Customs Service. In addition, the Secretary of Commerce may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities under this section. When so designated, such officers and employees may function as Federal law enforcement agents for these purposes.

**(c) Execution of warrants and process**

An individual authorized to carry out enforcement activities under this section has power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter.

**(d) Arrest; search**

An individual so authorized to carry out enforcement activities under this section has power—

(1) with or without a warrant or other process, to arrest any person subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this chapter or the regulations issued under section 972e of this title;

(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if, as a result of the search he has reasonable cause to believe that such vessel or any individual on board is engaging in operations in violation of this chapter or any regulation issued thereunder to arrest such person.

**(e) Seizure**

An individual authorized to enforce this chapter may seize, whenever or wherever lawfully found, all species of designated tuna taken or retained in violation of this chapter or the regulations issued under section 972e of this title. Any species so seized may be disposed of pursuant to the order of a court of competent jurisdiction, under subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of Commerce.

**(f) Bond or stipulation for value of the property**

Notwithstanding the provisions of section 2464 of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any species of designated tuna seized if the process has been levied, on receiving from the claimant of the species a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the species seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the species may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

(Pub. L. 98–445, § 9, Oct. 4, 1984, 98 Stat. 1717; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CHANGE OF NAME

''United States magistrate judges'' substituted for ''United States magistrates'' in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

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.

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.

### § 972h. Authorization of appropriations

There are authorized to be appropriated for fiscal years after fiscal year 1984 such sums as may be necessary to carry out this chapter.

(Pub. L. 98–445, § 10, Oct. 4, 1984, 98 Stat. 1719.)

## CHAPTER 16C—SOUTH PACIFIC TUNA FISHING

Sec.
973. Definitions.
973a. Application to other laws.
973b. Regulations.
973c. Prohibited acts.
973d. Exceptions.
973e. Criminal offenses.
973f. Civil penalties.
973g. Licenses.
973h. Enforcement.
973i. Findings by Secretary.
973j. Reporting requirements; disclosure of information.
973k. Closed Area stowage requirements.
973*l*. Observers.
973m. Technical assistance.
973n. Arbitration.
973*o*. Disposition of fees, penalties, forfeitures, and other moneys.
973p. Additional agreements.
973q. Secretary of State to act for United States.
973r. Authorization of appropriations.

### § 973. Definitions

As used in this chapter—

(1) The term ''Administrator'' means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States Government.

(2) The term ''Authorized Officer'' means any officer who is authorized by the Secretary,

or 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 enforcement agreement with the Secretary under section 973h(a) of this title.

(3) The term ''Authorized Party Officer'' means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

(4) The term ''applicable national law'' means any provision of law of a Pacific Island Party which is described in paragraph 1(a) of Annex I of the Treaty.

(5) The term ''Closed Area'' means any of the closed areas identified in Schedule 2 of Annex I of the Treaty.

(6) The term ''fishing'' means—

(A) searching for, catching, taking, or harvesting fish;

(B) attempting to search for, catch, take, or harvest fish;

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish;

(D) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(E) any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or

(F) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

(7) The term ''fishing vessel'' or ''vessel'' means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, and which is documented under the laws of the United States.

(8) The term ''Licensing Area'' means all waters in the Treaty Area except for—

(A) those waters subject to the jurisdiction of the United States in accordance with international law;

(B) those waters within Closed Areas; and

(C) those waters within Limited Areas closed to fishing.

(9) The term ''licensing period'' means the period of validity of licenses issued in accordance with the Treaty.

(10) The term ''Limited Area'' means any area so identified in Schedule 3 of Annex I of the Treaty.

(11) The term ''operator'' means any person who is in charge of, directs or controls a vessel, including the owner, charterer, and master.

(12) The term ''Pacific Island Party'' means a Pacific Island nation which is a party to the Treaty.

(13) The term ''Party'' means a nation which is a party to the Treaty.

(14) The term ''person'' means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(15) The term ''Secretary'' means the Secretary of Commerce, or the designee of the Secretary of Commerce.

(16) The term ''State'' means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(17) The term ''Treaty'' means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements.

(18) The term ''Treaty Area'' means the area so described in paragraph 1(k) of Article 1 of the Treaty.

(Pub. L. 100–330, § 2, June 7, 1988, 102 Stat. 591.)

