdiction of the Treaty. These regimes, which allow the fishery harvest to vary from year to year, are designed to implement the conservation and harvest-sharing principles of the Treaty. Larger catches will be allowed when salmon abundance is higher, and catches will be significantly constrained in years when stock abundance is down. This is intended to be more responsive to the conservation requirements of salmon than the *fixed-catch ceilings* that existed under the original Treaty arrangements.

**Funds** – The agreement also provides for establishment of two bilaterally-managed regional funds: one covering northern and central British Columbia, and southeast Alaska; and the second covering southern British Columbia, the states of Washington and Oregon, and the Snake River basin in Idaho. The funds will be used to promote bilateral cooperation, improve fishery management, and aid stock and habitat enhancement efforts to improve the status of weakened salmon stocks.

**Bilateral Cooperation** – The agreement also includes provisions to enhance bilateral cooperation, improve the scientific basis for salmon management, and apply institutional changes to the Pacific Salmon Commission. At the heart of this accord is an agreement between the Parties to focus on conservation and habitat protection, rather than division of shared salmon stocks.

**2008 Agreement** -- With the 1999 agreement scheduled to expire in 2008, an extension agreement was successfully concluded in 2008 and ratified by both government in January 2009. The renewed chapters are in effect from the 2009 fishing season through 2018. The 10-year agreement places strong emphasis on conservation, stability of access for harvesters, and the sustainability of the Pacific salmon resource.

### ***Pacific Whiting Act of 2006, 16 U.S.C. §§ 7001-7010***

The **Secretary of Commerce** shall establish the United States catch level for Pacific whiting according to the standards and procedures of the Agreement between the Government of the United States and the Government of Canada on Pacific Hake/Whiting, signed at Seattle, Washington, on November 21, 2003, and according to this Act rather than under the standards and procedures of the Magnuson-Stevens Fishery Conservation and Management Act, except to the extent necessary to address the rebuilding needs of other species. 16 U.S.C. § 7007(a). Except for establishing the catch level, all other aspects of Pacific whiting management shall be subject to the Magnuson-Stevens Fishery Conservation and Management Act and shall be consistent with this Act. *Id.*

#### **Authority for International Activities/Engagement by NOAA/DOC:**

**Appointments** -- The **Secretary of Commerce**, in consultation with the Secretary of State, shall appoint the following: (a) four individuals to represent the United States as the United States Section on the joint management committee established by the Agreement, along with alternate representatives; (b) no more than two scientific experts to serve on the scientific review group, as well as (jointly with the

Government of Canada) two independent members and two public advisors to that group ; (c) no more than two individuals to serve as scientific experts on the joint technical committee, at least one of whom shall be an official of **NOAA**, together with one independent member of the joint technical committee, to be appointed jointly with Canada; (d) at least six but not more than twelve individuals to serve as members of the advisory panel on Pacific Hake/Whiting established by the Agreement. 16 U.S.C. § 7002-7005.

The **Secretary of Commerce** is responsible for carrying out the Agreement and this Act, including the authority, to be exercised in consultation with the Secretary of State, to accept or reject, on behalf of the United States, recommendations made by the joint management committee. 16 U.S.C. § 7006(a). In exercising responsibilities under this chapter, the **Secretary of Commerce** may promulgate such regulations as may be necessary and, with the concurrence of the Secretary of State, may cooperate with officials of the Canadian Government duly authorized to carry out the Agreement. 16 U.S.C. § 7006(b). The Secretary shall establish the United States catch level for Pacific whiting according to the standards and procedures of the Agreement and this Act rather than under the standards and procedures of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), except to the extent necessary to address the rebuilding needs of other species. 16 U.S.C. § 7007(a).

### ***Shark Conservation Act of 2010, Pub. L. 111-348, §§ 101-104***

*See* High Seas Driftnet Fishing Moratorium Protection Act (HSDFMMPA), 16 U.S.C. 1826d-k. The Shark Conservation Act was – together with the International Fisheries Agreement Clarification Act – part of Pub. L. 111-348. The Shark Conservation Act amended and is incorporated into HSDFMMPA.

### ***Shark Finning Prohibition Act, 16 U.S.C. §§ 1822 note, 1857(1)(P), Pub. L. 106-557, §§ 1-10, as amended***

The purpose of this Act is to eliminate shark-finning by addressing the problem comprehensively at both the national and international levels. Pub. L. 106-557, § 2. The statute makes it unlawful for any person to remove the fins or tail of a shark at sea; to have custody, control, or possession of unattached fins aboard a vessel at sea; to transfer or receive unattached fins from one vessel to another at sea; or to land unattached fins or any shark carcass that does not have fins attached. 16 U.S.C. § 1857(1)(P), as added by Section 3 of this Act.

Authority for International Activities/Engagement by NOAA/DOC:

**International Negotiations** -- The **Secretary of Commerce**, acting through the Secretary of State, shall initiate discussions for the purpose of developing bilateral or multilateral agreements with other nations for the prohibition on shark-finning; initiate discussions with all foreign governments which are engaged in shark-finning, for the purposes of collecting information and entering into bilateral and multilateral treaties with such countries; seek agreements calling for an international ban on shark-finning; initiate the amendment of any existing international treaty for the protection and conservation of species of sharks and to which the United States is a party; urge other governments involved in fishing for or importation of shark or shark products to fulfill their obligations to collect biological data; and urge other governments to prepare and submit their respective National Plan of Action for the Conservation and Management of Sharks. Pub. L. 106-557, § 5.

**Research** -- The **Secretary of Commerce** shall also establish a research program that, among other things, conducts research on the nature and extent of the harvest of sharks and shark fins by foreign fleets and the international trade in shark fins and other shark products. Pub. L. 106-557, § 7(6).

**Report to Congress** – The **Secretary of Commerce**, in consultation with the Secretary of State, shall report annually to Congress, identifying nations whose vessels conduct shark-finning and provide details on the extent of the international trade in shark fins; describing the efforts taken to carry out this Act, and evaluating the progress of those efforts; setting forth a plan of action to adopt international measures for the conservation of sharks; and including recommendations for measures to ensure that United States actions are consistent with national, international, and regional obligations relating to shark populations. Pub. L. 106-557, § 6.

***South Pacific Tuna Act of 1988, 16 U.S.C. §§ 973–973r***

The **Secretary of Commerce**, with the concurrence of the Secretary of State, and after consultation with the Secretary of the department in which the Coast Guard is operating, is directed to issue regulations as may be necessary to carry out the purposes and objectives of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, together with its annexes, schedules, and implementing agreements (the Treaty). 16 U.S.C. § 973b. These regulations shall be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located. The Treaty, signed with the governments of 16 Pacific

Island countries and 1 territory, provides U.S. purse seine vessels with access to fishing inside the national waters of these Pacific Islands Parties (PIPs).

Under the Act, licenses to fish are issued to U.S. vessels by a person designated by the PIPs to act on their behalf (the PIP Administrator). License applications are to be filed with the **Secretary of Commerce** by operators of vessels and must designate an agent for service of process to be located at Port Moresby, Papua New Guinea. The **Secretary** will forward applications to the Secretary of State for transmittal to the PIP Administrator. 16 U.S.C. § 973g. Among other prohibitions, it is a violation of the Act for any person subject to U.S. jurisdiction to use a vessel for fishing in violation of any provision of law of a PIP which is described in paragraph 1(a) of Annex I of the Treaty as applicable law, and for any such person who has entered into a fishing arrangement under Article 3 of the Treaty (regarding access to the Treaty Area), to violate the terms and conditions of such fishing arrangement if the Secretary of State has decided that Articles 4 (flag state responsibility to enforce and to assist investigations) and Article 5 (powers of PIPs to ensure compliance) of the Treaty shall apply to the arrangement. 16 U.S.C. § 973c.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Enforcement** – The provisions of this chapter shall be enforced by the **Secretary of Commerce** in cooperation with the Secretary of State. 16 U.S.C. § 973h(a). The **Secretary of Commerce** shall, at the request of a Pacific Island Party made to the Secretary of State, fully investigate any alleged infringement of the Treaty involving a vessel of the United States, and report as soon as practicable through the Secretary of State on any action taken or proposed. 16 U.S.C. § 973h(b). Prior to instituting legal proceedings regarding an alleged infringement of the Treaty, the **Secretary of Commerce** shall notify the PIP exercising jurisdiction over the waters in which the violation occurred that proceedings will be instituted and shall thereafter promptly notify that PIP of the outcome of those proceedings. 16 U.S.C. § 973h(c).

**PIP Investigations** – Upon being advised by the Secretary of State that a PIP is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of such PIP, the **Secretary of Commerce** shall order the vessel to leave such waters until the Secretary of State notifies the **Secretary of Commerce** that such order is no longer necessary. 16 U.S.C. § 973i(a), (b). Information provided by license holders pursuant to the Treaty shall be provided to the **Secretary of Commerce** for transmittal to the PIP Administrator and shall be maintained as confidential. 16 U.S.C. § 973j.

**Communications** – The operator and crew of each U.S. vessel shall cooperate with and assist observers identified by PIPs for purposes of boarding and compliance monitoring. 16 U.S.C. § 973l. The Secretary of State is authorized to receive on behalf of the United States reports,

requests, and other communications from the PIP Administrator and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, after consultation with the **Secretary of Commerce**, may accept or reject, on behalf of the United States, changes or amendments to Treaty Annexes and Schedules. 16 U.S.C. § 973q.

**Arbitration Panel** – In the event of a dispute requiring the establishment of an arbitral tribunal under the Treaty, the Secretary of State, in consultation with the **Secretary of Commerce**, shall appoint the arbitrator which is to be appointed by the United States and shall represent the United States in reaching agreement with each PIP involved concerning the appointment of the presiding arbitrator of the tribunal. 16 U.S.C. § 973n.

### ***Tuna Conventions Act of 1950, 16 U.S.C. §§ 951–961***

This Act implements the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC) and the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, two treaties to which the United States is a party. The latter of the two Conventions was a bilateral agreement with Mexico which was terminated in 1965 because of the adequacy of an increased reliance on IATTC. The IATTC is a regional fishery management organization that manages and conserves yellowfin, skipjack, and other tuna species taken by fishing vessels in the eastern tropical Pacific Ocean. The Act authorizes the Secretary of State to approve bylaws, rules and amendments adopted by the Commission and with the concurrence of the **Secretary of Commerce** to approve the general annual program of the Commission. Regulations required to carry out the recommendations from the Commission shall be promulgated by the **Secretary of Commerce** upon approval of such recommendations by the Secretary of State and the **Secretary of Commerce**. 16 U.S.C. § 955.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**Representation** – The United States shall be represented on the Commission by a total of not more than four United States Commissioners, who shall be appointed by the President. 16 U.S.C. § 952. The **Secretary of Commerce**, in consultation with the United States Commissioners, shall appoint a General Advisory Committee which shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission; and shall appoint a Scientific Advisory Subcommittee which shall provide advice and scientific assistance and which shall also be given full opportunity to examine and to be heard. 16 U.S.C. § 953(a), (b).

