

“(B) has evolved to the point where meaningful consultation under section 7(a)(2) or (3) of the Act [16 U.S.C. 1536(a)(2), (3)] can take place.

“(6) The term ‘Secretary’ means the Secretary of the Interior.

“(7) The term ‘Service’ means the United States Fish and Wildlife Service.

“(b) PLAN SPECIFICATIONS.—The Secretary may develop and implement, in accordance with this section, a plan for the relocation and management of a population of California sea otters from the existing range of the parent population to another location. The plan, which must be developed by regulation and administered by the Service in cooperation with the appropriate State agency, shall include the following:

“(1) The number, age, and sex of sea otters proposed to be relocated.

“(2) The manner in which the sea otters will be captured, translocated, released, monitored, and protected.

“(3) The specification of a zone (hereinafter referred to as the ‘translocation zone’) to which the experimental population will be relocated. The zone must have appropriate characteristics for furthering the conservation of the species.

“(4) The specification of a zone (hereinafter referred to as the ‘management zone’) that—

“(A) surrounds the translocation zone; and

“(B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.

The purpose of the management zone is to (i) facilitate the management of sea otters and the containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone shall be treated as a member of the experimental population. The Service shall use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population.

“(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.

“(6) A description of the relationship of the implementation of the plan to the status of the species under the Act and to determinations of the Secretary under section 7 of the Act [16 U.S.C. 1536].

“(c) STATUS OF MEMBERS OF THE EXPERIMENTAL POPULATION.—(1) Any member of the experimental population shall be treated while within the translocation zone as a threatened species for purposes of the Act, except that—

“(A) section 7 of the Act [16 U.S.C. 1536] shall only apply to agency actions that—

“(i) are undertaken within the translocation zone,

“(ii) are not defense-related agency actions, and

“(iii) are initiated after the date of the enactment of this section [Nov. 7, 1986]; and

“(B) with respect to defense-related actions within the translocation zone, members of the experimental population shall be treated as members of a species that is proposed to be listed under section 4 of the Act [16 U.S.C. 1533].

For purposes of this paragraph, the term ‘defense-related agency action’ means an agency action proposed to be carried out directly by a military department.

“(2) For purposes of section 7 of the Act [16 U.S.C. 1536], any member of the experimental population shall be treated while within the management zone as a member of a species that is proposed to be listed under section 4 of the Act [16 U.S.C. 1533]. Section 9 of the Act [16 U.S.C. 1538] applies to members of the experimental population; except that any incidental taking of such a member during the course of an otherwise lawful activity within the management zone, may not be treated as

a violation of the Act or the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.].

“(d) IMPLEMENTATION OF PLAN.—The Secretary shall implement the plan developed under subsection (b)—

“(1) after the Secretary provides an opinion under section 7(b) of the Act [16 U.S.C. 1536(b)] regarding each prospective action for which consultation was initiated by a Federal agency or requested by a prospective permit or license applicant before April 1, 1986; or

“(2) if no consultation under section 7(a)(2) or (3) regarding any prospective action is initiated or requested by April 1, 1986, at any time after that date.

“(e) CONSULTATION AND EFFECT OF OPINION.—A Federal agency shall promptly consult with the Secretary, under section 7(a)(3) of the Act [16 U.S.C. 1536(a)(3)], at the request of, and in cooperation with, any permit or license applicant regarding any prospective action. The time limitations applicable to consultations under section 7(a)(2) of the Act apply to consultations under the preceding sentence. In applying section 7(b)(3)(B) with respect to an opinion on a prospective action that is provided after consultation under section 7(a)(3), that opinion shall be treated as the opinion issued after consultation under section 7(a)(2) unless the Secretary finds, after notice and opportunity for comment in accordance with section 553 of title 5, United States Code, that a significant change has been made with respect to the action or that a significant change has occurred regarding the information used during the initial consultation. The interested party may petition the Secretary to make a finding under the preceding sentence. The Secretary may implement any reasonable and prudent alternatives specified in any opinion referred to in this subsection through appropriate agreements with any such Federal agency, prospective permit or license applicant, or other interested party.

“(f) CONSTRUCTION.—For purposes of implementing the plan, no act by the Service, an authorized State agency, or an authorized agent of the Service or such an agency with respect to a sea otter that is necessary to effect the relocation or management of any sea otter under the plan may be treated as a violation of any provision of the Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1532, 1539, 1542, 3645 of this title; title 23 section 108.

§ 1537. International cooperation

(a) Financial assistance

As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1306 of title 31, use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1691 et seq.] or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 1533 of this title. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 1542 of this title.

