

occurring before the expiration of the term for which the Commissioner's predecessor was appointed shall be appointed only for the remainder of such term. Of the Commissioners—

(1) one shall be an official of the National Oceanic and Atmospheric Administration; and

(2) two shall be knowledgeable or experienced concerning the Northern Pacific halibut fishery; of these, one shall be a resident of Alaska and the other shall be a nonresident of Alaska. Of the three commissioners described in paragraphs (1) and (2), one shall be a voting member of the North Pacific Fishery Management Council.

(3) Commissioners shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in section 8101 et seq. of title 5 and section 2671 et seq. of title 28. This subsection shall take effect on the 90th day after May 17, 1982.

(b) Alternate United States Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time alternate United States Commissioners to the commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

(Pub. L. 97-176, §3, May 17, 1982, 96 Stat. 78.)

§ 773b. Acceptance or rejection of Commission recommendations

The Secretary of State, with the concurrence of the Secretary, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article III of the Convention and paragraphs 14 and 15 of the annex to the Convention.

(Pub. L. 97-176, §4, May 17, 1982, 96 Stat. 79.)

§ 773c. General responsibility

(a) Secretary of Commerce

The Secretary shall have general responsibility to carry out the Convention and this subchapter.

(b) Adoption of regulations; cooperation with Canadian officials

In fulfilling this responsibility, the Secretary—

(1) shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this subchapter; and

(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the Government of Canada.

(c) Regional Fishery Management Council involvement

The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 1853(b)(6) of this title. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges: *Provided*, That the Regional Council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a 3 year development period.

(Pub. L. 97-176, §5, May 17, 1982, 96 Stat. 79; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

Editorial Notes

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1853(b)(6) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

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.

§ 773d. Cooperation of Federal agencies

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 purposes of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

(Pub. L. 97-176, §6, May 17, 1982, 96 Stat. 80.)

§ 773e. Prohibited acts

It is unlawful—

(1) for any person subject to the jurisdiction of the United States—

(A) to violate any provision of the Convention, this subchapter or any regulation adopted under this subchapter;

(B) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search, investigation, or inspection in connection with the enforcement of the Convention, this subchapter or any regulation adopted under this subchapter;

(C) to forcibly assault, resist, oppose, impede, intimidate or interfere with any enforcement officer in the conduct of any search, investigation, or inspection described in paragraph (2);

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

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

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

(2) for any foreign fishing vessel, and for the owner or operator of any foreign fishing vessel, to engage in fishing for halibut in the fishery conservation zone, unless such fishing is authorized by, and conducted in accordance with the Convention, this subchapter and regulations adopted under this subchapter.

(Pub. L. 97-176, § 7, May 17, 1982, 96 Stat. 80; Pub. L. 102-251, title III, § 302(b), Mar. 9, 1992, 106 Stat. 65; Pub. L. 114-81, title I, § 110, Nov. 5, 2015, 129 Stat. 659.)

AMENDMENT OF PARAGRAPH (2)

Pub. L. 102-251, title III, §§ 302(b), 308, Mar. 9, 1992, 106 Stat. 65, 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, paragraph (2), formerly subsection (b) of this section, is amended by substituting "exclusive economic zone or special areas" for "fishery conservation zone".

Editorial Notes

AMENDMENTS

2015—Pub. L. 114-81 redesignated subsecs. (a) and (b) as pars. (1) and (2), respectively, and former pars. (1) to (6) of subsec. (a) as subpars. (A) to (F), respectively, of par. (1), inserted ", investigation," before "or inspection" in par. (1)(B) and (C), struck out "or" after the semicolon in par. (1)(E), and substituted "section; or" for "section." in par. (1)(F).

Statutory Notes and Related Subsidiaries

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.

§ 773f. Civil penalties

(a) Liability; continuing violations; notice; determination of amount

Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 773e of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$200,000 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, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty, the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay if the information is provided to the Secretary at least 30 days prior to an administrative hearing.

(b) Judicial review

Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate 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 and the Attorney General. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, in accordance with rules prescribed pursuant to section 2112 of title 28. The findings and order of the Secretary 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.

(c) Recovery of assessed penalties by Attorney General

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, the Secretary shall refer the matter to the Attorney General of the United States, 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.