Public Law 97-212
97th Congress

An Act

June 30, 1982
[H.R. 3816]

To improve the operation of the Fishermen's Contingency Fund established to compensate commercial fishermen for damages resulting from oil and gas exploration, development, and production in areas of the Outer Continental Shelf.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fishermen's Contingency Fund, improvement.

SECTION 1. DEFINITIONS.

Section 401 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1841) is amended as follows:

(1) renumber paragraphs (1) through (7) as paragraphs (2) through (8); and

(2) insert immediately before paragraph (2), as renumbered, the following:

"(1) 'area affected by Outer Continental Shelf activities' means any geographic area:

"(A) which is under oil or gas lease on the Outer Continental Shelf;

"(B) where Outer Continental Shelf exploration, development or production activities have been permitted, except geophysical activities;

"(C) where pipeline rights-of-way have been granted; or

"(D) otherwise impacted by such activities including but not limited to expired lease areas, relinquished rights-of-way and easements, Outer Continental Shelf supply vessel routes, or other areas as determined by the Secretary;".

SECTION 2. ESTABLISHMENT AND OPERATION OF FUND.

Section 402 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1842) is amended to read as follows:

"ESTABLISHMENT OF FISHERMEN'S CONTINGENCY FUND; FEE COLLECTION

"SEC. 402. (a)(1) There is established in the Treasury of the United States a Fishermen's Contingency Fund. The Fund shall be available to the Secretary without fiscal year limitations as a revolving fund for the purpose of making payments pursuant to this section. The Fund shall consist of—

"(A) revenues received from investments made under paragraph (3);

"(B) amounts collected under subsection (b); and

"(C) amounts recovered by the Secretary under section 405(h)(2).

Post, p. 145.

The total amount in the Fund that is collected under subsection (b) may at no time exceed $2,000,000; and the total amount in the Fund which is attributable to revenue received under paragraph (3) or recovered by the Secretary under section 405(h)(2) shall be expended prior to amounts collected under subsection (b). Not more than 8

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

percent of the total amount in the Fund may be expended in any fiscal year for paying the administrative and personnel expenses referred to in paragraph (2)(A).

"(2) The Fund shall be available, as provided for in appropriation Acts solely for the payment of—

"(A) the personnel and administrative expenses incurred in carrying out this title;

"(B) any claim, in accordance with procedures established under this section, for damages that are compensable under this title; and

Post, p. 145.

"(C) attorney and other fees awarded under section 405(e) with respect to any such claim.

"(3) Sums in the Fund that are not currently needed for the purposes of the Fund shall be kept on deposit in appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury or invested in obligations of, or guaranteed by, the United States. Any revenue accruing from such deposits and investments shall be deposited into the Fund.

"(4) The Fund may sue and be sued in its own name. All litigation by or against the Fund shall be referred to the Attorney General.

"(b)(1) Except as provided in paragraph (2), each holder of a lease that is issued or maintained under the Outer Continental Shelf Lands Act and each holder of an exploration permit, or an easement or right-of-way for the construction of a pipeline in any area of the Outer Continental Shelf, shall pay an amount specified by the Secretary. The Secretary of the Interior shall collect such amount and deposit it into the Fund. In any calendar year, no holder of a lease, permit, easement, or right-of-way shall be required to pay an amount in excess of $5,000 per lease, permit, easement, or right-of-way.

"(2) Payments may not be required under paragraph (1) by the Secretary of the Interior with respect to geological permits and geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).".

SEC. 3. ADMINISTRATION OF CLAIMS.

Section 403(c) of such amendments of 1978 (43 U.S.C. 1843(c)) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

"(c)(1) Payments shall be disbursed by the Secretary from the Fund to compensate commercial fishermen for actual and consequential damages, including resulting economic loss, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with Outer Continental Shelf oil and gas exploration, development, or production activities. The compensation payable under this section for resulting economic loss shall be an amount equal to 25 per centum of such loss. For purposes of this subsection, the term 'resulting economic loss' means the gross income, as estimated by the Secretary, that a commercial fisherman who is eligible for compensation under this section will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use.".

"Resulting economic loss."

(2) Paragraph (2) is amended—

(A) by striking out "any area account established under this title—" and inserting in lieu thereof "the Fund—",

(B) by striking out subparagraphs (A) and (E),

(C) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively,

(D) by inserting "and" after the semicolon in subparagraph (C) (as so redesignated),

(E) by redesignating subparagraph (F) as subparagraph (D), and

(F) by striking out "or will receive" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "received, or will receive,".

SEC. 4. BURDEN OF PROOF.

Section 404 of such amendments of 1978 (43 U.S.C. 1844) is amended—

(1) by amending the matter appearing before paragraph (1) to read as follows: "With respect to any claim for damages filed under this title, 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—";

(2) by striking out "five days after the date on which such damages were discovered;" in paragraph (2) and inserting in lieu thereof "fifteen days after the date on which the vessel first returns to a port after discovering such damages;"; and

(3) by amending paragraph (3) to read as follows: "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".

SEC. 5. CLAIMS PROCEDURE.

Section 405 of such amendments of 1978 (43 U.S.C. 1845) is amended as follows:

(1) Subsection (b) is amended to read as follows:

"(b) 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).".

(2) Subsection (c) is amended by striking out "hearing" and inserting in lieu thereof "proceeding".

