

TITLE 16 - CONSERVATION**CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT****SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM****§ 1861. Enforcement****(a) Responsibility**

The provisions of this chapter shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries 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, including all elements of the Department of Defense, and of any State agency, in the performance of such duties.

(b) Powers of authorized officers

(1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a) of this section) to enforce the provisions of this chapter may—

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

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 1857 of this title;

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

(iii) 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 this chapter;

(iv) seize any fish (wherever found) taken or retained in violation of any provision of this chapter;

(v) seize any other evidence related to any violation of any provision of this chapter; and

(vi) access, directly or indirectly, for enforcement purposes any data or information required to be provided under this subchapter or regulations under this subchapter, including data from vessel monitoring systems, satellite-based maritime distress and safety systems, or any similar system, subject to the confidentiality provisions of section 1881a of this title;

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

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone, the Secretary of the department in which the Coast Guard is operating.

(c) Issuance of citations

If any officer authorized to enforce the provisions of this chapter (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this chapter, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of

the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b) of this section. If a permit has been issued pursuant to this chapter for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) Jurisdiction of courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter. In the case of Guam or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii, and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands. Any such court may, at any time—

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions as are in the interest of justice.

(e) Payment of storage, care, and other costs

(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this chapter or of any other marine resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this chapter or any other marine resource law enforced by the Secretary with respect to that fish or other property;

(B) a reward of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this chapter or any other marine resource law enforced by the Secretary;

(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

(D) any valid liens or mortgages against any property that has been forfeited;

(E) claims of parties in interest to property disposed of under section 1612 (b) of title 19, as made applicable by section 1860 (c) of this title or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a) of this section, or any similar agreement authorized by law.

(2) Any person found in an administrative or judicial proceeding to have violated this chapter or any other marine resource law enforced by the Secretary shall be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property lawfully seized in connection with the violation.

(f) Enforcement of Northeast Multispecies Fishery Management Plan

(1) Enforcement agreements

Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a) of this section, with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

(2) Reimbursement

An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

(3) Coast Guard enforcement working group

(A) Establishment

The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

(B) Membership

The working group shall consist of members selected by the Commander, and shall include—

- (i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;
- (ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and
- (iii) other individuals the Commander considers appropriate.

(C) Non-Federal status of working group members

An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

(D) Meetings

The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

(4) Use of fines and penalties

Amounts available to the Secretary under this chapter which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.

(g) Enforcement in Pacific Insular Areas

The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.

(h) Joint enforcement agreements

(1) In general

The Governor of an eligible State may apply to the Secretary for execution of a joint enforcement agreement with the Secretary that will authorize the deputization and funding of State law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary relating to law enforcement provisions under this subchapter or any other marine resource law enforced by the Secretary. Upon receiving an application meeting the requirements of this subsection, the Secretary may enter into a joint enforcement agreement with the requesting State.

(2) Eligible State

A State is eligible to participate in the cooperative enforcement agreements under this section if it is in, or bordering on, the Atlantic Ocean (including the Caribbean Sea), the Pacific Ocean, the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or 1 or more of the Great Lakes.

(3) Requirements

Joint enforcement agreements executed under paragraph (1)—

- (A) shall be consistent with the purposes and intent of this section to the extent applicable to the regulated activities;
- (B) may include specifications for joint management responsibilities as provided by section 1525 of title 15; and
- (C) shall provide for confidentiality of data and information submitted to the State under section 1881a of this title.

(4) Allocation of funds

The Secretary shall include in each joint enforcement agreement an allocation of funds to assist in management of the agreement. The allocation shall be fairly distributed among all eligible States participating in cooperative enforcement agreements under this subsection, based upon consideration of Federal marine enforcement needs, the specific marine conservation enforcement needs of each participating eligible State, and the capacity of the State to undertake the marine enforcement mission and assist with enforcement needs. The agreement may provide for amounts to be withheld by the Secretary for the cost of any technical or other assistance provided to the State by the Secretary under the agreement.

