

amended Pub. L. 102-587, title II, §2105, Nov. 4, 1992, 106 Stat. 5043.)

AMENDMENTS

1992—Pub. L. 102-587, §2105(b), substituted “; international negotiations and cooperation” for “and international negotiations” in section catchline.

Subsec. (a). Pub. L. 102-587, §2105(a)(1), substituted “This chapter and the regulations” for “The regulations” and inserted “or be enforced against” after “apply to”.

Subsec. (c). Pub. L. 102-587, §2105(a)(2), added subsec. (c).

INTERNATIONAL COOPERATION

For direction that the Secretary of State seek effective international action and cooperation through the development of appropriate international rules and regulations in support of the policy of this chapter and chapter 27 of Title 33, Navigation and Navigable Waters, see section 1419 of Title 33.

§ 1436. Prohibited activities

It is unlawful for any person to—

(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

(2) possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;

(3) interfere with the enforcement of this chapter by—

(A) refusing to permit any officer authorized to enforce this chapter to board a vessel, other than a vessel operated by the Department of Defense or United States Coast Guard, subject to such person’s control for the purposes of conducting any search or inspection in connection with the enforcement of this chapter;

(B) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this chapter or any such authorized officer in the conduct of any search or inspection performed under this chapter; or

(C) knowingly and willfully submitting false information to the Secretary or any officer authorized to enforce this chapter in connection with any search or inspection conducted under this chapter; or

(4) violate any provision of this chapter or any regulation or permit issued pursuant to this chapter.

(Pub. L. 92-532, title III, §306, as added Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2302; amended Pub. L. 102-587, title II, §2106, Nov. 4, 1992, 106 Stat. 5043; Pub. L. 106-513, §7, Nov. 13, 2000, 114 Stat. 2386.)

AMENDMENTS

2000—Pub. L. 106-513, §7(1), inserted “for any person” after “unlawful” in introductory provision.

Par. (2). Pub. L. 106-513, §7(2), inserted “offer for sale, purchase, import, export,” after “sell.”

Par. (3). Pub. L. 106-513, §7(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “interfere with the enforcement of this chapter; or”.

1992—Pub. L. 102-587 amended section generally. Prior to amendment, section read as follows: “The Secretary

shall conduct research and educational programs as are necessary and reasonable to carry out the purposes and policies of this chapter.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1437. Enforcement

(a) In general

The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.

(b) Powers of authorized officers

Any person who is authorized to enforce this chapter may—

(1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation or permit issued under this chapter and any equipment, stores, and cargo of such vessel;

(2) seize wherever found any sanctuary resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter;

(3) seize any evidence of a violation of this chapter or of any regulation or permit issued under this chapter;

(4) execute any warrant or other process issued by any court of competent jurisdiction;

(5) exercise any other lawful authority; and

(6) arrest any person, if there is reasonable cause to believe that such person has committed an act prohibited by section 1436(3) of this title.

(c) Criminal offenses

(1) Offenses

A person is guilty of an offense under this subsection if the person commits any act prohibited by section 1436(3) of this title.

(2) Punishment

Any person that is guilty of an offense under this subsection—

(A) except as provided in subparagraph (B), shall be fined under title 18, imprisoned for not more than 6 months, or both; or

(B) in the case of a person who in the commission of such an offense uses a dangerous weapon, engages in conduct that causes bodily injury to any person authorized to enforce this chapter or any person authorized to implement the provisions of this chapter, or places any such person in fear of imminent bodily injury, shall be fined under title 18, imprisoned for not more than 10 years, or both.

(d) Civil penalties

(1) Civil penalty

Any person subject to the jurisdiction of the United States who violates this chapter or any regulation or permit issued under this chapter

shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) Notice

No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

(3) In rem jurisdiction

A vessel used in violating this chapter or any regulation or permit issued under this chapter shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(4) Review of civil penalty

Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

(5) Collection of penalties

If any person fails to pay an assessment of a civil penalty under this section 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, 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.

(6) Compromise or other action by Secretary

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

(e) Forfeiture

(1) In general

Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this chapter or of any regulation or permit issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 1443 of this title. None of those proceeds shall be subject to set-off.