**Communications with the Commission** – The Secretary of State is authorized to approve or disapprove, on behalf of the U. S. Government, bylaws and rules, or amendments thereof, adopted by the Commission and submitted for approval of the U. S. Government in accordance with the provisions of the Convention, and, with the concurrence of the **Secretary of Commerce**, to approve or disapprove the general annual programs of the Commission. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the Commission and to take appropriate action thereon directly or by reference to the appropriate authority. 16 U.S.C. § 955(a). Regulations required to carry out the recommendations of the IATTC shall be promulgated by the **Secretary of Commerce** upon approval of such recommendations by the Secretary of State and the **Secretary of Commerce**. 16 U.S.C. § 955(c).

### ***Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. §§ 6901-6910***

The Western and Central Pacific Fisheries Commission (WCPFC Commission or Commission) was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention or Convention) which entered into force on June 19 2004. The WCPFC Convention seeks to address problems in the management of high seas fisheries resulting from unregulated fishing, over-capitalization, excessive fleet capacity, vessel re-flagging to escape controls, insufficiently selective gear, unreliable databases and insufficient multilateral cooperation with respect to conservation and management of highly migratory fish stocks. The objective of the Convention is to ensure the long-term conservation and sustainable use of tuna and other highly migratory stocks in the Western and Central Pacific Ocean. The Convention is also intended to help to reduce the impact of fishing for such stocks on non-target species.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**Communications with the Commission** – The U.S. is represented on the Commission by five Commissioners appointed by the President, one of whom shall be an employee of the **Department of Commerce**. 16 U.S.C. § 6902(a). The Secretary of State, in consultation with the **Secretary of Commerce**, may designate Alternate United States Commissioners. 16 U.S.C. § 6902(b). The **Secretary of Commerce**, in consultation with the Commissioners, shall appoint a permanent advisory committee of up to 20 members to which the **Secretary of Commerce** and Secretary of State shall furnish relevant information concerning fisheries and international fishery agreements. 16 U.S.C. §

6902(d). The Secretary of State may receive and transmit reports, requests, recommendations, proposals, decisions, and other communications of and to the Commission; and in consultation with the **Secretary of Commerce** approve, disapprove, object to, or withdraw objections to bylaws and rules, or amendments thereof, adopted by the WCPFC Commission; and, approve or disapprove the general annual program of the WCPFC Commission with respect to conservation and management measures and other measures proposed or adopted in accordance with the WCPFC Convention; and act upon, or refer to other appropriate authority, any communication. 16 U.S.C. § 6903.

**MOU Re Highly Migratory Species** -- For highly migratory species in the Pacific, the **Secretary of Commerce**, in coordination with the Secretary of State, shall develop a memorandum of understanding with the Western Pacific, Pacific, and North Pacific Fishery Management Councils, that clarifies the role of the relevant Council or Councils with respect to (1) participation in United States delegations to international fishery organizations in the Pacific Ocean, including government-to-government consultations; (2) providing formal recommendations to the Secretary and the Secretary of State regarding necessary measures for both domestic and foreign vessels fishing for these species; (3) coordinating positions with the United States delegation for presentation to the appropriate international fishery organization; and (4) recommending those domestic fishing regulations that are consistent with the actions of the international fishery organization. 16 U.S.C. § 6902(f).

**Fulfillment of Obligations** – The **Secretary of Commerce**, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out U.S. international obligations under the WCPFC Convention and this Act. In cases in which the **Secretary of Commerce** has discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under the authority of a Regional Fishery Management Council, the **Secretary** may promulgate such regulations in accordance with the procedures established by the Magnuson-Stevens Act. The **Secretary of Commerce** may promulgate regulations applicable to all vessels and persons subject to the jurisdiction of the United States, including United States flag vessels wherever they may be operating. 16 U.S.C. § 6904. The **Secretary of Commerce** may cooperate with agencies of the U. S. government, any public or private institutions or organizations within the United States or abroad, and, through the Secretary of State, with the duly authorized officials of the government of any party to the WCPFC Convention, in carrying out responsibilities under this Act. 16 U.S.C. § 6907(a).



### ***Whale Conservation and Protection Study Act, 16 U.S.C. §§ 917-917d***

The **Secretary of Commerce**, in consultation with the Marine Mammal Commission and the coastal States, was directed to undertake comprehensive studies of all whales found in waters subject to the jurisdiction of the United States, including in the EEZ. Such studies were to take into consideration all relevant factors regarding (1) the conservation and protection of such whales, (2) their distribution, migration patterns, and population, and (3) the effects on all such whales of habitat destruction, disease, chemicals, disruption of migration patterns, and food shortages for the purpose of developing adequate and effective measures, including appropriate laws and regulations, to conserve and protect such mammals. The **Secretary of Commerce** was to report on such studies and any appropriate recommendations to Congress no later than January 1, 1980. 16 U.S.C. § 917a. However, as noted below, this statute remains available to be amended to require additional whale studies.

This statute was indeed amended on December 23, 2000 by inclusion of a note directing the **Secretary of Commerce** to initiate a study of the environmental and biological factors responsible for the significant increase in mortality events of the eastern gray whale population. 16 U.S.C. § 917a note, Pub. L. 106-562, § 401.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

The **Secretary of Commerce**, through the Secretary of State, is directed to initiate negotiations for the purpose of developing appropriate bilateral agreements with Mexico and Canada for the protection and conservation of whales. 16 U.S.C. § 917c.

### ***Whaling Convention Act of 1949, 16 U.S.C. §§ 916-916I***

This statute makes it unlawful for any person subject to the jurisdiction of the United States to engage in whaling in violation of the International Convention for the Regulation of Whaling or of any regulation of the International Whaling Commission or of any regulation promulgated by the **Secretary of Commerce** under this Act. 16 U.S.C. § 916c(a). It is also unlawful to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any whale or whale products taken or processed in violation of these requirements; or to fail to make, keep, submit, or furnish any record or report required by the Convention, the Commission, or by any regulation of the **Secretary of Commerce**; or to refuse to permit any authorized enforcement officer to inspect such record or report at any reasonable time. *Id.* No person shall engage in whaling without first having obtained from the **Secretary of Commerce** an appropriate license or scientific permit. 16 U.S.C. § 916d(a). The **Secretary of Commerce** is authorized and directed to administer and enforce all of the provisions of this Act and regulations issued

pursuant thereto and all of the provisions of the Convention and of the regulations of the Commission, except to the extent otherwise specifically provided for in this Act. 16 U.S.C. § 916j(a).

*Authority for International Activities/Engagement by NOAA/DOC:*

The United States Commissioner as well as a Deputy U.S, Commissioner, shall be appointed by the President, on the concurrent recommendations of the Secretary of State and the **Secretary of Commerce**. 16 U.S.C. § 916a(a), (b). The Secretary of State is authorized, with the concurrence of the **Secretary of Commerce**, to present or withdraw any objections on behalf of the United States Government to such regulations or amendments of the schedule to the Convention as are adopted by the Commission and submitted to the United States Government in accordance with the Convention. 16 U.S.C. § 916b. The Secretary of State is further authorized to receive on behalf of the United States Government reports, requests, recommendations, and other communications of the Commission, and to act thereon either directly or by reference to the appropriate authority. *Id.* All agencies of the Federal Government are authorized, on request of the Commission, to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the Commission in the performance of its duties as prescribed by the convention. 16 U.S.C. § 916h(b).

## NATIONAL OCEAN SERVICE

### ***Act to Prevent Pollution from Ships, 33 U.S.C. 1901-1915***

This statute implements the International Convention for the Prevention of Pollution from Ships (known as MARPOL) and the Protocol on Environmental Protection to the Antarctic Treaty. The law authorizes the Secretary of the department in which the Coast Guard is operating to develop regulations to administer these treaties. 33 U.S.C. § 1903. The Act also establishes the Interagency Marine Debris Committee, which is chaired by NOAA, 33 U.S.C. § 1914, and directs NOAA and EPA, in consultation with the Secretary of Transportation, to conduct a public outreach program on the harmful effects of plastic pollution, 33 U.S.C. § 1915.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

The Interagency Marine Debris Coordinating Committee, under NOAA's chairmanship, is to coordinate marine debris research and activities among Federal agencies, in cooperation and coordination with non-governmental organizations, industry, universities, and research institutions, States, Indian tribes, and other nations, as appropriate. 33 U.S.C. § 1914(a). This Committee also is to meet at least twice a year to provide a public, interagency forum for the coordination of national and international research, monitoring, education, and regulatory actions addressing the persistent marine debris problem. 33 U.S.C. § 1914(c).

The Secretary of the department in which the Coast Guard is operating, in consultation with the Secretary of Agriculture and the **Secretary of Commerce**, shall report to the Congress triennially regarding compliance with Annex V to the International Convention for the Prevention of Pollution from Ships in United States waters and shall publish in the Federal Register annually a list of the enforcement actions taken against any domestic or foreign ship (including any commercial or recreational ship) pursuant to the Act to Prevent Pollution from Ships. 33 U.S.C. § 1913(a).

### ***Clean Hulls – Coast Guard Authorization Act of 2010, Title X, 33 U.S.C. §§ 3801-3857***

These sections implement the 2001 International Convention on the Control of Anti-Fouling Systems on Ships (Anti-Fouling Convention), and repeal the Organotin

Antifouling Paint Control Act of 1988 (33 U.S.C. §§ 2401-2410). The Anti-Fouling Convention governs the use of anti-fouling systems to prevent the build-up of organisms on the surface of ships with the goal of reducing any toxicity risks from these systems. The Act applies to vessels operated under the authority of the United States; any vessel permitted by a Federal agency to operate on the Outer Continental Shelf; and any other vessel when in the internal waters of the United States, in any port, or other place in the United States, lightering or anchoring in the territorial sea of the United States. 33 U.S.C. § 3802(a). Vessels of at least 400 gross tons that engage in one or more international voyages shall carry an International Antifouling System Certificate. 33 U.S.C. § 3821.

*Authority for International Activities/Engagement by NOAA/DOC:*

The **Administrator of NOAA** is authorized, as is the Secretary of the department in which the Coast Guard operates and the Administrator of the EPA, to undertake scientific and technical research and monitoring pursuant to article 8 of the Anti-Fouling Convention to promote the availability of information concerning scientific and technical activities undertaken in accordance with the Convention. Article 8 requires member states to promote research on the effect of anti-fouling systems and share information with other member states of the Convention. 33 U.S.C. § 3825.

