Collection: Boggs, Danny J.: Files
Folder Title: Environment - Oil Spills
Box: H79

ENV —

OIL SPILLS' DANGER APPEARS REDUCED

Coast Guard Officials Believe Tighter Rules Have Curbed Pollution of the Oceans

10-15-81

By DUDLEY CLENDINEN
Special to The New York Times

BOSTON, Oct. 14 — The amount of oil spilled into the sea, one of the great environmental concerns of the last decade, has dropped sharply throughout the world, according to the Center for Short-Lived Phenomena in Cambridge, Mass.

The private group, which is monitoring the volume of spillage from ruptures, fires, collisions and other industrial accidents, came to the conclusion in a report today. It has issued annual reports on the subject since 1978.

United States Coast Guard officials agree with the findings and think they could be the result of tougher regulations and the industry's heightened sense of responsibility.

But with the Reagan Adminstration's emphasis on increased exploration on the outer continental shelf of the United States, and with drilling going forward in other remote and difficult areas of the open sea, the newly released figures are cause for both comfort and concern. They suggest that the danger of oil pollution is lessening, but they give rise to fears that the public will take too much comfort from that.

Spills Still Pose a Danger

"If we had a spill on the Georges Bank," the fishing grounds off Massachusetts, Capt. Charles R. Corbett of the United States Coast Guard said today, "our equipment would be there, and it would recover a lot of oil. But it wouldn't get it all." Capt. Corbett commands the Coast Guard's Marine Environment Response Division, which coordinates response to oil spills.

The Oil Spill Intelligence Report, a newsletter of the Center for Short-Lived Phenomena, finds that "the total amount of oil lost to spillage, fire or sinking in 1980 was about 55 per cent less than the corresponding amount lost in 1979, and about 29 per cent less than the corresponding amount in 1978."

Nearly 149 million gallons of oil were lost in 199 accidents in 1980, as compared to 328 million gallons in 1979 and 210 million gallons in 1978. There were 83 other accidents in 1980 in which oil loss is unknown. But, the report says, "nearly 480 people were killed or reported missing, over 150 people were injured, and up to 100,000 birds were killed."

The report notes, "The apparent decrease in the amount of oil lost in 1980, as compared to that in 1978 and 1979, may prove somewhat misleading." It said that it would be difficult to guess how much oil was lost in the war between Iran and Iraq, because of a lack of detailed information on damage to pipelines, refineries and other oil facilities. But, the newsletter estimated, "at least 100 million gallons" were lost.

Oil From a Variety of Sources

The National Academy of Sciences estimated in 1973 that about 4,750,000 metric tons of oil would enter the world's oceans each year. There are 280 to 300 gallons of oil per ton. The academy said some 600,000 tons would seep up from natural vents in the ocean floors, 700,000 tons would spill from tankers, 600,000 tons trapped in the atmosphere would fall as rain from the sky, and that coastal municipal and non-refinery wastes would produce 450,000 tons, offshore production 200,000 tons, urban runoff 300,000 tons, and oil spilled on land would amount to 1,600,000 tons.

The sources monitored by the Center account for about one-fifth of the estimated overall loss. But losses from those sources were reduced in 1980. In addition, according to Richard S. Golob, executive director of the Center, "this year, it seems that we have had even fewer spills than in 1980."

There have been no major production disasters so far in the period under review.

In almost every year of the 1970's, Mr. Golob said, great accidents have occurred. But the breaking up of the tanker Amoco Cadiz off Portsall, France, in 1978, which released 68 million gallons of oil on the Brittany Coast, and the grounding of the Argo Merchant on the Nantucket Shoals off Massachusetts the previous winter, the Coast Guard says, changed the climate of public opinion, and brought tougher standards into effect.

In the New England region, where no oil is refined and where almost all petroleum arrives by ship, according to Lieutt. Comdr. Herbert Robinson of the Coast Guard, oil spillage into navigable waters was 30 per cent less in 1980 than in 1979, and the 1979 figures was 50 per cent below that for 1978.

"Most of our regulatory packages came into effect around 1978," he said. Crew training, navigational and oil handling equipment is better now, he said. All foreign and domestic carriers in American waters must carry such equipment as radar, gyrocompasses and charts and publications "so they know where they are." he added.

Since late 1978, Commander Robinson said, the Coast Guard has maintained a computerized watch on every ship entering American waters. with records on its history of performance and specific problems. If the Captain of the Port in Boston, New Orleans or elsewhere wants to bar a ship from entry, he can, Commander Robinson said.

And the maritime and petroleum industries have grown more careful, Capt. Corbett said: "For one thing, the Government got on them. And the public did, too. They just don't want the hassle. And they don't want to lose the oil."

23

Closure Attempt Blocked Mining Record 10-7-81

Office Of Surface Mining To Close Denver Office

Mining Record Staff Reporter

DENVER, CO — The U.S. District Court at Denver has rejected an attempt by employees of the Office of Surface Mining to block closure of the Denver regional office and the transfer of most of its employees to Casper, Wyoming and Albuquerque, New Mexico.

U.S. District Judge Zita Weinshienk dismissed the suit on the grounds the association of employees had not shown they had sufficient legal grounds to file the suit. Interior Secretary James G. Watt had announced in June a plan to reorganize OSM countrywide. The Denver staff of 250 is to be reduced about one-half and the remaining employees offered jobs in the Casper and Albuquerque offices.

A lawyer for the employees, Sylvian Roybal, told the court that the reorganization would harm the environment "from Wyoming to West Virginia and all points in between.,"

Judge Weinschienk said an environmental impact statement should have been prepared by the government concerning the reorganization. She said the statement should have been drafted before Watt "takes the teeth out of an act of Congress." However, she said, the employees "have not proved any definite injury to themselves as required in the law."

The reorganization is scheduled to take place during October. Technical operations of OSM in the Denver regional office will be transferred to the expanded office in Casper.

OSM Director Sees No Hiring Trouble in Casper

Wyo State Tribune 10-7-81

GILLETTE (UPI) — Office of Surface Mining Director James R. Harris says he expects the agency will have less trouble hiring qualified people in Casper than in Denver because of less competition from the energy industry.

Interior Secretary James Watt wants to move the OSM office in Denver to Casper as part of a reorganization of the agency. A General Accounting Office briefing paper released last week said the OSM might have trouble hiring qualified people in Casper.

Harris, who was holding meetings with industry and state officials this week, said Tuesday Denver is the "energy center of the whole West," making it difficult for government to compete with industry for employees.

He said he does not expect the agency will have "a great deal more problems" in Casper than the government experiences in any community, because the salaries it offers are not competitive with industry.

OSM employees who elect to go to Casper probably will be more long-term and have "a commitment that you might not be able to recruit in Denver," Harris said.

He said the OSM will begin reworking many federal reclamation regulations that he said are counterproductive because the 1977 Surface Mining Act did not take into account different mining conditions around the country.

ENV. - OIL SPILLS SUPERFUND

'Unusual Constraints' for Spillers

API Says Oil Spill Superfund Bill is Seriously Flawed

• Statement by Forrest Smith of Chevron USA on behalf of the American Petroleum Institute, before the Senate Committee on Environment and Public Works, about S. 681, The Oil Spill Liability and Compensation Act of 1981.

