

## A BILL

To provide a comprehensive system of liability and compensation for oil spill damage and removal costs, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and for other purposes.

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 "Comprehensive Oil Pollution Liability and Compensation Act of 1975"

## TITLE I - DOMESTIC OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

Sec. 101. Definitions - For the purposes of this title, the term -

(a) "Secretary" means the Secretary of Transportation;

(b) "Fund" means the fund established by section 102 of this title;

(c) "person" means an individual, firm, corporation, association, or partnership;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, ships, public

vessels, onshore facilities, offshore facilities, or any combination thereof, which causes or poses an imminent threat of oil pollution;

(e) "vessel" means a watercraft or other artificial contrivance used or capable of being used as a means of transportation on water other than a ship or public vessel;

(f) "public vessel" means a watercraft or other artificial contrivance used or capable of being used as a means of transportation on water which is owned and operated or bareboat-chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign government, when it is used in governmental non-commercial service;

(g) "ship" has the same meaning as in title II of this Act;

(h) "onshore facility" means a structure or group of structures (including, but not limited to, any motor vehicle or rolling stock) of any kind located in, on, or under any land within the United States other than submerged lands;

(i) "offshore facility" means a fixed or floating structure or group of such structures of any kind located in, on, or under any navigable waters or high seas if the structure or structures are subject to the jurisdiction of the United States;

(j) "terminal" means a permanently situated onshore facility, not owned by any agency of the federal government, which receives oil in bulk directly from any vessel, ship, offshore production facility, offshore port facility, onshore pipeline, or a pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act;

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

(l) "oil pollution" means the presence of oil, either in an unlawful quantity or having been discharged at an unlawful rate, (1) in or on the navigable waters, on the shoreline adjacent thereto, or in or on the high seas seaward of the navigable waters; or (2) where damages are recoverable by a foreign claimant under this title, in or on the territorial sea, internal waters, or adjacent shoreline of his country;

(m) "navigable waters" has the same meaning as in the Federal Water Pollution Control Act;

(n) "United States claimant" means any resident of the United States, the government of the United States or agency thereof, or the government of a State or political subdivision thereof;

(o) "foreign claimant" means any resident of a foreign country, or the government of a foreign country, or any agency or political subdivision thereof;

(p) "state" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto

Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(q) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(r) "appropriate official in charge" means the official of the United States responsible for coordinating response efforts respecting an incident;

(s) "clean-up costs" means costs of reasonable measures taken by any United States or foreign claimant after an incident has occurred to prevent, minimize, or mitigate pollution damage stemming from that incident;

(t) "person in charge" means the individual immediately responsible for the operations of a vessel or ship, if the vessel or ship is subject to the jurisdiction of the United States, or an onshore or offshore facility;

(u) "claim" means a demand in writing for a sum certain for damages recoverable under this title.

#### Sec. 102. Fund Establishment, Administration, and Financing

(a) There is hereby established in the Treasury of the United States a fund, not to exceed \$200,000,000 to carry out the purposes of this title. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Secretary and the Secretary of the Treasury are each authorized individually to issue rules and regulations as

necessary to carry out their respective responsibilities under this title. The costs incurred in administering the provisions of this title shall be borne by the Fund.

(b) The Fund shall be financed in the manner prescribed in this subsection.

(1) All monies received as payment for civil or criminal penalties or fines assessed or adjudged under this Act, section 7 of the Oil Pollution Act of 1961, paragraphs (5) and (6) of subsection (b) of section 311 of the Federal Water Pollution Control Act respecting discharges of oil, section 12 of the Intervention on the High Seas Act, and sections 15 and 18 of the Deepwater Port Act of 1974 shall be deposited in the Fund.

(2) All monies recovered under section 111 of this title and recovered or collected under this section by the Fund shall be deposited in the Fund.

(3) The Secretary of the Treasury, in accordance with regulations promulgated by the Secretary of the Treasury upon the recommendation of the Secretary, shall collect from the owners of refineries receiving crude oil and the owners of terminals receiving any oil for export or entry into the United States, whether for import or transport to a foreign country, a fee, not to exceed three cents per barrel of oil received. The Secretary of the Treasury shall waive, at the request of the Secretary, the collection of a fee from owners of

refineries with respect to oil received from pipelines which the Secretary determines do not pose a significant environmental threat to the navigable waters. Any oil upon which a fee has been levied under this paragraph shall not be subject to a subsequent levy under this paragraph.

(4) Any person required by regulation to collect or to pay fees under this subsection who fails to collect or pay those fees shall be liable for the amount of the fees required to be collected or paid, interest on these fees, and for a civil penalty not to exceed \$10,000. The Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for the amount for which he is liable under this paragraph. Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution under section 1001 of title 18 United States Code.

(5) The Secretary of the Treasury may from time to time modify by regulation the amount of fees to be collected under paragraph (3) of this subsection as necessary to maintain the Fund at a level not to exceed \$200,000,000. Fee modifications made pursuant to this paragraph shall become effective no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register.

(c) For the purpose of titles II and III of this Act:

(1) The secretary is designated as the person who suffered pollution damage, with respect to actions taken under subsections (c) and (d) of section 311 of the Federal Water Pollution Control Act, subsection (b) of section 18 of the Deepwater Port Act of 1974, and section 5 of the Intervention on the High Seas Act. The Secretary may recover the costs of these actions and compensation paid to a claimant as applicable in accordance with the provisions of titles II, III, and IV of this Act; and

(2) the Secretary may, with the concurrence of the Secretary of State and the Attorney General, retain legal counsel and do all other necessary acts to institute and maintain legal actions or other proceedings in foreign states.

(d) (1) The Secretary of the Treasury may invest those portions of the Fund which the Secretary determines are not currently required to meet the obligations of the Fund. The investments may be made only in interest-bearing special obligations of the United States.

(2) Special obligations issued to the Fund may be redeemed at any time in accordance with the terms of the special issue and regulations promulgated by the Secretary of the Treasury.

(3) The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) If at any time the monies available in the Fund are insufficient to meet the obligations of the Fund the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to the terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the Secretary from monies in the Fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the U.S.



Sec. 103 Damages

Damages which may be recovered under this Act are as follows:

- (a) removal costs;
- (b) value of injury to real or personal property directly resulting from oil contamination;
- (c) value of injury to natural resources directly resulting from oil contamination;
- (d) loss of profits or impairment of earning capacity due to injury to real or personal property or natural resources directly resulting from oil contamination;
- (e) value of loss of use of real or personal property or natural resources directly resulting from oil contamination; and
- (f) loss of tax revenue for a period of one year due to injury to real or personal property directly resulting from oil contamination.

