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FY 2003 Omnibus Appropriations Bill Conference Report

DEPARTMENT OF COMMERCE

GENERAL PROVISIONS--DEPARTMENT OF COMMERCE

SEC. 201. During the current fiscal year, applicable appropriations and funds made available to the Department of Commerce by this Act shall be available for the activities specified in the Act of October 26, 1949 (15 U.S.C. 1514), to the extent and in the manner prescribed by the Act, and, notwithstanding 31 U.S.C. 3324, may be used for advanced payments not otherwise authorized only upon the certification of officials designated by the Secretary of Commerce that such payments are in the public interest.

SEC. 202. During the current fiscal year, appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C. 3109; and uniforms or allowances therefore, as authorized by law (5 U.S.C. 5901-5902).

SEC. 203. Hereafter none of the funds made available by this Act may be used to support the hurricane reconnaissance aircraft and activities that are under the control of the United States Air Force or the United States Air Force Reserve.

SEC. 204. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section:

Provided further, That the Secretary shall notify the Committees on Appropriations at least 15 days in advance of the acquisition or disposal of any capital asset (including land, structures, and equipment) not specifically

provided for in this or any other Commerce, Justice, State Appropriations Act.

SEC. 205. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response to funding reductions included in this title or from actions taken for the care and protection of loan collateral or grant property shall be absorbed within the total budgetary resources available to such department or agency: Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act:

Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 206. Hereafter the Secretary of Commerce may award contracts for hydrographic, geodetic, and photogrammetric surveying and mapping services in accordance with title IX of the Federal Property and Administrative Services Act of 1949.

SEC. 207. The Secretary of Commerce may use the Commerce franchise fund for expenses and equipment necessary for the maintenance and operation of such administrative services as the Secretary determines may be performed more advantageously as central services, pursuant to section 403 of Public Law 103-356: Provided, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made for the purpose of providing capital shall be used to capitalize such fund: Provided further, That such fund shall be paid in advance from funds available to the Department and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of automated data processing (ADP) software and systems (either acquired or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the Secretary: Provided further, That such fund shall provide services on a competitive basis:

Provided further, That an amount not to exceed 4 percent of the total annual income to such fund may be retained in the fund for fiscal year 2003 and each fiscal year thereafter, to remain available until expended, to be used for the acquisition of capital equipment, and for the improvement and implementation of department financial management, ADP, and other support systems: Provided further, That such amounts retained in the fund for fiscal year 2003 and each fiscal year thereafter shall be available for obligation and expenditure only in accordance with section 605 of this Act: Provided further, That no later than 30 days after the end of each fiscal year, amounts in excess of this reserve limitation shall be deposited as miscellaneous receipts in the Treasury: Provided further, That such franchise fund pilot program shall terminate pursuant to section 403(f) of Public Law 103-356.

SEC. 208. Notwithstanding any other provision of law, of the amounts made available elsewhere in this title to the 'National Institute of Standards and Technology, Construction of Research Facilities', \$14,000,000 is appropriated to fund a cooperative agreement with the Medical University of South Carolina, \$6,000,000 is appropriated to the Thayer School of Engineering for the nanocrystalline materials and biomass research initiative, \$3,000,000 is appropriated to the Institute for Information Infrastructure Protection at the Institute for Security Technology Studies, \$4,000,000 is appropriated for the Institute for Politics, and \$1,260,000 is appropriated to the Franklin Pierce Manse.

SEC. 209. Of the amount available from the fund entitled 'Promote and Develop Fishery Products and Research Pertaining to American Fisheries', \$10,000,000 shall be provided to develop an Alaska seafood marketing program. Such amount shall be made available as a direct lump sum payment to the Alaska Fisheries Marketing Board (hereinafter 'Board') which is hereby established to award grants to market, develop, and promote Alaska seafood and improve related technology and transportation with emphasis on wild salmon, of which 20 percent shall be transferred to the Alaska Seafood Marketing Institute. The Board shall be appointed by the Secretary of Commerce and shall be administered by an Executive Director to be appointed by the Secretary. The Board shall submit an annual report to the Secretary detailing the expenditures of the board.

SEC. 210. (a) The Secretary of Commerce is authorized to award grants and make direct lump sum payments in support of an international

advertising and promotional campaign developed in consultation with the private sector to encourage individuals to travel to the United States consisting of radio, television, and print advertising and marketing programs.

(b) The United States Travel and Tourism Promotion Advisory Board (hereinafter 'Board') is established to recommend the appropriate coordinated activities to the Secretary for funding.

(c) The Secretary shall appoint the Board within 30 days of enactment and shall include tourism-related entities he deems appropriate.

(d) The Secretary shall consult with the Board and state and regional tourism officials on the disbursement of funds.

(e) There is authorized to be appropriated \$50,000,000, to remain available until expended, and \$50,000,000 is appropriated to implement this section.

