

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

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(b) of Pub. L. 95-376 provided that: “The amendment made by subsection (a) [amending this section] shall take effect January 1, 1979.”

SAVINGS PROVISION

Section 3(c) of Pub. L. 95-376 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

Section 240(a), (b)(1) of Pub. L. 96-561 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

Section 4(a) of Pub. L. 96-289 provided that: “Notwithstanding the provisions of section 10(c)(1) of the Fishermen’s 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.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 1821.

§ 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) of this section, 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

Section 401 of Pub. L. 104-43 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."

§ 1980b. Sanctions for imposition of conditions on U.S. fishing vessel found inconsistent with international law

(a) Certification

If the Secretary of State finds that the government of any nation imposes conditions on the operation or transit of United States fishing vessels which the United States regards as being inconsistent with international law or an international agreement, the Secretary of State shall certify that fact to the President.

(b) Sanctions

Upon receipt of a certification under subsection (a) of this section, the President shall direct the heads of Federal agencies to impose similar conditions on the operation or transit of fishing vessels registered under the laws of the nation which has imposed conditions on United States fishing vessels.

(c) "Fishing vessel" defined

For the purposes of this section, the term "fishing vessel" has the meaning given that term in section 2101(11a) of title 46.