

territorial sea, was to be considered to be internal waters of the State of Alaska for the purposes of subsec. (c)(4)(B) of this section until Sept. 30, 1993.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

§ 1857. Prohibited acts

It is unlawful—

(1) for any person—

(A) to violate any provision of this chapter or any regulation or permit issued pursuant to this chapter;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this chapter;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 1821(c) of this title;

(D) to refuse to permit any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) 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 this chapter or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) 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 this chapter or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this chapter;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations pub-

lished in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this subchapter, 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.);

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to to<sup>1</sup> steal or attempt to steal or to negligently and without authorization remove, damage, or tamper with—

(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

(ii) fish contained in such fishing gear;

(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this chapter, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this chapter;

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 1852(j) of this title, or to knowingly vote on a Council decision in violation of section 1852(j)(7)(A) of this title;

(P)(i) to remove any of the fins of a shark (including the tail) at sea;

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;

(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation; or

(R) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment

<sup>1</sup> So in original.

to the owner of that fishing vessel under section 1861a(b)(2) of this title.

For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term “naturally attached”, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except—

(i) recreational fishing permitted under section 1821(i) of this title;

(ii) fish processing permitted under section 1856(c) of this title; or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 1824(d) of this title;

(B) in fishing, except recreational fishing permitted under section 1821(i) of this title, within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 1824(b), (c), or (d) of this title; or

(C) except as permitted under section 1856(c) of this title, in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 1824(d) of this title or section 1856(c) of this title to receive such fish;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 1823 of this title, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

(Pub. L. 94-265, title III, §307, Apr. 13, 1976, 90 Stat. 355; Pub. L. 95-354, §5(4), Aug. 28, 1978, 92 Stat. 521; Pub. L. 97-191, §2, June 1, 1982, 96 Stat. 107; Pub. L. 97-453, §15(b), Jan. 12, 1983, 96 Stat. 2492; Pub. L. 99-659, title I, §§101(c)(2), 107(a), Nov. 14, 1986, 100 Stat. 3707, 3713; Pub. L. 100-629, §4, Nov. 7, 1988, 102 Stat. 3286; Pub. L. 101-224, §8, Dec. 12, 1989, 103 Stat. 1907; Pub. L. 101-627, title I, §113, Nov. 28, 1990, 104 Stat. 4453; Pub. L. 102-251, title III, §301(h), Mar. 9, 1992, 106 Stat. 64; Pub. L. 104-297, title I, §113, title IV, §405(b)(1), Oct. 11, 1996, 110 Stat. 3597, 3621; Pub. L. 106-557, §3, Dec. 21, 2000, 114 Stat. 2772; Pub. L. 109-479, title I, §118, Jan. 12, 2007, 120 Stat. 3607; Pub. L. 111-348, title I, §103(a), Jan. 4, 2011, 124 Stat. 3670.)

#### AMENDMENT OF SECTION

*Pub. L. 102-251, title III, §§301(h), 308, Mar. 9, 1992, 106 Stat. 64, 66, as amended by Pub. L. 104-297, title IV, §405(b)(1), Oct. 11, 1996, 110 Stat. 3621, 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, this section is amended:*

*(1) in paragraph (1)(K), by inserting “or special areas” immediately after “exclusive economic zone”;*

*(2) in paragraph (2)(B), by inserting “or areas” immediately after “such zone”;*

*(3) in paragraph (3), by inserting “or special areas” immediately after “exclusive economic zone”;* and

*(4) in paragraph (4), by inserting “or special areas” immediately after “exclusive economic zone”.*

#### REFERENCES IN TEXT

This chapter, referred to in par. (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.

The Atlantic Coastal Fisheries Cooperative Management Act, referred to in par. (1)(J)(i), is title VIII of Pub. L. 103-206, Dec. 20, 1993, 107 Stat. 2447, as amended, which is classified principally to chapter 71 (§5101 et

seq.) of this title. For complete classification of title VIII to the Code, see Short Title note set out under section 5101 of this title and Tables.

#### AMENDMENTS

2011—Par. (1). Pub. L. 111-348, §103(a)(2), substituted “For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term ‘naturally attached’, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.” for “For purposes of subparagraph (P) there is a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of subparagraph (P) if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of shark carcasses landed or found on board.” in concluding provisions.

Par. (1)(P). Pub. L. 111-348, §103(a)(1), amended subpar. (P) generally. Prior to amendment, subpar. (P) read as follows:

“(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(i)” 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 ves-

sel, 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

Pub. L. 94-265, title III, §312, Apr. 13, 1976, 90 Stat. 359, 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