***The Coast and Geodetic Survey Act, 33 U.S.C. §§ 883a-883l***

The statute authorizes the **Secretary of Commerce** to conduct the following activities: (1) hydrographic and topographic surveys; (2) tide and current observations; (3) geodetic-control surveys; (4) field surveys for aeronautical charts; (5) geomagnetic, seismological, gravity, and related geophysical measurements and investigations, and observations for the determination of variation in latitude and longitude. 33 U.S.C. § 883a. The Act provides the **Secretary of Commerce** with data analysis and data dissemination authority. 33 U.S.C. § 883b. The **Secretary of Commerce** is also authorized to conduct developmental work for improvement of surveying and cartographic methods, as well as instruments and equipment; and to conduct investigations and research in the geophysical sciences (including geodesy, oceanography, seismology, and geomagnetism). 33 U.S.C. § 883d. See “Geophysical Sciences Authorities” described in the next section.

*Authority for International Activities/Engagement by NOAA/DOC:*

The **Secretary of Commerce** is authorized to enter into cooperative agreements, or any other agreements, with, and to receive and expend funds made available by, any State or subdivision thereof, any Federal agency, or any public or private organization, or individual for surveys or investigations authorized herein, or for performing related surveying and mapping activities, including special-purpose maps, and for the

preparation and publication of the results thereof. 33 U.S.C. § 883e(1). The **Secretary of Commerce** is authorized to contract with qualified organizations for the performance of any part of the authorized functions of the National Ocean Survey when the Secretary deems such procedure to be in the public interest. 33 U.S.C. § 883f.

### ***Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451-1466***

The Coastal Zone Management Act is designed “to preserve, protect, develop, and where possible, to restore or enhance” the resources of the nation’s coastal zone. 16 U.S.C. § 1452. This policy is accomplished through the implementation of state coastal management programs. State participation in coastal zone management planning is voluntary. There are no federal standards in absence of a state program. However, the Act provides two types of incentives to encourage state participation: (1) grant funds for states to develop, implement, and maintain coastal management programs, 16 U.S.C. § 1455; and (2) the requirement that activities conducted, permitted, or funded by the federal government be consistent to the maximum extent practicable with the enforceable policies of a participating state’s approved coastal management program, 16 U.S.C. § 1456(c). States with federally-approved coastal management programs may object to projects that are inconsistent with the State’s program. 16 U.S.C. § 1456(c). In the event of an objection, the project may not receive necessary federal licenses and permits unless the **Secretary of Commerce**, on appeal, overrides the state’s objection. 16 U.S.C. § 1456.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**Encourage Cooperation and Coordination** – Congress has declared that it is national policy for the **Secretary of Commerce** “to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States.” 16 U.S.C. § 1452(5)

**Technical Assistance and Support** – The Act also provides that the **Secretary of Commerce** shall conduct a program of technical assistance and management-oriented research in order to support both State coastal management program amendments and to further international cooperative efforts and technical assistance in coastal zone management. 16 U.S.C. § 1456c(a).

**Development of Coastal Resources** – The Act provides that the **Secretary of Commerce** shall provide for the establishment of the National Coastal Resources Research and Development Institute, one of the purposes of which is to research “efficient and responsible development of ocean coastal resources, including arctic resources.” 16 U.S.C. §1463b(b).

### ***Coral Reef Conservation Act of 2000, 16 U.S.C. §§ 6401-6409***

The purposes of the Act are to preserve and restore coral reef ecosystems; to promote wise management and sustainable use of these ecosystems; to develop scientific understanding of these ecosystems; and to assist in the preservation of coral reefs by supporting conservation programs, including projects that involve affected local communities and nongovernmental organizations. 16 U.S.C. § 6401. Authority to conduct these activities is granted specifically to the **Secretary of Commerce** and the **NOAA Administrator**. 16 U.S.C. § 6409(1); 16 U.S.C. § 6409(7). The **NOAA Administrator** shall also publish and update a national coral reef action strategy as well as an implementation plan. 16 U.S.C. § 6402.

The Coral Reef Conservation Act was preceded by Executive Order No. 13089 which continues to be in effect. *See* below.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

The action strategy shall include, among other topics, international and regional issues. 16 U.S.C. § 6402(b). The **Secretary of Commerce** may enter into cooperative conservation and management agreements with local, regional, or international programs or partners. 16 U.S.C. § 6406(b)(4). The **Secretary of Commerce**, through the **NOAA Administrator** and subject to the availability of funds, shall provide grants of financial assistance for projects for the conservation of coral reefs. The **NOAA Administrator**, after ensuring that no less than forty percent of available funds are provided to Pacific Ocean projects and forty percent to projects in Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea within the maritime areas and zones subject to the jurisdiction and control of the U.S., may award remaining funds to emerging priorities and threats, including international priorities and threats identified by the **NOAA Administrator**. 16 U.S.C. § 6403(d).

### **Executive Order No. 13089 (June 11, 1998) (“Coral Reef Protection”)**

All Federal agencies whose actions may affect U.S. coral reef ecosystems shall: (a) identify their actions that may affect U.S. coral reef

ecosystems; (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and (c) ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems. The Secretary of the Interior and the **Secretary of Commerce**, through the **NOAA Administrator**, shall co-chair a U.S. Coral Reef Task Force which shall oversee implementation of the policy and Federal agency responsibilities set forth in the Order, and shall guide and support activities under the U.S. Coral Reef Initiative. Federal agencies whose actions affect U.S. coral reef ecosystems, shall provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including measures reducing impacts from pollution, sedimentation, and fishing. These measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected governmental and nongovernmental entities, the scientific community, and commercial interests.

The Secretary of State and the Administrator of USAID, in cooperation with other members of the Coral Reef Task Force, shall assess the U.S. role in international trade and protection of coral reef species and implement appropriate strategies and actions to promote conservation and sustainable use of coral reef resources worldwide. Such actions shall include expanded collaboration with other International Coral Reef Initiative<sup>1</sup> (“ICRI”) partners, especially governments, to implement the ICRI through its Framework for Action and the Global Coral Reef Monitoring Network at regional, national, and local levels.

***See also Executive Order No. 13178 (December 7, 2000) (“Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve”) discussed *infra* in connection with the National Marine Sanctuaries Act.***

### ***Deep Seabed Hard Mineral Resources Act, 30 U.S.C. §§ 1401-1473***

The Deep Seabed Hard Mineral Resources Act establishes United States legal regime for exploration and recovery of hard mineral resources in the deep seabed, pending adoption by the United States of an international regime, such as the United Nations Convention on the Law of the Sea (UNCLOS). The Act establishes a licensing and permit process for exploration and recovery of hard mineral resources for entities under the jurisdiction of the United States. The process helps to ensure the protection of the marine

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<sup>1</sup> An informal partnership of governments, U.N. organizations, multilateral development banks, and environmental and developmental non-government organizations.

environment, safety of life and property at sea, prevention of unreasonable interference with other uses of the high seas, and conservation of mineral resources.

*Authority for International Activities/Engagement by NOAA/DOC:*

**NOAA Authority** – The statute grants to **NOAA** the authority to issue licenses for exploration and permits for the commercial recovery of hard mineral resources in the deep seabed (including areas in the high seas) to United States citizens and to persons and vessels under the jurisdiction of the United States. 30 U.S.C. § 1412. The United States exercises its jurisdiction over United States citizens and vessels, and foreign persons and vessels otherwise subject to its jurisdiction, in the exercise of the high seas freedom to engage in exploration for, and commercial recovery of, hard mineral resources of the deep seabed, in accordance with generally accepted principles of international law recognized by the United States; but the United States does not thereby assert sovereignty or sovereign or exclusive rights or jurisdiction over, or the ownership of, any areas or resources in the deep seabed. 30 U.S.C. § 1402.

**Necessary Findings** – Before issuing or transferring a license or permit, the **NOAA Administrator** must find that the exploration or commercial recovery proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other states, as recognized under general principles of international law; will not conflict with any international obligation of the United States; will not create a situation which may reasonably be expected to lead to a breach of international peace and security; cannot reasonably be expected to result in a significant adverse effect on the quality of the environment; and will not pose an inordinate threat to the safety of life and property at sea. 30 U.S.C. § 1415(a). Each license and permit issued under this subchapter shall include such restrictions as may be necessary to ensure that exploration or commercial recovery activities do not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law. 30 U.S.C. § 1421. No license or permit shall be issued under this Act permitting any exploration or commercial recovery which will conflict with any license, permit, or equivalent authorization issued by any foreign nation which is designated by **NOAA** as a reciprocating state under the Act. 30 U.S.C. § 1428(b).

**International Consultations** – The **NOAA Administrator**, in consultation with the Secretary of State, shall consult with foreign nations which enact, or are preparing to enact, domestic legislation establishing an interim legal framework for exploration and commercial recovery of hard mineral resources with a view to facilitating the designation of such nations as reciprocating states and, as necessary, the negotiation of agreements with such foreign nations. In addition, the



**NOAA Administrator** shall provide such foreign nations with information on environmental impacts of exploration and commercial recovery activities, and shall provide any technical assistance requested in designing regulatory measures to protect the environment. 30 U.S.C. § 1428(f).

**Effect of Subsequent International Agreement** – If an international agreement enters into force with respect to the United States, any provision of subchapter I (regulation and licenses), subchapter II (transitional provisions), or subchapter III (enforcement) of this Act, and any regulation issued under any such provision, which is not inconsistent with such international agreement shall continue in effect with respect to United States citizens. 30 U.S.C. § 1442.

Two exploration licenses are currently active for seabed areas in the Clarion-Clipperton zone of the South Pacific Ocean.

### ***Federal Ocean Acidification Research and Monitoring Act of 2009, 33 U.S.C. §§ 3701-3708***

This statute provides for the development and coordination of a comprehensive interagency plan to monitor and conduct research on the processes and consequences of ocean acidification on marine organisms and ecosystems; to establish an interagency research and monitoring program on ocean acidification; to establish an ocean acidification program within **NOAA**; to assess and analyze regional and national ecosystem and socioeconomic impacts of increased ocean acidification; and to research adaptation strategies and techniques for effectively conserving marine ecosystems as they cope with increased ocean acidification. 33 U.S.C. § 3701(a). The statute calls for creation of a joint Interagency Subcommittee, to be chaired by **NOAA**, to develop a strategic research and monitoring plan and to oversee assessment of the potential impacts of ocean acidification on marine organisms and marine ecosystems and to oversee the development of adaptation and mitigation strategies. 33 U.S.C. § 3703(d).

#### ***Authority for International Activities/Engagement by NOAA/DOC:***

**Interagency Subcommittee and Research Plan** – The Subcommittee shall coordinate the U.S. research and monitoring program with programs and with scientists from other nations. 33 U.S.C. § 3703(b) The Subcommittee’s research plan shall describe specific activities, such as participation in international research efforts; and make recommendations for the coordination of the ocean acidification research and monitoring activities of the United States with such activities of other nations and international organizations. 33 U.S.C. § 3704(b)

**Ocean Acidification Program** – The **Secretary of Commerce** shall establish an ocean acidification program within **NOAA** to conduct research and monitoring activities consistent with the Subcommittee’s strategic plan, and to provide educational opportunities that encourage an interdisciplinary and international approach to exploring the impacts of ocean acidification. The program shall also provide for coordination of ocean acidification monitoring and impacts research with other appropriate international ocean science bodies such as the Intergovernmental Oceanographic Commission, the International Council for the Exploration of the Sea, the North Pacific Marine Science Organization, and others. 33 U.S.C. §§ 3705(a). In conducting the Program, the **Secretary of Commerce** (acting through **NOAA**) may enter into and perform such contracts, leases, grants, or cooperative agreements as may be necessary to carry out the purposes of this chapter on such terms as the **Secretary** considers appropriate. 33 U.S.C. § 3705(b).

