

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 violation under this section and may be proceeded against in any district court of the United States having jurisdiction thereof. The penalty shall constitute a maritime lien on the 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, etc., of civil penalty

The Secretary, after consultation with the Secretary of State, 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) Conduct of hearings

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 a person pursuant to this subsection, the district court of the United States for any district in which the person is found, resides, or transacts business, upon application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the 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 the order of the court may be punished by the court as a contempt thereof.

(g) Waiver of referral to Attorney General

If a vessel used in a violation of section 973c(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (13) or section 973c(b) of this title for which a civil penalty has been assessed—

(1) had a valid license under the Treaty at the time of the violation, and

(2) within 60 days after the penalty assessment has become final, leaves and remains outside of the Licensing Area, all Limited Areas closed to fishing, and all Closed Areas until the final penalty has been paid,

there shall be no referral to the Attorney General under subsection (c) of this section or in rem action under subsection (d) of this section in connection with such civil penalty.

(Pub. L. 100-330, §8, June 7, 1988, 102 Stat. 594; Pub. L. 100-350, §4(1), (2), June 27, 1988, 102 Stat. 660.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-350, §4(1), substituted “and gravity” for “any gravity” and “history of prior” for “history or prior”.

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 1 of the Act of August 26, 1983 (97 Stat. 587; 46 U.S.C. 12108);¹
- (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—²

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) 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 treaty³ 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 1 of the Act of August 26, 1983 (97 Stat. 587; 46 U.S.C. 12108), referred to in subsec. (h)(1), probably should be a reference to section 12108 of Title 46, Shipping, which was enacted by section 1 of act Aug. 26, 1983, Pub. L. 98-89, 97 Stat. 587. Section 12108 of Title 46 was subsequently omitted, and its provisions restated, in the general amendment of chapter 121 of Title 46 by

¹ See References in Text note below.

² So in original. The dash probably should be a semicolon.

³ So in original. Probably should be capitalized.

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 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