Sec. 104 Claimants

- (a) Damages may be recovered by:
  - (1) any agency of the United States Government or of any State for damages under clause (a) of section 103 of this title;
  - (2) the President, as trustee, for damages under clause (c) of section 103 of this title respecting natural resources over which the United States has sovereign rights to explore or exploit;

(3) any State, as trustee, for damages under clause (c) of section 103 of this title respecting natural resources belonging to or appertaining to the State, including those resources appertaining to the State under the Submerged Lands Act;

(4) any United States claimant other than the owner or operator of a vessel, ship, onshore facility or offshore facility involved in an incident for damages under clause (a) of section 103 of this title;

(5) any United States claimant for damages under clauses (b), (d), and (e) of section 103 of this title, respecting littoral or riparian real or personal property owned or leased by the claimant or natural resource utilized by the claimant, to the extent the claimant is not otherwise compensated for the damage respecting the real or personal property or natural resource;

(6) any United States claimant for damages under clause (d) of section 103 of this title, respecting littoral or riparian real or personal property or natural resource, where the claimant does not own or lease the property or directly utilize the natural resource and the Secretary has determined that a major incident has occurred, if the claimant derives at least 50% of his earnings from activities which utilize the property or natural resource and is not otherwise compensated for the damages;

(7) any State or political subdivision thereof for damages under clause (f) of section 103 of this title, respecting littoral or riparian real or personal property, where the Secretary has determined that a major incident has occurred;

(8) any foreign claimant for damages under section 103 of this title to the same extent that a United States claimant may present a claim under this section if (A) the damages stemmed from the presence of oil in or on the territorial sea or internal waters of the country of which the claimant is a resident or on the shoreline adjacent thereto, and (B) the claimant is not otherwise compensated for the damages, and (C) the oil was discharged from an onshore or offshore facility or a vessel or ship located within the navigable waters, and (D) recovery is authorized by an executive agreement between the country of residence of the foreign claimant, or where the Secretary of State, in consultation with the Attorney-General and other appropriate officials, certifies that the country of which the claimant is a resident provides an adequate and similar remedy for United States claimants; provided, however, that subclauses (C) and (D) of this clause shall not apply where damages relate to oil that has been transported through the pipeline authorized under the Trans-Alaska Pipeline Authorization Act and loaded on a vessel or ship at the terminal facility of that pipeline prior to the time that oil is first brought ashore in a port under the jurisdiction of the United States; and

(9) The Attorney General on his own motion or at the request of the Secretary, on behalf of any group of United States claimants for damages to which the claimants are otherwise entitled under this subsection, when he determines that the claimants would be more adequately represented as a class in recovery of their claims.

(b) Any owner or operator of a vessel, ship (except where title II is in effect and applicable), onshore facility or offshore facility involved in an incident may recover damages under subsection (a) of this section if entitled to a defense to liability under section 105 of this title and at the time of the incident was in full compliance with all applicable laws of the United States relating to maritime and navigational safety and marine environmental protection.

(c) For the purposes of this section littoral or riparian personal property includes, but is not limited to, vessels and ships.

(d) (1) If the Attorney General fails to take action under clause (9) of subsection (a) of this section within 90 days of the date the Secretary designates a source under paragraph (1) of subsection (b) of section 109 of this title, any member of a group may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take that action shall have no bearing on any class action maintained by any claimant under this paragraph.

(2) In any case where the number of members in the class exceeds 1,000, publication of notice of the action in the Federal Register and in local newspapers serving the areas in which potential claimants reside shall fulfill the requirement for public notice established by rule 23(c) (2) of the Federal Rules of Civil Procedure.

Sec. 105 Owner/Operator Liability

(a) The owner and operator of a vessel, ship (except where title II of this Act is in effect and applicable), onshore facility, or offshore facility shall be jointly, severally, and strictly liable, in accordance with the provisions of this subsection, for all damages specified in section 103 of this title where the vessel, ship, onshore facility, or offshore facility discharged oil in an incident or, with respect to actions taken under subsection (d) of section 311 of the Federal Water Pollution Control Act and section 5 of the Intervention on the High Seas Act, where the vessel, ship or onshore or offshore facility posed an imminent threat in an incident. No liability shall be imposed under this subsection where the discharge was caused solely by (1) an act of war, hostilities, civil war, or insurrection, (2) an act of God, or (3) a combination thereof. Except as otherwise provided in this title, the total of the liability of a vessel or ship shall not exceed the lesser of \$150 per gross ton or

\$20,000,000, unless the incident was caused by gross negligence or willful misconduct within the privity or knowledge of the owner or operator. Except as otherwise provided in this title, the total of the liability of an onshore facility or offshore facility shall not exceed \$50,000,000, or, where a lesser limit has been established under subsection (c) of this section, that lesser limit, unless the incident was caused by gross negligence or willful misconduct of the owner or operator. No liability shall arise under this subsection for damages of a claimant whose gross negligence or willful misconduct contributed to the injury.

(b) Nothing in this Act shall bar a cause of action that an owner or operator subject to liability under subsection (a) of this section has or would have by reason of subrogation or otherwise against any person or governmental entity.

(c) The Secretary may prescribe by regulation limitations of liability, for various classes of onshore facilities and offshore facilities, which are lower than \$50,000,000.00. In issuing these regulations, the Secretary shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents of the classes of onshore and offshore facilities.

(d) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (a) of this section.

(e) (1) Except where titles II and III of this Act are in effect and applicable, in addition to the damages specified in section 103 of this title, and without regard to the limitation of liability provided in subsections (a) and (c) of this section, the owner, operator, or other person providing financial responsibility shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to the owner, operator, or other person providing financial responsibility to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or other person providing financial responsibility 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 that amount, inclusive. However, if the owner, operator, or other person providing financial responsibility shall offer to the claimant, within 90 days of the date upon which the claim was presented to the owner, operator, or other person providing financial responsibility or of the date upon which advertising was commenced pursuant to section 106 of this title, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or other person providing financial responsibility shall be liable for the interest provided in this paragraph only from the date that 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 180 days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

#### Sec. 106 Fund Liability

The Fund shall be liable for all damages specified in section 103 of this title. Except for removal costs specified in clause (1) of subsection (a) of section 107 of this title, no liability shall arise under this section where the injury was caused wholly by act of war, hostilities, civil war, or insurrection or where the gross negligence or willful misconduct of the claimant contributed to the injury. No interest shall be recoverable except in accordance with subsection (d) of section 111 of this title.

#### Sec. 107 Removal Costs

(a) For the purposes of clause (a) of section 103 of this title removal costs are:

(1) costs incurred under subsections (c), (d), and (1) of section 311 of the Federal Water Pollution Control Act,



section 5 of the Intervention on the High Seas Act, and subsection (b) of section 18 of the Deepwater Port Act of 1974, including, but not limited to, costs incurred but not reimbursed on the effective date of this title; and

(2) clean-up costs, except as provided for by clause (1) of this subsection.

(b) The appropriate official in charge is authorized, in accordance with regulations promulgated by the Secretary, to obligate money available in the Fund for the purpose of the removal costs specified in clause (1) of subsection (a) of this section.

#### Sec. 108 Financial Responsibility

(a) (1) Any vessel or ship (except where title II of this Act is in effect and applicable), over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil as cargo or fuel, using any port or place in the United States or the navigable waters for any purpose shall establish and maintain, under regulations and in the method prescribed by the President, evidence of financial responsibility to the extent of the limit of liability applicable to the vessel or ship under subsection (a) of section 105 of this title. Financial responsibility may be established by any one or combination of the following methods: evidence

of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

In cases where an owner or operator owns, operates, or charters more than one vessel or ship subject to this subsection, evidence of financial responsibility need only be established to meet the maximum liability to which the largest of the vessels or ships could be subjected.