(2) Application of the customs laws

The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this chapter.

(3) Disposal of sanctuary resources

Any sanctuary resource seized pursuant to this chapter may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

(4) Presumption

For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this chapter or of any regulation or permit issued under this chapter were taken or retained in violation of this chapter or of a regulation or permit issued under this chapter.

(f) Payment of storage, care, and other costs

(1) Expenditures

(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42.

(B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this chapter or any regulation or permit issued under this chapter.

(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or any regulation or permit issued under this chapter; and

(iii) manage and improve any other national marine sanctuary.

(2) Liability for costs

Any person assessed a civil penalty for a violation of this chapter or of any regulation or permit issued under this chapter, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

(g) Subpoenas

In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses

and the production of relevant papers, books, electronic files, and documents, and may administer oaths.

(h) Use of resources of State and other Federal agencies

The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

(i) Coast Guard authority not limited

Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14.

(j) Injunctive relief

If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 1443 of this title, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(k) Area of application and enforceability

The area of application and enforceability of this chapter includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.

(l) Nationwide service of process

In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(Pub. L. 92-532, title III, §307, as added Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2302; amended Pub. L. 100-627, title II, §207, Nov. 7, 1988, 102 Stat. 3219; Pub. L. 102-587, title II, §2107(a)-(c), (e), Nov. 4, 1992, 106 Stat. 5043, 5044; Pub. L. 104-283, §9(c), Oct. 11, 1996, 110 Stat. 3367; Pub. L. 106-513, §8, Nov. 13, 2000, 114 Stat. 2387.)

REFERENCES IN TEXT

Presidential Proclamation 5928 of December 27, 1988, referred to in subsec. (k), is set out as a note under section 1331 of Title 43, Public Lands.

AMENDMENTS

2000—Subsec. (b)(6). Pub. L. 106-513, §8(a), added par. (6).

Subsecs. (c) to (f). Pub. L. 106-513, §8(b), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 106-513, §8(b), (c), redesignated subsec. (f) as (g) and inserted "electronic files," after "books,". Former subsec. (g) redesignated (h).

Subsecs. (h) to (k). Pub. L. 106-513, §8(b), redesignated subsecs. (g) to (j) as (h) to (k), respectively.

Subsec. (l). Pub. L. 106-513, §8(c), added subsec. (l).

1996—Subsec. (e)(1)(A). Pub. L. 104-283 made technical amendment to reference in original act which appears in text as reference to section 9607(f)(1) of title 42.

1992—Subsec. (c)(1). Pub. L. 102-587, §2107(a)(1), substituted "\$100,000" for "\$50,000".

Subsec. (c)(3). Pub. L. 102-587, §2107(a)(2), struck out "and may be proceeded against in any district court of the United States having jurisdiction" after "assessed for such violation" and inserted at end "Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel."

Subsec. (d)(1). Pub. L. 102-587, §2107(b), inserted at end "The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 1443 of this title. None of those proceeds shall be subject to set-off."

Subsec. (e)(1). Pub. L. 102-587, §2107(c), added par. (1) and struck out former par. (1) which read as follows: "IN GENERAL.—Notwithstanding any other law, the Secretary may use amounts received under this section in the form of civil penalties, forfeitures of property, and costs imposed under paragraph (2) to pay—

"(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such property or sanctuary resource was seized; and

"(B) a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or of any regulation or permit issued under this chapter."

Subsec. (j). Pub. L. 102-587, §2107(e), added subsec. (j).

1988—Pub. L. 100-627 amended section generally, substituting provisions consisting of subsecs. (a) to (i) relating to enforcement activities in general, powers of authorized officers, civil penalties, forfeiture, payment of storage, care, and other costs, subpoenas, use of resources of State and other Federal agencies, Coast Guard authority, and injunctive relief for former provisions consisting of subsecs. (a) to (c) relating to enforcement activities in general, civil penalties, and jurisdiction.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

STUDY OF JOINT ENFORCEMENT OF MARINE SANCTUARY REGULATIONS

Pub. L. 102-241, §51, Dec. 19, 1991, 105 Stat. 2227, directed Secretary of Transportation and Secretary of Commerce, not later than one year after Dec. 19, 1991, to submit to Congress a joint report describing methods by which Coast Guard enforcement efforts under the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.) could be enhanced and coordinated with those of the National Oceanic and Atmospheric Administration.