(i) Improved data sharing

(1) In general

Notwithstanding any other provision of this chapter, as soon as practicable but no later than 21 months after January 12, 2007, the Secretary shall implement data-sharing measures to make any data required to be provided by this chapter from satellite-based maritime distress and safety systems, vessel monitoring systems, or similar systems—

- (A) directly accessible by State enforcement officers authorized under subsection (a) of this section; and
- (B) available to a State management agency involved in, or affected by, management of a fishery if the State has entered into an agreement with the Secretary under section 1881a (b)(1)(B) of this title.

(2) Agreement required

The Secretary shall promptly enter into an agreement with a State under section 1881a (b)(1)(B) of this title if—

- (A) the Attorney General or highest ranking legal officer of the State provides a written opinion or certification that State law allows the State to maintain the confidentiality of information required by Federal law to be kept confidential; or
- (B) the Secretary is provided other reasonable assurance that the State can and will protect the identity or business of any person to which such information relates.

(j) Definitions

For purposes of this section—

(1) The term “provisions of this chapter” includes

- (A) any regulation or permit issued pursuant to this chapter, and
- (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 1821 (b) or (c) of this title, or section 1824 (d) of this title, with respect to fishing subject to the exclusive fishery management authority of the United States.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

- (2) The term “violation of any provision of this chapter” includes
- (A) the commission of any act prohibited by section 1857 of this title, and
 - (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

(Pub. L. 94–265, title III, § 311, Apr. 13, 1976, 90 Stat. 358; Pub. L. 96–470, title II, § 209(e), Oct. 19, 1980, 94 Stat. 2245; Pub. L. 97–453, §§ 13, 15 (c), Jan. 12, 1983, 96 Stat. 2491, 2493; Pub. L. 99–659, title I, §§ 101(c)(2), 109 (b), Nov. 14, 1986, 100 Stat. 3707, 3714; Pub. L. 101–627, title I, § 117, Nov. 28, 1990, 104 Stat. 4456; Pub. L. 102–251, title III, § 301(i), Mar. 9, 1992, 106 Stat. 64; Pub. L. 102–567, title IX, § 901, Oct. 29, 1992, 106 Stat. 4316; Pub. L. 104–297, title I, § 115, Oct. 11, 1996, 110 Stat. 3599; Pub. L. 109–479, title I, § 111(a), Jan. 12, 2007, 120 Stat. 3596.)

Amendment of Subsection (b)(2)

Pub. L. 102–251, title III, §§ 301(i), 308, Mar. 9, 1992, 106 Stat. 64, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (b)(2) is amended by inserting “and special areas,” after “exclusive economic zone”.

References in Text

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Lacey Act Amendments of 1981, referred to in subsec. (e), is Pub. L. 97–79, Nov. 16, 1981, 95 Stat. 1073, which is classified principally to chapter 53 (§ 3371 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3371 of this title and Tables.

Amendments

2007—Subsec. (b)(1)(A)(vi). Pub. L. 109–479, § 111(a)(1)–(3), added cl. (vi).

Subsecs. (h) to (j). Pub. L. 109–479, § 111(a)(4), (5), added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

1996—Subsec. (d). Pub. L. 104–297, § 115(a)(2), inserted “, and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands” after “District of Hawaii”.

Pub. L. 104–297, § 115(a)(1), which directed substitution of “Guam or any” for “Guam, any Commonwealth, territory, or”, was executed by making the substitution for “Guam, and any Commonwealth, territory, or”, to reflect the probable intent of Congress.

Subsec. (e)(1). Pub. L. 104–297, § 115(b)(1), substituted “marine resource law” for “fishery resource law” in introductory provisions and in subpars. (A) and (B).

Subsec. (e)(1)(B). Pub. L. 104–297, § 115(b)(2), inserted “of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount,” after “reward”.

