

**16 USC Ch. 93: AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE  
ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

**From Title 16—CONSERVATION**

**CHAPTER 93—AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE  
ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

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## **§7401. Purpose**

The purpose of this chapter is to implement the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

(Pub. L. 114–81, [title III](#), [§302](#), [Nov. 5, 2015](#), 129 Stat. 664.)

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **SHORT TITLE**

Pub. L. 114–81, [title III](#), [§301](#), [Nov. 5, 2015](#), 129 Stat. 664, provided that: "This title [enacting this chapter] may be cited as the 'Port State Measures Agreement Act of 2015'."

## **§7402. Definitions**

As used in this chapter:

(1) The term "Agreement" means the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at the Food and Agriculture Organization of the United Nations, in Rome, Italy, November 22, 2009, and signed by the United States November 22, 2009.

(2) The term "IUU fishing" means any activity set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

(3) The term "listed IUU vessel" means a vessel that is included in a list of vessels having engaged in IUU fishing or fishing-related activities in support of IUU fishing that has been adopted by a regional fisheries management organization of which the United States is a member, or a list adopted by a regional fisheries management organization of which the United States is not a member if the Secretary determines the criteria used by that organization to create the IUU list is comparable to criteria adopted by RFMOs of which the United States is a member for identifying IUU vessels and activities.

(4) The term "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(5) The term "person" has the same meaning as that term has in section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802).

(6) The terms "RFMO" and "regional fisheries management organization" mean a regional fisheries management organization (as that term is defined by the United Nation's <sup>1</sup> Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) that is recognized by the United States.

(7) The term "Secretary" means the Secretary of Commerce or his or her designee.

(8) The term "vessel" means any vessel, ship of another type, or boat used for, equipped to be used for, or intended to be used for, fishing or fishing-related activities, including container vessels that are carrying fish that have not been previously landed.

(9) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(10) The term "fishing"—

(A) except as provided in subparagraph (B), means—

- (i) the catching, taking, or harvesting of fish;
- (ii) the attempted catching, taking, or harvesting of fish;
- (iii) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (iv) any operations at sea in support of, or in preparation for, any activity described in clauses (i) through (iii); and

(B) does not include any scientific research activity that is conducted by a scientific research vessel.

(Pub. L. 114–81, [title III, §303, Nov. 5, 2015](#), 129 Stat. 664.)

#### EDITORIAL NOTES

#### REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in par. (4), is Pub. L. 94–265, [Apr. 13, 1976](#), 90 Stat. 331, which is classified principally to chapter 38 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

<sup>1</sup> So in original.

### §7403. Duties and authorities of the Secretary

#### (a) Regulations

The Secretary may, as needed, promulgate such regulations—

- (1) in accordance with section 553 of title 5;
- (2) consistent with provisions of this chapter; <sup>1</sup> and
- (3) with respect to enforcement measures, in consultation with the Secretary of the department in which the Coast Guard is operating;

as may be necessary to carry out the purposes of this chapter, to the extent that such regulations are not already promulgated.

#### (b) Ports of entry

The Secretary, in consultation with the Secretary of the department in which the Coast Guard is operating, may designate and publicize the ports to which vessels may seek entry. No port may be designated under this section that has not also been designated as a port of entry for customs reporting purposes pursuant to section 1433 of title 19 <sup>1</sup> or that is not specified under an existing international fisheries agreement.

#### (c) Notification

The Secretary shall provide notification of the denial of port entry or the use of port services for a vessel under section 7404 of this title, the withdrawal of the denial of port services for a foreign vessel, the taking of enforcement action pursuant to section 7405 of this title with respect to a foreign vessel, or the results of any inspection of a foreign vessel conducted pursuant to this chapter to the flag nation of the vessel and, as appropriate, to the nation of which the vessel's master is a national, relevant coastal nations, RFMOs, the Food and Agriculture Organization of the United Nations, and other relevant international organizations.

#### (d) Confirmation that fish were taken in accordance with conservation and management measures

The Secretary may request confirmation from the flag state of a foreign vessel that the fish on board a foreign vessel in a port subject to the jurisdiction of the United States were taken in accordance with applicable RFMO conservation and management measures.

(Pub. L. 114–81, [title III, §304, Nov. 5, 2015](#), 129 Stat. 665.)

#### EDITORIAL NOTES

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original "the title" and was translated as meaning "this title" to reflect the probable intent of Congress.

Section 1433 of title 19, referred to in subsec. (b), was in the original a reference to "section 1433 of title 19, United States Code" but probably should have been a reference to section 433 of the Tariff Act of 1930, act June 17, 1930, ch. 497, which is classified to section 1433 of Title 19, Customs Duties.

