

Subsec. (g)(1). Pub. L. 100-350, §4(2), substituted “Treaty” for “Treasury”.

§ 973g. Licenses

(a) Issuance; establishment of procedures; designation of agent for service of legal process in license application; reception and response to process

Licenses to fish in the Licensing Area, to be issued by the Administrator in accordance with the Treaty, may be requested from the Secretary by operators of vessels, under procedures established by the Secretary. The license application shall designate an agent for the service of legal process to be located in Port Moresby, Papua New Guinea. The applicant shall ensure that the designated agent for service of process, acting on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty and will, within 21 days after notification, travel if necessary for this purpose to any Pacific Island Party at no expense to that Party.

(b) Forwarding and transmittal of vessel license application

Except as provided in subsections (e), (f), and (g) of this section, the Secretary shall forward a vessel license application to the Secretary of State for transmittal to the Administrator whenever such application is in accordance with application procedures established by the Secretary, includes a complete application form as required by Annex II of the Treaty, and is accompanied by the required license fee.

(c) Fees and fee schedules

(1) In the initial year of implementation, fees for the first 40 vessel licenses shall be at least \$50,000 each, for any 10 vessel licenses in addition to the first 40 shall be \$60,000 each, and for vessel licenses in addition to the first 50 shall be in accordance with Annex II of the Treaty.

(2) After such initial year, fees for vessel licenses shall be paid in accordance with fee schedules established under Annex II of the Treaty and published by the Secretary.

(d) Period of validity

Licenses shall be valid for the licensing period specified by the Administrator.

(e) Allocation system

The Secretary may establish a system of allocating licenses in the event more applications are received than there are licenses available.

(f) Minimum fees required to be received in initial year of implementation for forwarding and transmittal of license applications

For the initial year of implementation, license fees totaling at least \$1,750,000 must be received by the Secretary before any license applications will be forwarded to the Secretary of State for transmittal to the Administrator.

(g) Grounds for denial of forwarding of license application

The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator for one of the following reasons:

(1) where the application is not in accordance with the Treaty or the procedures established by the Secretary;

(2) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

(3) where the owner or charterer has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance;

(4) where the owner or charterer has not paid any penalty which has become final, assessed by the Secretary in accordance with this chapter.

(h) Grandfathering of vessels documented before November 3, 1995

Notwithstanding the requirements of—

(1) section 12108 of title 46;

(2) the general permit issued on December 1, 1980, to the American Tunaboat Association under section 1374(h)(1) of this title; and

(3) sections 1374(h)(2) and 1416(a) of this title—¹

any vessel documented under the laws of the United States as of November 3, 1995, for which a license has been issued under subsection (a) of this section may fish for tuna in the Treaty Area, including those waters subject to the jurisdiction of the United States in accordance with international law, subject to the provisions of the treaty² and this chapter, provided that no such vessel fishing in the Treaty Area intentionally deploys a purse seine net to encircle any dolphin or other marine mammal in the course of fishing under the provisions of the Treaty or this chapter.

(Pub. L. 100-330, §9, June 7, 1988, 102 Stat. 596; Pub. L. 104-43, title VIII, §801, Nov. 3, 1995, 109 Stat. 395.)

REFERENCES IN TEXT

Section 12108 of title 46, referred to in subsec. (h)(1), was in the original “section 1 of the Act of August 26, 1983 (97 Stat. 587; 46 U.S.C. 12108)”, and was translated to reflect the probable intent of Congress. Section 1 of act Aug. 26, 1983, Pub. L. 98-89, 97 Stat. 500, enacted Title 46, Shipping. Section 12108 of Title 46 was subsequently omitted, and its provisions restated, in the general amendment of chapter 121 of Title 46 by Pub. L. 109-304, §5, Oct. 6, 2006, 120 Stat. 1491. See sections 12102, 12113, and 12116 of Title 46 and Prior Provisions note under section 12107 of Title 46.

Sections 1374(h)(1), 1374(h)(2), and 1416(a) of this title, referred to in subsec. (h)(2), (3), were in the original references to sections 104(h)(1), 104(h)(2), and 306(a) of the Marine Mammal Protection Act, and were translated as meaning sections 104(h)(1), 104(h)(2), and 306(a), respectively, of the Marine Mammal Protection Act of 1972, Pub. L. 92-522, to reflect the probable intent of Congress.