(2) In addition to any action or claim brought under this title, any claim for costs incurred by any vessel or ship subject to this subsection asserted under subsections (f) and (g) of section 311 of the Federal Water Pollution Control Act may be brought or presented directly against an insurer or any other person producing evidence of financial responsibility as required under this subsection. In the case of any action taken pursuant to subsections (f) and (g) of section 311 of the Federal Water Pollution Control Act the insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him

if an action had been brought against him by the owner or operator.

(3) Any owner or operator of a vessel or ship subject to this subsection who fails to comply with this subsection or any regulation or entry denial or detention order of the Secretary issued thereunder shall be subject to a civil penalty of not more than \$10,000. At the request of the agency designated by the President to carry out the provisions of paragraph (1) of this subsection, or the Secretary, with respect to entry denials or detention orders issued under paragraph (5) of this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed by the agency or the Secretary.

(4) The Secretary of the Treasury shall refuse the clearance required by section 4197 of the Revised Statutes of the United States, to any vessel or ship subject to this subsection, which does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(5) The Secretary, in accordance with regulations promulgated by him, shall (A) deny entry to any port or place in the United States or navigable waters to and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States any vessel or ship subject to this subsection

which, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b) (1) The Secretary shall, by regulation, specify those classes of onshore facilities and offshore facilities the owners and operators of which shall be required to establish and maintain financial responsibility to the extent of the limit of liability, applicable under subsections (a) and (c) of section 105 of this title. Financial responsibility may be established, in accordance with regulations issued by the Secretary, by any one or combination of the following methods: evidence of insurance guarantee, surety bonds, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) Any owner or operator who fails to comply with the regulations issued under paragraph (1) of this subsection is subject to a civil penalty of not more than \$10,000.00. At the request of the Secretary, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed by the Secretary under this paragraph.

#### Sec. 109 Notification and Advertisement

(a) The person in charge of a vessel, ship, or onshore or offshore facility shall, as soon as he has knowledge

that his vessel, ship, or onshore or offshore facility is involved in an incident, shall immediately notify the Secretary of the incident. Any person in charge who fails to make this notification immediately shall, upon conviction, be fined not more than \$10,000.00, imprisoned for not more than one year, or both.

(b) (1) When the Secretary receives information from any person of an incident involving the discharge of oil, the Secretary shall, where possible, designate the source or sources of the discharge. The Secretary shall immediately notify the owner or operator of the designated source, other person providing financial responsibility, or both of the designation. In addition, where title II of this Act is in effect and applicable, the Secretary shall advertise the designation and the procedures by which claims may be presented thereunder.

(2) Any owner or operator of a vessel, ship (except where title II of this Act is in effect and applicable), onshore facility, or offshore facility which is designated as source under paragraph (1) of this subsection or other person providing financial responsibility may, within five days after receiving notification of the designation, deny the designation and inform the Secretary of that denial. If denial is not made in accordance with this paragraph, that owner, operator, or other person shall, in accordance with

regulations promulgated by the Secretary, advertise the designation and the procedures by which claims may be presented to that owner, operator, or other person. Nothing in this title shall be construed as barring any other party involved in an incident from accepting liability for and settling all claims stemming from the incident for which the Fund is liable. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, at the cost of the owner, operator, or other person providing financial responsibility, advertise the designation and the procedures by which claims may be presented to that owner, operator, or other person.

(c) In a case where -

(1) the owner or operator of the vessel, ship, onshore facility, or offshore facility designated under paragraph (1) of subsection (b) of this section denies the designation in accordance with paragraph (2) of that subsection,

(2) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (b) of this section, or

(3) it appears that the source of the discharge was a public vessel -

the Secretary shall advertise the procedures by which claims may be presented to the Fund.

(d) Advertisement under subsections (b) of this section shall commence no later than 15 days from the date of the designation made thereunder to continue for a period of no less than 30 days.

Sec. 110 Claims Settlement

(a) No claim may be presented and no action may be commenced for damages recoverable under this title unless that claim is presented to or that action is commenced against the owner, operator, or other person providing financial responsibility, or, the Fund, as their respective liabilities shall appear, within one year from the date upon which advertising was commenced pursuant to section 109 of this title; this statute of limitations to run concurrently with respect to both claims and actions. However, a claim for sums for which the Fund is liable by reason of the limitation of liability permitted by subsections (a) and (c) of section 104 of this title or titles II or III of this Act may be presented within 90 days of a final judgment entered in an action commenced within one year from the date upon which advertising was commenced pursuant to section 109 of this title.

(b) Except as provided in subsection (c) of this section, all claims shall be presented to the owner, operator,

or other person providing financial responsibility.

However, where the Secretary has advertised in accordance with subsection (c) of section 109 of this title claims invited by that advertising shall be presented to the Fund. Claims presented respecting damages specified in subsection (b) of section 104 shall also be presented to the Fund.

(c) In the case of a claim which had been presented to the owner, operator, or other person providing financial responsibility, and in which the owner, operator, or other person providing financial responsibility:

(1) has denied all liability for the claim, for any reason; or

(2) has not settled the claim by payment to the claimant within 90 days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 109 of this title, which ever is later;

the claimant may elect to commence an action in court against the owner, operator, or other person providing financial responsibility, or present that claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim which had been presented to Fund, and in which the Fund:

(1) has denied all liability for the claim, for any reason; or



(2) has not settled the claim by payment to the claimant within 90 days of the date upon which (A) the claim was presented to the Fund, or (B) advertising was commenced pursuant to subsection (c) of section 109 of this title, which ever is later;

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5 of the United States Code. However, a claimant who presented a claim to the Fund pursuant to subsection (b) of this section may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

(e) (1) In any action brought against an owner, operator, or other person providing financial responsibility both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time those pleadings are served upon the opposing parties.

(2) The Fund may intervene in the action as a matter of right.

(3) In any action to which the Fund is a party, if the owner, operator, or other person providing financial responsibility admits liability under this Act, the Fund upon its motion shall be dismissed therefrom.

(4) If the Fund receives from either the plaintiff or the defendant notice of such an action as provided in this subsection, the Fund shall be bound by any judgment entered therein whether or not the Fund was a party to the action.

(5) If neither the plaintiff nor the defendant give notice of an action to the Fund as provided in this subsection, the limitation of liability otherwise permitted by section 105 of this title is not available to the defendant and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

(f) In any action brought against the Fund the plaintiff may join any owner, operator, or other person providing financial responsibility, and the Fund may implead any person who is or may be liable to the Fund under any provision of this Act.

(g) (1) The Secretary shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(2) Except as provided in paragraph (3) of this subsection the Secretary shall use the facilities and services of private insurance and claims adjusting organizations in administering this section 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, upon a showing by the Secretary that advertising is not reasonably practicable, and advance payments may be made.

A payment to a claimant for a single claim in excess of \$100,000, or two or more claims aggregating in excess of \$200,000 shall be first approved by the Secretary.

(3) In extraordinary circumstances, where the services of such private organizations are inadequate, the Secretary may use federal personnel to administer the provisions of this section, to the extent necessitated by the extraordinary circumstances.

(h) Without regard to subsection (b) of section 556 of title 5 of the United States Code, the Secretary is authorized to appoint from time to time for a period not to exceed 180 days one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (d) of this section. At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings, and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal Agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation and each

panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of Chapter 11 of Title 18, United States Code, and of Executive Order 11222 regarding Special Government Employees, apply to panel members appointed from private life.

