

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-453, §11(b), Jan. 12, 1983, 96 Stat. 2491, provided that: “The amendment made by subsection (a) [amending this section] applies with respect to offenses committed under section 309 [this section] on or after the date of the enactment of this Act [Jan. 12, 1983].”

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.

§ 1860. Civil forfeitures**(a) In general**

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the 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 1857 of this title (other than any act for which the issuance of a citation under section 1861(c) of this title is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Jurisdiction of district courts

Any district court of the United States which has jurisdiction under section 1861(d) of this title shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) Judgment

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 under subsection (d). The provisions of the customs laws relating to—

- (1) the seizure, forfeiture, and condemnation of property for violation of the customs law;
- (2) the disposition of such property or the proceeds from the sale thereof; and
- (3) 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. The duties and powers imposed upon the Commissioner of U.S. Customs and Border Protection or other persons under such provisions shall, with respect to this chapter, be performed by officers or other persons designated for such purpose by the Secretary.

(d) Procedure

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 1861(d) shall—

- (A) stay the execution of such process; or
- (B) discharge any fish seized pursuant to such process;

upon the 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 (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) 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. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 1861(d) of this title, to release on bond any seized fish or other property or the proceeds from the sale thereof.

(2) 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.

(e) Rebuttable presumptions

(1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 1857 of this title were taken or retained in violation of this chapter.

(2) For purposes of this chapter, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.

(3) For purposes of this chapter, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on board that is capable of use for large-scale driftnet fishing, is engaged in such fishing.

(Pub. L. 94-265, title III, §310, Apr. 13, 1976, 90 Stat. 357; Pub. L. 97-453, §12, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, §109(a), Nov. 14, 1986, 100 Stat. 3714; Pub. L. 101-627, title I, §116, Nov. 28, 1990, 104 Stat. 4456; Pub. L. 104-297, title I, §114(d), Oct. 11, 1996, 110 Stat. 3599; Pub. L. 114-125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (d)(2), and (e), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, 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.

AMENDMENTS

1996—Subsec. (e)(3). Pub. L. 104-297 added par. (3).

1990—Subsec. (e). Pub. L. 101-627 designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (c). Pub. L. 99-659, §109(a)(1), amended second sentence generally. Prior to amendment, second sentence of subsec. (c) read as follows: “The provisions of the customs laws relating to—

“(1) the disposition of forfeited property,

“(2) the proceeds from the sale of forfeited property,

“(3) the remission or mitigation of forfeitures, and

“(4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter.”

Subsec. (d)(1). Pub. L. 99-659, §109(a)(2), inserted provision that nothing in this paragraph may be construed to require the Secretary, except in the Secretary’s discretion or pursuant to the order of a court under section 1861(d) of this title, to release on bond any seized fish or other property or the proceeds from the sale thereof.

1983—Subsec. (a). Pub. L. 97-453 inserted “(or the fair market value thereof)” after “fish” wherever appearing.

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CHANGE OF NAME

“Commissioner of U.S. Customs and Border Protection” substituted for “Commissioner of Customs” in concluding provisions of subsec. (c) on authority of section 802(d)(2) of Pub. L. 114-125, set out as a note under section 211 of Title 6, Domestic Security.

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 functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

§ 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 en-

tered into an agreement with such Secretaries under subsection (a)) 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). If a permit has