

SUBCHAPTER D—CLAIMS AND STOLEN PROPERTY

PART 33—FISHERMEN'S PROTECTIVE ACT GUARANTY FUND PROCEDURES UNDER SECTION 7

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SOURCE: 61 FR 49967, Sept. 24, 1996, unless otherwise noted.

§ 33.1 Purpose.

These rules clarify procedures for the administration of Section 7 of the Fishermen's Protective Act of 1967. Section 7 of the Act establishes a Fishermen's Guaranty Fund to reimburse owners and charterers of United States commercial fishing vessels for certain losses and costs caused by the seizure and detention of their vessels by foreign countries under certain claims to jurisdiction not recognized by the United States.

§ 33.2 Definitions.

For the purpose of this part, the following terms mean:

Act. The Fishermen's Protective Act of 1967 (22 U.S.C. 1971 *et seq.*).

Capital equipment. Equipment or other property which may be depreciated for income tax purposes.

Depreciated replacement costs. The present replacement cost of capital equipment after being depreciated on a straight line basis over the equipment's depreciable life, which is standardized at ten years.

Downtime. The time a vessel normally would be in port or transiting to and from the fishing grounds.

Expendable items. Any property, excluding that which may be depreciated for income tax purposes, which is

maintained in inventory or expensed for tax purposes.

Fund. The Fishermen's Guaranty Fund established in the U.S. Treasury under section 7(c) of the Act (22 U.S.C. 1977(c)).

Market value. The price property would command in a market, at the time of property loss, assuming a seller willing to sell and buyer willing to buy.

Other direct charge. Any levy which is imposed in addition to, or in lieu of any fine, license fee, registration fee, or other charge.

Owner. The owner or charterer of a commercial fishing vessel.

Secretary. The Secretary of State or the designee of the Secretary of State.

Seizure. Arrest of a fishing vessel by a foreign country for allegedly illegal fishing.

U.S. fishing vessel. Any private vessel documented or certified under the laws of the United States as a commercial fishing vessel.

§ 33.3 Eligibility.

Any owner or charterer of a U.S. fishing vessel is eligible to apply for an agreement with the Secretary providing for a guarantee in accordance with section 7 of the Act.

§ 33.4 Applications.

(a) *Applicant.* An eligible applicant for a guaranty agreement must:

(1) Own or charter a U.S. fishing vessel; and

(2) Submit with his application the fee specified in § 33.6 below.

(b) *Application forms.* Application forms may be obtained by contacting the Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7820, U.S. Department of State, Washington, DC 20520-7818; Telephone 202-647-3941.

(c) *Where to apply.* Applications must be submitted to the Director, Office of marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7820, U.S. Department of State, Washington, DC 20520-7818.

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(d) *Application approval.* Application approval will be by execution of the guaranty agreement by the Secretary or by the Secretary's designee.

§ 33.5 Guaranty agreements.

(a) *Period in effect.* Agreements are effective for a Fiscal Year beginning October 1 and ending on the next September 30. Applications submitted after October 1 are effective from the date the application and fee are mailed (determined by the postmark) through September 30.

(b) *Guaranty agreement transfer.* A guaranty agreement may, with the Secretary's prior consent, be transferred when a vessel which is the subject of a guaranty agreement is transferred to a new owner if the transfer occurs during the agreement period.

(c) *Guaranty agreement renewal.* A guaranty agreement may be renewed for the next agreement year by submitting an application form with the appropriate fee for the next year in accordance with the Secretary's annually published requirements regarding fees. Renewals are subject to the Secretary's approval.

(d) *Provisions of the agreement.* The agreement will provide for reimbursement for certain losses caused by foreign countries' seizure and detention of U.S. fishing vessels on the basis of claims to jurisdiction which are not recognized by the United States. Recent amendments to the Magnuson Fishery Conservation and Management Act (16 U.S.C. (1801 *et seq.*) assert U.S. jurisdiction over highly migratory species of tuna in the U.S. exclusive economic zone (EEZ). Accordingly, as a matter of international law, the United States now recognizes other coastal states' claims to jurisdiction over tuna in their EEZ'S. This change directly affect certification of claims filed under the Fishermen's Protective Act. Participants are advised that this means that the Department will no longer certify for payment claims resulting from the seizure of a U.S. vessel while such vessel was fishing for tuna within the exclusive economic zone of another country in violation of that country's laws. Claims for detentions or seizures based on other claims to jurisdiction not recognized by the United States, or

on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States, may still be certified by the Department.

§ 33.6 Fees.