OUR FIRST major objection lies in the failure of this bill to provide for preemption of state funds and liability laws. Our primary objective in supporting federal oil spill legislation in the past has been to obtain preemption of proliferating state oil spill funds and liability laws, as well as other federal oil spill funds.

S. 681 does not provide for such preemption. It would simply establish another layer of bureaucracy, regulation and taxes at the ultimate expense of the consumer. It appears to us that this legislation is moving in direct opposition to the current major effort to reduce the cost and regulatory burden of government.

Beyond the lack of preemption, our second major objection is that S. 681 places unusual constraints on the spiller. For example, S. 681 prevents the spiller from recovering from the fund for clean-up and damage expenses paid in excess of his liability. This right must be assured in order to encourage the prompt response to and orderly clean-up of major spills.

No Offshore Limit

A third objection is the fact that S. 681 provides a specific upper limit to liability for all facility classes except offshore facilities, which carry the burden of total removal costs plus damages to a limit of $50 million. There should be no exceptions to the liability limits provided by this bill.

Our fourth objection is Section 105 (c), which allows direct action on the part of a claimant against an insurer or guarantor. A large company, such as my own, will self-insure, and it will pose no problem. The impact on the small independent operator, be he wildcatter, transporter or terminal operator, could be severe.

Insurance companies currently are reluctant to write policies that allow direct actions by claimants. To the extent that the insurance industry chooses not to meet this condition, the amount of insurance available may not be sufficient. The result will be an inability of the small independents to provide evidence of financial responsibility. The provision is extremely anticompetitive.

Fund Abuse Potential

Our fifth objection is the extraneous uses and potential for abuse inherent in Section 103 "Uses of Liability Fund." Section 103 allows the fund to be used for undefined costs of removal or damages resulting from threats of discharges and provides off budget financing authority for such things as:

- Redundant damage assessment capabilities in numerous federal agencies.
- $10 million worth of research and development costs each year for topics already adequately addressed by PL96-510 and private funds.
- The administrative and personnel costs of running the fund.

It has been and will continue to be our position that drains on a fund should be eliminated. We believe that charges appropriate to any fund include: 1) clean-up costs and economic damages sustained in excess of a spiller's liability; 2) clean-up costs and economic damages from spills of unknown origin; and 3) costs for responding to spills caused by an Act of God, Act of War, or an Act of a Third Party.

"*Quantification of damages to natural resources is as yet an undeveloped art. Do we really want federal officials to make subjective judgements and then protect such judgements with the concept of rebuttable presumption? These issues are extremely cloudy.*"

Our sixth objection is Section 103 (e) (2). This section is extremely troublesome. Quantification of damages to natural resources is as yet an undeveloped art. Do we really want federal officials to make subjective judgements and then protect such judgements with the concept of rebuttable presumption? These issues are extremely cloudy. Further, the potential for administrative abuse and economic disaster is very large. We are therefore opposed to this provision...

International Accord

Our final point is more conceptual. For many years, the United States has joined with other maritime nations to develop solutions to common maritime problems through the auspices of the Intergovernmental Maritime Consultative Organization (IMCO), an arm of the United Nations.

For a number of years, the United States has failed to act on two significant conventions developed by this organization. I am speaking of the International Convention on Civil Liability for Oil Pollution Damage, 1969 (the "Civil Liability Convention") and the International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the "Fund Convention"). These two conventions create an international regime similar to the type which we support; that is, a vessel operator is required to maintain insurance to cover a specified level of liability with a fund to provide additional resources when this liability limit is reached.

Unless the United States acts to ratify these conventions, there is a distinct possibility that other nations may similarly fail to ratify. Should these conventions not gain broad international acceptance, a significant opportunity to adopt widely recognized, uniform vessel financial responsibility and compensation regimes will have been lost.

It should be particularly noted, with respect to liability limits, that the United States has called a meeting for June of this year to consider raising the limits associated with the Civil Liability Convention. We wholeheartedly support this action. If it is successful, ratification of both conventions should proceed.

ADVERTISING SALES

DONALD F. O'BRIEN, District Manager, 850 Third Ave., New York, N.Y. 10022, 212-593-2100. DAVID NEIMAN, Suite 215, 10600 West Higgins Rd., Rosemont, Ill. 60018, 312-298-6463. DON STRONG, District Sales Manager, 1230 Americana Building, Houston, Texas, 713-652-3870. DICK FAUST, Sales Representative, Suite 400, 21515 Hawthorne Blvd., Torrance, Calif. 90503. 213-371-1294. MALCOLM THIELE, European Sales Representative, Technomedia Ltd., Wood Cottage, Shurlock Row, Reading, RG10 OQE, England, 073-581-302 and 619, Cable: Tekpub, Reading. KEN McKINLEY, Marketing Consultant, New York City. ANN BLACKBURN, Advertising Production, New York City. INGEBORG SCHMIDT, Classified Advertising Manager, New York City.

The Oil Daily Inc.
is a subsidiary of
WHITNEY COMMUNICATIONS CORPORATION

JOHN HAY WHITNEY
Chairman

WALTER N. THAYER
President

JOHN S. PRESCOTT
President
Magazine Division

SUBSCRIPTIONS: $257 per year. Foreign rates on request. Send orders and address changes to Circulation Dept., The Oil Daily, 850 Third Ave., New York, N.Y. 10022 or phone 212-593-2100 or 800-223-6635.

FILE ENV. — OIL SPILLS

— SUPERFUND

SEN. ENV. COMMITTEE

WED. 3/25 – Chafee Subcomm

S. 681

Do we support a bill

APRIL 1 – RULE
Commerce Markup

← V. 311(K) of Water Act →

DOT
&
EPA

want a bill

Store [illegible] emptions

have has to replenish the fund

existing funds to this account

joint/strict/& several

defenses now exist,
would be wiped out

ANNELISE —
COAST GUARD
DOT/JUSTICE

ent change in an annuity ...bsection shall be adjusted to ...st 1/10 of 1 percent.".

(1) Subparagraph (A) of section 8340 (c)(1) of title 5, United States Code, is amended by inserting "(1/12 if such first increase is determined under subsection (b)(1)(A)(ii))" after "1/6".

(2) Paragraph (3) of section 8340 (c) of title 5, United States Code, is amended by inserting "subsection (b)(1)(A)(i) of" before "this section" the first place it appears.

SEC. 3. The amendments made by this Act shall apply to any increase in any annuity taking effect on or after the date of the enactment of this Act.

By Mr. STEVENS (for himself, Mr. MATHIAS and Mr. GLENN):

S. 678. A bill to amend title 39 of the United States Code to require that any extension of the ZIP code be part of a voluntary service option with a reduced rate; to the Committee on Governmental Affairs.

