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National Fishing Enhancement Act of 1984 (Public Law 98-623; 198 Stat. 3394)

TITLE II—ARTIFICIAL REEFS

[SEC. 206. DEFINITIONS.]

For purposes of this title—

(1) The term “artificial reef” means a structure which is constructed or placed in waters covered under this title for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities.

(2) The term “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, American Samoa, Guam, Johnston Island, Midway Island, and Wake Island.

(3) The term “waters covered under this title” means the navigable waters of the United States and the waters superjacent to the Outer Continental Shelf as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. section 1331), to the extent such waters exist in or are adjacent to any State.]

SEC. 206. DEFINITIONS

In this title:

(1) ADMINISTRATOR.—The term ‘Administrator’ means the Under Secretary of Commerce for Oceans and Atmosphere in the Under Secretary’s capacity as Administrator of the National Oceanic and Atmospheric Administration.

(2) ARTIFICIAL REEF.—The term ‘Artificial reef’ means a structure or facility and associated equipment and infrastructure which is located, constructed or placed in Covered Waters that enhances fishery resources and commercial and recreational fishing opportunities, including, without limitation, Approved Structures.

(3) DIRECTOR.—The term ‘Director’ means the Principal Deputy Director Exercising the Delegated Authorities of the Director of the Bureau of Safety and Environmental Enforcement.

(4) DECOMMISSIONING.—For the purposes of this title, the term ‘Decommissioning’ means ending oil, gas, or sulphur operations on an offshore lease, right-of-way, or right-of-use and easement and returning the area subject to such lease, right-of-way, or right-of-use and easement to a condition that complies with applicable law, including, without

limitation, Reefing in Place of Approved Structures, or removal of platforms and structures, or a combination thereof.

(5) ESTABLISHED REEF ECOSYSTEM.—The term ‘established reef ecosystem’ means an area with identified reef-associated species, including species of corals, crustaceans, fish, or other marine life.

(6) APPROVED STRUCTURE.—The term ‘approved structure’ means an Eligible Structure which the Secretary of the Interior has approved for Reefing in Place pursuant to Section 207(a)(5)(B).

(7) ELIGIBLE STRUCTURE.—The term ‘eligible structure’ refers to an Inactive Structure that is determined eligible for Reefing in Place by the Director pursuant to Section 207(a)(3).

(8) INACTIVE STRUCTURE.—The term ‘inactive structure’ means an oil or gas platform, structure, facility, pipeline, and associated equipment and infrastructure—

(A) that either—

- (i) an Applicant determines is no longer useful for operations;
- (ii) is located on a lease, right-of-way, right-of-use and entry or other similar right that has expired, terminated, been relinquished or abandoned or is no longer valid and effective; or
- (iii) is currently on the sea floor as a result of an act of God or event of force majeure.

(9) PARTIAL REMOVAL.—The term ‘Partial Removal’ means—

(A) the severance and removal of a portion of an Inactive Structure at a level that maximizes the vertical relief of the structure in the water column at the minimum depth from the surface to maintain navigational safety, as determined by the Secretary of the Interior in consultation with the Commandant of the Coast Guard; and

(B) optionally, the placement of the severed portion of the Inactive Structure on the sea floor in proximity to the base of the unsevered portion of the structure or at an alternative reef planning area.

(10) REEF IN PLACE.—The term ‘Reef in Place’ or ‘Reefing in Place’ means Decommissioning of an Approved Structure, in whole or in part, by abandoning in place, Toppling in Place, or Partial Removal of the Approved Structure in a manner that—

(A) attempts to maximize reef ecosystem for benthic and pelagic species throughout the entirety of the water column; and

(B) is at the appropriate minimum depth from the surface to maintain navigational safety as determined by the Secretary of the Interior in consultation with the Commandant of the Coast Guard.