EFFECTIVE DATE

Section 21 of Pub. L. 100–330 provided that:

''(a) Except as provided in subsection (b) of this section, this Act [enacting this chapter] shall be effective on the date on which the Treaty enters into force for the United States. [The Treaty entered into force for the United States June 15, 1988.]

''(b)(1) The authority to promulgate regulations pursuant to this Act shall be effective on the date of enactment of this Act [June 7, 1988].

''(2) Any regulation promulgated pursuant to this Act shall not be effective before the date on which the Treaty enters into force for the United States.''

SHORT TITLE

Section 1 of Pub. L. 100–330 provided: ''That this Act [enacting this chapter] may be cited as the 'South Pacific Tuna Act of 1988'.''

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.

## § 973a. Application to other laws

The seizure by a Pacific Island Party of a vessel of the United States shall not be determined to be a seizure described in section 1825(a)(4)(C) of this title or section 1972 of title 22 if the seizure is found by the Secretary of State to be in accordance with the provisions of the Treaty.

(Pub. L. 100–330, § 3, June 7, 1988, 102 Stat. 592; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

AMENDMENTS

1996—Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1825(a)(4)(C) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

### § 973b. Regulations

The Secretary of Commerce, with the concurrence of the Secretary of State and after consultation with the Secretary of the department in which the Coast Guard is operating, shall issue regulations as may be necessary to carry out the purposes and objectives of the Treaty and this chapter. These regulations shall be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located.

(Pub. L. 100–330, § 4, June 7, 1988, 102 Stat. 592.)

EFFECTIVE DATE

Authority to promulgate regulations effective on June 7, 1988, with any such regulation not to be effective before date on which Treaty enters into force for the United States, see section 21 of Pub. L. 100–330, set out as an Effective Date note under section 973 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.

### § 973c. Prohibited acts

(a) Except as provided in section 973d of this title, it is unlawful for any person subject to the jurisdiction of the United States—

(1) to violate any provision of this chapter or any regulation or order issued pursuant to this chapter;

(2) to use a vessel for fishing in violation of an applicable national law;

(3) who has entered into a fishing arrangement under paragraph 3 of Article 3 of the Treaty, to violate the terms and conditions of such fishing arrangement if the Secretary of State has decided under section 973p of this title that Article 4 and paragraph 6 of Article 5 of the Treaty shall apply to the arrangement;

(4) to use a vessel for fishing in any Limited Area in violation of any requirement in Schedule 3 of Annex I of the Treaty;

(5) to use a vessel for fishing in any Closed Area;

(6) to falsify any information required to be reported, notified, communicated, or recorded pursuant to a requirement of this chapter, or to fail to submit any required information, or to fail to report to the Secretary immediately any change in circumstances which has the effect of rendering any such information false, incomplete, or misleading;

(7) to intentionally destroy evidence which could be used to determine if a violation of this chapter or the Treaty has occurred;

(8) to refuse to permit any Authorized Officer or Authorized Party Officer to board a fishing vessel for purposes of conducting a search or inspection in connection with the enforcement of this chapter or the Treaty;

(9) to refuse to comply with the instructions of an Authorized Officer or Authorized Party Officer relating to fishing activities under the Treaty;

(10) to forcibly assault, resist, oppose, impede, intimidate, or interfere with—

(A) any Authorized Officer or Authorized Party Officer in the conduct of a search or inspection in connection with the enforcement of this chapter or the Treaty; or

(B) an observer in the conduct of observer duties under the Treaty;

(11) to resist a lawful arrest for any act prohibited by this section;

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

(13) 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 this chapter or any regulation, permit, or the Treaty, with the knowledge that the fish were so taken or retained.

(b) Except as provided in section 973d of this title, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area—

(1) to use a vessel to fish unless validly licensed as required by the Administrator;

(2) to use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental by-catch;

(3) to use a vessel for fishing by any method other than the purse-seine method;

(4) to use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license;

(5) to operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels;

(6) to use a vessel to fish in a manner inconsistent with an order issued by the Secretary under section 973i of this title; or

(7) except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use an aircraft in association with the fishing activities of a vessel unless it is identified in the license application for the vessel, or any amendment thereto.

(Pub. L. 100–330, § 5, June 7, 1988, 102 Stat. 592.)

### § 973d. Exceptions

(a) The prohibitions of section 973c of this title and the licensing requirements of section 973g of this title shall not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline method in the high seas areas of the Treaty area.