LEGISLATION TO MAKE NINE-DIGIT ZIP CODE A VOLUNTARY SERVICE WITH A REDUCED RATE

Mr. STEVENS. Mr. President, I am today introducing legislation which would prohibit the U.S. Postal Service from requiring any mailer or individual to use the new proposed nine-digit ZIP code. The U.S. Postal Service has proposed that a "ZIP+4" or nine-digit ZIP code be established. In order to take advantage of technological advances in mail processing equipment, this change would allow the U.S. Postal Service to save some $600 million a year beginning by 1987. As part of the proposal, business mailers who agree to use the nine-digit ZIP code would become eligible for a lower postal rate.

This legislation would put into law the requirement that the ZIP code system be voluntary in nature. The public will not, and we cannot, accept the imposition of a mandatory nine-digit ZIP code. From what I have learned, there is absolutely no reason to make such a code mandatory.

There is a refreshing consensus in this country that at long last we are going to slow down and stop the regulatory burden of the Federal Government on the American public. The electorate has let it be known that the oppressive weight of Government must be lifted starting now. This Congress and President Reagan are going to make a healthy start in that direction. We are also going to cut back on the costs of the Federal Government, a cost ultimately borne by the public. Wherever we can, we must accomplish needed savings through identifying and eliminating waste and inefficiencies. We must look to improve productivity and use of modern technology to cut costs where we can. We do not want to cut back on essential services, however. The U.S. Postal Service should not, and will not, be exempt from this philosophy.

I do not see how we can tie the hands of the Postal Service by limiting their capability to cut future costs. I see no reason why we would want to. In fact, the Postal Service is simply living up to the law which requires them to look for ways to cut costs. None of us wants to see cuts in the service they provide. But we are kidding ourselves if we think the Postal Service can simply waive a magic wand and absorb double digit inflation, budget cuts, increased employee demands, reduction in revenue, without realizing savings, where they are able to, through technological improvements.

There is no way the Postal Service can continue to attempt to give us better service with the tremendous pressures to do more with less, unless they can find some very significant and concrete innovations to do the same job more efficiently. I think they have got a start with the nine-digit ZIP or "ZIP+4" concept.

As chairman of the Governmental Affairs Subcommittee on Civil Service, Post Office, and General Services, I am particularly concerned that we search for ways to achieve efficiencies and economies in the U.S. Postal Service. Our subcommittee has begun a series of hearings on the Postal Service plans for improved automation with its "ZIP+4" or nine-digit ZIP code proposal. The longer ZIP code would be justified only in terms of additional efficiencies and savings in the processing of the mail. Bulk mailers who utilize this longer code would and should get the benefit of those savings through lower postage. After all, it does cost money, considerable amounts of money, for business mailers to change their address files and addressing practices to comply with this four-digit add-on.

We must not restrict the business community from improving their mailing capabilities and from cutting costs by utilizing the nine-digit ZIP code. I think that any nine-digit ZIP code or "ZIP+4" mailing incentive should be available as an additional mailing option along with the presort discounts and other alternatives already offered various mailers. If this new nine-digit ZIP code proposal is limited to mailers who wish to use this option and who will receive a reduced rate for using it, we cannot reasonably prohibit or delay its development or implementation. This proposal will benefit the average American who writes an occasional letter. Although he or she would not qualify for a rate reduction because of lack of volume, he would benefit by a slowdown in future rate increases because of the cost savings.

I believe this bill is a fair and reasonable way to allow the Postal Service and large mailers to utilize this new technology to their financial benefit without inconveniencing the public.

Mr. President, I ask unanimous consent to have the entire text of my bill printed at the end of my comments.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 678

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 404 of title 39, United States Code, is amended by adding the following new subsection:

"(c) Notwithstanding any other provision of this title, the Postal Service shall not require the inclusion of any ZIP Code in the address of any mail piece, except as a condition for mailing at a reduced rate or rates for a subclass established to recognize the costs of handling mail bearing such code.".

By Mr. STAFFORD (for himself, Mr. RANDOLPH, Mr. CHAFEE, Mr. PACKWOOD, Mr. CANNON, Mr. GORTON, and Mr. MITCHELL):

S. 681. A bill to provide a comprehensive system of liability and compensation for oil spill damage and removal costs, and for other purposes.

OIL SPILL LIABILITY AND COMPENSATION ACT OF 1981

Mr. STAFFORD. Mr. President, on behalf of myself, Senator RANDOLPH, Senator CHAFEE, Senator PACKWOOD, Senator CANNON, Senator GORTON, and Senator MITCHELL I send a bill to the desk to provide a comprehensive system of liability and compensation for oil spill damage and removal costs, and for other purposes.

Mr. President, in connection with that bill, which I am sending to the desk, on behalf of Senator MITCHELL and myself I offer an amendment to that bill.

The PRESIDING OFFICER. The bill and the amendment will be received and appropriately referred.

Mr. STAFFORD. Mr. President, late in the last Congress, the so-called superfund bill was enacted into law, establishing a system of response, compensation, and liability for releases of poisonous chemicals. It had been hoped that the toxics superfund would be amended on the Senate floor to add a title dealing with oil spills and pollution. For a variety of reasons, that was not possible.

As part of the debate in the Senate and in the House of Representatives, I assured several Members that an oil spill bill would be introduced and acted on early in this legislative session. In fulfillment of that commitment, I am today introducing the Oil Spill Liability and Compensation Act of 1981.

I am pleased to say that this bill's other sponsors include Senators PACKWOOD and CANNON of the Committee on Commerce, Science, and Transportation, as well as my good friend, Senator RANDOLPH, who is, of course, the ranking minority member of the Committee on Environment and Public Works; Senators CHAFEE and MITCHELL, who are chairman and ranking minority member of the Subcommittee on Environmental Pollution; and Senator GORTON, who is chairman of the Merchant Marine Subcommittee. Collectively, they represent the Members most concerned with and involved in this issue.

Senator CHAFEE has indicated his intention to hold hearings before the end of the month. With the introduction of this bill and the scheduling of hearings, I consider my personal commitment fulfilled.

I ask unanimous consent that the text of the bill and amendment be printed in the RECORD.

There being no objection, the bill and amendment were ordered to be printed in the RECORD, as follows:

S. 681

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 "Oil Spill Liability and Compensation Act of 1981".

TITLE I—OIL SPILL LIABILITY AND COMPENSATION

DEFINITIONS

SEC. 101. For the purpose of this act—

(1) the terms "oil", "discharge", "public vessel", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility" and "barrel" shall have the meaning provided in section 311(a) of the Federal Water Pollution Control Act;

(2) the terms "navigable waters" and "territorial seas" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act;

(3) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil;

(5) the term "claimant" means any person who presents a claim for compensation under this Act;

(6) the term "damages" means damages for economic loss or the loss of natural resources as specified in section 102(a)(2) of this Act;

(7) the term "facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;

(8) the term "Fund" means the Oil Spill Liability Trust Fund established under title II of this Act;

(9) the term "guarantor" means any person, other than the owner or operator, who agrees with the owner or operator of a vessel or an offshore facility subject to section 105 of this Act or section 311(p) of the Clean Water Act to insure or indemnify any risk under this Act;

(10) the term "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act;

(11) the term "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(12)(A) the term "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person who (either directly or through a trust or singly or in combination with others) (I) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or (II) holds indicia of ownership primarily to protect his security interest in the vessel or facility. In the case of an offshore facility, the term includes the operating holder of a leasehold interest or permit for the exploration of oil;

