



**AMERICAN FISHERIES ACT**



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April 2, 2012

## AMERICAN FISHERIES ACT

[Public Law 105-277, Approved Oct. 21, 1998, 112 Stat. 2681-616]

[Amended through Public Law 111-281, Enacted October 15, 2010]

AN ACT making omnibus consolidated and emergency appropriations for the fiscal year ending September 30, 1999, and for other purposes.

## TITLE II—FISHERIES<sup>1</sup>

### Subtitle I—Fishery Endorsements

**SEC. 201. [46 U.S.C. 2101 note] SHORT TITLE.**

This title may be cited as the “American Fisheries Act”.

**SEC. 202. STANDARD FOR FISHERY ENDORSEMENTS.**

[(a) STANDARD.—Made amendments to section 12102(c) of title 46, United States Code.]

[(b) PREFERRED MORTGAGE.—Made amendments to section 31322(a) of title 46, United States Code.]

**SEC. 203. ENFORCEMENT OF STANDARD.**

(a) [46 U.S.C. 12102 note] EFFECTIVE DATE.—The amendments made by section 202 shall take effect on October 1, 2001.

(b) [46 U.S.C. 12102 note] REGULATIONS.—Final regulations to implement this subtitle shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency, identify transactions which do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

(c) [46 U.S.C. 12102 note] VESSELS MEASURING 100 FEET AND GREATER.—(1) The Administrator of the Maritime Administration shall administer section 12102(c) of title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall

<sup>1</sup>This title was enacted as part of division C of Public Law 105-277 (112 Stat. 2681-616).

conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of documentation for such vessel and to comply with this subsection and section 12102(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.

(2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(d) **[46 U.S.C. 12102 note] VESSELS MEASURING LESS THAN 100 FEET.**—The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.

(e) **[46 U.S.C. 12102 note] ENDORSEMENTS REVOKED.**—The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.

**[(f) PENALTY.—Made an amendment to section 12122 of title 46, United States Code.]**

**SEC. 204. REPEAL OF OWNERSHIP SAVINGS CLAUSE.**

(a) **REPEAL.**—Section 7(b) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100–239; 46 U.S.C. 12102 note) is hereby repealed.

(b) **[46 U.S.C. 12102 note] EFFECTIVE DATE.**—Subsection (a) shall take effect on October 1, 2001.

**Subtitle II—Bering Sea Pollock Fishery**

**SEC. 205. [16 U.S.C. 1851 note] DEFINITIONS.**

As used in this subtitle—

(1) the term “Bering Sea and Aleutian Islands Management Area” has the same meaning as the meaning given for such term in part 679.2 of title 50, Code of Federal Regulations, as in effect on October 1, 1998;

(2) the term “catcher/processor” means a vessel that is used for harvesting fish and processing that fish;

(3) the term “catcher vessel” means a vessel that is used for harvesting fish and that does not process pollock onboard;

(4) the term “directed pollock fishery” means the fishery for the directed fishing allowances allocated under paragraphs (1), (2), and (3) of section 206(b);

(5) the term “harvest” means to commercially engage in the catching, taking, or harvesting of fish or any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(6) the term “inshore component” means the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area:

(A) shoreside processors, including those eligible under section 208(f); and

(B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod;

(7) the term “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(8) the term “mothership” means a vessel that receives and processes fish from other vessels in the exclusive economic zone of the United States and is not used for, or equipped to be used for, harvesting fish;

(9) the term “North Pacific Council” means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G));

(10) the term “offshore component” means all vessels not included in the definition of “inshore component” that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area;

(11) the term “Secretary” means the Secretary of Commerce; and

(12) the term “shoreside processor” means any person or vessel that receives unprocessed fish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving fish for personal consumption or bait.