(b) The prohibitions of section 973c(a)(4), (a)(5), and (b)(3) of this title shall not apply to fishing under the terms and conditions of an arrangement which has been reached under paragraph 3 of Article 3 of the Treaty and which, pursuant to a decision by the Secretary of State under section 973p of this title, is covered by Article 4 and paragraph 6 of Article 5 of the Treaty.

(Pub. L. 100–330, § 6, June 7, 1988, 102 Stat. 594; Pub. L. 108–219, title IV, § 402, Apr. 13, 2004, 118 Stat. 617.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–219 substituted ''or to fishing by vessels using the longline method in the high seas areas of the Treaty area'' for ''outside of the 200 nautical mile fisheries zones of the Pacific Island Parties''.

### § 973e. Criminal offenses

#### (a) Prohibited acts

A person is guilty of a criminal offense if he or she commits any act prohibited by section 973c(a)(8), (10), (11), or (12) of this title.

#### (b) Sentence and fine

Any offense described in subsection (a) of this section is punishable by a fine of not more than $50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any Authorized Officer, Authorized Party Officer, or observer under the Treaty in the conduct of their duties, or places any such Authorized Officer, Authorized Party Officer, or observer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than 10 years, or both.

#### (c) Jurisdiction

The district courts of the United States shall have jurisdiction over any offense described in this section.

(Pub. L. 100–330, § 7, June 7, 1988, 102 Stat. 594.)

### § 973f. Civil penalties

#### (a) Determination of liability; amount; participation by Secretary of State in assessment proceeding

Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 973c of this title, shall be liable to the United States Code[1] for a civil penalty. Before issuing a notice of violation, the Secretary shall consult with the Secretary of State. The amount of the civil penalty shall be determined in accordance with considerations set forth in the Treaty and 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, ability to pay, and such other matters as justice may require. Except for those acts prohibited by section 973c(a)(4), (5), (7), (8), (10), (11), and (12), and section 973c(b)(1), (2), (3), and (7) of this title, the amount of the civil penalty shall not exceed $250,000 for each violation. Upon written notice, the Secretary of State shall have the right to participate in any proceeding initiated to assess a civil penalty for violation of this chapter.

[1] So in original. ''Code'' probably should not appear.

#### (b) Judicial review of assessment; procedures applicable

Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of the order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General of the United States, and the appropriate United States Attorney. The Secretary shall promptly file in the court a certified copy of the record upon which the violation was found or the penalty imposed. The findings and order of the Secretary shall be set aside or modified by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

#### (c) Failure to pay assessment of civil penalty; recovery by Attorney General

Except as provided in subsection (g) of this section, 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.

#### (d) In rem liability for civil penalty; jurisdiction; maritime lien on vessel

Except as provided in subsection (g) of this section, a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 973c of this title shall be liable in rem for any civil penalty assessed for the violation under this section and may be proceeded against in any district court of the United States having jurisdiction thereof. The penalty shall constitute a maritime lien on the vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

#### (e) Compromise, etc., of civil penalty

The Secretary, after consultation with the Secretary of State, may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

#### (f) Conduct of hearings

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 a person pursuant to this subsection, the district court of the United States for any district in which the person is found, resides, or transacts business, upon application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony be-

fore the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

**(g) Waiver of referral to Attorney General**

If a vessel used in a violation of section 973c(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (13) or section 973c(b) of this title for which a civil penalty has been assessed—

(1) had a valid license under the Treaty at the time of the violation, and

(2) within 60 days after the penalty assessment has become final, leaves and remains outside of the Licensing Area, all Limited Areas closed to fishing, and all Closed Areas until the final penalty has been paid,

there shall be no referral to the Attorney General under subsection (c) of this section or in rem action under subsection (d) of this section in connection with such civil penalty.

(Pub. L. 100–330, § 8, June 7, 1988, 102 Stat. 594; Pub. L. 100–350, § 4(1), (2), June 27, 1988, 102 Stat. 660.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–350, § 4(1), substituted ''and gravity'' for ''any gravity'' and ''history of prior'' for ''history or prior''.

Subsec. (g)(1). Pub. L. 100–350, § 4(2), substituted ''Treaty'' for ''Treasury''.