(B) the term "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person;

(13) the term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

(14) the term "refinery" means a terminal which receives oil for the purpose of refinement;

(15) the term "terminal" means any permanently situated onshore or offshore facility which receives oil in bulk directly from any vessel, offshore production facility, offshore port facility, or any pipeline including the pipeline constructed under the Trans-Alaska Pipeline Authorization Act;

(16) the terms "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction;

(17) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

LIABILITY FOR DAMAGES AND REMOVAL

SEC. 102. (a) Except where an owner or operator of a vessel or a facility can prove that a discharge was caused solely by an act of God, an act of war, or an act or omission of a third party as provided in subsection (d)(1) of this section, and notwithstanding any other provision or rule of law, such owner or operator of a vessel or a facility from which oil is discharged in violation of section 311 (b)(3) of the Federal Water Pollution Control Act shall be liable for—

(1)(A) all actual costs of removal (including personnel costs, depreciation costs for capital equipment, and overhead) incurred by the United States Government or a State under subsection (c), (d), (e), or (f)(4) of section 311 of the Federal Water Pollution Control Act or under the Intervention on the High Seas Act or section 18 of the Deepwater Port Act of 1974, and

(B) any other costs or expenses incurred by any person to remove oil as the term "remove" or "removal" are defined in section 311(a)(8) of the Federal Water Pollution Control Act, not inconsistent with the national contingency plan; and

(2) the following damages for economic loss or loss of natural resources resulting from such a discharge:

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(C) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources or loss of use of such property or natural resources, without regard to the ownership of such property or natural resources, to the extent that such damages were sustained during the two-year period beginning on the date the claimant first suffered such loss, and if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource.

(b) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(B) of this section, liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such natural resources.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability of an owner or operator of a vessel or a facility for damages and removal costs under this section, including any removal costs incurred on behalf of such owner or operator, and inclusive of the limits of liability established under section 311(f) of the Federal Water Pollution Control Act, for each discharge or incident shall not exceed—

(A) $300 per gross ton or $500,000, whichever is greater, of any vessel carrying oil in bulk as cargo or as residue of cargo;

(B) $300 per gross ton of any other vessel;

(C) the total of all costs of removal under subsection (a)(1) of this section plus $50,000,000 for any offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act;

(D) $50,000,000 for any deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $50,000,000 exceeds $300 per gross ton of such vessel); or

(E) $50,000,000 for any other facility.

(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel or an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs not offset by any removal costs incurred on behalf of such owner or operator, if (A)(i) the discharge of oil was the result of willful negligence or willful misconduct within the privity or knowledge of the owner or operator, or (ii) the primary cause of the discharge was a violation (within the privity or knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations, or (B) the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities under the contingency plan established under section 311(c) of the Federal Water Pollution Control Act. With respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the exceptions or defenses of subsection (a) of this section, all costs of removal incurred by the United States Government or any State or local official or agency in connection with a discharge of oil from any offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act or a vessel carrying oil as cargo from such a facility shall be borne by the owners and operator of the offshore facility or vessel from which the discharge occurred. √OCS DOE

(4) The President is authorized to establish by regulation, with respect to any class or category of facility subject to paragraph (1)(E) of this subsection, a maximum limit of liability under this section of less than $50,000,000 but not less than $8,000,000. Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to

the economic impact of such limits on each such class.

(5) The President shall from time to time, but at least biannually, review and, when appropriate, increase the liability limits established by paragraph (1) of this subsection to reflect the following:

(A) increased potential for damage due to increases in vessel size, alterations in design or construction, or other relevant changes in circumstances or operation; and

(B) increases in the relative costs of responding to a discharge due to inflation or other circumstances.

(d)(1) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the discharge of oil and the damages resulting therefrom were caused solely by an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to such oil, taking into consideration the characteristics of such oil, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

(2) In any case where the owner or operator of a vessel or an onshore or offshore facility can prove that a discharge was caused solely by an act or omission of a third party (or solely by such an act or omission in combination with an act of God or an act of war), such third party shall be liable under this section as if such third party were the owner or operator of a vessel or onshore or offshore facility from which the discharge actually occurred. If such third party was the owner or operator of a vessel, other than a vessel which caused the discharge of oil from an offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act, the liability of such third party shall not exceed the limitation applicable to such vessel under subsection (c) of this section. Where the owner or operator of a vessel carrying oil as cargo or an onshore or offshore facility which handles or stores oil in bulk or commercial quantities, from which oil is discharged, alleges that such discharge was caused solely by an act or omission of a third party (or solely by such an act or omission in combination with an act of God or an act of war), such owner or operator shall promptly pay to the United States Government, and any other claimant, the costs of removal or damages claimed and shall be entitled by subrogation to all rights of the United States Government or other claimant to recover such costs of removal or damages from such third party under this subsection.

(e) A discharge of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign nation shall be deemed to be a discharge in violation of section 311(b)(3) of the Federal Water Pollution Control Act for purposes of this section, and claims for compensation for damages and removal costs may be made under this Act by any citizen of a foreign nation or by any foreign nation, if such damages or removal costs resulted from a discharge of oil, or threat of a discharge of oil, from—

(1) a facility located in the United States or subject to the jurisdiction of the United States;

(2) a vessel incident occurring in the nevigable waters of the United States; or

(3) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States. This subsection shall apply only if recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(f) The owner or operator of a vessel shall be liable in accordance with this section notwithstanding any provision of the Act of March 3, 1951 (46 U.S.C. 183ff).

(g)(1) In addition to the damages for which claims may be asserted and without regard to any limitation of liability provided in this section, the owner or operator of a vessel or a facility from which oil is discharged in violation of section 311(b)(3) of the Federal Water Pollution Control Act shall be liable to a claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim occurred to the date upon which the claimant is paid, inclusive, less the period (if any) from the date upon which such owner or operator shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept such amount, inclusive. However, if such owner or operator shall offer to the claimant, within sixty days of the date upon which the claim was presented, an amount equal to or greater than that finally paid in satisfaction of the claim, such owner or operator shall be liable for the interest on the amount paid in satisfaction of the claim for the periods only from the date upon which the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period from which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a discharge or threat of discharge under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

USE OF LIABILITY FUND

SEC. 103. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of any claim for costs of removal or damages finally decided pursuant to section 104 of this title, resulting from discharges or threats of discharges of oil;

(2) all removal costs or expenses or other costs of carrying out the national contingency plan established under section 311(c) of the Federal Water Pollution Control Act resulting from discharges or threats of discharges of oil, including removal costs incurred by any person and approved under such national contingency plan;

(3) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act (with respect to discharges of oil), and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under such national contingency plan;

(4) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil;

(5) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil;

(6) subject to such amounts as are provided in appropriation Acts, not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act (with respect to discharges of oil) to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, the Coast Guard, and the National Oceanic and Atmospheric Administration. Such research shall include, but not be limited to, (A) development and refinement of protocols to determine the type and extent of short- and long-term injury or loss of natural resources, (B) development and refinement of the best available procedures to identify the value of injured or lost resources, (C) laboratory or field research on the effects of oil on living and nonliving resources that will provide additional scientific basis for damage assessments, and (D) research on minimizing the damage caused by spill control, dispersal and removal operations; and

(7) subject to such amounts as are provided in appropriation Acts, the administrative and personnel costs of administering the Fund and this Act.

