

*date on which the Agreement enters into force for the United States, paragraph (2), formerly subsection (b) of this section, 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.

AMENDMENTS

2015—Pub. L. 114-81 redesignated subsecs. (a) and (b) as pars. (1) and (2), respectively, and former pars. (1) to (6) of subsec. (a) as subpars. (A) to (F), respectively, of par. (1), inserted “, investigation,” before “or inspection” in par. (1)(B) and (C), struck out “or” after the semicolon in par. (1)(E), and substituted “section; or” for “section.” in par. (1)(F).

**§ 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) 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 un-

appealable 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 other-

wise, 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 “violation, 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 any<sup>1</sup> offense if he commits an act prohibited by section 773e(a)(2), (3), (4), or (6)<sup>2</sup> of this title; or section 773e(b)<sup>2</sup> of this title.

#### (b) Fines; imprisonment

Any offense described in subsection (a) 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 sub-

chapter, 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.)

#### REFERENCES IN TEXT

Subsec. (a) and pars. (2), (3), (4), and (6) of subsec. (a) of section 773e of this title, referred to in subsec. (a), were renumbered par. (1) and subpars. (B), (C), (D), and (F), respectively, of par. (1) of section 773e of this title by Pub. L. 114-81, title I, § 110(1), (2), Nov. 5, 2015, 129 Stat. 659.

Subsec. (b) of section 773e of this title, referred to in subsec. (a), was renumbered par. (2) of section 773e of this title by Pub. L. 114-81, title I, § 110(2), Nov. 5, 2015, 129 Stat. 659.

#### 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) and any action provided for under subsection (d).

#### (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). 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 U.S. Customs and Border Protection or other persons

<sup>1</sup> So in original. Probably should be “an”.

<sup>2</sup> See References in Text note below.