

(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

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 L. 102-587 was repealed by Pub.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 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 with-

in 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 Secretary of Commerce, the matter shall be referred to the Attorney General, 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.

(4) A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5009 of this title shall be liable in rem for any civil penalty assessed for such violation under paragraph (1) 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 that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(5) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(6) For the purposes of conducting any hearing under this section, the Secretary of Commerce 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 paragraph, 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 of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Offenses

(1) A person is guilty of an offense if the person commits any act prohibited by section 5009(5), (6), (7), or (8) of this title.

(2) Any offense described in paragraph (1) is a class A misdemeanor punishable by a fine under title 18 or imprisonment for not more than 6 months, or both; except that if in the commis-

sion of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any enforcement officer, or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18 or imprisonment for not more than 10 years, or both.

(c) Forfeiture

(1) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or a fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 5009 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.

(2) Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

(3) 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 chapter or for which security has not previously been obtained. The provisions of the customs laws relating to—

(A) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(B) the disposition of such property or the proceeds from the sale thereof; and

(C) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter.

(4)(A) Any officer authorized to serve any process in rem that is issued by a court having jurisdiction under section 5008(b) of this title shall—

(i) stay the execution of such process; or

(ii) discharge any fish seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(B) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 5009 of this title were taken or retained in violation of the Convention and this chapter.

(Pub. L. 102-567, title VIII, §811, Oct. 29, 1992, 106 Stat. 4314; Pub. L. 102-587, title VIII, §8011, Nov. 4, 1992, 106 Stat. 5103; Pub. L. 106-562, title III, §304(a), Dec. 23, 2000, 114 Stat. 2806.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (c)(3), are classified generally to Title 19, Customs Duties.

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.

§ 5011. Funding requirements

(a) Authorization

There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this chapter, including—

(1) necessary travel expenses of the United States Commissioners or Alternate Commissioners; and

(2) the United States' share of the joint expenses of the Commission.

(b) Research

Such funds as shall be made available to the Secretary of Commerce for research and related activities shall be expended to carry out the program of the Commission in accordance with the recommendations of the United States Section and to carry out other research and observer programs pursuant to the Convention.

(Pub. L. 102-567, title VIII, §812, Oct. 29, 1992, 106 Stat. 4316; Pub. L. 102-587, title VIII, §8012, Nov. 4, 1992, 106 Stat. 5105; 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.

§ 5012. Disposition of property

The Secretary shall dispose of any United States property held by the International North Pacific Fisheries Commission on the date of its termination in a manner that would further the purposes of this chapter.

(Pub. L. 102-567, title VIII, §813, Oct. 29, 1992, 106 Stat. 4316; Pub. L. 102-587, title VIII, §8013, Nov. 4, 1992, 106 Stat. 5106; 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 identical sections. Title VIII of Pub. L. 102-587 was repealed by Pub. L. 106-562.

CHAPTER 71—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Sec.

5101. Findings and purpose.