

REVISED STATUES 56:700.1-700.5

RS 56:700.1

PART XIV. FISHERMEN'S GEAR COMPENSATION FUND

§700.1. Definitions

As used in this Part, unless the context requires otherwise, the following terms shall have the following meanings:

(1) "Commercial fisherman" means any citizen of the state of Louisiana whose primary source of earnings is from the harvesting of living marine resources for commercial purposes. "Earnings" means the earnings derived solely by the personal efforts of the commercial fisherman, exclusive of the income of a spouse or of any community property interest in the income of a spouse.

(2) "Fishing gear" means (a) any vessel and (b) any equipment, whether or not attached to a vessel, which is used in the commercial handling or harvesting of living marine resources.

(3) "Secretary" means the secretary of the Department of Natural Resources or his designee.

(4) "Department" means the Department of Natural Resources.

(5) "Fund" means Fishermen's Gear Compensation Fund.

Added by Acts 1979, No. 673, §1. Acts 1983, No. 705, §6, eff. Sept. 1, 1983; Acts 1997, No. 801, §1, eff. July 10, 1997.

RS 56:700.2

§700.2. Establishment, continuance, and purposes of fund; geographical coverage; assessments

A. There is hereby established in the state treasury a Fishermen's Gear Compensation Fund into which amounts paid pursuant to this Section shall be deposited. The fund shall be available to the secretary only for the following purposes:

(1) Administrative and personnel expenses of the fund.

(2) Payment of any fully justified claim made in accordance with procedures established herein for actual damages suffered by a commercial fisherman as a result of hitting or snagging an obstruction or hazard in the waters of the state resulting from natural occurrences, oil and gas activities, or other activities where the owner of said obstruction is unknown.

(3) Expenses necessary to implement an investigatory survey of existing potential underwater obstructions which might be due to past drilling, production, and transportation activities. Such survey shall be conducted in not more than three geographical areas which are known to be hazardous as a result of underwater obstructions, the locations and sizes of which shall be approved by the Senate Committee on Natural Resources and the House Committee on Natural Resources and Environment, meeting jointly, following a consensus of opinion relative

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thereto rendered by commercial fishermen and the secretary. The purpose of the survey shall be to reveal the location, size, and density of underwater obstructions, as well as to test investigatory procedures, so as to provide field data and information which might aid fishermen directly and which shall be used to design a program more responsive to the needs of fishermen. Withdrawals from the fund for the purposes of surveying shall be limited to the one-time application described in this Paragraph and shall not exceed one-fourth of the monies remaining in the fund at the time that this Paragraph becomes effective.

(4) The state treasurer shall annually deposit the amount of two hundred fifty thousand dollars into the Underwater Obstruction Removal Fund as provided in R.S. 30:101.9. The department shall seek to match these funds with whatever federal or state funds may be available for such purposes.

B. The Fishermen's Gear Compensation Fund shall be established for Louisiana territorial waters which overlie state-owned waterbottoms which are contained within the coastal zone boundaries as described and established by R.S. 49:213.4.

C.(1) The fund shall be established within sixty days of the effective date of this Part, at a level sufficient to meet administrative and personnel expenses of the fund, including implementation of responsibilities set forth in R.S. 56:700.5, as well as payment of justified claims made pursuant to this Part.

(2) To create a workable balance immediately upon establishment of the fund, the secretary shall be authorized and empowered to levy a fee upon each lessee of a state mineral lease and each grantee of a state right of way, for each lease and right of way in effect at the time of the effective date of this Part and which are located within the coastal zone boundary, in an amount of three hundred dollars. In addition, the state treasurer shall be authorized to pay into the fund a sum in the amount of one hundred thousand dollars from proceeds remaining in the Bond Security and Redemption Fund after compliance with dedications of mineral royalties, leases, bonuses and rights of way and other sums payable to the state as lessor of mineral leases and grantor of rights of way as required pursuant to R.S. 30:136(B) and R.S. 30:136.1(A), (B), and (C), after a sufficient amount has been allocated from the Bond Security and Redemption Fund to pay all obligations secured by the full faith and credit of the state which become due and payable within the fiscal year.

D. In the same fiscal year during which the fund is established, and in each fiscal year subsequent to that in which the fund is established, at any time that the balance of the fund becomes two hundred fifty thousand dollars or less and the secretary determines that additional monies are required to pay justified claims and to cover necessary administrative costs of the program, the secretary shall be authorized and empowered to replenish the fund by levying additional fees on each lessee of a state mineral lease and each grantee of a state right of way, for each lease or right of way in effect at the time of establishing the fee rate and which are located within the coastal zone boundary. However, fees levied upon leases and rights of way as provided herein shall be made on a per-unit basis at a level not to exceed one thousand dollars per lease or right of way during any fiscal year.

Added by Acts 1979, No. 673, §1. Amended by Acts 1981, No. 477, §1. Acts 1983, No. 705, §6, eff. Sept. 1, 1983; Acts 1991, No. 337, §1; Acts 1999, No. 599, §2, eff. July 1, 1999; Acts 2001, No. 705, §1, eff. July 1, 2001; Acts 2003, No. 830, §1, eff. July 1, 2003; Acts 2007, No. 167, §1, eff. June 29, 2007; Acts 2008, No. 580, §7; Acts 2012, No. 70, §1, eff. May 11, 2012.

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RS 56:700.3

§700.3. Rules and regulations

A. In carrying out this Part, the secretary shall prescribe, and from time to time amend, regulations for the filing, processing, and the fair and expeditious settlement of claims pursuant to this Part, including a time limitation on the filing of such claims and the appointment of hearing examiner. These regulations shall insure that the whole claim procedure is as simple as possible. Any designee of the secretary authorized to prescribe and amend such rules and regulations shall do so under the overall supervision and control of the secretary.

B. In the formulation of regulations pursuant to this Part, the secretary shall establish a procedure whereby a fisherman may recover for damages from an obstruction encountered previously.

C. Any rule, regulation, or guideline shall be proposed or adopted pursuant to the rulemaking procedures set forth in the Administrative Procedure Act and shall be subject to approval by the House Committee on Natural Resources and Environment and Senate Committee on Natural Resources. Such approval shall be presumed unless either committee submits objections in writing within fifteen days after receipt of the proposed rule, regulation, or guideline, provided that such written objections shall be subject to override by the governor within five days after receipt of the objections by the governor.

D. The department shall promulgate regulations implementing the Fishermen's Gear Compensation Fund on or before October 1, 1980. The department shall hold not less than three public hearings for the purpose of receiving public input on the development of the regulations.

Added by Acts 1979, No. 673, §1. Acts 1983, No. 705, §6, eff. Sept. 1, 1983; Acts 2008, No. 580, §7.

RS 56:700.4

§700.4. Disbursement of funds; eligibility; hearings

A. Payments may be disbursed by the undersecretary of the Department of Natural Resources as authorized by the secretary from the fund to compensate commercial fishermen for actual property damage suffered as a result of hitting or snagging an obstruction or hazard in the territorial waters of the state within the boundaries of the fund but shall not be extended to speculative loss such as anticipated profit or income.

B. In order to be eligible to receive reimbursement from the fund, a commercial fisherman must show that he has a valid claim. A valid claim shall be established by the hearing examiner, based on evidence that the following conditions have been met:

(1) The fishing vessel was being used for fishing in Louisiana territorial waters within the boundaries of this fund.

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(2) The fisherman made a report to the Department of Natural Resources on the location of the obstruction postmarked within ninety days of the loss. If good cause is shown, the secretary of the Department of Natural Resources, when there are extenuating circumstances, may waive the ninety-day limit on the reporting period, such waiver period not to exceed forty-five days; and

(3) The fisherman has made a good faith effort to locate the financially responsible party. Evidence of a good faith effort shall be established by regulation, and shall include attempts to identify the responsible party with the assistance of the Department of Natural Resources where necessary.

C. The provisions of Subsections A and B of this Section notwithstanding, no payment:

(1) Shall be made by the fund when the damage set forth in a claim was caused by materials, equipment, structures, or other items attributable to a financially responsible party and unless evidence is submitted that the party responsible for the obstruction can not be determined;

(2) Shall exceed five thousand dollars for any incident; or

(3) Shall be made unless the claimant shows by a preponderance of evidence that he is free from contributory negligence in causing the loss.

(4) Shall be made for any claim at a site that has been certified by the assistant secretary of the office of conservation for the Department of Natural Resources as having been cleared under the Louisiana Underwater Obstruction Removal Program, R.S. 30:101.1 et seq. Once a site has been cleared under the Louisiana Underwater Obstruction Removal Program, the assistant secretary shall certify that the site of at least two hundred yards in diameter is free of obstructions and future claims at a site so certified shall be denied. Whenever four or more claims are reported after a site has been certified as clear, the site shall be revisited and the new or leftover obstruction shall be located and, if the department determines it is feasible, removed.

D. Upon receipt of a claim against the fund, the secretary shall assign the matter to a hearing examiner for disposition. Claimants shall submit such documentary evidence as the hearing examiner requires to prove a valid claim justifying payment from the fund. In the event that a dispute arises over any claim that cannot otherwise be resolved, the hearing examiner shall hold a hearing, after giving public notice. At such hearing, the claimant and any other interested person may submit evidence. The hearing examiner shall have the power to administer oaths and subpoena witnesses and books, records, and other evidence pertinent to the issue. The hearing shall be held in the state at a place and time determined by the secretary. After the hearing, a prompt decision shall be made, all in accordance with rules and regulations adopted pursuant to this Part and the Administrative Procedure Act.

Added by Acts 1979, No. 673, §1. Acts 1983, No. 705, §6, eff. Sept. 1, 1983; Acts 1988, No. 33, §1, eff. June 10, 1988; Acts 1999, No. 11, §1; Acts 1999, No. 599, §2, eff. July 1, 1999.

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RS 56:700.5

§700.5. Facilities reports; survey of obstruction; labelling

A. Within 180 days of the effective date of this Act, the secretary shall prepare a detailed file of all structures and facilities located on state waterbottoms within the boundaries of this fund. In developing the file the secretary may require the owners and operators of state mineral leases and pipelines rights of way to furnish information relative to the location, description and nature of facilities, both active and abandoned, on and beneath the state's waterbottoms.

B. The secretary of the Department of Natural Resources shall establish and classify all potential hazards to commercial fishing caused by oil and gas exploration, development, and production activities in Louisiana waters, including all obstructions on the bottom, throughout the water column, and on the surface. The survey shall be completed on or before October 1, 1980.

C. The secretary of the Department of Natural Resources shall establish regulations for all materials, equipment, tools, containers, pipelines, and other items used within Louisiana waters by the oil and gas industry to be properly stamped or labelled, wherever practicable, with the owner's identification prior to actual use. These regulations shall be consistent with labelling regulations promulgated by the U.S. Department of Interior pursuant to the provisions of Title IV of the Outer Continental Shelf Lands Act Amendments of 1978¹.

Added by Acts 1979, No. 673, §1.

¹43 U.S.C.A. 1841 et seq.