(3) Subsection (d) is amended to read as follows:

"(d)(1) The Secretary shall, under regulations prescribed pursuant to section 403(a), specify the form and manner in which claims must be filed. 43 USC 1843.

"(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 title for the damages concerned; except that the Secretary— Nonacceptance, written notice.

"(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.

Determination review.

"(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.".

(4) Subsection (e) is amended to read as follows:

"(e) 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.".

(5) Subsection (f) is amended by striking out "hearing examiner" each place it appears therein and inserting in lieu thereof "the Secretary", and by striking out "hearing" each place it appears therein and inserting in lieu thereof "proceeding".

(6) Subsection (g) is amended to read as follows:

"(g) 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.".

(7) Subsection (h) is amended—

(A) by amending paragraph (1) to read as follows:

"(h)(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."; and

(B) paragraph (2) is amended by adding at the end thereof the following new sentence: "Any moneys recovered by the Secretary through subrogation shall be deposited into the Fund.".

(8) Subsection (i) is amended to read as follows:

"(i) 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.". Judicial review.

SEC. 6. SURVEY OF OBSTRUCTIONS.

(a) Section 407 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1847) is repealed. Repeal.

(b) The table of contents of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by striking:

"1847. Survey of obstructions on the Outer Continental Shelf.".

SEC. 7. REGULATIONS IMPLEMENTING THIS ACT.

Section 403(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1843(a)(1)) is amended by striking out "claims; and" and inserting in lieu thereof "claims (except that, notwithstanding any other provision of law, final regulations implementing the 1981 amendments to this title shall be published in the Federal Register within 120 days after the date of the enactment of such amendments); and". Publication in Federal Register.

SEC. 8. TECHNICAL AMENDMENT.

Section 401(3)(B) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1841(3)(B)) is amended by striking out "at sea".

SEC. 9. EFFECTIVE DATE. 43 USC 1841 note.

(a) Except as provided for in subsection (b), the amendments made by this Act shall apply with respect to claims for damages that are filed, on or after the date of the enactment of this Act, with the Secretary of Commerce under section 405(a) of the Outer Continental Shelf Lands Act Amendments of 1978. 43 USC 1845.

(b)(1) Any commercial fisherman who filed a claim with the Secretary of Commerce for compensation under title IV of such amendments of 1978 before the date of the enactment of this Act may, if no decision on such claim was rendered under section 405(d) of such title IV before such date of enactment, refile such claim with the Secretary if the claimant notifies the Secretary in writing within thirty days after notification under paragraph (2) of his eligibility to refile the claim that he intends to so refile. If timely notification of intent to refile is made under the preceding sentence, any action pending with respect to the original claim shall be suspended pending the refiling of the claim under paragraph (2) and, if such refiling is timely made, such action shall be vacated. 43 USC 1841. *Ante*, p. 145.

(2) The Secretary shall notify each claimant eligible to refile a claim under paragraph (1) of such eligibility within 10 days after the date of enactment of this Act.

(3) A claim for which notification on intent to refile was timely made under paragraph (1) must be refiled with the Secretary within the thirty-day period after the date on which the regulations promulgated to implement the amendments made by this Act become

final or action shall be resumed with respect to such claim without regard to the amendments made by this Act.

(4) The amendments made by this Act shall apply with respect to any claim that is refiled on a timely basis under paragraph (3).

SEC. 10. GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) Section 2 of the Fishery Conservation Zone Transition Act (16 U.S.C. 1823 note) is amended—

(1) by inserting "(a)" immediately before "Notwithstanding"; and

(2) by adding at the end thereof the following new subsection:

16 USC 1823. "(b) Notwithstanding such section 203—

"(1) the governing international fishery agreement referred to in subsection (a)(5), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 11, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976;

"(2) the governing international fishery agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs, as contained in the message to the House of Representatives and the Senate from the Secretary of State dated June 15, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of the Act of 1976; and

"(3) the governing international fishery agreement referred to in subsection (a)(6), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated June 21, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976.

Each such governing international fishery agreement shall enter into force and effect with respect to the United States on July 1, 1982.".

16 USC 1823 note. (b) Notwithstanding any provision of the Act entitled "An Act for the conservation and management of the fisheries, and for other purposes", dated April 13, 1976 (16 U.S.C. 1801 et seq.), the governing international fishery agreements referred to in section 2(a) (9) and (10) of the Fishery Conservation Zone Transition Act shall be extended, and shall be in force and effect with respect to the United States, for the period of time ending on—

16 USC 1823 note.

(1) the deadline for completion of Congressional review, pursuant to section 203(a) of such 1976 Act, of any new governing international fishery agreement signed, on or before July 31, 1982, by the United States and the respective foreign government that is a party to the agreement in question; or 16 USC 1823.

(2) July 31, 1982, if the United States and the respective foreign government that is a party to the agreement in question fail to sign a new governing international fishery agreement on or before that date.

Approved June 30, 1982.

LEGISLATIVE HISTORY H.R. 3816:

HOUSE REPORT No. 97-354 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD:
Vol. 127 (1981): Dec. 15, considered and passed House.
Vol. 128 (1982): June 23, considered and passed Senate, amended.
June 24, House concurred in Senate amendments with an amendment.
June 29, Senate concurred in House amendments.