

Public Law 95-376

95th Congress

An Act

Sept. 18, 1978
[H.R. 10878]

To extend until October 1, 1981, the voluntary insurance program provided by section 7 of the Fishermen's Protective Act of 1967, and for other purposes.

Fishermen's
Protective Act of
1967,
amendments.
Voluntary
insurance
program,
extension.
Certification to
President.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)), is amended by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1981; except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriation Acts".

SEC. 2. Section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978) is amended—

(1) by amending subsection (a) thereof—

(A) by inserting "(1)" immediately before "When", and
(B) by striking out the last sentence and inserting in lieu thereof the following:

"(2) When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

"(3) Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of fish products (if the certification is made under paragraph (1)) or wildlife products (if the certification is made under paragraph (2)) from the offending country for such duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.";

(2) by amending subsection (b)—

(A) by inserting "or the Secretary of the Interior" immediately after "Secretary of Commerce", and

(B) by inserting "or wildlife products" immediately after "fish products" each place it appears therein;

(3) by amending subsection (c) by inserting "or wildlife products" immediately after "fish products";

(4) by amending subsection (d) (2) by inserting "and wildlife products" immediately after "fish products";

(5) by amending subsection (e)—

(A) by inserting "and wildlife products" immediately after "fish products" in paragraph (1) and the first sentence of paragraph (5),

(B) by inserting "or other conveyance" immediately after "vessel" in paragraph (4) (B), and

(C) by striking out "Any fish products" in the second sentence of paragraph (5) and inserting in lieu thereof "Fish products and wildlife products";

(6) by amending subsection (f) by striking out "is" and inserting in lieu thereof "the Secretary of Commerce, and the Secretary of the Interior are each";

Notification to
Congress.

Regulations.

(7) by amending subsection (g)—

(A) by striking out “in force” in paragraph (3) and inserting in lieu thereof “in effect”,

(B) by striking out “to which the United States is a signatory party,” and inserting in lieu thereof “which is in force with respect to the United States,” and

(C) by adding at the end thereof the following:

“(5) The term ‘international program for endangered or threatened species’ means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

“(6) The term ‘wildlife products’ means fish (other than those to which paragraph (4) applies) and wild animals, and parts (including eggs) thereof, taken within an offending country and all products of any such fish and wild animals, or parts thereof, whether or not such products are packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof. Such term does not include any wild animal or fish if brought or imported into the United States for scientific research.

“(7) The term ‘taking’ means—

“(A) for purposes of subsection (a) (2)—

“(i) to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or

“(ii) to attempt to engage in any such conduct with respect to,

animals to which an international program for endangered or threatened species applies; and

“(B) for purposes of paragraph (6), any conduct described in subparagraph (A) (i), whether or not such conduct is legal under the laws of the offending country, undertaken with respect to any wild animal.”

SEC. 3. (a) Section 10 of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1980) is amended to read as follows:

“SEC. 10. (a) For purposes of this section—

“(1) The terms ‘fishery’, ‘fishery conservation zone’, ‘fishing’, ‘fishing vessel’, ‘Secretary’, and ‘vessel of the United States’ shall each have the same respective meaning as is given to such terms in section 3 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802).

“(2) The term ‘fishing gear’ means any equipment or appurtenance which is necessary for the carrying out of fishing operations by a fishing vessel, whether or not such equipment or appurtenance is attached to such vessel.

“(3) The term ‘fund’ means the Fishing Vessel and Gear Damage Compensation Fund established under subsection (f).

“(b) Subject to the provisions of this section, the owner or operator (hereinafter referred to as the ‘vessel owner’) of any fishing vessel which is a vessel of the United States is eligible for monetary compensation under this section for any damage to, loss of, or destruction of such vessel, or any fishing gear used with such vessel, or both, if the damage, loss, or destruction—

“(1) in the case of such vessel—

“(A) occurs when such vessel is engaged in any fishery subject to the exclusive fishery management authority of the United States under the Fishery Conservation and Management Act of 1976, and

Definitions.

Damages to fishing vessels and gear, compensation.

16 USC 1801 note.

"(B) is attributable to any vessel (or its crew or fishing gear) other than a vessel of the United States; or

"(2) in the case of such fishing gear—

"(A) occurs when such fishing gear is being used for fishing in any fishery subject to such exclusive management authority, and

"(B) is attributable to (i) any other vessel, whether such vessel is a vessel of the United States, or (ii) an act of God.