**SEC. 206. [16 U.S.C. 1851 note] ALLOCATIONS.**

(a) **POLLOCK COMMUNITY DEVELOPMENT QUOTA.**—Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(b) **INSHORE/OFFSHORE.**—Effective January 1, 1999, the remainder of the pollock total allowable catch in the Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community devel-

opment quota program) shall be allocated as directed fishing allowances as follows—

- (1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;
- (2) 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and
- (3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

**SEC. 207. [16 U.S.C. 1851 note] BUYOUT.**

(a) **FEDERAL LOAN.**—Under the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and notwithstanding the requirements of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a), the Secretary shall, subject to the availability of appropriations for the cost of the direct loan, provide up to \$75,000,000 through a direct loan obligation for the payments required under subsection (d).

(b) **INSHORE FEE SYSTEM.**—Notwithstanding the requirements of section 304(d) or 312 of the Magnuson-Stevens Act (16 U.S.C. 1854(d) and 1861a), the Secretary shall establish a fee for the repayment of such loan obligation which—

- (1) shall be six-tenths (0.6) of one cent for each pound round-weight of all pollock harvested from the directed fishing allowance under section 206(b)(1); and
- (2) shall begin with such pollock harvested on or after January 1, 2000, and continue without interruption until such loan obligation is fully repaid; and
- (3) shall be collected in accordance with section 312(d)(2)(C) of the Magnuson-Stevens Act (16 U.S.C. 1861a(d)(2)(C)) and in accordance with such other conditions as the Secretary establishes.

(c) **FEDERAL APPROPRIATION.**—Under the authority of section 312(c)(1)(B) of the Magnuson-Stevens Act (16 U.S.C. 1861a(c)(1)(B)), there are authorized to be appropriated \$20,000,000 for the payments required under subsection (d).

(d) **PAYMENTS.**—Subject to the availability of appropriations for the cost of the direct loan under subsection (a) and funds under subsection (c), the Secretary shall pay by not later than December 31, 1998—

- (1) up to \$90,000,000 to the owner or owners of the catcher/processors listed in paragraphs (1) through (9) of section 209, in such manner as the owner or owners, with the concurrence of the Secretary, agree, except that—

(A) the portion of such payment with respect to the catcher/processor listed in paragraph (1) of section 209 shall be made only after the owner submits a written certification acceptable to the Secretary that neither the owner nor a purchaser from the owner intends to use such catcher/processor outside of the exclusive economic zone of the United States to harvest any stock of fish (as such term is defined in section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802)) that occurs within the exclusive economic zone of the United States; and

(B) the portion of such payment with respect to the catcher/processors listed in paragraphs (2) through (9) of section 209 shall be made only after the owner or owners of such catcher/processors submit a written certification acceptable to the Secretary that such catcher/processors will be scrapped by December 31, 2000 and will not, before that date, be used to harvest or process any fish; and

(2)(A) if a contract has been filed under section 210(a) by the catcher/processors listed in section 208(e), \$5,000,000 to the owner or owners of the catcher/processors listed in paragraphs (10) through (14) of such section in such manner as the owner or owners, with the concurrence of the Secretary, agree; or

(B) if such a contract has not been filed by such date, \$5,000,000 to the owners of the catcher vessels eligible under section 208(b) and the catcher/processors eligible under paragraphs (1) through (20) of section 208(e), divided based on the amount of the harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such manner as the Secretary deems appropriate,

except that any such payments shall be reduced by any obligation to the federal government that has not been satisfied by such owner or owners of any such vessels.

(e) PENALTY.—If the catcher/processor under paragraph (1) of section 209 is used outside of the exclusive economic zone of the United States to harvest any stock of fish that occurs within the exclusive economic zone of the United States while the owner who received the payment under subsection (d)(1)(A) has an ownership interest in such vessel, or if the catcher/processors listed in paragraphs (2) through (9) of section 209 are determined by the Secretary not to have been scrapped by December 31, 2000 or to have been used in a manner inconsistent with subsection (d)(1)(B), the Secretary may suspend any or all of the federal permits which allow any vessels owned in whole or in part by the owner or owners who received payments under subsection (d)(1) to harvest or process fish within the exclusive economic zone of the United States until such time as the obligations of such owner or owners under subsection (d)(1) have been fulfilled to the satisfaction of the Secretary.

