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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

NOTE August 6, 1990

TO: William K. Reilly, Administrator

FROM: Patrick H. Quinn, Associate Administrator, Office of Congressional and Legislative Affairs

RE: Oil Spill Bill Conference Report passed in House and Senate

On Thursday, August 2nd the Senate passed the oil spill bill conference report by a vote of 99 to 0. Supportive statements made by the Senators lasted approximately one and a half hours.

Very late on Friday, August 3rd the House passed the oil spill bill conference report by a vote of 360 to 0 with 72 abstaining. Debate lasted almost two hours as members of the House Rules Committee objected to the process by which Chairman Walter B. Jones (D-NC) offered an amendment at the final oil spill conference which prohibits oil exploration, leasing or development off the North Carolina coast until October 1, 1991. House members acknowledged the concerns of the Rules Committee but were determined to pass the oil spill bill after a 14 years of debate.

The two attached documents provide an excellent summary of the bill.

Oil-Spill Compromise

As approved by House and Senate conferees July 26, HR 1465 would do the following:

- Increase spillers' liability many times over current federal limits and impose stiffer civil and criminal penalties. Liability could top $200 million for big tankers.
- Require spillers to pay for cleaning up oil spills and compensate parties economically injured by them.
- Continue to allow states to impose unlimited liability on shippers.
- Authorize using money from a federal fund, subject to annual appropriations, to pay for cleanup and compensation costs not covered by spillers. The fund, which will eventually contain $1 billion, is financed by a recent 5-cent-a-barrel oil tax.
- Require shippers to draft "worst-case" oil-spill response plans for quick cleanup.
- Enhance the federal government's oil-spill response capability. District response groups would be positioned across the country to aid strike teams, and a new national command center would be established in Elizabeth City, N.C.
- Expand the president's power to take control of a spiller's cleanup operations.
- Require the government to do an audit of the structural soundness of the Trans-Alaska Pipeline, taking into account safety, health and environmental protection.
- Establish a multi-agency oil-pollution panel to coordinate federal research.
- Stiffen antidrug and anti-alcohol laws for ship operators by requiring testing for certain workers and threatening substance abusers with license revocation.
- Block oil or gas drilling off the coast of North Carolina until Oct. 1, 1991.

ENVIRONMENTAL AND ENERGY STUDY INSTITUTE

SPECIAL REPORT

KEN MURPHY, EXECUTIVE DIRECTOR ■ 122 C STREET, N.W., SUITE 700, WASHINGTON, D.C. 20001 ■ (202) 628-1400

July 31, 1990

Oil Pollution Act of 1990 — HR 1465 Conference report

by Jim Ketcham-Colwill

Floor action: The House and Senate this week are likely to approve and send to President Bush a comprehensive oil spill bill in response to the 11-million-gallon *Exxon Valdez* spill off Alaska in March 1989.

Conferees completed an accord on the final version July 26. Staff said the statement of the managers was to be filed the evening of Tuesday, July 31.

House Rules was to meet Wednesday, Aug. 1, to consider a rule waiving certain points of order on the bill. At least one item in the conference report — a temporary moratorium on oil leasing and development off the North Carolina coast — may be subject to a point of order for being outside the scope of the conference. The item, an addition proposed by House Merchant Marine Chairman Walter B. Jones (D-N.C.), was not in either bill.

Bill overview: The bill would dramatically increase the liability of spillers for oil spill cleanup costs and damages. Additional money for cleanup and compensation would be available from a $1 billion federal oil spill fund, supported by a 5-cent-per-barrel tax on oil that became effective Jan. 1.

Up to $1 billion per spill for cleanup costs and damages could be spent from the fund. The amount that could be spent on natural resource damage restoration or replacement would be limited to $[illegible]00 million per spill.

The bill would require double hulls on most oil tankers and barges, and require better contingency planning and preparedness on the part of potential spillers and federal, state and local governments. The federal government would have to direct cleanup of major spills. Penalties for spills would be increased.

The bill contains numerous measures to increase navigation safety, and would expand

research on environmental impacts and cleanup methods.

Conferees decided to omit language that would have implemented a pair of international oil spill liability and compensation agreements after U.S. ratification. The administration strongly supported those agreements, but the Senate opposed them on grounds that they would pre-empt more stringent federal and state liability laws.

The conference committee was composed of 73 members, from seven House committees — Merchant Marine, Public Works, Interior, Science, Energy, Foreign Affairs and Ways and Means — and three Senate committees: Environment, Commerce and Finance.

Positions: Galen Reser, assistant transportation secretary for governmental affairs, told the *Wall Street Journal* that the administration is pleased that the conference agreement has been reached. He said the transportation secretary probably will not recommend a veto of the bill, despite the outcome on the international agreements.

Clifton Curtis of Friends of the Earth said the bill is "very environmentally strong," thanks largely to the political pressures produced by the *Exxon Valdez* spill.

"When you compare the bill with the bills that were on the table prior to March 24, 1989, there are major improvements," he said. "It's tragic that Prince William Sound had to be the guinea pig."

An oil industry spokesman called the final bill "a mixed bag," voicing concern about the lack of pre-emption of state law and large penalties for spills, among other things. He said the schedule for replacing single-hulled tankers with double-hulled tankers "certainly can be met," although he said the requirement will be expensive.

"The bottom line was we did want an oil spill bill," he said.

No pre-emption: Congress has been working on oil spill liability and compensation legislation since 1975, but never before has a bill come so close to enactment. Bills died repeatedly largely because of controversy over whether the bill should pre-empt state liability laws.

The conference agreement preserves the right of states to have stricter liability laws and their own oil spill compensation funds, in line with the wishes of states and environmental groups.

That outcome was a defeat for the oil and shipping industries, which had supported pre-emption to escape state liability laws that impose unlimited liability. Industry says that unlimited liability is uninsurable, and some oil shippers recently have announced they will no longer operate in the United States, or in states with unlimited liability for spills.

Contents

Summary of conference report

Note: The following summary is based on an unedited draft of the final bill. Staff were still making technical and conforming changes at press time.

The final measure contains eight titles: liability and compensation (I), conforming amendments (II), international oil pollution prevention and removal (III), prevention and removal (IV), Prince William Sound (V), miscellaneous (VI), research and development (VII), and Trans-Alaska Pipeline System (VIII).

Title I — Liability and compensation

Overview: Title I would set up a single federal liability and compensation system intended to provide prompt compensation for cleanup costs and damages from oil spills. Those seeking compensation could be federal, state and local governments, and private parties such as fishermen, beachfront property owners, boat owners and hotel owners.

Spillers would be liable for cleanup costs and damages up to specified liability limits, but in certain circumstances their liability would be unlimited. If full compensation was unavailable from the spiller, additional compensation for cleanup costs and damages would be available from a federal oil spill liability fund. The fund, already established in the tax code, is supported by a 5-cent-per-barrel tax on oil.

The bill's liability and compensation system would apply to future oil spills from vessels and facilities in navigable waters, adjoining shorelines, or the 200-mile exclusive economic zone. Examples of onshore facilities are oil terminals; offshore facilities include oil drilling and production platforms.

