

“(i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea;

“(ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or

“(iii) to land any such fin without the corresponding carcass;”.

2007—Par. (1)(Q), (R). Pub. L. 109-479 added subpars. (Q) and (R).

2000—Par. (1). Pub. L. 106-557 added subpar. (P) and concluding provisions.

1996—Par. (1)(J)(i). Pub. L. 104-297, §113(a), substituted “plan implemented” for “plan, implemented” and inserted before semicolon at end “, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.)”.

Par. (1)(K). Pub. L. 104-297, §113(b)(2), substituted “gear;” for “gear,” at end of cl. (ii) and struck out concluding provisions which read as follows: “or to attempt to do so;”.

Pub. L. 104-297, §113(b)(1), which directed substitution of “to steal or attempt to steal or to negligently and without authorization” for “knowingly steal or without authorization, to”, was executed by making the substitution for “knowingly steal, or without authorization, to” to reflect the probable intent of Congress.

Par. (1)(L). Pub. L. 104-297, §113(c), amended subpar. (L) generally. Prior to amendment, subpar. (L) read as follows: “to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this chapter;”.

Par. (1)(O). Pub. L. 104-297, §113(d), added subpar. (O).

Par. (2)(A). Pub. L. 104-297, §113(e), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “in fishing within the boundaries of any State, except recreational fishing permitted under section 1821(j) of this title;”.

Par. (2)(B). Pub. L. 104-297, §113(f), substituted “1821(j)” for “1821(j)” and “1824(b), (c), or (d)” for “1824(b) or (c)”.

Par. (3). Pub. L. 104-297, §113(g), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone, unless the foreign fishing vessel has been issued a permit under section 1824 of this title which authorizes the receipt by such vessel of United States harvested fish of the species concerned;”.

Par. (4). Pub. L. 104-297, §113(h), inserted “or within the boundaries of any State” after “zone” in introductory provisions.

1990—Par. (1)(K) to (N). Pub. L. 101-627, §113(a), added subpars. (K) to (N).

Par. (5). Pub. L. 101-627, §113(b), added par. (5).

1989—Par. (1)(J). Pub. L. 101-224 added subpar. (J).

1988—Par. (4). Pub. L. 100-629 added par. (4).

1986—Par. (1)(I). Pub. L. 99-659, §107(a), added subpar. (I).

Pars. (2)(B), (3). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

1983—Par. (2)(A). Pub. L. 97-453, §15(b)(A), substituted “in fishing within the boundaries of any State, except recreational fishing permitted under section 1821(j) of this title” for “in fishing within the boundaries of any State”.

Par. (2)(B). Pub. L. 97-453, §15(b)(B), inserted “, except recreational fishing permitted under section 1821(j) of this title,” after “in fishing”.

1982—Par. (2). Pub. L. 97-191, §2(1), struck out “in fishing” in provisions preceding subpar. (A).

Par. (2)(A). Pub. L. 97-191, §2(2), inserted “in fishing” at beginning and struck out “or” at end.

Par. (2)(B). Pub. L. 97-191, §2(3), inserted “in fishing” at beginning and substituted “or” for “and” at end.

Par. (2)(C). Pub. L. 97-191, §2(4), added subpar. (C).

1978—Par. (3). Pub. L. 95-354 added par. (3).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-191 effective June 1, 1982, see section 3 of Pub. L. 97-191, set out as a note under section 1856 of this title.

#### EFFECTIVE DATE

Section 312 of Pub. L. 94-265, provided that this section and sections 1858 to 1861 of this title were to take effect Mar. 1, 1977, prior to the general amendment of section 312 by Pub. L. 104-297, title I, §116(a), Oct. 11, 1996, 110 Stat. 3600. See section 1861a of this title.

#### SAVINGS CLAUSE

Pub. L. 111-348, title I, §103(b), Jan. 4, 2011, 124 Stat. 3670, provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] do not apply to an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board.

“(2) DEFINITIONS.—In this subsection:

“(A) COMMERCIAL FISHING.—The term ‘commercial fishing’ has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

“(B) STATE.—The term ‘State’ has the meaning given that term in section 803 of Public Law 103-206 (16 U.S.C. 5102).”