(f) PROGRAM DEFINED; MATURITY.—For the purposes of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), the fishing capacity reduction program in this subtitle shall be within the meaning of the term “program” as defined and used in such section. Notwithstanding section 1111(b)(4) of such Act (46 U.S.C. App. 1279f(b)(4)), the debt obligation under subsection (a) of this section may have a maturity not to exceed 30 years.

(g) FISHERY CAPACITY REDUCTION REGULATIONS.—The Secretary of Commerce shall by not later than October 15, 1998 publish proposed regulations to implement subsections (b), (c), (d), and (e) of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a) and sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

**SEC. 208. [16 U.S.C. 1851 note] ELIGIBLE VESSELS AND PROCESSORS.**

(a) CATCHER VESSELS ONSHORE.—Effective January 1, 2000, only catcher vessels which are—

- (1) determined by the Secretary—
  - (A) to have delivered at least 250 metric tons of pollock; or
  - (B) to be less than 60 feet in length overall and to have delivered at least 40 metric tons of pollock, for processing by the inshore component in the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

- (2) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and
- (3) not listed in subsection (b),

shall be eligible to harvest the directed fishing allowance under section 206(b)(1) pursuant to a federal fishing permit.

(b) CATCHER VESSELS TO CATCHER/PROCESSORS.—Effective January 1, 1999, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

- (1) AMERICAN CHALLENGER (United States official number 633219);
- (2) FORUM STAR (United States official number 925863);
- (3) MUIR MILACH (United States official number 611524);
- (4) NEAHKAHNE (United States official number 599534);
- (5) OCEAN HARVESTER (United States official number 549892);
- (6) SEA STORM (United States official number 628959);
- (7) TRACY ANNE (United States official number 904859);

and

- (8) any catcher vessel—
  - (A) determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed pollock fishery in 1997 to catcher/processors for processing by the offshore component; and
  - (B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary.

(c) CATCHER VESSELS TO MOTHERSHIPS.—Effective January 1, 2000, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

- (1) ALEUTIAN CHALLENGER (United States official number 603820);
- (2) ALYESKA (United States official number 560237);
- (3) AMBER DAWN (United States official number 529425);
- (4) AMERICAN BEAUTY (United States official number 613847);
- (5) CALIFORNIA HORIZON (United States official number 590758);



- (6) MAR-GUN (United States official number 525608);
- (7) MARGARET LYN (United States official number 615563);
- (8) MARK I (United States official number 509552);
- (9) MISTY DAWN (United States official number 926647);
- (10) NORDIC FURY (United States official number 542651);
- (11) OCEAN LEADER (United States official number 561518);
- (12) OCEANIC (United States official number 602279);
- (13) PACIFIC ALLIANCE (United States official number 612084);
- (14) PACIFIC CHALLENGER (United States official number 518937);
- (15) PACIFIC FURY (United States official number 561934);
- (16) PAPADO II (United States official number 536161);
- (17) TRAVELER (United States official number 929356);
- (18) VESTERAALEN (United States official number 611642);
- (19) WESTERN DAWN (United States official number 524423); and
- (20) any vessel—

(A) determined by the Secretary to have delivered at least 250 metric tons of pollock for processing by motherships in the offshore component of the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(C) not listed in subsection (b).

(d) **MOTHERSHIPS.**—Effective January 1, 2000, only the following motherships shall be eligible to process the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

- (1) EXCELLENCE (United States official number 967502);
- (2) GOLDEN ALASKA (United States official number 651041); and
- (3) OCEAN PHOENIX (United States official number 296779).