(i) (1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an Administrative Law Judge, appointed under section 3105 of title 5 of the United States Code, or (B) to a panel appointed under subsection (h) of this section.

(2) The Administrative Law Judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States Judicial Circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute the Administrative Law Judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection the presiding officer may require by subpoena any person to appear and testify or to appear and produce books, papers, documents, or tangible things or both at a hearing or deposition at any designated place. Subpoenas 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 Secretary. If a person fails or refuses to obey a subpoena, the Secretary 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.

(4) A hearing conducted under this subsection shall be conducted within the United States Judicial District within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts.

(5) The decision of the Administrative Law Judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund staff.

(6) Final orders of the Secretary made under this subsection shall be reviewable at the instance of the claimant in the district courts of the United States in accordance with Section 706 of Title 5, United States Code.

Sec. 111 Subrogation

(a) Any person or governmental entity, including the Fund, who shall pay compensation to any claimant pursuant to this title shall be subrogated to all rights, claims and causes of action which that claimant has under this Act.

(b) Upon request of the Secretary the Attorney General may commence an action against any owner, operator, or other person providing financial responsibility, or any other person or governmental entity, liable to any claimant pursuant to section 105 of this title, or to any claimant or the Fund pursuant to any law for the compensation paid by the Fund to any claimant pursuant to this title.

(c) In all claims or actions by the Fund against any owner, operator, or other person providing financial responsibility, the Fund shall recover:

(1) For a claim presented to the Fund (where there has been a denial of source designation or liability) pursuant to subsection (b) and clause (1) of subsection (c) of section 110 of this title, (A) the amount the Fund has paid to the claimant, without reduction, and, except for any action brought under titles II and III of this Act, (B) interest on that amount, at the rate calculated in accordance with paragraph (2) of subsection (e) of section 105 of this title, from the date upon which the claim was presented by the claimant to the defendant to the date upon which the Fund is paid by

the defendant, inclusive, less the period, if any, from the date upon which the Fund shall offer to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant shall accept that offer, inclusive, and, except for any action brought under titles II and III of this Act, (C)all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys fees.

(2) For a claim presented to the Fund pursuant to clause (2) of subsection (c) of section 110 of this title,

(A) In which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant: (i) the amount the Fund has paid to the claimant, subject to dispute by the defendant; and, except for any action brought under titles II and III of this Act, (ii) interest, at the rate calculated in accordance with paragraph (2) of subsection (e) of section 105 of this title, for the period specified in clause (1) of this subsection; and, except for any action brought under titles II and III of this Act, (iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including,

but not limited to, processing costs, investigating costs, court costs, and attorneys fees,

(B) In which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant: (i) the amount the Fund has paid to the claimant, without reduction, and, except for any action brought under titles II and III of this Act, (ii) interest, at the rate calculated in accordance with paragraph (2) of subsection (e) of section 105 of this title, from the date upon which the claim was presented to the defendant by the claimant to the date upon which the defendant offered to the claimant the "largest amount" referred to in this subclause. However, if the defendant tendered the offer of the "largest amount" referred to in this subclause within 90 days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced pursuant to section 109 of this title, the defendant shall not be liable for interest for that period, and from the date upon which the claim of the Fund against the defendant was presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund shall accept that offer, inclusive.



(d) The Fund shall pay over to the claimant that portion of any interest the Fund shall recover pursuant to clause (1), and subclause (A) of clause (2) of subsection (c) of this section for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the Fund, inclusive, less the period from the date upon which the Fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The Fund is entitled to recover for all interest and cost specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled.

#### Sec. 112 Conformity with International Law

(a) The jurisdiction of the United States for purpose of this title shall be exercised to the fullest extent permitted by international law and the Secretary shall consult with the Secretary of State to assure that no actions are taken pursuant to the title which are contrary to international law.

(b) The Secretary of State is authorized to negotiate and conclude executive agreements described in subclause (D) of clause (8) of subsection (a) of section 104 of this title on terms and conditions which he shall determine.

Sec. 113 Jurisdiction and Venue

(a) The United States District Court shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the damage complained of shall have occurred, or wherein the defendant resides, may be found, or has its principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

Sec. 114 Preemption

Except as provided in this Act no action may be brought in any court of the United States or any State or political subdivision thereof for damages specified in section 103 of this title, and no person may be required to contribute to any fund the purpose of which is to pay damages so specified.

Sec. 115 Appropriations

(a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of Title I of this Act.

(b) The Secretary is hereby authorized to incur indebtedness on behalf of the United States as provided in Section 102(e) of this Act to the extent provided in Appropriation Acts for that purpose.

TITLE II--INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL  
POLLUTION DAMAGE

Sec. 201. For the purposes of this title, the term--

(a) "Ship" means any seagoing vessel and any sea-borne craft of any type whatsoever, actually carrying oil in bulk as cargo.

(b) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency, or instrumentality, any State, or any political subdivision of, or any political entity within a State, any foreign government or country, or any political subdivision of any such government or country, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(c) "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a country and operated by a company which in that country is registered as the ship's operator, owner shall mean such company.

(d) "State of the ship's registry" and other references to registration of a ship in a State mean in relation to registered ships the country of registration of the ship, and in relation to unregistered ships the country whose flag the ship

is flying. Registration of a ship in the United States includes the licensing or enrollment of a ship.

(e) "Oil" means any persistent oil, such as crude oil, fuel oil, heavy diesel oil, lubricating oil, and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

(f) "Pollution damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures (including the actual cost of removal of the oil) and further loss or damage caused by preventive measures. In the preceding sentence, "contamination" includes, but is not limited to, contamination which is the escape or discharge of any quantity of oil, at such times and locations or under such circumstances and conditions, as are determined, pursuant to paragraph (4) of section 311(b) of the Federal Water Pollution Control Act, as amended, to be harmful to the public health or welfare of the United States.

(g) "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

(h) "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage.

(i) "Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969.

(j) "Escape" or "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(k) "United States," when used in a geographic sense, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and all other territories or possessions of the United States.

(l) "Franc" means a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred.

(m) "Ton" means two thousand two hundred and forty pounds.

(n) "Guarantor" means any person providing insurance or other financial security pursuant to the provisions of section 203 of this title or of article VII, paragraph 1 of the Liability Convention.

(o) "Ship's tonnage" means the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engineroom space for the purpose of ascertaining the net tonnage. In the case of a ship which cannot be measured in accordance with the normal rules of tonnage measurement, the ship's tonnage shall be deemed to

be 40 per centum of the weight in tons of oil which the ship is capable of carrying.

(p) "District court of the United States" includes the courts enumerated in title 28, section 460, United States Code.

Sec. 202.

(a) Except as provided in subsections (b) and (c) of this section, the owner of a ship at the time of the incident, or where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused as a result of the incident.

(b) The owner shall not be liable for pollution damage if he proves that the damage--

(1) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character, or

(2) was wholly caused by an act or omission done with intent to cause damage by a third party, or

(3) was wholly caused by the negligence or wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(c) If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered

the damage or from negligence of that person, the owner may be exonerated to the same extent from his liability to such person.