(b) Encouragement of foreign programs

In order to carry out further the provisions of this chapter, the Secretary, through the Secretary of State, shall encourage—

- (1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 1533 of this title;
- (2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and
- (3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

(c) Personnel

After consultation with the Secretary of State, the Secretary may—

- (1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants; and
- (2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) Investigations

After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this chapter.

(Pub. L. 93-205, § 8, Dec. 28, 1973, 87 Stat. 892; Pub. L. 96-159, § 5, Dec. 28, 1979, 93 Stat. 1228.)

REFERENCES IN TEXT

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsec. (a), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended, which is classified generally to chapter 41 (§1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

CODIFICATION

In subsec. (a), “section 1306 of title 31” substituted for “section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724)” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-159, §5(1), encouraged conservation of plants.

Subsec. (b)(3). Pub. L. 96-159, §5(2), encouraged conservation practices for enhancement of plants taken for importation into the United States.

Subsec. (c)(1). Pub. L. 96-159, §5(3), made personnel available for plant conservation.

Subsec. (e). Pub. L. 96-159, §5(4), struck out subsec. (e) relating to Convention implementation.

CONSERVATION OF SEA TURTLES; IMPORTATION OF SHRIMP

Pub. L. 101-162, title VI, §609, Nov. 21, 1989, 103 Stat. 1037, provided that:

“(a) 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 on June 29, 1987—

“(1) 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;

“(2) 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;

“(3) encourage such other agreements to promote the purposes of this section with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of such species of sea turtles;

“(4) initiate the amendment of any existing international treaty for the protection and conservation of such species of sea turtles to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section; and

“(5) provide to the Congress by not later than one year after the date of enactment of this section [Nov. 21, 1989]—

“(A) a list of each nation which conducts commercial shrimp fishing operations within the geographic range of distribution of such sea turtles;

“(B) a list of each nation which conducts commercial shrimp fishing operations which may affect adversely such species of sea turtles; and

“(C) a full report on—

“(i) the results of his efforts under this section; and

“(ii) the status of measures taken by each nation listed pursuant to paragraph (A) or (B) to protect and conserve such sea turtles.

“(b)(1) IN GENERAL.—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 not later than May 1, 1991, except as provided in paragraph (2).

“(2) CERTIFICATION PROCEDURE.—The ban on importation of shrimp or products from shrimp pursuant to paragraph (1) shall not apply if the President shall determine and certify to the Congress not later than May 1, 1991, and annually thereafter that—

“(A) the government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

“(B) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or

“(C) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.”

EXECUTIVE ORDER NO. 11911

Ex. Ord. No. 11911, Apr. 13, 1976, 41 F.R. 15683, which provided that for purposes of the Convention on International Trade in Endangered Species of Wild Fauna and Flora the Secretary of the Interior be designated as the Management Authority and established the Endan-

gered Species Scientific Authority as the Scientific Authority, with the Secretary of the Interior designated to act on behalf of the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, was revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.

DELEGATION OF AUTHORITY REGARDING CERTIFICATION OF COUNTRIES EXPORTING SHRIMP TO UNITED STATES

Memorandum of the President of the United States, Dec. 19, 1990, 56 F.R. 357, provided:

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990 (Public Law 101-162) [set out above], and section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions vested in me by section 609(b) of that Act. The authority delegated by this memorandum may be further redelegated within the Department of State.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

§ 1537a. Convention implementation

(a) Management Authority and Scientific Authority

The Secretary of the Interior (hereinafter in this section referred to as the “Secretary”) is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) Management Authority functions

The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c) Scientific Authority functions; determinations

(1) The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d) Reservations by the United States under Convention

If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e) Wildlife preservation in Western Hemisphere

(1) The Secretary of the Interior (hereinafter in this subsection referred to as the “Sec-

retary”), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the “Western Convention”). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

(Pub. L. 93-205, § 8A, as added Pub. L. 96-159, § 6(a)(1), Dec. 28, 1979, 93 Stat. 1228; amended Pub. L. 97-304, § 5[(a)], Oct. 13, 1983, 96 Stat. 1421.)

AMENDMENTS

1982—Subsec. (c). Pub. L. 97-304, § 5[(a)](1), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 97-304, § 5[(a)](2), substituted provisions relating to reservations by the United States under the Convention for provisions which had established an International Convention Advisory Commission and had provided for its membership, staffing, and operation.

Subsec. (e). Pub. L. 97-304, § 5[(a)](3), substituted provisions implementing the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for provisions which had provided that the President shall designate those agencies of the Federal Government that shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.