Liability: Owners and operators of vessels and facilities would be subject to strict, joint and several liability for removal (cleanup) costs and damages from oil spills. Strict liability means liability regardless of fault. Joint and several liability means that each party potentially would be liable for all costs.

Spillers would not be liable if they could show the spill was caused solely by an act of God, an act of war, or an act or omission of a third party (not including employees or parties that have a contractual relationship with the spiller).

Removal costs and damages: Spillers would be liable under the bill for removal costs that are in line with the national contingency plan, the federal regulations governing oil spill response.

Damages for which spillers would be liable include loss of profits or earning capacity due to property or natural resource damage, and property damage or loss.

Compensation for natural resource damage could be sought by U.S., state, Indian or foreign governments.

The measure of natural resource damages would be the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the damaged resources — and "the diminution in value of those natural resources pending restoration," plus the reasonable cost of assessing those damages.

Spillers also would be liable for:

- loss of subsistence use of natural resources by anyone who uses the resources for subsistence;
- loss of tax or other revenues by governments; and
- damages for the net costs to state and local governments of providing increased or additional public services during or after removal activities (such as protection from fire, safety or health hazards).

Lawsuits to recover removal costs would have to be started within three years of the time removal actions are completed. Lawsuits to recover damages would have be started within three years after the date the injury and its connection with the spill were reasonably discoverable — or, in the case of natural resource damages, three years after damage assessment regulations are issued, if that date is later.

Liability limits: Liability would be unlimited if the spill was caused by gross negligence or willful misconduct, or by a violation of an applicable federal safety, construction or operating regulation.

Liability also would be unlimited if the responsible party failed or refused to report the incident, to provide reasonable cooperation to responsible officials in connection with removal activities, or to comply with a cleanup order issued under section 311 of the Federal Water Pollution Control Act.

In other cases, liability limits would be as follows:

- Tank vessels (which carry oil in bulk) — $1,200 per gross ton, but no less than $10 million for vessels greater than 3,000 gross tons, and no less than $2 million for smaller vessels. (Many inland barges weigh less than 3,000 gross tons.)
- Other vessels — $600 per gross ton or $500,000, whichever is greater.
- Offshore facilities — $75 million for damages plus all cleanup costs.
- Onshore facilities and deep-water ports — $350 million. (A deep-water port receives oil from supertankers and pipes it ashore.)

The president could lower the limit for categories of onshore facilities to as low as $8 million, and for deep-water ports to as low as $50 million based on a study.

Financial responsibility: Those responsible for vessels and deep-water ports would be required to have insurance or other evidence of financial responsibility up to their liability limits; offshore facilities would have to have coverage of $150 million. Violators would be subject to stiff sanctions, including seizure of the vessel.

States could enforce federal financial responsibility requirements.

Lawsuits for compensation could be filed directly against guarantors (insurers).

Natural resource damage: Officials designated as natural resource trustees would assess the damage, and develop and implement restoration plans.

The National Oceanic and Atmospheric Administration would have to issue regulations assessing natural resource damage, in consultation with the Environmental Protection Agency, Fish and Wildlife Service and other affected agencies.

Money recovered by trustees for natural resource damage would be kept in a revolving trust account to pay costs incurred by the trustee. Any leftover money would be deposited in the federal oil spill fund.

Cleanup standard: For purposes of the national contingency plan, cleanup would be considered complete when determined so by the president in consultation with the governors of affected states. Additional removal actions could be carried out under state law.

Uses of fund: The federal oil spill liability trust fund could be used by federal and state governments for removal costs, and the costs of monitoring removal actions. The costs must be determined by the president to be consistent with the national contingency plan (this means the fund could not be used to pay for meeting stricter state standards).

The fund also could be used to pay:

- the costs of natural resource damage assessments and restoration;
- claims for damages when the spiller denies liability or when the claim is not settled by payment within 90 days;
- administrative, operational and personnel costs for implementation and enforcement of the act. Up to $25 million would be available to the Coast Guard in any fiscal year. Up to $30 million each year through fiscal 1992 would be available to establish a national spill response system, including the purchase and pre-spill positioning of oil spill removal equipment. Up to $26.5 million a year would be available for research and development activities.

Up to $250,000 from the fund would be available to a state for immediate oil spill removal actions. States could enter into agreements with the federal government that would set procedures for receiving additional payments.

State pre-emption: The bill would expressly preserve states' authority to impose additional liability or requirements with respect to oil spills and removal activities. The bill also would preserve states' authority to establish their own oil spill funds, and to impose fines and penalties for oil spills.

Title II — Conforming amendments

The bill would repeal or make conforming amendments to several existing federal oil spill laws, including the Intervention on the High Seas Act, section 311 of the Federal Water Pollution Control Act, Deepwater Port Act, and Title II of the Outer Continental Shelf Lands Act Amendments of 1978. (See also Title VIII.)

Money in three existing federal oil spill funds — the section

311(k) fund, the Deepwater Port Liabili Fund, and the Offshore Oil Pollution Compensation Fund — would be deposited in the comprehensive federal oil pollution liability fund.

Title III — International oil pollution prevention and removal

Due to Senate opposition, the conference report omits House provisions to implement a pair of international oil spill liability and compensation protocols in the United States after U.S. ratification. Instead, the bill contains a non-binding resolution stating that the United States should participate in an international oil pollution liability and compensation system that is at least as effective as federal and state laws.

The secretary of state would be required to review international agreements and treaties with Canada regarding oil spills in the Great Lakes and Lake Champlain. The purpose is to determine whether changes or new agreements are needed.

The president would be required to encourage international organizations to establish an international inventory of spill removal equipment and personnel.

Title IV, subtitle A — Prevention

This summary of Title IV is derived from a summary by House and Senate staff.

Double hulls: Double hulls would be required on all new oil tankers and barges operating in waters subject to U.S. jurisdiction, except for vessels used only to respond to a discharge of oil or hazardous substances. New vessels of less than 5,000 gross tons would be required to have double containment systems; existing vessels of that size would be required to have a double containment system by 2015.

Certain vessels would be exempt from the double hull requirement until 2015: a vessel unloading oil at a deep-water port and a ship engaged in "lightering," or transferring, oil to other ships more than 60 miles from the U.S. coast.

Existing vessels without double hulls would be phased out beginning in 1995. Older vessels would be phased out before newer ones, and heavier ones before lighter ones. All vessels with single hulls would be retired by 2010, and all vessels with double bottoms or double sides would be retired by 2015.

The transportation secretary would have to require interim measures on vessels to provide substantial protection to the environment until the double hull requirement is fully implemented. Also required would be a study of other structural or operational requirements that would provide equal or greater protection to the environment than double hulls.

The transportation secretary would be authorized to provide Title XI loan guarantees under the Merchant Marine Act of 1936 to aid in financing a contract for construction or reconstruction of a vessel to comply with the double hull requirement.

Alcohol and drugs: The bill would establish new requirements to prevent oil spills due to use of alcohol or drugs by ship personnel.

