

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—

(A) shall in any case involving a good faith effort by the claimant to meet such filing requirements, or

(B) may in any case involving extenuating circumstances, accept a claim that does not meet the 30-day refiling requirement.

(3)(A) The Secretary shall make an initial determination with respect to the claim within 60 days after the day on which the claim is accepted for filing. Within 30 days after the day on which the Secretary issues an initial determination on a claim, the claimant, or any other interested person who submitted evidence relating to the initial determination, may petition the Secretary for a review of that determination.

(B) If a petition for the review of an initial determination is not filed with the Secretary within the 30-day period provided under subparagraph (A), the initial determination shall thereafter be treated as a final determination by the Secretary on the claim involved.

(C) If a petition for review of an initial determination is timely filed under subparagraph (A), the Secretary shall allow the petitioner 30 days after the day on which the petition is received to submit written or oral evidence relating to the initial determination. The Secretary shall then undertake such review and, on the basis of such review, issue a final determination no later than the 60th day after the day on which the Secretary received the petition for review of an initial determination.

#### (e) Claim preparation fees; attorney's fees

If the decision of the Secretary under subsection (d) is in favor of the commercial fisherman filing the claim, the Secretary, as a part of the amount awarded, shall include reasonable claim preparation fees and reasonable attorney's fees, if any, incurred by the claimant in pursuing the claim.

#### (f) Powers of Secretary

(1) For purposes of any proceeding conducted pursuant to this section, the Secretary shall have the power to administer oaths and subpoena the attendance or testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.

(2) In any proceeding conducted pursuant to this section with respect to a claim for damages resulting from activities on any area of the Outer Continental Shelf, the Secretary shall consider evidence of obstructions in such area which have been identified pursuant to the survey conducted under section 1847<sup>1</sup> of this title.

#### (g) Place of proceeding

Any proceeding conducted with respect to an initial determination on a claim under subsection (d)(3)(A) shall be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Secretary or, if no agreement can be reached, within the United States judicial district in which the home port of the claimant is located.

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

#### (h) Certification and disbursement of award; subrogation of rights; payment of costs of proceedings

(1) The amount awarded in an initial determination by the Secretary under subsection (d) shall be immediately disbursed, subject to the limitations of this section, by the Secretary if the claimant—

(A) states in writing that he will not petition for review of the initial determination; and

(B) enters into an agreement with the Secretary to repay to the Secretary all or any part of the amount of the award if, after review under subsection (d)(3)(C) or, if applicable, after judicial review, the amount of the award, or any part thereof, is not sustained.

(2) Upon payment of a claim by the Secretary pursuant to this subsection, the Secretary shall acquire by subrogation all rights of the claimant against any person found to be responsible for the damages with respect to which such claim was made. Any moneys recovered by the Secretary through subrogation shall be deposited into the Fund.

(3) Any person who denies responsibility for damages with respect to which a claim is made and who is subsequently<sup>2</sup> found to be responsible for such damages, and any commercial fisherman who files a claim for damages and who is subsequently found to be responsible for such damages, shall pay the costs of the proceedings under this section with respect to such claim.

#### (i) Judicial review

Any claimant or other person who suffers a legal wrong or who is adversely affected or aggrieved by a final determination of the Secretary under subsection (d), may, no later than 30 days after such determination is made, seek judicial review of the determination in the United States district court for such United States judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States district court for the United States judicial district in which is located the home port of the claimant.

(Pub. L. 95-372, title IV, §405, Sept. 18, 1978, 92 Stat. 688; Pub. L. 97-212, §5, June 30, 1982, 96 Stat. 145; Pub. L. 98-498, title IV, §420(3), (4), Oct. 19, 1984, 98 Stat. 2309, 2310.)

#### REFERENCES IN TEXT

Section 1847 of this title, referred to in subsec. (f)(2), was repealed by Pub. L. 97-212, §6(a), June 30, 1982, 96 Stat. 147.

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-498, §420(3), substituted “under subsection (d)(1)” for “, except that no such claim may be filed more than 60 days after the date of discovery of the damages with respect to which such claim is made”.

Subsec. (d)(1). Pub. L. 98-498, §420(4), inserted “time,” before “form”.

1982—Subsec. (b). Pub. L. 97-212, §5(1), struck out pars. (1) and (2) designations, and substituted “shall take such further action regarding the claim that is re-

<sup>2</sup> So in original. Probably should be “subsequently”.

quired under subsection (d)” for “refer such matter to a hearing examiner appointed under section 3105 of title 5”.

Subsec. (c). Pub. L. 97-212, §5(2), substituted “proceeding” for “hearing”.

Subsec. (d). Pub. L. 97-212, §5(3), substituted provisions relating to the filing of claims with the Secretary of the Interior in order to be eligible for compensation under this subchapter, the time for such filing, the time in which the Secretary must make his initial determination with respect to the claim, and the submission of evidence by the petitioner when reviewing an initial determination by the Secretary, for provisions relating to the time in which a hearing examiner has to render a decision.