"(c) A vessel owner is not eligible for compensation under this section with respect to fishing vessel or fishing gear damage, loss, or destruction unless such owner—

"(1) makes application to the Secretary for compensation under this section within sixty days after the day on which the damage, loss, or destruction occurred or was first noticed by the owner;

"(2) pays upon making such application a reasonable administrative fee which the Secretary shall deposit into the fund;

"(3) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the fishery vessel or fishing gear concerned;

"(4) has complied with all applicable regulations, if any, relating to the marking of, and (if appropriate) the notification of the location of, the fishing gear concerned; and

"(5) is in compliance with such other regulations as may be prescribed by the Secretary to carry out this section.

"(d) (1) Application for compensation under this section shall be made in such form and manner, and include such documentation and other evidence relating to the cause and extent of the damage, loss, or destruction claimed, as the Secretary shall prescribe by regulation. The Secretary shall promptly, but not later than sixty days after receipt of an application, consider, and issue an initial determination with respect to, the application.

"(2) The amount of compensation awarded to any vessel owner under this section shall be—

"(A) determined on the basis of the depreciated replacement cost, or the repair cost, whichever cost is less, of the fishing vessel or fishing gear concerned;

"(B) proportionally reduced to the extent that evidence indicates that negligence by the vessel owner contributed to the cause or extent of the damage, loss, or destruction; and

"(C) reduced by the amount of compensation, if any, which the vessel owner has received or will receive with respect to the damage, loss, or destruction through insurance, pursuant to any other provision of law, or otherwise.

"(3) The initial determination made by the Secretary under paragraph (1) with respect to any application shall—

"(A) if the application is disapproved, set forth the reasons therefor; or

"(B) if the application is approved, set forth the amount of compensation to which the applicant is entitled and the basis on which such amount was determined.

"(4) Any vessel owner who is aggrieved by any decision of the Secretary contained in the initial determination of the Secretary regarding such owner's application may, within thirty days after the date of issue of the initial determination, petition the Secretary for a review of the decision. If petition for review is not made to the Secretary within such thirty-day period regarding the initial determination, the initial determination shall be deemed to be the final determination on

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Application for
compensation.
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Review.

the application. Before undertaking any such review, the Secretary shall provide to the vessel owner opportunity to submit additional written or oral evidence relating to the decision. After review the Secretary shall issue a final determination with respect to the application.

"(5) If compensation is awarded under the final determination on any application, the Secretary shall promptly pay from the fund to such owner the amount of compensation stated in the final determination. Upon the acceptance of such payment by the vessel owner, the United States shall be subrogated to all rights of the vessel owner with respect to which the payment is made.

"(e) In addition to any fee imposed under section 204(b)(10) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824(b)(10)) with respect to any foreign fishing vessel for any year after 1978, the Secretary shall impose a surcharge in an amount not to exceed 20 percent of the amount of the fee imposed under such section for such year. The failure to pay any surcharge imposed under this subsection with respect to any foreign fishing vessel shall be treated by the Secretary as a failure to pay the fee for such vessel under such section 204(b)(10).

"(f)(1) There is established in the Treasury of the United States the Fishing Vessel and Gear Damage Compensation Fund. The fund shall be available without fiscal year limitation as a revolving fund for the purposes of administering, and paying compensation awarded under, this section.

Fishing Vessel
and Gear Damage
Compensation
Fund.
Establishment.

"(2) The fund shall consist of—

"(A) all sums recovered by the United States in the exercise of rights subrogated to it under subsection (d)(5);

"(B) all administrative fees collected under subsection (c)(2);

"(C) all surcharges collected under subsection (e);

"(D) revenues received from deposits or investments made under the last sentence of this paragraph; and

"(E) any revenue acquired through the issuance of obligations under paragraph (3).

Sums may be expended from the fund only to such extent and in such amounts as are provided in advance in appropriation Acts. Sums in the fund which are not currently needed for the purpose of paying such awards shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(3) Whenever the amount in the fund is not sufficient to pay compensation under this section, the Secretary may issue, in an amount not to exceed \$5,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notices or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notices or other obligations. Moneys obtained by the Secretary under this paragraph shall be deposited in the fund and redemptions of any such notices or other obligations shall be made from the fund. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The Secretary of the Treasury may sell any such notices or other obligations at such times and prices and upon such terms and conditions as he shall determine. All purchases, redemptions, and sales of such notes or other

31 USC 774.

obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

Penalty.

"(g) Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation under this section is guilty of a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or both."

Effective date.

22 USC 1980

note.

22 USC 1980

note.

22 USC 1980.

(b) The amendment made by subsection (a) shall take effect January 1, 1979.

(c) Nothing in the amendment made by subsection (a) 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), 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.

Approved September 18, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1029 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 95-816 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 10, considered and passed House.

May 22, considered and passed Senate, amended.

Aug. 10, House concurred in Senate amendments with amendments.

Aug. 17, Senate concurred in House amendments with an amendment; House concurred in Senate amendments.