The bill provides for:

- review of driver's license records of applicants for licenses, certificates of registry, or merchant mariner's documents;
- alcohol and drug testing of merchant sailors;
- temporary suspension of licenses, certificates or documents under certain circumstances;
- criminal checks prior to issuance or renewal of documents;
- suspension or revocation of a license, certificate or document if the individual is convicted of driving under the influence; and
- removal of the ship's master if he is under the influence of alcohol or dangerous drugs.

Manning standards: The bill provides for limiting the number of hours a crew member can work on a vessel and requires the transportation secretary to issue regulations on the use of automatic pilots.

The transportation secretary would be required to evaluate the manning, training, qualification and watch-keeping standards of a foreign country's vessels periodically. (The draft language says that if the secretary determines that a country has failed to maintain or enforce standards equivalent to U.S. law or international standards accepted by the United States, the secretary must prohibit vessels with documentation from that country from entering the United States. The secretary may allow provisional entry.)

Vessel traffic service systems: The secretary would be required to require tank vessels, which carry oil or hazardous materials in bulk, to participate in vessel traffic service systems. The authority currently is discretionary.

The bill requires a study of such traffic service systems and a report to Congress within one year.

Additional provisions: Other provisions would:

- require the transportation secretary to issue regulations on pilotage waters in Prince William Sound;
- provide a limited exception to U.S. citizen ownership requirements for vessels engaged solely in cleanup and removal activities;
- ensure that the qualifications of Canadian pilots operating in the Great Lakes are equal to those of U.S. pilots;
- require periodic gauging of the plate thickness of vessels, and require overfill and pressure monitoring devices to prevent spills; and
- require studies related to navigation safety, the feasibility of modifying dredges to clean up spills, and the use of liners for bulk storage of oil at onshore facilities.

Title IV, subtitle B — Removal

This summary of subtitle B is taken from the staff summary.

Federal removal authority: The president would be required to ensure effective and immediate removal of an oil or hazardous substance spill.

The president could federalize a spill (take over cleanup operations), direct or monitor all federal, state or private cleanup efforts, or remove or destroy a leaking vessel. In the case of a major spill, the president would be required to direct all federal, state and private cleanup efforts.

Immunity: With certain exceptions, immunity from liability

would be provided to people involved in cleanup activities, such as industry cooperatives or response organizations. Immunity would not be available to the responsible party, or when there is personal injury or wrongful death, or gross negligence or willful misconduct.

National planning and response system: A national planning and response system would be established to ensure that there are adequate plans to respond to a spill.

The national contingency plan would be revised to establish procedures for removing a worst-case discharge or substantial threat of a discharge. The plan is to ensure coordination among strike teams, district response groups, federal on-scene coordinators and area committees. The plan would have to include provisions for protection of fish and wildlife resources.

A national response unit would be established to compile a list of oil spill removal resources, personnel and equipment worldwide, to conduct inspections of vessels, facilities and equipment, and to maintain the contingency plans, among other things.

A district response group — including response personnel and pre-positioned equipment — would be established in each of the 10 Coast Guard districts.

Local area committees composed of federal, state and local agencies would be established to prepare a local contingency plan to respond to a worst-case discharge.

Owners or operators of tank vessels and facilities would have to prepare response plans to prepare for a worst-case discharge, to the maximum extent practicable.

Penalties: Existing penalties for oil spills and violations of regulations would be increased. Penalties could be assessed administratively. Federal enforcement powers would be strengthened.

Title V — Prince William Sound

A Prince William Sound Oil Spill Recovery Institute would be established to conduct oil spill research and educational and demonstration projects directly related to the *Exxon Valdez* spill.

Two environmental oversight and monitoring demonstration programs for oil terminals and oil tankers would be established for Prince William Sound and Cook Inlet. An oil industry association and a citizen advisory council would be established for each. The industry would be required to provide $2 million annually for the Prince William Sound program and $1 million annually for the Cook Inlet program.

The transportation secretary would be required to establish special requirements for the Prince William Sound area, including:

- an improved vessel traffic service system for the port of Valdez and a Bligh Reef warning light;
- pre-positioned oil spill containment and removal equipment in strategic locations;
- establishment of an oil spill cleanup force sufficient to clean up a 200,000-barrel spill;
- training in oil removal techniques for fishermen and fishing industry employees in the area; and
- spill drills twice a year.

Money for the oversight programs and vessel traffic service system would be available from the comprehensive fund: $5 million upon enactment, and $2 million annually for nine years.

The *Exxon Valdez* and tank vessels over 125,000 deadweight tons that are constructed after enactment are prohibited from operating on Prince William Sound.

Title VI — Miscellaneous (Including appropriations)

Amounts in the fund are available only by appropriation, with three exceptions:

Appropriations would not be required for payment of claims for uncompensated removal costs and damages, or for use of funds recovered from liable parties for natural resource damage assessment and restoration.

The president without appropriation could use up to $50 million in a fiscal year to conduct oil spill removal and initiate assessment of natural resource damages.

Title VII — Research and development

The bill would make available from the fund $26.5 million annually for a new research and development program coordinated by an Interagency Coordinating Committee on Oil Pollution Research. The committee would coordinate efforts by federal agencies, industry, universities, research institutions, states and other nations.

The committee, composed of representatives of nine federal departments and independent agencies, would develop a research plan with advice from the National Academy of Sciences. NAS later would submit to Congress a report assessing the adequacy of the plan.

The program would investigate technologies to prevent and clean up spills, ways to improve industry and government response to spills, ways to restore damaged natural resources, the environmental effects of spills, and other topics.

The Coast Guard would conduct two port oil pollution minimization projects with the Port Authority of New York and New Jersey, and the ports of Los Angeles and Long Beach, Calif.

The committee would coordinate a program of competitive grants to universities or other research institutions for research on regional aspects of oil pollution.

In addition, the agencies on the interagency committee would be given authority to make research grants to universities, research institutions and others.

Title VIII — Trans-Alaska Pipeline System

Liability provisions of the Trans-Alaska Pipeline Authorization Act would continue to apply to Alaska pipeline-related spills onshore. The law provides that pipeline right-of-way holders are responsible for paying all costs and are strictly liable for $50 million in damages. The bill would raise that limit to $350 million.

Information on provisions for future termination of the TAPS fund was not available at press time.

The bill would expedite compensation for the *Exxon Valdez* spill, which is subject to liability and compensation provisions of the trans-Alaska act. The bill would make retroactive changes in TAPS liability provisions. Also, compensation would be available from the existing TAPS fund if the vessel owner or operator has not paid a claim within 90 days after a claim is submitted. This would include the first $14 million in claims, the amount of a vessel owner's liability under the act.

A presidential task force would be created to conduct a comprehensive two-year audit of the trans-Alaska pipeline and terminal operations and make recommendations concerning prevention of oil spills and health and environmental damage. The audit would include a review of whether Alyeska Pipeline Service Co., the right-of-way holder, is in compliance with laws, regulations and agreements. The provision authorizes $5 million annually for the task force from the comprehensive fund.

Penalties: The authority of the Minerals Management Service to impose penalties on outer continental shelf facilities would be clarified.