### ***Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387***

The Federal Water Pollution Control Act, also known as the Clean Water Act, establishes a comprehensive water pollution control program. The Clean Water Act encompasses a wide range of programs, including grants for construction of treatment works, the establishment of water quality standards, and the national pollutant discharge elimination system. 33 U.S.C. §§ 1281-1301, 1311-1330, and 1342.

#### ***Authority for International Activities/Engagement by NOAA/DOC:***

**Action by Foreign Governments** -- The Clean Water Act includes among its goals that the “the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.” 33 U.S.C. § 1251(c).

**Stronger Enforcement of Agreements** – The Act also requires the Secretary of the department in which the Coast Guard is operating, in consultation the heads of other appropriate Federal agencies, to ensure that Coast Guard pursue stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including

joint enforcement operations, training, and stronger compliance mechanisms. 33 U.S.C. § 1321c.

**Comprehensive Water Quality Sampling** – The Clean Water Act also requires that the EPA Administrator coordinate and implement through EPA and **NOAA Fisheries** a comprehensive water quality sampling program in estuarine zones after consultation with interested State, local, interstate, or international agencies. 33 U.S.C. § 1330(j)(C).

**Research, Investigations, Monitoring --** The Administrator of EPA shall encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of research, investigations, studies, surveys, etc. on the causes, effects, extent, prevention and elimination of pollution and shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall, in cooperation with the States, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans; and the Administrator shall conduct such surveillance by utilizing the resources of the NASA, **NOAA**, the United States Geological Survey, and the Coast Guard. 33 U.S.C. §§ 1254(a).

**Research Harmful Effects of Pollution** – In carrying out the provisions of section 1254(a) of this title, the Administrator of EPA shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the **USFWS**, **NOAA**, and other Federal, State, and interstate agencies carrying on such research. Such research shall include the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commercial and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species. 33 U.S.C. § 1254a.

**Great Lakes Research** – The Administrator of EPA, in cooperation with other Federal departments, agencies, and instrumentalities, is authorized to enter into agreements with any State, political subdivision, interstate agency, or other public agency, or combination thereof, to carry out one or more projects to demonstrate new methods and techniques and to develop preliminary plans for the elimination or control of pollution, within all or any part of the watersheds of the Great Lakes. 33 U.S.C. § 1258(a).

***Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251 note, Pub. L. 92-500, §§ 6-7***

The 1972 amendments to the Federal Water Pollution Control Act restructured the authority for water pollution control and consolidated that authority in the Administrator of EPA. They also changed the thrust of enforcement from water quality standards, regulating the amount of pollutants in a given body of water, to effluent limitations, regulating the amount of pollutants being discharged from particular point sources.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Competitive Effects of Pollution Control** – The Amendments directed the **Secretary of Commerce** to undertake an investigation and study of the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation does not require its manufacturers to implement pollution abatement and control programs, requires a lesser degree of pollution abatement and control in its programs, or in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program; and shall study alternative means by which such competitive advantage might be equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and shall assess the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs. Pub. L. 92-500, § 6(a). The **Secretary of Commerce** shall make an initial report to the President and Congress within six months after the date of enactment of this section [Oct. 18, 1972] and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months. Pub. L. 92-500, § 6(b).

**International Agreements** – The President shall undertake to enter into international agreements to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums. (Note: Under Exec. Ord. No. 11742, this authority was subsequently vested in the Secretary of State, “in coordination with other appropriate federal agencies.”)

***Federal Water Pollution Control Act as amended by the Great Lakes Legacy Act of 2002, 33 U.S.C. § 1268, Pub. L. 107-303, §§ 101-106***

Significant portions of Great Lakes waters are impaired because of years of discharges of toxic chemicals that have accumulated in the sediments of the lakes. The purpose of this enactment is to achieve the goals embodied in the Great Lakes Water Quality Agreement which is a bilateral agreement between the United States and Canada, signed in 1978 and amended in 1987 (Agreement). 33 U.S.C. § 1268(a)(2). Together, the U.S. and Canadian governments have identified 43 specific areas of contaminated sediments throughout the lakes as Areas of Concern and have initiated a variety of remedial actions. This Act amended the Great Lakes provision of the Clean Water Act (section 118) to authorize funds for monitoring, evaluating, and remediating contaminated sediments in areas of concern. The statute establishes a Great Lakes National Program Office within EPA which shall cooperate with appropriate federal, state and international agencies to develop and implement specific action plans to carry out the responsibilities of the United States under the Agreement, to establish a Great Lakes system-wide surveillance network, to serve as liaison to the Canadian members of the International Joint Commission,<sup>2</sup> and to coordinate EPA actions with the actions of other federal agencies and state and local authorities. 33 U.S.C. § 1268(b), (c).

*Authority for International Activities/Engagement by NOAA/DOC:*

**Great Lakes Research Office** – The statute establishes within NOAA the Great Lakes Research Office which shall identify issues relating to Great Lakes resources on which research is needed, shall inventory environmental research programs relating to the Great Lakes, establish a Great Lakes research exchange, and conduct research and monitoring activities which address priority issues and current needs relating to the Great Lakes. 33 U.S.C. § 1268(d). By October 1 of each year, the Program Office and the Research Office shall prepare a research plan for the following year which identifies proposed research dedicated to activities conducted under the Agreement, including an assessment of priorities needed to fulfill the terms of the Agreement, and research that may be used to develop a comprehensive Great Lakes System environmental data base. 33 U.S.C. § 1268(e). The head of each federal agency engaged in or concerned with programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the Great Lakes, including NOAA, shall submit an annual report to EPA

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<sup>2</sup> The International Joint Commission consists of three representatives from the U.S. and three from Canada. It was established by the Boundary Waters Treaty of 1909. Its purpose is to assist the two governments in addressing problems relating to the many rivers and lakes which lie along or flow across the border. The Commission has, in turn, established more than 20 boards to assist in carrying out its responsibilities.

on agency activities affecting compliance with the Agreement. 33 U.S.C. § 1268(f).

**Executive Order No. 13340 (May 18, 2004)**  
**(“Establishment of the Great Lakes Interagency Task Force and Promotion of a Regional Collaboration of National Significance for the Great Lakes”)**

To assist in establishing a regional collaboration for the Great Lakes, the President issued Executive Order No. 13340 in May 2004 which established the Great Lakes Interagency Task Force to promote state, federal and regional collaboration; to collaborate with Canada and its provinces and with bi-national bodies regarding Great Lakes policies, strategies, projects, and activities; to develop consistent federal policies, strategies and projects as well as outcome-based goals focusing on cleaner water, sustainable fisheries, and biodiversity of the Great Lakes system, and to ensure coordinated development of the Great Lakes portion of the Global Earth Observation System. 33 U.S.C. § 1268 note, Section 3. The **Secretary of Commerce** is an officer of the Task Force, along with other Cabinet officials and the CEQ Chairman. The Task Force has established the Great Lakes Regional Working Group which includes **NOAA** and other federal agency representatives. The Working Group will coordinate and make recommendations on how to implement the policies, strategies, projects, and priorities of the Task Force. *Id.*

***Great Lakes Shoreline Mapping Act of 1987, 33 U.S.C. § 883a note, Pub. L. 100-220, as amended, §§ 3201-3206***

This statute directs the **National Ocean Service**, in consultation with the U.S. Geological Survey to plan for and prepare maps of the shoreline of the Great Lakes. These maps shall include bathymetry, topography, and geological conditions of the near shore area, to the extent that this area will affect coastal erosion and flooding; information on the recent geological past of the near shore area and shoreline areas; and appropriate information for use in predicting and preventing damage caused by erosion and flooding in the Great Lakes. Section 3203(b).

*Authority for International Activities/Engagement by NOAA/DOC:*

To the maximum extent practicable, these maps shall be consistent with similar shoreline maps prepared by, or for the use of, the Government of Canada. The Director of Charting and Geodetic Services shall make such maps available to the Government of Canada. Section 3203(c).

### ***Hydrographic Services Improvement Act of 1998, 33 U.S.C. § 892-892d.***

This statute further expands on the duties of the **NOAA Administrator** under the Coast and Geodetic Survey Act. It directs the **Administrator** to acquire and disseminate hydrographic data and provide hydrographic services; promulgate standards for hydrographic data; ensure comprehensive geographic coverage of hydrographic services, in cooperation with other appropriate Federal agencies; maintain a national database of hydrographic data; and participate in the development of, and implement in cooperation with other appropriate Federal agencies, international standards for hydrographic data and hydrographic services. 33 U.S.C. § 892a. The Act provides for a quality assurance program for non-federal navigational products (that is, any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data), 33 U.S.C. § 892b, and for a broad-based Hydrographic Services Review Panel to advise the **Administrator** on **NOAA's** duties under the Coast and Geodetic Survey Act and this statute, 33 U.S.C. § 892c.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

The Act provides that the **Administrator** shall 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. 33 U.S.C. § 892a(a)(7).

### ***Marine Debris Research, Prevention, and Reduction Act, 33 U.S.C. §§ 1951-1958***

The purposes of this Act are “(1) to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety; (2) to reactivate the Interagency Marine Debris Coordinating Committee; and (3) to develop a Federal marine debris information clearinghouse.” 33 U.S.C. § 1951. The Act establishes within **NOAA** a Marine Debris Prevention and Removal Program to reduce and prevent the occurrence and adverse impacts of marine debris on the marine environment and navigation safety. The program’s central components include mapping, debris identification, impact assessments, removal and prevention activities, establishing a process for cataloguing and maintaining an inventory of marine debris and its impacts, research into and development of alternatives to gear that poses threats to the marine environment, and outreach activities. 33 U.S.C. § 1952. The Act also authorizes the U.S. Coast Guard to undertake marine debris activities

consistent with Act to Prevent Pollution from Ships and the International Convention for the Prevention of Pollution from Ships (MARPOL). 33 U.S.C. § 1953.

*Authority for International Activities/Engagement by NOAA/DOC:*

This Act reactivates the Interagency Marine Debris Coordinating Committee, which is chaired by **NOAA**. 33 U.S.C. § 1951(2). The composition of the committee is described in the Act to Prevent Pollution from Ships, 33 U.S.C. § 1914. The Committee directed to report to Congress on sources, impacts of marine debris, alternatives for reducing marine debris and their costs, and to make recommendations to reduce marine debris both domestically and internationally. The Committee is further directed to report biennially on the status and implementation of committee recommendations and strategies, on **NOAA** accomplishments, on its marine debris inventory, and on efforts relating to marine debris removal, as well as Coast Guard programs and accomplishments related to enforcement and compliance with MARPOL requirements. 33 U.S.C. § 1954.