(e) **CATCHER/PROCESSORS.**—Effective January 1, 1999, only the following catcher/processors shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

- (1) AMERICAN DYNASTY (United States official number 951307);
- (2) KATIE ANN (United States official number 518441);
- (3) AMERICAN TRIUMPH (United States official number 646737);
- (4) NORTHERN EAGLE (United States official number 506694);

- (5) NORTHERN HAWK (United States official number 643771);
- (6) NORTHERN JAEGER (United States official number 521069);
- (7) OCEAN ROVER (United States official number 552100);
- (8) ALASKA OCEAN (United States official number 637856);
- (9) ENDURANCE (United States official number 592206);
- (10) AMERICAN ENTERPRISE (United States official number 594803);
- (11) ISLAND ENTERPRISE (United States official number 610290);
- (12) KODIAK ENTERPRISE (United States official number 579450);
- (13) SEATTLE ENTERPRISE (United States official number 904767);
- (14) US ENTERPRISE (United States official number 921112);
- (15) ARCTIC STORM (United States official number 903511);
- (16) ARCTIC FJORD (United States official number 940866);
- (17) NORTHERN GLACIER (United States official number 663457);
- (18) PACIFIC GLACIER (United States official number 933627);
- (19) HIGHLAND LIGHT (United States official number 577044);
- (20) STARBOUND (United States official number 944658);
- and
- (21) any catcher/processor not listed in this subsection and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary, except that catcher/processors eligible under this paragraph shall be prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2).

Notwithstanding section 213(a), failure to satisfy the requirements of section 4(a) of the Commercial Fishing Industry Vessel Anti-Re-flagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12108 note) shall not make a catcher/processor listed under this subsection ineligible for a fishery endorsement.

(f) SHORESIDE PROCESSORS.—(1) Effective January 1, 2000 and except as provided in paragraph (2), the catcher vessels eligible under subsection (a) may deliver pollock harvested from the directed fishing allowance under section 206(b)(1) only to—

(A) shoreside processors (including vessels in a single geographic location in Alaska State waters) determined by the Secretary to have processed more than 2,000 metric tons

round-weight of pollock in the inshore component of the directed pollock fishery during each of 1996 and 1997; and

(B) shoreside processors determined by the Secretary to have processed pollock in the inshore component of the directed pollock fishery in 1996 or 1997, but to have processed less than 2,000 metric tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year.

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

(g) VESSEL REBUILDING AND REPLACEMENT.—

(1) IN GENERAL.—

(A) REBUILD OR REPLACE.—Notwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels or transferring permits or licenses to a replacement vessel contained in sections 679.2 and 679.4 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010 and except as provided in paragraph (4), the owner of a vessel eligible under subsection (a), (b), (c), (d), or (e), in order to improve vessel safety and operational efficiencies (including fuel efficiency), may rebuild or replace that vessel (including fuel efficiency) with a vessel documented with a fishery endorsement under section 12113 of title 46, United States Code.

(B) SAME REQUIREMENTS.—The rebuilt or replacement vessel shall be eligible in the same manner and subject to the same restrictions and limitations under such subsection as the vessel being rebuilt or replaced.

(C) TRANSFER OF PERMITS AND LICENSES.—Each fishing permit and license held by the owner of a vessel or vessels to be rebuilt or replaced under subparagraph (A) shall be transferred to the rebuilt or replacement vessel or its owner, as necessary to permit such rebuilt or replacement vessel to operate in the same manner as the vessel prior to the rebuilding or the vessel it replaced, respectively.

(2) RECOMMENDATIONS OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.—The North Pacific Fishery Management Council may recommend for approval by the Secretary such conservation and management measures, including size limits and measures to control fishing capacity, in accordance with the Magnuson-Stevens Act as it considers necessary to ensure that this subsection does not diminish the effectiveness of fishery

management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.

(3) SPECIAL RULE FOR REPLACEMENT OF CERTAIN VESSELS.—

(A) IN GENERAL.—Notwithstanding the requirements of subsections (b)(2), (c)(1), and (c)(2) of section 12113 of title 46, United States Code, a vessel that is eligible under subsection (a), (b), (c), or (e) and that qualifies to be documented with a fishery endorsement pursuant to section 213(g) may be replaced with a replacement vessel under paragraph (1) if the vessel that is replaced is validly documented with a fishery endorsement pursuant to section 213(g) before the replacement vessel is documented with a fishery endorsement under section 12113 of title 46, United States Code.