Subsec. (e)(1)(E). Pub. L. 104–297, § 115(b)(3), added subpar. (E) and struck out former subpar. (E) which read as follows: “claims of parties in interest to property disposed of under section 1612 (b) of title 19 or under other provisions of the customs laws, as made applicable by section 1860 (c) of this title to seizures made by the Secretary under this chapter, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and”.

Subsec. (e)(2). Pub. L. 104–297, § 115(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any person assessed a civil penalty for, or convicted of, any violation of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.”

Subsec. (g). Pub. L. 104–297, § 115(d), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 104–297, § 115(d), redesignated subsec. (g) as (h).

Subsec. (h)(1). Pub. L. 104–297, § 115(e), which directed amendment of subsec. (i)(1) by substituting “1821(b) or (c) of this title, or section 1824 (d) of this title,” for “1821(b), (c) of this title,” was executed by making the substitution

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for “1821(b) or (c) of this title” in subsec. (h)(1) to reflect the probable intent of Congress because this section does not contain a subsec. (i).

1992—Subsecs. (f), (g). Pub. L. 102–567 added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsec. (e). Pub. L. 101–627 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Notwithstanding any other provision of law, after September 30, 1986, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provision of this chapter—

“(1) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this chapter with respect to that fish or other property; and

“(2) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this chapter.

Any person assessed a civil penalty for, or convicted of, any violation of any provision of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation concerned.”

1986—Subsec. (b)(2). Pub. L. 99–659, § 101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

Subsecs. (e), (f). Pub. L. 99–659, § 109(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1983—Subsec. (a). Pub. L. 97–453, § 15(c), struck out provision that the Secretaries were to report annually on June 30, to each committee of the Congress listed in section 1823 (b) of this title and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this chapter during the preceding calendar year.

Subsec. (b)(1). Pub. L. 97–453, § 13(1), designated existing provisions as par. (1).

Subsec. (b)(1)(A). Pub. L. 97–453, § 13(2), (3), redesignated former par. (1) as subpar. (A) and, in subpar. (A) as redesignated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively.

Subsec. (b)(1)(B), (C). Pub. L. 97–453, § 13(2), redesignated former pars. (2) and (3) as subpars. (B) and (C), respectively.

Subsec. (b)(2). Pub. L. 97–453, § 13(4), added par. (2).

1980—Subsec. (a). Pub. L. 96–470 substituted “annually on June 30” for “semiannually” and inserted “during the preceding calendar year” after “with the provisions of this chapter”.

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.

Effective Date

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94–265, formerly set out as a note under section 1857 of this title.

Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468 (b), 551 (d), 552 (d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Action Against Vessels and Vessel Owners Engaged in Illegal, Unreported, or Unregulated Fishing

Pub. L. 110–161, div. B, title I, § 113, Dec. 26, 2007, 121 Stat. 1896, provided that:

“(a) The Secretary of Commerce may—

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“(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization, whether or not the United States is a party to the agreement establishing such organization; and

“(2) take appropriate action against listed vessels and vessel owners, including action against fish, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management and trade agreements.

“(b) Action taken by the Secretary under subsection (a)(2) that include measures to restrict use of or access to ports or port services shall apply to all ports of the United States and its territories.

“(c) The Secretary may promulgate regulations to implement this section.”

Integration of Vessel Monitoring System Data

Pub. L. 109–241, title VIII, § 803, July 11, 2006, 120 Stat. 563, provided that: “The Secretary of the department in which the Coast Guard is operating shall integrate vessel monitoring system data into its maritime operations databases for the purpose of improving monitoring and enforcement of Federal fisheries laws and work with the Under Secretary of Commerce for Oceans and Atmosphere to ensure effective use of such data for monitoring and enforcement.”

Agreement To Make More Effective Enforcement of Domestic Laws and International Agreements

Pub. L. 102–582, title II, § 202, Nov. 2, 1992, 106 Stat. 4905, provided that not later than six months after Nov. 2, 1992, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense were to enter into an agreement under subsec. (a) of this section to make more effective the enforcement of domestic laws and international agreements that conserve and manage living marine resources of the United States.