

the activities of traditional and locally based fishermen and fishing vessels;

(6) to use a vessel to fish in a manner inconsistent with an order issued by the Secretary under section 973i of this title; or

(7) except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use an aircraft in association with the fishing activities of a vessel unless it is identified in the license application for the vessel, or any amendment thereto.

(Pub. L. 100-330, § 5, June 7, 1988, 102 Stat. 592.)

#### § 973d. Exceptions

(a) The prohibitions of section 973c of this title and the licensing requirements of section 973g of this title shall not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline method in the high seas areas of the Treaty area.

(b) The prohibitions of section 973c(a)(4), (a)(5), and (b)(3) of this title shall not apply to fishing under the terms and conditions of an arrangement which has been reached under paragraph 3 of Article 3 of the Treaty and which, pursuant to a decision by the Secretary of State under section 973p of this title, is covered by Article 4 and paragraph 6 of Article 5 of the Treaty.

(Pub. L. 100-330, § 6, June 7, 1988, 102 Stat. 594; Pub. L. 108-219, title IV, § 402, Apr. 13, 2004, 118 Stat. 617.)

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-219 substituted “or to fishing by vessels using the longline method in the high seas areas of the Treaty area” for “outside of the 200 nautical mile fisheries zones of the Pacific Island Parties”.

#### § 973e. Criminal offenses

##### (a) Prohibited acts

A person is guilty of a criminal offense if he or she commits any act prohibited by section 973c(a)(8), (10), (11), or (12) of this title.

##### (b) Sentence and fine

Any offense described in subsection (a) of this section is punishable by a fine of not more than \$50,000, 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 Authorized Officer, Authorized Party Officer, or observer under the Treaty in the conduct of their duties, or places any such Authorized Officer, Authorized Party Officer, or observer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000 or imprisonment for not more than 10 years, or both.

##### (c) Jurisdiction

The district courts of the United States shall have jurisdiction over any offense described in this section.

(Pub. L. 100-330, § 7, June 7, 1988, 102 Stat. 594.)

#### § 973f. Civil penalties

##### (a) Determination of liability; amount; participation by Secretary of State in assessment proceeding

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 973c of this title, shall be liable to the United States Code<sup>1</sup> for a civil penalty. Before issuing a notice of violation, the Secretary shall consult with the Secretary of State. The amount of the civil penalty shall be determined in accordance with considerations set forth in the Treaty and 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, ability to pay, and such other matters as justice may require. Except for those acts prohibited by section 973c(a)(4), (5), (7), (8), (10), (11), and (12), and section 973c(b)(1), (2), (3), and (7) of this title, the amount of the civil penalty shall not exceed \$250,000 for each violation. Upon written notice, the Secretary of State shall have the right to participate in any proceeding initiated to assess a civil penalty for violation of this chapter.

##### (b) Judicial review of assessment; procedures applicable

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 the order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General of the United States, and the appropriate United States Attorney. The Secretary shall promptly file in the court a certified copy of the record upon which the violation was found or the penalty imposed. The findings and order of the Secretary shall be set aside or modified by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

##### (c) Failure to pay assessment of civil penalty; recovery by Attorney General

Except as provided in subsection (g) of this section, 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.

##### (d) In rem liability for civil penalty; jurisdiction; maritime lien on vessel

Except as provided in subsection (g) of this section, a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 973c of this title shall be liable in rem for any civil penalty assessed for the viola-

<sup>1</sup> So in original. “Code” probably should not appear.