(B) APPLICABILITY.—A replacement vessel under subparagraph (A) and its owner and mortgagee are subject to the same limitations under section 213(g) that are applicable to the vessel that has been replaced and its owner and mortgagee.

(4) SPECIAL RULES FOR CERTAIN CATCHER VESSELS.—

(A) IN GENERAL.—A replacement for a covered vessel described in subparagraph (B) is prohibited from harvesting fish in any fishery (except for the Pacific whiting fishery) managed under the authority of any Regional Fishery Management Council (other than the North Pacific Fishery Management Council) established under section 302(a) of the Magnuson-Stevens Act.

(B) COVERED VESSELS.—A covered vessel referred to in subparagraph (A) is—

(i) a vessel eligible under subsection (a), (b), or (c) that is replaced under paragraph (1); or

(ii) a vessel eligible under subsection (a), (b), or (c) that is rebuilt to increase its registered length, gross tonnage, or shaft horsepower.

(5) LIMITATION ON FISHERY ENDORSEMENTS.—Any vessel that is replaced under this subsection shall thereafter not be eligible for a fishery endorsement under section 12113 of title 46, United States Code, unless that vessel is also a replacement vessel described in paragraph (1).

(6) GULF OF ALASKA LIMITATION.—Notwithstanding paragraph (1), the Secretary shall prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that is rebuilt or replaced under this subsection and that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program under part 679 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010.

(7) AUTHORITY OF PACIFIC COUNCIL.—Nothing in this section shall be construed to diminish or otherwise affect the authority of the Pacific Council to recommend to the Secretary conservation and management measures to protect fisheries under its jurisdiction (including the Pacific whiting fishery)

and participants in such fisheries from adverse impacts caused by this Act.

(h) **ELIGIBILITY DURING IMPLEMENTATION.**—In the event the Secretary is unable to make a final determination about the eligibility of a vessel under subsection (b)(8) or subsection (e)(21) before January 1, 1999, or a vessel or shoreside processor under subsection (a), subsection (c)(21), or subsection (f) before January 1, 2000, such vessel or shoreside processor, upon the filing of an application for eligibility, shall be eligible to participate in the directed pollock fishery pending final determination by the Secretary with respect to such vessel or shoreside processor.

(i) **ELIGIBILITY NOT A RIGHT.**—Eligibility under this section shall not be construed—

(1) to confer any right of compensation, monetary or otherwise, to the owner of any catcher vessel, catcher/processor, mothership, or shoreside processor if such eligibility is revoked or limited in any way, including through the revocation or limitation of a fishery endorsement or any federal permit or license;

(2) to create any right, title, or interest in or to any fish in any fishery; or

(3) to waive any provision of law otherwise applicable to such catcher vessel, catcher/processor, mothership, or shoreside processor.

**SEC. 209. [16 U.S.C. 1851 note] LIST OF INELIGIBLE VESSELS.**

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished:

(1) AMERICAN EMPRESS (United States official number 942347);

(2) PACIFIC SCOUT (United States official number 934772);

(3) PACIFIC EXPLORER (United States official number 942592);

(4) PACIFIC NAVIGATOR (United States official number 592204);

(5) VICTORIA ANN (United States official number 592207);

(6) ELIZABETH ANN (United States official number 534721);

(7) CHRISTINA ANN (United States official number 653045);

(8) REBECCA ANN (United States official number 592205); and

(9) BROWNS POINT (United States official number 587440).

**SEC. 210. [16 U.S.C. 1851 note] FISHERY COOPERATIVE LIMITATIONS.**

(a) PUBLIC NOTICE.—(1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall—

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

(b) CATCHER VESSELS ONSHORE.—

(1) CATCHER VESSEL COOPERATIVES.—Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock,

the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting

in aggregate in excess of such percentage of such directed fishing allowance.