The interior secretary could impose civil penalties of up to $1,000 per barrel for pipeline spills in Alaska.

Alaska native corporations could bring claims for oil spill damages to lands validly selected under the Alaska Native Claims Settlement Act.

The bill calls on the secretary of state, in consultation with others, to negotiate a treaty with Canada concerning oil spills in the Arctic Ocean.

Amendments to Internal Revenue Code

Amendments to the Internal Revenue Code would allow up to $1 billion per spill for cleanup costs and damages to be spent from the fund. The amount that could be spent on natural resource damage restoration or replacement would be limited to $500 million per spill. The fund could borrow up to $1 billion in the aggregate from the general treasury.

The trust fund could be used only for purposes enumerated elsewhere in the bill. Certain specified penalties would be deposited into the comprehensive fund.

North Carolina offshore leasing

The Jones amendment would prohibit new leasing, exploration or development off the shore of North Carolina until Oct. 1, 1991, or until the secretary of the interior certifies to Congress that environmental information is adequate, based on the findings of a scientific review panel. (Due to incorrect information stated at the conference meeting, this provision was incorrectly described in the July 30 *Weekly Bulletin*.)

STAFF DRAFT 8-5-90

OIL POLLUTION ACT
ISSUES ARISING FROM LEGISLATION

(1) EPA Executive Order Strategy - What strategy should the Agency use with DOT/USCG for drafting the order? What role should the NRT have?

(2) Supplemental Budget Strategy - What strategy should OSWER, OW, and ORD adopt for FTE to perform required work beginning in 1991?

(3) §1004 (d) Onshore Facility Regulations - How should EPA develop regulations for inland oil facilities to include facilities with oil & HS?

(4) §1006 (b) Designation of Trustees - Should EPA seek designation as a trustee? In what capacity and How?

(5) §1006 (e) (1) Damage Assessment Regulations. - To what extent should EPA participate in development of damage assessment regs?

(6) §1011 Consultation on Response With Trustees - What procedures will EPA OSC use to consult with trustees [including states] ?

(7) §1012 (a) Fund Administration - How will the Interagency Budget Process with USCG work ?

(8) §1012 (c) Fed. Obligation Authorization - What minimum changes to existing policy and procedures are required to continue delegated EPA OSC response obligation authority?

(9) §1012 (d)(1) State Obligation Agreements - What support role should EPA play in states with response authority delegated by Fund Administrator?

(10) §1013 (b) (1) Receipt of Damage Claims - What role will EPA play in payment of damage claims presented to the fund in the inland zone?

(11) §1014 (a) Notice/Advertise Claims - What role will the EPA OSC play in spill and damage claims notice and advertising in the inland zone?

(12) §1016 (e) Financial Responsibility - To what extent should EPA participate in the development of a system to assure oil facilities **[with or without HS]** evidence financial responsibility (statutory language is unclear at this time, however we expect that this requirement will be part of the enrolled bill).

(13) §3003 Canada/US Lake Champlain Agreement - To what extent should EPA participate in agreement? [Tom Jorling is a player in this issue]

(14) §4112 Secondary Containment/Liners Research - To what extent should EPA ORD participate ?

(15) §4201 (c)v Federal Removal Authority - Assume that EPA authority remains. What is the EPA support responsibility regarding spills from "other federal agency" facilities? (Executive Order needs to parallel OSC responsibilities with CERCLA)

(16) §4201 (c) NCP Coordinated Federal Response - How to assure that the role of the NRT is maintained in the EO?

(17) §4201 (c) Revise The NCP ≤12 Mo. -How should the USCG be included in the revisions to the NCP?

(18) §4201 (d) Identify/List Dispersants, Agents and Response Equipment - How should this responsibility be shared by EPA and USCG?

(19) §4202 (a) Area Committee Designations/ Appointments - How will EPA and Coast Guard identify Areas for designation? What role will the NRT/RRT play in committee designations and appointments?

(20) §4202 (a) Approve Area Contingency Plans -What role will the NRT/RRT play in plan approval? How will EPA and Coast Guard review/approve plans?

(21) §4202 (a) Regulations for Facility Response Plans - What mechanism should EPA and USCG jointly use for developing the on-shore facility regulations **[oil & HS]**?

(22) §4202 (a) Regulations for Facility Response Plans - How will EPA review and approve facility response plans in the inland zone?

(23) §4202 Facility Plan Waivers - How can waivers for required plan approval be kept to a minimum without significant increases in resources to review and approve the facility **[oil & HS]** response plans?

(24) §4202 (a) Facility Response Equipment Inspection/ Oversight- How will EPA, without significant increases in resources, perform facility equipment **[oil & HS]** inspection and oversight in the inland zone?

(25) §4202 (b) (7) Required Response Drills - What is the FTE source for planning and executing drills.

(26) §4202 (b) Area Plans Reviewed $\leq$ 24Mo - If review of area plans can be delegated to states, [see 4202 (b) (4) (B) (ii)- "work with State and local officials to enhance contingency planning..."] how can we best syndicate this work?

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1990 Legislative Update

"The Comprehensive Oil Pollution Act of 1989"

by Alaska Congressman Don Young

I am working with the House-Senate Conference Committee to ensure that these provisions I authored dealing specifically with protecting Alaska remain in the final bill:

- **Requiring an oil spill response capability in Prince William Sound to handle up to 200,000 barrels (10 million gallons) of oil;**
- **Requiring a tug escort and pilot for oil tankers past Bligh Reef;**
- **Requiring special training for residents of Prince William Sound and fishermen in oil spill response skills;**
- **Redefining the Prince William Sound region to include the navigational approaches out to, and beyond, Seal Rock;**
- **Upgrading the oil vessel traffic safety system in Prince William Sound and requiring new radar monitoring coverage out to Cape Hinchenbrook;**
- **Requiring pre-positioning of oil spill cleanup equipment at Valdez, Cordova, Tatitlek and Chenega;**
- **Requiring vessels to carry oil spill reduction and mitigation equipment when transiting Alaska waters;**
- **Requiring that oil companies and shipping companies use Alaska-local services when cleaning oil spills and preparing for oil spill cleanups;**
- **Requiring local Alaska input related to oil spill cleanup and prevention in our state.**

In addition, some of the central issues being addressed by the U.S. House-Senate Conference Committee include:

1) Should the United States implement the international protocols on oil pollution?

I believe there are several important reasons to support the international oil spill protocols — or an appropriate substitute. These reasons include:

I. Immediate And Reliable Relief Without Litigation

• The International Fund has been in business for 12 years, successfully providing quick payment to victims of oil spills around the world. The average time to settle claims is about six months. In contrast, the Amoco Cadiz spill in 1978, which is not covered under the protocols, is still in litigation and no claims have been paid.

II. Leverage Over Foreign Vessels

• The protocols allow the United States to get jurisdiction over foreign vessels that pass by our coastline, both in innocent passage (within three miles) and those that sail outside the boundary of the territorial sea. The threat of a spill by tankers sailing from the Canadian Beaufort Sea around and through the Bering Sea is a significant one.