SEC. 211. From funds made available from the 'Operations and Training' account, not more than \$50,000 shall be made available to the Maritime Administration for administrative expenses to oversee the implementation of this section for the purpose of recovering economic and national security benefits to the United States following the default under the construction contract described in section 8109 of the Department of Defense

Appropriations Act for Fiscal Year 1998 (Public Law 105-56): Provided, That the owner of any ship documented under the authority of this section shall offset such appropriation through the payment of fees to the Maritime Administration not to exceed the appropriation and that such fees be deposited as an offsetting collection to this appropriation: Provided further, That notwithstanding any other provision of law, one or both ships originally contracted under section 8109 of Public Law 105-56 may be constructed to completion in a shipyard located outside of the United States and the owner thereof (or a related person with respect to that owner) may document one or both ships under U.S. flag with a coastwise endorsement, and notwithstanding any other provision of law, and not later than two years after entry into service of the first ship contracted for under section 8109 of Public Law 105-56, that owner (or a related person with respect to that owner) may re-document under U.S. flag with a coastwise endorsement one additional foreign-built cruise ship: Provided further

authority of this section is a citizen of the United States within the meaning of 46 U.S.C. 12102(a), (2) the foreign-built cruise ship re-documented under the authority of this section meets the eligibility requirements for a certificate of inspection under section 1137(a) of Public Law 104-324 and applicable international agreements and guidelines referred to in section 1137(a)(2) thereof and the 1992 Amendments to the Safety of Life at Sea Convention of 1974, and that with respect to the re-documented foreign-built cruise ship, any repair, maintenance, alteration, or other preparation necessary to meet such requirements be performed in a United States shipyard, (3) any non-warranty repair, maintenance, or alteration work performed on any ship documented under the authority of this section shall be performed in a United States shipyard unless the Administrator of the Maritime Administration finds that such services are not available in the United States or if an emergency dictates that the ship proceed to a foreign port for such work, (4) any ship documented under the authority of this section shall operate in regular service transporting passengers between or among the islands of Hawaii and shall not transport passengers in revenue service to ports in Alaska, the Gulf of Mexico, or the Caribbean Sea, except as part of a voyage to or from a shipyard for ship construction, repair, maintenance, or alteration work, (5) no person, nor any ship operating between or among the islands of Hawaii, shall be entitled to the preference contained in the second proviso of section 8109 of Public Law 105-56, and (6) no cruise ship operating in coastwise trade under the authority of this section or constructed under the authority of this section shall be eligible for a guarantee of financing under title XI of the Merchant Marine Act 1936: Provided further, That any cruise ship to be documented under the authority of this section shall be immediately eligible before documentation of the vessel for the approval contained in section 1136(b) of Public Law 104-324: Provided further, That for purposes of this section the

term 'cruise ship' means a vessel that is at least 60,000 gross tons and not more than 120,000 gross tons (as measured under chapter 143 of title 46, United States Code) and has berth or stateroom accommodations for at

least 1,600 passengers, the term 'one or both ships' means collectively the partially completed hull and related components, equipment, and parts of whatever kind acquired pursuant to the construction contract described in

section 8109 of Public Law 105-56 and intended to be incorporated into the ships constructed thereto, the term 'related person' means with respect to a person: a holding company, subsidiary, or affiliate of such person

meeting the citizenship requirements of section 12102(a) of title 46, United States Code, and the term 'regular service' means the primary service in which the ship is engaged on an annual basis.

SEC. 212. (a) The Secretary of Commerce shall implement a fishing capacity reduction program for the West Coast groundfish fishery pursuant to section 212 of Public Law 107-206 and 16 U.S.C. 1861a (b)-(e); except that the program may apply to multiple fisheries; except that within 90 days after the date of enactment of this Act, the Secretary shall publish a public notice in the Federal Register and issue an invitation to bid for reduction payments that specifies the contractual terms and conditions under which bids shall be made and accepted under this section; except that section 144(d)(1)(K)(3) of title I, division B of Public Law 106-554 shall apply to the program implemented by this section.

(b) A reduction fishery is eligible for capacity reduction under the program implemented under this section; except that no vessel harvesting and processing whiting in the catcher-processors sector (section 19 660.323(a)(4)(A) of title 50, Code of Federal Regulations) may participate in any capacity reduction referendum or industry fee established under this section.

(c) A referendum on the industry fee system shall occur after bids have been submitted, and such bids have been accepted by the Secretary, as follows: members of the reduction fishery, and persons who have been issued Washington, Oregon, or California Dungeness crab and Pink shrimp permits, shall be eligible to vote in the referendum to approve an industry fee system; referendum votes cast in each fishery shall be weighted in proportion to the debt obligation of each fishery, as calculated in subsection (f) of this section; the industry fee system shall be approved if the referendum votes cast in favor of the proposed system constitute a simple majority of the participants voting; except that notwithstanding 5 U.S.C. 553 and 16 U.S.C. 1861a(e), the Secretary shall not prepare or publish proposed or final regulations for the implementation of the program under this section before the referendum is conducted.

(d) Nothing in this section shall be construed to prohibit the Pacific Fishery Management Council from recommending, or the Secretary from approving, changes to any fishery management plan, in accordance with

applicable law; or the Secretary from promulgating regulations (including regulations governing this program), after an industry fee system has been approved by the reduction fishery.