(2) VOLUNTARY PARTICIPATION.—Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) QUALIFIED CATCHER VESSEL.—For the purposes of this subsection, a catcher vessel shall be considered a “qualified catcher vessel” if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) CONSIDERATION OF CERTAIN VESSELS.—Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) OPEN ACCESS.—A catcher vessel eligible under section 208(a) the catch history of which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(f). A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) TRANSFER OF COOPERATIVE HARVEST.—A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(7) FISHERY COOPERATIVE EXIT PROVISIONS.—

(A) FISHING ALLOWANCE DETERMINATION.—For purposes of determining the aggregate percentage of directed fishing allowances under paragraph (1), when a catcher vessel is removed from the directed pollock fishery, the fishery allowance for pollock for the vessel being removed—

(i) shall be based on the catch history determination for the vessel made pursuant to section 679.62 of title 50, Code of Federal Regulations, as in effect on

the date of enactment of the Coast Guard Authorization Act of 2010; and

(ii) shall be assigned, for all purposes under this title, in the manner specified by the owner of the vessel being removed to any other catcher vessel or among other catcher vessels participating in the fishery cooperative if such vessel or vessels remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the directed pollock fishery.

(B) ELIGIBILITY FOR FISHERY ENDORSEMENT.—Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph.

(C) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this paragraph shall be construed—

(i) to make the vessels AJ (United States official number 905625), DONA MARTITA (United States official number 651751), NORDIC EXPLORER (United States official number 678234), and PROVIDIAN (United States official number 1062183) ineligible for a fishery endorsement or any permit necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Act; or

(ii) to allow the vessels referred to in clause (i) to participate in any fishery under the authority of the Councils referred to in clause (i) in any manner that is not consistent with the fishery management plan for the fishery developed by the Councils under section 303 of the Magnuson-Stevens Act.

(c) CATCHER VESSELS TO CATCHER/PROCESSORS.—Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of the section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) CATCHER VESSELS TO MOTHERSHIPS.—

(1) PROCESSING.—Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (48 Stat. 1213 and



1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) VOLUNTARY PARTICIPATION.—Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) EXCESSIVE SHARES.—

(1) HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) PROCESSING.—Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) REVIEW BY MARITIME ADMINISTRATION.—At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or con-

trolled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) **LANDING TAX JURISDICTION.**—Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) **PENALTIES.**—The violation of any of the requirements of this subtitle or any regulation or permit issued pursuant to this subtitle shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857), and sections 308, 309, 310, and 311 of such Act (16 U.S.C. 1858, 1859, 1860, and 1861) shall apply to any such violation in the same manner as to the commission of an act prohibited by section 307 of such Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

**SEC. 211. [16 U.S.C. 1851 note] PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES.**

(a) **GENERAL.**—The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

(b) **CATCHER/PROCESSOR RESTRICTIONS.**—

(1) **GENERAL.**—The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) **BERING SEA FISHING.**—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997; and

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery—

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

(3) **BERING SEA PROCESSING.**—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—

(A) processing any of the directed fishing allowances under paragraphs (1) or (3) of section 206(b); and

(B) processing any species of crab harvested in the Bering Sea and Aleutian Islands Management Area.

(4) **GULF OF ALASKA.**—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—

(A) harvesting any fish in the Gulf of Alaska;

(B) processing any groundfish harvested from the portion of the exclusive economic zone off Alaska known as area 630 under the fishery management plan for Gulf of Alaska groundfish; or

(C) processing any pollock in the Gulf of Alaska (other than as bycatch in non-pollock groundfish fisheries) or processing, in the aggregate, a total of more than 10 percent of the cod harvested from areas 610, 620, and 640 of the Gulf of Alaska under the fishery management plan for Gulf of Alaska groundfish.