## § 973g. Licenses

**(a) Issuance; establishment of procedures; designation of agent for service of legal process in license application; reception and response to process**

Licenses to fish in the Licensing Area, to be issued by the Administrator in accordance with the Treaty, may be requested from the Secretary by operators of vessels, under procedures established by the Secretary. The license application shall designate an agent for the service of legal process to be located in Port Moresby, Papua New Guinea. The applicant shall ensure that the designated agent for service of process, acting on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty and will, within 21 days after notification, travel if necessary for this purpose to any Pacific Island Party at no expense to that Party.

**(b) Forwarding and transmittal of vessel license application**

Except as provided in subsections (e), (f), and (g) of this section, the Secretary shall forward a vessel license application to the Secretary of State for transmittal to the Administrator whenever such application is in accordance with application procedures established by the Secretary, includes a complete application form as required by Annex II of the Treaty, and is accompanied by the required license fee.

**(c) Fees and fee schedules**

(1) In the initial year of implementation, fees for the first 40 vessel licenses shall be at least $50,000 each, for any 10 vessel licenses in addition to the first 40 shall be $60,000 each, and for vessel licenses in addition to the first 50 shall be in accordance with Annex II of the Treaty.

(2) After such initial year, fees for vessel licenses shall be paid in accordance with fee schedules established under Annex II of the Treaty and published by the Secretary.

**(d) Period of validity**

Licenses shall be valid for the licensing period specified by the Administrator.

**(e) Allocation system**

The Secretary may establish a system of allocating licenses in the event more applications are received than there are licenses available.

**(f) Minimum fees required to be received in initial year of implementation for forwarding and transmittal of license applications**

For the initial year of implementation, license fees totaling at least $1,750,000 must be received by the Secretary before any license applications will be forwarded to the Secretary of State for transmittal to the Administrator.

**(g) Grounds for denial of forwarding of license application**

The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator for one of the following reasons:

(1) where the application is not in accordance with the Treaty or the procedures established by the Secretary;

(2) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

(3) where the owner or charterer has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance;

(4) where the owner or charterer has not paid any penalty which has become final, assessed by the Secretary in accordance with this chapter.

**(h) Grandfathering of vessels documented before November 3, 1995**

Notwithstanding the requirements of—

(1) section 12108 of title 46;

(2) the general permit issued on December 1, 1980, to the American Tunaboat Association under section 1374(h)(1) of this title; and

(3) sections 1374(h)(2) and 1416(a) of this title—[1]

any vessel documented under the laws of the United States as of November 3, 1995, for which a license has been issued under subsection (a) of this section may fish for tuna in the Treaty Area, including those waters subject to the jurisdiction of the United States in accordance with international law, subject to the provisions of the treaty[2] and this chapter, provided that no such vessel fishing in the Treaty Area intentionally deploys a purse seine net to encircle any dolphin or other marine mammal in the

[1] So in original. The dash probably should be a semicolon.

[2] So in original. Probably should be capitalized.

course of fishing under the provisions of the Treaty or this chapter.

(Pub. L. 100–330, § 9, June 7, 1988, 102 Stat. 596; Pub. L. 104–43, title VIII, § 801, Nov. 3, 1995, 109 Stat. 395.)

REFERENCES IN TEXT

The bankruptcy laws of the United States, referred to in subsec. (g)(2), are generally classified to Title 11, Bankruptcy.

Section 12108 of title 46, referred to in subsec. (h)(1), was in the original ''section 1 of the Act of August 26, 1983 (97 Stat. 587; 46 U.S.C. 12108)'', and was translated to reflect the probable intent of Congress. Section 1 of act Aug. 26, 1983, Pub. L. 98–89, 97 Stat. 500, enacted Title 46, Shipping. Section 12108 of Title 46 was subsequently omitted, and its provisions restated, in the general amendment of chapter 121 of Title 46 by Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1491. See sections 12102, 12113, and 12116 of Title 46 and Prior Provisions note under section 12107 of Title 46.

Sections 1374(h)(1), 1374(h)(2), and 1416(a) of this title, referred to in subsec. (h)(2), (3), were in the original references to sections 104(h)(1), 104(h)(2), and 306(a) of the Marine Mammal Protection Act, and were translated as meaning sections 104(h)(1), 104(h)(2), and 306(a), respectively, of the Marine Mammal Protection Act of 1972, Pub. L. 92–522, to reflect the probable intent of Congress.