AMENDMENTS

1995—Subsec. (h). Pub. L. 104-43 added subsec. (h).

§ 973h. Enforcement

(a) Federal responsibilities; utilization of personnel, etc., of other Federal and State agencies

The provisions of this chapter shall be enforced by the Secretary in cooperation with the

¹ So in original. The dash probably should be a semicolon.

² So in original. Probably should be capitalized.

Secretary of State. The Secretary, after consultation with the Secretary of State, may by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency and of any State agency in the performance of these duties.

(b) Investigation and report of alleged Treaty infringement involving U.S. vessel; notice requirements to operator of vessel; comments, information, or evidence by operator

(1) The Secretary shall, at the request of a Pacific Island Party made to the Secretary of State, fully investigate any alleged infringement of the Treaty involving a vessel of the United States, and report as soon as practicable, and in any case within 2 months, to that Party through the Secretary of State on any action taken or proposed by the Secretary in regard to the alleged infringement.

(2) Upon commencement of an investigation under paragraph (1) of this subsection, the Secretary shall notify the operator of any vessel concerned regarding—

(A) the nature of the investigation;

(B) the right of the operator to submit comments, information, or evidence bearing on the investigation and to receive, upon the operator's timely written request to the Secretary, an opportunity to present such comments, information, or evidence orally to the Secretary or the Secretary's representative within 30 days after receipt of such notification.

(c) Notice requirements to Pacific Island Party concerning institution and outcome of legal proceedings

(1) Prior to instituting any legal proceedings under this chapter for any action which involves an alleged infringement of the Treaty in waters within the jurisdiction of a Pacific Island Party, the Secretary, through the Secretary of State, shall notify the Pacific Island Party in accordance with paragraph 8 of Article 4 of the Treaty that the proceedings will be instituted. Such notice shall include a statement of the facts believed to show an infringement of the Treaty and the nature of the proposed proceedings, including any proposed charges and any proposed penalties. The Secretary shall not institute such proceedings if the Pacific Island Party objects within 30 days after the effective date of the notice under Article 10 of the Treaty.

(2) The Pacific Island Party exercising jurisdiction over the waters involved in such a legal proceeding shall be promptly notified by the Secretary, through the Secretary of State, concerning the outcome of the proceeding.

(d) Searches and seizures by Authorized Officers; limitations on powers

(1) Any Authorized Officer may—

(A) with or without a warrant or other process—

(i) arrest any person, if he has reasonable cause to believe that the person has committed any act subject to prosecution under section 973e of this title;

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this chapter; or

(iii) seize samples of fish or items for evidence (other than the vessel or its fishing gear or equipment) related to any violation of any provision of this chapter;

(iv) order a vessel into the most convenient port of the United States for investigation when an investigation has been requested by a Pacific Island Party in accordance with the Treaty and when such an order is necessary to gather information for such an investigation;

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

(C) exercise any other lawful authority; and

(D) investigate alleged violations of the Treaty to the same extent authorized to investigate alleged violations of this chapter.

(2) To the extent possible, Authorized Officers shall exercise their powers under paragraph (1)(A)(ii), (iii), and (iv) of this subsection so as not to interfere unduly with the lawful operation of the vessel.

(3) Nothing in this chapter shall be construed to limit the enforcement of this or other applicable Federal laws under section 89 of title 14.

(e) Exclusive jurisdiction

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter.

(Pub. L. 100-330, §10, June 7, 1988, 102 Stat. 597.)

§ 973i. Findings by Secretary

(a) Order of vessel to leave waters upon failure to submit to jurisdiction of Pacific Island Party; procedure applicable

Following any investigation conducted in accordance with section 973h(b) of this title, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel which has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding—

(1) that the fishing vessel—

(A) while fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, such fishing is not authorized to be conducted in the Licensing Area without a license;

(B) was involved in any incident in which an Authorized Officer, Authorized Party Officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding, or subjected to physical intimidation or physical interference in the performance of duties as authorized by this chapter or the Treaty;

(C) has not made full payment within 60 days of any amount due as a result of a final judgment or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

(D) was not represented by an agent for service of process in accordance with the Treaty; or