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(d) *Applicaton 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

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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);