***National Marine Sanctuaries Act, 16 U.S.C. §§ 1431-1445c-1***

This statute authorizes the **Secretary of Commerce** to identify and designate, as national marine sanctuaries, areas of the marine environment which are of special national or ecological significance, and it provides authority for comprehensive and coordinated conservation and management of these marine areas and regulation of activities affecting them; to maintain, protect, restore and enhance natural habitats, populations, and ecological processes; to enhance public awareness, understanding, and appreciation; to support, promote, and coordinate scientific research; to facilitate all public and private uses of the resources; to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes, international organizations, and other interests; and to cooperate with global programs encouraging conservation of marine resources. 16 U.S.C. § 1431(b). The statute prohibits the destruction, loss of, or injury to any sanctuary resource; authorizes the assessment of civil penalties and criminal fines for violations of the Act; and establishes liability for response costs and natural resource damages for injured resources. 16 U.S.C. §§ 1436, 1437, 1443.

*Authority for International Activities/Engagement by NOAA/DOC:*

The Secretary of State, in consultation with the **Secretary of Commerce**, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established. 16 U.S.C. § 1435(b). The **Secretary of**



**Commerce**, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this Act and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas. 16 U.S.C. § 1435(c). The **Secretary of Commerce** may enter into cooperative agreements, contracts, or other arrangements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons (including foreign governments) to carry out the purposes and policies of this chapter. 16 U.S.C. § 1442(a). Regulations issued under this Act shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. 16 U.S.C. § 1435(a).

### **Executive Order No. 13158 (May 26, 2000) (“Marine Protected Areas”)**

In furtherance of the purposes of statutes including the National Marine Sanctuaries Act, National Historic Preservation Act, Magnuson-Stevens Fishery Conservation and Management Act, Coastal Zone Management Act, Endangered Species Act of 1973, Marine Mammal Protection Act, National Environmental Policy Act, Outer Continental Shelf Lands Act, and other pertinent statutes, this Order directs federal agencies whose authorities provide for the establishment and management of Marine Protected Areas (MPAs) to, consistent with domestic and international law: (a) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded MPAs; (b) develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the nation's natural and cultural resources; and (c) avoid causing harm to MPAs through federally conducted, approved, or funded activities.

**NOAA** is directed to establish a Marine Protected Area Center to carry out, in cooperation with the Department of the Interior, the requirements of this order, to partner with governmental and nongovernmental entities to conduct necessary research, analysis, and exploration, and to develop a framework for a national system of MPAs. Federal agencies taking actions pursuant to this Executive Order must act in accordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America, Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States.

**Executive Order No. 13178 (December 7, 2000)**  
**(“Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve”)**

This Executive Order created the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands extending approximately 1200 nautical miles in length and 100 nautical miles in width. The Order prescribes conservation measures that restrict some activities throughout the Reserve and establishes Reserve Preservation Areas around certain islands, atolls, and banks where all consumptive or extractive uses are prohibited. On January 18, 2001, establishment of the Reserve was finalized by issuance of Executive Order 13196. This Executive Order modified Executive Order 13178, revising certain conservation measures and making permanent the Reserve Preservation Areas, with certain modifications. The National Marine Sanctuary Program has begun the process to designate the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve as a National Marine Sanctuary under the National Marine Sanctuaries Act.

The Order directs the **Secretary of Commerce** to develop a Reserve Operations Plan which shall provide, among other things, for the **Secretary of Commerce** to evaluate the need for the establishment of vessel monitoring systems and, if warranted, shall initiate the steps necessary to have the appropriate domestic agencies, and request that the International Maritime Organization, adopt a vessel monitoring system requirement for the Reserve.

Management of the Reserve and any regulations issued pursuant thereto and all other provisions of this order shall be applied consistently with the 1983 Presidential Proclamation on the Exclusive Economic Zone, the 1988 Presidential Proclamation on the Territorial Sea, and the 1999 Presidential Proclamation on Contiguous Zone and in accordance with generally recognized principles of international law, and with the treaties, conventions, and other agreements to which the United States is a party. The **Secretary of Commerce** shall consult with the Department of State in implementing this order.

***Ocean Dumping Act, 33 U.S.C. §§ 1401-1445, 16 U.S.C. § 1447-1447f, 33 U.S.C. §§ 2801-2805***

The Ocean Dumping Act is reflected in Titles I, II, IV and V of the Marine Protection Research and Sanctuaries Act, 33 U.S.C. §§ 1401-1445, 2801-2805; 16 U.S.C. § 1447-1447f. It provides the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers with authority to regulate the intentional disposal of materials into the ocean, and it provides NOAA and EPA with authority to conduct certain research and monitoring functions. Title I, II and IV are relevant to this analysis.

Title I, Permit Program, 33 U.S.C. §§ 1401-1421

Except as may be authorized by a permit, no person shall transport from the United States any material for the purpose of dumping it into ocean waters. In the case of a vessel or aircraft registered in the U. S. or flying the U. S. flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location any material for the purpose of dumping it into ocean waters. Except as may be authorized by a permit, no person shall dump any material transported from a location outside the United States into the territorial sea of the United States, or into a zone contiguous to the U.S. territorial sea, extending to a line twelve nautical miles seaward from the base line. 33 U.S.C. § 1411. Certain materials, such as medical waste, sewage sludge and industrial waste may not be dumped in the ocean. 33 U.S.C. §§1412(a), 1414b. Permits for dredged material (currently the bulk of ocean-dumped material) are issued by the U.S. Army Corps of Engineers and for all other permitted material by EPA.

*Authority for International Activities/Engagement by NOAA/DOC:*

The Secretary of State, in consultation with the Administrator of EPA, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other component international organizations for the development of appropriate international rules and regulations in support of the policy of regulating the dumping of materials into the ocean. 33 U.S.C. § 1419. In undertaking the research program authorized under Title II of this Act relating to possible long-range effects of pollution, overfishing, and man-induced changes in ocean ecosystems (as described below), the **Secretary of Commerce** shall ensure that such program complements these activities and all activities undertaken by other federal agencies pursuant to this Title I.

Title II, Research Programs, 33 U.S.C. §§ 1441-1444

The **Secretary of Commerce** is directed to undertake a comprehensive, long-term research program on the effects of ocean dumping, as well as a comprehensive, continuing program of research on the possible long-range effects of pollution, overfishing, and man-induced changes in ocean ecosystems. These responsibilities shall

include the scientific assessment of damages to the natural resources from spills of petroleum or petroleum products. 33 U.S.C. §§ 1441-43.

*Authority for International Activities/Engagement by NOAA/DOC:*

In carrying out such research, the **Secretary of Commerce** shall take into account existing and proposed international policies affecting ocean problems. 33 U.S.C. § 1442(a). In addition, the **Secretary of Commerce**, under the foreign policy guidance of the President and pursuant to international agreements and treaties, may act in conjunction with any other nation or group of nations, and shall make known the results of his activities by such channels of communication as may appear appropriate. 33 U.S.C. § 1442(b).

Title IV, Regional Marine Research Programs, 16 U.S.C. §§ 1447-1447f

Title IV established nine regional marine research boards for the purpose of developing comprehensive marine research plans for the purpose of considering water quality and ecosystem conditions and to establish research and monitoring priorities for the region. Once the plans were approved by **NOAA** and EPA, they were to guide **NOAA** in awarding research grant funds. 16 U.S.C. § 1447c. The boards, having completed their work, ceased to exist in 1999.

*Authority for International Activities/Engagement by NOAA/DOC:*

The boards were directed to develop and stimulate, in consultation with the Department of State, joint marine research projects with foreign nations. 16 U.S.C. § 1447b(d).

**See Discussion of Executive Order No. 12114, *infra*, in the context of the National Environmental Policy Act.**

***Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. §§ 9101-9168.***

No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is located in the territorial sea of the United States, or which is connected to the United States by pipeline or cable, except in accordance with a license issued by **NOAA**. No citizen of the United States may engage in the ownership, construction or operation of an ocean thermal energy conversion plant except in accordance with a license issued by **NOAA** or in accordance with a license issued by a foreign nation whose licenses are found by the **NOAA Administrator**, after consultation with the Secretary of State, to be compatible with licenses issued by **NOAA**.

42 U.S.C. § 9111(a). Each license shall include conditions that ensure that the construction and operation of the facility shall not interfere with the peaceful uses of the high seas by citizens of the U.S. or of other nations. 42 U.S.C. § 9119(a). The **NOAA Administrator** shall initiate a program to assess the environmental effects of ocean thermal energy conversion facilities and plantships. 42 U.S.C. § 9117.

The U.S. Coast Guard prescribes by regulation and enforces procedures for ocean thermal energy conversion facilities with regard to safety, pollution, construction, operations, and otherwise to prevent or minimize any adverse impacts from such facilities. 42 U.S.C. § 9118. Coast Guard must also ensure that the thermal plume of such an ocean thermal energy conversion plantship does not degrade the thermal gradient used by the operation of any other ocean thermal energy conversion plantship or facility, or adversely affect the territorial sea of any other nation. 42 U.S.C. § 9119(c). Other federal statutory requirements which are applicable to ocean thermal energy conversion facilities and plantships such as the Clean Water Act, Clean Air Act, Endangered Species Act and Marine Mammal Protection Act trigger reviews by other agencies. These authorizations are incorporated into the facility license.

A project certified by the Department of Energy as a demonstration project is exempt from being required to obtain an ocean thermal energy conversion license from **NOAA**, pursuant to the Ocean Thermal Energy Conversion Research, Development, and Demonstration Act (42 U.S.C. §§ 9001 et seq.). This exemption does not relieve project developers from all of the requirements that would be associated with obtaining an ocean thermal energy conversion license, nor any requirements imposed by other federal statutes.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Consistent with Freedom of the High Seas** – As noted above, the purpose of this statute is to authorize and regulate the construction, location, ownership and operation of ocean thermal energy conversion facilities and plantships with due regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other nations in their exercise of the freedoms of the high seas as recognized under the Convention of the High Seas and the general principles of international law. 42 U.S.C. § 9119(c).

**International Agreements** – The Secretary of State, in cooperation with the **NOAA Administrator** and the Secretary of the department in which the Coast Guard is operating, shall seek effective international action and cooperation in support of the policy and purposes of this chapter and may initiate and conduct negotiations for the purpose of entering into international agreements designed to guarantee noninterference of ocean thermal energy conversion facilities and plantships with the thermal gradients used by other such facilities and plantships, to assure protection of such facilities and plantships and of navigational safety in

the vicinity thereof, and to resolve such other matters relating to ocean thermal energy conversion facilities and plantships as need to be resolved in international agreements. 42 U.S.C. § 9162.