(d) This section applies exclusively to pollution damage (other than preventive measures) caused on the territory, including the territorial sea, of the United States or of any foreign country which is party to the Liability Convention, and to preventive measures, wherever taken, to prevent or minimize such damage.

(e) Nothing in this Act shall prejudice any right of recourse of the owner against third parties.

(f) When oil was escaped or has been discharged from two or more ships, and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under subsection (b), and, to the extent not exonerated under subsection (c), shall be jointly and severally liable for all such damage which is not reasonably separable.

(g) (1) Subject to paragraph (2) of this subsection, the owner of a ship shall be entitled to limit his liability under this Act in respect of any one incident to an aggregate amount equal to the dollar equivalent of 2,000 francs for each ton of the ship's tonnage: Provided, That the aggregate amount of an owner's liability in respect of any one incident shall not exceed the dollar equivalent of 210,000,000 francs.

The dollar equivalent of a franc shall in any action brought pursuant to this title be calculated as of the date the fund referred to in paragraph (3) of this subsection is constituted.

(2) If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph (1) of this subsection.

(3) For the purpose of availing himself of the benefit of limitation provided for in paragraph (1) of this subsection the owner shall constitute a fund in an amount equal to the limit of his liability under this title in a court in which an action is brought under subsection 204(b) of this title, or the owner shall constitute a fund in such amount in accordance with article V of the Liability Convention in any court of a foreign country having jurisdiction as provided in article IX of the Liability Convention in which an action under that Convention is brought or with another competent authority of such a country. A fund constituted in the United States may be constituted either by depositing the sum or producing a bank guarantee or other guarantee considered to be adequate by the court.

(4) A guarantor shall be entitled to constitute a fund in accordance with this subsection on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even in the event



of actual fault or privity of the owner but its constitution shall in that case not prejudice the rights of any claimant against the owner.

(h) (1) Where the owner, after an incident, has constituted a fund in accordance with subsection (g) of this section and is entitled to limit his liability,

(A) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;

(B) a district court of the United States shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of the incident, and shall similarly release any bail or other security furnished to avoid arrest.

(2) Paragraph (1) of this subsection shall apply only if the claimant has access to the court administering the fund and the fund is actually available in respect of his claim.

(i) Any claim for compensation for pollution damage may be brought directly against the guarantor of the owner's liability for pollution damage. In such case, the defendant may, irrespective of the actual fault or privity of the owner, avail himself of the limits of liability prescribed in subsection (g) (1) of this section. He may further

avail himself of the defenses (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defense that the pollution damage resulted from the willful misconduct of the owner himself, but the defendant shall not avail himself of any other defense which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the action.

Sec. 203.

(a) The owner of a ship registered in the United States which is capable of carrying more than two thousand tons of oil in bulk as cargo shall maintain insurance or other financial security in the sums fixed by applying the limits of liability prescribed in subsection (g) (1) of section 202 of this title. Any sums provided by insurance or by other financial security maintained in accordance with the preceding sentence shall be available exclusively for the satisfaction of claims under this title.

(b) After determining that insurance or other financial security in the sums fixed by applying the limits of subsection (g) (1) of section 202 has been obtained, the President shall issue a certificate to each ship registered in the United States which is capable of carrying more than two thousand tons of oil in bulk as cargo attesting that such insurance or other

financial security has been obtained. After making such a determination, the President may also issue a certificate to a ship capable of carrying more than two thousand tons of oil in bulk as cargo which is registered in a State not party to the Liability Convention. The certificate shall be in the form annexed to the Liability Convention and shall contain:

- (1) name of the ship and port of registration;
- (2) name and principal place of business of owner;
- (3) type of security;
- (4) name and principal place of business of insurer or other person giving security, and, where appropriate, place of business where the insurance or security is established;
- (5) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.

(c) The certificates shall be carried on board all ships to which the certificates are issued and a copy shall be retained by the President.

(d) No certificate shall be issued if the insurance or other financial security can cease, for reasons other than the expiration of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the President. The President shall determine such

other requirements related to the financial capability of the owner's guarantor as may be desirable to carry out the purposes of this title and title III of this Act for the issuance of the certificate or the termination of its validity.

(e) Certificates issued or certified under the authority of another state party to the convention shall have the same force as certificates issued pursuant to this subsection. The Secretary of State shall request consultation with the state of a ship's registry if the President seeks to determine whether the guarantor named in the ship's certificate is financially capable for the purposes of this title and title III of this Act. If the President determines that such guarantor is not financially capable for these purposes, he may take such lawful action as he deems appropriate, including but not limited to the barring of the ship from any or all ports of the United States.

(f) No ship registered in the United States to which this section applies shall engage in trade unless a certificate has been issued pursuant to this section.

(g) No ship registered in the United States which is capable of carrying more than two thousand tons of oil in bulk as cargo, and no other ship, wherever registered, actually carrying more than two thousand tons of oil in bulk as cargo, shall enter or leave a port in the United States, or be permitted

to arrive at or leave an offshore terminal unless the ship has on board a valid certificate issued by the United States or a foreign country party to the Convention. Any ship required by the preceding sentence to have such a valid certificate on board which enters the territorial waters or a safety zone established under subsection (d) of section 12 of the Deepwater Port Act of 1974 en route to a port or terminal installation (as defined in subsection 301(e) of title III) in the United States, and which fails to have such valid certificate on board, shall for each such failure be liable for a civil penalty of not more than \$10,000. The President may assess and compromise such penalty. No penalty shall be assessed until notice and an opportunity for hearing on the charge has been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the owner shall be considered by the President.

(h) Any ship owned by the United States or any foreign country which carries a certificate issued by the President, or, if a ship owned by a foreign country, by the country owning the ship, stating the ownership of the ship and that ship's liability is covered to the limit prescribed by subsection (g)(1) of section 202 shall be deemed to have complied with the foregoing requirements of this section. The certificate shall resemble as closely as possible the model described in subsection (b) of this section.

(i) The President is authorized to delegate the administration of this section, including the powers to make determinations and to make and revise regulations, and to redelegate such powers, to the head of those Federal departments, agencies, and instrumentalities which he determines to be appropriate.

Sec. 204.

(a) Rights of compensation under this title shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought later than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six years' period shall run from the date of the first occurrence.

(1) Subject to paragraph 2 of this subsection, the several district courts of the United States shall have jurisdiction over any actions arising under this title and title III of this Act if the action is brought in respect of an incident which has caused all or part of the pollution damage (other than preventive measures) on the territory, including the territorial sea, of the United States or in respect of preventive measures, wherever taken, to prevent or minimize such damage.

(2) Actions authorized under the above subsection may be brought in any judicial district in which one of the plaintiffs or one of the defendants resides or in which pollution damage, including preventive measures taken to prevent or minimize such damage, has occurred or could reasonably be expected to have occurred if such preventive measures had not been taken. For the purpose of this title and title III of this Act, American Samoa shall be included within the judicial district of the district court of the United States for the district of Hawaii and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the district court of the United States for the district of Hawaii and the district court of Guam.

(3) If the fund referred to in subsection (g) (3) of section 202 has been constituted in a district court of the United States or in a competent court of a foreign country party to the Liability Convention, that court shall have exclusive jurisdiction regarding all matters relating to the apportionment and distribution of the fund.