Subsec. (e). Pub. L. 97-212, §5(4), substituted provisions that if the decision of the Secretary is in favor of the commercial fisherman filing the claim, the Secretary shall award to such claimant reasonable attorney’s fees and claim preparation fees incurred by claimant in pursuing such claim for provisions that upon a decision in favor of the claimant fisherman, the hearing examiner include in the award reasonable attorney’s fees incurred by the claimant in pursuing such claim.

Subsec. (f). Pub. L. 97-212, §5(5), substituted “the Secretary” for “hearing examiner” and “proceeding” for “hearing” wherever appearing. The amendment which directed the substitution of “the Secretary” for “hearing examiner” was executed by substituting “the Secretary” for “the hearing examiner”, as the probable intent of Congress, to avoid repeating the article “the” before “Secretary” in two places.

Subsec. (g). Pub. L. 97-212, §5(6), substituted “Any proceeding conducted with respect to an initial determination on a claim under subsection (d)(3)(A) shall be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Secretary or, if no agreement can be reached, within the United States judicial district in which the home port of the claimant is located” for “A hearing conducted under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred, or, if such matter occurred within two or more districts, in any of the affected districts, or, if such matter occurred outside of any district, in the nearest district”.

Subsec. (h)(1). Pub. L. 97-212, §5(7)(A), substituted provisions that the amount awarded in an initial determination by the Secretary under subsec. (d) be immediately disbursed by the Secretary if the claimant states in writing that he will not petition for review of the initial determination and he enters into an agreement with the Secretary to repay to the Secretary all or any part of the award that is not sustained upon later judicial review for provisions that upon a decision of the hearing examiner and in absence of judicial review, any amount to be paid would be certified to the Secretary who would promptly disburse the award and that such decision of the hearing examiner was not reviewable by the Secretary.

Subsec. (h)(2). Pub. L. 97-212, §5(7)(B), inserted provision that any moneys recovered by the Secretary through subrogation shall be deposited into the Fund.

Subsec. (i). Pub. L. 97-212, §5(8), substituted “Any claimant or other person who suffers a legal wrong or who is adversely affected or aggrieved by a final determination of the Secretary under subsection (d), may, no later than 30 days after such determination is made, seek judicial review of the determination in the United States district court for such United States judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States district court for the United States judicial district in which is located the home port of the claimant” for “Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner under this section may, no later than 60 days after such decision is made, seek judicial review of such decision in the United States court of

appeals for the circuit in which the damage occurred, or if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit”.

#### 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.

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

Authority to owners or operators of fishing vessels and commercial fishermen failing to make application for compensation within the time limitations of this section or section 1980 of Title 22, Foreign Relations and Intercourse, to make application for compensation within the 60-day period beginning on Dec. 22, 1980, see section 240(a), (b)(1) of Pub. L. 96-561, title II, Dec. 22, 1980, 94 Stat. 3300, set out as a note under section 1980 of Title 22.

#### § 1846. Repealed. Pub. L. 104-66, title I, § 1021(f), Dec. 21, 1995, 109 Stat. 713

Section, Pub. L. 95-372, title IV, §406, Sept. 18, 1978, 92 Stat. 689, directed Secretary to submit annual reports to Congress setting forth Fishermen’s Contingency Fund damage descriptions and compensation amounts and, in first annual report, to evaluate feasibility of (1) fine or penalty impositions, or (2) bonding requirements.

#### § 1847. Repealed. Pub. L. 97-212, §6(a), June 30, 1982, 96 Stat. 147

Section, Pub. L. 95-372, title IV, §407, Sept. 18, 1978, 92 Stat. 690, related to survey of obstructions on Outer Continental Shelf and development of charts for commercial fishermen.

#### EFFECTIVE DATE OF REPEAL

Repeal effective June 30, 1982, and applicable with respect to claims for damages filed on or after such date, with the Secretary of Commerce under section 1845(a) of this title, see section 9(a) of Pub. L. 97-212, set out as an Effective Date of 1982 Amendment note under section 1841.

#### SUBCHAPTER III—MISCELLANEOUS PROVISIONS

#### § 1861. Repealed. Pub. L. 99-367, §2(b), July 31, 1986, 100 Stat. 774

Section, Pub. L. 95-372, title VI, §601, Sept. 18, 1978, 92 Stat. 693, required Secretary of the Interior, within six months of Sept. 18, 1978, and in his annual report thereafter, to report to Comptroller General on shut-in and flaring oil and gas wells and required Comptroller General, within six months after receipt of report, to review and evaluate methodology used by Secretary in allowing wells to be shut-in or flare natural gas and submit his findings and recommendations to Congress.

#### § 1862. Natural gas distribution

##### (a) Expanded participation by local distribution companies in acquisition of leases and development of natural gas resources

The purpose of this section is to encourage expanded participation by local distribution companies in acquisition of leases and development of natural gas resources on the Outer Continen-