AMENDMENTS

1995—Subsec. (h). Pub. L. 104–43 added subsec. (h).

## § 973h. Enforcement

### (a) Federal responsibilities; utilization of personnel, etc., of other Federal and State agencies

The provisions of this chapter shall be enforced by the Secretary in cooperation with the Secretary of State. The Secretary, after consultation with the Secretary of State, 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 and of any State agency in the performance of these duties.

### (b) Investigation and report of alleged Treaty infringement involving U.S. vessel; notice requirements to operator of vessel; comments, information, or evidence by operator

(1) The Secretary shall, at the request of a Pacific Island Party made to the Secretary of State, fully investigate any alleged infringement of the Treaty involving a vessel of the United States, and report as soon as practicable, and in any case within 2 months, to that Party through the Secretary of State on any action taken or proposed by the Secretary in regard to the alleged infringement.

(2) Upon commencement of an investigation under paragraph (1) of this subsection, the Secretary shall notify the operator of any vessel concerned regarding—

(A) the nature of the investigation;

(B) the right of the operator to submit comments, information, or evidence bearing on the investigation and to receive, upon the operator's timely written request to the Secretary, an opportunity to present such comments, information, or evidence orally to the Secretary or the Secretary's representative within 30 days after receipt of such notification.

### (c) Notice requirements to Pacific Island Party concerning institution and outcome of legal proceedings

(1) Prior to instituting any legal proceedings under this chapter for any action which involves an alleged infringement of the Treaty in waters within the jurisdiction of a Pacific Island Party, the Secretary, through the Secretary of State, shall notify the Pacific Island Party in accordance with paragraph 8 of Article 4 of the Treaty that the proceedings will be instituted. Such notice shall include a statement of the facts believed to show an infringement of the Treaty and the nature of the proposed proceedings, including any proposed charges and any proposed penalties. The Secretary shall not institute such proceedings if the Pacific Island Party objects within 30 days after the effective date of the notice under Article 10 of the Treaty.

(2) The Pacific Island Party exercising jurisdiction over the waters involved in such a legal proceeding shall be promptly notified by the Secretary, through the Secretary of State, concerning the outcome of the proceeding.

### (d) Searches and seizures by Authorized Officers; limitations on powers

(1) Any Authorized Officer may—

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

(i) arrest any person, if he has reasonable cause to believe that the person has committed any act subject to prosecution under section 973e of this title;

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

(iii) seize samples of fish or items for evidence (other than the vessel or its fishing gear or equipment) related to any violation of any provision of this chapter;

(iv) order a vessel into the most convenient port of the United States for investigation when an investigation has been requested by a Pacific Island Party in accordance with the Treaty and when such an order is necessary to gather information for such an investigation;

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

(C) exercise any other lawful authority; and

(D) investigate alleged violations of the Treaty to the same extent authorized to investigate alleged violations of this chapter.

(2) To the extent possible, Authorized Officers shall exercise their powers under paragraph (1)(A)(ii), (iii), and (iv) of this subsection so as not to interfere unduly with the lawful operation of the vessel.

(3) Nothing in this chapter shall be construed to limit the enforcement of this or other applicable Federal laws under section 89 of title 14.

### (e) Exclusive jurisdiction

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter.

(Pub. L. 100–330, § 10, June 7, 1988, 102 Stat. 597.)

### § 973i. Findings by Secretary

**(a) Order of vessel to leave waters upon failure to submit to jurisdiction of Pacific Island Party; procedure applicable**

Following any investigation conducted in accordance with section 973h(b) of this title, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel which has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding—

(1) that the fishing vessel—

(A) while fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, such fishing is not authorized to be conducted in the Licensing Area without a license;

(B) was involved in any incident in which an Authorized Officer, Authorized Party Officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding, or subjected to physical intimidation or physical interference in the performance of duties as authorized by this chapter or the Treaty;

(C) has not made full payment within 60 days of any amount due as a result of a final judgment or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

(D) was not represented by an agent for service of process in accordance with the Treaty; or

(2) that there is probable cause to believe that the fishing vessel—

(A) was used in violation of section 973c(a)(4), (a)(5), (b)(2), or (b)(3) of this title;

(B) used an aircraft in violation of section 973c(b)(7) of this title; or

(C) was involved in an incident in which section 973c(a)(7) of this title was violated.

