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Fishermen's Protective Act of 1967: Reimbursement for Confiscation of Catch. B-187804. August 2, 1977. 7 pp.

Decision by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: General Government Matters.

Budget Function: International Affairs (150); Commerce and Transportation (400).

Organization Concerned: Department of Commerce.

Authority: Fishermen's Protective Act of 1967, sec. 7 (22 U.S.C. 1971 et seq. (Supp. V)). Fishery Conservation and Management Act of 1976 (P.L. 94-265; 90 Stat. 331). (P.L. 90-482; 82 Stat. 729). 31 U.S.C. 74. H. Rept. 90-1566. H. Rept. 94-445.

The General Counsel of the Department of Commerce requested a determination as to whether funds used to reimburse the owners of U.S. flag vessels for the cost of repurchase of their fish catches confiscated by Ecuador should be repaid to the fund established by section 7 of the Fishermen's Protective Act of 1967 from the Fishermen's Protective Fund. Because of the retroactive effect of the amendment affecting the Fishermen's Protective Fund, and because no payment can be made under section 7 with respect to losses covered by any other provision of law, the insurance fund should be reimbursed by the Fishermen's Protective Fund. (Author/SC)

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DECISION



**THE COMPTROLLER
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187804

DATE: August 2, 1977

MATTER OF: Fishermen's Protective Act of 1967--Reimbursement
For Confiscation of Catch

DIGEST: After vessel owners whose catches were confiscated were reimbursed from insurance fund under section 7 of Fishermen's Protective Act of 1967, Act was amended to make some losses reimbursable from Fishermen's Protective Fund under indemnity provision of section 3 of Act. Because of retroactive effect of amendment and because no payment can be made under section 7 with respect to losses covered by any other provision of law, insurance fund should be reimbursed by Fishermen's Protective Fund.

We have been asked by the General Counsel of the Department of Commerce, on behalf of the Secretary of Commerce, to determine whether funds used to reimburse the owners of United States flag vessels, pursuant to section 7 of the Fishermen's Protective Act of 1967, 22 U.S.C. §§ 1971 et seq. (1970 & Supp. V 1975), for the cost of repurchase of their fish catches confiscated by Ecuador in 1975, should be repaid to the fund established by section 7, from the Fishermen's Protective Fund, established by section 3, as a result of the passage of the Fishery Conservation and Management Act of 1976, Pub. L. No. 94-265, 90 Stat. 331.

The General Counsel states the facts as follows:

"In early 1975, three U.S. tuna vessels, the 'Neptune,' the 'A. K. Strom' and the 'Jaqueline A' were seized by the Government of Ecuador. When Ecuador seized these vessels, their catch was confiscated and the Government of Ecuador subsequently forced each owner of these vessels to repurchase the confiscated catch at the following prices:

Neptune	\$ 72,000
A. K. Strom	120,968
Jaqueline A	<u>32,000</u>
Total	\$224,968

[The fish on board each vessel remained on the vessel at all times.]

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"Pursuant to the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1971, hereinafter called the 'Act'), the individual owners of the above-named vessels submitted applications to the Secretary of Commerce in May and June of 1975, requesting reimbursement for the repurchase charges as well as other costs and losses they incurred. The General Counsel's Office of the National Oceanic and Atmospheric Administration determined on behalf of the Secretary of Commerce that the repurchase cost of the catch constituted a claim for 'confiscation' of fish within the meaning of Section 7(a)(2) of the Act [22 U.S.C. § 1977(a)(2) (Supp. V, 1975)]. In October, 1975, the Secretary reimbursed the claimants the following sums for such 'confiscations' after deducting all charges relating to claims submitted on behalf of alien fishermen aboard each vessel:

Neptune	\$ 72,000.00
A. K. Strom	102,767.70
Jaqueline A	<u>32,000.00</u>
Total	\$206,767.70

The payments to the claimants were made from the fund created by Section 7(c) of the Act. This fund (hereinafter called the 'Reimbursement Fund') is comprised of payments from members of the fishing industry who wish to be accorded its protection and payments from the Federal government in a ratio of three industry dollars to every government dollar. The responsibility for allowing or disallowing claims to be paid from the fund lies solely with the Secretary of Commerce. Therefore, the Secretary of Commerce acts as Trustee on behalf of the industry contributors, as well as on its own behalf, in managing the claims to be paid out of the Reimbursement Fund.