(5) **FISHERIES OTHER THAN NORTH PACIFIC.**—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) and motherships eligible under section 208(d) are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management council other than the North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a fishery management plan recommended by the regional fishery management council of jurisdiction and approved by the Secretary.

(6) **OBSERVERS AND SCALES.**—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) shall—

(A) have two observers onboard at all times while groundfish is being harvested, processed, or received from another vessel in any fishery under the authority of the North Pacific Council; and

(B) weigh its catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council.

This paragraph shall take effect on January 1, 1999 for catcher/processors eligible under paragraphs (1) through (20) of section 208(e) that will harvest pollock allocated under section 206(a) in 1999, and shall take effect on January 1, 2000 for all other catcher/processors eligible under such paragraphs of section 208(e).

(c) CATCHER VESSEL AND SHORESIDE PROCESSOR RESTRICTIONS.—

(1) REQUIRED COUNCIL RECOMMENDATIONS.—By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessels in a fishery cooperative under section 210(b) may deliver pollock.

(2) BERING SEA CRAB AND GROUND FISH.—

(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term “fa-

ilities” means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

(C) The catcher vessels eligible under section 208(b) are hereby prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible to harvest such crab in such directed fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary. The North Pacific Council is directed to recommend measures for approval by the Secretary to eliminate latent licenses under such program, and nothing in this subparagraph shall preclude the Council from recommending measures more restrictive than under this paragraph.

(3) FISHERIES OTHER THAN NORTH PACIFIC.—

(A) By not later than July 1, 2000, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(F)) shall recommend for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery.

(B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.

(d) BYCATCH INFORMATION.—Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a), the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and Secretary deem appropriate, the public disclosure of any information

from the groundfish fisheries under the authority of such Council that would be beneficial in the implementation of section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(9) and 1853(a)(11)).

(e) COMMUNITY DEVELOPMENT LOAN PROGRAM.—Under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), and subject to the availability of appropriations, the Secretary is authorized to provide direct loan obligations to communities eligible to participate in the western Alaska community development quota program established under 304(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)) for the purposes of purchasing all or part of an ownership interest in vessels and shore-side processors eligible under subsections (a), (b), (c), (d), (e), or (f) of section 208. Notwithstanding the eligibility criteria in section 208(a) and section 208(c), the LISA MARIE (United States official number 1038717) shall be eligible under such sections in the same manner as other vessels eligible under such sections.

**SEC. 212. RESTRICTION ON FEDERAL LOANS.**

【Made amendments to section 302(b) of the Fisheries Financing Act (46 U.S.C. 1274 note).】

**SEC. 213. [16 U.S.C. 1851 note] DURATION.**

(a) GENERAL.—Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. There are authorized to be appropriated \$6,700,000 per year to carry out the provisions of this Act through fiscal year 2004.

(b) EXISTING AUTHORITY.—Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.

(c) CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.—The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this title<sup>1</sup>, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title<sup>1</sup> or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this subtitle; or

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage

<sup>1</sup> Paragraph (6) of section 3027(a) of Public Law 106–31 (113 Stat. 101) amends this paragraph by striking “title” and inserting “subtitle”. The amendment was not executed, because it did not specify which occurrence of the word “title” to strike.

allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

(d) REPORT TO CONGRESS.—Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on bycatch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.

(e) REPORT ON FILLET PRODUCTION.—Not later than June 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and the Congress on whether this Act has negatively affected the market for fillets and fillet blocks, including through the reduction in the supply of such fillets and fillet blocks. If the report determines that such market has been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects.

(f) SEVERABILITY.—If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) INTERNATIONAL AGREEMENTS.—In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on of<sup>1</sup> a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to their ownership or mortgage interest in such vessel on that date to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on of<sup>1</sup> such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after or if the percentage of foreign ownership in the vessel is increased after the effective date of this subsection.

<sup>1</sup>So in law. See amendment made by section 2202(e)(1)(A) of Public Law 107–20, 115 Stat. 170.