**(b) Order of vessel to leave waters where Pacific Island Party investigating alleged Treaty infringement**

Upon being advised by the Secretary of State that proper notification to Parties has been made under paragraph 7 of Article 5 of the Treaty that a Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of such Pacific Island Party, the Secretary shall order the vessel to leave such waters until the Secretary of State notifies the Secretary that such order is no longer necessary.

**(c) Rescission of orders**

The Secretary shall rescind any order issued on the basis of a finding under subsection (a)(1)(C) or (D) of this section as soon as the Secretary determines that the facts underlying the finding do not apply.

**(d) Prohibition on judicial review of orders**

No order issued in accordance with this section is subject to judicial review.

**(e) Enforcement of orders by Attorney General**

Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including permanent or temporary injunction, to enforce any order issued by the Secretary under this section.

(Pub. L. 100–330, § 11, June 7, 1988, 102 Stat. 598; Pub. L. 100–350, § 4(3), June 27, 1988, 102 Stat. 660.)

AMENDMENTS

1988—Subsec. (a)(2)(C). Pub. L. 100–350 substituted ''section 973c(a)(7) of this title'' for ''section 973c(b)(7) of this title''.

### § 973j. Reporting requirements; disclosure of information

(a) Holders of licenses shall comply with the reporting requirements of part 4 of Annex I to the Treaty.

(b) Information provided by license holders in Schedules 5 and 6 of Annex I of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested under the Freedom of Information Act [5 U.S.C. 552], unless disclosure is required under court order or unless the information is essential for an enforcement action under section 973c, 973h(b), 973h(c), or 973i of this title, or any other proper law enforcement action.

(Pub. L. 100–330, § 12, June 7, 1988, 102 Stat. 599.)

### § 973k. Closed Area stowage requirements

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured.

(Pub. L. 100–330, § 13, June 7, 1988, 102 Stat. 599.)

### § 973*l*. Observers

**(a) Required access and assistance; scope of authorities**

The operator and each member of the crew of a vessel shall allow and assist any individual identified as an observer under the Treaty by the Pacific Island Parties—

(1) to board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary;

(2) without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel which the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas which may be used to hold, process, weigh, and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of in-

spection and copying; and gather any other information relating to fisheries in the Licensing Area;

(3) to disembark at the point and time notified by the Pacific Island Parties to the Secretary; and

(4) to carry out observer duties safely.

**(b) Free provision of food, etc., while on vessel**

The operator shall provide any such observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation, and medical facilities of such reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

**(c) Removal of fish samples and gathering of other information relating to fisheries**

The operator of any vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any individual so authorized by the Pacific Island Parties to have full access to any place where such fish is unloaded, to remove samples, and to gather any other information relating to fisheries in the Licensing Area.

(Pub. L. 100–330, § 14, June 7, 1988, 102 Stat. 599.)

### § 973m. Technical assistance

The United States tuna industry shall provide $250,000 annually in technical assistance, including provision of assistance by technicians, in response to requests coordinated through the Administrator. The Secretary of State shall designate an entity to coordinate the provision of such technical assistance as provided by the United States tuna industry and to provide an annual report to the Secretary of State regarding the provision of such technical assistance.

(Pub. L. 100–330, § 15, June 7, 1988, 102 Stat. 600.)

### § 973n. Arbitration

In the event of a dispute requiring the establishment of an arbitral tribunal under Article 6 of the Treaty, the Secretary of State, in consultation with the Secretary, shall appoint the arbitrator to be appointed by the United States under paragraph 3 of that Article, and shall represent the United States in reaching agreement under such paragraph with each Pacific Island Party involved concerning the appointment of the presiding arbitrator of the tribunal.

(Pub. L. 100–330, § 16, June 7, 1988, 102 Stat. 600.)

### § 973*o*. Disposition of fees, penalties, forfeitures, and other moneys

To the extent required by Article 4 of the Treaty, an amount equivalent to the total value of any fine, penalty, or other amount collected as a result of any action, judicial or otherwise, taken pursuant to sections 973e and 973f of this title shall be paid by the United States through the Secretary of State to the Administrator as soon as reasonably possible following the date that such amount is collected.

(Pub. L. 100–330, § 17, June 7, 1988, 102 Stat. 600.)