"Subsequent to the payments by the Secretary of Commerce for the repurchase charges, Congress enacted

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and President Ford signed the 'Fishery Conservation and Management Act of 1976,' which contained a section amending the Act so that repurchase payments of the type the three claimants made would come within the scope of Section 3(3) of the Act as 'other direct charge(s).' (22 U.S.C. 1973.) This amendment, although signed by President Ford on April 13, 1976, applies to 'seizures of vessels . . . occurring on or after December 31, 1974.' This amendment, therefore, applies to the three vessels documented in this Request for Ruling.

"Section 3(a) of the Act requires that payments be made by the Secretary of the Treasury to the owners of the qualifying vessels with monies from the Fishermen's Protective Fund--a fund established pursuant to Section 9 of the Act. The Fishermen's Protective Fund differs from the Reimbursement Fund in both the source of the monies received as well as the purpose for which monies should be paid out. The Fishermen's Protective Fund receives its money exclusively through congressional appropriations and makes payments to fishermen on the basis of claims that are solely within the province of the Secretary of State. The Reimbursement Fund, on the other hand, receives its money from the fishing industry as well as the Federal Government and makes payments on the basis of claims that are solely within the jurisdiction of the Secretary of Commerce.

"It is the position of the Secretary of Commerce, in view of the 1976 amendment to the Act, that the monies which were paid to the owners of the vessels in question to reimburse them for repurchasing their respective confiscated catches should be paid from Section 3 funds (the Fishermen's Protective Fund) as opposed to Section 7 funds (the Reimbursement Fund) under the Act. In view of the fact that the Secretary of Commerce made the payments from the Reimbursement Fund prior

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to the 1976 amendment to the Act, it is our request that the Comptroller General pursuant to the powers granted by 31 U.S.C. 74 authorize the payment of monies from the Fishermen's Protective Fund to the Secretary of Commerce so that the Reimbursement Fund may be made whole. In making the request the Secretary of Commerce is acting not only on its behalf with regard to Federal appropriations in the Reimbursement Fund but also as a Trustee for the contributions made by the fishing industry to the Reimbursement Fund."

As the General Counsel says, the Fishermen's Protective Act of 1967, as amended, provides for two sources of reimbursement for fishermen whose vessels are seized by other nations on the basis of rights or claims not recognized by the United States. Section 3(a) of the Act provides for reimbursement of any "fine, license fee, registration fee, or any other direct charge" which must be paid to secure the prompt release of the vessel and crew. These payments are to be made from the Fishermen's Protective Fund, which has its source in appropriations (section 9) (although the Fund may be replenished by recovery from the seizing country or, under certain circumstances, by setoff against foreign assistance funds which would otherwise go to that country (section 5)). The amount of reimbursement under section 3 is established by certification by the Secretary of State.

Section 3(a) does not compensate vessel owners for certain losses, other than charges imposed by the seizing country, which might result from seizures of their vessels. In recognition of this, section 7 was added to the Act by Pub. L. No. 90-482, 82 Stat. 729. H.R. Rep. No. 1566, 90th Cong., 2d Sess. 6-7 (1968). Under section 7 (now administered by the Secretary of Commerce) vessel owners may enter into an agreement with the Secretary guaranteeing them reimbursement for all actual costs incurred as a direct result of seizure or detention of their vessels. However, costs covered by section 3(a) or any other provision of law or by insurance are excluded from payment under section 7 by section 7(d). Covered costs include specifically those resulting from damage to the vessel or its equipment, loss of dockage fees or utilities, a portion of gross income lost, and the market value of any fish caught before the seizure, and confiscated or spoiled during the period of detention. Section 7(a). This program is described as an insurance program. H.R. Rep. No. 1566, supra 2. In

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contrast to the section 3(a) program, participation is voluntary and is financed largely by fees paid by participating vessel owners, although also by appropriated funds. Section 7(c). (The same provision for seeking recovery from the seizing country which applies to Section 3(a) payments also applies to section 7 payments, by virtue of section 5.)

