

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 50 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.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, no payment may be made by the Secretary from the Fund—

(A) to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim;

(B) if the damage set forth in the claim was sustained prior to September 18, 1978;

(C) in the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed; and

(D) for any portion of the damages claimed with respect to which the claimant has received, or will receive, compensation from insurance.

(Pub. L. 95-372, title IV, § 403, Sept. 18, 1978, 92 Stat. 687; Pub. L. 96-561, title II, § 240(b)(2), Dec. 22, 1980, 94 Stat. 3301; Pub. L. 97-212, §§ 3, 7, June 30, 1982, 96 Stat. 144, 147; Pub. L. 98-498, title IV, § 420(1), (2), Oct. 19, 1984, 98 Stat. 2309.)

Editorial Notes

REFERENCES IN TEXT

The 1981 amendments to this subchapter, referred to in subsec. (a)(1), probably means the amendments made to this subchapter in 1982 by Pub. L. 97-212, which amended sections 1841 to 1845 of this title, repealed section 1847 of this title, and enacted a provision set out as a note under section 1841 of this title. Pub. L. 97-212 also enacted a provision set out as a note under section 1823 of Title 16, Conservation, and amended a provision set out as a note under section 1823 of Title 16.

The date of enactment of such amendments, referred to in subsec. (a)(1), probably means the date of enactment of Pub. L. 97-212, which was approved June 30, 1982.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-498 substituted "limitation of not less than 90 days on" for "limitation on".
Subsec. (c)(1). Pub. L. 98-498 substituted "50 percent" for "25 per centum".

1982—Subsec. (a)(1). Pub. L. 97-212, § 7, substituted "claims (except that, notwithstanding any other provision of law, final regulations implementing the 1981 amendments to this subchapter shall be published in the Federal Register within 120 days after the date of the enactment of such amendments); and" for "claims; and".

Subsec. (c)(1). Pub. L. 97-212, § 3(1), substituted "Fund" for "appropriate area account" and "resulting 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.

Statutory Notes and Related Subsidiaries

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.)

Editorial Notes

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”.

Statutory Notes and Related Subsidiaries

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 com-

ensation 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 1847¹ 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.

¹ See References in Text note below.