<sup>1</sup> See References in Text note below.

## **§7404. Authorization or denial of port entry**

### **(a) Submission of information required under Agreement**

#### **(1) In general**

A vessel described in paragraph (2) seeking entry to a port that is subject to the jurisdiction of the United States must submit to the Secretary of the department in which the Coast Guard is operating information as required under the Agreement in advance of its arrival in port. The Secretary of the department in which the Coast Guard is operating shall provide that information to the Secretary.

#### **(2) Covered vessels**

A vessel referred to in paragraph (1) is any vessel that—  
(A) is not documented under chapter 121 of title 46; and  
(B) is not numbered under chapter 123 of that title.

### **(b) Decision to authorize or deny port entry**

#### **(1) Decision**

The Secretary shall decide, based on the information submitted under subsection (a), whether to authorize or deny port entry by the vessel, and shall communicate such decision to—

- (A) the Secretary of the department in which the Coast Guard is operating; and
- (B) the vessel or its representative.

#### **(2) Authorization or denial of entry**

The Secretary of the department in which the Coast Guard is operating shall authorize or deny entry to vessels to which such a decision applies.

#### **(3) Vessels to which entry may be denied**

The Secretary of the department in which the Coast Guard is operating may deny entry to any vessel to which such a decision applies—

- (A) that is described in subsection (a)(2); and
- (B) that—
  - (i) is a listed IUU vessel; or
  - (ii) the Secretary of Commerce has reasonable grounds to believe—
    - (I) has engaged in IUU fishing or fishing-related activities in support of such fishing; or
    - (II) has violated this chapter.

### **(c) Denial of use of port**

If a vessel described in subsection (a)(2) is in a port that is subject to the jurisdiction of the United States, the Secretary of the department in which the Coast Guard is operating, at the request of the Secretary, shall deny such vessel the use of the port for landing, transshipment, packaging and processing of fish, refueling, resupplying, maintenance, and drydocking, if—

- (1) the vessel entered without authorization under subsection (b);
- (2) the vessel is a listed IUU vessel;
- (3) the vessel is not documented under the laws of another nation;
- (4) the flag nation of the vessel has failed to provide confirmation requested by the Secretary that the fish on board were taken in accordance with applicable RFMO conservation and management measures; or
- (5) the Secretary has reasonable grounds to believe—
  - (A) the vessel lacks valid authorizations to engage in fishing or fishing-related activities as required by its flag nation or the relevant coastal nation;
  - (B) the fish on board were taken in violation of foreign law or in contravention of any RFMO conservation and management measure; or
  - (C) the vessel has engaged in IUU fishing or fishing-related activities in support of such fishing, including in support of a listed IUU vessel, unless it can establish that—
    - (i) it was acting in a manner consistent with applicable RFMO conservation and management measures; or
    - (ii) in the case of the provision of personnel, fuel, gear, and other supplies at sea, the vessel provisioned was not, at the time of provisioning, a listed IUU vessel.

### **(d) Exceptions**

Notwithstanding subsections (b) and (c), the Secretary of the department in which the Coast Guard is operating may allow port entry or the use of port services—

- (1) if they are essential to the safety or health of the crew or safety of the vessel;
- (2) to allow, where appropriate, for the scrapping of the vessel; or
- (3) pursuant to an inspection or other enforcement action.

(Pub. L. 114–81, [title III, §305, Nov. 5, 2015](#), 129 Stat. 666.)

## **§7405. Inspections**

The Secretary, and the Secretary of the department in which the Coast Guard is operating, shall conduct foreign vessel inspections in ports subject to the jurisdiction of the United States as necessary to achieve the purposes of the Agreement and this chapter. If, following an inspection, the Secretary has reasonable grounds to believe that a foreign vessel has engaged in IUU fishing or fishing-related activities in support of such fishing, the Secretary may take enforcement action under this chapter or other applicable law, and shall deny the vessel the use of port services, in accordance with section 7404 of this title.

(Pub. L. 114–81, title III, §306, Nov. 5, 2015, 129 Stat. 667.)

## **§7406. Prohibited acts**

It is unlawful for any person subject to the jurisdiction of the United States—

- (1) to violate any provision of this chapter or the regulations issued under this chapter;
- (2) to refuse to permit any authorized officer to board, search, or inspect a vessel that is subject to the person's control in connection with the enforcement of this chapter or the regulations issued under this chapter;
- (3) to submit false information pursuant to any requirement under this chapter or the regulations issued under this chapter; or
- (4) to commit any offense enumerated in paragraph (4), (5), (7), or (9) of section 707(a)<sup>1</sup> of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6906(a)).

