

Department of State

§ 33.8

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);

(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.