(c) Subject to the provisions of section 402 of title IV of this Act, any judgment given by a foreign court with jurisdiction in accordance with article IX of the Liability Convention which is enforceable in the country of origin and which is no longer subject to ordinary forms of review therein, shall be enforceable in the courts of the United

States except:

- (1) where the judgment was obtained by fraud; or
- (2) where the defendant was not given reasonable notice and a fair opportunity to present his case.

(d) (1) The provisions of this title shall not apply to warships or other ships owned or operated by a country and used, for the time being, only on Government noncommercial service.

(2) With respect to ships owned by the United States and used for commercial purposes, the United States, in actions brought against it in the United States and in other jurisdictions identified in article IX of the Liability Convention, waives all defenses based on its status as a sovereign state.



TITLE III--INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF  
AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

Sec. 301. For the purposes of this title, the term--

(a) "Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

(b) "The Fund" means the International Oil Pollution Fund established by the Convention.

(c) "Liability Convention," "ship," "state of the ship's registry" and other references to registration of a ship in a State, "person," "owner," "oil," "pollution damage," "preventive measures," "incident," "franc," "ship's tonnage," "escape," "discharge," "United States" when used in a geographic sense, "ton," "guarantor," and "district court of the United States" have the same meaning as in title II of this Act, except that (1) "Oil" shall be confined to persistent hydrocarbon mineral oils for the purposes of this title, and (2) "ton" in relation to oil means a metric ton.

(d) "Contributing oil" means crude oil and fuel oil as defined in subparagraphs (1) and (2) below:

(1) "Crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes crude oils from which certain distillate fractions have been removed

("topped crudes") and to which certain distillate fractions have been added ("spiked" or "reconstituted" crudes).

(2) "Fuel oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to American Society for Testing Materials Specification for Number Four Fuel Oil (designation D-369-69) or heavier.

(c) "Terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to such site.

#### Sec. 302.

(a) Contributions to the fund shall be made by any person who has received, in total quantities exceeding one hundred and fifty thousand tons in the calendar year preceding the year in which his contribution is calculated.

(1) in the ports or terminal installations in the territory of the United States, contributing oil carried by sea to such ports or terminal installations;

(2) in any installations situated in the territory of the United States, contributing oil which has been carried by sea and discharged in a port or terminal installation of a country not party to the convention, provided that contribution

in respect of contributing oil so carried and discharged shall be made only by the first receiver in the United States.

(b) Any person--

(1) who is a subsidiary of or an entity commonly controlled by a person or related group of persons required under subsection (a) of this section to make contributions to the Fund and who receives contributing oil as provided in subsection (a) of this section in any amount in the same calendar year as such person or related group of persons, or

(2) who is one of two or more subsidiaries of or entities commonly controlled by a person or related group of persons and such subsidiaries or entities receive, as provided in subsection (a) of this section an amount of contributing oil exceeding one hundred and fifty thousand tons in the aggregate in the same calendar year,

shall also make contributions to the Fund. The President shall by regulation determine which persons shall be deemed to be subsidiaries, commonly controlled entities, and related groups of persons for the purposes of this subsection.

(c) Any person required by subsection (a) or (b) of this section to contribute to the Fund shall, upon notification by the Director of the Fund, be liable to pay the Fund the amount of his initial and annual contribution calculated pursuant to article 11 and article 12 of the Convention, as specified by the Director. Such person shall pay the Fund

such portion thereof in cash as may from time to time be requested by the Director, and shall give such security for the remaining portions thereof, including amounts in arrears, as the Director may require pursuant to regulations of the Fund. Such person shall be liable to pay interest to the Fund in respect of amounts in arrears at a rate determined by the Fund.

(d) Any person liable to contribute to the Fund and who fails to make a payment or to provide security to the Fund as required by the preceding subsection within three months from the date such payment is due or the provision of security is required, shall for each such failure be liable for a civil penalty of not more than \$5,000. The President may assess and compromise such penalty. No penalty shall be assessed until the person has been given notice and an opportunity for a hearing on such charges. In determining the amount of such penalty or the amount agreed upon in compromise, the demonstrated good faith of the persons and the amount of the contribution due shall be considered by the President.

(c) (1) Subject to paragraph (2) of this subsection, any person liable to contribute to the Fund and who fails to make a payment or to provide security to the Fund as required by subsection (c) of this section shall be liable in an action brought in the several district courts of the United

States by the Director of the Fund for the amount due or to provide such other relief as the court may determine is appropriate.

(2) Upon a determination of the President that a person to which the judicial power of the United States does not extend in the circumstances set forth in amendment XI to the Constitution of the United States is liable to contribute an amount to the Fund, and that such person has failed to make payment of that amount or any part thereof for more than three months from the date the payment was due, the President shall take such measures as he deems appropriate to collect such unpaid amount and any interest (as provided in subsection (c) of this section) on behalf of the Fund, including the prosecution of an action therefor against such a person in a court of the United States. Upon receipt of the sums collected, the President shall forthwith pay such sums to the Fund.

(f) The Fund shall have capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the Fund shall be the legal representative of the Fund. The Director shall be deemed irrevocably to have appointed the Secretary of State his agent for service of process in any action against the Fund in any court of the United States.

(g) The President shall communicate to the Director of the Fund the name and address of any person who is liable to contribute to the Fund under subsection (b) of this section and data regarding the relevant quantities of contributing oil received by such person during the preceding calendar year. The President may require any person who may be liable to contribute to the Fund to furnish such information as he may from time to time deem appropriate for purposes of the preceding sentence. Communications by the President to the Director shall, in any civil action or administrative proceeding arising out of alleged failure to contribute or provide security to the Fund as required herein, be prima facie evidence of the facts stated therein.

(h) The President is authorized to delegate the administration of this section, including the powers to make determinations, and to make and revise regulations, and to redelegate such powers, to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate.

Sec. 303. Sections 304 and 305 of this title respectively apply exclusively to pollution damage (other than preventive measures) caused on the territory, including the territorial sea, of the United States and any foreign country which is party to the Convention and to preventive measures, wherever taken to prevent or minimize such damage, and, with regard to indemnification of owners and guarantors, to pollution damage

(other than preventive measures) caused on the territory, including the territorial sea, of the United States and any foreign country party to the Liability Convention by a ship registered in a state party to the Convention, and to preventive measures, wherever taken, to prevent or minimize such damage.

Sec. 304. (a) Any person suffering pollution damage arising out of an incident occurring more than one hundred and twenty days after the entry into force of the Convention shall be entitled to compensation from the Fund if that person has been unable to obtain full and adequate compensation for the damage under the terms of title II or the Liability Convention either--

(1) because no liability for the damages arises under title II or the Liability Convention; or

(2) because the owner liable for the damage under title II or the Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under section 203 of title II or article VII of the Liability Convention does not cover or is insufficient to satisfy the claims for compensation for the damage, provided that an owner shall be deemed to be financially incapable of meeting his obligations and financial security shall be deemed to be insufficient if the person suffering damage has been unable to obtain full satisfaction

of the amount due him under title II or the Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him; or

(3) because the damages exceed the owner's liability under the Liability Convention as limited pursuant to subsection 202(g) of title II or article V, paragraph 1 of the Liability Convention or under the terms of any other international convention in force or open for signature, ratification or accession on December 18, 1971.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily for preventive measures shall be treated as pollution damage for purposes of this section.

