

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).

(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.

(A) if the application is disapproved, set forth the reasons therefor; or

(B) if the application is approved, set forth the amount of compensation to which the applicant is entitled and the basis on which such amount was determined.

(4) Any vessel owner who is aggrieved by any decision of the Secretary contained in the initial determination of the Secretary regarding such owner's application may, within thirty days after the date of issue of the initial determination, petition the Secretary for a review of the decision. If petition for review is not made to the Secretary within such thirty-day period regarding the initial determination, the initial determination shall be deemed to be the final determination on the application. Before undertaking any such review, the Secretary shall provide to the vessel owner opportunity to submit additional written or oral evidence relating to the decision. After review the Secretary shall issue a final determination with respect to the application.

(5) If compensation is awarded under the final determination on any application, the Secretary shall promptly pay from the fund to such owner the amount of compensation stated in the final determination. Upon the acceptance of such payment by the vessel owner, the United States shall be subrogated to all rights of the vessel owner with respect to which the payment is made.

**(e) Surcharge on foreign fishing vessels**

In addition to any fee imposed under section 204(b)(10) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10)) with respect to any foreign fishing vessel for any year after 1978, the Secretary shall impose a surcharge in an amount not to exceed 20 percent of the amount of the fee imposed under such section for such year. The failure to pay any surcharge imposed under this subsection with respect to any foreign fishing vessel shall be treated by the Secretary as a failure to pay the fee for such vessel under such section 204(b)(10).

**(f) Fishing Vessel and Gear Damage Compensation Fund; requirements, etc.**

(1) There is established in the Treasury of the United States the Fishing Vessel and Gear Damage Compensation Fund. The fund shall be available without fiscal year limitation as a revolving fund for the purposes of administering, and paying compensation awarded under, this section.

(2) The fund shall consist of—

(A) all sums recovered by the United States in the exercise of rights subrogated to it under subsection (d)(5);

(B) all administrative fees collected under subsection (c)(2);

(C) all surcharges collected under subsection (e);

(D) revenues received from deposits or investments made under the last sentence of this paragraph; and

(E) any revenue acquired through the issuance of obligations under paragraph (3).

Sums may be expended from the fund only to such extent and in such amounts as are provided

in advance in appropriation Acts. Sums in the fund which are not currently needed for the purpose of paying such awards shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(3) Whenever the amount in the fund is not sufficient to pay compensation under this section, the Secretary may issue, in an amount not to exceed \$5,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notices<sup>2</sup> or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notices<sup>2</sup> or other obligations. Moneys obtained by the Secretary under this paragraph shall be deposited in the fund and redemptions of any such notices<sup>2</sup> or other obligations shall be made from the fund. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31. The Secretary of the Treasury may sell any such notices<sup>2</sup> or other obligations at such times and prices and upon such terms and conditions as he shall determine. All purchases, redemptions, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

**(g) Penalty for false or misleading statements**

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation under this section is guilty of a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or both.

(Aug. 27, 1954, ch. 1018, §10, as added Pub. L. 95-194, §2, Nov. 18, 1977, 91 Stat. 1413; amended Pub. L. 95-376, §3(a), Sept. 18, 1978, 92 Stat. 715; Pub. L. 96-289, §4(b), June 28, 1980, 94 Stat. 606; Pub. L. 96-561, title II, §§238(b), 241, Dec. 22, 1980, 94 Stat. 3300, 3301; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

Section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), referred to in subsec. (a)(1), contained a prior par. (8) defining "fishery conservation zone" which was repealed and a new par. defining "exclusive economic zone" was added by Pub. L. 99-659, title I, §101(a), Nov. 14, 1986, 100 Stat. 3706.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(1)(A), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. For complete classifica-

<sup>2</sup> So in original. Probably should be "notes".

tion of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

#### CODIFICATION

In subsec. (f)(3), “chapter 31 of title 31” substituted for “the Second Liberty Bond Act” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

#### AMENDMENTS

1996—Subsecs. (a)(1), (b)(1)(A), (e). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

1980—Subsec. (a)(1). Pub. L. 96-561, §238(b), substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

Subsec. (a)(4). Pub. L. 96-561, §241(1), added par. (4).

Subsec. (b). Pub. L. 96-561, §§238(b), 241(2), inserted in provision preceding par. (1) “and for any resulting economic loss” after “or both,” substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”, struck out provision in par. (2)(B) permitting compensation in the case of fishing gear lost, damaged, or destroyed by an act of God, and inserted provision following par. (2)(B) establishing for purposes of subpar. (B) a rebuttable presumption that any damage, loss, or destruction of fishing gear is attributable to another vessel.

Subsec. (c). Pub. L. 96-561, §241(3), inserted in provision preceding par. (1) “and resulting economic loss” after “destruction”.

Pub. L. 96-289 substituted “90” for “sixty” in par. (1).

Subsec. (d). Pub. L. 96-561, §241(4), inserted in par. (1) “, and resulting economic loss,” after “destruction” and in par. (2) included within the amount of compensation awarded to any vessel owner 25 percent of any resulting economic loss.

