

§ 2435. Unlawful activities

It is unlawful for any person—

(1) to engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States pursuant to article IX of the Convention;

(2) to violate any regulation promulgated under this chapter;

(3) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of, any Antarctic marine living resource (or part or product thereof) harvested in violation of a conservation measure in force with respect to the United States pursuant to article IX of the Convention or in violation of any regulation promulgated under this chapter, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource (or part or product thereof);

(4) to refuse to permit any authorized officer or employee of the United States to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for purposes of conducting any search, investigation, or inspection in connection with the enforcement of the Convention, this chapter, or any regulations promulgated under this chapter;

(5) to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in the conduct of any search, investigation, or inspection described in paragraph (4);

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

(7) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section.

(Pub. L. 98-623, title III, §306, Nov. 8, 1984, 98 Stat. 3401; Pub. L. 114-81, title I, §106(1), Nov. 5, 2015, 129 Stat. 657.)

AMENDMENTS

2015—Par. (3). Pub. L. 114-81, §106(1)(A), struck out “which he knows, or reasonably should have known, was” before “harvested in violation”.

Pars. (4), (5). Pub. L. 114-81, §106(1)(B), (C), inserted “, investigation,” after “search”.

§ 2436. Regulations**(a) In general**

The Secretary of Commerce, after consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, and the heads of other appropriate departments or agencies of the United States, shall promulgate such regulations as are necessary and appropriate to implement the provisions of this chapter.

(b) Regulations to implement conservation measures**(1) In general**

Notwithstanding subsections (b), (c), and (d) of section 553 of title 5, the Secretary of Com-

merce may publish in the Federal Register a final regulation to implement any conservation measure for which the Secretary of State notifies the Commission under section 2434(a)(1) of this title—

(A) that has been in effect for 12 months or less;

(B) that is adopted by the Commission; and

(C) with respect to which the Secretary of State,¹ does not notify Commission² in accordance with section 2434(a)(1) of this title within the time period allotted for objections under Article IX of the Convention.

(2) Entering into force

Upon publication of such regulation in the Federal Register, such conservation measure shall enter into force with respect to the United States.

(Pub. L. 98-623, title III, §307, Nov. 8, 1984, 98 Stat. 3401; Pub. L. 114-81, title I, §106(2), Nov. 5, 2015, 129 Stat. 658.)

AMENDMENTS

2015—Pub. L. 114-81 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

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.

§ 2437. Civil penalties**(a) In general**

Any person who commits an act that is unlawful under section 2435 of this title shall be liable to the United States for a civil penalty, and may be subject to a permit sanction, under section 1858 of this title.

(b) Hearings

Hearings for the assessment of civil penalties under subsection (a) shall be conducted in accordance with section 554 of title 5. For the purposes of conducting any such hearing, 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 contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General of 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

¹ So in original. The comma probably should not appear.

² So in original. Probably should be preceded by “the”.

order of the court may be punished by such court as a contempt thereof.

(c) Review of civil penalty

Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate district 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 of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly refer the matter to the Attorney General of the United States, who shall file in such court a certified copy of the record upon which the violation was found or such penalty imposed, as provided in section 2112 of title 28. The court shall set aside the findings and order of the Secretary if the findings and order are found to be unsupported by substantial evidence, as provided in section 706(2)(E) of title 5.

(d) Recovery of civil penalties

The Attorney General of the United States may seek to recover in any appropriate district court of the United States (1) any civil penalty imposed under this section that has become a final and unappealable order and has been referred to the Attorney General by the Secretary of Commerce or (2) any final judgment rendered under this section in favor of the United States by an appropriate Court.

(e) Penalties under other laws

The assessment of a civil penalty under subsection (a) for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

(Pub. L. 98-623, title III, §308, Nov. 8, 1984, 98 Stat. 3401; Pub. L. 114-81, title I, §101(a)(2), Nov. 5, 2015, 129 Stat. 653.)

AMENDMENTS

2015—Pub. L. 114-81 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to assessment of penalties.

§ 2438. Criminal offenses

(a) Offenses

A person is guilty of an offense if that person commits any act prohibited by paragraph (4), (5), (6), or (7) of section 2435 of this title.

(b) Punishment

Any offense described in subsection (a) is punishable by a fine of \$50,000, or imprisonment for not more than ten years, or both.

(c) Offenses under other laws

A conviction under subsection (a) for any act shall not be deemed to preclude a conviction for such act under any other law.

(Pub. L. 98-623, title III, §309, Nov. 8, 1984, 98 Stat. 3403.)

§ 2439. Enforcement

(a) Responsibility

The provisions of this chapter shall be enforced by the Secretary of Commerce and the

Secretary of the department in which the Coast Guard is operating. Such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other department or agency of the United States in the performance of such duties.

(b) Powers of authorized officers and employees

Any officer or employee of the United States who is authorized (by the Secretary of Commerce, the Secretary of the department in which the Coast Guard is operating, or the head of any department or agency of the United States which has entered into an agreement with either Secretary under subsection (a)) to enforce the provisions of this chapter and of any regulation promulgated under this chapter may, in enforcing such provisions—

(1) secure, execute, and serve any order, warrant, subpoena, or other process, which is issued under the authority of the United States;

(2) search without warrant any person, place, vehicle or aircraft subject to the jurisdiction of the United States where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 2435 of this title;

(3) with or without a warrant board and search or inspect any vessel of the United States or vessel subject to the jurisdiction of the United States;

(4) seize without warrant—

(A) any evidentiary item where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 2435 of this title,

(B) any Antarctic marine living resources (or part of¹ product thereof) with respect to which such an act is committed,

(C) any vessel of the United States (including its gear, furniture, appurtenances, stores, and cargo), any vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stores, and cargo), and any vehicle, aircraft, or other means of transportation subject to the jurisdiction of the United States used in connection with such an act, and

(D) any guns, traps, nets, or equipment used in connection with such an act;

(5) offer and pay rewards for services or information which may lead to the apprehension of persons violating such provisions;

(6) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;

(7) in coordination with the Secretary of the Treasury, detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States;

(8) make an arrest with or without a warrant with respect to any act prohibited by paragraph (4), (5), (6), or (7) of section 2435 of this title if such officer or employee has reasonable grounds to believe that the person to be ar-

¹ So in original. Probably should be "or".