(b) The Fund shall incur no obligation under the preceding subsection if:

(1) it proves that the pollution damage resulted from an act of war, hostilities, civil war, or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by the United States or a foreign country and used at the time of the incident only on government non-commercial service; or

(2) the claimant cannot prove that the damage resulted from an incident involving one or more ships.



(c) If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated to the same extent from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the owner may have been exonerated under subsection 202(c) of title II or article III, paragraph 3 of the Liability Convention. Notwithstanding any other provision of this Act, the Fund shall not to any extent be exonerated with regard to pollution damage resulting from the taking of preventive measures compensable under subsection (a) of this section.

(d) The aggregate amount of compensation payable by the Fund under this Act shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under title II or the Liability Convention for pollution damage, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to section 205 of this title shall not exceed the dollar equivalent of 450,000,000 francs: Provided, however, That if the Fund shall decide to change the figure 450,000,000 francs, such total sum shall, with respect to incident occurring after the date of such change, in no case exceed the dollar equivalent of the amount decided on by the Fund: And further

provided, That all pollution damage resulting from a single natural phenomenon of an exceptional, inevitable, and irresistible character in every case shall be deemed to have arisen out of a single incident.

Sec. 305.

(a) An owner or his guarantor shall be entitled to reimbursement from the Fund, for that portion of the aggregate amount of liability for pollution damage under title II or the Liability Convention arising out of an incident occurring more than one hundred and twenty days after the entry into force of the Convention which--

(1) is in excess of an amount equal to the dollar equivalent of 1,500 francs for each ton of the ship's tonnage or of an amount equal to the dollar equivalent or 125,000,000 francs, whichever is less; and

(2) is not in excess of an amount equal to the dollar equivalent of 2,000 francs of each ton of the ship's tonnage or an amount equal to the dollar equivalent of 210,000,000 francs, which ever is the less:

Provided, however, That the Fund shall incur no obligation under this paragraph where the pollution damage resulted from the willful misconduct of the owner himself.

(b) If the Fund proves that--

(1) as a result of the actual fault or privity of the owner, the ship from which the oil causing pollution

damage (including preventive measures) escaped or was discharged did not comply with the requirements laid down in (A) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962; or (B) the International Convention for the Safety of Life at Sea, 1960; or (C) the International Convention on Load Lines, 1966; or (D) the International Regulations for Preventing Collisions at Sea, 1960; or any amendment which has been determined to be of an important nature under article XVI (5) of the Convention mentioned in (A), under article IX(e) of the Convention mentioned in (B) or under article 29(3)(d) or 4(d) of the Convention mentioned in (C); Provided, however, That any such amendment has been in force for at least twelve months at the time of the incident; and

(2) the incident or damage was wholly or partially caused by such noncompliance; the fund shall, to the same extent, be exonerated from its obligations under the preceding subsection, without regard to whether the ship was bound by the law of the state of the ship's registry to comply with such requirements.

(c) If the Fund decides that a new convention shall replace an instrument or a part thereof for the purpose of paragraph 3 of article 5 of the Convention, the ship shall on the effective date of such replacement be required to

comply with the requirements of the new convention for the purposes of the preceding subsection: Provided, however, That any ship registered at the time of an incident in any state party to the Convention (including the United States) which is not a party to the new convention and which has declared to the Director of the Fund that it does not accept such replacement and has not terminated such declaration shall be required for the purposes of the preceding subsection to comply only with the requirements referred to in that subsection until such declaration is withdrawn or the state becomes party to the new convention.

(d) Any ship complying with the requirements in an amendment to an instrument specified in subsection (b) or with the requirements in a new convention, where the amendment or the Convention is designed to replace in whole or in part such instrument, shall be considered as complying with the requirements of subsection (b).

(e) If the Fund shall have assumed the obligations of a guarantor of part of an owner's liability, the owner shall, upon proof of such assumption, be deemed to have complied with section 203 of title II of this Act and article VII of the Liability Convention with respect to that part of his liability. Where the Fund, acting as a guarantor, has paid compensation for pollution damage in accordance with title II

of this Act or the Liability Convention, it shall have a right of recovery from the owner to the extent that the Fund would have been exonerated pursuant to subsection (b) of this section from its obligations under subsection (a) of this section to indemnify the owner or his guarantor.

(f) Expenses reasonably incurred and sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as included in the owner's liability for the purposes of this section.

#### Sec. 306.

(a) The several district courts of the United States shall have jurisdiction over actions against the Fund for compensation or indemnification under sections 304 or 305 of this title. Such actions may be brought no sooner than two hundred and forty days after entry into force of the Convention and shall be brought only before a court competent under section 204(b) of title II of this Act.

(b) Subject to the provisions for consolidation of the Federal Rules of Civil Procedure, where an action for compensation for pollution damage has been brought before a district court of the United States or a court of another country competent under article IX of the Liability Convention, against the owner or his guarantor, such court or courts

shall have exclusive jurisdiction over actions against the Fund for compensation or indemnification under section 304 or 305 of this title in respect of pollution damage arising out of the same incident and involving the same defendant or his guarantor. However, where an action for compensation for pollution damage under the Liability Convention has been brought before a court of a country party to the Liability Convention but not to the convention, any action against the Fund for such compensation or indemnification may be brought before any district court of the United States having jurisdiction under section 204(b) of title II.

(c) The Fund may intervene of right as a party in any legal proceedings instituted against an owner or his guarantor under title II of this Act.

(d) Subject to subsection (e) of this section, the Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

(e) Where an action under title II for compensation for pollution damage has been brought against an owner or his guarantor in a district court of the United States, each party to the proceedings shall be entitled to notify the Fund of the proceedings. Where such notification has been timely made in accordance with the practice of the Federal courts,

any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the United States, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

(f) Rights to compensation under section 304 of this title or to indemnification under section 305 of this title shall be extinguished unless an action is brought thereunder or notification has been made pursuant to the preceding subsection within three years from the date when the pollution damage occurred: Provided, That no action shall be brought more than six years after the date of the incident which caused the pollution damage.

(g) Notwithstanding the provisions of the preceding subsection, the right of an owner or guarantor to seek indemnification from the Fund pursuant to section 305(a) shall in no case be extinguished sooner than six months from the date the owner or his guarantor acquired knowledge of the commencement of an action against him under title I of this Act or under the Liability Convention.

(h) Subject to the provisions of section 402 of title IV of this Act, any judgment given against the Fund by a court having jurisdiction as provided in article 7, paragraph (1) or (3), of the Convention shall, when it is enforceable in the country of origin, and which is no longer subject to

ordinary forms of review therein, be enforceable in the courts of the United States except on the same conditions as are prescribed in section 204 of title II.

Sec. 307. The fund, its assets and income, including contributions, shall be exempt from all direct taxation in the United States.



TITLE IV--APPORTIONMENT OF CLAIMS AND SUBROGATION; EXCLUSIVE  
REMEDY; EFFECTIVE DATE; CONFORMING AMENDMENTS

Sec. 401. For the purposes of this title, the term--

(a) "Owner's fund" means a fund constituted as provided in section 202 of title II of this Act.