Subsec. (e). Pub. L. 96-561, §238(b), substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

1978—Subsec. (a). Pub. L. 95-376 substituted provisions defining “fishery”, “fishing conservation zone”, “fishing”, “fishing vessel”, “Secretary”, “vessel of the United States”, “fishing gear” and “fund” for provisions authorizing the Secretary to make a loan to an owner or operator whose commercial fishing vessel or its fishing gear was lost, damaged or destroyed by any vessel of a foreign nation.

Subsec. (b). Pub. L. 95-376 substituted provisions setting forth the causes of the damage, loss, or destruction of the vessel or its gear for which compensation is payable for provisions authorizing the Secretary to conduct an investigation of each incident of loss, damage or destruction for which the owner received a loan and allowing for repayment or cancellation of such loan depending on fault or nonfault of owner.

Subsec. (c). Pub. L. 95-376 substituted provisions setting forth the administrative provisions for making a claim for compensation for provisions directing the Secretary, with the assistance of the Attorney General, the Secretary of State, and the claimant, to take appropriate action to collect on any rights assigned to him, and directing how any sums recovered shall be dispensed.

Subsec. (d). Pub. L. 95-376 substituted provisions setting forth the form, manner and documentation of the application, the amount of compensation payable, procedure for review of the initial determination of eligibility and prompt payment upon finding of such eligibility for provisions defining “Secretary” as the “Secretary of Commerce”.

Subsec. (e). Pub. L. 95-376 substituted provisions authorizing the imposition of a maximum 20 per cent surcharge in addition to any fee imposed under section 1824(b)(10) of title 16 for provisions authorizing the Secretary to establish by regulation fees to recover the cost of administering this section.

Subsecs. (f), (g). Pub. L. 95-376 added subsecs. (f) and (g).

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300, provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-376, §3(b), Sept. 18, 1978, 92 Stat. 718, provided that: “The amendment made by subsection (a) [amending this section] shall take effect January 1, 1979.”

#### SAVINGS PROVISION

Pub. L. 95-376, §3(c), Sept. 18, 1978, 92 Stat. 718, provided that: “Nothing in the amendment made by subsection (a) [amending this section] shall be construed as affecting in any manner or to any extent any loan made under section 10 of the Fishermen’s Protective Act of 1967 (as in effect before January 1, 1979) [this section], and, for purposes of the consideration by the Secretary of Commerce of any application for a loan under such section which was filed, but not acted on, before January 1, 1979, the amendment made by subsection (a) shall not be deemed to have been enacted.”

#### COMPENSATION FOR CERTAIN FISHING VESSEL AND GEAR DAMAGE; APPLICATION

Pub. L. 96-561, title II, §240(a), (b)(1), Dec. 22, 1980, 94 Stat. 3300, 3301, provided that:

“(a) IN GENERAL.—If—

“(1) any owner or operator of a fishing vessel who suffered, after September 17, 1978, and before the date of the enactment of this title [Dec. 22, 1980], damage to, or loss or destruction of, such vessel or fishing gear used with such vessel, but did not apply for compensation therefor under section 10 of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1980) within the 60-day period prescribed in subsection (c)(1) of such section; or

“(2) any commercial fisherman who suffered, after September 17, 1978, and before the date of the enactment of this title, damages compensable under title IV of the Outer Continental Shelf Lands Act of 1978 (43 U.S.C. 1841 et seq.), but who did not timely file a claim therefor within the 60-day period prescribed in section 405(a) of such Act [43 U.S.C. 1845(a)]; such owner or operator may make application for compensation with respect to such damage, loss or destruction under such section 10 [this section], and such commercial fisherman may file a claim for, compensation for such damages under such title IV [43 U.S.C. 1841 et seq.], to the Secretary of Commerce, within the 60-day period beginning on the date of the enactment of this title [Dec. 22, 1980].

“(b) SPECIAL PROVISIONS.—(1) Notwithstanding any other provision of law—

“(A) any application or filing timely made under subsection (a) shall be treated by the Secretary of Commerce as an application timely made under such section 10(c)(1) [subsec. (c)(1) of this section], or as a filing timely made under such section 405(a) [43 U.S.C. 1845(a)], as the case may be, with respect to the damage, loss, or destruction claimed; and

“(B) any claim for fishing gear loss that was pending on June 1, 1980, before the United States-Union of Soviet Socialist Republics Fisheries Claims Board or the American-Spanish Fisheries Board shall be treated by the Secretary of Commerce as a timely application made, on the date of the enactment of this title [Dec. 22, 1980], under such section 10(c)(1) [subsec. (c)(1) of this section] for compensation for such loss.”

## TIMELY APPLICATIONS FOR COMPENSATION

Pub. L. 96-289, §4(a), June 28, 1980, 94 Stat. 605, provided that: "Notwithstanding the provisions of section 10(c)(1) of the Fishermens Protective Act of 1967 (22 U.S.C. 1980) [subsec. (c)(1) of this section] applications for compensation under such Act [this chapter], filed within 90 days after the date of enactment of this subsection [June 28, 1980] shall be deemed to be timely filed."