## § 1858. Civil penalties and permit sanctions

### (a) Assessment of penalty

Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 1857 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay,

*Provided*, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

**(b) Review of civil penalty**

Any person against whom a civil penalty is assessed under subsection (a) of this section or against whom a permit sanction is imposed under subsection (g) of this section (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

**(c) Action upon failure to pay assessment**

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

**(d) In rem jurisdiction**

A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 1857 of this title shall be liable in rem for any civil penalty assessed for such violation under this section and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

**(e) Compromise or other action by Secretary**

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

**(f) Subpenas**

For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony

before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(g) Permit sanctions**

(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 1857 of this title, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this chapter has acted in violation of section 1857 of this title, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this chapter and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

(Pub. L. 94-265, title III, §308, Apr. 13, 1976, 90 Stat. 356; Pub. L. 97-453, §10, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, §108, Nov. 14, 1986, 100 Stat. 3713; Pub. L. 101-627, title I, §114(a), Nov. 28, 1990, 104 Stat. 4454; Pub. L. 104-297, title I, §114(a)-(c), Oct. 11, 1996, 110 Stat. 3598, 3599.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (g)(1), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

## AMENDMENTS

1996—Subsec. (a). Pub. L. 104-297, §114(a), struck out "ability to pay," after "history of prior offenses," and inserted at end "In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay. Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing."

Subsec. (b). Pub. L. 104-297, §114(b), amended first sentence generally. Prior to amendment, first sentence read as follows: "Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary, the Attorney General and the appropriate United States Attorney."

Subsec. (g)(1). Pub. L. 104-297, §114(c), substituted "(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue," for "or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue."

1990—Pub. L. 101-627, §114(a)(1), inserted "and permit sanctions" after "penalties" in section catchline.

Subsec. (a). Pub. L. 101-627, §114(a)(2), substituted "\$100,000" for "\$25,000".

Subsec. (g). Pub. L. 101-627, §114(a)(3), added subsec. (g).

1986—Subsec. (b). Pub. L. 99-659, §108(1), amended first sentence generally. Prior to amendment, the sentence read as follows: "Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary."

Subsecs. (d) to (f). Pub. L. 99-659, §108(2), (3), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1983—Subsec. (e). Pub. L. 97-453 added subsec. (e).

## EFFECTIVE DATE

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94-265, formerly set out as a note under section 1857 of this title.

## § 1859. Criminal offenses

## (a) Offenses

A person is guilty of an offense if he commits any act prohibited by—

- (1) section 1857(1)(D), (E), (F), (H), (I), or (L) of this title; or
- (2) section 1857(2) of this title.

## (b) Punishment

Any offense described in subsection (a)(1) of this section is punishable by a fine of not more than \$100,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 1857(1)(L) of this title or any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title), or places any such observer or officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$200,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) of this section is punishable by a fine of not more than \$200,000.

## (c) Jurisdiction

There is Federal jurisdiction over any offense described in this section.

(Pub. L. 94-265, title III, §309, Apr. 13, 1976, 90 Stat. 357; Pub. L. 97-453, §11(a), Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, §107(b), Nov. 14, 1986, 100 Stat. 3713; Pub. L. 100-66, §2, July 10, 1987, 101 Stat. 384; Pub. L. 101-627, title I, §115, Nov. 28, 1990, 104 Stat. 4455.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

## AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-627, §115(a), amended par. (1) generally, substituting "(I), or (L)" for "or (I)".

Subsec. (b). Pub. L. 101-627, §115(b), substituted "\$100,000" for "\$50,000", substituted "\$200,000" for "\$100,000" in two places, and inserted "any observer described in section 1857(1)(L) of this title or" after "injury to" and "observer or" before "officer in fear".

1987—Subsec. (a)(1). Pub. L. 100-66 substituted "(I)" for "(J)".

1986—Subsec. (a)(1). Pub. L. 99-659 substituted "(H), or (J)" for "or (H)".

1983—Subsec. (b). Pub. L. 97-453 struck out ", or imprisonment for not more than 1 year, or both" after "subsection (a)(2) of this section is punishable by a fine of not more than \$100,000".

## EFFECTIVE DATE OF 1983 AMENDMENT

Section 11(b) of Pub. L. 97-453 provided that: "The amendment made by subsection (a) [amending this section] applies with respect to offenses committed under section 309 [this section] on or after the date of the enactment of this Act [Jan. 12, 1983]."

## EFFECTIVE DATE

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94-265, formerly set out as a note under section 1857 of this title.