

## AMENDMENTS

1999—Subsec. (a)(4). Pub. L. 106-36 substituted “World Trade Organization (as defined in section 3501(8) of title 19) or the multilateral trade agreements (as defined in section 3501(4) of title 19)” for “General Agreement on Tariffs and Trade”.

1992—Subsec. (a)(4). Pub. L. 102-582, §201(a)(1), substituted “any products from the offending country for any duration” for “fish products (if the certification is made under paragraph (1)) or wildlife products (if the certification is made under paragraph (2)) from the offending country for such duration”.

Subsecs. (c), (e)(2). Pub. L. 102-582, §201(a)(2), (3), substituted “products” for “fish products or wildlife products”.

Subsec. (f). Pub. L. 102-582, §201(a)(4), substituted “products” for “fish products and wildlife products” in pars. (1) and (5) and “Products” for “Fish products and wildlife products” in par. (5).

Subsec. (h)(2). Pub. L. 102-582, §201(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘United States’, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands.”

Subsec. (h)(3). Pub. L. 102-582, §201(b)(2), inserted “bilateral or” before “multilateral” and “, including marine mammals” before period at end.

Subsec. (h)(4). Pub. L. 102-582, §201(b)(3), (4), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “The term ‘fish products’ means any aquatic species (including marine mammals and plants) and all products thereof exported from an offending country, whether or not taken by fishing vessels of such country, or packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof.”

Subsec. (h)(5). Pub. L. 102-582, §201(b)(5), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The term ‘taking’ means—

“(A) for purposes of subsection (a)(2) of this section—

“(i) to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or

“(ii) to attempt to engage in any such conduct with respect to,

animals to which an international program for endangered or threatened species applies; and

“(B) for purposes of paragraph (6), any conduct described in subparagraph (A)(i), whether or not such conduct is legal under the laws of the offending country, undertaken with respect to any wild animal.”

Pub. L. 102-582, §201(b)(4), redesignated par. (7) as (5). Former par. (5) redesignated (4).

Subsec. (h)(6). Pub. L. 102-582, §201(b)(3), struck out par. (6) which read as follows: “The term ‘wildlife products’ means fish (other than those to which paragraph (4) applies) and wild animals, and parts (including eggs) thereof, taken within an offending country and all products of any such fish and wild animals, or parts thereof, whether or not such products are packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof. Such term does not include any wild animal or fish if brought or imported into the United States for scientific research.”

Subsec. (h)(7). Pub. L. 102-582, §201(b)(4), redesignated par. (7) as (5).

1988—Subsec. (h)(4). Pub. L. 100-711 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘fish products’ means fish and marine mammals and all products thereof taken by fishing vessels of an offending country whether or not packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof.”

1979—Subsec. (a)(3), (4). Pub. L. 96-61, §3(b)(1), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (d) to (h). Pub. L. 96-61, §3(b)(2), (3), added subsec. (d) and redesignated subsecs. (d) to (g) as (e) to (h), respectively.

1978—Subsec. (a). Pub. L. 95-376, §2(1), designated existing provisions as par. (1), struck out a provision enabling the President, upon receipt of certification, to direct the Secretary of the Treasury to prohibit importation of fish products of the offending country for as long as he determines appropriate and to the extent such prohibition is sanctioned by the General Agreement on Tariffs and Trade, and added pars. (2) and (3).

Subsec. (b). Pub. L. 95-376, §2(2), inserted “or the Secretary of the Interior” after “Secretary of Commerce” and inserted “or wildlife products” after “fish products” in two places.

Subsec. (c). Pub. L. 95-376, §2(3), inserted “or wildlife products” after “fish products”.

Subsecs. (d)(2), (e)(1). Pub. L. 95-376, §2(4), (5)(A), inserted “and wildlife products” after “fish products”.

Subsec. (e)(4)(B). Pub. L. 95-376, §2(5)(B), inserted “or other conveyance” after “vessel” wherever appearing.

Subsec. (e)(5). Pub. L. 95-376, §2(5)(A), (C), inserted “and wildlife products” after “all fish products”, and substituted “Fish products and wildlife products” for “Any fish products”.

Subsec. (f). Pub. L. 95-376, §2(6), inserted references to the Secretary of Commerce and the Secretary of the Interior.

Subsec. (g)(3). Pub. L. 95-376, §2(7)(A), (B), substituted “in effect” for “in force”, and “which is in force with respect to the United States” for “to which the United States is a signatory party”.

Subsec. (g)(5) to (7). Pub. L. 95-376, §2(7)(C), added pars. (5) to (7).

## CHANGE OF NAME

“United States magistrate judges” substituted for “United States magistrates” in subsec. (f)(2) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously “United States magistrates” substituted for “United States commissioners” pursuant to Pub. L. 90-578. See chapter 43 (§631 et seq.) of Title 28.