**§ 1980a. Reimbursement of owner for fee paid to navigate foreign waters if fee inconsistent with international law**

**(a) Reimbursable fees**

In any case on or after June 15, 1994, in which a vessel of the United States exercising its right of passage is charged a fee by the government of a foreign country to engage in transit passage between points in the United States (including a point in the exclusive economic zone or in an area over which jurisdiction is in dispute), and such fee is regarded by the United States as being inconsistent with international law, the Secretary of State shall, subject to the availability of appropriated funds, reimburse the vessel owner for the amount of any such fee paid under protest.

**(b) Documentation**

In seeking such reimbursement, the vessel owner shall provide, together with such other information as the Secretary of State may require—

- (1) a copy of the receipt for payment;
- (2) an affidavit attesting that the owner or the owner's agent paid the fee under protest; and
- (3) a copy of the vessel's certificate of documentation.

**(c) Timeliness**

Requests for reimbursement shall be made to the Secretary of State within 120 days after the date of payment of the fee, or within 90 days after November 3, 1995, whichever is later.

**(d) Funding; appropriations**

Such funds as may be necessary to meet the requirements of this section may be made available from the unobligated balance of previously appropriated funds remaining in the Fishermen's Protective Fund established under section 1979 of this title. To the extent that requests for reimbursement under this section exceed such funds, there are authorized to be appropriated such sums as may be needed for reimbursements authorized under subsection (a), which shall be deposited in the Fishermen's Protective Fund established under section 1979 of this title.

**(e) Claim against foreign government**

The Secretary of State shall take such action as the Secretary deems appropriate to make and collect claims against the foreign country imposing such fee for any amounts reimbursed under this section.

**(f) "Owner" defined**

For purposes of this section, the term "owner" includes any charterer of a vessel of the United States.

(Aug. 27, 1954, ch. 1018, §11, as added Pub. L. 104-43, title IV, §402(a), Nov. 3, 1995, 109 Stat. 389.)

## CONGRESSIONAL FINDINGS

Pub. L. 104-43, title IV, §401, Nov. 3, 1995, 109 Stat. 388, provided that: "The Congress finds that—

"(1) customary international law and the United Nations Convention on the Law of the Sea guarantee the right of passage, including innocent passage, to vessels through the waters commonly referred to as the 'Inside Passage' off the Pacific Coast of Canada;

"(2) in 1994 Canada required all commercial fishing vessels of the United States to pay 1,500 Canadian dollars to obtain a 'license which authorizes transit' through the Inside Passage;

"(3) this action was inconsistent with international law, including the United Nations Convention on the Law of the Sea, and, in particular, Article 26 of that Convention, which specifically prohibits such fees, and threatened the safety of United States commercial fishermen who sought to avoid the fee by traveling in less protected waters;

"(4) the Fishermen's Protective Act of 1967 [22 U.S.C. 1971 et seq.] provides for the reimbursement of vessel owners who are forced to pay a license fee to secure the release of a vessel which has been seized, but does not permit reimbursement of a fee paid by the owner in advance in order to prevent a seizure;

"(5) Canada required that the license fee be paid in person in 2 ports on the Pacific Coast of Canada, or in advance by mail;

"(6) significant expense and delay was incurred by commercial fishing vessels of the United States that had to travel from the point of seizure back to one of those ports in order to pay the license fee required by Canada, and the costs of that travel and delay cannot be reimbursed under the Fishermen's Protective Act;

"(7) the Fishermen's Protective Act of 1967 should be amended to permit vessel owners to be reimbursed for fees required by a foreign government to be paid in advance in order to navigate in the waters of that foreign country if the United States considers that fee to be inconsistent with international law;

"(8) the Secretary of State should seek to recover from Canada any amounts paid by the United States to reimburse vessel owners who paid the transit license fee;

"(9) the United States should review its current policy with respect to anchorage by commercial fishing vessels of Canada in waters of the United States off Alaska, including waters in and near the Dixon Entrance, and should accord such vessels the same treatment that commercial fishing vessels of the United States are accorded for anchorage in the waters of Canada off British Columbia;

"(10) the President should ensure that, consistent with international law, the United States Coast Guard has available adequate resources in the Pacific Northwest and Alaska to provide for the safety of United States citizens, the enforcement of United States law, and to protect the rights of the United States and keep the peace among vessels operating in disputed waters;

"(11) the President should continue to review all agreements between the United States and Canada to identify other actions that may be taken to convince Canada that any reinstatement of the transit license fee would be against Canada's long-term interests, and should immediately implement any actions which the President deems appropriate if Canada reinstates the fee;

"(12) the President should continue to convey to Canada in the strongest terms that the United States will not now, nor at any time in the future, tolerate any action by Canada which would impede or otherwise restrict the right of passage of vessels of the United States in a manner inconsistent with international law; and

"(13) the United States should continue its efforts to seek expeditious agreement with Canada on appropriate fishery conservation and management measures that can be implemented through the Pacific Salmon Treaty to address issues of mutual concern."