§ 1438. Repealed. Pub. L. 100-627, title II, § 203(1), Nov. 7, 1988, 102 Stat. 3214

Section, Pub. L. 92-532, title III, § 308, as added Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2303, authorized appropriations for fiscal years 1985 to 1988.

§ 1439. Regulations

The Secretary may issue such regulations as may be necessary to carry out this chapter.

(Pub. L. 92-532, title III, § 308, formerly § 309, as added Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2303; renumbered § 308, Pub. L. 100-627, title II, § 203(2), Nov. 7, 1988, 102 Stat. 3214; Pub. L. 106-513, § 9, Nov. 13, 2000, 114 Stat. 2387.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 92-532 was classified to section 1438 of this title, prior to repeal by section 203(1) of Pub. L. 100-627.

AMENDMENTS

2000—Pub. L. 106-513 amended section catchline and text generally. Prior to amendment, text read as follows: “If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.”

§ 1440. Research, monitoring, and education

(a) In general

The Secretary shall conduct, support, or coordinate research, monitoring, evaluation, and education programs consistent with subsections (b) and (c) of this section and the purposes and policies of this chapter.

(b) Research and monitoring

(1) In general

The Secretary may—

(A) support, promote, and coordinate research on, and long-term monitoring of, sanctuary resources and natural processes that occur in national marine sanctuaries, including exploration, mapping, and environmental and socioeconomic assessment;

(B) develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources; and

(C) support, promote, and coordinate research on, and the conservation, curation, and public display of, the cultural, archeological, and historical resources of national marine sanctuaries.

(2) Availability of results

The results of research and monitoring conducted, supported, or permitted by the Secretary under this subsection shall be made available to the public.

(c) Education

(1) In general

The Secretary may support, promote, and coordinate efforts to enhance public awareness, understanding, and appreciation of national marine sanctuaries and the System. Efforts supported, promoted, or coordinated under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries and the System.

(2) Educational activities

Activities under this subsection may include education of the general public, teachers, students, national marine sanctuary users, and ocean and coastal resource managers.

(d) Interpretive facilities

(1) In general

The Secretary may develop interpretive facilities near any national marine sanctuary.

(2) Facility requirement

Any facility developed under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries by providing the public with information about the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities of the national marine sanctuary.

(e) Consultation and coordination

In conducting, supporting, and coordinating research, monitoring, evaluation, and education programs under subsection (a) of this section and developing interpretive facilities under subsection (d) of this section, the Secretary may consult or coordinate with Federal, interstate, or regional agencies, States or local governments.

(Pub. L. 92-532, title III, § 309, as added Pub. L. 100-627, title II, § 203(3), Nov. 7, 1988, 102 Stat. 3214; amended Pub. L. 102-587, title II, § 2108, Nov. 4, 1992, 106 Stat. 5045; Pub. L. 106-513, § 10, Nov. 13, 2000, 114 Stat. 2388.)

PRIOR PROVISIONS

A prior section 309 of Pub. L. 92-532 was renumbered section 308 and is classified to section 1439 of this title.

AMENDMENTS

2000—Pub. L. 106-513 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) IN GENERAL.—The Secretary shall conduct research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of this chapter.

“(b) PROMOTION AND COORDINATION OF SANCTUARY USE.—The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring, and education, including coordination with the National Estuarine Research Reserve System.”

1992—Pub. L. 102-587 amended section generally. Prior to amendment, section read as follows: “The Secretary shall take such action as is necessary to promote and coordinate the use of national marine sanctuaries for research purposes, including—

“(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and

“(2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research.”

§ 1441. Special use permits

(a) Issuance of permits

The Secretary may issue special use permits which authorize the conduct of specific activi-