### § 973p. Additional agreements

Within 30 days after the Secretary of State's receipt of notice from a Pacific Island Party that it has concluded an arrangement pursuant to paragraph 3 of Article 3 of the Treaty, the Secretary of State shall consult with the Secretary concerning whether the procedures of Article 4 and paragraph 6 of Article 5 of the Treaty should be made applicable to such arrangement. At the conclusion of the consultations the Pacific Island Party and all other persons agreeing to the arrangement shall be notified by the Secretary of State of the resulting decision.

(Pub. L. 100–330, § 18, June 7, 1988, 102 Stat. 600.)

### § 973q. Secretary of State to act for United States

The Secretary of State is authorized to receive on behalf of the United States reports, requests, and other communications from the Administrator and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, after consultations with the Secretary, may accept or reject, on behalf of the United States, changes or amendments to Annex I of the Treaty and its Schedules and Annex II to the Treaty and its Schedules.

(Pub. L. 100–330, § 19, June 7, 1988, 102 Stat. 600.)

### § 973r. Authorization of appropriations

(a) There are authorized to be appropriated for fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002 such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this chapter including—

(1) for fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002, an amount not to exceed $350,000 annually to the Department of Commerce for administrative expenses; and

(2) for fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002, an amount not to exceed $50,000 annually to the Department of State for administrative expenses.

(b) Funds appropriated for the purposes of the Treaty may be used notwithstanding any of the provisions of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or of any appropriations Act that imposes restrictions on the maintenance or use of cash transfer assistance, which are inconsistent with the provisions of the Treaty.

(Pub. L. 100–330, § 20, June 7, 1988, 102 Stat. 601; Pub. L. 102–523, § 3(b), Oct. 26, 1992, 106 Stat. 3433.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (b), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–523 substituted ''1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002'' for ''1988, 1989, 1990, 1991, and 1992'' in three places.

## CHAPTER 17—NORTHWEST ATLANTIC FISHERIES

### §§ 981 to 991. Repealed. Pub. L. 95–6, § 4, Feb. 21, 1977, 91 Stat. 16

Section 981, acts Sept. 27, 1950, ch. 1054, § 2, 64 Stat. 1067; July 24, 1968, Pub. L. 90–420, § 1(a) to (c), 82 Stat. 419; Aug. 11, 1971, Pub. L. 92–87, §§ 101 to 103, 85 Stat. 310; July 10, 1974, Pub. L. 93–339, § 1(a), 88 Stat. 293, covered definitions of ''convention'', ''Commission'', ''person'', ''vessel'', ''fishing gear'', ''fishing'', ''fish'', ''international measures of control'', and ''national measures of control''.

Section 982, acts Sept. 27, 1950, ch. 1054, § 3, 64 Stat. 1068; Aug. 11, 1971, Pub. L. 92–87, § 111(a), (b), 85 Stat. 313, related to appointment and compensation of Commissioners for the International Commission for the Northwest Atlantic Fisheries.

Section 983, acts Sept. 27, 1950, ch. 1054, § 4, 64 Stat. 1068; July 24, 1968, Pub. L. 90–420, § 1(d), 82 Stat. 419; July 10, 1974, Pub. L. 93–339, § 1(b), (c), (g), 88 Stat. 293, provided for appointment, compensation, and travel expenses of an advisory committee.

Section 984, acts Sept. 27, 1950, ch. 1054, § 5, 64 Stat. 1068; Aug. 11, 1971, Pub. L. 92–87, § 111(c), 85 Stat. 313, deemed service of a United States Commissioner or member of the advisory committee as service as a special government employee of the United States, as defined in section 202 of Title 18.

Section 985, acts Sept. 27, 1950, ch. 1054, § 6, 64 Stat. 1069; Aug. 11, 1971, Pub. L. 92–87, §§ 104, 105, 85 Stat. 310, 311, authorized Secretary of State to receive on behalf of the United States reports, requests, recommendations, and other communications of the Commission, and to act thereon.

Section 986, acts Sept. 27, 1950, ch. 1054, § 7, 64 Stat. 1069; Aug. 11, 1971, Pub. L. 92–87, §§ 106, 107, 110(a), (b), 85 Stat. 311, 312; July 10, 1974, Pub. L. 93–339, § 1(d), (e), 88 Stat. 293, authorized Secretary of Commerce to enforce this chapter.