III. Two Funds Are Better Than One

• Ratification and implementation of the protocols means we have access to a second fund that would provide up to $260 million of coverage currently with the potential to be raised up to nearly $400 million after the United States joins the system. This money would be in addition to the money in the U.S. fund set up in this legislation.

IV. Use the Foreign Money First

• If a seagoing vessel spills oil, the foreign fund would be tapped before going to the U.S. fund. This means that if a foreign vessel spills oil, we should use the foreign money first and not subsidize foreigners from the U.S. fund when they spill oil. We need to have this capability to prevent another spill similar to that caused by the vessel, Glacier Bay, in Cook Inlet.

V. Nobody Walks — Everyone Pays Their Fair Share

• Vessel owners are not the only ones to profit from oil. Putting unlimited liability on the vessel owner only lets everyone else off the hook. Under the House bill with the protocols, a large tanker would pay the first $60 million, the cargo owner pays the second $60 million, the International Fund pays the next $200 million, and finally, the U.S. oil spill fund would pay last — currently up to $500 million. This provides up to $820 million of coverage.

(OVER)

• This means that all of those who benefit from the transportation of oil — both foreign and domestic, as well as ship owners and cargo owners — pay their fair share of the bill. The real problem is the $500 million limit on the payout from the federal fund — not the protocols. This is why I support providing the President with the waiver authority he wants to get rid of the $500 million cap and permit payouts for an unlimited amount of cleanup, restoration and compensation funding in catastrophic cases like the Exxon Valdez oil spill.

VI. Penalties Are Not Affected In Any Way

• The protocols and the U.S. federal fund are there to pay compensation and cleanup cost — not punish the "bad guys." Nothing in the protocols prevents the states or the federal government from imposing high penalties, either civil or criminal. Since we can get at the wrongdoers without restriction and make them fully accountable for their actions, we get the best of both worlds and should take the benefits of the protocols. Let's not mix the "apples and oranges" of compensation and cleanup with prevention and punishment.

VII. All Types Of Damages Get Paid

• Some have criticized the protocols because they restrict the categories of damages that can be paid. Although no unjustified damages should be paid, damages not paid for by the International Fund will be paid for under the U.S. fund and are unaffected by the international standards for payment. With the combination of the protocols and federal and state resources, all damages get paid, including natural resource damages.

• What the protocols do not pay for, the federal fund will. Thus, the standards under the law of the State of Alaska will prevail and claims will be paid from one fund or the other.

VIII. A Global Solution Is The Best Solution

• The best oil spill protection will result from a comprehensive, three-pronged international, federal and state effort. To ignore the international part is simply sticking our heads in the sand. We must work together to harmonize these systems — not end up with a patchwork of conflicting systems like we have today. Remember that the whole is greater than the sum of parts.

2) Should we require new tankers to be fitted with double hulls and require existing tankers to be fitted with double bottoms within a reasonable period of time?

• I support a requirement that new vessels be constructed with "double-hulls-or-better" technology and that we retire existing tankers with single hulls within a short period of time.

The provision that "better-technology-if-available" be included in the legislation is important to prevent this bill from curtailing future technological advances in safe tanker design.

3) Should Congress create an Alaska advisory committee to work with the federal government and oil industry to recommend improvements in oil spill recovery, tanker safety and oil terminal operations?

• I strongly support this provision and I am currently working to try to ensure that this provision is included in the final version of the legislation.

4) How much money should be designated for the federal national oil spill fund and should there be a cap on the amount of money claimants can collect for damages from an oil spill?

• There is a difference of opinion between the House Ways and Means Committee and the House-Senate Conference Committee regarding jurisdiction over oil taxation and the national oil spill fund. The Ways and Means Committee supports the current $500 million oil spill fund limit and a cap of $500 million for all oil spills.

I oppose this limit and the cap. At my request, the House Conference Committee has taken the position that we should not set a limit on oil taxation for oil spills and that the balance maintained in the national oil spill fund should be increased to $1 billion. In addition, the House Conference Committee is seeking a provision that would allow the federal government to impose a five-cent-per-barrel fee to pay for all cleanup and restoration efforts needed after an oil spill.

If it takes $3 billion or $4 billion to clean up an oil spill, I feel the national oil spill fund should be used in addition to the five-cent-per-barrel fee to pay all the remaining cleanup and restoration costs. I will continue to work for these protective provisions.

(Alaska Congressman Don Young is the Vice Chairman of the House Committee on Interior Affairs and a senior member of the House Committee on Merchant Marine and Fisheries. He is now serving his ninth term as Alaska's lone member of the U.S. House of Representatives.)

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2331 Rayburn Building • Washington, D.C. 20515 • (202) 225-5765

RPWG
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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Oil Spill Damage
Assessment and Restoration
P.O. Box 210029
Auke Bay, Alaska 99821

DATE: September 18, 1990

MEMORANDUM FOR: Sandy Rabinowitch

FROM: John Strand

SUBJECT: Map Referred to in Oil Pollution of 1990

I have tapped several sources to obtain a copy of the map (EXXON VALDEZ Oil Spill dated March 1990) referred to in Paragraph b_2, Section 5001 of the subject Act. Hopefully, one of my sources will bring me joy. The problem is that the text (public version) is still not available from the printer. I do have a contact in NOAA's Legislative Affairs Office, however, who will try to obtain a copy of the map directly from one of the House Committee's who worked the bill. If the map is available, I should be able to provide the RPWG a copy soon upon my return from the NOAA Habitat Restoration Conference, now scheduled on or about September 28th.

cc: Stan Senner
Brian Ross

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THE DEPUTY SECRETARY OF COMMERCE
Washington, D.C. 20230

SEP 7 1990

Honorable William K. Reilly
Administrator
Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Reilly:

It has come to my attention that one of your staff members has suggested that the delegations under the new Oil Pollution Act include the Environmental Protection Agency (EPA) as both a trustee and a coordinator of restoration. This would constitute a significant duplication of trustee responsibilities. Further, it would be a departure from the existing regime where the regulatory agencies are charged with clean-up and the management agencies are given trustee responsibilities.

The matter was brought to my desk because of the importance of this issue to the National Oceanic and Atmospheric Administration (NOAA) and to the Department of Commerce as a whole. NOAA dedicates millions of dollars each year in order to understand and manage our marine resources. It has accumulated unparalleled expertise that is crucial to its effective exercise of its trusteeship.

The efforts expended by NOAA's Damage Assessment and Restoration Center have been acknowledged by both environmental groups and industry. NOAA's expertise has also been recognized internationally as NOAA was asked to assess the damage resulting from the Amoco/Cadiz oil spill off the coast of France. Evidence of this esteem was seen when Congress, with the support of the environmental community, requested that NOAA develop the damage assessment regulations for this new act.

Last year NOAA responded effectively to hundreds of spills. While I recognize that EPA has been frustrated by its involvement in the Valdez damage assessment process, there is no reason to change an effective and efficient method of addressing oil spills based on EPA's singular experience.

The President will be best served if EPA and the Coast Guard continue their roles in clean-up of oil spills and Commerce, Interior and Agriculture continue as trustees for the resources they manage.