(b)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this Act and subject to section 202(a), in full in the order in which they were finally determined.

(2) Paragraphs (2), (3), (4), (5), (6), and (7) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(c) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government.

(d) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which oil has been discharged. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which oil has been discharged shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which oil has been discharged shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(e)(1) In accordance with regulations promulgated under section 301(c) of Public Law 96–510, damages for injury to, destruction of, or loss of natural resources resulting from discharge of oil, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 102 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(f) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(g) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.

CLAIMS PROCEDURE

SEC. 104. (a) All claims which may be asserted against the Fund pursuant to section 103 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which oil has been discharged, if known to the claimant and to any other person known to the claimant who may be liable under section 102 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.

(b)(1) The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined up to $5,000 or imprisoned for not more than one year, or both.

(2)(A) Upon receipt of any claim, the President shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and binding upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the President shall attempt to arrange settlement of any claim against the Fund. The President is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the President that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the President.

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the President may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagraph (G) of paragraph (4) of this subsection. If the President declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Within ninety days of the enactment of this Act, the President shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the President may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however*, That no regular employee of the President or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the President determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the President. If a person fails or refuses to obey a subpena, the President may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the President in writing to undertake such activities. The President shall dispose of such a request taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the President decide to undertake the requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the President reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the President attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the President extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion: *Provided, however*, That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(A) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(I) If at any time the President determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiations or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such discharge.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs of removal resulting from a discharge of oil shall be subrogated to all rights, claims, causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

FINANCIAL RESPONSIBILITY

SEC. 105. (a) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry oil as cargo or fuel), other than a public vessel, using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain in accordance with the procedures of section 311(p) of the Federal Water Pollution Control Act evidence of financial responsibility sufficient to meet the liability to which the owner or operator of such vessel could be subjected under section 102(c)(1) of this Act. The provisions of paragraphs (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This subsection shall take effect October 1, 1981.

(b)(1) The owner or operator of any offshore facility shall establish and maintain evidence of financial responsibility sufficient to meet the liability to which the owner or operator of such facility could be subject under section 102(c)(1) of this Act or $50,000,000, whichever is less. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Federal Water Pollution Control Act. This subsection shall take effect one hundred and eighty days after enactment of this Act.

(2) The owner or operator of any offshore facility subject to this subsection who fails to comply with this subsection or the regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

(3) Where an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(c)(1) Any claim authorized by this Act may be asserted directly against any guarantor for the owner or operator of the vessel or offshore facility from which oil was discharged. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this Act. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against such guarantor.

(2) The total liability under this Act of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility under this Act, or any higher amount for which that guarantor has agreed that claims under this Act may be asserted directly against that guarantor, except that nothing in this subsection shall be construed to limit the liability of a guarantor to the owner or operator for refusing to settle any claim in good faith, nor to alter the liability of any person under section 102 of this Act.

(d) Nothing in this Act shall affect the requirements for evidence of financial responsibility for motor carriers under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

RELATIONSHIP TO OTHER LAW

SEC. 106. Reserved.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 107. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

TITLE II—TRUST FUND ESTABLISHMENT AND COLLECTIONS

ESTABLISHMENT OF OIL SPILL LIABILITY TRUST FUND

SEC. 201. (a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Oil Spill Liability Trust Fund" (hereinafter referred to in this title as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO TRUST FUND OF CERTAIN AMOUNTS.—

(1) AMOUNTS EQUIVALENT TO CERTAIN COLLECTION, ETC.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury (hereinafter referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4691 of the Internal Revenue Code of 1954,

(B) the amounts recovered or collected on behalf of the Trust Fund under title I of this Act, and

(C) any penalties imposed under title I of this Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to oil).

(2) TRANSFER OF FUNDS.—There shall be transferred to the Trust Fund—

(A) the unobligated balance remaining as of the date of enactment of this Act under section 311(k) of the Federal Water Pollution Control Act (and not transferred to the Hazardous Substance Response Trust Fund under Public Law 96-510),

(B) all assets of the Trans-Alaska Pipeline Liability Fund,

(C) all assets of the Deepwater Port Liability Fund, and

(D) all assets of the Offshore Oil Pollution Compensation Fund established under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

(c) EXPENDITURES FROM TRUST FUND.—

(1) IN GENERAL.—Amounts in the Trust Fund shall be available only for purposes of making expenditures which are described in section 103 of this Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Trust Fund shall include the costs incurred by the United States by reason of any claim under title I of this Act (including processing costs, investigating costs, court costs, and attorney fees).

LIMITATION ON PAYMENT OF CLAIMS BY FUND

SEC. 202. (a) GENERAL RULE.—No amount in the Trust Fund established by this title shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the amount in such Fund to an amount less than $30,000,000.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Trust Fund established by this title is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND

SEC. 203. (a) GENERAL RULE.—Any claim for damages filed against the Trust Fund established by this title may be paid only out of that Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than the Trust Fund established by this title.

(b) BORROWING FROM GENERAL FUND OF THE TREASURY.—

(1) IN GENERAL.—There are authorized to be appropriated to the Trust Fund established by this title, as repayable advances, such sums as may be necessary to carry out the purposes of the Fund.

(2) LIMITATIONS.—

(A) The maximum aggregate amount which may be appropriated pursuant to paragraph (1) to the Trust Fund which is outstanding at any one time shall not exceed $75,000,000.

(B) No advance may be made under this subsection after September 30, 1985.

(3) REPAYMENT OF ADVANCES.—Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund. Such interest shall be at rates computed in the same manner as provided in section 204(b)(2) and shall be compounded annually.

ADMINISTRATIVE PROVISIONS

SEC. 204. (a) METHOD OF TRANSFER.—The amounts appropriated by section 201(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Trust Fund established by this title, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of the Trust Fund during that fiscal year and on its expected condition and operations during the next five fiscal years. This report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of the Trust Fund established by this title as is not, in the judgment of the President, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 per centum. The income on such investments shall be credited to and form a part of the Trust Fund.

ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND

SEC. 205. (a) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(1) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4691 of the Internal Revenue Code of 1954 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination, or

(2) that there is a TAP fund deficit, the tax imposed by section 4691 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(b) DEFINITIONS.—For purposes of this section—

(1) TAP FUND SURPLUS.—The term "TAP fund surplus" means the excess (if any) of—

(A) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Oil Spill Liability Trust Fund established by this title, over

(B) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time of such transfer.

(2) TAP FUND DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(A) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Oil Spill Liability Trust Fund established by this title, over

(B) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Oil Spill Liability Trust Fund established by this title.

IMPOSITION OF TAX

SEC. 206. (a) IN GENERAL.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Additional Tax on Petroleum

"Sec. 4691. Imposition of Tax.
"Sec. 4692. Definitions and Special Rules.