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (f)(5) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

## § 1979. Fishermen’s Protective Fund

There is created a Fishermen’s Protective Fund which shall be used by the Secretary of State to reimburse owners of vessels for amounts determined and certified by him under section 1973 of this title. The amount of any claim or portion thereof collected by the Secretary of State from any foreign country pursuant to section 1975(a) of this title shall be deposited in the fund and shall be available for the purpose of reimbursing vessel owners under section 1973 of this title; except that if a transfer to the fund was made pursuant to section 1975(b)(1) of this title with respect to any such claim, an amount from the fund equal to the amount so collected shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fund (1) the sum of \$3,000,000 to provide initial capital, and (2) such additional sums as may be necessary from time to time to supplement the fund in order to meet the requirements of the fund.

(Aug. 27, 1954, ch. 1018, §9, as added Pub. L. 92-569, §5, Oct. 26, 1972, 86 Stat. 1183; amended Pub. L. 98-364, title III, §302(c), July 17, 1984, 98 Stat. 444.)

## AMENDMENTS

1984—Pub. L. 98-364 substituted “Secretary of State” for “Secretary of the Treasury” and “determined and

certified by him” for “certified to him by the Secretary of State”.

#### EFFECTIVE DATE

Section applicable with respect to seizure of vessels of the United States occurring on or after Oct. 26, 1972, except that reimbursements under section 1973 of this title may be made from the fund established by this section with respect to seizure of vessels occurring after Dec. 31, 1970 and before Oct. 26, 1972, if no reimbursement was made before Oct. 26, 1972, see section 6 of Pub. L. 92-569, set out as an Effective Date of 1972 Amendment note under section 1972 of this title.

### § 1980. Compensation for loss or destruction of commercial fishing vessel or gear

#### (a) Definitions

For purposes of this section—

(1) The terms “fishery”, “fishery conservation zone”, “fishing”, “fishing vessel”, “Secretary”, and “vessel of the United States” shall each have the same respective meaning as is given to such terms in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).<sup>1</sup>

(2) The term “fishing gear” means any equipment or appurtenance which is necessary for the carrying out of fishing operations by a fishing vessel, whether or not such equipment or appurtenance is attached to such vessel.

(3) The term “fund” means the Fishing Vessel and Gear Damage Compensation Fund established under subsection (f) of this section.

(4) The term “resulting economic loss” means the gross income, as estimated by the Secretary, that a fishing vessel owner or operator who is eligible for compensation under this section for damage to, loss of, or destruction of, a fishing vessel or the fishing gear used with such vessel will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the vessel or gear, or both, are repaired or replaced and available for use.

#### (b) Causes of loss or destruction

Subject to the provisions of this section, the owner or operator (hereinafter referred to as the “vessel owner”) of any fishing vessel which is a vessel of the United States is eligible for monetary compensation under this section for any damage to, loss of, or destruction of such vessel, or any fishing gear used with such vessel, or both, and for any resulting economic loss, if the damage, loss, or destruction—

(1) in the case of such vessel—

(A) occurs when such vessel is engaged in any fishery subject to the exclusive fishery management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], and

(B) is attributable to any vessel (or its crew or fishing gear) other than a vessel of the United States; or

(2) in the case of such fishing gear—

(A) occurs when such fishing gear is being used for fishing in any fishery subject to such exclusive management authority, and

(B) is attributable to any other vessel, whether or not such vessel is a vessel of the United States.

For purposes of subparagraph (B), there shall be a rebuttable presumption that any damage, loss, or destruction of fishing gear is attributable to another vessel.

#### (c) Eligibility for compensation

A vessel owner is not eligible for compensation under this section with respect to fishing vessel or fishing gear damage, loss, or destruction and resulting economic loss unless such owner—

(1) makes application to the Secretary for compensation under this section within 90 days after the day on which the damage, loss, or destruction occurred or was first noticed by the owner;

(2) pays upon making such application a reasonable administrative fee which the Secretary shall deposit into the fund;

(3) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the fishery vessel or fishing gear concerned;

(4) has complied with all applicable regulations, if any, relating to the marking of, and (if appropriate) the notification of the location of, the fishing gear concerned; and

(5) is in compliance with such other regulations as may be prescribed by the Secretary to carry out this section.

#### (d) Application for compensation; initial determination of eligibility; amount of compensation; review of initial determination; subrogation of United States upon payment

(1) Application for compensation under this section shall be made in such form and manner, and include such documentation and other evidence relating to the cause and extent of the damage, loss, or destruction, and resulting economic loss, claimed, as the Secretary shall prescribe by regulation. The Secretary shall promptly, but not later than sixty days after receipt of an application, consider, and issue an initial determination with respect to, the application.

(2) The amount of compensation awarded to any vessel owner under this section shall be—

(A) the depreciated replacement cost, or the repair cost, whichever cost is less, of the fishing vessel or the fishing gear concerned; and

(B) 25 percent of any resulting economic loss.

Any amount determined pursuant to subparagraph (A) or (B) shall be reduced to the extent that evidence indicates that negligence by the vessel owner or operator contributed to the cause or the extent of the damage, loss, or destruction and shall be further reduced by the amount of compensation, if any, that the vessel owner or operator has received or will receive with respect to the damage, loss, destruction, or resulting economic loss through insurance, pursuant to any other provision of law, or otherwise.

(3) The initial determination made by the Secretary under paragraph (1) with respect to any application shall—

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