Most sincerely,

Thomas J. Murrin

Thomas J. Murrin

Oil-Spill Compromise

As approved by House and Senate conferees July 26, HR 1465 would do the following:

- Increase spillers' liability many times over current federal limits and impose stiffer civil and criminal penalties. Liability could top $200 million for big tankers.
- Require spillers to pay for cleaning up oil spills and compensate parties economically injured by them.
- Continue to allow states to impose unlimited liability on shippers.
- Authorize using money from a federal fund, subject to annual appropriations, to pay for cleanup and compensation costs not covered by spillers. The fund, which will eventually contain $1 billion, is financed by a recent 5-cent-a-barrel oil tax.
- Require shippers to draft "worst-case" oil-spill response plans for quick cleanup.
- Enhance the federal government's oil-spill response capability. District response groups would be positioned across the country to aid strike teams, and a new national command center would be established in Elizabeth City, N.C.
- Expand the president's power to take control of a spiller's cleanup operations.
- Require the government to do an audit of the structural soundness of the Trans-Alaska Pipeline, taking into account safety, health and environmental protection.
- Establish a multi-agency oil-pollution panel to coordinate federal research.
- Stiffen antidrug and anti-alcohol laws for ship operators by requiring testing for certain workers and threatening substance abusers with license revocation.
- Block oil or gas drilling off the coast of North Carolina until Oct. 1, 1991.

SIGNED INTO LAW ON 8/17/90
RWG
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ENVIRONMENTAL AND ENERGY STUDY INSTITUTE

SPECIAL REPORT

KEN MURPHY, EXECUTIVE DIRECTOR ■ 122 C STREET, N.W., SUITE 700, WASHINGTON, D.C. 20001 ■ (202) 628-1400

July 31, 1990

Oil Pollution Act of 1990 — HR 1465
Conference report

by Jim Ketcham-Colwill

Floor action: The House and Senate this week are likely to approve and send to President Bush a comprehensive oil spill bill in response to the 11-million-gallon *Exxon Valdez* spill off Alaska in March 1989.

Conferees completed an accord on the final version July 26. Staff said the statement of the managers was to be filed the evening of Tuesday, July 31.

House Rules was to meet Wednesday, Aug. 1, to consider a rule waiving certain points of order on the bill. At least one item in the conference report — a temporary moratorium on oil leasing and development off the North Carolina coast — may be subject to a point of order for being outside the scope of the conference. The item, an addition proposed by House Merchant Marine Chairman Walter B. Jones (D-N.C.), was not in either bill.

Bill overview: The bill would dramatically increase the liability of spillers for oil spill cleanup costs and damages. Additional money for cleanup and compensation would be available from a $1 billion federal oil spill fund, supported by a 5-cent-per-barrel tax on oil that became effective Jan. 1.

Up to $1 billion per spill for cleanup costs and damages could be spent from the fund. The amount that could be spent on natural resource damage restoration or replacement would be limited to $500 million per spill.

The bill would require double hulls on most oil tankers and barges, and require better contingency planning and preparedness on the part of potential spillers and federal, state and local governments. The federal government would have to direct cleanup of major spills. Penalties for spills would be increased.

The bill contains numerous measures to increase navigation safety, and would expand

research on environmental impacts and cleanup methods.

Conferees decided to omit language that would have implemented a pair of international oil spill liability and compensation agreements after U.S. ratification. The administration strongly supported those agreements, but the Senate opposed them on grounds that they would pre-empt more stringent federal and state liability laws.

The conference committee was composed of 73 members, from seven House committees—Merchant Marine, Public Works, Interior, Science, Energy, Foreign Affairs and Ways and Means—and three Senate committees: Environment, Commerce and Finance.

Positions: Galen Reser, assistant transportation secretary for governmental affairs, told the *Wall Street Journal* that the administration is pleased that the conference agreement has been reached. He said the transportation secretary probably will not recommend a veto of the bill, despite the outcome on the international agreements.

Clifton Curtis of Friends of the Earth said the bill is "very environmentally strong," thanks largely to the political pressures produced by the *Exxon Valdez* spill.

"When you compare the bill with the bills that were on the table prior to March 24, 1989, there are major improvements," he said. "It's tragic that Prince William Sound had to be the guinea pig."

An oil industry spokesman called the final bill "a mixed bag," voicing concern about the lack of pre-emption of state law and large penalties for spills, among other things. He said the schedule for replacing single-hulled tankers with double-hulled tankers "certainly can be met," although he said the requirement will be expensive.

"The bottom line was we did want an oil spill bill," he said.

No pre-emption: Congress has been working on oil spill liability and compensation legislation since 1975, but never before has a bill come so close to enactment. Bills died repeatedly largely because of controversy over whether the bill should pre-empt state liability laws.

The conference agreement preserves the right of states to have stricter liability laws and their own oil spill compensation funds, in line with the wishes of states and environmental groups.

That outcome was a defeat for the oil and shipping industries, which had supported pre-emption to escape state liability laws that impose unlimited liability. Industry says that unlimited liability is uninsurable, and some oil shippers recently have announced they will no longer operate in the United States, or in states with unlimited liability for spills.

Contents

Summary of conference report

Note: The following summary is based on an unedited draft of the final bill. Staff were still making technical and conforming changes at press time.

The final measure contains eight titles: liability and compensation (I), conforming amendments (II), international oil pollution prevention and removal (III), prevention and removal (IV), Prince William Sound (V), miscellaneous (VI), research and development (VII), and Trans-Alaska Pipeline System (VIII).

Title I — Liability and compensation

Overview: Title I would set up a single federal liability and compensation system intended to provide prompt compensation for cleanup costs and damages from oil spills. Those seeking compensation could be federal, state and local governments, and private parties such as fishermen, beachfront property owners, boat owners and hotel owners.

Spillers would be liable for cleanup costs and damages up to specified liability limits, but in certain circumstances their liability would be unlimited. If full compensation was unavailable from the spiller, additional compensation for cleanup costs and damages would be available from a federal oil spill liability fund. The fund, already established in the tax code, is supported by a 5-cent-per-barrel tax on oil.

The bill's liability and compensation system would apply to future oil spills from vessels and facilities in navigable waters, adjoining shorelines, or the 200-mile exclusive economic zone. Examples of onshore facilities are oil terminals; offshore facilities include oil drilling and production platforms.

Liability: Owners and operators of vessels and facilities would be subject to strict, joint and several liability for removal (cleanup) costs and damages from oil spills. Strict liability means liability regardless of fault. Joint and several liability means that each party potentially would be liable for all costs.

Spillers would not be liable if they could show the spill was caused solely by an act of God, an act of war, or an act or omission of a third party (not including employees or parties that have a contractual relationship with the spiller).

Removal costs and damages: Spillers would be liable under the bill for removal costs that are in line with the national contingency plan, the federal regulations governing oil spill response.

Damages for which spillers would be liable include loss of profits or earning capacity due to property or natural resource damage, and property damage or loss.

Compensation for natural resource damage could be sought by U.S., state, Indian or foreign governments.