(a) *General.* Fees provide for administrative costs and payment of claims. Fees are set annually on the basis of past and anticipated claim experience. The annual agreement year for which fees are payable starts on October 1 and ends on September 30 of the following year.

(b) *Amount and payment.* The amount of each annual fee or adjusted fee will be established by the Office Director of the Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, by publication of a notice in the FEDERAL REGISTER. Each notice will establish the amount of the fee, when the fee is due, when the fee is payable, and any special conditions surrounding extension of prior agreements or execution of new agreements. Unless otherwise specified in such notices, agreement coverage will commence with the post-marked date of the fee payment and application.

(c) *Adjustment and refund.* Fees may be adjusted at any time to reflect actual seizure and detention experience for which claims are anticipated. Failure to submit adjusted fees will result in agreement termination as of the date the adjusted fee is payable. No fees will be refunded after an agreement is executed by the Secretary.

(d) *Disposition.* All fees will be deposited in the Fishermen's Guaranty Fund. They will remain available without fiscal year limitation to carry out section 7 of the Act. Claims will be paid from fees and from appropriated funds, if any. Fees not required to pay administrative costs or claims may be invested in U.S. obligations. All earnings will be credited to the Fishermen's Guaranty Fund.

§ 33.7 Conditions for claims.

(a) Unless there is clear and convincing credible evidence that the seizure did not meet the requirements of

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the Act, payment of claims will be made when:

(1) A covered vessel is seized by a foreign country under conditions specified in the Act and the guaranty agreement; and

(2) The incident occurred during the period the guaranty agreement was in force for the vessel involved.

(b) Payments will be made to the owner for:

(1) All actual costs (except those covered by section 3 of the Act or reimbursable from some other source) incurred by the owner during the seizure or detention period as a direct result thereof, including:

(i) Damage to, or destruction of, the vessel or its equipment; or

(ii) Loss or confiscation of the vessel or its equipment; and

(iii) Dockage fees or utilities;

(2) The market value of fish or shellfish caught before seizure of the vessel and confiscated or spoiled during the period of detention; and

(3) Up to 50 percent of the vessel's gross income lost as a direct result of the seizure and detention.

(c) The exceptions are that no payment will be made from the Fund for a seizure which is:

(1) Covered by any other provision of law (for example, fines, license fees, registration fees, or other direct charges payable under section 3 of the Act);

(2) Made by a country at war with the United States;

(3) In accordance with any applicable convention or treaty, if that treaty or convention was made with the advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure;

(4) Which occurs before the guaranty agreement's effective date or after its termination;

(5) For which other sources of alternative reimbursement have not first been fully pursued (for example, the insurance coverage required by the agreement and valid claims under any law);

(6) For which material requirements of the guaranty agreement, the Act, or the program regulations have not been fully fulfilled; or

(7) In the view of the Department of State occurred because the seized vessel was undermining or diminishing the effectiveness of international conservation and management measures recognized by the United States, or otherwise contributing to stock conservation problems pending the establishment of such measures.

§ 33.8 Claim procedures.

(a) *Where and when to apply.* Claims must be submitted to the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7820, U.S. Department of State, Washington, DC 20520-7818. Claims must be submitted within ninety (90) days after the vessel's release. Requests for extension of the filing deadline must be in writing and approved by the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs.

(b) *Contents of claim.* All material allegations of a claim must be supported by documentary evidence. Foreign language documents must be accompanied by an authenticated English translation. Claims must include:

(1) The captain's sworn statement about the exact location and activity of the vessel when seized;

(2) Certified copies of charges, hearings, and findings by the government seizing the vessel;

(3) A detailed computation of all actual costs directly resulting from the seizure and detention, supported by receipts, affidavits, or other documentation acceptable to the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs;

(4) A detailed computation of lost income claimed, including:

(i) The date and time seized and released;

(ii) The number of miles and running time from the point of seizure to the point of detention;

(iii) The total fishing time lost (explain in detail if lost fishing time claimed is any greater than the elapsed time from seizure to the time required after release to return to the point of seizure);

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(iv) The tonnage of catch on board at the time of seizure;

(v) The vessel's average catch-per-day's fishing for the three calendar years preceding the seizure;

(vi) The vessel's average downtime between fishing trips for the three calendar years preceding the seizure; and

(vii) The price-per-pound for the catch on the first day the vessel returns to port after the seizure and detention unless there is a pre-negotiated price-per-pound with a processor, in which case the pre-negotiated price must be documented; and

(5) Documentation for confiscated, damaged, destroyed, or stolen equipment, including:

(i) The date and cost of acquisition supported by invoices or other acceptable proof of ownership; and

(ii) An estimate from a commercial source of the replacement or repair cost.