Section 987, act Sept. 27, 1950, ch. 1054, § 8, 64 Stat. 1069, related to Commissioner's cooperation with agencies of United States Government and State and private institutions and organizations.

Section 988, acts Sept. 27, 1950, ch. 1054, § 9, 64 Stat. 1069; Aug. 11, 1971, Pub. L. 92–87, § 108, 85 Stat. 312; July 10, 1974, Pub. L. 93–339, § 1(f), 88 Stat. 293, related to activities declared unlawful with respect to this chapter.

Section 989, acts Sept. 27, 1950, ch. 1054, § 10, 64 Stat. 1070; Aug. 11, 1971, Pub. L. 92–87, § 109, 85 Stat. 312, covered the penalties for violations of section 988 of this title or any regulations adopted pursuant to this chapter.

Section 990, acts Sept. 27, 1950, ch. 1054, § 11, 64 Stat. 1070; Oct. 17, 1968, Pub. L. 90–578, title IV, § 402(b)(2), 82 Stat. 1118; Aug. 11, 1971, Pub. L. 92–87, § 110(c), (d), 85 Stat. 312, related to procedures for arrest, search and seizure, warrants, stay of execution, and bond or stipulation with respect to persons committing violations of the convention, this chapter, or adopted regulations.

Section 991, acts Sept. 27, 1950, ch. 1054, § 12, 64 Stat. 1071; Aug. 11, 1971, Pub. L. 92–87, § 111(d), 85 Stat. 313, authorized appropriation to carry out the purposes and provisions of this chapter.

EFFECTIVE DATE OF REPEAL

Section 4 of Pub. L. 95–6 provided that repeal of sections 981 to 991 of this title is effective Mar. 1, 1977.

## CHAPTER 18—WATERSHED PROTECTION AND FLOOD PREVENTION

Sec.
1001. Declaration of policy.
1002. Definitions
1003. Assistance to local organizations.
1003a. Cost share assistance.
1004. Conditions for Federal assistance.
1005. Works of improvement.
1006. Cooperative programs.
1006a. Loans or advancements for financing local share of costs; repayment; interest; maximum amount.
1006b. Territorial application.
1007. Authorization of appropriations.
1008. Notification of Secretary of the Interior of approval of assistance; surveys and investigations; report and recommendations; consideration; cost of surveys, investigations and reports.
1009. Joint investigations and surveys by Secretary of the Army and Secretary of Agriculture; reports to Congress.
1010. Data.
1011. Watershed restoration and enhancement agreements.
1011a. Watershed agreements.
1012. Rehabilitation of structural measures near, at, or past their evaluated life expectancy.

### § 1001. Declaration of policy

Erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting, and improving the Nation's land and water resources and the quality of the environment.

(Aug. 4, 1954, ch. 656, § 1, 68 Stat. 666; Pub. L. 92–419, title II, § 201(a), Aug. 30, 1972, 86 Stat. 667.)

AMENDMENTS

1972—Pub. L. 92–419 expanded the declaration of policy to include conservation and utilization of land, improvement of land and water resources, and quality of the environment.

SHORT TITLE

Section 11 of act Aug. 4, 1954, as renumbered by act Aug. 7, 1956, ch. 1027, § 1(g), 70 Stat. 1088, provided that: ''This Act [enacting this chapter, amending section 701b of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under this section and section 701b of Title 33] may be cited as the 'Watershed Protection and Flood Prevention Act'.''

WATERSHED PROTECTION AND FLOOD PREVENTION PROJECTS EXEMPT FROM REQUIREMENTS FOR INDEPENDENT WATER PROJECT REVIEW

For exemption of projects under this chapter from independent water project review requirements of Ex. Ords. No. 12113 and 12141, see Pub. L. 96–528, title VI, § 622, Dec. 15, 1980, 94 Stat. 3118, set out as a note under section 1962 of Title 42, The Public Health and Welfare.

EXTENSION OF BENEFITS TO PROJECTS AUTHORIZED BEFORE AUG. 7, 1956

Section 2 of act Aug. 7, 1956, ch. 1027, 70 Stat. 1090, provided that sections 1006a and 1006b of this title and the amendments made by act Aug. 7, 1956 to sections 1002 to 1005 of this title should be applicable to all works of improvement and plans for such works under the provisions of this chapter and that any plans for works of improvement with respect to which the Secretary of Agriculture was authorized prior to Aug. 7,