

(iv) seize any living marine resource (wherever found) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 5505 of this title;

(v) seize any other evidence related to any violation of any provision of this chapter or any regulation or permit issued under this chapter;

(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.

(d) Issuance of citations

If any authorized officer finds that a high seas fishing vessel is operating or has been operated in violation of any provision of this chapter, such officer may issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (c) 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.

(e) Liability for costs

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 living marine resource or other property seized in connection with the violation.

(Pub. L. 104-43, title I, § 107, Nov. 3, 1995, 109 Stat. 372.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original "this Act", and was translated as reading "this title", meaning title I of Pub. L. 104-43, to reflect the probable intent of Congress.

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.

§ 5507. Civil penalties and permit sanctions

(a) Civil penalties

(1) 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 com-

mitted an act prohibited by section 5505 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 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 violation, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(2) The Secretary 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.

(b) Permit sanctions

(1) In any case in which—

(A) a vessel of the United States has been used in the commission of an act prohibited under section 5505 of this title;

(B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under section 5503 of this title has acted in violation of section 5505 of this title; or

(C) any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued to or applied for by such vessel or person under this chapter, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on such permit.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a high seas fishing vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer. The Secretary may waive or compromise a sanction in the case of a transfer pursuant to court order.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil

penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

(c) Hearing

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

(d) Judicial review

Any person against whom a civil penalty is assessed under subsection (a) of this section or against whose vessel a permit sanction is imposed under subsection (b) of this section (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such penalty or sanction. The Secretary shall promptly file in such court a certified copy of the record upon which such penalty or sanction was imposed, as provided in 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.

(e) Collection

(1) 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 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.

(2) A high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5505 of this title shall be liable in rem for any civil penalty assessed for such violation under subsection (a) of this section 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.

(Pub. L. 104-43, title I, § 108, Nov. 3, 1995, 109 Stat. 373.)

§ 5508. Criminal offenses

(a) Offenses

A person is guilty of an offense if the person commits any act prohibited by paragraph (6), (7), (8), or (9) of section 5505 of this title.

(b) Punishment

Any offense described in subsection (a) of this section is a class A misdemeanor punishable by a fine under title 18, or imprisonment for not more than one year, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any authorized 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.

(Pub. L. 104-43, title I, § 109, Nov. 3, 1995, 109 Stat. 375.)

§ 5509. Forfeitures

(a) In general

Any high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any living marine resources (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 5505 of this title (other than an act for which the issuance of a citation under section 5506 of this title is a sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such living marine resources (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 shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(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. 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;