***Oceans Act of 2000, 33 U.S.C. § 857-19 note, Pub. L. 106-256, §§1-7***

The purpose of this Act is to establish a Commission on Ocean Policy to make recommendations that will promote the protection of life and property against natural and manmade hazards; the responsible stewardship, including use, of fishery resources and other ocean and coastal resources; the protection of the marine environment and prevention of marine pollution; the enhancement of marine-related commerce and transportation; the resolution of conflicts among users of the marine environment; and the engagement of the private sector in innovative approaches for sustainable use of living marine resources and responsible use of non-living marine resources. Pub. L. 106-256, § 2. The Commission was to submit a final report to the President and Congress by June 20, 2003. Within 90 days after receiving the report and recommendations of the Commission, the President was to submit to Congress a statement of proposals to implement or respond to the Commission's recommendations for a coordinated, comprehensive, and long-range national policy for the responsible use and stewardship of ocean and coastal resources for the benefit of the United States. Pub. L. 106-256, § 4.

*Authority for International Activities/Engagement by NOAA/DOC:*

Among the recommendations to be made by the Commission were those that would promote the preservation of the role of the United States as a leader in ocean and coastal activities, and, when it is in the national interest, the cooperation by the United States with other nations and international organizations in ocean and coastal activities. Pub. L. 106-256, §2.

**Executive Order No. 13547 (July 19, 2010) (“Stewardship of the Ocean, Our Coasts and the Great Lakes”).**

In this Order, the President declared it to be the policy of the United States to, among other things, exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security. The United States shall promote this policy by cooperating and exercising leadership at the international level; by pursuing the United States’ accession to the Law of the Sea Convention; and by supporting ocean stewardship in a fiscally responsible manner. The Order establishes the National Ocean Council whose members include the **Secretary of Commerce** and the **NOAA Administrator** to implement the policy set forth in the Order.

## ***Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2762***

The Oil Pollution Act (OPA) of 1990 establishes a broad framework for preventing, responding to, and paying for discharges and threatened discharges of oil from ships and facilities. The **Administrator of NOAA**, in consultation with the heads of other affected agencies, shall promulgate regulations for the assessment of natural resource damages resulting from the discharge of oil. 33 U.S.C. § 2706(e)

Section 1006(b) (33 U.S.C. § 2706(b)) provides for the identification of natural resource trustees and describes their duties under the law. The implementing regulations for OPA natural resources provisions require trustees conducting natural resource damage assessments to coordinate their efforts to the maximum extent possible (*See* 15 CFR 990.14(a)).

The **Secretary of Commerce** shall provide for the establishment of a Prince William Sound Oil Spill Recovery Institute. The Institute shall conduct research and carry out educational and demonstration projects designed to identify and develop the best available techniques, equipment, and materials for dealing with oil spills in the arctic and subarctic marine environment; and complement Federal and State damage assessment efforts and determine, document, assess, and understand the long-range effects of Arctic or Subarctic oil spills on the natural resources of Prince William Sound and its adjacent waters. 33 U.S.C. § 2731(a), (b). The policies of the Institute shall be determined by an advisory board chaired by a representative of the **Secretary of Commerce**. 33 U.S.C. § 2706(c).

The **Secretary of Commerce** shall establish a North Pacific Marine Research Institute to conduct research and carry out education and demonstration projects relating to the North Pacific marine ecosystem with particular emphasis on marine mammal, sea bird, fish, and shellfish populations in the Bering Sea and Gulf of Alaska. 33 U.S.C. § 2738(a).

Section 7001 of the OPA establishes an Interagency Coordinating Committee on Oil Pollution Research in order to coordinate a “comprehensive program of oil pollution research, technology development, and demonstration” together with implementation and guidance plans based on the findings of that comprehensive research. The Committee is to include representatives from the **Department of Commerce** and **NOAA**. 33 U.S.C. § 2761(a), (b).

Public Law 101-15 (1990) set up the Damage Assessment and Restoration Revolving Fund (DARRF) to allow **NOAA** to recover monies spent in carrying out contingency planning, response, and natural resource damage assessment and restoration activities pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Federal Water Pollution Control Act (FWPCA), the Marine Protection, Research, and Sanctuaries Act (now the National Marine Sanctuaries Act (NMSA)), and the Oil Pollution Act (OPA), for any injury to the marine environment

and/or resources for which **NOAA** acts as trustee. In 1991, Public Law 102-567 significantly expanded **NOAA**'s ability to recapture expenses associated with natural resource damage assessment efforts. Under Public Law 102-567, **NOAA**'s recovery of these expenses associated with the natural resource damage assessment efforts is not limited to activities undertaken under the authority of CERCLA, FWPCA, NMSA, or OPA; or to efforts associated with natural resources for which **NOAA** acts as a trustee.

*Authority for International Activities/Engagement by NOAA/DOC:*

**Research** – The Interagency Committee is directed to coordinate and cooperate with other nations and foreign research entities in conducting oil pollution research, development, and demonstration activities, including controlled field tests of oil discharges. 33 U.S.C. § 2761(d). The Interagency Committee includes representatives from several agencies including **NOAA**. 33 U.S.C. § 2761(a)(3). The statute provides that in carrying out the comprehensive research program, coordination and cooperation with other nations is authorized. 33 U.S.C. § 2761(a)(2).

**Foreign Trustees** – 33 U.S.C. § 2706(b) provides for the designation of natural resource trustees, and includes “foreign trustees” among those who may claim natural resource damages. As such, there may be circumstances in which **NOAA**, as a Federal trustee, would be working with co-trustees that could include a foreign country’s representative. In such a case, **NOAA** may coordinate with and carry out assessment studies and activities with a foreign country.

**Fund** – Recoveries for natural resource damage and restoration activities are deposited into the DARRF, and are not subject to appropriations. Therefore, **NOAA** is able to collect into the DARRF reimbursements for its international consultation activities, even if a **NOAA** trust resource is not involved.



## **NATIONAL WEATHER SERVICE; NATIONAL ENVIRONMENTAL SATELLITE, DATA, & INFORMATION SERVICE; OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH**

### ***Geophysical Sciences Authorities, 33 U.S.C. §§ 883c, 883d, 883e***

These provisions authorize the **Secretary of Commerce** to conduct surveys, research, and investigations in geophysical sciences. In order to improve efficiency and increase engineering and scientific knowledge, the **Secretary of Commerce** is also authorized to conduct developmental work for improvement of surveying and cartographic methods, and of instruments, and equipment; and to conduct investigations/research in geophysical sciences (including geodesy, oceanography, seismology, and geomagnetism). 33 U.S.C. § 883d. The **Secretary of Commerce** is further authorized to enter into cooperative agreements with, and to receive and expend funds made available by State or Federal agencies, as well as any public or private organization or individual for purposes of surveying or mapping activities, including special purpose maps. 33 U.S.C. § 883e. *See* “The Coast and Geodetic Survey Act” described in the previous section.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

The **Secretary of Commerce** is directed to provide for an orderly collection, correlation, and dissemination of geomagnetic data from domestic and foreign sources and to ensure that such data is readily available. 33 U.S.C. § 883c.

### ***Global Change Research Act of 1990, 15 U.S.C. §§ 2921-2938***

The purpose of this Act is to provide for development and coordination of a comprehensive and integrated United States Global Change Research Program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced as well as the natural processes of global change. 15 U.S.C. § 2931(b). The President is directed to establish an interagency Committee on Earth and Environmental Sciences of which **NOAA** is to be a member. 15 U.S.C. § 2932. The **Secretary of Commerce** “shall ensure that relevant research activities of the National Climate Program are considered in developing national global change research efforts.” 15 U.S.C. § 2938(a).

Authority for International Activities/Engagement by NOAA/DOC:

**Committee Functions** – The Committee shall cooperate with the Secretary of State in providing representation at international meetings and conferences on global change research in which the United States participates; and in coordinating the Federal activities of the United States with programs of other nations and with international global change research activities such as the International Geosphere-Biosphere Program. The Committee shall also consult with actual and potential users of the results of the Program to ensure that such results are useful in developing national and international policy responses to global change. 15 U.S.C. § 2932(e).

**Research Plan** – The Committee shall develop a National Global Change Research Plan for implementation of the Program. The Plan shall make recommendations for the coordination of the global change research activities of the United States with such activities of other nations and international organizations, including a description of the extent and nature of necessary international cooperation; bilateral and multilateral proposals for improving worldwide access to scientific data and information; and methods for improving participation in international global change research by developing nations. 15 U.S.C. § 2934(b), (e). The Plan shall also create globally accessible formats for data collected by various international sources. 15 U.S.C. § 2934(b), (e).

***Global Climate Protection Act of 1987, 15 U.S.C. § 2901 note, Pub. L. 100-204, §§ 1101-1106, as amended***

This Act declares it to be U.S. policy to seek to increase worldwide understanding of the greenhouse effect and its environmental and health consequences; foster cooperation among nations to develop more extensive and coordinated scientific research efforts with respect to the greenhouse effect; identify technologies and activities to limit mankind's adverse effect on the global climate by controlling greenhouse gases and to work toward multilateral agreements. Pub. L. 100-204, Section 1103(a). The President, through EPA, shall be responsible for developing and proposing to Congress a coordinated national policy on global climate change. Such policy formulation shall consider research findings of the various U.S. Government agencies, including **NOAA**. Pub. L. 100-204, Section 1103(b).

Authority for International Activities/Engagement by NOAA/DOC:

**Multilateral Diplomacy** – The Secretary of State shall be responsible for coordinating those aspects of United States policy requiring action through the channels of multilateral diplomacy, including the United Nations Environment Program and other international organizations. In

the formulation of these elements of United States policy, the Secretary of State shall, under the direction of the President, work jointly with United States government agencies concerned with environmental protection, including **NOAA**, consistent with applicable Federal law. Pub. L. 100-204, Section 1103(c).

**Former Soviet Union** – In recognition of the respective leadership roles of the United States and the independent states of the former Soviet Union in the international arena, and of the extent to which they are producers of atmospheric pollutants, the Congress urges that the President accord the problem of climate protection a high priority on the agenda of United States relations with the independent states. Pub. L. 100-204, Section 1106.

### ***International Cooperation in Global Change Research Act of 1990, 15 U.S.C. §§ 2951-2953***

The purposes of this Act are to promote international and intergovernmental cooperation on global change research; to involve scientists and policymakers from developing nations in such cooperative global change research programs; and to promote international efforts to provide technical and other assistance to developing nations which will facilitate improvements in their domestic standard of living while minimizing damage to the global or regional environment. 15 U.S.C. § 2951(b).