(11) APPLICANT.—The term ‘applicant’ refers to a current or former lessee, right-of-way holder, right-of-use holder or operating rights owner that has assumed operational control or regulatory responsibility over an Inactive Structure, or has received an order from the Secretary of the Interior to perform decommissioning on an Inactive Structure, or is otherwise legally responsible for Decommissioning an Inactive Structure. Parties that do not meet any of this criteria may apply to the Director to be deemed an Applicant for the purposes of this title, to the extent that multiple parties meeting the definition of Applicant exist, the party designated to the Department of the Interior as the single entity to serve as an operator or agent for the decommissioning operations shall be the Applicant for the purposes of this title.

(12) STATE.—The term ‘State’ means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, American Samoa, Guam, Johnston Island, Midway Island, and Wake Island.

(13) TOPPLE IN PLACE.—The term ‘Topple in Place’ or ‘Toppling in Place’ means detaching an Approved Structure or a portion of the Approved Structure from the seabed and toppling the approved structure or a severed portion of the Approved Structure onto its side on the seabed in the same area or immediately adjacent to the area where the Approved Structure was originally installed or abandoned.

(14) COVERED WATERS.—The term ‘Covered Waters’ means the navigable waters of the United States and the waters superjacent to the Outer Continental Shelf as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331), to the extent such waters exist in or are adjacent to any State.

(15) STATE PROGRAM.—The term ‘State Program’ means any State Artificial Reef program authorized under section 207(c).

(16) REEF PLANNING AREA.—The term ‘Reef Planning Area’ means an area identified and designated as such by the Director under section 207(a)(4).

[SEC. 207. USE OF CERTAIN VESSELS AS ARTIFICIAL REEFS.]

The Act entitled “An Act to authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce and for other purposes”, approved August 22, 1972 (16 U.S.C. 1220-1220C), is amended—

(1) by striking out "Liberty" each place it appears in sections 3, 4, 5, and 6 and inserting in lieu thereof "obsolete";

(2) by striking out "Commerce" in section 3 and inserting in 16 USC 1220. lieu thereof "Transportation";

(3) by striking out "shall" in the matter preceding paragraph 16 USC 1220a. (1) in section 4 and inserting in lieu thereof "may", and

(4) by adding at the end thereof the following new section:

"SEC. 7. For purposes of sections 3, 4, 5, and 6, the term 'obsolete 16 USC 1220d. ship' means any vessel owned by the Department of Transportation that has been determined to be of insufficient value for commercial or national defense purposes to warrant its maintenance and preservation in the national defense reserve fleet and has been designated as an artificial reef candidate.".]

SEC. 207. REEF IN PLACE.

(a) REEF IN PLACE.—An Applicant may elect to Reef in Place the Inactive Structure in accordance with the following:

(1) NOTICE OF INTENT TO REEF.—To Reef in Place, an Applicant may submit a Notice of Intent to Reef an Inactive Structure at any time to the Director.

(2) ASSESSMENT.—Within 180 days of submission of a Notice of Intent to Reef under Section 207(a)(1), initiate the following assessment.

(A) IN GENERAL.—The Director shall, in response to an Applicant request, conduct or appoint a State or qualified third-party to perform on its behalf, an assessment of each Inactive Structure, which shall, with respect to each Inactive Structure include an assessment of—

(i) in consultation with the Administrator the localized corals, fish species, and other marine life that use the Inactive Structure as a habitat; and

(ii) the economic benefits of Reefing in Place, including a comparison of the cost to replace the Inactive Structure with an equivalent cubic volume, including interstitial spaces, of appropriate artificial material if the Inactive Structure is removed.

(B) ASSESSMENT CONDUCTED BY APPLICANT.—The Director may permit an Applicant to conduct an assessment or enter into an agreement with a State or qualified third-party to perform on its behalf, an assessment report for each Inactive Structure to be submitted to the Director, which shall, with respect to

each Inactive Structure satisfy the assessment criteria set forth in subparagraph (2)(A).

(C) To the extent practicable, the assessment under this subparagraph (2) must be completed within one year of receipt by the Director of the Notice of Intent to Reef.

