

CODIFICATION

Title VIII of Pub. L. 102-567 and Pub. L. 102-587 enacted identical sections. Title VIII of Pub. L. 102-587 was repealed by Pub. L. 106-562.

§ 5006. Administration and enforcement of Convention

(a) Responsibilities

The Secretary of Commerce shall be responsible for administering provisions of the Convention, this chapter, and regulations issued under this chapter. The Secretary, in consultation with the Secretary of Commerce and the Secretary of Transportation, shall be responsible for coordinating the participation of the United States in the Commission.

(b) Consultation and cooperation

In carrying out such functions, the Secretary of Commerce—

(1) shall, in consultation with the Secretary of Transportation and the United States Section, issue such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter; and

(2) may, with the concurrence of the Secretary, cooperate with the authorized officials of the government of any Party.

(Pub. L. 102-567, title VIII, §807, Oct. 29, 1992, 106 Stat. 4311; Pub. L. 102-587, title VIII, §8007, Nov. 4, 1992, 106 Stat. 5101; Pub. L. 106-562, title III, §304(a), Dec. 23, 2000, 114 Stat. 2806.)

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§ 5007. Cooperation with other agencies

(a) In general

Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

(b) Functions of Secretary of Commerce

In carrying out the provisions of the Convention and this chapter, the Secretary of Commerce may arrange for cooperation with agencies of the United States, the States, private institutions and organizations, and agencies of the government of any Party, to conduct scientific and other programs, and may execute such memoranda as may be necessary to reflect such agreements.

(Pub. L. 102-567, title VIII, §808, Oct. 29, 1992, 106 Stat. 4312; Pub. L. 102-587, title VIII, §8008, Nov. 4, 1992, 106 Stat. 5101; Pub. L. 106-562, title III, §304(a), Dec. 23, 2000, 114 Stat. 2806.)

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§ 5008. Enforcement provisions

(a) Duties of Secretaries of Commerce and Transportation

This chapter shall be enforced by the Secretary of Commerce and the Secretary of Transportation. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under the preceding sentence may (if the agreement so provides), authorize officers to enforce the provisions of the Convention, this chapter, and regulations issued under this chapter. Any such agreement or contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) District court jurisdiction

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

(c) Powers of enforcement officers

Authorized officers may, shoreward of the outer boundary of the exclusive economic zone, or during hot pursuit from the zone—

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

(A) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by section 5009 of this title;

(B) board, and search or inspect, any fishing vessel subject to the provisions of the Convention and this chapter;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of the Convention, this chapter, or regulations issued under this chapter;

(D) seize any fish (wherever found) taken or retained in violation of any provision referred to in subparagraph (C);

(E) seize any other evidence related to any violation of any provision referred to in subparagraph (C);

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

(3) exercise any other lawful authority.

(d) Additional powers

(1) An authorized officer may in the Convention area—

(A) board a vessel of any Party that reasonably can be believed to be engaged in directed fishing for, incidental taking of, or processing of anadromous fish, and, without warrant or process, inspect equipment, logs, documents, catch, and other articles, and question per-

sons, on board the vessel, for the purpose of carrying out the provisions of the Convention, this chapter, or any regulation issued under this chapter; and

(B) If¹ any such vessel or person on board is actually engaged in operations in violation of any such provision, or there is reasonable ground to believe any person or vessel was obviously so engaged before the boarding of such vessel by the authorized officer, arrest or seize such person or vessel and further investigate the circumstance if necessary.

If an authorized officer, after boarding and investigation, has reasonable cause to believe that any such fishing vessel or person engaged in operations in violation of any provision referred to in subparagraph (A), the officer shall deliver the vessel or person as promptly as practicable to the enforcement officers of the appropriate Party, in accordance with the provisions of the Convention.

(2) When requested by the appropriate authorities of a Party, an authorized officer may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary, for the prosecution by that Party of any violation of the provisions of the Convention or any law of that Party relating to the enforcement thereof.

(Pub. L. 102-567, title VIII, § 809, Oct. 29, 1992, 106 Stat. 4312; Pub. L. 102-587, title VIII, § 8009, Nov. 4, 1992, 106 Stat. 5101; Pub. L. 106-562, title III, § 304(a), Dec. 23, 2000, 114 Stat. 2806.)

CODIFICATION

Title VIII of Pub. L. 102-567 and Pub. L. 102-587 enacted substantially identical sections. Title VIII of Pub. L. 102-587 was repealed by Pub. L. 106-562.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5002, 5010 of this title.

§ 5009. Unlawful activities

It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States—

(1) to fish for any anadromous fish in the Convention area;

(2) to retain on board any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(3) to fail to return immediately to the sea any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(4) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any anadromous fish taken or retained in violation of the Convention, this chapter, or any regulation issued under this chapter;

(5) to refuse to permit any enforcement officer 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 the Convention, this chapter, or any regulation issued under this chapter;

(6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (5);

(7) to resist a lawful arrest or detection for any act prohibited by this section;

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

(9) to violate any provision of the Convention, this chapter, or any regulation issued under this chapter.

(Pub. L. 102-567, title VIII, § 810, Oct. 29, 1992, 106 Stat. 4313; Pub. L. 102-587, title VIII, § 8010, Nov. 4, 1992, 106 Stat. 5103; Pub. L. 106-562, title III, § 304(a), Dec. 23, 2000, 114 Stat. 2806.)

CODIFICATION

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5008, 5010 of this title.

§ 5010. Penalties

(a) Civil penalties

(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 5009 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 of Commerce, or the Secretary's designee, by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce 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 of Commerce 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.

(3) 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

¹ So in original. Probably should not be capitalized.