

economic loss" for "loss of profits", inserted "Outer Continental Shelf" after "items associated with", struck out "in such area, whether or not such damage occurred in such area" after "production activities", and inserted provisions that compensation payable under this section for resulting economic loss be an amount equal to 25 per centum of such loss and provision defining "resulting economic loss" for purposes of subsec. (c).

Subsec. (c)(2). Pub. L. 97-212, §3(2), substituted "the Fund" for "any area account established under this subchapter" in provisions preceding subpar. (A), struck out subpars. (A) and (E) which related, respectively, to damage caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party and the party admitted responsibility and to loss of profits for any period in excess of 6 months unless such claim was supported by records with respect to the claimant's profits during the previous 12-month period, redesignated subpars. (B), (C), and (D) as (A), (B), and (C) respectively, redesignated subpar. (F) as (D), and in subpar. (D) as so redesignated, substituted "received, or will receive," for "or will receive".

1980—Subsec. (c)(2)(A). Pub. L. 96-561 inserted reference to party admitting responsibility.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-212 applicable with respect to claims for damages filed on or after June 30, 1982, with the Secretary of Commerce under section 1845(a) of this title, with provision for the refiling of previously filed claims under certain circumstances, see section 9 of Pub. L. 97-212, set out as a note under section 1841 of this title.

#### § 1844. Burden of proof

With respect to any claim for damages filed under this subchapter, there shall be a presumption that such damages were due to activities related to oil and gas exploration, development, or production if the claimant establishes that—

(1) the commercial fishing vessel was being used for fishing and was located in an area affected by Outer Continental Shelf activities;

(2) a report on the location of the material, equipment, tool, container, or other item which caused such damages and the nature of such damages was made within fifteen days after the date on which the vessel first returns to a port after discovering such damages;

(3) there was no record on the latest nautical charts or Notice to Mariners in effect at least 15 days prior to the date such damages were sustained that such material, equipment, tool, container, or other item existed where such damages occurred, except that in the case of damages caused by a pipeline, the presumption established by this section shall obtain whether or not there was any such record of the pipeline on the damage date; and

(4) there was no proper surface marker or lighted buoy which was attached or closely anchored to such material, equipment, tool, container, or other item.

(Pub. L. 95-372, title IV, §404, Sept. 18, 1978, 92 Stat. 688; Pub. L. 97-212, §4, June 30, 1982, 96 Stat. 145.)

#### AMENDMENTS

1982—Pub. L. 97-212, §4(1), substituted "under this subchapter" for "pursuant to this subchapter" and "damages were due to activities related to oil and gas exploration, development, or production" for "claim is valid" in provisions preceding par. (1).

Par. (2). Pub. L. 97-212, §4(2), substituted "fifteen days after the date on which the vessel first returns to a port after discovering such damages" for "five days after the date on which such damages were discovered".

Par. (3). Pub. L. 97-212, §4(3), inserted "the latest" after "no record on", struck out "the" before "Notice to Mariners", and substituted "in effect at least 15 days prior to the date" for "on the date" and "where such damages occurred, except that in the case of damages caused by a pipeline, the presumption established by this section shall obtain whether or not there was any such record of the pipeline on the damage date" for "in such area".

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-212 applicable with respect to claims for damages filed on or after June 30, 1982, with the Secretary of Commerce under section 1845(a) of this title, with provision for the refiling of previously filed claims under certain circumstances, see section 9 of Pub. L. 97-212, set out as a note under section 1841 of this title.

#### § 1845. Claims procedure

##### (a) Filing requirement; time to file

Any commercial fisherman suffering damages compensable under this subchapter may file a claim for compensation with the Secretary under subsection (d)(1).

##### (b) Transmittal of copy of claim to Secretary of the Interior; reference to Secretary

Upon receipt of any claim under this section, the Secretary shall transmit a copy of the claim to the Secretary of the Interior and shall take such further action regarding the claim that is required under subsection (d).

##### (c) Notification to persons engaged in activities associated with Outer Continental Shelf energy activities; response of persons notified; submittal of evidence

The Secretary of the Interior shall make reasonable efforts to notify all persons known to have engaged in activities associated with Outer Continental Shelf energy activity in the vicinity. Each such person shall promptly notify the Secretary and the Secretary of the Interior as to whether he admits or denies responsibility for the damages claimed. Any such person, including lessees or permittees or their contractors or subcontractors, may submit evidence at any proceeding conducted with respect to such claim.

##### (d) Acceptance of claim by Secretary; time to render decision; review of initial determination

(1) The Secretary shall, under regulations prescribed pursuant to section 1843(a) of this title, specify the time, form and manner in which claims must be filed.

(2) The Secretary may not accept any claim that does not meet the filing requirements specified under paragraph (1), and shall give a claimant whose claim is not accepted written notice of the reasons for nonacceptance. Such written notice must be given to the claimant within 30 days after the date on which the claim was filed and if the claimant does not refile an acceptable claim within 30 days after the date of such written notice, the claimant is not eligible for compensation under this subchapter for the damages concerned; except that the Secretary—