Section 3(a) and section 7 are thus complementary. Losses in the form of fees, fines, and other direct charges are covered by section 3(a). Other losses, in the form of actual costs, are covered by section 7.

The question at hand arises because of uncertainty as to the proper fund from which reimbursement was to be made, where the seizing country did not physically remove the catch from the seized vessels, but said that, unless the vessel owners paid the value of the catch, it would be taken. According to the Report of the House Committee on Merchant Marine and Fisheries, where the 1976 amendment to section 3(a) originated:

"This amendment to section 3(a) of the Act would apply with respect to seizures occurring on or after December 31, 1974.

"The need for this amendment arises because of the seizure in early 1975 of a number of United States tuna vessels by the Government of Ecuador. When Ecuador seized the vessels, three of such vessels had their catch confiscated and, in lieu of confiscation, the Ecuadorian authorities required the vessel owners to pay the monetary value of the fish on board such vessels to the Ecuadorian Government. The payments made by the vessel owners were as follows: Neptune \$72,000; A. K. Strom \$120,968; and Jaqualine A \$34,000; for a total of \$226,968.

"Had the fish been actually confiscated, the vessel owners would have been reimbursed for the fair market value of such fish under the voluntary insurance program provided by section 7 of the Fishermen's Protective Act.

"Since the fish were not actually confiscated and the monetary value of such fish was required to

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be paid in lieu of confiscation, the Department of Commerce determined that no reimbursement would lie under section 7 of the Act.

"As previously pointed out, section 3 of the Act provides for reimbursement of any fine, license fee, registration fee, or any other direct charge required to be paid in order for a vessel owner to obtain release of his vessel illegally seized. In the case of these three vessels, the State Department interpreted the Act narrowly, and determined that the clause 'any other direct charge' would not include the monies paid for the monetary value of the fish. Consequently, these vessel owners are out \$226,968.

"The amendment would have the effect of making these claims, as well as any future similar claims, reimbursable under section 3 of the Act." H.R. Rep. No. 445, 94th Cong., 1st Sess. 77-78 (1975). (Emphasis added.)

The amendment was enacted in a form substantially identical to the way it appeared in the bill as reported by the Committee.

The amendment, in clear and unequivocal terms, makes the kinds of payments here at issue reimbursable from the Fishermen's Protective Fund. Indeed, as the quoted report says, the amendment was expressly intended to cover the three specific seizures now at issue because, at the time the amendment originated, both State and Commerce had refused payment from the fund under the respective control of each. Without more, therefore, there could be no doubt that State should now certify the three claims for payment from the Fishermen's Protective Fund.

Apparently, however, after the Committee report quoted above, but before enactment of the bill, Commerce decided that the payment exacted from the owners for return of their catch did amount to a confiscation, and consequently was covered by section 7 as an actual cost resulting from the seizure. Commerce therefore reimbursed the vessel owners from the Reimbursement Fund.

Manifestly, the Congress intended by enactment of the 1976 amendment that losses of the kind in question be reimbursed under section 3,

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and that this be applied retroactively to the three seizures by Ecuador in 1975. (Perhaps, had the Congress known that payment had been made under section 7, it would not have found it necessary to amend section 3. But this is conjecture and we must decide this matter based on the law as it is now in effect.) It is equally clear that, under the law as amended, reimbursement could not now be made under section 7, by virtue of the provision that no payment shall be made under that section with respect to any losses covered by another provision of law. Section 7(d). Hence, to leave the matter in its present posture is inconsistent with the requirements of the Act, as amended.

Accordingly, we agree with the Secretary of Commerce that the so-called Reimbursement Fund should be repaid from the Fishermen's Protective Fund, any amount that the Secretary of State would have certified for payment under section 3(a).


Deputy Comptroller General
of the United States