#### *Authority for International Activities/Engagement by NOAA/DOC:*

**Global Change Research** -- The President shall direct the Secretary of State, in cooperation with the Committee on Earth and Environmental Sciences, of which **NOAA** is a member, to initiate discussions with other nations leading toward international protocols and other agreements to coordinate global change research activities. Such discussions should include coordination of global change research plans with those developed by international organizations such as the International Council on Scientific Unions, the World Meteorological Organization, and the United Nations Environment Program. It should include the establishment of global change research centers and training programs for scientists, especially those from developing nations; and the development of innovative methods for management of international global change research. 15 U.S.C. § 2952(a)

**Energy Research** – The President shall direct the Secretary of State (in cooperation with the Secretary of Energy, the **Secretary of Commerce**, the United States Trade Representative, and other appropriate members of the Committee, which includes **NOAA**) to initiate discussions with other nations leading toward an international research protocol for

cooperation on the development of energy technologies which have minimally adverse effects on the environment. 15 U.S.C. § 2952(b).

**Information Office** – The Act requires that the President, with advice from all relevant Federal agencies, establish an Office for Global Change Research Information to provide foreign governments, businesses, institutions, and citizens with useful information and research data about adapting to the effects of global change. 15 U.S.C. § 2953.

***Land Remote-Sensing Policy Act of 1992, 51 U.S.C. §§ 60101-60162, as amended December 18, 2010***

This statute was recently re-codified and relocated in the U.S. Code. Under the Act the **Secretary of Commerce**, in consultation with other appropriate United States Government agencies, is authorized to license private sector parties to operate private remote sensing space systems for such period as the **Secretary** may specify and in accordance with the provisions of this subchapter. 51 U.S.C. § 60121(a). No license shall be granted by the **Secretary of Commerce** unless the **Secretary** determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States. 51 U.S.C. § 60121(b). The **Secretary of Commerce** shall issue such regulations as may be necessary to carry out these responsibilities. 51 U.S.C. § 60124. The term “land remote sensing” means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites.

*Authority for International Activities/Engagement by NOAA/DOC:*

**License Conditions** – Licenses shall, among other requirements, make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions. 51 U.S.C. § 60122(b)(2). The licensee shall also notify the **Secretary of Commerce** of any significant or substantial agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities. 51 U.S.C. § 60122(b)(6). The **Secretary of Commerce** may specify in a license that it is in the interest of the United States to require such data to be provided by the licensee without preference, bias, or any other special arrangement (except on the basis of national security concerns) regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another after considering the impact on the licensee and the importance of promoting

widespread access to remote sensing data from United States and foreign systems. 51 U.S.C. § 60121(e).

**Consultation --** The **Secretary of Commerce** and the Landsat Program Management shall consult with the Secretary of Defense on all matters under this chapter affecting national security. 51 U.S.C. § 60147(a). The **Secretary of Commerce** and the Landsat Program Management shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying promptly the **Secretary of Commerce** and the Landsat Program Management of such conditions. 51 U.S.C. § 60147(b)(1). Appropriate United States Government agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid. 51 U.S.C. § 60147(b)(2). The Secretary of State shall promptly report to the **Secretary of Commerce** and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data. 51 U.S.C. § 60147(b)(3).

**Earth Science Program** – The goal of NASA’s Earth Science program is to pursue a schedule of Earth observations, research, and applications activities to better understand the Earth, how it supports life, and how human activities affect its ability to do so in the future. In pursuit of this goal, NASA shall, together with **NOAA** and other relevant agencies, provide United States leadership in developing and carrying out a cooperative international Earth observations-based research program. 51 U.S.C. § 60501.

### ***National Climate Program Act, 15 U.S.C. §§ 2901-2908***

The purpose of this Act is to establish a comprehensive National Climate Program to assist both the Nation and the world to understand and respond to artificial and natural climate processes. 15 U.S.C. § 2902. The **Secretary of Commerce** shall establish within the Department of Commerce a National Climate Program Office which shall serve as the lead entity responsible for administering the program and be responsible for coordinating interagency participation in international climate-related activities. 15 U.S.C. § 2904(c). The Act grants **NOAA** the authority to enter into contracts, grants or cooperative agreements for climate-related activities. 15 U.S.C. § 2904(c). These activities include: assessments of the effect of climate on the natural environment, land and water resources and national security; basic and applied research to improve understanding of climate processes and climate change; methods for improving climate forecasts; global data collection and monitoring and analysis activities; systems for

management and dissemination of climatological data; measures for increasing international cooperation in climate research, monitoring, analysis and data dissemination; mechanisms for intergovernmental climate-related studies and services, including participation by universities; and experimental climate forecast centers. 15 U.S.C. § 2904(d).

*Authority for International Activities/Engagement by NOAA/DOC:*

The **Secretary of Commerce** shall establish within the Department of Commerce a National Climate Program Office. 15 U.S.C. § 2904(c)(1). That office shall be responsible for coordinating interagency participation in international climate-related activities. 15 U.S.C. § 2904(c)(2)(E). Each Federal officer, employee, department and agency that has been given a role in the Program by the President shall cooperate with the **Secretary** in carrying out the provisions of this Act with respect to global data collection, monitoring and analysis and measures for increased international cooperation and the dissemination of data 15 U.S.C § 2904(d)(4)-(d)(6). In addition, the **Secretary of Commerce** shall cooperate and participate with other Federal agencies, and foreign, international, and domestic organizations and agencies involved in international or domestic climate-related programs; provide representation at climate-related international meetings and conferences, and coordinate the activities of the Program with the climate programs of other nations and international agencies and organizations. 15 U.S.C. § 2904(f)(1)-(2).

***National Sea Grant College Program Act, as amended, 33 U.S.C. §§ 1121-1131***

The objective of this Act is to increase the understanding, assessment, development, management, utilization, and conservation of the Nation's ocean, coastal, and Great Lakes resources by providing assistance to promote a strong educational base, responsive research and training activities, broad and prompt dissemination of knowledge and techniques, and multidisciplinary approaches to environmental problems. 33 U.S.C. § 1121(b). Congress found that **NOAA** offers the most suitable locus and means for such commitment and engagement through the promotion of activities that will result in greater understanding, assessment, development, management, utilization, and conservation of ocean, coastal, and Great Lakes resources. The most cost-effective way to promote such activities is through continued and increased Federal support of the establishment, development, management, and operation of programs and projects by sea grant colleges, sea grant institutes, and other institutions, including strong collaborations between **NOAA** scientists and the research and outreach personnel at academic institutions. 33 U.S.C. §§ 1121(a)(6). The **Secretary of Commerce** is directed to maintain within **NOAA** a National Sea Grant College Program. 33 U.S.C. §§ 1123(a).

*Authority for International Activities/Engagement by NOAA/DOC:*

This Act declares it to be in the national interest to pursue, among other things, a policy that promotes domestic and international cooperative solutions to ocean, coastal, and Great Lakes issues. 33 U.S.C. § 1121(a). The Program shall, among other things, provide support for sea grant programs that comprise a national sea grant college program network, including international projects conducted within such programs and regional and national projects conducted among such programs. 33 U.S.C. § 1123(b)(1). To carry out the provisions of this subchapter, the **Secretary of Commerce** is authorized to enter into contracts, accept voluntary services, accept funds from other Federal departments, and promulgate rules and regulations as may be necessary and appropriate. 33 U.S.C. § 1123(c)(4)(D)-(G)

***National Weather Modification Policy Act of 1976, 15 U.S.C. § 330 note, Pub. L. 94-490, §§ 1-6.***

This Act directed the **Secretary of Commerce** to conduct a comprehensive investigation and study of the state of scientific knowledge concerning weather modification, the state of development of weather modification technology, the problems impeding effective implementation of weather modification technology, and to make recommendations concerning implementation of a national weather modification policy and program; to review the international importance and implications of weather modification activities by the United States; to analyze the necessity and feasibility of negotiating an international agreement concerning the peaceful uses of weather modification; and to formulate one or more options for a model international agreement concerning the peaceful uses of weather modification and the regulation of national weather modification activities. The Secretary was directed to report his findings and recommendations to Congress and the President by October 13, 1977.

The statute had been preceded by the signing of an agreement between Canada and the United States (**NOAA**) relating to the exchange of information on weather modification activities. (March 1975). In May 1977, the U.N. Secretary General officiated at a signing ceremony for a “Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques” which had been transmitted to the General Assembly by the U.S. and the Soviet Union. That Convention entered into force in October 1978 and was ratified by the U.S. in December 1979.

### ***Space Weather Authority, 15 U.S.C. § 1532***

This provision authorizes the **Secretary of Commerce** to conduct research on all telecommunications sciences, including wave propagation and reception and conditions which affect electromagnetic wave propagation and reception; preparation and issuance of predictions of electromagnetic wave propagation conditions and warnings of disturbances in such conditions; research and analysis in the general field of telecommunications sciences in support of other Federal agencies; investigation of ionizing electromagnetic radiation and its uses; as well as compilation, evaluation and dissemination of general scientific and technical data when such data are important to science, engineering, industry or the general public and are not available elsewhere.

#### ***Authority for International Activities/Engagement by NOAA/DOC:***

The **Secretary of Commerce** is authorized to conduct research on all telecommunications sciences, investigate conditions which affect the transmission of radio waves from their source to a receiver, and publish and otherwise disseminate general scientific and technical data resulting from the performance of the functions listed herein. 15 U.S.C. § 1532(1)-(7). On June 26, 2012, the United States and the United Kingdom issued a joint statement reviewing progress made to coordinate scientific knowledge and predictive capabilities and to develop a long-term vision for space weather activities, pledging continued cooperation to improve preparedness for space weather hazards. “Joint Statement Regarding Cooperation on Space Weather” (June 226, 2012)

### ***Tsunami Warning and Education Act, 33 U.S.C. §§ 3201-3207***

The Act establishes a comprehensive program to operate and maintain a Tsunami Forecasting and Warning Program, tsunami warning centers, Tsunami Research Program, and National Tsunami Hazard Mitigation Program. The **NOAA Administrator**, through the National Weather Service and in consultation with other relevant offices, shall operate a Tsunami Forecasting and Warning Program charged with providing tsunami detection, forecasting and adequate warnings. The Program shall maintain tsunami warning centers; utilize an array of tsunami detection technologies; provide tsunami forecasting capability; maintain data quality and management systems; undertake a cooperative effort among **NOAA**, the United States Geological Survey, and the National Science Foundation to provide rapid and reliable seismic information from international and domestic seismic networks; provide a capability for the dissemination of warnings to at-risk States; allow for integration of tsunami detection technologies with other environmental observing technologies; and include any technology that **NOAA** considers appropriate to fulfill the objectives of the program under this section. 33 U.S.C. § 3203.