(Pub. L. 114–81, title III, §307, Nov. 5, 2015, 129 Stat. 667.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

Section 707(a) of the Western and Central Pacific Fisheries Convention Implementation Act, referred to in par. (4), probably means section 507(a) of title V of Pub. L. 109–479, which is classified to section 6906(a) of this title.

<sup>1</sup> See References in Text note below.

## **§7407. Enforcement**

### **(a) Existing authorities and responsibilities**

#### **(1) Authorities and responsibilities**

The authorities and responsibilities under subsections (a), (b), and (c) of section 1861 of this title and subsection (f) of section 1858 of this title and paragraphs (2), (3), and (7) of section 2439(b) of this title shall apply with respect to enforcement of this chapter.

#### **(2) Included vessels**

For purposes of enforcing this chapter, any reference in such paragraphs and subsections to a "vessel" or "fishing vessel" includes all vessels as defined in section 7402(8) of this title.

#### **(3) Application of other provisions**

Such paragraphs and subsections apply to violations of this chapter and any regulations promulgated under this chapter.

### **(b) Civil enforcement**

#### **(1) Civil administrative penalties**

##### **(A) In general**

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 under section 7406 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall be consistent with the amount under section 1858(a) of this title.

##### **(B) Compromise or other action by secretary**

The Secretary shall have the same authority as provided in section 1858(e) of this title with respect to a violation of this chapter.<sup>1</sup>

#### **(2) In rem jurisdiction**

For purposes of this chapter, the conditions for in rem liability shall be consistent with section 1858(d) of this title.

#### **(3) Action upon failure to pay assessment**

If any person fails to pay an assessment of a civil penalty under this chapter 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, 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.

### **(c) Forfeiture**

#### **(1) In general**

Any foreign vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) imported or possessed in connection with or as <sup>2</sup> result of the commission of any act prohibited by section 7406 of this title shall be subject to forfeiture under section 1860 of this title.

#### **(2) Application of the customs laws**

All provisions of law relating to seizure, summary judgment, and judicial forfeiture and condemnation for violation of the customs laws, the disposition of the property forfeited or condemned or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof. For seizures and forfeitures of property under this section by the Secretary, such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs law may be performed by such officers as are designated by the Secretary or, upon request of the Secretary, by any other agency that has authority to manage and dispose of seized property.

#### **(3) Presumption**

For the purposes of this section there is a rebuttable presumption that all fish, or components thereof, found on board a vessel that is used or seized in connection with a violation of this chapter (including any regulation promulgated under this chapter <sup>1</sup>) were taken, obtained, or retained as a result of IUU fishing or fishing-related activities in support of IUU fishing.

### **(d) Criminal enforcement**

Any person (other than a foreign government agency, or entity wholly owned by a foreign government) who knowingly commits an act prohibited by section 7406 of this title shall be subject to subsections (b) and (c) of section 1859 of this title.

### **(e) Payment of storage, care, and other costs**

Any person assessed a civil penalty for, or convicted of, any violation of this chapter (including any regulation promulgated under this chapter) and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any property seized in connection with the violation.

(Pub. L. 114–81, title III, §308, Nov. 5, 2015, 129 Stat. 668.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (b)(1)(B) and the second place appearing in subsec. (c)(3), was in the original "this Act" and was translated as meaning "this title" to reflect the probable intent of Congress.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. The word "a" probably should appear.

## **§7408. International cooperation and assistance**

### **(a) Assistance to developing nations and international organizations**

Consistent with existing authority and the availability of funds, the Secretary shall provide appropriate assistance to developing nations and international organizations of which such nations are members to assist those nations in meeting their obligations under the Agreement.

### **(b) Personnel, services, equipment, and facilities**

In carrying out subsection (a), the Secretary may, by agreement, on a reimbursable or nonreimbursable basis, utilize the personnel, services, equipment, and facilities of any Federal, State, local, or foreign government or any entity of any such government.

(Pub. L. 114–81, title III, §309, Nov. 5, 2015, 129 Stat. 669.)

## **§7409. Relationship to other laws**

**(a) In general**

Nothing in this chapter shall be construed to displace any requirements imposed by the customs laws of the United States or any other laws or regulations enforced or administered by the Secretary of Homeland Security. Where more stringent requirements regarding port entry or access to port services exist under other Federal law, those more stringent requirements shall apply. Nothing in this chapter shall affect a vessel's entry into port, in accordance with international law, for reasons of force majeure or distress.

**(b) United States obligations under international law**

This chapter shall be interpreted and applied in accordance with United States obligations under international law.

(Pub. L. 114–81, [title III, §310](#), Nov. 5, 2015, 129 Stat. 669.)