"SEC. 4691. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1986.

"SEC. 4692. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term "petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons at sixty degrees Fahrenheit.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4691 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY ONE TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section 4691 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4691.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 38 is amended by adding at the end thereof the following new item:

"Subchapter C. Additional Tax on Petroleum.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1981.

TITLE III—MISCELLANEOUS PROVISIONS

EFFECTIVE DATES, SAVINGS PROVISION

SEC. 301. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal or State law, including common law, with respect to releases of oil. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to oil discharges, or pollution.

LITIGATION, JURISDICTION, AND VENUE

SEC. 302. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of removal costs.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge of oil, or any damages associated therewith, commenced prior to enactment of this Act.

CONFORMING AMENDMENTS

SEC. 304. (a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) Section 204(b) of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence—

(A) by inserting after the words "any area" the words "in the State of Alaska";

(B) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline"; and

(C) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability and Compensation Act of 1981.".

(2)(A) Section 204(c) of the Trans-Alaska Pipeline Authorization Act is hereby repealed. The Trans-Alaska Pipeline Liability Fund is hereby abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Oil Spill Liability Trust Fund established by title II of this Act. The Oil Spill Liability Trust Fund shall assume any and all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of section 204(c) of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(B) The Secretary of the Interior shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (A) is made. If the Secretary finds that—

(i) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to subparagraph (D) of this paragraph the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the tax due under title II of this Act on barrels of oil, and the Secretary may remit such tax until such time as the total amount of the taxes so remitted equals the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified; or

(ii) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary of the Treasury shall increase by 2 cents per barrel the tax imposed under title II on barrels of oil until such time as the total amount of the 2-cent-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(C) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under subparagraph (B)(i) of this paragraph for the collection or payment of taxes established under title II of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees remitted. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. Such owner shall make such payment to the State of Alaska during such time the collection of payment of taxes under title II of this Act is remitted.

(D) For purposes of paragraph (B), the term "barrels of oil" means only barrels of oil which would, but for the repeal made by this paragraph, be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act. The term "Secretary" means the Secretary of the Treasury.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The Fund established under title II of the Oil Spill Liability and Compensation Act of 1981 shall be available to the Secretary for actions taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under title II of the Oil Spill Liability and Compensation Act of 1981, as appropriate,".

(2) The unobligated balance remaining as of the date of enactment of this Act under subsection (k) of such section 311 shall be transferred to the Fund established under title II of this Act.

(d) DEEPWATER PORT ACT.—The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1) strike "section 18(1) of this Act;" and insert in lieu thereof "section 105 of the Oil Spill Liability and Compensation Act of 1981.".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and clause (1) of subsection (m) of section 18 are deleted.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section.", and inserting in lieu thereof "fund established under title II of the Oil Spill Liability and Compensation Act of 1981".

(4) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively, and clauses (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed.

STUDY

SEC. 304. The President, in cooperation with the Comptroller General shall undertake a study of possible incentives to safer operation of vessels and facilities to reduce the potential of discharges of oil, and generally of measures to prevent or avoid the occurrence of such discharges. Such study shall address (1) the feasibility of a variable fee for replenishment of the Fund under subsection (c) of this section which takes into account the likelihood of a discharge and the operational experience of individuals or classes, and (2) whether current practices in the insurance and banking industries provide any incentives or disincentives to reducing the potential for discharges of oil. Such study shall be conducted in consultation with other appropriate Federal and State agencies, the affected industries, and other interested parties. A first report of such study, together with legislative recommendations, if any, shall be submitted to the Congress not later than July 1, 1983, and as appropriate thereafter.

SEPARABILITY

SEC. 305. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall not be affected thereby.

AMENDMENT NO. 6

On page 31, strike lines 12 and 13 and add a new title and subsection as follows:

"PROTECTION ON PREEMPTION

"SEC. 106. Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liabilities or requirements with respect to oil pollution, spills, discharges or other releases within such State."

Mr. CHAFEE. Mr. President, I would like to congratulate the distinguished senior Senator from Vermont for the work he has done on this piece of legislation.

This bill is an effort to try to protect our coastlines from the serious threat of oilspills. It is particularly important to Rhode Island and New England because all of our petroleum is imported into the region, much of it by barge and tanker. It is important that a comprehensive liability system becomes law so that oil shippers will have an incentive to handle their product more carefully.

Under the legislation, shippers will have to demonstrate a significant financial responsibility in order to carry petroleum products on U.S. waters. For a vessel carrying oil as its cargo, the liability is $300 per gross ton, or $500,000, whichever is greater. For any other vessel, the liability is $300 per gross ton. Deepwater ports and Outer Contenental Shelf facilities will have a liability of $50 million.

In addition to establishing a comprehensive liability system for handling damages, the bill also establishes a trust fund. This fund, which will be filled by a 1.3-cent-per-barrel fee on oil received in the United States, will be used to compensate persons injured or damaged by spills, and for cleanup of the spills themselves.

If passed, the legislation will provide greater protection for our coastal ecosystems from the chance of catastrophic spills because of these new requirements to be placed on shippers.

The Subcommittee on Environmental Pollution and Resource Protection will hold several days of hearings on the bill later this month. Those hearings will focus on the relationship of this program to existing State programs, as well as the financial burden that this will place on those persons engaged in the business of handling oil.

Mr. MITCHELL. Mr. President, I am

pleased to cosponsor the Oil Spill Liability and Compensation Act of 1981. This legislation will provide a comprehensive system of liability and compensation for damage resulting from oil spills.

A uniform solution to potential catastrophes from oil pollution is long overdue. Those of us who represent coastal States are well aware of the dangers of oil spills. Many of our citizens depend on water resources for their livelihood—from fishing, tourism, and other marine-related activities.

Recent events have highlighted the problem of massive oil spills. In December of 1976, the *Argo Merchant* ran aground 27 miles southeast of Nantucket Island, spilling 8.5 million gallons of fuel oil. The entire Cape Cod coastline was threatened with devastation, which would have occurred had the oil not been blown out to sea. However, the mere threat of millions of gallons of oil washing ashore was sufficient to alert New Englanders to the enormous potential harm of oil spills.

The expense to the United States just to monitor this disaster was approximately $2 million.

The devastation of natural resources that was feared from the wreck of *Argo Merchant* actually occurred 2 years later when the *Amoco Cadiz* went aground off the coast of France. The 240,000-ton supertanker lost its entire cargo of 67 million gallons of oil. The estimates of total claims for damage to real and personal property and to natural resources are over $1 billion.

This country will continue to use petroleum products and the risks associated with transportation of those products will remain with us for the foreseeable future. This bill is an attempt to put into place a comprehensive law to provide adequate and timely compensation to persons who have been victims of oil pollution.