*Authority for International Activities/Engagement by NOAA/DOC:*

The **NOAA Administrator** shall provide technical assistance and training to the Intergovernmental Oceanographic Commission, the World Meteorological Organization, and other international entities, as part of international efforts to develop a fully functional global tsunami forecast and warning system comprising regional tsunami warning networks, modeled on the International Tsunami Warning System of the Pacific. 33 U.S.C. § 3206(a). In addition, the **NOAA Administrator** shall operate an International Tsunami Information Center (ITIC) to improve tsunami preparedness for all Pacific Ocean nations participating in the International Tsunami Warning System of the Pacific. 33 U.S.C. § 3206(b). The ITIC also monitors international tsunami warning activities around the world; assists member states in establishing national warning systems, and makes information available on current technologies for tsunami warning systems; maintains a library of materials to promulgate knowledge about tsunami in general and for use by the scientific community; and disseminates information, including educational materials and research reports. 33 U.S.C. § 3206(b)(1)-(4). One of the purposes of the Act is to allow **NOAA** to improve international coordination for detection and response to tsunamis. 33 U.S.C. § 3202(6).

***Weather Service Organic Act, 15 U.S.C. § 313-313d, 325***

The Act is authorizes **NOAA** to forecast, record, report, and monitor the weather, and to distribute meteorological, hydrologic and climate data. 15 U.S.C. § 313. The **Secretary of Commerce** has responsibility for these and other essential weather-related duties for the protection of life and property and the enhancement of the Nation's economy. NOAA's National Weather Service (NWS) provides these services for the United States, its territories, adjacent waters and ocean areas. NWS data and products form a national information database and infrastructure which can be used by other governmental agencies, the private sector, the public and the global community.

*Authority for International Activities/Engagement by NOAA/DOC:*

The **Secretary of Commerce** is authorized to take such action as may be necessary in the development of an international basic meteorological reporting network in the Arctic region of the Western Hemisphere, including the establishment, operation, and maintenance of such reporting stations in cooperation with the State Department and other United States governmental departments and agencies, with the meteorological services of foreign countries and with persons engaged in

air commerce. 15 U.S.C. § 313a. Additionally, appropriations now or hereafter provided for the **National Weather Service** shall be available for equipment and maintenance of meteorological offices and stations, and maintenance and operation of meteorological facilities outside the United States by contract or otherwise. 15 U.S.C. § 325.

## GENERAL

### ***Foreign Assistance Act of 1961, 22 U.S.C. §§ 2151-2431k***

Under the Foreign Assistance Act, any agency of the U.S. Government is authorized to furnish services and commodities on an advance-of-funds or reimbursement basis to friendly countries, international organizations, the American Red Cross, and voluntary nonprofit relief agencies registered with and approved by the Agency for International Development (USAID). 22 U.S.C. § 2357. This may include the assignment of an agency employee to perform functions outside the U.S. or the detail of an agency employee to provide technical, scientific advice to a foreign government or to an international organization. 22 U.S.C. §§ 2387-2388, 2390-2392.

#### *Authority for International Activities/Engagement by NOAA/DOC:*

There are a number of examples of NOAA's partnering with USAID to bring technical, scientific and programmatic assistance to foreign nations, including efforts involving NOAA's Climate Prediction Center and efforts at capacity building. For example, NOAA is providing training in key areas which support the participation of Indonesia and other nations in the Coral Triangle Initiative. This includes Ecosystems-Based Fisheries Management. NOAA is building capacity in Indonesia and elsewhere to provide comprehensive and coordinated fisheries management through enforcement, science, and resource management strengthening and coordination. The activities carried out under this program will contribute to Indonesia's efforts to reduce illegal, unreported and unregulated (IUU) fishing and to strengthen fisheries enforcement. It also included Marine Protected Areas (MPA). NOAA is providing technical expertise to support capacity building for: 1) government agencies; 2) for MPA practitioners in priority landscapes; and 3) fisheries resource managers. NOAA is providing assistance in developing a body of curriculum and a training methodology to support on-going capacity building for MPA practitioners.

### ***Government Employees – Details to International Organizations, 5 U.S.C. §§ 3343, 3581-3584***

The head of an agency may detail, for a period of not more than 5 years, an employee of his or her agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national

interest, he may extend the 5-year period for up to an additional 3 years. 5 U.S.C. § 3343(b). Details may be made without reimbursement to the United States by the international organization; or with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed. 5 U.S.C. § 3343(d).

***International Environment Protection Act of 1983, 22 U.S.C. § 2151q***

The preservation of animal and plant species through the regulation of the hunting and trade in endangered species, through limitations on the pollution of natural ecosystems, and through the protection of wildlife habitats is declared to be an important objective of the United States development assistance. Each country development strategy statement or other country plan shall be prepared by the U.S. Agency for International Development and shall include an analysis of the actions necessary in that country to conserve biological diversity, and the extent to which the actions proposed for support by the Agency meet the needs thus identified. Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

*Authority for International Activities/Engagement by NOAA/DOC:*

In order to preserve biological diversity, the President is authorized to furnish assistance to countries in protecting and maintaining wildlife habitats and in developing sound wildlife management and plant conservation programs. Special efforts should be made to establish and maintain wildlife sanctuaries, reserves, and parks; to enact and enforce anti-poaching measures; and to identify, study, and catalog animal and plant species, especially in tropical environments. 22 U.S.C. § 2151q(b)

The Administrator of the Agency for International Development shall cooperate with appropriate international organizations, both governmental and nongovernmental; look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity; engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity; support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity; cooperate with and support the relevant efforts of other agencies of the United States Government. 22 U.S.C. § 2151q(g)

## ***Mutual Educational and Cultural Exchange Act of 1961, 22 U.S.C. §§ 2451-2464***

The Mutual Educational and Cultural Exchange Act of 1961, as amended, also known as the Fulbright-Hays Act, authorizes U.S. exchange programs as a public diplomacy tool. Its purpose is to increase mutual understanding between the U.S. and other countries and to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; and to promote international cooperation. 22 U.S.C. § 2452. It authorizes grants, contracts, or other mechanisms for educational and cultural exchanges; interchanges and visits between the United States and other countries of scientists, scholars, leaders, and other experts in the fields of environmental science and environmental management; the participation by groups and individuals from other countries in educational, scientific, and technical meetings held under American auspices in or outside the United States; as well as the interchange of technical and scientific material and equipment, the establishment and operation of centers for cultural and technical interchanges, and for U.S. representation at international nongovernmental educational, scientific, and technical meetings 22 U.S.C. § 2452(b).

### *Authority for International Activities/Engagement by NOAA/DOC:*

The Exchange Visitor (J-1) visa is a non-immigrant visa issued by the United States to individuals of other nationalities to participate in work- and study-based exchange visitor programs. More than 350,000 J-1 visa visitors come to the United States each year, including high school and university students, researchers, physicians, and summer work travelers. For example, NOAA Fisheries Office of International Affairs processes J-1 visas for visitors interested in coming to NOAA Fisheries. The International Activities Office of National Weather Service is the focal point for NWS-hosted visiting scientists and researchers who require NOAA-sponsored J1 visas.

The Act authorizes the President to enter into international agreements with foreign governments and international organizations to provide for equitable participation and support for the implementation of these agreements and it authorizes the President to delegate his authorities to other officers of the government as he determines to be appropriate. The Department of State and USAID are responsible for the vast majority of U.S. sponsored exchanges. The Act establishes a Bureau of Educational and Cultural Affairs in the Department of State to be responsible for managing, coordinating, and overseeing various programs and exchanges, including the J. William Fulbright Exchange Program, the Hubert H. Humphrey Fellowship Program, the International Visitors Program, the American Cultural Centers and Libraries abroad, and several others. 22 U.S.C. §§ 2453-2460. Congress expressly consents to the acceptance by a Federal employee of grants and other forms of

assistance provided by a foreign government to facilitate the participation of such Federal employee in a cultural exchange that may include visits and interchanges between the United States and other countries of experts in fields of specialized knowledge or skill, when such exchange is specifically approved by the Secretary of State. 22 U.S.C. § 2458a(a)

### ***National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h***

The stated purpose of NEPA is to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. 42 U.S.C. § 4321.

#### ***Authority for International Activities/Engagement by NOAA/DOC:***

Congress, through the act, authorizes federal agencies to support initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment. 42 U.S.C. § 4332(F).

### **Executive Order No. 12114 (January 4, 1979) ("Environmental Effects Abroad of Major Federal Actions")**

This Order directs federal agencies, including NOAA, to establish environmental impact review procedures in the following categories of actions:

- Major Federal actions significantly affecting the environment of the global commons outside the exclusive jurisdiction of any nation (e.g., the oceans, the atmosphere, the deep seabed, or Antarctica).
- Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action.
- All other major Federal actions significantly affecting the environment of a foreign nation, including, but not limited to, those that provide to that nation:

- a product and/or a principal product, emission, or effluent which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk;
- a physical project which is prohibited or strictly regulated by Federal law in the United States to protect the environment against radioactive substances.
- Major Federal actions beyond the U.S. EEZ and the U.S. continental shelf and beyond U.S. territories and possessions which actions significantly affect natural or ecological resources of global importance designated for protection by the President or under international agreements binding on the United States.

Certain activities having environmental impacts outside the United States require special efforts because of their international environmental significance. These include activities which:

- Threaten natural or ecological resources of global importance or which threaten the survival of any species;
- May have a significant impact on any historic, cultural, or national heritage or resource of global importance; or
- Involve environmental obligations set forth in an international treaty, convention, or agreement to which the United States is a party.

***National Historic Preservation Act, 16 U.S.C. §§ 470-470x-6***

The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. 16 U.S.C § 470a-1(a). The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). 16 U.S.C § 470a-1(b).

*Authority for International Activities/Engagement by NOAA/DOC:*

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects. 16 U.S.C § 470a-2.

***United States Information and Educational Exchange Act of 1948, 22 U.S.C. §§ 1431-1480***

When the government of another country has need of the services of a person having special scientific or other technical or professional qualifications, the Secretary of State may assign or authorize the assignment for service, to or in cooperation with such government, any person in the employ or service of the U.S. Government who has such qualifications, with the approval of the Government agency in which such person is employed or serving. Such assignment must be necessary and in the national interest of the United States, or such government must agree to reimburse the United States in an amount equal to the compensation, travel expenses, and allowances payable to such person during the period of such assignment. 22 U.S.C. § 1451. The Secretary of State is authorized, in carrying on any activity under the authority of this Act, to utilize the services, facilities, and personnel of the other Government agencies. The Secretary shall pay for such performance out of funds available to the Secretary under this chapter, either in advance, by reimbursement, or direct transfer. 22 U.S.C. § 1456. The Secretary of State may delegate to officers of the U.S. government any powers conferred upon him by this Act to the extent that he finds such delegation to be in the interest of the purposes expressed in this chapter and the efficient administration of the programs undertaken pursuant to this chapter. 22 U.S.C. § 1434.

*Authority for International Activities/Engagement by NOAA/DOC:*

As noted above, the Secretary of State may assign a qualified U.S. government employee to the service of another government requesting such assistance. In addition, a government agency, at the request of the Secretary of State, may perform such technical or other services as such agency may be competent to render for the government of another country desirous of obtaining such services, upon terms and conditions which are satisfactory to the Secretary of State and to the head of the Government agency, when it is determined by the Secretary of State that such services will contribute to the purposes of this chapter. 22 U.S.C. § 1457.