

Fishermen's Protective Fund

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Freedom of the seas and the right of fishermen from any nation to fish in international waters throughout the world is a doctrine imbedded deeply in the tradition and history of the United States. Our commercial fishermen, as well as those from any other countries, range far and wide in search of their catch. The United States has opposed efforts to limit freedom of the seas through excessive claims to territorial waters or fishing limits by any country. By statute, we recognize a 12-mile limit for fishing purposes. We do not recognize the legality of jurisdictional claims beyond 12 miles, unless, of course, an international agreement has been entered into to the contrary. Furthermore, we have encouraged our commercial fishing industry, through programs of technical and financial assistance, to range far and wide in studying and using the resources of the sea.

During recent years, however, some of our fishermen have faced problems of detention or seizure as they fished in international waters near countries claiming fishing rights in these waters. As a result, requests began early in the 1950's to reach the Congress of the United States for protection of these fishermen. These requests eventually resulted in passage of the Fishermen's Protective Act on August 27, 1954. This Act directed the Secretary of State to attend to the welfare of any U.S. flag vessel and its crew seized by a foreign country in international waters or on the high seas on the basis of rights and claims not recognized by the United States. It also directed the State Department to secure the release of the vessel and its crew. If a license fee, registration fee, or a fine was charged, it directed the Secretary of the Treasury to reimburse the owners of the vessel in the amount certified by the Secretary of State being the amount actually paid, provided there is no dispute of material facts relative to the vessel's location or activities at the time of seizure.

This situation remained relatively static through the late '50's, but in the early 1960's, United States fishermen began to experience more frequent difficulty as additional nations extended their claim for fishing rights beyond 12 miles. Many of these countries were located in South and Central America and claimed fishing rights up to 200 miles. As seizures of United States tuna and shrimp vessels increased, vessel owners began experiencing significant losses beyond those of fees or fines paid to the foreign countries. These losses included confiscated or spoiled catches as well as lost fishing time. Further congressional action resulted in the passage of the Fishermen's Protective Act of 1967. This Act, approved August 12, 1968, under which authority we are now operating, provides assistance to the commercial fishing industry through February 8, 1973, at which time it will expire.

As you know, on October 3, 1970, Reorganization Plan No. 4 of 1970 became effective. This reorganization, among other things, transferred the Bureau of Commercial Fisheries and the direction and supervision of its financial assistance program, including administration of Section 7 of the Fishermen's

Protective Act, from the Department of the Interior to the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. Consequently, the Secretary of Commerce is authorized to enter into a Guarantee Agreement with the owner of a U.S. flag fishing vessel. Under this agreement, the Secretary guarantees to reimburse the vessel's owner for all actual costs, except those specifically covered by Section 3 of the Act, incurred by the owner during the seizure and detention period of the vessel and as a direct result thereof. These losses may include damage to or destruction of the vessel or its fishing gear or equipment, losses from confiscation of the vessel gear and equipment, and dockage fees. The Act also authorizes the Secretary to reimburse the vessel's owner and crew for the market value of the fish caught before seizure of the vessel as a result of confiscation or spoilage. It also provides for reimbursement to the owner and its crew for not to exceed 50% of the gross income lost as a direct result of the seizure or detention. The exact extent of these losses, of course, must be determined by the Secretary according to prescribed procedures.

A fee is charged for the privilege of entering into a Guarantee Agreement. Fees are based on anticipated losses and are established to recover the cost of administering the program and at least one-third of the sum of estimated claims. The remaining two-thirds are to be provided by the Government. All payments under the Act are made out of fees so long as they are available, and then out of appropriated funds.

Section 5 of the Act directs the Secretary of State to take such action as he may deem appropriate to make and collect claims against a foreign country for amounts expended by the United States under the provisions of this act. If such country fails or refuses to make payment in full within 120 days after receiving notice, the United States shall withhold an amount equal to this unpaid claim from any funds programed for the current fiscal year for assistance to the government of such country under the Foreign Assistance Act of 1961.

The fee during the current fiscal year is set at \$60 plus \$1.80 per gross ton as listed on the vessel's documents. Fractions of a ton are not included. The fee year ends on June 30. No refunds of a fee or any portion of a fee will be made after agreement is executed by the Secretary. The fee schedule, of course, may be increased or decreased by amendment at any time as warranted by changing conditions.

Eligibility for entering into a Guarantee Agreement is limited to the registered owner or bare-boat charterer of a vessel licensed or enrolled and licensed as a fishing vessel of the United States engaged in catching, or catching and processing, fish and/or shellfish. This means that a vessel must be properly documented as a vessel of the United States at the time of seizure in order for claims to be paid. Consequently, if anything occurs that would cause a vessel to lose its rights as a vessel of the United States, the agreement would be voided. Among other things, employment of an alien as an officer of the vessel might have this effect and void the agreement.

The vessel must also be insured during the period of the agreement with hull and machinery insurance and protection and indemnity insurance. The amount and form of insurance must be satisfactory to the Secretary. If such insurance is not in effect at the time of seizure, the agreement may be void and no claims paid.

Making application for a Guarantee Agreement under the authority of the Fishermen's Protective Act is relatively simple. The owner of a vessel need only

complete Form No. 2-298, Application for Guarantee Agreement, and mail it to the Division of Financial Assistance, National Marine Fisheries Service, 1801 North Moore Street, Arlington, Virginia 22209. When the application is received, and provided it is eligible on its face, the application serves as a binder to provide owners the benefits of the Guarantee Agreement as of the date received. Vessel owners who wish to have continuous coverage should submit their application each year prior to June 30.

This program has met with considerable enthusiasm and support by the U.S. fishing industry, first by operators of tuna vessels in California, and now by shrimp vessel operators in the Gulf and Caribbean areas. As of June 1969, 45 fishing vessels were covered under agreements. Of these, 42 were owned by California operators. By October 31, 1970, however, the situation had changed considerably. Of the 138 Guarantee Agreements in effect, 101 of the vessels were owned by companies located in the South Atlantic or Gulf coasts; 29 vessels were operated by owners in California; and 8 vessels were owned by companies located in the Pacific Northwest.