(3) ELIGIBILITY DETERMINATION.—Not later than 60 days after completion of the assessment conducted under subparagraph (2)(A), or receipt by the Director of the assessment report conducted under subparagraph (2)(B), the Director, after consultation with the Administrator, shall make a formal determination that the Inactive Structure is an Eligible Structure if—

(A) there is an Established Reef Ecosystem on, under, or in the immediate vicinity of the Inactive Structure, or there is potential for a reef ecosystem on, under, or in the immediate vicinity of the Inactive Structure; and

(B) Reefing in Place of the Inactive Structure is appropriate based on criteria described in the National Artificial Reef Plan (as amended) developed pursuant to Section 204.

(4) DESIGNATION OF REEF PLANNING AREAS.—

(A) Not later than 90 days after the Director determines an Inactive Structure is an Eligible Structure pursuant to paragraph (3), the Director, in consultation with the associated State Reef Program, shall designate the footprint of the Eligible Structure or other proposed reefing location, along with any surrounding area deemed necessary for Reefing in Place, as a Reef Planning Area.

(B) Designation as a Reef Planning Area under subparagraph (4)(A) shall be made by the Director prior to any Reef in Place activity.

(C) Nothing in this paragraph shall be construed to require the redesignation of, or otherwise affect, any area already serving as a reef permitted area or existing Artificial Reef site.

(5) APPROVAL.—Not later than three years after the date on which the Director determines an Inactive Structure is an Eligible Structure, the Applicant may Reef in Place if—

(A) with respect to the Eligible Structure—

(i) all associated wells have been permanently plugged and abandoned pursuant to applicable law, including any departures approved by the Bureau of Safety and Environmental Enforcement;

- (ii) hydrocarbons and other hazardous liquids have been removed in accordance with applicable laws and regulations;
- (iii) if required by law or regulation, the Applicant installs identifying markers to protect and aid navigation;
- (iv) the Applicant confirmed there is no outstanding responsibility or liability related to the Eligible Structure other than Decommissioning and related maintenance monitoring; and
- (v) the Applicant has transferred, or has an agreement to transfer, liability to a State agency upon completion of the reefing activity.

(B) And, the Secretary of the Interior determines the criteria in subparagraph 5(A) have been met and the Eligible Structure is reasonably sound and secure, upon which the Eligible Structure is deemed an Approved Structure.

(6) ANNUAL REPORT.—Not later than one year after the date of the enactment of this subsection, and annually thereafter, the Director shall submit to the Secretary of the Interior, the Administrator, the Committee on Natural Resources of the House of Representatives and the Committee on Natural Resources of the Senate a report summarizing all actions taken in relation to an Inactive Structure under this Section 207 that occurred in the preceding twelve (12) months, including, without limitation, each Notice of Intent to Reef, assessment, Eligible Structure determination, Reef Planning Area designation, Approved Structure determination, and appeal submitted or conducted pursuant to this Section 207, which shall include a comprehensive map.

(7) WITHDRAWAL.—Any Applicant may determine that it will not complete Reefing in Place at any time, regardless of whether or not it has, or prior Applicants have, completed any of the processes described in this Section 207. Any Applicant shall be entitled to terminate the processes commenced in this Section 207 upon written notice to the Director and remove or otherwise Decommission the Inactive Structure in accordance with applicable law.

(8) OTHER REEFING OR DECOMMISSIONING MECHANISMS PRESERVED.—Nothing in this Act shall eliminate, modify or otherwise limit the ability of any party from pursuing the reefing of any Inactive Structure under any other program authorized by the National Fishing Enhancement Act or pursuing any other method of Decommissioning.

(b) APPEALS.—Any Applicant aggrieved by a decision made under paragraph (a) may submit a written appeal within 60 days of the decision to the Director describing why the decision should be reconsidered. The Director shall respond with an appeal determination no later than 60 days after receipt of the appeal. Any determination made by the Director under this paragraph (b) is a final agency action subject to judicial review.