(e) The Secretary shall determine, and state in the public notice published under paragraph (a), all program implementation aspects the Secretary deems relevant.

(f) Any bid submitted in response to the invitation to bid issued by the Secretary under this section shall be irrevocable; the Secretary shall use a bid acceptance procedure that ranks each bid in accordance with this paragraph and with additional criteria, if any, established by the Secretary: for each bid from a qualified bidder that meets the bidding requirements in the public notice or the invitation to bid, the Secretary shall determine a bid score by dividing the bid's dollar amount by the average annual total ex-vessel dollar value of landings of Pacific groundfish, Dungeness crab, and Pink shrimp based on the 3 highest total annual revenues earned from such stocks that the bidder's reduction vessel landed during 1998, 1999, 2000, or 2001. For purposes of this paragraph, the term 'total annual revenue' means the revenue earned in a single year from such stocks. The Secretary shall accept each qualified bid in rank order of bid score from the lowest to the highest until acceptance of the next qualified bid with the next lowest bid score would cause the reduction cost to exceed the reduction loan's maximum amount. Acceptance of a bid by the Secretary shall create a binding reduction contract between the United States and the person whose bid is accepted, the performance of which shall be

subject only to the conclusion of a successful referendum, except that a person whose bid is accepted by the Secretary under this section shall relinquish all permits in the reduction fishery and any Dungeness crab and

Pink shrimp permits issued by Washington, Oregon, or California; except that the Secretary shall revoke the Pacific groundfish permit, as well as all Federal fishery licenses, fishery permits, area, and species endorsements, and any other fishery privileges issued to a vessel or vessels (or to persons on the basis of their operation or ownership of that vessel or vessels) removed under the program. (g) The Secretary shall establish separate reduction loan sub-amounts and repayment fees for fish sellers in the reduction fishery and for fish sellers in each of the fee-share fisheries by dividing the total ex-vessel dollar value during the bid scoring period of all reduction vessel landings from the reduction fishery and from each of the fee-share fisheries by the total such value of all such landings for all such

fisheries; and multiplying the reduction loan amount by each of the quotients resulting from each of the divisions above. Each of the resulting products shall be the reduction loan sub-amount for the reduction fishery and for each of the fee-share fisheries to which each of such products pertains; except that, each fish seller in the reduction fishery and in each of the fee-share fisheries shall pay the fees required by the reduction loan sub-amounts allocated to it under this paragraph; except that, the Secretary may enter into agreements with Washington, Oregon, and California to collect any fees established under this paragraph.

(h) Notwithstanding 46 U.S.C. App. 1279(b)(4), the reduction loan's term shall not be less than 30 years.

(i) It is the sense of the Congress that the States of Washington, Oregon, and California should revoke all relinquishment permits in each of the fee-share fisheries immediately after reduction payment, and otherwise to implement appropriate State fisheries management and conservation provisions in each of the fee-share fisheries that establishes a program that meets the requirements of 16 U.S.C. 141861a(b)(1)(B) as if it were applicable to fee-share fisheries.

(j) The term 'fee-share fishery' means a fishery, other than the reduction fishery, whose members are eligible to vote in a referendum for an industry fee system under paragraph (c). The term 'reduction fishery' means that portion of a fishery holding limited entry fishing permits endorsed for the operation of trawl gear and issued under the Federal Pacific Coast Groundfish Fishery Management Plan.

SEC. 213. (a) The National Oceanic and Atmospheric Administration is authorized to enter into a lease arrangement whereby the National Oceanic and Atmospheric Administration will relocate the National Weather Service Forecasting Office in Galveston County, League City, Texas to a Galveston County facility and, in exchange, Galveston County may use the existing National Oceanic and Atmospheric Administration National Weather Service Forecasting Office.

(b) Neither the National Oceanic and Atmospheric Administration National Weather Service nor Galveston County will charge the other rent for use of the space and each will be responsible for the operation, maintenance and renovation costs it incurs.

SEC. 214. (a) Hereafter, habitat conservation activities, enforcement and surveillance--cooperative enforcement and vessel monitoring, stock assessments--data collection, and highly migratory shark fishery research under the heading, 'National Oceanic and Atmospheric Administration, Operations, Research and Facilities', shall be considered to be within the 'Coastal Assistance sub-category' in section 250(c)(4)(K) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

(b) For fiscal year 2004 and thereafter, response and restoration activities, Cooperative Research, Protected Species activities, Endangered Species Act--Marine Mammals, Sea Turtles and Other Species, Endangered Species Act--Right Whales, Marine Mammal Protection, and Sea Grant (except for the fellowship program) under the heading, 'National Oceanic and Atmospheric Administration, Operations, Research, and Facilities', shall be considered to be within the 'Coastal Assistance sub-category' in section 250(c)(4)(K) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

(c) All references to outlays in title VIII of Public Law 106-291 are repealed.

This title may be cited as the 'Department of Commerce and Related Agencies Appropriations Act, 2003'.