Our bill does this in the following manner:

An owner or operator of a vessel carrying oil is made strictly liable for the discharge of oil into the navigable waters of the United States;

The discharger is responsible for the costs of cleanup of the oil, as well as for damage to a person's real or personal property, a person's loss of use of natural resources, and a person's loss of income resulting from an oil spill;

The discharger is also responsible for compensating the Federal Government, or a State government, for injury to its natural resources;

A fund is established through a fee on each barrel of oil produced in or imported into the United States to provide cleanup costs and compensation for damage resulting from oil spills, when the damage exceeds the limits of the owner's liability or the responsible party cannot be found; and

States retain their ability to enact oil pollution statutes, financed by fees on oil, to provide funds for oil cleanup and compensation to individuals over and above the Federal coverage.

Mr. President, the State of Maine has been in the forefront in enacting comprehensive oil spill legislation. We have long recognized that our water resources are an invaluable and irreplaceable part of our State economy.

In 1969, we enacted the Maine coastal conveyance law. It imposes strict liability for the discharge of oil into any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into any river, stream, sewer, surface water drain, or other waters of the State.

It establishes the Maine Coastal Protection Fund, financed through a 1-cent-per-barrel fee on oil offloaded at a Maine port. The fund provides for the cleanup of oil spills, and for compensation to third parties for damages to real or personal property, or loss of income directly or indirectly as a result of an oil discharge.

The Maine statute remains one of the strongest in the country. But since the Maine law imposes liability only for spills into the State waters and the Maine fee is imposed only on oil contained in vessels which come directly into Maine ports, it does not deal with tankers which pass through the Gulf of Maine enroute to or from other American ports. Obviously, a comprehensive Federal law is needed to provide minimum protection from oil pollution damage. But any State wishing to impose a greater degree of protection for its resources must be permitted to do so. I could not, in good conscience, support legislation that preempts the right of Maine to compensate its citizens more fully than would any Federal law in the event of an oil spill.

Mr. President, there is an urgent need to enact an oil pollution statute that will provide minimum Federal cleanup and compensation requirements.

In this bill, we provide a nonregulatory mechanism to accomplish that end. We are not imposing additional regulations on those who handle oil; we are simply prescribing the consequences for failure to handle oil in an environmentally acceptable manner.

We are at the same time permitting States to continue to provide additional protection for their natural resources if they so desire.

This bill will be given expedited consideration by the Environment and Public Works Committee on which I serve. I look forward to participating in the hearings and committee action on this legislation.

● Mr. PACKWOOD. Mr. President, today legislation is being introduced that will provide compensation to parties damaged by oil spills, and provide uniformity of compensation by combining a number of Federal compensation schemes into one. I, and two other members of the Senate Committee on Commerce, Science, and Transportation, Senators CANNON and GORTON, have agreed to cosponsor this legislation along with several members of the Senate Environment and Public Works Committee. In the past, all oil spill superfund legislation has been jointly referred to our two committees. Because both committees have recognized that such legislation contains substantial areas of interest and concern peculiar to each committee, we have again agreed to a joint referral. This represents a positive first step in developing legislation that is acceptable to the entire Senate, the House of Representatives and the administration.

The interest of the Commerce Committee in this legislation is substantial. Virtually all modes of transportation are affected: Railroads, motor carriers, aircraft, pipelines, and vessels. This legislation involves the activities of the Outer Continental Shelf, the ports and highways of our Nation, and the integrity of our coastal zone resources, including marine fisheries. The objective of the Commerce Committee in dealing with this legislation is to balance the needs of industry and interstate commerce with the necessity to protect our marine resources. The impact of this legislation can affect the smallest domestic business establishments as well as large multinational corporations.

I want the legislation to be workable and effective and to encourage that appropriate responses to oil spills be undertaken by the responsible parties. The legislation should encourage and afford small businesses the opportunity to obtain insurance, where appropriate, for liabilities which they might incur under this act. I want both private and public sector entities to be compensated for damages resulting from oil spills. Such damages should be compensated with a minimum of judicial involvement, and claims should be paid promptly and fairly.

The present legislation attempts to accomplish the goals set out above. Although our two committees have enjoyed an extremely close working relationship during the development of this bill, it is, indeed, possible that changes will have to be made and compromises reached. The close examination of the proposed legislation resulting from committee hearings will highlight those portions of the legislation that will require additional consideration.

Lastly, let me state that both committees have agreed to develop language concerning the relationship between this bill and certain other States and Federal laws. As the legislative process moves along, and as both committees have a clearer view of the ultimate content of the legislation, I am certain that satisfactory language on the above subject can be worked out.

Mr. President, in closing, let me say I look forward to working with my colleagues from the Environment and Public Works Committee on this legislation which is of such importance to our Nation.●

By Mr. RIEGLE (for himself, Mr. EXON, Mr. PRESSLER, Mr. JOHNSTON, Mr. PRYOR, Mr. ANDREWS, Mr. ABDNOR, Mr. ZORINSKY, Mrs. HAWKINS, Mr. CRANSTON, Mr. DECONCINI, Mr. LAXALT, Mr. LEVIN, Mr. SASSER, Mr. GRASSLEY, Mr. WILLIAMS, and Mr. DIXON):

S. 682. A bill to place a moratorium on decisions by the Federal Trade Commission in shared monopoly proceedings un-

MAR 13, 81

DOT
EPA
DOC
TREAS.
DOJ
FMC
CEA
CEQ
STATE
DOD
DOI

R. Sheppard
T. GRINDSTAFF
K. O'HALLORAN
N. STOER

March 16, 1981

NEOB-5104

Oil Spill Liability and Compensation Legislation

Your agency's position, including justification, on the following oil spill "superfund" issues are needed by noon on Wednesday, March 18:

-- Will the Administration support a "superfund" approach to oil spills or rely on the existing 311(k) cleanup scheme?

If the Administration does support such legislation,

-- which agency, DOT or EPA, will be responsible for administering the fund?

-- will the agency transmit its own bill to Congress or support one, with amendments, that has already been introduced, H.R. 85 or S. 681?

-- should use of the fund be limited to cleanup of oil spills only, or should claims for economic losses for (1) injury or destruction of real and personal property and natural resources and (2) loss of profits or impairment of earning capacity be permitted?

-- should joint, strict, and several liability, with attendant financial responsibility requirements, be supported, or should liability pursuant to section 311 of the FWPCA apply?

Low?

-- should State funds be preempted by the Federal superfund as advocated by EPA, DOT, and Justice for the past four years?

In addition to cleanup costs, should expenditures from the fund be authorized for:

-- administrative, equipment, and personnel costs?

-- establishment and maintenance of a damage assessment capability?

-- assessing short and long-term injury to, destruction of, or loss of natural resources?

-- State and Federal costs for restoring, rehabilitating, replenishing, or acquiring the equivalent of a lost or damaged natural resource?

-- oil spill-related research to be performed by EPA, FWS, CG, and NOAA.

Are the definitions of "navigable waters" and "territorial seas" in H.R. 85 and S. 681 acceptable?

Are there other issues that need to be addressed?

oil - envir.

Marine Sanctuaries Act Shouldn't Halt Oil Drilling

• Excerpts from a statement by J.R. Jackson Jr., manager of exploration regulatory affairs for Exxon USA, on behalf of the American Petroleum Institute, before the joint hearing of the subcommittees of the House Merchant Marine and Fisheries Committee regarding the reauthorization of the Marine Sanctuaries Program.

