

villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a 3 year development period.

(Pub. L. 97-176, § 5, May 17, 1982, 96 Stat. 79; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1853(b)(6) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

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.

§ 773d. Cooperation of Federal agencies

Any agency of the Federal Government is authorized upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish on a reimbursable basis, facilities and personnel for the purposes of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

(Pub. L. 97-176, § 6, May 17, 1982, 96 Stat. 80.)

§ 773e. Prohibited acts

It is unlawful—

(a) for any person subject to the jurisdiction of the United States—

(1) to violate any provision of the Convention, this subchapter or any regulation adopted under this subchapter;

(2) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this subchapter or any regulation adopted under this subchapter;

(3) to forcibly assault, resist, oppose, impede, intimidate or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest or detention for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any fish taken or retained in violation of the Convention, this subchapter, or any regulation adopted under this subchapter; or

(6) to interfere with, delay or prevent, by any means, the apprehension, arrest or detention of another person, knowing that

such person has committed any act prohibited by this section.

(b) for any foreign fishing vessel, and for the owner or operator of any foreign fishing vessel, to engage in fishing for halibut in the fishery conservation zone, unless such fishing is authorized by, and conducted in accordance with the Convention, this subchapter and regulations adopted under this subchapter.

(Pub. L. 97-176, § 7, May 17, 1982, 96 Stat. 80; Pub. L. 102-251, title III, § 302(b), Mar. 9, 1992, 106 Stat. 65.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 102-251, title III, §§ 302(b), 308, Mar. 9, 1992, 106 Stat. 65, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (b) is amended by substituting "exclusive economic zone or special areas" for "fishery conservation zone".

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.

§ 773f. Civil penalties

(a) Liability; continuing violations; notice; determination of amount

Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 773e of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$200,000 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 if the information is provided to the Secretary at least 30 days prior to an administrative hearing.

(b) Judicial review

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 and the Attorney General. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, in accordance with rules prescribed pursuant to 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) Recovery of assessed penalties by Attorney General

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) Compromise, modification, and remission of penalties

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.

(e) Revocation or suspension of permit

(1) In general

The Secretary may take any action described in paragraph (2) in any case in which—

(A) a vessel has been used in the commission of any act prohibited under section 773e 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 subchapter has acted in violation of section 773e of this title; or

(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.

(2) Permit-related actions

Under the circumstances described in paragraph (1) the Secretary may—

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

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

(C) deny such permit; or

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

(3) Factors to be considered

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.

(4) Transfers of ownership

Transfer of ownership of a vessel, a permit, or any interest in a permit, 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, permit, or interest in a permit, 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, permit, or interest at the time of the transfer.

(5) Reinstatement

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

(6) Hearing

No sanction shall be imposed under this subsection unless there has been 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.

(7) Permit defined

In this subsection, the term “permit” means any license, certificate, approval, registration, charter, membership, exemption, or other form of permission issued by the Commission or the Secretary, and includes any quota share or other transferable quota issued by the Secretary.

(Pub. L. 97-176, §8, May 17, 1982, 96 Stat. 80; Pub. L. 109-479, title III, §301(a), (b), Jan. 12, 2007, 120 Stat. 3621, 3622.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 109-479, §301(a), substituted “\$200,000” for “\$25,000” and “violator, the degree of culpability, any history of prior offenses,” for “violation, the degree of culpability, and history of prior offenses, ability to pay,” 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 if the information is provided to the Secretary at least 30 days prior to an administrative hearing.”

Subsec. (e). Pub. L. 109-479, §301(b), added subsec. (e).

§ 773g. Crimes and criminal penalties**(a) Offenses**

A person is guilty of any¹ offense if he commits an act prohibited by section 773e(a)(2), (3), (4), or (6) of this title; or section 773e(b) of this title.

(b) Fines; imprisonment

Any offense described in subsection (a) of this section is punishable by a fine of not more than \$200,000 or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this subchapter, or places any such officer in fear of imminent bodily injury the offense is punishable by a fine of not more than \$400,000, or imprisonment for not more than 10 years or both.

(c) Federal jurisdiction

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

(Pub. L. 97-176, §9, May 17, 1982, 96 Stat. 81; Pub. L. 109-479, title III, §301(c), Jan. 12, 2007, 120 Stat. 3623.)

AMENDMENTS

2007—Subsec. (b). Pub. L. 109-479 substituted “\$200,000” for “\$50,000” and “\$400,000,” for “\$100,000.”

§ 773h. Forfeitures**(a) Civil forfeiture proceeding**

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 773e of this title shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) United States district court jurisdiction

Any district court of the United States shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) Seizure of forfeited property

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this subchapter or for which security has not previously been obtained under subsection (d) of this section. The provisions of the customs laws relating to—

- (1) the disposition of forfeited property;
- (2) the proceeds from the sale of forfeited property;
- (3) the remission or mitigation of forfeitures; and

- (4) the compromise of claims;

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this subchapter. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this subchapter, be performed by officers or other persons designated for such purpose by the Secretary.

(d) Bond or other security; disposal of seized fish

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 773i(d) of this title shall—

- (A) stay the execution of such process; or
- (B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any fish seized pursuant to this subchapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations of the Secretary or the Secretary of the department in which the Coast Guard is operating.

(e) Presumption of violation

For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 773e of this title were taken or retained in violation of the Convention and this subchapter.

(Pub. L. 97-176, §10, May 17, 1982, 96 Stat. 81.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

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.

§ 773i. Administration and enforcement**(a) Secretary of Commerce and Secretary of department in which Coast Guard is operating**

The Convention, this subchapter, and any regulation adopted under this subchapter, shall be

¹ So in original. Probably should be “an”.