(c) STATE PROGRAMS.—

(1) IN GENERAL.—A State that has a program to convert inactive structures into artificial reefs may enter into an agreement with any applicant to assume responsibility and liability no later than one year after a reef planning area is designated for an Eligible Structure in Covered Waters in exchange for an amount of funds that—

(A) is determined by the State; and

(B) does not exceed 50 percent of the cost savings gained by the Applicant due to reefing as determined by the Applicant and approved by the State, unless the Applicant consents to a greater amount.

(2) LIABILITY.—Upon acceptance by a State of an Eligible structure into a State Program described in subparagraph (1)—

(A) the Applicant shall have no responsibility or liability with respect to the Approved Structure following completion of the reefing activity unless otherwise agreed to by the Applicant and a State; and

(B) the State shall be—

(i) solely responsible for the continued maintenance of the Approved structure, including maintaining any identifying markers installed to protect and aid navigation; and

(ii) exclusively responsible and liable for the Approved structure.

(d) OUTER CONTINENTAL SHELF LANDS ACT.—Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended by adding at the end the following:

“(e) ARTIFICIAL REEFS.—

“(1) DEFINITIONS.—In this subsection:

“(A) For the purposes of this section, the terms ‘Administrator’, ‘Applicant’, ‘Approved Structure’, ‘Artificial Reef’, ‘Decommissioning’, ‘Director’, ‘Eligible Structure’, ‘Established Reef Ecosystem’, ‘Inactive Structure’, ‘Partial Removal’, ‘Reef in Place’, ‘Reef Planning Area’, ‘State Program’, ‘State’, and ‘Topple in Place’ shall have the same meaning as set forth in section 206 of the National Fishing Enhancement Act of 1984 (as amended), 33 U.S.C. 2101 et seq.

“(B) REMOVAL ORDER.—The term ‘removal order’ means any order, notice, or request to fully or partially remove an Inactive Structure sent by any Federal agent, including, without limitation any order to perform decommissioning.

“(2) PROHIBITION ON REMOVAL ORDERS.—

“(A) IN GENERAL.—The Secretary of the Interior may not issue or enforce a Removal Order for an Inactive Structure during any of the following periods—

“(i) INITIAL NOTICE PERIOD.—From the date an Applicant submits its first Notice of Intent to Reef pursuant to Section 207(a)(1) of the National Fishing Enhancement Act of 1984 (as amended), 33 U.S.C. 2101 et seq., for a given Inactive Structure and for a period of one year thereafter.

“(ii) ASSESSMENT PERIOD.—From the date an assessment required under Section 207(a)(2) of the National Fishing Enhancement Act of 1984 (as amended), 33 U.S.C. 2101 et seq. is initiated, but not later than 18 months after the Notice of Intent to Reef is submitted.

“(iii) PENDING DETERMINATION.—After submission of an assessment to the Director pursuant to Section 207(a)(2) of the National Fishing Enhancement Act of 1984 (as amended), 33 U.S.C. 2101 et seq., and before the Director has made an Eligible Structure determination under Section 207(a)(3) of the National Fishing Enhancement Act of 1984 (as amended), 33 U.S.C. 2101 et seq.

“(iv) ELIGIBLE DETERMINATION.—After a determination that the structure is an Eligible Structure under Section 207(a)(3) of the National Fishing Enhancement Act of 1984 (as amended), 33 U.S.C. 2101 et seq., and for a period not to exceed three years following such determination.

“(B) APPEAL PERIOD.—After the date an appeal has been filed under Section 207(b) of the National Fishing Enhancement Act of 1984 (as amended), 33 U.S.C. 2101 et seq., and for 150 days thereafter.

“(C) EXCEPTION.—Subparagraph (A) does not apply with respect to an inactive structure that the Secretary of the Interior determines poses a substantial and imminent threat to—

“(i) navigational safety; or

“(ii) the marine environment.

“(f) EXISTING REGULATIONS.—Nothing in this Act shall be construed to modify or supersede existing regulatory procedures for pipeline abandonment or decommissioning under the applicable provisions of the Code of Federal Regulations. Pipeline abandonment in place shall continue to follow established regulatory processes and shall not require additional permitting unless the pipeline is specifically designated for conversion to an Artificial Reef.”.