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House sinks marine insurance bill

Legislation voted down, 241-181

'Does U.S. want a fishing industry?'

By PAMELA GLASS
Ottaway News Service

WASHINGTON — The bill intended to ease the maritime insurance crunch was soundly defeated by the House yesterday, and the bill's author blames greedy lawyers and misguided consumer groups.

"It was a combination of intimidation and obfuscation that worked," said Rep. Gerry Studds.

The Cohasset Democrat, whose district includes the New Bedford and Cape Cod fishing communities, made these stinging remarks after a 241-181 vote killed the measure.

In the final tally, the bill's sup-

porters couldn't even muster a majority, never mind the 282-vote, two-thirds majority required to pass the measure according to special rules under which it was being considered.

The final tally was 241-181, with the entire Massachusetts delegation voting in favor, except House Speaker Thomas O'Neill, who normally doesn't vote.

Studds said the nation's trial lawyers, with the help of four influential consumer groups, staged a "highly visible, highly subtle" lobbying campaign to kill his bill, which would cap a boat owner's accident liability and require certain safety equipment on commercial fishing boats.

Studds said he will try to bring the bill back to the floor again before Congress adjourns for the year on Oct. 3. He conceded, however, that this will be very difficult considering the crowded congressional calendar and strong opposition from the House Judiciary Committee and the nation's trial lawyers.

"It's my own impression that it's effectively dead for this Congress," Studds told reporters after the vote. "The groups that sought to kill it have succeeded."

Members of the Association of Trial Lawyers of America, including several maritime attorneys

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By BILL KIRK
Times staff

The defeat of the marine insurance bill in the House of Representatives has sent tremors through the local fishing industry.

"This is very devastating for the entire U.S. fishing industry," said Sam Parisi, a local businessman who has been trying to get insurance for Gloucester fishing boats for almost two years.

"Does the United States want a fishing industry or not?" Parisi asked.

But not everyone is so sure the proposed bill would have helped the industry by reducing insurance premiums.

Nowhere in the bill did the insurance companies promise to reduce insurance premiums, local attorney Joseph Orlando pointed out.

The bill capped the amount fishermen could collect in personal injury suits, on the assumption that

the cap would cut insurance companies' costs, and the companies could then afford to lower rates.

Orlando, an attorney with Orlando and White, a local law firm which has won many personal injury suits resulting in high claims, said the bill as authored by Rep. Gerry Studds was written by and for the insurance companies.

"All it does is to assure greater insurance company profits," Orlando said. "They get this bill and people who are injured can't bring action against vessels. A guy could shatter his leg, be out 10 months, and he has no recovery."

"The bill makes the victims pay for the negligence of boatowners."

Under the bill, a fisherman with a temporary disability would have received 80 percent of his wages or \$30 a day, whichever was greater, plus all medical expenses, and would not have had to sue to get it.

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• Some question whether bill would help

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A permanently disabled fishing boat crew member would have had to go to court, but would have been limited to \$500,000, plus medical expenses. If the boat owner was guilty of gross negligence or willful misconduct, however, there would be no limit.

"I am not surprised Studds is pushing it," Orlando said. "He has people on his staff who own fishing boats and who are closely aligned with the insurance companies.

"No one has ever said that if this bill passes that they (insurance companies) will lower premiums."

Parisi disagreed. To blame high insurance premiums on insurance companies is "totally ridiculous. Insurance companies are a business, and they are going to make money. To make money, they will raise insurance premiums."

"The way (Joe) Orlando looks at it, if there is a ceiling on (premiums) he would be working for less.

Naturally it is in their (attorneys') best interests to defeat this."

Parisi said the bill would have had several benefits for the fishing industry:

- Insurance companies, now hesitant to insure fishing boats because of exorbitantly high personal injury claims, would be more willing to grant personal injury insurance to boat owners;

- Boat owners, who are faced with high personal injury suits and who may be considering dropping out of the industry, would stay in the industry and hire more crewmen.

Parisi said, "What happens if a boat owner says, 'It's not worth it to own a boat — I incur all the costs, and if I get sued, I must pay.'"

Instead, Parisi said, boat owners are saying, "I will work for another boat. If I slip, then I will sue."

He added, "They are making it impossible for a boat owner to want to own a boat. They can't even make (premium) payments,

much less a profit."