(c) *Burden of proof.* The claimant has the burden of proving all aspects of the claim, except in cases of dispute over the facts of the seizure where the claimant shall have the presumption that the seizure was eligible unless there is clear and convincing credible evidence that the seizure did not meet the eligibility standards of the Act.

§ 33.9 Amount of award.

(a) *Lost fishing time.* Compensation is limited to 50 percent of the gross income lost as a direct result of the seizure and detention, based on the value of the average catch-per-day's fishing during the three most recent calendar years immediately preceding the seizure as determined by the Secretary, based on catch rates on comparable vessels in comparable fisheries. The compensable period for cases of seizure and detention not resulting in vessels confiscation is limited to the elapsed time from seizure to the time after release when the vessel could reasonably be expected to return to the point of seizure. The compensable period in cases where the vessel is confiscated is limited to the elapsed time from seizure through the date of confiscation, plus an additional period to purchase a replacement vessel and return to the point of seizure. In no case can the additional period exceed 120 days.

(1) Compensation for confiscation of vessels, where no buy-back has occurred, will be based on market value which will be determined by averaging estimates of market value obtained from as many vessel surveyors or brokers as the Secretary deems practicable;

(2) Compensation for capital equipment other than vessel, will be based on depreciated replacement cost;

(3) Compensation for expendable items and crew's belongings will be 50 percent of their replacement costs; and

(4) Compensation for confiscated catch will be for full value, based on the price-per-pound.

(b) *Fuel expense.* Compensation for fuel expenses will be based on the purchase price, the time required to run to and from the fishing grounds, the detention time in port, and the documented fuel consumption of the vessel.

(c) *Stolen or confiscated property.* If the claimant was required to buy back confiscated property from the foreign country, the claimant may apply for reimbursement of such charges under section 3 of the Act. Any other property confiscated is reimbursable from this Guaranty Fund. Confiscated property is divided into the following categories:

(1) Compensation for confiscation of vessels, where no buy-back has occurred, will be based on market value which will be determined by averaging estimates of market value obtained from as many vessel surveyors or brokers as the Secretary deems practicable;

(2) Compensation for capital equipment other than a vessel, will be based on depreciated replacement cost;

(3) Compensation for expendable items and crew's belongings will be 50 percent of their replacement cost; and

(4) Compensation for confiscated catch will be for full value, based on the price-per-pound.

(d) *Insurance proceeds.* No payments will be made from the Fund for losses covered by any policy of insurance or other provisions of law.

(e) [Reserved]

(f) *Appeals.* All determinations under this section are final and are not subject to arbitration or appeal.

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§ 33.10 Payments.

The Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, will pay the claimant the amount calculated under § 33.9. Payment will be made as promptly as practicable, but may be delayed pending the appropriation of sufficient funds, should fee collections not be adequate to sustain the operation of the Fund. The Director shall notify the claimant of the amount approved for payment as promptly as practicable and the same shall thereafter constitute a valid, but non-interest bearing obligation of the Government. Delays in payments are not a direct consequence of seizure and detention and cannot therefore be construed as increasing the compensable period for lost fishing time. If there is a question about distribution of the proceeds of the claim, the Director may request proof of interest from all parties, and will settle this issue.

§ 33.11 Records.

The Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs will have the right to inspect claimants' books and records as a precondition to approving claims. All claims must contain written authorization of the guaranteed party for any international, federal, state, or local governmental Agencies to provide the Office Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs any data or information pertinent to a claim.

§ 33.12 Penalties.

Persons who willfully make any false or misleading statement or representation to obtain compensation from the Fund are subject to criminal prosecution under 22 U.S.C. 1980(g). This provides penalties up to \$25,000 or imprisonment for up to one year, or both. Any evidence of criminal conduct will be promptly forwarded to the United States Department of Justice for action. Additionally, misrepresentation, concealment, or fraud, or acts intentionally designed to result in seizure, may void the guaranty agreement.

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PART 34—DEBT COLLECTION

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Subpart A—General Provisions

§ 34.1 Purpose.

These regulations prescribe the procedures to be used by the United States Department of State (STATE) in the collection of debts owed to STATE and to the United States.

§ 34.2 Scope.

(a) Except as set forth in this part or otherwise provided by law, STATE will conduct administrative actions to collect debts (including offset, compromise, suspension, termination, dis-closure and referral) in accordance