The measure of natural resource damages would be the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the damaged resources — and "the diminution in value of those natural resources pending restoration," plus the reasonable cost of assessing those damages.

Spillers also would be liable for:

- loss of subsistence use of natural resources by anyone who uses the resources for subsistence;
- loss of tax or other revenues by governments; and
- damages for the net costs to state and local governments of providing increased or additional public services during or after removal activities (such as protection from fire, safety or health hazards).

Lawsuits to recover removal costs would have to be started within three years of the time removal actions are completed. Lawsuits to recover damages would have be started within three years after the date the injury and its connection with the spill were reasonably discoverable — or, in the case of natural resource damages, three years after damage assessment regulations are issued, if that date is later.

Liability limits: Liability would be unlimited if the spill was caused by gross negligence or willful misconduct, or by a violation of an applicable federal safety, construction or operating regulation.

Liability also would be unlimited if the responsible party failed or refused to report the incident, to provide reasonable cooperation to responsible officials in connection with removal activities, or to comply with a cleanup order issued under section 311 of the Federal Water Pollution Control Act.

In other cases, liability limits would be as follows:

- Tank vessels (which carry oil in bulk) — $1,200 per gross ton, but no less than $10 million for vessels greater than 3,000 gross tons, and no less than $2 million for smaller vessels. (Many inland barges weigh less than 3,000 gross tons.)
- Other vessels — $600 per gross ton or $500,000, whichever is greater.
- Offshore facilities — $75 million for damages plus all cleanup costs.
- Onshore facilities and deep-water ports — $350 million. (A deep-water port receives oil from supertankers and pipes it ashore.)

The president could lower the limit for categories of onshore facilities to as low as $8 million, and for deep-water ports to as low as $50 million based on a study.

Financial responsibility: Those responsible for vessels and deep-water ports would be required to have insurance or other evidence of financial responsibility up to their liability limits; offshore facilities would have to have coverage of $150 million. Violators would be subject to stiff sanctions, including seizure of the vessel.

States could enforce federal financial responsibility requirements.

Lawsuits for compensation could be filed directly against guarantors (insurers).

Natural resource damage: Officials designated as natural resource trustees would assess the damage, and develop and implement restoration plans.

The National Oceanic and Atmospheric Administration would have to issue regulations assessing natural resource damage, in consultation with the Environmental Protection Agency, Fish and Wildlife Service and other affected agencies.

Money recovered by trustees for natural resource damage would be kept in a revolving trust account to pay costs incurred by the trustee. Any leftover money would be deposited in the federal oil spill fund.

Cleanup standard: For purposes of the national contingency plan, cleanup would be considered complete when determined so by the president in consultation with the governors of affected states. Additional removal actions could be carried out under state law.

Uses of fund: The federal oil spill liability trust fund could be used by federal and state governments for removal costs, and the costs of monitoring removal actions. The costs must be determined by the president to be consistent with the national contingency plan (this means the fund could not be used to pay for meeting stricter state standards).

The fund also could be used to pay:

- the costs of natural resource damage assessments and restoration;
- claims for damages when the spiller denies liability or when the claim is not settled by payment within 90 days;
- administrative, operational and personnel costs for implementation and enforcement of the act. Up to $25 million would be available to the Coast Guard in any fiscal year. Up to $30 million each year through fiscal 1992 would be available to establish a national spill response system, including the purchase and pre-spill positioning of oil spill removal equipment. Up to $26.5 million a year would be available for research and development activities.

Up to $250,000 from the fund would be available to a state for immediate oil spill removal actions. States could enter into agreements with the federal government that would set procedures for receiving additional payments.

State pre-emption: The bill would expressly preserve states' authority to impose additional liability or requirements with respect to oil spills and removal activities. The bill also would preserve states' authority to establish their own oil spill funds, and to impose fines and penalties for oil spills.

Title II — Conforming amendments

The bill would repeal or make conforming amendments to several existing federal oil spill laws, including the Intervention on the High Seas Act, section 311 of the Federal Water Pollution Control Act, Deepwater Port Act, and Title II of the Outer Continental Shelf Lands Act Amendments of 1978. (See also Title VIII.)

Money in three existing federal oil spill funds — the section

311(k) fund, the Deepwater Port Liability Fund, and the Offshore Oil Pollution Compensation Fund — would be deposited in the comprehensive federal oil pollution liability fund.

Title III — International oil pollution prevention and removal

Due to Senate opposition, the conference report omits House provisions to implement a pair of international oil spill liability and compensation protocols in the United States after U.S. ratification. Instead, the bill contains a non-binding resolution stating that the United States should participate in an international oil pollution liability and compensation system that is at least as effective as federal and state laws.

The secretary of state would be required to review international agreements and treaties with Canada regarding oil spills in the Great Lakes and Lake Champlain. The purpose is to determine whether changes or new agreements are needed.

The president would be required to encourage international organizations to establish an international inventory of spill removal equipment and personnel.

Title IV, subtitle A — Prevention

This summary of Title IV is derived from a summary by House and Senate staff.

Double hulls: Double hulls would be required on all new oil tankers and barges operating in waters subject to U.S. jurisdiction, except for vessels used only to respond to a discharge of oil or hazardous substances. New vessels of less than 5,000 gross tons would be required to have double containment systems; existing vessels of that size would be required to have a double containment system by 2015.

Certain vessels would be exempt from the double hull requirement until 2015: a vessel unloading oil at a deep-water port and a ship engaged in "lightering," or transferring, oil to other ships more than 60 miles from the U.S. coast.

Existing vessels without double hulls would be phased out beginning in 1995. Older vessels would be phased out before newer ones, and heavier ones before lighter ones. All vessels with single hulls would be retired by 2010, and all vessels with double bottoms or double sides would be retired by 2015.

The transportation secretary would have to require interim measures on vessels to provide substantial protection to the environment until the double hull requirement is fully implemented. Also required would be a study of other structural or operational requirements that would provide equal or greater protection to the environment than double hulls.

The transportation secretary would be authorized to provide Title XI loan guarantees under the Merchant Marine Act of 1936 to aid in financing a contract for construction or reconstruction of a vessel to comply with the double hull requirement.

Alcohol and drugs: The bill would establish new requirements to prevent oil spills due to use of alcohol or drugs by ship personnel.

The bill provides for:

- review of driver's license records of applicants for licenses, certificates of registry, or merchant mariner's documents;
- alcohol and drug testing of merchant sailors;
- temporary suspension of licenses, certificates or documents under certain circumstances;
- criminal checks prior to issuance or renewal of documents;
- suspension or revocation of a license, certificate or document if the individual is convicted of driving under the influence; and
- removal of the ship's master if he is under the influence of alcohol or dangerous drugs.

Manning standards: The bill provides for limiting the number of hours a crew member can work on a vessel and requires the transportation secretary to issue regulations on the use of automatic pilots.