THE PETROLEUM industry supports the basic concept and objective of the Marine Sanctuaries Program as originally conceived by Congress. However, we do not believe the Sanctuaries Program should be reauthorized if it is to continue to be used as a mechanism for obstructing lease sales and unnecessarily prohibiting or regulating offshore hydrocarbon operations and the use of existing marine transportation corridors.

In this regard, we believe that sanctuaries should be limited to discrete areas of unique or significant ecological value which are not already adequately protected by existing federal and state authorities. In addition, regulations of activities within and in the vicinity of a designated sanctuary should be limited to those required to adequately protect the marine resource values of concern. Unnecessary prohibitions of activities in such areas should be strictly avoided.

During the past four years, considerable controversy has centered around several recommended sanctuaries which have been nominated in direct response to President Carter's Environmental Message of May 1977. A principal result of this has been to prohibit or severely restrict petroleum development in promising ocean areas scheduled for oil and gas leasing...

Example of Concern

The environmental impact statement for the Point Reyes/Farallon Islands sanctuary illustrates our concern with the overreaching administration of the Marine Sanctuary Program by the National Oceanic and Atmospheric Administration's Sanctuary Program Office. Notwithstanding the number and coverage of existing laws and regulations — such as the Clean Water Act, the Endangered Species Act, the Marine Mammal Protection Act, the Fisheries Conservation and Management Act, the Coastal Zone Management Act and the OCS Lands Act Amendments — NOAA concludes in its environmental impact statement that the "extraordinary diversity of natural resources concentrated in the study area warrant additional protection beyond that provided by the present institutional structure. Although certain activities in the area do not threaten resource quality at present, they could have more significant impact if and when they intensify. The current multitude of regulatory authorities, most of which have differing mandates in varying jurisdictions, could bring about policy conflicts and, thereby, diminish overall management effectiveness as use pressures mount."

Stated more simply, NOAA has unduly inflated the risk of harm from certain activities which may or may not ever occur, and unilaterally discounted the tiers of protections provided by the myriad of existing regulations. The result is a program of sanctuaries management out of proportion to the probable or demonstrated risks to the marine environment. This application of the Act, we submit, is in conflict with the intent and language of the statute.

Legislators' Worries

Indeed, some members of Congress anticipated this possible use of the 1972 law during debate on passage of the bill. During House discussion, Congressman Aspinall moved to strike Title III (the Sanctuaries Act) because he believed it would impair the mineral leasing program. He stated: "...the enactment of this title could result in unnecessarily locking up offshore resources..." Congressman Pelly, a sponsor of the bill, replied: "...the fear is groundless. Let me assure the distinguished chairman of the Interior Committee that it has never been our intention to stop the development of these vast resources...

Notwithstanding this philosophy, the implementation of the Act has become a mechanism for NOAA to halt future oil and gas drilling altogether. An example is the Sept. 22, 1980, designation of the Santa Barbara Channel Islands Marine Sanctuary, where all future oil and gas operations are prohibited on unsold lease tracts. In effect, NOAA is designating "marine wilderness" areas of inordinate size in regions highly favorable for the discovery of hydrocarbon resources.

"NOAA has unduly inflated the risk of harm from certain activities which may or may not ever occur, and unilaterally discounted the tiers of protections provided by the myriad of existing regulations."

If your subcommittees are to recommend reauthorization of Title III, and continued appropriations for the Marine Sanctuaries Program, then we hope you will direct a change in direction for the program. With respect to the regulation of hydrocarbon operations in large OCS areas, former Interior Secretary Andrus and Secretary Watt have opposed categorical prohibition and/or unnecessary regulation. Instead, they favor the existing permitting system of case-by-case project review which has been adequate for the protection of sensitive marine resources.

Congressional Power

If huge sanctuaries are deemed appropriate by the administration for withdrawal from mineral leasing activities, then Congress should be the branch of government to designate major "marine wilderness" areas. Given the national interest implications of marine sanctuary designations which carry with them the prohibition of oil and gas activities, we view Congress' limited power of disapproval under the present act as far too small a check on agency discretion...

If these subcommittees and the Congress determine that simple reauthorization of the program is all that is required, we urge that the Sanctuary Program Office be required to:

- Distinguish between alleged threats to the specific marine resources under consideration for protection which are a mere possibility and those threats for which there is a reasonable expectation of occurrence.

- As a precondition for designation or prohibition of oil and gas activity, demonstrate that there is a significant risk of harm to the specific marine resources under consideration, taking into account the assimilative capacity of the resources.

- Require scientifically derived protective measures only or those impacts which cannot be assimilated. The burden for these measures should be the responsibility of all users and not fall only on one industry. Moreover, performance standards are preferable to specific technology requirements.

- Encourage a high degree of management and protection to specific resources within reasonably limited geographic areas. This approach is much preferred over either lower degrees of management over large areas, or management of competing activities. Under either approach, the boundary of a sanctuary should be no larger than proven necessary for the protection of the resources for which the sanctuary is proposed.

Memorandum

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

File-ENV-OIL SPILLS

TO: Roger Adkins, Dave Gibbons, Kathy O'Halloran, Don Crabill, and Richard Sheppard

DATE: March 6, 1981

FROM: Jim Murr

SUBJECT: March 11 Hearing--H.R. 85 (Biaggi) Oil Superfund Bill

Purpose: To obtain agreement on what position the Department of Transportation (DOT) should take on the subject bill for a March 11 hearing before the House Merchant Marine Committee. (DOT's proposed testimony is attached.)

Bill's Provisions: H.R. 85 is almost identical to legislation passed by the House last year. The bill establishes a comprehensive Federal system of liability and compensation for oil spill damage and removal costs. The bill's major provisions would:

-- Establish a DOT-administered trust fund, funded by a 1.3 cent tax per barrel of crude oil or petroleum product. The tax would be effective for a 5-year period and would result in estimated annual receipts of $75 million. In addition, up to $75 million is authorized to be appropriated to the fund subject to reimbursement by the fund at a later date;

-- Authorize use of the fund to pay for oil spill cleanup costs and settlement of claims for (1) economic losses, including injury to or destruction of, real or personal property and natural resources and (2) loss of profits or impairment of earning capacity resulting from a spill; and

-- Establish a system of joint strict, and several liability. (In the past, many have argued that these provisions would result in the Federal government eventually becoming an insurer of last resort.)

DOT Position at Hearing: The attached DOT statement supports H.R. 85. We propose, however, to advise DOT that they should not commit to supporting such legislation. Instead, they would advise the commitee that they cannot take a position at this time because the matter is under review by the Administration. This way we would have time to obtain policy guidance on whether to oppose the legislation or to support it with modifications before other likely hearings are held by the House Ways and Means and Public Works committees within the next few months.

Decision: Unless I hear otherwise, we will revise DOT's testimony as stated above. If you disagree with this approach please let me know by noon on Monday, March 9. Also, which Division will be taking the lead on this issue, NR or TCH?

cc: Fred Khedouri, w/o atch
Annelise Anderson, w/o atch
Danny Boggs, w/o atch