(b) "Compensation Fund" means the Fund as defined in section 301 of title III of this Act.

(c) "Owner," "guarantor," "person," "pollution damage," "preventive measures," "Liability Convention," and "district court of the United States" have the same meaning as in title II of this Act.

(d) "Convention" has the same meaning as in title III of this Act.

Sec. 402.

(a) Subject to section 403 of this title--

(1) An owner's fund shall be distributed among the claimants in proportion to their established claims.

Claims in respect to preventive measures taken by the owner shall rank equally with other claims against the owner's fund.

(2) Where the aggregate amount of damage arising out of any one incident exceeds the amount referred to in section 304(d) of title III of this Act, the amount available thereunder for compensation of such damage under titles II and III of this Act

shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Liability Convention and titles II and III of this Act shall be the same for all claimants.

(b) On the petition of any claimant, owner, guarantor, the Compensation Fund, or any other interested person, any district court of the United States in which an owner's fund is constituted pursuant to section 202 of title II of this Act or if no fund is constituted, any district court having jurisdiction of an action against the Compensation Fund may determine that liability arising from an incident may exceed the limit of liability under titles II and III of this Act. Whenever such determination is made:

(1) total payments made by or for all claimants as a result of such incident shall not exceed 20 per centum of such limit of liability without the prior approval of the court;

(2) the court shall not authorize payments in excess of 20 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a

plan of distribution pursuant to subsection (a) of this section; and

(3) any other interested person may submit to such district court a plan for the disposition of pending claims and for the distribution of remaining moneys available. Such a plan shall include an allocation of appropriate amounts for claims which may not be made until a later time. Such a court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of moneys available for each claimant. Any person compensated or indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this subsection, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

Sec. 403.

(a) If, before an owner's fund is distributed, the owner, any of his servants or agents, the owner's guarantor, or the Compensation Fund has as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under titles II and III of this Act.

(b) The right of subrogation provided for in subsection (a) of this section may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is otherwise permitted under law.

(c) Subject to the provisions of section 305 of title III, the Compensation Fund shall, in respect of any amount of compensation for pollution damage paid by the Compensation Fund in accordance with section 304 of title III, acquire by subrogation the rights that the person so compensated may enjoy under title II or the Liability Convention against the owner liable for the damage or his guarantor.

(d) Nothing in titles II and III of this Act shall prejudice any right of recourse or subrogation of the Compensation Fund against persons other than those referred to in the

preceding subsection. In any event the right of the Compensation Fund to subrogation to the rights of persons referred to in the preceding paragraph shall be no less favorable than that of an insurer of a person to whom compensation or indemnification has been paid.

(e) Without prejudice to any other rights of subrogation or recourse against the Compensation Fund which may exist, the United States or any foreign country party to the Convention, or any agency thereof, shall acquire by subrogation the rights which a person it has compensated for pollution damage in accordance with the provisions of national law would have enjoyed under the Convention.

Sec. 404. No action for compensation for such damage or preventive measures shall be maintained in the United States against an owner, a guarantor, or the Compensation Fund, otherwise than in accordance with this Act. No action for such damage or preventive measures shall be maintained in the United States against an owner's servants or agents.

Sec. 405.

(a) This section shall be effective on the date of enactment of this Act.

(b) Title I and sections 406 and 407 of this Act shall be effective on the one hundred and eightieth day after the date of enactment of this Act.

(c) Titles II of this Act and sections 401 through 404 of this title as applicable thereto shall be effective on the later of the effective date of Title I of this Act or the date of the entry into force for the United States of the Liability Convention.

(d) Title III of this Act and sections 401 through 404 of this title as applicable thereto shall be effective on the later of the effective date of Title I of this Act or the date of the entry into force for the United States of the Convention.

#### Sec. 406

(a) Subsection (c) of section 204 of the Act of November 16, 1973, (87 Stat. 587), the Trans-Alaska Pipeline Authorization Act, is hereby repealed.

(b) Section 17 of the Act of February 5, 1974 (88 Stat. 10), the Intervention on the High Seas Act, is amended to read as follows:

"Sec. 17. The Fund established under section 102 of the [Comprehensive Oil Pollution Liability and Compensation Act of 1975] shall be available to the Secretary for actions and activities taken under section 5 of this Act."

(c) Section 311 of the Act of October 18, 1972, (86 Stat. 862), the Federal Water Pollution Control Act, is amended as provided in this subsection.

(1) Subsection (a) is amended by replacing the period following clause (14) thereof with a semicolon and adding a new clause (15) to read as follows:

"(15) "person in charge" means the individual having immediate operational responsibility."

(2) Paragraph (1) of subsection (c) is amended by (A) deleting the comma after the words "contiguous zone" and inserting in lieu thereof the words "or from an artificial island on fixed structure operating under authority of the Outer Continental Shelf Lands Act" and (B) adding after the word "vessel," the words "artificial island or fixed structure,".

(3) 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 section 102 of the [Comprehensive Oil Pollution Liability and Compensation Act of 1975], as appropriate."

(4) Subsection (d) is amended by deleting all after the words "incurred under this subsection" and inserting in lieu thereof "shall be reimbursed from the fund established under subsection (k) of this section or the Fund established under section 102 of the [Comprehensive Oil Pollution Liability and Compensation Act of 1975], as appropriate. Any expense

incurred hereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with subsection (f) of this section."

(5) Paragraph (5) of subsection (b) and subsections (f), (g), (h), (l), and (o) are amended by inserting after the word "oil," wherever it appears, the words "other than petroleum, crude oil or any fraction or residue therefrom".

(6) Subsection (k) is amended to read as follows:

"(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed \$35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section respecting discharges or imminent discharges of oil (other than petroleum crude oil or any fraction or residue therefrom) and hazardous substances. Any other funds received by the United States under this section or paragraph (3) of subsection (a) of section 108 of the Comprehensive Oil Pollution Liability and Compensation Act of 1975 respecting discharges or imminent discharges of oil (other than



petroleum, crude oil or any fraction or residue therefrom) and hazardous substances shall also be deposited in this fund for these purposes. All sums appropriated to or deposited in, the fund shall remain available until expended."

(7) Subsection (1) is amended by inserting after the words "subsections (c) and (i) of this section" the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil or any fractions or residue therefrom)."

(8) Paragraph (1) of subsection (p) is amended by deleting the words "Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel" and inserting in lieu thereof "Any non-self-propelled barge over three hundred gross tons that carries oil (other than petroleum, crude oil or any fractions or residue therefrom) or hazardous substance as cargo or fuel".

(9) Subsection (p) is amended by deleting the word "vessel", wherever it appears, and inserting in lieu thereof "barge".

(d) Section 18 of the Act of January 3, 1975 (88 Stat. 2141), the Deepwater Port Act of 1974, is amended as provided in this subsection.

(1) Subsections (b), (d), (e), (f), clause (1) of subsection (m); and subsections (b), (d), (e), (f), (g), (h), (i), (k), (l), and (n) are deleted. Subsections (c) and (m) are redesignated (b) and (c) respectively. Clauses (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3) respectively.

Sec. 407

If any provision of this Act or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby.