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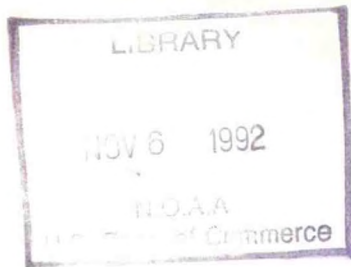
Summary Report of the AD HOC Group on Commercial Fishing Vessel Insurance January 1973-May 1975

June 1976

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service



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SUMMARY REPORT
OF THE
AD HOC GROUP ON COMMERCIAL FISHING
VESSEL INSURANCE
JANUARY 1973 to MAY 1975

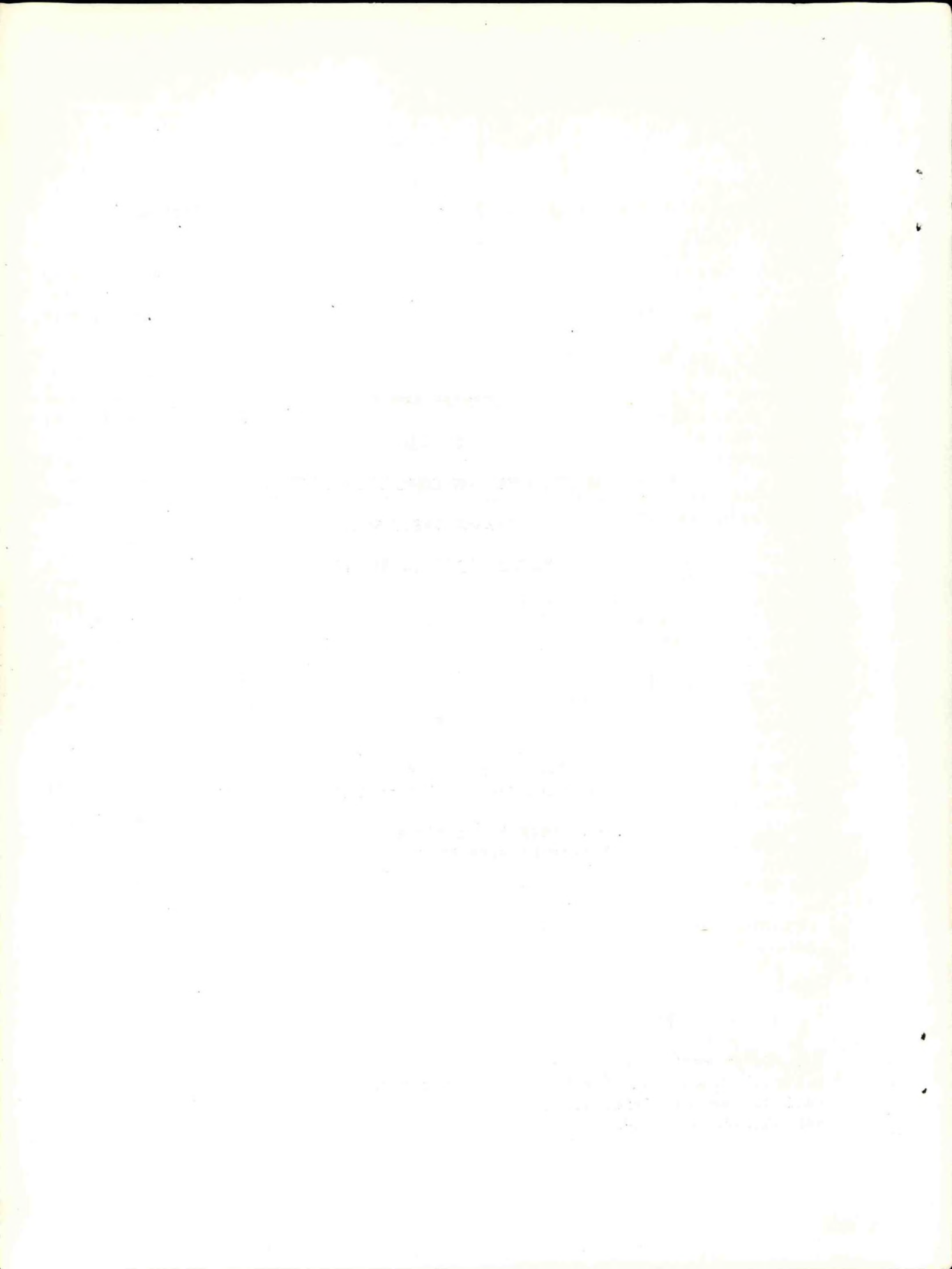
by

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U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

June 1976



TO ATTENDEES OF THE CONFERENCE ON COMMERCIAL FISHING VESSEL INSURANCE

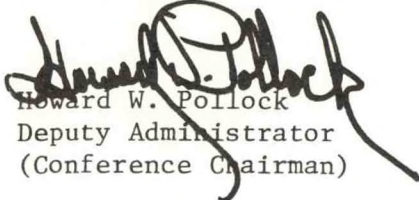
It is with considerable pleasure that I submit the "Summary Report of the Ad Hoc Group on Commercial Fishing Vessel Insurance" in fulfillment of the request of the Conference on Commercial Fishing Vessel Insurance, January 9-10, 1973.

The Ad Hoc Group was composed of members with varied backgrounds and interests, but each accepted the assignment with a conviction to find a workable solution to the insurance problem confronting U.S. fishing vessels. At the outset of the meetings, it became clear that this was a complicated subject with no quick and simple solution. It was also evident that there were conflicting views among the fishermen, vessel owners, attorneys and marine insurance representatives and that only dedication and compromise would yield meaningful results.

This report sets out in some detail the activities and considerations of the Group as they searched for a workable solution to the fishing vessel insurance problem. It also summarizes the consensus of the Group toward proposed solutions. All agreed that liability insurance is a persistent and growing problem of vessel owners and that safety on commercial fishing vessels is an important part of the insurance problem. It is in the best interest of the U.S. fishing industry that serious consideration be given to the findings of the Ad Hoc Group and that a final and equitable resolution to this problem be found.

Finally, I want to personally thank members of the Ad Hoc Group for the outstanding contributions which each made to this work. I am confident that the entire fishing industry joins with me in thanking each of them for the dedication and contributions in knowledge, time, and personal funds to this project. In addition, a debt of gratitude is owed to individuals who provided support to the Ad Hoc Group. Special recognition is due Dr. Chris A. Theodore, Professor, Boston University; David Michelman, Counsel, Washington, D.C.; Kinvin Wroth, Professor of Law, University of Maine; and Richard Smith, Attorney, University of Maine, for their outstanding contributions and dedication to the project.

Sincerely,


Howard W. Pollock
Deputy Administrator
(Conference Chairman)

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FOREWORD

The Ad Hoc Group on Commercial Fishing Insurance was established following the conference on the subject held in Washington, D.C. January 9 and 10, 1973. Initially, the Group was given the responsibility of studying the multiple aspects of vessel insurance in general. The scope of the assignment reflects the understandings and issues aired at the Conference. Subjects include protection and indemnity insurance, hull insurance, and vessel safety. The Group quickly recognized the need to focus on *spell out* P and I insurance and vessel safety.

This report deals primarily with the activities and recommendations of the Ad Hoc Group. It highlights the deliberations, direction of activities, and accomplishments of the Group. Its ideas, principles, and alternative courses of action are summarized so that the report may be used as a quick reference. In addition, a brief summary of previous reports on vessel insurance establishes continuity with the past.

Many readers may satisfy their interest and conserve time by reading the summary and findings of the Ad Hoc Group (Section I). The main body of the report consists of five additional sections. Each section deals with one major activity: initial deliberations about the problem in general, vessel safety, formulation of new legislation, and ~~the final draft bill and appendix.~~

(an appended copy of the draft bill.)

SECTION I: INTRODUCTION

The United States commercial fishing industry is confronted with a chronic and growing insurance problem. The problem is manifested by high and rising costs and weak markets for protection and indemnity (P and I) insurance. (Liability insurance covering fishermen-employees for disability and death while in the service of commercial fishing vessels). The principal sources of the problem are large awards made by the courts in litigated cases, the growing number of injury and death cases which involve lawsuits, and the threat of litigation which influences every settlement whether or not a lawsuit has been filed. The trend toward court settlement of cases has had a clear impact on marine insurance companies. The uncertainty resulting primarily from litigation has made risk evaluation very difficult for even the most sophisticated marine insurance underwriter. Some marine companies have experienced substantial monetary losses with commercial fishing vessel P and I insurance. Consequently, many companies refuse to participate in the commercial fishing vessel insurance market. This has limited the number of suppliers of marine insurance for U.S. fishing fleets. In addition, some geographical areas with limited demand for P and I insurance have experienced complete disinterest in their business by marine insurance companies. This has created obvious problems for vessel owners with risks for which they will not or cannot obligate their individual assets.

Another significant factor contributing to the high cost of P and I insurance on commercial fishing vessels is the number of injuries and deaths of crew members. Records are very incomplete, but the limited available evidence indicates that the number of injuries and deaths are disproportionately large when compared to other occupational groups. An existing practice which has important implications both economically and socially is that a large proportion of the 87,000 fishing craft are operated commercially without marine insurance of any kind. The various elements of the commercial fishing vessel insurance problem are widespread in the ~~commercial~~ industry, but vary in intensity both between fisheries and overtime.

Federal supremacy exists in maritime law and applies equally to commercial fishing and to merchant vessels. The source of supremacy is Article III, Section 2, of the United States Constitution, which grants to federal courts power over "All cases of admiralty and maritime jurisdiction." Federal admiralty power applies to all activities related to navigation or commerce on the high seas and "navigable waters of the United States." The federal authority over fishing vessels applies to matters related to fishing vessel insurance. It follows that the federal authority over commercial fishing vessels results in the involvement of the federal government in the development and adoption of any new insurance system for the commercial fishing fleet. In this regard, during recent years, there has been more or less continuous involvement of the National Marine Fisheries Service and its predecessor agencies to help the commercial fishing industry find a solution to its insurance problem. Some of the more prominent efforts in this regard are cited below and will be elaborated on subsequently in this report.

In the early 1950's the fishing industry encountered a major vessel insurance crisis. At that time, writers cited insufficient insurance protection and high insurance costs. Problems seemed to be centered primarily in the Boston and New Bedford, Massachusetts, and Tampa, Florida, areas. This crisis resulted in the Federal Government sponsoring a survey and study of the problem which culminated in a two-volume report, complete with case histories, analysis, and recommendations.^{1/} As the problem persisted and grew in intensity, pressure mounted for permanent relief, and a new and different study was undertaken. It too was placed in report form.^{2/}

Subsequently, in January 1973, a nationwide conference was called on commercial fishing vessel insurance by the National Oceanic and Atmospheric Administration (NOAA), to provide a forum where all interested parties could be heard and all issues discussed. The two-day, well attended conference brought forth the issues, but developed no consensus on a solution or solutions.^{3/} It did yield a complete conference report; however, conferees preferred to leave the matter of a solution to a select group of their peers. An Ad Hoc Group on Commercial Fishing Vessel Insurance was formed to study the issues and to recommend solutions to the commercial fishing industry.

This report deals with the activities, findings, and recommendations of the Ad Hoc Group on Commercial Fishing Vessel Insurance. In addition to the work of the Ad Hoc Group, related background information is included to provide a more complete understanding of the commercial fishing efforts which have been made to help resolve the problems.

^{1/} W.C. Danforth and C.A. Theodore. Hull Insurance and Protection and Indemnity Insurance of Commercial Fishing Vessels. Special Scientific Report - Fisheries No. 241 and 241 Supplement. U.S. Department of the Interior, Fish and Wildlife Service, 1957

^{2/} M.M. Miller and Darrel A. Nash, Insurance Coverage for U.S. Commercial Fishing Vessels. U.S. Department of Commerce, National Marine Fisheries Service, 1972.

^{3/} Proceedings of the Conference on Commercial Fishing Vessel Insurance, Washington, D.C. January 9-10, 1973. Editors G.H. Lyon and C.A. Theodore, National Oceanic and Atmospheric Administration, September 1973.

SUMMARY AND FINDINGS OF THE

AD HOC GROUP ON COMMERCIAL FISHING VESSEL INSURANCE*

For the past two and one-half years, the Ad Hoc Group has been studying the factors which affect the cost of protection and indemnity insurance for commercial fishing vessels. Group members, supported by the staff of the National Marine Fisheries Service, have conducted extensive reviews of insurance costs and claims settlements under the general maritime law and the Jones Act; they also studied such costs and claims under alternative systems. Furthermore, the Group reviewed various voluntary as well as mandatory safety programs and their potential impact on insurance costs. We have reached the conclusion that the fishing industry needs to approach Congress or have Congress consider factors such as alternative employer-employee liability relationships for injuries and a safety program.

TITLE I

The Group finds that if the number of accidents is reduced, the relative insurance costs will decline. As a result of such consensus, the Group has drafted Title I of the enclosed, entitled "VESSEL SAFETY AND FISHERMEN'S BENEFITS ACT OF 1975."

The draft bill provides for a vessel safety certification program including regular inspection of vessels and physical examination of crew members, in order to maintain appropriate safety and health standards. In return for maintaining such standards, a vessel owner who joins the program is entitled to a certificate of compliance and loan guarantees. In addition, the Government assumes the responsibility of conducting training programs on safety and health standards and procedures. Regional and national safety advisory committees representing the fishing industry will advise and make recommendations to the Federal Government on safety and health matters. This safety program is also perceived as an integral part of Title II of the draft bill, since it provides an information-reporting mechanism designed to evaluate the impact of safety on loss experience. It is true that our views on safety vary widely. Nevertheless, the majority of us maintain that the safety program of the draft bill is a constructive beginning. We also hope that the impact of safety standards on loss experience will achieve the stated purpose of the draft bill.

TITLE II

The Group recognizes that insurance costs are rising and may become prohibitive. Furthermore, many vessel owners encounter difficulties in obtaining insurance protection. With this in mind, we have drafted Title II

* Drafted by a subcommittee consisting of August Felando, Paul Poliak, Thomas Norris, John Royal, Anthony Raia, John Burt, Sig. Jaeger, and Chris Theodore. It was reviewed and revised before the entire Ad Hoc Group before being unanimously approved.

of the enclosed bill. The draft bill is an approach to correcting some factors which tend to contribute to high insurance costs and also to effect adversely the equitable settlement of claims.

While all of the members of this Group do not subscribe to this draft bill, it is the result of careful deliberation and should be considered. Likewise, the Group as a whole is not necessarily advocating the draft bill over the present system of general maritime law and the Jones Act. The Group feels that the following major points will be of assistance in your deliberations for this draft bill.

It is alleged by some of the Group members that the present system has a number of serious limitations--

1. Claims of injured fishermen are determined under the ever-present threat of a lawsuit and frequent litigation. The net result is that approximately one-third of the funds expended for settlement of claims go to legal fees and expenses. Benefits are based on fault and unseaworthiness, so that a claim may go completely uncompensated because a fisherman fails to prove these factors in a court. Benefits are frequently not commensurate with the severity of injury. Nor is compensation always prompt.

2. On the other hand, there is no limit to the owner's liability. Awards for injuries are not determined on the basis of a pre-established schedule relating benefits to the severity of the injury and to earnings. They are determined fortuitously and, to a large extent, by the two parties acting as "legal adversaries." The Group feels that this procedure contributes to abnormally high insurance costs in the many regions and potentially rising costs in all regions, uncertainty about the future, and the inability to obtain insurance protection at any cost. No less important is the fact that such an adversary system interferes with cooperative employer/management relations.

3. From the actuarial standpoint, the present system is unstable and the magnitude of claims is unpredictable, forcing insurers to require premiums high enough to accumulate reserves to meet unpredictably higher awards. The alternative for many insurers is to refuse to underwrite the risks. Then vessel owners must either self-insure at their peril or pay higher premiums.

The enclosed draft bill has been designed to remedy some of the limitations of the present system. Furthermore, it introduces a system which keeps abreast of social change and recognizes the need for improving safety.

1. Benefits for injury, illness, or death are paid promptly. They are based on a pre-established schedule and determined on the basis of the severity of the accident, personal and regional earnings, age of the fisherman, and his family obligations. Injured or ill fishermen are entitled to free medical care, hospital expenses, and rehabilitation.

2. Although expensive and time-consuming litigation is effectively controlled, it is not entirely eliminated. The injured fisherman is entitled to legal representation. Furthermore, he retains the right to sue if the vessel owner fails to pay benefits. Thus, the basic

rights of fishermen are safeguarded, while a serious source of adversary employee/management relations is alleviated.

3. Vessel owners are liable for their employees regardless of fault, but their liability is limited to the benefits specified in the draft bill. Every vessel owner must either carry insurance protection or furnish satisfactory proof to the Government of his financial ability to pay the specified benefits.

4. The draft bill is designed to provide a stable and broad insurance market. Systematic reporting on loss experience will enable insurers to evaluate risks more accurately.

5. The draft bill provides for a free insurance market mechanism designed to operate under sound actuarial principles and practices. The role of the Federal Government is supportive rather than regulatory. Claims are handled through the existing administrative apparatus for workmen's compensation. Both insurers and insured are provided with valuable information on accidents, injuries, safety, and loss experience. The Secretaries of Labor and Commerce shall make annual reports to Congress giving results achieved under the program and containing recommendations for increases in benefits based on industry experience.

SUMMARY

In conclusion, the following represent some of the Group's accomplishments:

1. Identified the basic issues affecting safety and insurance and communicated findings to regional representatives of the fishing industry.
2. Formed industry advisory committees which have initiated regional efforts to improve vessel safety. These committees provide a mechanism for implementing organized training and safety programs.
3. Clarified for the industry the legal rights of fishermen and the liabilities of fishing vessel owners in regard to job-related bodily injuries, illness, and death. Alternate legislative proposals modifying the present system were drafted for review and consideration.
4. Provided the industry with a comparative analysis of the benefits and costs of the present system with such alternative systems. The analysis was based on available limited data collected from actual cases provided by insurance representatives.
5. The Group recommends that NOAA provide/as much assistance as possible, including funding through Sea Grant and other related agencies, to expand on-going regional safety committee and training programs.

The Group labored long and hard to strike a delicate balance among the varying and sometimes conflicting interests of fishermen, vessel owners, and insurers. This draft legislation is based on a realistic appraisal of earnings, accident experience, and financial ability of vessel owners, as these factors relate to a particular fishery. The Group is therefore, genuinely seriously concerned that this delicate balance be maintained.

ADOPTED UNANIMOUSLY BY THE AD HOC GROUP ON COMMERCIAL FISHING VESSEL INSURANCE. May 30, 1975



SECTION II: BACKGROUND INFORMATION

Vessel insurance is clearly a persistent, troublesome problem for the commercial fishing industry, but it is worse during some periods than others. There was a major crisis in the 1950's, which was studied by a nationwide survey of the problem. Another major crisis occurred in the 1960's, with another nationwide study reviewing the problem. Subsequently, the chronic issues of the insurance problem were discussed in a 1973 national conference, which resulted in another major publication. All these activities, plus a study by the U.S. Coast Guard on fishing vessel safety, were sponsored by the Federal Government for the purpose of helping the commercial fishing industry find a satisfactory solution to the insurance problem. Howard Pollock, Deputy Administrator of NOAA, referred to the problem in succinct terms in his opening remarks to the 1973 Conference on Commercial Fishing Vessel Insurance: "I am sure that most of us will agree that attaining adequate vessel insurance coverage at affordable rates has become a very worrisome problem for the fishing vessel operators in all areas of the U.S. fishing industry."^{4/}

The Survey of the 1950's: ^{5/} The conclusions and recommendations of the final report covered a wide range of topics. We shall concentrate on those which are relevant to the deliberations and activities of the Ad Hoc Group, namely, vessel safety and liability insurance.

The following are summary comments on vessel safety:

1. The best constructed and equipped vessel is as good a risk as the people who man and operate it.
2. Licensing of all masters, engineers, and navigating personnel is long overdue.
3. Commercial fishing vessels smaller than 200 gross tons should be subject to regular inspection by the United States Coast Guard. Inspection standards, however, should take into consideration the size of the vessel, its construction limitations, and the type of fishing in which each vessel is engaged.
4. A broad and intensive educational program is highly recommended.

^{4/} cited previously, p. 3

^{5/} The survey was based on a stratified random sample of commercial fishing vessels and their insurance experience for hull insurance and for protection and indemnity insurance for a five-year period, 1950-55. It covered the New England, Gulf of Mexico, and California fisheries. The brief account of the relevant findings and quotations are taken from the summary of conclusions and recommendations of the first volume of the report. W.C. Danforth and C.A. Theodore, Hull Insurance and Protection and Indemnity Insurance of Commercial Fishing Vessels. Special Scientific Report-Fisheries No. 241. U.S. Department of the Interior, Fish and Wildlife Service, 1957.

5. The protection and indemnity insurance problem has its roots in the onerous maritime law, especially that part of the Merchant Marine Act of 1920 known as the Jones Act. Pleas for the repeal of the Jones Act and extension of workmen's compensation to fishermen are the most frequently suggested solutions to the problem.

6. Whenever possible, the Federal Government should encourage the establishment of limited self-insurance plans and insurance cooperatives by offering free expert advice on how to operate such plans.

7. The establishment of a system for the compilation of statistical information about the loss experience of each vessel, the accident record of fishermen, and the insurability of each vessel owner.

8. The demerits of the existing legislation which determines the method of settling vessel owner's liability for accidents sustained by crews were well exposed in the survey. They should be rectified by new legislation. However, further study is required. Such a study is recommended with the following objectives: (a) to estimate whether the cost of insurance to the owner under workmen's compensation would be less or more than under the present system; and (b) to consider ways and means which will make the new legislation more acceptable to the vessel owners and to the fishermen.

The Study of the 1960's:^{6/} This nationwide study focused on the analysis of the insurance problem with emphasis on vessel operating costs. Nevertheless, other topics such as the legal aspects of protection and indemnity insurance and insurance plans of other nations received attention. Although the report contained no recommendations, the researchers recognized in their summary that the insurance problem may be "chronic" and that "the hull problem potentially is more widespread..." but "...the protection and indemnity problem is the more troublesome when viewed in the light of potential solutions."

The 1973 National Conference:^{7/} The reports of the two day Conference amply reflected the seriousness as well as the complexity of the insurance problem. The current insurance situation was discussed by both insured owners and insurers. A panel of underwriters presented aspects of the insurance market structure and procedures for determining insurance rates. The legal aspects were considered by a panel of lawyers representing both viewpoints: The

6/ Most of the dates were obtained from two nationwide samples of vessel records. Sample "A" consisted of all vessels mortgaged to the Fisheries Loan Fund. Their records were used to determine insurance rates on a state by state basis. Sample "B" was a subsample of sample "A" for a detailed study of insurance policies. Although other sources permitted comparisons of insurance experience for several years, analysis was focused on a five-year period, 1964-68. M.M. Miller and D.A. Nash, Insurance Coverage for U.S. Commercial Fishing Vessels. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 1972. Also, Proceedings of the Conference, 1973, pp.

7/ See Proceedings of the Conference cited previously.

plaintiff and the defendant insurer. Safety programs and practices were presented as part of risk management, with a panel consisting of representatives from the Coast Guard, fishermen's unions, safety specialists, and lawyers. The final panel discussed various methods and institutional approaches for pooling risks. The Conference terminated with suggestions how to meet the issues with reports by representatives of vessel owners, fishermen, insurers, and the Federal Government.

Conference participants individually made a wide range of suggestions and recommendations for both short and long term solutions to the insurance problem. The most important or most frequently cited remedies are arranged below under the headings of vessel safety, insurance, reinsurance, information collection, and legal.

a) Vessel Safety

1. Consider some of the international conventions adopted through the International Labor Conference. These conventions and recommendations concern minimum age of fishermen, medical examinations for fishermen, fishermen's articles of agreement, fishermen's certificates of competence, and the vocational training of fishermen.
2. Give fishermen a bonus for safety.
3. Underwriters should provide the fishing industry with more information and more educational material on safety, through agents and brokers.
4. A thorough, independent engineering study of equipment and operating procedures should be made.
5. A vigorous program of safety inspection on the premises and equipment must be instituted.
6. A comprehensive training program should be instituted to include boat owners, skippers, engineers, and other crew members.
7. The Federal Government should establish an attractive loan program specifically for vessel safety improvements. This would enable all willing boat owners to comply with the recommended standards.
8. The Ad Hoc Group should appoint regional fishing vessel safety committees covering all segments of the U.S. fishing industry. The committees should be on a regional basis.

Regions Recommended:

North Atlantic and Great Lakes
South Atlantic and Gulf
Pacific Northwest
California
Alaska
Hawaii

Recommended Members:

NMFS
Vessel Owners
Marine Surveyors
Fishermen's Unions

b) Insurance and reinsurance:

1. Ease the insurance premium rates on hull insurance by having the insurance companies determine the value of the boat and insure it accordingly, instead of the owner deciding how much insurance he wants.
2. Insurance companies should establish differential rates for vessel insurance based on vessel condition instead of a single rate for the

entire fleet.

3. Insurance companies should avoid placing last minute requirements on a vessel prior to issuing a policy. This obviously places a hardship on the owner and the crew.
4. Insurance companies should expedite vessel recovery after grounding. Fishermen believe that some boats could have been saved if immediate action had been taken.
5. Both the commercial fishing industry and the insurance industry should improve the policing of the insurance situation, ferret out illegal claims, and adopt programs that would form a better means of communication between the insured and the insurer.
6. Insurance companies should speed up claim settlement.
7. Establish a mutual or a corporate entity of some kind. The association of vessel owners could act as a federation of fishermen's associations and cooperatives to contract for consulting services and provide a strong voice for industry.
8. Considering insurance cooperatives as a basic institutional form for vessel insurance. Under certain conditions insurance cooperatives are not only desirable but the most natural forms of risk-pooling for fishing vessels.
9. The Federal Government should give serious consideration to a plan providing insurance or re-insurance for fishing boats to be fully or jointly financed by the government. This method is not unique, today the Icelandic Government subsidizes their fishing fleet insurance costs. Contained in this proposed program would be the requirement that fishermen submit to a physical examination each year by a public health physician.
10. Establish a government or quasi-government re-insurance service to provide a broad market for risk dispersion in accordance with the law of large numbers (law of averages).

c) Information collection:

1. Prepare and distribute reports from each Coast Guard District similar to the vessel casualty report prepared by NMFS.
2. Insurance companies should be requested to submit a report, covering a five year period, analyzing the reasons for the increase in premiums and proving that they are warranted.
3. The industry itself should undertake the qualification, classification, and appraisal of the large category of uninspected vessels through professional, independent consulting services.
4. The existing system for handling risks and loss information needs to be improved. A central reporting system which would assemble and disseminate information to underwriters, vessel owners, unions, and others is needed.
5. Establish a centralized risk rating function to improve the efficiency of the insurance market in general. The activity would maintain a continuous and complete record of accidents, evaluate risks, and disseminate risk evaluation information to the industry.
6. A central reporting system should be agreed upon. It would seem that this system might be similar to the Workmen's Compensation system.

d) Legal:

1. Consider legislation to alter current laws relative to P and I insurance for vessels. (Modification of the maritime laws).
2. Overhaul the Jones Act with respect to fishermen.
3. In dealing with third party claims such as those arising under P and I policies, a revision of the underlying legal systems seems appropriate. It appears that we are faced in this area of marine law with a breakdown of the tort system of liability similar to that which is being experienced in other areas. Recommend considering workmen's compensation as an alternative system.
4. An analysis should be made of the practicability of establishing a no-fault fishing boat insurance plan, particularly as it related to P and I coverage. /s
5. For P and I insurance--recommend two alternatives for consideration:
 - (a) a clear-cut compensation statute,
 - (b) modified no-fault insurance of the order of S-945 or the Massachusetts no-fault automobile insurance law.
6. Congress should take action to place fishermen on a compensation basis with a fixed schedule of recovery. If this isn't done, the fishing industry of the United States will have very, very serious problems. The answer is to treat everyone (fishermen and shore-workers) alike.
7. Extend the Federal Longshoremen's and Harborworker's Act to cover fishermen. This law is tried and tested, and administrative machinery is already in existence. All fishermen could and should be covered by insurance and all would receive equitable treatment under this law. Present applicable laws are grossly inequitable when one considers that a permanently disabled crewman who has no one but himself to blame (no negligence or unseaworthiness) would normally receive only \$8 per day maintenance and even that inadequate sum only until the termination of medical treatment--plus, of course, cure and wages to the end of the voyage.

The position of the Federal Government was presented at the closing of the conference by the Director of the National Marine Fisheries Service.^{8/} The critical elements of the many faceted insurance problem were identified as follows;

1. The high rate of accidents in the fishing industry,
2. Inadequate actuarial information,
3. Limited opportunity for adequately spreading the risk and ~~applying the risk and~~ applying the essential "Law of Averages" in some part of the insurance market; and
4. Liberal coverage under existing maritime laws for personal injury and illness, and the expense of establishing such claims.

With respect to the rate of accidents, he discussed the possibility of a vessel safety and inspection program. A program for the collection and dissemination of actuarial information for proper evaluation of risks is

^{8/} "Alternatives for Government Action in Alleviating the Insurance Problem" in Proceedings, pp. 147-52

reinsuring ↑

certainly a possible solution to the second element of the insurance problem. For the appropriate functioning of the Law of Averages, "it may be desirable to establish a Government or quasi-Government mechanism for re~~assur-~~ing at least a portion of the high risk." The obvious remedy for the liberal coverage of personal injuries and illnesses is to remove certain modifications of the provisions of the maritime laws as they apply to commercial fisheries. However, he repeatedly pointed out that the discussion of these alternatives does not imply any committment on the part of the Government and that "effective action will require effective cooperation and coordination from all the groups involved. We will consider all your views and suggestions in determining what we in Government can and should do to help provide a satisfactory solution."

The National Conference terminated its activities with the appointment of the Ad Hoc Group.

SECTION III: INITIAL DELIBERATIONS

During the first two meetings, the Ad Hoc Group was concerned principally with assessing the outcome of the Conference, clarifying the scope of their future responsibilities, and setting up a general plan of activities.^{9/}

The suggestions and recommendations of the Conference on vessel safety, insurance, reinsurance, information collection, and legal matters were discussed extensively. From the beginning the Group recognized the need for concentrating on protection and indemnity insurance, considering hull insurance of much less concern to the fishing industry. The deliberations of the Group during the course of their meetings focused on:

- a) vessel safety
- b) personal liability insurance
- c) the draft bill
- d) information collection
- e) other approaches to cope with the insurance problem, and
- f) a set of general guidelines for carrying out future activities.

Since the first three topics dominated the Group's activities, each is covered later in a separate section. The presentation here is limited to the last three topics, starting in reverse order.

A. General Guidelines

Since the protection and indemnity insurance problem centered on the need for institutional changes, the Group adopted the following general guidelines.

Statement of Purposes: The Group agrees that it should engage in more concrete deliberations for the purpose of bringing about any institutional changes necessary to accomplish the following objectives:

1. To reduce the cost of Protection and Indemnity Insurance to the insured vessel owners and to make such protection more readily available to them.
2. To maintain and, if possible, increase the present level of benefits to the beneficiary fishermen.
3. To stabilize the insurance mechanism in order to maintain and, if possible, increase the present level of earnings of the insurers.
4. To keep the Protection and Indemnity system abreast of social change in the nation as a whole, without impairing the competitive position of the fishing industry.

^{9/} The first meeting was held in Washington, D.C., during February 28 and March 1, 1973; the second in Boston, Mass., during June 20 and 21 of the same year; and the remaining three in Washington, D.C. during February 13 and 14, 1974, September 12 and 13, 1974, and May 29 and 30, 1975. All meetings were chaired by Joseph W. Slavin, Associate Director for Resource Utilization, NMFS.

General Planning Factors: After deliberation, the Group recognizes that any attempt to arrive at a concrete Protection and Indemnity insurance plan that will serve the above objectives may involve consideration of a number of general planning factors such as the following:

1. The special nature of the employer-employee relationship which prevails in many segments of the fishing industry, namely, the impermanent nature of employment and the arrangements for sharing of earnings.
2. The need for stability and uniformity in the process of underwriting risks and handling claims by all parties involved.
3. The need to avoid duplication of social and medical benefits and services provided by various Federal and State agencies.
4. The need for voluntary accident prevention measures tailored to meet the special problems of different regions and fisheries.
5. The need to include presently noninsured vessel owners for the purpose of improving the workings of the law of averages.
6. The need to establish a system that will make maximum insurance information available to all parties involved.
7. The need to consider the different operational characteristics pertaining to different types of fishing and different vessel sizes.
8. The need to anticipate the future introduction of a hull insurance plan in order to achieve maximum benefits for both plans.
9. The ability of vessel owners to meet premium charges that may be necessary to provide adequate coverage for permanent disability and death.
10. The possibility of limiting the present broad scope of the employer's liability without impairing the fair and equitable identification and valuation of covered items of recovery for the fisherman.
11. The desirability of a financially self-sustaining system, with the exception of possible governmental aid for special services such as an information system.
12. The need to eliminate or curtail the central role of adversary litigation in the settlement of claims.

B. Other Approaches

In the quest for solutions the Group looked into other alternatives which, for lack of a better term, are called "other approaches."

They include two oral reports, one on the Canadian Commercial Fishing Vessel Insurance System, and another on the Marine Index Bureau, Inc. A third approach refers to the establishment of insurance pools or associations among vessel owners.

The Canadian system is administered by the Canadian Federal Government.^{10/} Although primarily a hull insurance plan, insurance coverage includes war perils, captures, and other perils. It also includes, under certain conditions, indemnification for any loss such as foregone profits or unearned construction subsidies. Furthermore, it covers some elements of personal

^{10/} Oral presentation by L.O. Clark, Coordinator of the system. Industrial Development Branch, Ministry of Environment, Ottawa, Canada.

liability insurance such as death benefits. At the time of reporting, about 7,800 fishing vessels were insured under the system with an insured value of approximately \$95 million. Insured risks are somewhat poorer than those written by private insurers with whom the system competes. Canadian fishing vessels operate under provincial workers compensation program for personal liability insurance.

The Marine Index Bureau, Inc. was organized in 1937 to serve the needs of marine and affiliated industries for reducing insurance costs resulting from crew claims for personal injuries and illnesses.^{11/} Employers participate in the service on a subscription basis and file a report on each personal injury or illness sustained or alleged by employees. In return, participating employers receive the following reports:

1. A casualty report which reflects previous injuries or illnesses reported or attributable to the same individual. Such a personal casualty profile assists the employers in the equitable evaluation of claims and in effective administration of programs for preventing casualties.
2. A pre-employment report is also a casualty profile of a person applying for employment, transmitted to an inquiring employer by telephone, teletype, or telex. Such a report serves as a guide to the personnel and medical departments of the employer, or to his authorized agent, in their determination of the applicant's eligibility for employment.
3. An annual report presents and analyzes aggregate casualty statistics for each segment of the maritime industry. The report is valuable for the study of underlying factors which may explain the frequency and severity of casualties and as a means of comparing each employer's experience with the total experience of his industry segment. The service can be easily extended to meet the needs of vessel owners who wish to participate.

Insurance pools or associations were presented in a paper during the Conference on Commercial Fishing Vessel Insurance, and several suggestions were made for this approach as a grass roots solution to the insurance problem.^{12/} Although insurers may represent private business firms, cooperatives of vessel owners, or a Government agency, the paper concentrates on insurance cooperatives rather than the other two institutional approaches for insurance protection. Insurance cooperatives, mutual societies, associations, or commonly named pools, are a desirable and effective form of protection for commercial fishing vessels. They provide for maximum self-supervision and control of the human element, and against the unique hazards at sea. Under certain conditions insurance cooperatives are the most natural form of risk pooling.

^{11/} Oral presentation by Bruno J. Augenti, President of the Marine Index Bureau, New York, New York.

^{12/} Report, "On a Centralized Information Collection and Reporting Service for Commercial Fishing Vessel Insurance" by Chris A. Theodore.

C. Information Collection

One of the early requests of the Group was that the National Marine Fisheries Service investigate the sources of data on commercial fishing vessel injuries, illnesses, and death losses, and the availability of such data. To this end, a technical report was prepared for the Group.^{13/}

An information collection and reporting plan may serve the needs of all three major groups of the insurance market, namely, insurers, insured, and fishermen. Periodic reporting of aggregate actuarial data on a regional and nationwide basis will enable insurers to improve the evaluation of risks and could result in lower premiums. Vessel owners may use the same information in order to compare their experience with that of the region they operate in and thus be able to negotiate insurance contracts more intelligently. Dissemination of information on insurance and vessel safety may be of interest or of "educational" value to major groups, including fishermen and their fishermen's unions.

Compilation of statistics may include the physical and operating characteristics of each insured vessel, hull insurance data, protection and indemnity insurance data, and aggregate actuarial data from insurers. The collected data, together with other information on insurance and vessel safety topics, may be published periodically.

Some very limited information is available from the United States Coast Guard and the United States Department of Health, Education and Welfare. Such information, however, would not serve the stated objectives.

On the issue of information collection, the Ad Hoc Group made the following recommendations.

1. Data collection is badly needed but must be given priority in accordance with its relative significance.
2. That a provision should be made in fishery insurance legislation for a data collection service.
3. In the meantime, a project should be undertaken to explore the possible support and cooperation in data collection by insurance underwriters.

^{13/} Report, "On a Centralized Information Collection and Reporting Service for Commercial Fishing Vessel Insurance" by Chris A. Theodore.

SECTION IV: VESSEL SAFETY

Work of the Ad Hoc Group on vessel safety may be presented under three headings: consideration of alternative programs of vessel safety, the safety advisory service program, and the vessel safety certification program.

Alternatives for Vessel Safety: From the outset the group recommended that consideration be given to the development of a voluntary safety program, a certification program, and a training program at the local level. It was requested that National Marine Fisheries Service (NMFS) consider the feasibility of such a program involving vessel owner associations, fishermen's unions, insurance companies which are writing fishing vessel insurance, educational institutions, Sea Grant, U.S. Coast Guard, and others interested in vessel safety. In response to this recommendation, a paper was prepared which, in addition to the safety advisory service, presented a voluntary safety program and a mandatory safety program as realistic alternatives.^{14/}

A Safety Advisory Service could be instituted with the existing authority of the NMFS. It would operate with the available resources of NMFS and the capabilities of the commercial fishing industry. The proposed organization would consist of safety representatives from the NMFS personnel, the fishing industry, and other parties. Each of the five NMFS regions would form safety advisory committees. (One such committee is already functioning in the Alaska region.) Participation of organizations and individuals interested in vessel safety would be voluntary and without pay.

The primary functions of the Safety Advisory Service would be to:

1. Develop and recommend safety and health standards for each fishery;
2. Investigate, analyze, and recommend corrective action for injuries and accidents;
3. Assist with crew training;
4. Provide a limited information service.

Establishment of a Voluntary Safety Program would require new legislation with provisions for the Secretary of Commerce to develop and promulgate the following major functions: safety and health standards, an inspection program, and a certification program. Also, the new legislation would provide the necessary resources for implementing the program. Although the program would be available to everyone, it would be applied only to vessel owners and fishermen who request to participate in the program. However, once the request is made, compliance with official standards and regulations would be mandatory for certification. All features of the Safety Advisory Service would be incorporated into the Voluntary Safety Program. In addition to the three major functions already mentioned, the program may include the following services:

1. Financial assistance for vessel modification to meet official standards.

^{14/} Report on "Commercial Fishing Vessels Safety Programs for Consideration and Discussion by the Ad Hoc Group on Commercial Fishing Vessel Insurance" by Gale H. Lyon.

2. Crew member safety training for both experienced personnel and new recruits.
3. Accident and injury analysis and recommendations.
4. Safety technical advice.
5. Safety information service.

A Mandatory Safety Program was discussed since introduction of such a program to the fishing industry is a real possibility under the Occupational Safety and Health Act (OSHA) administered by the Occupational Safety and Health Agency, U.S. Department of Labor. The principal provisions of OSHA which may be of concern to commercial fishing vessels are:

1. Mandatory safety and health standards;
2. Mandatory reporting system;
3. Inspection without prior notice;
4. Reinforcement procedures;
5. A judicial review system;
6. A safety and health review commission;
7. Training and education of employees and employers.

Although there is no certainty that the provisions under OSHA will be imposed on the fishing industry, the probability of such an application appears to be high. OSHA applies where there is an employer-employee relationship and to the territorial waters of the United States. Applicability to the fishing industry may depend on whether the "lay" system of earnings, which prevails in most fishing operations, is considered an employer-employee relationship, or whether the law may be applied beyond the territorial waters of the United States, and, obviously, on the state of funding for implementation of OSHA. In spite of all these contingencies, some individuals close to OSHA believe that application to the fishing industry is very likely. If such an event takes place, either the Occupational Safety and Health Administration or the Coast Guard will have mandatory inspection jurisdiction over the fishing industry.

With respect to these three alternatives for vessel safety, the Ad Hoc Group adopted the following recommendations, that:

1. The commercial fishing industry adopt and implement immediately the Safety Advisory Service. All members of the industry present, both vessel owners and fishermen's representatives, pledged their active support to this program. They concurred in the proposal that Safety Advisory Committees be organized and become functional as soon as possible.
2. The voluntary safety program as briefed should be given further consideration. Specifically, it was requested that (a) a proposed commercial fishing vessel safety program legislative bill should be prepared and presented at the next meeting of the Group and (b) the insurance industry should be interrogated to determine whether vessel and crew certification would be recognized in P and I insurance premiums to owners. Although not immediately adopted, this program was recognized as perhaps of more significant long-range value than the Safety Advisory Service.
3. If a decision as to the enforcement agency, that is between OSHA and the Coast Guard, is necessary, then the industry would favor the Coast Guard over OSHA as the agency to administer the program.

4. It should be clear that the industry strongly resists any mandatory safety program on commercial fishing vessels.
5. Consideration be given to the formation of a safety school where fishermen could enroll for short periods to be educated in the latest safety methods and in fishing vessel operations.

Safety Advisory Service: In order to strengthen efforts for implementing this recommendation, the Ad Hoc group approved the following:

1. Voluntary safety standards can be implemented at no cost or minimal cost to the Federal Government.
2. It may be desirable to implement several aspects of a voluntary safety standards program through Sea Grant programs.
3. NOAA Corps should actively be involved in an advisory capacity with respect to implementation of a voluntary safety standards program.
4. The National Marine Fisheries Service, Extension Division, should be encouraged to continue to organize and develop safety advisory committees on a regional or port basis.
5. A constructive relationship should be developed between the various fisheries and the U.S. Coast Guard Academy similar to that which presently exists with the menhaden fishing industry, involving the education of cadets about the harvesting and processing aspects of the industry.

Efforts to establish regional Safety Advisory Committees fall into two broad categories, those from Government agencies and those from industry representatives. This is a summary of these efforts as reported at the meetings of the Ad Hoc Group.

Government assistance came from many quarters. The NMFS took the following immediate steps. The Safety Advisory Service (SAS) was:

1. Assigned to the Extension Division;
2. Identified as a priority area;
3. Provided with assistance from both regional and headquarters personnel.

In addition, assistance has been rendered or is for coming from the following NOAA activities: Office of Fleet Operations, Sea Grant, and NOAA Corps; and from the U.S. Coast Guard.^{15/}

Potential contributions to the Service from the Marine Advisory Service of Sea Grant were promising. Several coastal centers could be established on vessel safety. Functions of Sea Grant institutions include special studies, research, education, training, and advisory services. Research activities are of short-run duration, that is, three years or less. Cost-benefit analysis and accident prevention are two potential research areas. Educational activities through advisory services are one of the most promising avenues through which Sea Grant can assist with a fishing vessel safety

^{15/} Report of James F. Murdock, Chief, Extension Division, NMFS, to the Ad Hoc Group, September 12-13, 1974.

program. However, it is not within the Sea Grant jurisdiction to organize and operate a commercial fishing vessel safety program.16/

The request for a full-time officer from the NOAA Corps assigned to the SAS will be honored as soon as a qualified officer becomes available. Ad Hoc participation of NOAA Corps in the activities of the regional safety advisory committees is feasible. However, arrangements will have to be made with supervisors of NOAA programs to which officers are assigned. The NOAA Corps can be counted on for unlimited moral support and as much contribution of personnel time as possible.17/

The Safety Advisory Service provides the U.S. Coast Guard an unusual opportunity to reach and work with the fishermen on vessel safety. Specific guidelines directing Coast Guard regional offices to help the service are as follows:

1. The U.S. Coast Guard district representatives have been given a degree of freedom to cooperate with the Safety Advisory Committees.
2. An agenda should be distributed well in advance of the meeting.
3. Subchapter I (U.S. Code of Federal Regulations) is recommended as a guide for fishing vessel standards.
4. The Coast Guard can help with interpreting regulations and rules, but it cannot provide instructors for such courses as navigation and stability.
5. The position of the U.S. Coast Guard is that voluntary standards are no substitute for mandatory standards.18/

Representatives of more than one agency pointed out that an effective safety program could conceivably prevent as much as 37 percent of the casualties reported to the Coast Guard. But there appears to be considerable under-reporting of accidents, and no proper evaluation of present conditions and future improvements is possible without conscientious filing of accident and injury reports.

Progress with the regional Safety Advisory Committees has been uneven. By the end of the Ad Hoc Group activities in mid-1975, such committees were fully functioning activities in three regions, while in the two remaining regions work was at the conceptual stage.

Efforts to improve vessel safety have been underway in Alaska since the establishment of the Alaskan Fisheries Safety Advisory Council (AFSAC), early in 1972. The objectives were to:

1. Promote safe operating methods in the Alaska commercial fishing industry; and

✓ 16/ Report of Howard Eckles, Program Manager, Marine Advisory Service, Sea Grant, ~~NMFS~~ ^{NOAA}, to the Ad Hoc Group, September 12-13, 1974

17/ Report of Rear Admiral Harley Nygren, NOAA Corps, to the Ad Hoc Group on September 12-13, 1974.

18/ Report of Commander D.F. Smith, USCG, to the Ad Hoc Group on September 12-13, 1974.

2. Identify and develop effective methods for preventing loss of lives, reducing personal injuries, and minimizing vessel casualties.

Parallel to the activities of AFSAC, the Kodiak Fisheries Institute has featured safety-at-sea demonstrations annually since 1972. In 1973, a Sea Grant project was launched to analyze and handle safety problems of fishing vessels. These early activities were strengthened with the establish of the Safety Advisory Committee for the Northwest region in December 1973. The committee's membership reaches into Oregon, with a heavy crossover into Alaska fishing operations since many Oregon and Washington vessels operate in the Gulf of Alaska.

Since then, the principal activity has been to identify problems, establish priorities, and evaluate casualty data. There is a serious problem with the range of existing emergency-frequency radio communications. Another high priority item relates to the appropriate use of inflatable life rafts and their need to carry portable emergency locator beacons. A third item of importance is the successful utilization of survival suits. No less important is the need for better charting of harbors and coastlines and improving the gross underreporting of total and, especially, partial losses of vessels.^{19/}

The New England Safety Advisory Committee was established in October, 1973. Membership included representatives of vessel owners from Boston, Gloucester, and New Bedford, fishermen's unions, NMFS, the Coast Guard, and the University of Rhode Island. After several meetings a program was developed which relates to three projects:

1. Expansion of the existing marine safety placard series.
2. Modification of the international rules of the road in cooperation with the Coast Guard.
3. Inspecting and reporting of selected types of fishing vessels.^{20/}

A great deal of interest is reported in the Safety Advisory Service in California. A safety program activity has been arranged involving the fishing industry as well as associated shipyards, attorneys, and the California State University. Interest in developing safety programs was expressed in several ports along the California coast. Similar interest was shown in ports along the coast of the Gulf of Mexico. The movement, however, in both the Southwest and Gulf regions, has not gone beyond the efforts of forming Safety Advisory Committees.

Voluntary Safety Program: Based on recommendations of the Ad Hoc Group, a draft bill was prepared and titled "Commercial Fishing Vessel Safety Act of 1974." After considerable discussion of this bill and a bill providing for a fishermen's compensation system, an agreement was reached to combine the two

^{19/} Report of Sig Jaeger, Manager, North Pacific Fishing Vessels Owners Association, to the Ad Hoc Group, September 12-13, 1974.

^{20/} Report of Thomas Morris, Vice President, Boston Fishing Boat Association, to the Ad Hoc Group, May 29-30, 1975.

into one legislative bill. In this connection the Ad Hoc Group agreed that the effort to integrate the voluntary safety program with the compensation system should consider the following:

1. Provide for an annual report with respect to the operation of fishing vessels by fisheries, by area, gear, and other characteristics from the data bank of the U.S. Coast Guard;
2. Consider a cost-benefit analysis of the probable effects which preventable accidents may have on the fishermen's compensation system;
3. Provide for reporting of vessel certification and other data of fishing vessels that are in the voluntary safety program to the information data bank of the compensation system;
4. Provide for an upward adjustment of fishermen's benefits whenever there is a reduction in premiums for compensation insurance if such reduction exceeds a reasonable level.

The provisions for a Voluntary Safety Program were incorporated as Title I of the enclosed draft bill (Appendix).

In closing this section, it is interesting to point out that insurance companies would adjust premiums to reflect improved loss records of vessels but not merely because a vessel has obtained a safety certificate as provided by the Voluntary Safety Program. Furthermore, insurance carriers indicated that about three years' experience under such a program would be necessary before premiums would be adjusted, although this rule is not always followed.

SECTION V: LIABILITY INSURANCE SYSTEM FOR COMMERCIAL FISHING VESSELS

In their initial deliberation, members of the Ad Hoc Group recognized the need to consider solving the insurance problem through institutional change. To this end, they adopted a statement of purposes and set up general planning factors (See General Guidelines, Section III-4). These resolutions became the basis for intensive and time-consuming efforts toward formulation of a new insurance liability system. Deliberations of the Group focused on three major tasks: (1) clarification of the legal basis of fishermen's rights and vessel owner liabilities as provided under present maritime law; (2) the evaluation of alternatives to the present system of remedies for fishermen; and (3) drafting a legislative proposal.

Fishermen's Rights: The need for a close examination of fishermen's rights was recognized during the first meeting of the Ad Hoc Group. The following resolution was adopted: "That a study be made to evaluate the feasibility of consolidating into one statute all the rights of fishermen with respect to injury, illness, and death arising in connection with service on commercial fishing vessels which presently appear in statutory as well as nonstatutory maritime laws. It appeared that such codification of all fishermen's legislation would help clarify applicable law and facilitate the evaluation of fishermen's benefits."

In response to this request, a paper was prepared which surveyed the legal remedies presently available to fishermen and their survivors.^{21/} These remedies are provided almost entirely by the federal maritime law as it applies to injury and death of seamen. The federal maritime law consists of two components.

The nonstatutory component, or the so-called general maritime law, evolved from federal court decisions on a case-by-case basis. This power to apply and develop the general maritime law is based on the Constitution of the United States, which grants to the federal courts power over "all cases of admiralty and maritime jurisdiction." Maintenance, cure, and unseaworthiness are examples of legal remedies grounded in the general maritime law.

The statutory component of the federal maritime law, otherwise called statutory maritime law, is enacted by the United States Congress. The Jones Act and the Death on the High Seas Act, to be discussed later, are examples of statutory maritime law based upon this power.

The power of the federal maritime law over state law on jurisdictional matters is overwhelming. This power is based on the doctrine of uniformity, that is, the need to provide similar treatment from port to port for the shipping industry. The force of this doctrine is such as to hold a state

^{21/} Report on "The Maritime Law of Personal Injury and Death as Applied to Commercial Fishermen," R.W. Smith, Boston University and L.K. Wroth, University of Maine, 1973.

workmen's compensation act unconstitutional as applied to seamen, to provide that a case be heard by a jury, and to hold that the federal law must be applied even by a state judge.

For most purposes, the federal maritime law has treated commercial fishermen as seamen; and the legal remedies available to seamen are also available to fishermen. The fact that a fisherman gives up his freedom of action and movement and agrees to follow orders during potentially hazardous voyages is a proscription of personal liberty which should be compensated by favorable statutes in the law. Hence, the maritime law has extended broad protection or favored treatment to fishermen. Consequently, fishermen, as seamen, find the path to recovery for illness or injury relatively smooth.

Under federal maritime law, fishermen's remedies can be classified as no-fault remedies and fault remedies. We shall describe each kind in turn.

1. The principal no-fault remedies are those provided by the general maritime law for maintenance, cure, wages, and transportation. Maintenance is payment of a daily sum to meet the subsistence needs of the fisherman. Cure is expenses for medical treatment until such time as the fisherman is made as well as medical science can make him. In addition, the vessel owner must pay the fisherman's wages through the end of the voyage or the end of the contract period. Finally, the family of a fisherman who dies is entitled to burial expenses.

Maintenance and cure are available to a fisherman in the case of illness unrelated to his employment resulting from a disease which antedates his employment. A fisherman may frequently sign a release of his claim against a third party, but such a release does not release the vessel owner from liability for maintenance and cure. Notwithstanding, the liberal provisions for the remedy of maintenance and cure, this remedy is subject to certain limitations and qualifications.

2. The fault remedies are those provided by the general maritime law for unseaworthiness, the statutory maritime law for negligence under the Jones Act, and the maritime tort of negligence.

The nonstatutory action for unseaworthiness is a traditional maritime remedy which has been expanded considerably and evolved into the doctrine of strict liability. Under this doctrine a fisherman need only show that (a) he was in the vessel's service, (b) he was injured, and (c) the cause of his injury was a defective condition of a physical part of the vessel, a defect in the vessel's gear, disrepair of a vessel's appurtenances, unfitness of the crew, an improper method of loading or stowing cargo, the assignment of too few men to perform a given task, or any similar shortcoming.

Furthermore, the doctrine has been expanded by the operating negligence rule. Under this rule, certain oversights or errors on the part of crew members can cause an unseaworthy condition for which the vessel owner will be liable without a showing of crewmen's negligence. The rule, however, applies strictly to actions for unseaworthiness. It differs from an action of negligence

in that the vessel owner can be found liable even though he did not have control over the instrumentality which caused the injury and even though he did not have an opportunity to find or correct the condition. It is similar to an action for negligence in that the fisherman's negligence will cause a proportionate reduction in the amount recovered and in that the fisherman must show that the unseaworthy condition was the proximate cause of his injury. In an action for unseaworthiness a fisherman may recover for his pain and suffering, loss of future earnings, and other consequential damages.

If the negligence (other than operating negligence) of the vessel owner or a crew member causes the fisherman's injury, then the appropriate proceeding for fault remedies is a suit under the Jones Act. Like the action in unseaworthiness, the Jones Act action is totally dependent on the employer-employee relationship. Because of that the statutory phrase "in the course of his employment" is far more expansively construed in Jones Act cases than it is in the workmen's compensation area. Furthermore, a fisherman in a Jones Act suit has the option of suing on the admiralty side of the federal district court without a jury, or on the law side with a jury, or in a state court without a jury. He can also advance both unseaworthiness and negligence leading to an unseaworthiness recovery, and unseaworthy conditions caused by negligence leading to Jones Act recovery, is understandably apt to be blurred by both court and jury.

Jones Act negligence is different from the negligence of everyday personal injury law in that breach of duty is readily found because of the high degree of responsibility the vessel owner has for his crew. Also, Jones Act negligence differs from "ordinary" negligence in that causation, that is, showing that the breach of duty led to the injury, is more easily proved because it does not have to be proved by direct evidence. As in unseaworthiness, recovery under the Jones Act may include damages for pain and suffering, loss of future earnings and other incidental and consequential damages.

Maritime tort remedies against third parties are a third source of fault remedies. A fisherman may be able to recover damages from the third party for the nonstatutory maritime torts of negligence or breach of warranty. In many situations, however, when a fellow crewmember has caused the harm, inevitably the vessel owner will be the preferable defendant. In the collision situation, the vessels are said to be liable both jointly and severally; that is, the injured fisherman can resort to either vessel for the full amount of his damage or may turn to one for part of his loss and require the second to make up any deficiency. The measure of damages is similar to that in tort recoveries generally, including those based on the Jones Act and unseaworthiness.

The report also discusses other issues which may be relevant to the subject of vessel owners' personal liability.

Maritime remedies for death depend upon the same basic principles of liability that underlie remedies for injury not resulting in death. The topic deserves separate treatment because of complications produced by the interplay of federal and state law. The range of recoveries depends upon where the injury or illness leading to death was incurred. Regardless of the site of the injury, if its cause was negligence, then the Jones Act will provide a vehicle for

recovery. If the injury was received beyond one marine league from shore, the Death on the High Seas Act will give a second source of recovery. Both Acts require a showing of fault: Jones Act negligence, or "wrongful act, neglect, or default" (which includes unseaworthiness) in the Death on the High Seas Act. The primary difference between the two Acts is the list of beneficiaries entitled to recovery.

0 / The vessel owner can recover against the third party only if he is free from fault or the case falls within one of the exceptions to the rule if no contribution. Principal cases in which recovery has been allowed are: a) where a vessel owner not actively at fault has paid maintenance and cure; b) where a vessel owner has paid damages for unseaworthiness and the defect was the fault of a third party; and c) where the vessel owner has paid damages in a collision in which damages are to be divided.

A vessel owner may institute proceedings to limit the amount of his liability to no more than the value of his vessel. In order to do so, the vessel owner must show that the act or omission leading to the injury happened "without the privity or knowledge of such owner." Corporate vessel owners are subject to what might be called the corporate hierarchy rule; that is, the corporate owner will be deemed to have knowledge and privity if someone "sufficiently high" in the corporate structure knows of the difficulty. On the other hand, an individual owner who is not on board will have an easier time showing that he was without knowledge than will a corporate owner.

Under the amended U.S. Longshoremen's and Harborworkers' Compensation Act, the recoveries allowed are far more limited than the recoveries allowed to fishermen by the maritime law remedies.^{22/} The Act allows the longshoreman but one claim, like the claim under workmen's compensation, paid in accordance with a statutory benefit schedule.

We have seen that the federal maritime law preempts state law in most cases pertaining to death and injury of fishermen. State workmen's compensation acts are likewise preempted for claimants who satisfy the general and statutory maritime law tests.

Alternative Insurance Systems Considered: Efforts to identify and to evaluate a new insurance system fall into two distinct categories: existing draft legislation and the systematic development of alternatives leading to legislation.

Evaluation of existing bills involved three draft bills plus the insurance system provided by the U.S. Longshoremen's and Harborworkers' Compensation Act (LHWCA).

^{22/} The discussion refers to the scope of liability, not the magnitude of payments and other conditions of recovery. The scope of the Act may be limited while the benefits may be much larger than prior to the passage of the Act.

A bill, designated S.789 "Fishing Vessel Insurance and Safety Act," would authorize the Secretary of Commerce to guarantee loans made by private lending institutions to fishing vessel owners and to fishermen's marine insurance associations. The Secretary would be authorized to set up safety standards and also to provide a reinsurance service to insurance carriers.

A second bill, designated H.R. 2298 "An Amendment to the Fish and Wildlife Act of 1956," was discussed briefly. This amendment would authorize the Secretary of Commerce to make loans to associations of fishing vessel owners and operators. Such associations would be entitled to loans if they organize to provide insurance protection against vessel damage or loss, against injury or death of fishermen, and for other purposes.

The Group concluded that neither bill, if enacted, would bring about a lasting solution to the insurance problem because both are designed to treat symptoms rather than the basic problem. In other words, they do not provide for changing the present legislative setup relative to insurance. ✓

This was not the case with the third bill cited as "Fishermen's Modified No-fault Protection Act." This bill was designed to provide personal injury protection benefits for all commercial fishermen and to alter the legal procedure for obtaining such benefits by establishing a modified no-fault system of liability. Most provisions were written along the lines of the LHWCA as amended in 1972. Fishermen, or their dependents, would be entitled to 75 percent of average weekly wages for time lost from work due to injury, illness, or death. In addition, fishermen would be entitled to compensation for rehabilitation and other benefits; and, under certain conditions, they would also retain the right to sue at law or in admiralty. This bill was viewed as the most comprehensive piece of legislation for the purpose of introducing a new compensation system for fishermen. Nevertheless, special and general features of the bill fell short of the desired objective, namely, to introduce an insurance system which will offer maximum benefits at a minimum cost. In particular, it was believed that consideration should be given to differences among fisheries, different types of fishermen, a clearly specified compensation system with a fixed schedule of benefits, and a review board for certain kinds of disabilities and for death. However, there was considerable interest in the bill, and further consideration and evaluation were recommended.

Consideration was given to the possibility of including fishermen in the Longshoremen's and Harborworkers' Compensation System. Some possible advantages were uniformity of treatment of injured fishermen, faster claims service, stability in insurance costs, and an existing agency to administer the program. On the other hand, some disadvantages were noted, such as the uncertainty of the total effect of the Act on the fishing industry in terms of requirements and costs. At any rate, it was recommended that the LHWCA be studied more closely by comparing identical cases under the Act and under the present insurance system.

The first such comparison involved 85 disability and death cases which were supplied by, or in the interest of, vessel owners who were serving as members of the Ad Hoc Group. The National Council on Compensation Insurance volun-

teered to compute the cost of benefits of each case under the LHWCA.^{23/} Comparison of computed payments under LHWCA with the actual payments of claims under the present P and I insurance system disclosed that for temporary total disability cases fishermen were receiving larger total payments under the present system than if they had been under the LHWCA system. The reverse was true for cases representing permanent total disability and death, based on cases studied. About two out of three claimant fishermen would have been paid larger sums under the present system. However, in the aggregate the LHWCA system paid larger sums and was considered to be costlier to vessel owners than the present insurance system payments for permanent total disability and death under the LHWCA system. These findings were generally supported later by a more systematic analysis and a broader data base.

The net effect of these early discussions on legislation was the recognition that none of the existing systems were satisfactory and that a systematic approach to drafting new legislation was needed. In particular, the general consensus of the Group was that:

1. Legislation drafters avoid fragmenting vessel labor because of the difficulties of manning vessels with personnel operating under different agreements.
2. Fishermen not be treated as seamen because they are entirely different, especially from the employer-employee standpoint.
3. Consideration be given to social change in any new legislation.
4. Consideration be given to fishermen's rights for re-employment.
5. Regardless of the system, fishermen be provided maintenance and cure.
6. Action on any bills pending before Congress be delayed until the deliberations and recommendations of the Group are finalized.

These conclusions were reached roughly at the time the rights of fishermen were intensively studied. Both efforts led to the statement of purposes and general planning factors already covered (Section III-A). In the light of these directives, the Group undertook the task of exploring in depth the feasibility of three alternative models of personal liability insurance.

Model 1 - Modification

- a) Statutory modification of the present maintenance and cure remedies to provide nonjudicial procedures for automatic payment of benefits and to adjust upward the level of benefits, consistent with the statement of purpose.
- b) No change in present remedies for unseaworthiness and negligence.

Model 2 - No-fault

- a) Statutory compensation regardless of fault according to pre-established, fixed scales of benefits for all injuries involving a specified type of disability.
- b) Right to sue in all cases involving other than the specified types of disability and in all death cases.

^{23/} National Council on Compensation Insurance, 200 E. 42nd Street, New York, New York 10017

Model 3 - Compensation

- a) Statutory compensation regardless of fault according to a pre-established, fixed scale of benefits for all injuries
- b) No right to sue for present remedies.

A draft bill was prepared for each model.^{24/} In addition, further consideration and analysis was given to the LHWCA. In order to compare these four systems with the present P and I system, 316 recently settled insurance cases were obtained from cooperating major insurers in the field. Again the National Council on Compensation Insurance computed the cost of benefits of each of the 316 cases under each system, with the exception of Model 1 which did not include a schedule of benefits. Statistical tests showed that the sample of 316 cases was representative with respect to type in injury, age of claimant fishermen, and other relevant characteristics.^{25/}

A tabulation of the distribution of funds paid out by insurance companies revealed that approximately 31 percent of the cash paid by insurers for the settlement of 315 of the claims in the sample under the present P and I system was paid out for legal fees and expenses (Table 1). In other words, claimant fishermen received only about 69 cents for every dollar insurers spent for settling the sample claims. This escape of funds does not include other indirect costs for underwriting risks as well as for processing claims.

^{24/} The three models were drafted by Professor Kinvin Wroth, University of Maine School of Law, and Richard Smith, Boston University; David Michelman, Legal Counsel; and Gale H. Lyon, Industry Economist, NMFS respectively.

^{25/} Chi-square tests showed no significant difference between the data and similar data from the 1957 Danforth Theodore nationwide survey which was based on a random sample.

Table 1: The distribution of cash payments by insurers in 315 fishermen's cases. 1973.

	Number of Cases	Dollars	Percent
Total Payments by the Insurer	315	3,012	100.00
Payments to Fishermen	315	2,078	69.0
Payments to Fishermen's Lawyers	121	645	21.4
Payments to Insurer's Lawyer	144	289	9.6

Source: Primary data from records of brokers and marine insurance companies. Included cases from the following fisheries: Northeast, Gulf shrimp, Menhaden, Tuna, and Northwest. Cases were ones which had been settled (closed) during the period 1970-72 with few exceptions.

A comparative analysis of alternative insurance systems considered by the Ad Hoc Group was made using disability and death payments under the present P and I system as a base (Table 2). Based on this analysis, the U.S. Longshoremen's and Harbor Workers Compensation System would have paid fishermen (or their dependents) who were involved in the 316 analyzed cases 168 percent more than they were paid (data were adjusted for time lag factor). Similarly, Model 2 would pay 33 percent more, while title II of H.R. 9716 (Model 3 revised) would pay only 1 percent more than they actually received. However, under either Model 2 or Model 3, legal and other settlement costs could be reduced, thereby reducing total insurer pay-out. Savings under such a system would theoretically be divided between fishermen and vessel owners. Adjustments in fishermen's benefits would be made through alterations in benefits schedules. Adjustments in vessel owners' premiums would be made through the insurance market mechanism. This latter factor reflects the need for a strong insurance market, i.e., many buyers and sellers and a uniform insurance product.

Table 2 points up the substantial difference in benefits among the various types of disability and death cases. For instance, the present system paid temporarily total disabled cases more than twice as much as the LHWCA system would have paid, and the latter is considered a high paying system. Alternatively, the permanent total disability and death case benefit payments appear to be very low and is extremely low compared to the LHWCA system.

Table 2: Comparative Analysis of Payments to Fishermen or Dependents for Disability and Death Cases Under Alternative Insurance Systems Using the Amount Actually Paid Under the Current System as a Base, 1975.

Type of Disability and Death Case	Number cases Involved	Present P & I System	U.S. Longshoremen and Harbor Workers Compensation System	Model 2	Title II of H.R. 9716 (Model 3A)
		(000) %	(000) %	(000) %	(000) %
Temporary Total Cases	234	\$829.0 100	\$402.0 48	\$439.0 53	\$392.0 47
Permanent Partial Cases	53	693.0 100	748.0 108	430.0 62	455.0 66
Permanent Total	6	156.0 100	1,122.0 719	417.0 267	318.0 204
Fatalities	17	240.0 100	3,032.0 1263	1,352.0 563	831.0 346
Other	6	62.0 100	0 --	0 -	0 -
All Cases	316	\$1,980.0 100	\$5,304.0 268	\$2,638.0 133	\$1,996.0 101

Source: Primary data from the records of insurance brokers and marine insurance companies. Included cases from fisheries as follows: Northeast, Gulf Shrimp, Menhaden, Tuna, and the Northwest. Based on cases which were mostly settled in 1970, 1971, and 1972.

In conclusion, a number of guidelines were suggested to help members of the Ad Hoc Group in their efforts to initiate a new insurance system:

1. Escapage of funds should be effectively controlled.
2. Monetary gains should be distributed among all three major interest groups, namely, vessel owners, insurers, and fishermen.
3. The actuarial as well as the nonactuarial aspects of such a system should be consistent with the stated objectives and planning factors of the Ad Hoc Group.
4. Individuals of each interest group should convince themselves that expected benefits are worthy of the risks they assume in sponsoring the needed legislation.
5. The best interest of each major group can be most effectively served through collective action.

In general the consensus of the Ad Hoc Group was that fishermen would definitely be better off under Model 3 than under the present system; vessel owners would pay lower premiums; there would be greater equity of benefits among disabled fishermen; and a large share of premiums presently going abroad would remain at home. Finally, the Ad Hoc Group made the following recommendations:

1. To accept the general provisions of Model 3, "Fishermen's Compensation System," as the basis for providing a new draft of a compensation system.
2. To prepare legislation integrating a voluntary safety and a compensation insurance system following the general provisions of the present bill on a voluntary safety program and Model 3.
3. That the new draft should incorporate some of the provisions of other models as well as suggestions which are consistent with the originally stated objectives and planning factors.
4. That the new draft should be evaluated with respect to the following viewpoints:
 - a) administrative feasibility
 - b) actuarial performance
 - c) experience from existing compensation systems
 - d) legal implications
5. That the new draft should be submitted to members of the Ad Hoc Group for evaluation and comment.

Drafting of New Legislation: Merging the fishermen's compensation and the voluntary safety program bills marked the beginning of the last stage of the efforts towards new legislation. The major tasks were evaluation of the merged draft bill and redrafting by a subcommittee of the Ad Hoc Group.^{26/}

The first draft of the merged bill cited as "Fishermen's Compensation and Vessel Safety Act of 1974" was evaluated from the four viewpoints recommended by the Group. In addition, at least one meeting was held in each major

^{26/} The legal work for revising the draft bill, including the final version, was carried out principally by David Michelman, legal counsel on the group.

coastal fishery throughout the country during which vessel owners, fishermen's representatives, insurers and insurance brokers, admiralty attorneys, and others were briefed on the draft bill. The principal points raised were:

1. Whether the bill would jeopardize the fishermen's rights to use the U.S. Public Health Service Hospitals. Inquirers were assured that the bill does not affect such rights.
2. Concern was raised as to whether the bill would effectively control litigation. According to the Deputy Director of the office administering the U.S. Longshoremen's and Harborworkers' Compensation Act, only 0.35 percent of about 200,000 cases, or about 700 cases, required litigation. All other cases were handled by the administrative mechanism of the system. The fishing industry is likely to have similar experience if the bill becomes law, since cases will be handled in a similar manner.
3. Deficiencies in state compensation systems as reported in the White Paper on Workers Compensation were cited and discussed. It was pointed out that the White Paper referred to shortcomings of the state compensation systems. The draft bill corrects these shortcomings.^{27/}
4. One of the overriding concerns was that the bill might result in higher rather than lower costs to vessel owners because Congress might increase the benefits level of the Act. The bill was an unknown quantity since Congress would probably not accept it as it is considering other legislation on the books. Hence, the Group recommended that the views of key members of Congress be obtained on the possibility of passing the draft bill without unwanted changes.

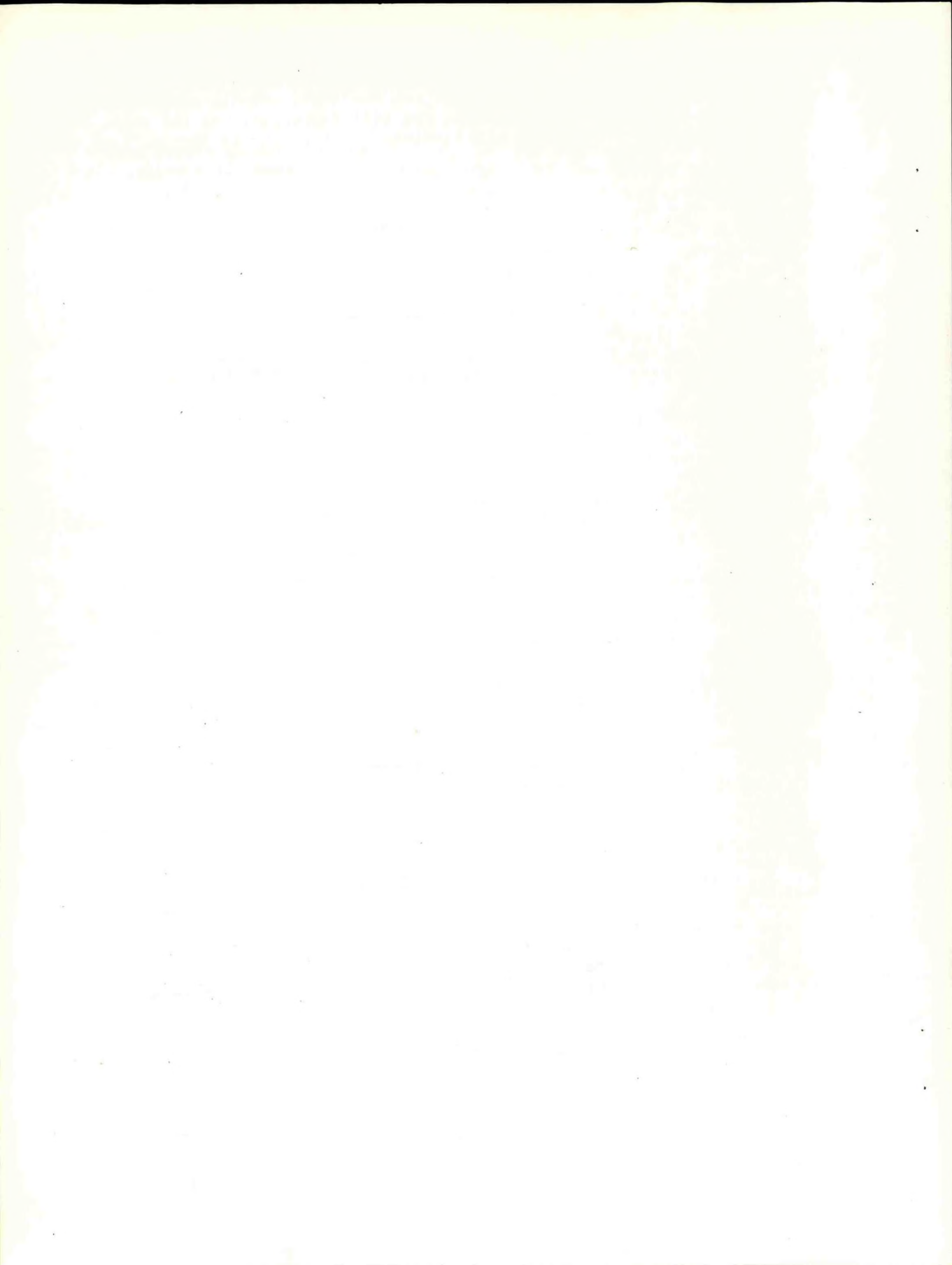
As part of the evaluation process, the Group considered a number of options to the provisions of the merged bill:

1. Mandatory versus voluntary coverage by the bill for fishing vessels.
2. A revised computational system for computing benefits. This option would allow for geographical fishery differences in fishermen's incomes, and age of the fisherman at the time of injury.
3. Provision for an advisory committee on fishermen's compensation insurance.
4. Judicial review of administrative determinations.
5. Limited review by the courts.
6. Changes in administrative procedures.
7. Medical evaluation procedures and medical care and rehabilitation.
8. Exclusiveness of liability. This involved the clarification of certain sections of the draft bill to provide for the exclusiveness factor without doubt.

As a result of these evaluating points and options, the Ad Hoc Group agreed that the momentum gained through these efforts should be continued. A small working committee was appointed for the purpose of reviewing the draft bill in order to make the necessary modifications. The committee met and revised the entire title of the bill on insurance section by section. Agreement was

^{27/} White Paper on Workers Compensation, a report on the need for reform of State Workers' Compensation, U.S. Department of Labor, Commerce, Health, Welfare and Housing and Urban Development, 1974.

reached on all but a few items. The new draft bill, cited as "Vessel Safety and Fishermen's Benefits Act of 1975," was evaluated and discussed again by the Ad Hoc Group. The final draft of the bill (~~Appendix~~) was the basis for the preparation of the Summary and Findings which appear as Section I of this report.



SECTION VI: THE DRAFT BILL^{28/}

The bill was developed "to provide for a commercial fishing vessel safety certification program and fishermen's benefits for personal injuries, illnesses, and for dependents benefits." It is composed of two titles.

Title I - Fishing Vessel Safety authorizes the Secretary of Commerce to implement programs which would provide for the following:

- (a) The promulgation of safety and health standards for commercial fishing vessels which could be voluntarily adopted by vessel owners.
- (b) Vessel inspections at owners' cost and crew member examinations to determine whether the vessel and crew are in compliance with the safety and health standards which are promulgated under this title.
- (c) The certification of vessels which are in compliance with safety and health standards.
- (d) Guarantees of loans made to vessel owners by private lending institutions for the purpose of modifying vessels in order to meet safety and health standards.
- (e) Safety training for voluntary participation by crew members in the furtherance of safety and health standards.
- (f) Fishing industry safety advisory committees which shall be comprised of representatives of commercial fishing vessel owners, fishermen's unions, marine insurance underwriters, and marine surveyors.
- o/ (g) Accident reporting, investigation, and analysis to include mandatory accident reporting by vessel owners who have received certification or a loan guarantee.

Title II - Fishermen's Benefits authorizes the Secretary of Labor to implement a program which would provide for the following:

- (a) A personal injury and death insurance liability system for commercial fishing vessels in place of the current system which is under Federal maritime laws.
- (b) That every commercial fishing vessel owner with one or more employees be liable without regard to causation by fault or unseaworthiness for benefits for disability or death which occurs to an employee while on board a commercial fishing vessel or while engaged in carrying out the duties of a commercial fishing vessel.
- (c) A system of income payments to disabled fishermen until they are fit for duty and to dependents of fishermen who are killed in the service of a commercial fishing vessel; free medical and rehabilitation services to fishermen in their choice of either private or U.S. Public Health Service facilities; and burial expenses in death cases.
- (d) A system of records and reports which will provide data on the number and kinds of accidents and injuries which are occurring on U.S. fishing vessels.
- (e) That every commercial fishing vessel owner secure benefit payments by obtaining and keeping insurance or by furnishing the Secretary proof of ability to pay benefits on his own.

28/ Copy of the Bill is enclosed. It was introduced in the House of Representatives as H.R. 9716 on September 19, 1975.

(f) A fixed schedule of benefits to be paid in disability and death cases, thereby substantially limiting the liability of the vessel owner for personnel aboard his vessel.

(g) Establishment of procedures for resolving contested rights to benefits by either the fisherman or the vessel owner.

(h) The formation of an advisory committee consisting of vessel owners, fishing vessel employees, insurers, and others.

✓ Basic Principles and Concepts of the Bill: The bill was structured on basic principles and concepts which are reflected in both the vessel safety and fishermen's benefits titles, ~~of the bill~~. Some of these principles and concepts are listed below. In addition, comparisons are made between the current system and the systems of the bill.

(1) The social system dictates that all fishermen should receive adequate, fair, and timely compensation benefits when suffering from a service-connected injury or illness and that their dependents should be compensated at a socially acceptable level in the event of accidental death.

Under the present system many fishermen do not receive adequate compensation benefits when injured.

Under the draft bill every fisherman would be covered by provisions of Title II, and every vessel owner would be liable for his employees regardless of fault (Sec. 202). This system would provide the fisherman free medical and hospital care and a predetermined schedule of benefits payments (Sec. 208, 209, 210, 212, 213, and 214).

(2) Ample liability insurance coverage must be available to the owners of fishing vessels and at minimum possible cost.

The present system has resulted in some very weak insurance markets and insurance cancellation, ~~on occasions~~. P and I insurance costs are very high in some areas and are increasing rapidly.

The proposed bill would make insurance available to every owner [Sec. 225(c)]. It would increase competition, lower insurance costs on a case basis, and help create insurance stability in the fishing industry.

(3) A properly functioning fishing vessel insurance system should not permit escape of funds; that is, no premium should be diverted to channels other than for payment of benefits and system management.

The proposed system would virtually eliminate settlement of cases through litigation. Procedures within the system are provided to settle disputed cases (Sec. 218 and 219).

Fees would be set by the Secretary for representatives of either the employee or employer in hearings [Sec. 223(b)].

The proposed system would enable risk evaluation to the point that carriers costs would be substantially reduced. Other costs to the system would be

reduced by transferring certain functions to the government.

(4) The insurance liability system of fishing vessels should be kept abreast of social change in the nation as a whole, without impairing the competitive position of the fishing industry.

The current system of claims litigation is obsolete. It is time-consuming and costly. Benefits should be predetermined and uniformly applied to all concerned.

The proposed system would adjust benefits so that they are more in line with other compensation systems and in accordance with the needs of employees and their families. Benefits would be increased in permanent total (PT) and fatal (F) cases and decreased in temporary total (TT) and permanent partial (PP) cases.

The bill would provide a means of changing the benefit schedule based on loss experience [Sec. 231(c)].

(5) An insurance system should provide for stability and uniformity in the process of underwriting risks as well as processing claims.

The proposed system prescribes a claims filing system (Sec. 216), claims paying system (Sec. 217), and for the settlement of disputed claims (Sec. 218 and 219). These systems would be standard throughout fisheries.

(6) Information on loss experience, accidents, injuries, and fatalities should be available.

At present there is a lack of information on accidents, injuries, and loss records. The availability of this information would greatly facilitate risk management.

The draft bill would provide for accident investigation analysis and reporting (Sec. 109); records and reports of injuries and deaths (Sec. 224); and reports on loss experience and insurance rates and premiums (Sec. 228).

(7) Benefits should be based on the earnings of the injured fisherman as well as the earnings of fishermen in each fishery.

Fishermen's benefits are based on the lowest of the following: (1) The fishermen's earnings or (2) the average earnings of fishermen in each fishery. This method provides for variation in benefits according to the fisherman's or the fishery average (Sec. 212, 214, and 215). It follows that the vessel owners' insurance costs would be in proportion to earnings of the particular fishery.

(8) The liability of vessel owners should be limited to the benefits specified by the system.

Under the current system, there is no limit to an owners liability. It is an

open-ended system. This is poor business since one large settlement could absorb all of an owners assets and lead to bankruptcy.

The proposal limits the owners liability to the extent of the benefits schedule (Sec. 206).

(9) The system should eliminate settlement of claims through the litigation process.

Provisions would be made for the settlement of disputed claims within the system. The following steps would apply (Sec. 218 and 219):

- (a) One or more informal discussions between the parties and a case review officer.
- (b) An informal hearing before the Deputy Commissioner.
- (c) A hearing before an administrative law judge.
- (d) Benefits Review Board consideration.

A Liability exclusiveness statement is provided (Sec. 206).

(10) An integral part of a risk management program should be a safety program designed to minimize injuries and the loss of life and property.

Title I provides for a vessel safety program with the following elements:

- (a) Safety and health standards
- (b) Inspections and examinations
- (c) Certificates of compliance
- (c) Loan guarantees
- (e) Safety training programs
- (f) Safety advisory committees
- (g) Accident reports

(11) An insurance system should operate in a free market composed of insurance carriers and vessel owners, with a minimum of government interference.

This bill would provide for privately negotiated insurance contracts between the carriers and the vessel owners. Claims would be settled within a prescribed set of rules, with no government involvement except in disputed claims. Disputed claims would be resolved with government assistance (Sec. 227).

(12) Every employer should be liable to his employees, without regard to causation by fault or unseaworthiness, for benefits ~~for~~ injury or death of his employees. *due to*

The bill provides for no-fault obligation by vessel owners (Sec. 202).

(13) The system should effectively exclude benefits for injury or illness not directly related to actual employment.

The intention of the bill is to limit owner obligations to those injuries and deaths which occur while the fisherman is on duty on board a fishing vessel

or when he is off of the vessel, but then only when he is engaged directly in duties associated with the vessel [Sec. 202(b)].

(14) An insurance system should support favorable labor-management relations.

The present system creates employer-employee problems in that the injured employee must seek compensation directly from the employer and the settlement is very often a negotiated figure.

The bill would provide for predetermined benefits, and settlements are usually automatic and impersonal. It would virtually eliminate the confrontations which occur under the current system (Sec. 217).

(15) A properly functioning system should provide for periodic evaluation and revision when justified of benefits on the basis of the loss experience of insurers.

A provision of the bill would direct the Secretaries of Commerce and Labor to make an annual report to Congress containing recommendations for changes in benefits based on changes in loss experience [Sec. 231(c)].

(16) Insurers should cooperate in a reinsurance plan to cover poor risks.

At present some owners cannot obtain P and I insurance at affordable costs. Under the provisions of the bill, all carriers participating in the program must agree to write insurance on all owner-applicants and to share in losses [Sec. 225(c)].

(17) The existing legal remedies, the Jones Act and maritime laws, of an injured fisherman should be available as a remedy where his employer fails to secure payment of benefits as required by the prescribed system.

The draft bill does not eliminate the current federal laws providing for fishermen's rights, including the Jones Act, and it does provide for the right of a fisherman to sue under the laws if an owner fails to fulfill his obligations [Sec. 206(b)].

A BILL

To provide for a commercial fishing vessel safety certification program and fishermen's benefits for personal injuries, illnesses, and for dependents benefits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Vessel Safety and Fishermen's Benefits Act of 1975."

TITLE I--FISHING VESSEL SAFETY

STATEMENT OF PURPOSE

SEC. 101. (a) The Congress declares it to be a part of its duty and purpose to provide so far as possible a healthy, viable and competitive fishing industry, and to assure that every fisherman in the Nation has safe and healthful working and living conditions while serving on United States commercial fishing vessels:

(1) by encouraging vessel owners and fishermen in their efforts to improve safety and health conditions on board commercial fishing vessels;

(2) by assisting and encouraging vessel owners and fishermen in reducing the severity and incidence of accidents on commercial fishing vessels.

(3) by providing fishermen with training which will promote safe fishing operations;

(4) by assisting vessel owners with the physical alteration of commercial fishing vessels as necessary in order to provide safe and healthful working conditions; and

(5) by taking other action as necessary to improve health and safety conditions in the United States commercial fishing fleet.

(b) It is the purpose of this title to authorize and direct the Secretary of Commerce to undertake a safety and health program to be made available to members of the United States commercial fishing fleet, to promulgate safety and health standards and to certify those in compliance with such standards, and to provide loan guarantees to vessel owners for improving their vessels to comply with safety and health standards, in order to improve safety and health conditions in the fishing fleet.

DEFINITIONS

SEC. 102. As used in this title --

(a) "Vessel" means any fishing vessel of United States registry or ownership engaged in commercial fishing and harvesting operations on the

navigable waters of the United States or the high seas;

(b) "Secretary" means the Secretary of Commerce;

(c) "Crew member" means any person, including a master or an owner, engaged in operating or working on board a vessel.

FISHING VESSEL SAFETY STANDARDS

SEC. 103. (a) The Secretary is authorized and directed to promulgate safety and health standards for commercial fishing vessels. In establishing such standards, the Secretary shall consult with--

(1) the Secretary of the Department in which the Coast Guard is operating; and

(2) the National safety advisory committee created pursuant to section 108 (c) of this title.

(b) To the fullest extent practicable, safety and health standards promulgated by the Secretary shall be consistent with the collective views of the safety advisory committees.

(c) Safety and health standards promulgated by the Secretary pursuant to this section shall be developed to take into account the differences between various types of fisheries, of various types of vessels and of areas in which the vessels operate.

(d) In promulgating safety and health standards pursuant to this section, the Secretary shall follow the rulemaking procedures set forth in title 5 of the United States Code relating to administrative procedures.

(e) As used in this section, "safety and health standards" means minimum acceptable standards for--

(1) the physical condition of the vessel, including the hull, decks, machinery and gear; and

(2) procedures for normal operation of the vessel, including navigation, fishing, the use of machinery and gear, and emergency procedures; and

(3) the professional competence of crew members, including knowledge of normal operating and emergency procedures; and

(4) the fitness of crew members, including the adequacy of their physical and mental condition for the safe performance of duties.

(f) Any safety and health standards promulgated by the Secretary pursuant to this section shall be consistent with all applicable laws, together with any rules and regulations issued pursuant to such laws.

INSPECTIONS AND EXAMINATIONS

SEC. 104. (a) Within twenty days of the receipt of a written request by the vessel owner, the Secretary shall provide for the inspection of any vessel and the examination of crew members thereof to determine whether such vessel and crew are in compliance with safety and health standards promulgated pursuant to section 103 of this title.

(b) All inspections shall be performed on a predetermined and announced schedule and in a manner so as not to interfere with the fishing operations of the vessel and crew.

(c) All vessel inspections shall be performed by inspectors previously accepted and registered as qualified by the Secretary. All physical examinations of crew members shall be administered by physicians certified by the Secretary.

(d) The Secretary may set a reasonable fee to be paid by the vessel owner to cover costs incurred by the Department of Commerce in conducting inspections and examinations.

FISHING VESSEL SAFETY CERTIFICATION

SEC. 105. (a) In the event an inspection is conducted pursuant to section 104 of this title, and the Secretary determines that the safety and health standards established pursuant to section 103 of this title have been fully complied with, the Secretary shall issue a certificate to the vessel owner so stating. The certificate shall remain in effect for two years from the date of issue.

(b) The Secretary shall compile a list of vessel owners receiving certificates pursuant to this section, and shall update and distribute the list periodically to interested marine insurance underwriters, brokers, and agents.

(c) In the event an inspection is conducted pursuant to section 104 of this title, and the Secretary determines that the Safety and health standards established pursuant to section 103 of this title have not been fully complied with by the termination of the inspection period, the Secretary shall transmit to the vessel owner a statement of the reasons for his decision within ten days of inspection. The Secretary shall not conduct more than one inspection of any vessel within any ninety day period. Crew reexaminations shall be every two years.

(d) All determinations made by the Secretary pursuant to certifications provided for in this section are final.

LOAN GUARANTEES FOR FISHING VESSEL SAFETY

SEC. 106. (a) The Secretary is authorized, under such rules and regulations as he may prescribe, to guarantee the entire amount of loans made to owners of United States commercial fishing vessels by private lending institutions for the cost of equipping, maintaining, altering, modifying, rehabilitating, repairing, or improving such vessels in order to meet safety and health standards promulgated pursuant to section 103 of this title.

(b) The aggregate unpaid principal amount of the loans guaranteed under this section and outstanding at any time shall not exceed \$25,000,000.

(c) Any loan guarantees made pursuant to this section shall be on such terms and conditions as the Secretary determines, subject, however, to the following minimum restrictions and limitations:

(1) Loans shall bear interest (exclusive of premium charges and

service charges, if any) at rates not to exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Department of Commerce.

(2) Loans shall mature in not more than ten years.

(3) No loan guarantee shall be entered into unless some security or other reasonable assurance of repayment is furnished, as the Secretary may require.

(4) The Secretary is authorized to make commitments to guarantee any such loan prior to the date of execution or disbursement thereon.

(5) The Secretary shall charge and collect such amounts as he may deem reasonable for the investigation of applications for a loan guarantee, for the appraisal of properties offered as security, and for the issuance of commitments: Provided, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the loan to be guaranteed. Unless otherwise agreed, the charge for any such services shall be paid by the borrower.

(6) The Secretary is authorized to fix a premium charge for the guaranteeing of loans under this title. Such premium charges shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average principal amount of the loan outstanding. Premium payments shall be made when moneys are first advanced under the loan and on each anniversary date thereafter. All such premium charges shall be computed and shall be payable to the Secretary under such regulations as he may prescribe.

(7) An applicant for a loan guarantee under this section must be a citizen or a national of the United States.

(8) Within the meaning of this title, a corporation, partnership, or association shall not be deemed to be a citizen of the United States, unless the Secretary determines that it satisfactorily meets all of the requirements set forth in section 2 of the Shipping Act, 1916, as amended for determining the United States citizenship of a corporation, partnership, or association operating a vessel in the coastwise trade.

(9) (A) The nationality of an applicant shall be established to the satisfaction of the Secretary. Within the meaning of this title, no corporation, partnership, or association organized under the laws of American Samoa shall be deemed a national of the United States unless 75 per centum of the interest therein is owned by nationals of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are nonnationals and noncitizens.

(B) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by nationals of the United States, citizens of the United States, or both, (i) if the title to 75 per centum of its stock is not vested in such nationals and citizens free from any trust or fiduciary obligation in favor of any person not a national or citizen of the United States; or, (ii) if 75 per centum of the voting power in such corporation is not vested in nationals of the United States, or both, (iii) if through any contract or understanding it is so arranged that more than 25 per centum of the

voting power may be exercised, directly or indirectly, in behalf of any person who is not a national or citizen of the United States; or (iv) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a national or citizen of the United States.

(d) The faith of the United States is solemnly pledged to the payment of interest on the unpaid balance of the principal amount of each loan guaranteed under this title.

(e) The Secretary shall upon payment of the guarantee to the lender, be entitled to take as assignment from the lender of any collateral or security given by the borrower or others in connection with the loan.

(f) If at any time the moneys in the Loan Guarantee Fund authorized herein are not sufficient to pay any amount the Secretary is required to pay hereunder, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of Commerce with the approval of the Secretary of the Treasury.

(g) The Loan Guarantee Fund authorized herein shall have an initial capital of \$5,000,000. The Secretary is authorized to make provision for such payments into or out of the Fund as are necessary to carry out the provisions of this title.

(h) Notwithstanding the provisions of paragraph (6) of subsection (c) of this section, the Secretary is authorized to include in any premiums charged in conjunction with any loan guarantee undertaken pursuant to this section an amount sufficient to cover any borrowing costs incurred by the Department of the Treasury with respect to any funds borrowed from the Department of the Treasury by the Secretary of Commerce pursuant to subsection (f) of this section. The Secretary shall pay such amounts directly to the Department of the Treasury.

(i) The Secretary shall make no loan guarantees to any applicant pursuant to this section unless the applicant demonstrates to the satisfaction of the Secretary that credit is not available on reasonable terms elsewhere.

(j) No application for a loan guarantee authorized under this section may be accepted by the Secretary after June 30, 1981.

SAFETY TRAINING PROGRAMS

SEC. 107. The Secretary shall conduct directly, or through grants or contracts, health and safety information and training programs in order to familiarize members of the United States commercial fishing vessel fleet with the safety and health standards promulgated pursuant to section 103 of this title. Such programs shall be participated in by members of the fishing fleet on a voluntary basis.

SAFETY ADVISORY COMMITTEES

SEC. 108. (a) The Secretary shall establish five regional safety advisory committees covering the coastal areas of the United States. Members of the regional safety advisory committees shall consult with members of the United States commercial fishing vessel fleet and with appropriate public and private agencies and organizations. They shall analyze and investigate accident reports submitted to them pursuant to sections 109 and 224 of this Act, and shall advise and make recommendations on matters relating to vessel safety to the national safety advisory committee established in subsection (c) of this section and to the commercial fishing fleet.

(b) Membership of the regional advisory committees established pursuant to subsection (a) of this section shall be comprised of representatives of commercial fishing vessel owners, members of fishermen's unions, marine insurance underwriters, marine surveyors, and other members as the Secretary may direct. Such members shall serve without compensation. Government personnel shall serve in advisory and support roles.

(c) The Secretary shall establish a national safety advisory committee, composed of the chairmen of each of the regional safety advisory committees, and other members as the Secretary may direct. Committee members shall consult with members of the commercial fishing industry and appropriate public and private agencies and organizations on matters relating to commercial fishing vessel safety, and shall advise and make recommendations to the Secretary regarding the adoption of safety and health standards.

ACCIDENT REPORTS REGULATIONS

SEC. 109. (a) The Secretary is authorized and directed, in conjunction with the commercial fishing vessel safety program set forth in this title, to develop programs for commercial fishing vessel accident reporting, investigation, and analysis.

(b) The owner of any commercial fishing vessel which has received certification pursuant to section 105 of this title, or which is the subject of a loan guarantee pursuant to section 106 of this title, shall prepare and submit to the Secretary a complete report describing any accident or injury which takes place aboard such vessel. Such report shall be submitted within ten days following notice to the owner of an accident or injury on board his vessel.

REGULATIONS

SEC. 110. The Secretary is authorized to promulgate such other rules and regulations as are necessary to carry out the provisions of this title.

APPROPRIATIONS

SEC. 111. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

TITLE II--FISHERMEN'S BENEFITS

Part A--Coverage and Liability

DECLARATION OF PURPOSE

SEC. 201. (a) The Congress recognizes the following factors--

(1) The failure of the present system of determining liability based on fault or unseaworthiness to provide a sufficient, fair, and timely distribution of monies for the adequate compensation and rehabilitation of injured employees; and

(2) The high cost of settling claims for disability and death under present remedies in which adversary litigation plays a central role; and

(3) The inability of many segments of the fishing industry to obtain protection and indemnity insurance coverage; and

(4) The heavy economic burden on the fishing industry in meeting premium charges necessary to provide adequate coverage for the protection of its employees; and

(5) The high number of vessels which are presently noninsured and whose employees lack adequate protection in case of injury; and

(6) The need for stability and uniformity in the process of underwriting risks and the lack of adequate insurance information available for making rational decisions about expected losses and premium rates; and

(7) The differences between the commercial fishing industry and the merchant marine which require that the law distinguish between fishermen and other seamen, including the special nature of the employee-employer relationship which prevails in many segments of the fishing industry, characterized by the impermanent nature of employment and by arrangements for sharing the earnings of the vessel; and

(8) The different operational characteristics pertaining to different types of fishing and different vessel sizes; and

(9) The need to limit the present broad scope of the employer's liability without impairing the fair and equitable recovery by fishermen of losses caused by job-related injuries.

(b) It is the purpose of this Act to provide for the general welfare by establishing a system of personal injury protection benefits which will provide sufficient, fair, and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of fishing vessels within interstate commerce and otherwise affecting such commerce, and which will guarantee the availability of insurance at reduced cost to the fishing industry.

LIABILITY FOR BENEFITS

SEC. 202 (a) Every employer whose vessel is normally operated with a person other than himself is subject to the provisions of this title. Such employer shall file a certificate of compliance, in accordance with a form prescribed by the Secretary, subjecting himself to the obligations and duties imposed by this title.

(b) Every employer subject to this title shall be liable to his employees, without regard to causation by fault or unseaworthiness, for benefits for injury or death which occurred on board a commercial fishing vessel or while the employee was directly engaged in carrying out the duties of a commercial fishing vessel.

(c) Liability for benefits shall not apply where injury to the employee was occasioned by his intoxication, misconduct, or by his willful intention to injure or kill himself or another.

DEFINITIONS

SEC. 203. When used in this title the following meanings of terms apply.

(1) "Person" means individual, partnership, corporation or association.

(2) "Employee" means any individual who derives income from commercial fishing and harvesting operations, including any individual who also owns, charters, or operates the vessel on which he is employed.

(3) The term "employer" means --

(A) Any person who has legal or equitable title to a fishing vessel and who --

(i) personally engages in commercial fishing and harvesting operations with such vessel,

(ii) does not personally engage in commercial fishing and harvesting operations with such vessel but hires other persons to operate the vessel in such operations,

(iii) rents or leases such vessel to another person for use in commercial fishing and harvesting operations, where the rent or consideration for lease of such vessel is in whole or in part determined by the value of the catch resulting from such operations; or

(B) Any person who rents or leases a fishing vessel from another person for use in commercial fishing and harvesting operations (regardless of whether the person so using the vessel personally engages in such operations), where the rent or consideration for lease of the vessel is not in whole or in part determined by the value of the catch resulting from such operations.

(4) "Commercial fishing and harvesting operations" means the catching or processing of fish, shellfish, and other aquatic plants and animals from fresh or salt water bodies for sale.

(5) "Injury" means (1) accidental injury or death which occurred on board a commercial fishing vessel or while an employee was directly engaged in the duty of a commercial fishing vessel, or (2) such occupational illness, infection, or disease which arises naturally out of such employment or results naturally from such accidental injury.

(6) "Disability" means an administrative determination of the extent of incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or another employment.

(7) "Benefits" means the money allowance payable to an employee or his dependents under this title for medical, rehabilitation, and burial services, and for disability or death.

(8) "Carrier" means any person or fund authorized under section 125 to insure under this title.

(9) "Secretary" means the Secretary of Labor.

(10) "Child" means a person under eighteen years of age, including a person in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of the injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children.

(11) "Dependent" includes a "child," "widow," or "widower."

(12) "Vessel" means any fishing vessel of United States registry or ownership engaged in commercial fishing and harvesting operations on the navigable waters of the United States or the high seas.

(13) "District court" means any district court of the United States, including the United States District Court for the District of Columbia.

EXTRATERRITORIAL COVERAGE

SEC. 204. If an employee suffers injury while working outside the territorial limits of the United States, on the account of which he, or in the event of his death, his dependents would have been entitled to the benefits provided by this title had such injury occurred in territorial waters, such employee or his dependents shall be entitled to the benefits provided by this title.

PRESUMPTION

SEC. 205. In any claim for benefits under this title it shall be presumed, in the absence of evidence to the contrary, (1) that the claim comes within the provisions of this title, and (2) that sufficient notice of such claim has been given.

EXCLUSIVENESS OF LIABILITY

SEC. 206 (a) If an employer secures payment of benefits as required by this title, the liability of such employer under this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer, or from the vessel itself, at law or in admiralty on account of such injury or death.

(b) If an employer fails to secure payment of benefits as required by section 225, an injured employee (or his legal representative in case death results from the injury) may maintain any action at law or in admiralty that such person might have maintained for damages on account of such injury prior to enactment of this title.

THIRD PARTY LIABILITY

SEC. 207. (a) If a person entitled to benefits on account of an injury determines that some person other than the employer or a person in his employ is liable in damages on account of such injury, he may either (1) accept benefits from the employer; (2) commence an action against such third party to recover damages; or (3) both accept such benefits and commence such an action, provided that, where a person accepts benefits from the employer and fails to commence an action for damages against such third party within six months following the receipt of the first installment of benefits, such acceptance shall act as an assignment to the employer of all of the rights of such person to recover damages against the third party.

(b) The employer, on account of such assignment, may either commence proceedings for the recovery of such damages or may compromise with such third party either without or after commencing such proceeding.

(c) Any amount recovered by an employer on account of such assignment shall be distributed as follows:

(1) The employer shall retain an amount equal to --

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee, as determined by the deputy commissioner as provided in section 223(b));

(B) the cost of all benefits actually furnished by him to the employee under section 208;

(C) all amounts paid as income benefits

(D) the present value of all amounts thereafter payable as income benefits, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits to be furnished thereafter under section 208, to be estimated by the deputy commissioner. The amounts so computed and estimated are to be retained by the employer as a trust fund to pay such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to benefits; and

(2) The employer shall pay any excess to the person entitled to benefits, less one-fifth of such excess which shall belong to the employer.

(d) If the person entitled to benefits commences an action within the period prescribed in subsection (a), the employer shall be required to pay as benefits a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury over the amount recovered against such third party.

(e) If the person entitled to benefits commences an action against a third party as provided in subsection (a) and compromises such action for an amount less than the benefits to which such person would be entitled under

this title, the employer shall be liable for benefits as determined in subsection (d) only if the written approval of such compromise is obtained from the employer and its carrier at the time of or prior to such agreement. Such compromise is obtained from the employer and its carrier at the time of or prior to such agreement. Such compromise shall be recorded, on a form provided by the Secretary, and filed in the office of the deputy commissioner, within thirty days after such compromise is made.

(f) Where the employer is insured and the carrier has assumed the payment of the benefits, the carrier shall be subrogated to all of the rights of the employer under this section.

(g) The right to benefits shall be the exclusive remedy when an employee is injured by the negligence or wrong of any other person in the same employ.

Part B -- Medical, Rehabilitation, and Burial Services

MEDICAL AND REHABILITATION SERVICES, APPLIANCES AND SUPPLIES

SEC. 208. (a) For any injury covered by this title, the employee shall be entitled to all medical care and rehabilitation services, and appliances and supplies, which are required by the nature of his injury and which will relieve pain and promote and hasten his restoration to health and employment. The employer shall promptly furnish such care, services, appliances and supplies and necessary replacements or repairs of such appliances unless the need for replacement or repairs is due to carelessness of the employee.

(b) All employees shall be entitled either to utilize the services of medical personnel and facilities of the United States Public Health Service or to choose a private physician to attend them, from a list designated by the Secretary.

(c) All physicians attending injured employees shall comply with all the rules and regulations adopted by the deputy commissioner and shall make such reports as required by him upon the condition or treatment of any injured employee or upon any other matter concerning cases in which employed. The deputy commissioner shall actively supervise the medical care and rehabilitation rendered to injured employees and shall have authority to determine the necessity, character, and sufficiency of any medical aid or rehabilitation furnished or to be furnished. Where the deputy commissioner determines that further medical aid, treatment or rehabilitation is necessary, and the employer or carrier refuses to provide such services, he may order that such services be supplied to the employee and the costs be assessed against the employer or carrier. /c

(d) If the employee unreasonably refuses to submit to medical examination, treatment, or rehabilitation the deputy commissioner shall, by order, suspend the payment of further compensation and his right to further proceedings during such time as such refusal continues.

(e) Medical fees and services for employees will be no higher than those charged other clientele and shall be regulated by the Secretary.

MEDICAL EXAMINATIONS

SEC. 209. (a) In the event that medical questions or issues of the extent of an employee's physical impairment are raised in any case, the deputy commissioner shall have the power -- (1) to cause the employee to be examined by a physician selected by the employer, and, at his discretion, to charge the cost of examination to the employer; or (2) to cause the employee to be examined by a panel of three physicians employed or selected by him. (An employee or an employer may have a physician of his own choosing in attendance at such examination.)

(b) If at least two members of a panel established pursuant to subdivision (a)(2) of this section are in agreement on such questions, the panel shall submit a joint report stating its findings and conclusions about the extent of employee's physical impairment and such other information as may be appropriate. Where no such agreement is reached, the panel shall request the deputy commissioner to cause the employee to be re-examined by a panel of different physicians.

(c) The findings and conclusions of any medical panel shall become part of the record in the case and shall be accepted as final and conclusive in any hearing by any administrative law judge or the Board. Any award made as a result of such hearing shall conform to such findings and conclusions.

BURIAL EXPENSE

SEC. 210. If an injury causes death, the employer shall pay reasonable funeral expenses, but such payments shall not exceed \$1,000. If death occurs while away from the home port or if there are recovery fees associated with the body, the employer shall pay the reasonable cost of services necessary to recover and transport the body to the employee's place of residence within the United States.

Part C -- Income Benefits

WAITING PERIOD

SEC. 211. No income benefits shall be allowed for the first three days of a disability; provided, however, that in case the injury results in disability of more than fourteen days, income benefits shall be allowed from the date of the disability. (The day on which the injury occurred shall be included in computing such waiting period unless the employee has been paid full wages for that day.)

INCOME BENEFITS FOR DISABILITY

SEC. 212. Income benefits for disability shall be paid to the employee as follows:

(a) Temporary total disability -- In case of disability total in character but temporary in quality, 65 percent of the employees average weekly earnings, but not more than 65 percent of the fishery average, shall be paid to the employee until he is declared fit for duty by a physician or returns to duty, whichever occurs first.

(b) Permanent partial disability -- In case of disability partial in

in character but permanent in quality (1) 65 percent of the employee's average weekly earnings, but not more than 65 percent of the fishery average, shall be paid until he is declared fit for duty by a physician, has reached his maximum recovery, or returns to duty, whichever occurs first, and (2) for bodily losses scheduled in subsection (c) of this section, the employee shall, in addition, be paid in one lump sum the product of 50 percent of the lesser of either his average weekly earnings or the fishery average times the number of weeks scheduled for such loss, and (3) in all cases in this class of disability other than those scheduled in subsection (c) of this section, in addition, 65 percent of the difference between the lesser of either the employee's average weekly earnings, or the fishery average, and the employee's wage earning capacity thereafter in the same or another employment shall be paid during the continuance of such disability, subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.

(c) The following schedule for bodily losses shall constitute the base level for permanent partial disability payments to an employee of 40 years of age:

Bodily Loss

(1) Arm	312
(2) Leg	288
(3) Hand	244
(4) Foot	205
(5) Thumb	75
(6) Index Finger	46
(7) Middle Finger	30
(8) Ring Finger	25
(9) Little Finger	15
(10) Great Toe	38
(11) Second Toe	16
(12) Third Toe	16
(13) Fourth Toe	16
(14) Fifth Toe	16
(15) Total hearing loss binaural	200
(16) Total vision, one eye	160

(17) Phalanges: Benefits for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Benefits for loss of the first phalange shall be one-half of the benefits for loss of the entire digit.

(18) Amputated arm or leg: Benefits for an arm or leg, if amputated at or above the elbow or knee, shall be the same as for a loss of the entire arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or a foot.

(19) Binocular vision or percent of vision: Benefits for loss of binocular vision or for 80 percent or more of the vision of an eye shall be the same as for loss of the eye.

(20) Two or more digits: Benefits for loss of two or more digits or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the benefits for loss of a hand or foot.

(21) Total loss of use: Benefits for permanent total loss of use of a member shall be the same as for loss of a member.

(22) Partial loss or partial loss of use: Benefits for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(23) Disfigurement: Benefits not to exceed 100 weeks shall be paid for serious disfigurement of normally exposed areas likely to handicap the employee in securing or maintaining employment.

(d) The benefit periods specified in subsection (c) of this section shall be adjusted as follows where the employee's age is greater than or lesser than the base age:

(1) Where the base period is greater than or equal to 160 weeks, an employee's benefit period shall be increased by two weeks for each year by which the employee's age is less than 40 and shall be decreased by two weeks for each year by which the employee's age is greater than 40; provided that in no case shall such period be increased or decreased by more than 40 weeks.

(2) Where the base period is between 25-75 weeks, an employee's benefit period shall be increased by one week for each year by which the employee's age is less than 40, and shall be decreased by one week for each year by which the employee's age exceeds 40; provided that in no case shall such period be increased or decreased by more than 20 weeks.

(3) Where the base period is 15 or 16 weeks, an employee's benefit period shall be increased by one week for each two years by which the employee's age is less than 40, and shall be decreased by one week for each two years by which the employee's age exceeds 40; provided that in no case shall such period be increased by more than 10 weeks.

1/8 (e) Permanent total disability -- In case of disability total in character but permanent in quality, an employee shall be paid -- (1) benefits for temporary total disability, in accordance with subsection (a) of this section, until such injury is adjudged to be permanent, and, thereafter, (2) 50 percent of the lesser of his average weekly earnings or the fishery average, plus 2½ percent of the lesser of such amount for each dependent for up to a maximum of 4 dependents.

(f) The following shall constitute permanent total disability in the absence of conclusive proof to the contrary:

Loss of:

- (1) both hands or
- (2) both arms or
- (3) both legs
- (4) both eyes or
- (5) any two thereof.

In other cases permanent total disability shall be determined in accordance with the facts.

(g) Temporary partial disability -- In case of temporary partial disability resulting in a decrease in earning capacity, 65 percent of the difference between the lesser of either the employee's average weekly earnings before the injury or the fishery average, and the employee's wage earning capacity after the injury in the same or another employemnt shall be paid to

the employee during the continuance of such disability, provided that such payments shall not be made for a period exceeding three years.

SUBSEQUENT INJURIES

SEC. 213. (a) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide benefits for such disability as is found to be attributable to that injury, but benefits for such subsequent injury shall not be paid for a period exceeding one hundred and four weeks. In determining such benefits, the employee's average weekly earnings shall be such sum as reasonably represents the employee's earning capacity at the time of the injury.

(b) Where an employee suffers a subsequent injury for which he would be entitled to receive more than one hundred and four weeks of benefits if the employer's liability were not limited by subsection (a) of this section, the employee shall be paid the remainder of the benefits to which he would be entitled for such disability from the special fund established in section 232 of this title.

INCOME BENEFITS FOR DEATH

SEC. 214. (a) If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following:

(1) To the widow or widower of the deceased, 50 percent of the average weekly earnings of the deceased but not more than 50 percent of the fishery average, payable until remarriage. Two year indemnity benefits in one lump sum shall be payable to a widow or widower upon marriage.

(2) To each child, until the age of 18 (if there is also a widow or widower), up to a maximum of four children, $2\frac{1}{2}$ percent of the average weekly earnings of the deceased, but not more than $2\frac{1}{2}$ percent of the fishery average.

(3) To the children, until the age of 18 (if there is no widow or widower), 35 percent of the average weekly wage of the deceased, but not more than 35 percent of the fishery average, to the first child, and 5 percent of the average weekly wage of the deceased, but not more than 5 percent of the fishery average, for each additional child up to a total of 50 percent for all of the children of the deceased, to be divided equally among such children.

(b) Where the present annual income from all sources (including benefit payments) of a person entitled to benefits under this section exceeds 100 percent of the average weekly earnings of the deceased, the benefits payable under this section shall be reduced by an amount of \$50 for each \$100 of income which such person receives above such 100 percent level.

DETERMINATION OF AVERAGE WEEKLY
EARNINGS AND THE FISHERY AVERAGE

SEC. 215. (a) The average weekly earnings of an employee shall be determined as follows:

(1) Where the employee has worked in the same or similar type of employment on the same or similar type of fishing vessel, whether for the same or another employer, for substantially all of the fishing seasons for the particular fishery within the 36-month period preceding the injury, his average weekly earnings shall be found by taking one, one hundred and fifty-sixth of his total annual earnings from all commercial fishing whether in this or another fishery during such period.

(2) Where the employee has not worked in the same or similar type of employment on the same or similar type of fishing vessel, whether for the same or another employer for substantially all of the fishing seasons for the particular fishery within the 36-month period preceding the injury, his average weekly earnings shall be such sum as, having regard to the previous earnings of such employee in the employment in which he was working at the time of the injury, and of other employees of the same or most similar type of employment in the same or neighboring locality, or other employment of such employee, shall reasonably represent the annual earning capacity of the employee.

(b) The fishery average shall be determined as follows: The Secretary shall identify specific fisheries, and shall annually determine the arithmetic average (over the most recent 36-month period) of the weekly earnings of all employees in each fishery subject to this title who during such period received at least 50 percent of their annual earnings from commercial fishing and harvesting operations.

Part D -- Procedures

PROCEDURE FOR FILING A NOTICE OF INJURY AND A
CLAIM FOR BENEFITS

SEC. 216. (a) Notice of an injury in respect of which benefits are payable under this title shall be given to (1) a deputy commissioner and (2) the employer. The filing of such notice shall represent a claim for the payment of benefits, and no further formal demand for payment must be made upon the employer to notify him of his obligations under this title.

(b) Such notice shall be given within 30 days after the employee becomes aware, or in the exercise of reasonable diligence should have become aware of the relationship between the injury and the employment. If notice is not given within the prescribed period, the right to receive benefits under this title shall be barred, except that the deputy commissioner may determine that the interests of equity and justice require the waiver of such statute of limitations. In no case shall a claim be honored if reported more than two years after the date of injury or illness.

(c) Such notice shall be in writing, in accordance with a form provided by the Secretary, shall contain the name and address of the employee, and a statement of the time, place, nature, and cause of the injury, and shall be signed by the employee or by some person on his behalf.

(d) Notice shall be given to the deputy commissioner by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

PROCEDURE FOR PAYMENT OF BENEFITS

SEC. 217. (a) Benefits under this title shall be paid periodically, promptly, and directly to the employee or his survivors without an order, except where liability to pay benefits is controverted by the employer.

(b) The first installment of benefits shall become due on the fourteenth day after the employer has knowledge of the injury, on which day all benefits then due shall be paid. Thereafter benefits shall be paid in semi-monthly installments.

(c) Upon making the first payment, and upon suspension of payments for any cause, the employer shall notify the deputy commissioner in accordance with a form prescribed by the Secretary.

(d) If the employer controverts the right to benefits he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury a notice, in accordance with a form prescribed by the Secretary, stating that the right to benefits is controverted, the name of the claimant, the name of the employer, the date of the alleged injury, and the grounds upon which the right to benefits is controverted.

(e) If any installment of benefits payable is not paid within fourteen days after it becomes due, as provided in subsection (b) of this section, there shall be added to such unpaid installment an amount equal to 10 percent thereof, which shall be paid at the same time as, but, in addition to, such installment, unless notice is filed under subsection (d) of this section, or unless such nonpayment is excused by the deputy commissioner after a showing by the employer then owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) Within fourteen days after final payment of benefits has been made, the employer or his carrier shall send to the deputy commissioner a notice, in accordance with a form prescribed by the Secretary, stating that such final payment has been made, the total amount of benefits paid, the name of the employee, that date of the injury, and the date to which benefits have been paid. If the employer or his carrier fails to so notify the deputy commissioner within such time, the Secretary may assess such employer a penalty in the amount of \$100. e/

(g) Whenever the deputy commissioner determines that it is in the interest of justice, the total liability of the employer for benefits or any part thereof, as determined by the deputy commissioner with the approval of the Secretary, may be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 6 percent true discount compounded annually. The probability of death of the injured employee or other person entitled to benefits before the expiration of the period during which he is entitled to benefits shall be determined in accor-

dance with the American Experience Table of Mortality, and the probability of remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the benefits shall be disregarded.

(h) An injured employee shall give receipts for payment of benefits to the employer or carrier paying the same and such employer shall produce the same for inspection by the deputy commissioner, whenever required.

INVESTIGATIONS AND HEARINGS

SEC. 218. (a) The deputy commissioner shall have full power and authority, in any case in which payments are being made without an award or upon receiving notice from the employer than the right to benefits is controverted or that the payment of benefits has been stopped or suspended, to make such investigations and to take all such further actions as he considers will properly protect the rights of all parties. Upon request, he shall provide persons covered by this title with assistance relating to the title's coverage, benefits, and shall assist such persons in processing claims.

(b) In any case in which the deputy commissioner is unable to obtain agreement of the parties in the dispute, then upon application of either party, the deputy commissioner shall submit the case to an administrative law judge for a hearing. The administrative law judge shall hold the hearing within 45 days of the filing of such application. The claimant, employer and carrier shall receive at least ten days' notice of such hearing, served personally upon them or sent to them by registered mail.

(c) Any hearing held under this title shall be conducted by an administrative law judge qualified under section 3104 of title 5 of the United States Code, and shall be conducted in accordance with the provisions of section 554 of that title.

(d) The administrative law judge shall within 30 days following such hearing by order, either reject the claim or make an award in respect of the claim. Such order (referred to in this title as a benefit order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail to the claimant, employer, and carrier at the last known address of each.

(e) Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining the payment of any benefits under this title shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed \$2,000, and shall be required to reimburse the employer or carrier for all benefits obtained due to such statement or representation.

REVIEW OF BENEFIT ORDERS

SEC. 219. (a) A benefit order shall become effective, and benefits shall be payable, when such order is filed as provided in section 218. Unless proceedings for the suspension or, setting aside of such order are instituted as provided in subsection (b) of this section, such order shall become final at the expiration of the thirtieth day thereafter.

(b) Appeals raising a question of law or fact taken by any party in interest from decisions of an administrative law judge under this title shall be heard and determined by the Benefits Review Board (hereafter referred to in this title as the "Board") established under section 921 of title 33 of the United States Code. Benefit orders shall be based upon the hearing record, and finding of fact shall be conclusive if supported by substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless irreparable injury would otherwise ensue to the employer or carrier.

(c) The Board may, on its own motion or at the request of the Secretary, and without the consent of the parties, remand a case to the administrative law judge for further appropriate action.

(d) The decisions of the Board on any question of law or fact concerning a claim for benefits under this title shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review such decisions, by any action in the nature of mandamus or otherwise.

(e) The Board may require the opinion of the Attorney General on any question of law arising in the administration of this title.

ENFORCEMENT OF BENEFIT ORDERS

SEC. 220. (a) In the event of failure to comply with a benefit order making an award, that has become final, the employee or deputy commissioner or Board may apply for the enforcement of the order to the district court. If the court determines that the order was made and served in accordance with the law, and that such employer has failed to comply therewith, then the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such employer compliance with the order.

(b) (1) In case of default by the employer in the payment of benefits under any award of benefits, if such default continues for thirty days after the benefits are due and payable, the employee may, within one year after such default, make application to the deputy commissioner or the Board for a supplementary order declaring the amount in default. In case the payment in default is an installment of the award, the deputy commissioner or the Board may, in their discretion, declare the whole of the award as the amount in default.

(2) The applicant may file a certified copy of such supplementary order with the clerk of the district court.

(3) The supplementary order of a deputy commissioner or the Board shall be final, and the court shall, upon the filing of the copy of such order, enter judgment for the amount therein declared in default if such supplementary order is in accordance with law. Review of the judgment shall be final unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefit order upon presentation of a certified copy thereof to the court.

(4) Any person entitled to benefits under the provisions of this title shall have a lien against the assets of the carrier or employer for such benefits without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

MODIFICATION OF BENEFIT PAYMENTS

SEC. 221. Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of benefits, whether or not a benefit order has been issued or at any time prior to one year after the rejection of a claim, review a case in accordance with the procedures prescribed in section 218, and may thereupon issue a new benefit order which may terminate, continue, reinstate, increase or decrease such benefits or awarded benefits. Such new order issued modifying a previous order shall not affect any benefits previously paid. Where benefits have been paid for loss suffered by an injured employee before his death resulting from the injury, the deputy commissioner may issue an order awarding benefits to the survivors.

PROCEDURE BEFORE THE DEPUTY COMMISSIONER

SEC. 222. (a) In making an investigation or inquiry or conducting a hearing the deputy commissioner, administrative law judge or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this title; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the right of the claimant. The parties may be represented at such inquiry or hearing by attorneys or lay representatives. The Secretary may, upon request, provide the claimant with legal assistance for the purpose of preparation for or representation at a hearing before an administrative law judge or the Board.

(b) Hearings before an administrative law judge or the Board shall be open to the public and shall be stenographically reported, and administrative law judges, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the administrative law judges or Board.

(c) Administrative law judges or the Board shall have power to preserve and enforce an order during any proceedings to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things necessary to carry out the duties of his office.

(d) If any person in proceedings before an administrative law judge or the Board disobeys or resists any lawful order or process, or misbehaves during a hearing, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having

been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to the law, then the administrative law judge or the Board shall certify the facts to the appropriate district court. The court shall thereupon, in a summary manner, hear the evidence as to the act complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process.

(e) Witnesses summoned in a proceeding before an administrative law judge or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States.

(f) No person shall be required to attend as a witness in any proceeding before an administrative law judge at a place outside of the State of his residence and more than one hundred miles from his residence, unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the district court for the judicial district in which the case is pending.

FEEES FOR REPRESENTATION

SEC. 223. (a) If the employer or carrier declines to pay benefits on or before the thirtieth day after receiving written notice of a claim having been filed from the deputy commissioners, on the ground that there is no liability for benefits within the provisions of this title, and the person seeking benefits shall thereafter have utilized the services of an attorney at law or a lay representative in the successful prosecution of his claim, there shall be awarded against the employer or carrier a reasonable fee and an amount for reimbursement for reasonable and necessary expenses incurred.

(b) The amount of such fee shall be based upon the amount of time actually spent by the attorney or lay representative and his staff in investigation, preparation and presentation of the case, and shall be computed according to a fixed hourly rate for such services, as established by the Secretary. The amount of benefits recovered by the employee shall not be a factor in the computation of such fee.

(c) Each claim shall be supported by a written statement specifying the amount of time expended, services rendered, and expenses incurred. Each claim shall be reviewed and approved, in whole or in part, and shall be awarded by the administrative law judge, Board, or court, as the case may be. The amount awarded shall be paid directly by the employer or carrier to the attorney or lay representative in a lump sum after the benefit order becomes final. Such amount shall not in any respect affect or diminish the benefits payable under this title.

(d) Any person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved by the administrative law judge, Board, or court, or who solicits employment for an attorney or lay representative, or for himself in respect of any claim or award for benefits, shall upon conviction thereof, for each offense be punished by a fine of not

more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

RECORDS AND REPORTS

SEC. 224. (a) Every employer or carrier shall keep a record in respect of an injury to an employee, containing such information about the injury as the Secretary, after consultation with the Secretary of Commerce, may require. Such record shall be available for inspection at such times and under such conditions as the Secretary may prescribe.

(b) Within ten days from the date at which the employer has knowledge of an injury or from the date the vessel returns to its home port the employer shall send to the appropriate regional safety advisory committee established pursuant to section 108 of this Act, a report setting forth (1) the name, address, and business of the employer; (2) the name and address of the employee; (3) the cause or nature of the injury; (4) a description of such accident and the conditions under which it occurred; and (5) such other information as the Secretary may require.

(c) Any report provided for in subsection (b) shall not be evidence of any fact stated in such report in any proceeding in respect of such injury on account of which the report is made.

(d) Any employer who knowingly or willfully refuses to send any report required of him by this section shall be subject to civil penalty not to exceed \$500 for each such refusal.

SECURITY FOR PERSONAL INJURY PROTECTION BENEFITS

SEC. 225. (a) Every employer shall secure the payment of benefits under this title --

(1) By insuring and keeping insured the payment of such benefits with any stock company, mutual company, corporation, insurance cooperative, or other association of vessel owners, domestic or foreign, authorized by the Secretary to insure payment of benefits under this title; or

(2) By furnishing satisfactory proof to the Secretary of his financial ability to pay such benefits and receiving an authorization from the Secretary to pay such benefits directly. The Secretary may, as a condition to such authorization, require such employer to deposit in a depository designated by the Secretary either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Secretary, and subject to such conditions as the Secretary may prescribe, which shall include authorization to the Secretary in case of default to sell any such securities sufficient to pay benefit awards or to bring suit upon such bonds, to procure prompt payment of benefits. Any employer securing benefits in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of benefits under this title the Secretary shall require satisfactory proof of the carrier's financial ability to pay such benefits. In granting such authorization the Secretary may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation. The Secretary may suspend or revoke such authorization for good cause

shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

(c) Every carrier authorized to pay benefits under this title and its authorized agent shall agree to provide insurance for the payment of benefits to any employer making application for such insurance. Such carriers, acting under the direction of the Secretary, shall cooperate in the preparation of a reinsurance plan which shall provide for the fair and equitable apportionment among such carriers of premiums, losses, or expenses, or any combination thereof, incurred under policies issued to employers under this title. Such plan shall be developed subject to approval by the Secretary, and shall be implemented and operated by a governing board consisting of representatives of six carriers, appointed by the Secretary. When such plan has been approved, no carrier shall thereafter issue an insurance policy for the payment of benefits under this title unless such carrier shall participate in such plan.

PENALTY FOR FAILURE TO SECURE PAYMENT OF BENEFITS

SEC. 226. (a) Any employer required to secure the payment of benefits under this title who fails to secure such benefits shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of benefits; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefits which may accrue under this title with respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of such benefits.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this title, and with intent to avoid the payment of benefits under this title to such employee or his survivors shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one year, or by both such fine and imprisonment for not more than one year, and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty or imprisonment as well as jointly liable with such corporation for such fine.

SUBSTITUTION OF CARRIER FOR EMPLOYER

SEC. 227. In order that the liability for benefits may be most effectively discharged by the employer, and in order that the administration of this title in respect of such liability may be facilitated, the Secretary shall by regulation provide for the discharge, by the carrier for such employer of such obligations and duties of the employer, in respect to such liability, as it considers proper in order to effectuate the provisions of this title. For such purpose (1) notice to or knowledge of an employer of the occurrence of an injury shall be notice to or knowledge of the carrier,

(2) jurisdiction of the employer by a deputy commissioner, administrative law judge, the Board or the Secretary, or any court under this title shall be jurisdiction of the carrier, and (3) any requirement by a deputy commissioner, administrative law judge, the Secretary, the Board, or any court under any benefit order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

UNIFORM STATISTICAL PLAN AND PRICE INFORMATION

SEC. 228. (a) The Secretary shall classify all commercial fishing vessels into reasonable categories of coverage and classes of risk, and shall promulgate a common, uniform statistical plan for the allocation and compilation of loss experience data for each such coverage and class of risk. All such data gathered in accordance with the provisions of the statistical plan shall be reported at such time and in such manner as the Secretary shall, by rules and regulations, prescribe.

(b) Such statistical plan shall contain data pertaining to the pure loss experience for the classes of risk within each coverage of this title, except that (1) such plan shall not contain data pertaining to loss adjustment expenses, underwriting expenses, general administration expenses, or other expense experience for any class of risk within the coverage; and (2) in carrying out the provisions of this section, no insurer, rating or advisory organization, or statistical agent, or any other association of insurers, shall pool, or in any manner combine, any such expenses or expense experience, or otherwise act in concert with respect thereto.

(c) Every insurer writing policies of insurance which meet the requirements of this title, shall provide the Secretary with the actual rate or premium being charged for each class of risk within each coverage.

(d) The Secretary shall annually analyze and freely make available to the general public, a comparison of the aggregate loss experience, within particular fisheries, for each category of coverage and class of risk.

INSURANCE POLICY PROVISIONS

SEC. 229. (a) Terms and conditions of insurance policies issued by a carrier under this title, except for terms and conditions involving premium rates or other costs of insurance, and forms used by such carriers in offering insurance coverage, are subject to approval and regulation by the Secretary. The Secretary shall approve only terms and conditions consistent with the purposes of this title, and fair and equitable to all persons whose interest may be affected.

(b) The Secretary may require standard uniform and standard minimal policy provisions and classes of risk in policies or contracts of insurance issued under this title, to the extent that he deems it necessary to accomplish the purposes of the statistical plan required by section 228.

(c) Every policy or contract of insurance issued under authority of this title shall contain:

- (1) provision to carry out the provisions of section 227, and
- (2) provision that insolvency or bankruptcy of the employer and/or

discharge therein shall not relieve the carrier from payment of benefits for disability or death sustained by an employee during the life of such policy or contract.

(d) No contract or policy of insurance issued by a carrier under this title shall be cancelled prior to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the deputy commissioner and to the employer.

INVALID AGREEMENTS

SEC. 230. (a) No agreement by an employee to waive his right to benefits under this title shall be valid.

(b) No assignment, release, or commutation benefits due or payable under this title, except as provided by this title, shall be valid, and such benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

ADMINISTRATION

SEC. 231. (a) In order to carry out the provisions and fulfill the purpose of this title the Secretary shall --

(1) establish an advisory committee consisting of vessel owners, employees of fishing vessels, and insurers, or their representatives for the purpose of assisting in the implementation of this title and for acting as a liaison with the regional safety advisory committees, and for other matters relating to the prevention of personal injuries.

(2) consult with representatives of State agencies charged with the regulation of workmen's compensation, representatives of State agencies charged with the regulation of the business of insurance, representatives of the insurance industry, and such other persons, organizations, and agencies of the Federal, State or local governments as he deems necessary;

(3) make, promulgate, amend, and repeal such rules and regulations as he deems necessary;

(4) appoint and fix the compensation (subject to the provisions of the civil service laws) of such deputy commissioners and other officers and employees, and where the Secretary determines that efficiency of operation and the utilization of expertise and manpower will be improved, he may assign the duties and responsibilities inherent in such positions to the deputy commissioners, officers, and employees having jurisdiction over administration of the Longshoremen and Harbor Worker's Compensation Act (33 U.S.C. 901-950); and

(5) establish benefit districts, to include the high seas and the areas within the United States to which this Act applies, and shall assign to each such district one or more deputy commissioners, as he deems advisable.

(b) The secretaries of Labor and Commerce shall make a joint annual report to the Congress (1) with respect to safety programs and measures being carried out in United States commercial fishing and harvesting operations

and the results of such programs and measures in reducing injuries covered by this Act, and (2) containing recommendations for increases in benefits pursuant to this Act at such times as they determine the fishing industry can pay such increases as a result of improved loss ratios.

SPECIAL FUND

SEC. 232. (a) There is hereby established in the Treasury of the United States a special fund whose proceeds shall be available for payments under section 213 of this title, or for repayment of the sums deposited in the fund pursuant to subsection (e) of this section.

(b) The Treasurer is authorized to disburse moneys from such fund only upon order of the Secretary. He shall be required to give bond in an amount to be fixed and with the securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into such fund shall be made as follows:

(1) Whenever the Secretary determines that there is no person entitled under this title to benefits for the death of an employee for which benefits would otherwise be payable under this title, the appropriate employer shall pay \$5,000 as benefits for the death of such an employee.

(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and each carrier shall make payments into the fund on a prorated assessment by the Secretary in the proportion that the total benefit and medical payments made on risks covered by this title by each carrier bears to the total of such payments made by all carriers under this title in the prior calendar year, in accordance with a formula and schedule to be determined from time to time by the Secretary to maintain adequate reserves in the fund.

(3) All amounts collected as fines and penalties under the provisions of this title shall be paid into such fund.

(d) For the purpose of making rules, regulations, and determinations under this section and for providing enforcement thereof, the Secretary may require each carrier to make, keep, and preserve such records and to make such reports and provide such other information as the Secretary deems appropriate. The Secretary may investigate and gather appropriate data from each carrier, and for that purpose may enter and inspect such places and records, question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate.

(e) There is hereby authorized to be appropriated to the Secretary the sum of \$200,000, which the Secretary shall immediately deposit into the fund and which shall be treated as the property of the fund. This sum, without additional payments for interest, shall be repaid from the money or property belonging to the fund on a schedule of repayment set by the Secretary: Provided that full repayment must be made no later than five years from the date of deposit into the fund. Each such repayment, as made, shall be covered into the Treasury of the United States as miscellaneous receipts.

(f) Neither the United States nor the Secretary shall be liable in respect of payments authorized under section 113 in an amount greater than

the money or property deposited in or belonging to such fund.

(g) The Treasurer of the United States shall deposit any moneys paid into such fund into interest-bearing accounts in such depository banks as the Secretary may designate, and may invest any portion of the funds which, in the opinion of the Secretary, is not needed for current requirements, in bonds or notes of the United States.

(h) The comptroller General of the United States shall audit the account for such fund and shall submit such audit to Congress at the close of the fiscal year. The action of the Secretary in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the Secretary for payments made from such fund authorized by the Secretary.

AUTHORIZATION AND APPROPRIATIONS

SEC. 233. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

DISCRIMINATION AGAINST EMPLOYEES WHO CLAIM BENEFITS

SEC. 234. (a) It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim benefits from such employer, or because he has testified or is about to testify in a proceeding under this title. Any employee so discriminated against shall be restored to his employment and shall be reimbursed by his employer for any loss of wages arising out of such discrimination: Provided, that if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such resotation and reimbursement.

(b) Any employer who violates this section shall be liable to a penalty of not more than \$1,000 as may be determined by the deputy commissioner. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void.

EFFECTIVE DATE

SEC. 235. This title shall take effect on the first day of the third calendar month after the date of its enactment, and shall apply only with respect to injuries occurring on or after the first day of such third calendar month.