Brian Tarr, president of the Gloucester Fisherman's Loan Fund, who like Parisi is also trying to organize an insurance cooperative made up of Gloucester boat owners, said one boat owner he knows is paying \$72,000 for insurance, with minimal coverage and \$5,000 deductible.

He said the bill was "one avenue open to us. (Its defeat) closes the door on us. Many of us were counting on that bill to relieve the pressure of trying to get insurance in the industry.

"This was a hope," he said. "It had some bugs that had to be worked out, but it was a start, a beginning."

The Seafarers International Union, which represents a small percentage of the crewmen in Gloucester, supported implementing the bill for one year to see if it would result in lower premiums.

Michael Orlando, vice president of the union's Gloucester branch, could not be reached for comment.

Joe Piva, president of the union

in New Bedford, said the bill got defeated because "the insurance companies gave no indication that premiums would come down."

"Congressmen were scared that if they passed it, the insurance rates would go up or stay the same," he said.

"We were not totally for it. We wanted to put a one-year umbrella on it."

In both Gloucester and New Bedford, many vessels, which have already paid off their mortgages, are going without insurance.

Parisi said boat owners without insurance incorporate their vessels so that if they are sued on a personal injury claim, they can tell the insurance company to take the corporation, while protecting the rest of their assets.

But, Parisi said, that is a dangerous practice.

"Some sharp lawyer will come along and pierce the corporation and take the guy's house and car and everything else he owns."

• House votes down insurance proposal

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from Massachusetts, canvassed Capitol Hill this week outlining their opposition to the bill, and, according to Studds, threatening to withdraw campaign contributions to those who voted for it.

Studds said at least two colleagues told him they would oppose the legislation for fear of losing campaign money from the lawyer's group.

Studds said the bill's defeat is a perfect example of how congressmen who know little about a pending bill can be easily swayed by persuasive and often distorted arguments by lobbyists.

"The entry into the game in the last 48 hours of a well-financed lobby with the threat to withhold campaign contributions made a difference," he said.

But Robert Havel, spokesman for the lawyer's group, denied that threats were used.

"There were no threats made," he said. "I think some of people we contributed to actually didn't vote with us. We had 12 lawyers and members of admiralty law section lobby; it was all quite open."

The group also objected to suggestions by Studds earlier this week that lawyers were exploiting injured fishermen for their own financial gain.

"Trial lawyers around the country deeply resent Rep. Studds' suggesting that representing the victims of fishing accidents or their survivors somehow indicates a desire to see them injured or killed," association president Robert Habush said in a statement.

"We are totally in favor of increased safety on fishing vessels and of increased benefits to those injured on them," he said. "We believe that had Mr. Studds worked through the normal process instead of trying to ram through an ill-advised bill that needs further work and amendments, a good product could have been achieved."

The lawyers' group mounted an extraordinary campaign, Studds said, but distorted several key facts — such as the lawyers' claims that the mandated safety equipment requirement wouldn't apply to all fishing boats.

"That's just not true," Studds

said. All fishing boats, regardless of their age, would have been required to comply.

Studds said the groups also distorted the reasons why fishermen's insurance problems require special congressional attention.

The congressman stressed that the bill had the united support of the fishing industry, fishermen and insurers.

Consumer groups, including advocate Ralph Nader's Public Citizen, joined the opposition early yesterday morning when they sent letters to all House members saying the bill is "fatally flawed."

The letter, also signed by the Consumer's Union, U.S. Public Interest Research Group and the Consumer Federation of America, said the current national insurance crisis can't be solved by "cutting off the rights of the most seriously injured fishermen."

Under the bill, a fishermen with a temporary disability would have received 80 percent of his wages or \$30 a day, whichever was greater, plus all medical expenses, and would not have had to sue to get it.

A permanently disabled fishing

boat crew member would have had to go to court, but would have been limited to \$500,000, plus medical expenses, except in cases involving gross negligence or willful misconduct.

Unlike most workers, injured fishermen are not covered by traditional workers' compensation laws, but instead are covered by federal maritime laws that also cover seamen on merchant ships.

The bill also would have mandated safety features such as distress beacons, marine radio systems and survival suits for boats operating in cold waters, such as those off Alaska and New England.

Consumer and lawyer groups have traditionally opposed legislation limiting an injured person's right to sue.

But the kind of injury situation these groups are thinking of has nothing to do with the U.S. fishing industry, Studds said. "They're thinking of Bhopal (India, where a leak at a Union Carbide plant killed thousands last year), rather than the (fishing boat) Mediera out of New Bedford."