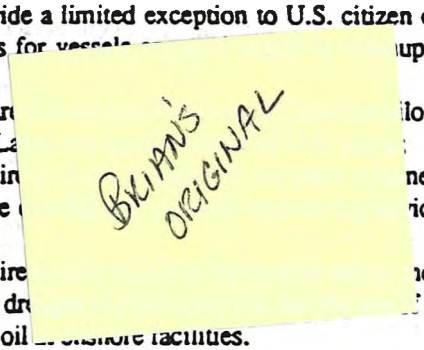
The transportation secretary would be required to evaluate the manning, training, qualification and watch-keeping standards of a foreign country's vessels periodically. (The draft language says that if the secretary determines that a country has failed to maintain or enforce standards equivalent to U.S. law or international standards accepted by the United States, the secretary must prohibit vessels with documentation from that country from entering the United States. The secretary may allow provisional entry.)

Vessel traffic service systems: The secretary would be required to require tank vessels, which carry oil or hazardous materials in bulk, to participate in vessel traffic service systems. The authority currently is discretionary.

The bill requires a study of such traffic service systems and a report to Congress within one year.

Additional provisions: Other provisions would:

- require the transportation secretary to issue regulations on pilotage waters in Prince William Sound;
- provide a limited exception to U.S. citizen ownership requirements for vessels ... up and removal activities;
- ensure ... pilots operating in the Great La...
- require ... ness of vessels, and require ... ices to prevent spills; and
- require ... e feasibility of modifying dr... liners for bulk storage of oil ... offshore facilities.



Title IV, subtitle B — Removal

This summary of subtitle B is taken from the staff summary.

Federal removal authority: The president would be required to ensure effective and immediate removal of an oil or hazardous substance spill.

The president could federalize a spill (take over cleanup operations), direct or monitor all federal, state or private cleanup efforts, or remove or destroy a leaking vessel. In the case of a major spill, the president would be required to direct all federal, state and private cleanup efforts.

Immunity: With certain exceptions, immunity from liability

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Certain vessels would be exempt from the double hull requirement until 2015: a vessel unloading oil at a deep-water port and a ship engaged in "lightering," or transferring, oil to other ships more than 60 miles from the U.S. coast.

Existing vessels without double hulls would be phased out beginning in 1995. Older vessels would be phased out before newer ones, and heavier ones before lighter ones. All vessels with single hulls would be retired by 2010, and all vessels with double bottoms or double sides would be retired by 2015.

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- removal of the ship's master if he is under the influence of alcohol or dangerous drugs.

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Vessel traffic service systems: The secretary would be required to require tank vessels, which carry oil or hazardous materials in bulk, to participate in vessel traffic service systems. The authority currently is discretionary.

The bill requires a study of such traffic service systems and a report to Congress within one year.

Additional provisions: Other provisions would:

- require the transportation secretary to issue regulations on pilotage waters in Prince William Sound;
- provide a limited exception to U.S. citizen ownership requirements for vessels engaged solely in cleanup and removal activities;
- ensure that the qualifications of Canadian pilots operating in the Great Lakes are equal to those of U.S. pilots;
- require periodic gauging of the plate thickness of vessels, and require overfill and pressure monitoring devices to prevent spills; and
- require studies related to navigation safety, the feasibility of modifying dredges to clean up spills, and the use of liners for bulk storage of oil at onshore facilities.

Title IV, subtitle B — Removal

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Federal removal authority: The president would be required to ensure effective and immediate removal of an oil or hazardous substance spill.

The president could federalize a spill (take over cleanup operations), direct or monitor all federal, state or private cleanup efforts, or remove or destroy a leaking vessel. In the case of a major spill, the president would be required to direct all federal, state and private cleanup efforts.

Immunity: With certain exceptions, immunity from liability

would be provided to people involved in cleanup activities, such as industry cooperatives or response organizations. Immunity would not be available to the responsible party, or when there is personal injury or wrongful death, or gross negligence or willful misconduct.

National planning and response system: A national planning and response system would be established to ensure that there are adequate plans to respond to a spill.

The national contingency plan would be revised to establish procedures for removing a worst-case discharge or substantial threat of a discharge. The plan is to ensure coordination among strike teams, district response groups, federal on-scene coordinators and area committees. The plan would have to include provisions for protection of fish and wildlife resources.

A national response unit would be established to compile a list of oil spill removal resources, personnel and equipment worldwide, to conduct inspections of vessels, facilities and equipment, and to maintain the contingency plans, among other things.

A district response group — including response personnel and pre-positioned equipment — would be established in each of the 10 Coast Guard districts.

Local area committees composed of federal, state and local agencies would be established to prepare a local contingency plan to respond to a worst-case discharge.

Owners or operators of tank vessels and facilities would have to prepare response plans to prepare for a worst-case discharge, to the maximum extent practicable.

Penalties: Existing penalties for oil spills and violations of regulations would be increased. Penalties could be assessed administratively. Federal enforcement powers would be strengthened.

Title V — Prince William Sound

A Prince William Sound Oil Spill Recovery Institute would be established to conduct oil spill research and educational and demonstration projects directly related to the *Exxon Valdez* spill.

Two environmental oversight and monitoring demonstration programs for oil terminals and oil tankers would be established for Prince William Sound and Cook Inlet. An oil industry association and a citizen advisory council would be established for each. The industry would be required to provide $2 million annually for the Prince William Sound program and $1 million annually for the Cook Inlet program.

The transportation secretary would be required to establish special requirements for the Prince William Sound area, including:

- an improved vessel traffic service system for the port of Valdez and a Bligh Reef warning light;
- pre-positioned oil spill containment and removal equipment in strategic locations;
- establishment of an oil spill cleanup force sufficient to clean up a 200,000-barrel spill;
- training in oil removal techniques for fishermen and fishing industry employees in the area; and
- spill drills twice a year.

Money for the oversight programs and vessel traffic service system would be available from the comprehensive fund: $5 million upon enactment, and $2 million annually for nine years.

The *Exxon Valdez* and tank vessels over 125,000 deadweight tons that are constructed after enactment are prohibited from operating on Prince William Sound.

Title VI — Miscellaneous (Including appropriations)

Amounts in the fund are available only by appropriation, with three exceptions:

Appropriations would not be required for payment of claims for uncompensated removal costs and damages, or for use of funds recovered from liable parties for natural resource damage assessment and restoration.

The president without appropriation could use up to $50 million in a fiscal year to conduct oil spill removal and initiate assessment of natural resource damages.

Title VII — Research and development

The bill would make available from the fund $26.5 million annually for a new research and development program coordinated by an Interagency Coordinating Committee on Oil Pollution Research. The committee would coordinate efforts by federal agencies, industry, universities, research institutions, states and other nations.

The committee, composed of representatives of nine federal departments and independent agencies, would develop a research plan with advice from the National Academy of Sciences. NAS later would submit to Congress a report assessing the adequacy of the plan.

The program would investigate technologies to prevent and clean up spills, ways to improve industry and government response to spills, ways to restore damaged natural resources, the environmental effects of spills, and other topics.

The Coast Guard would conduct two port oil pollution minimization projects with the Port Authority of New York and New Jersey, and the ports of Los Angeles and Long Beach, Calif.

The committee would coordinate a program of competitive grants to universities or other research institutions for research on regional aspects of oil pollution.

In addition, the agencies on the interagency committee would be given authority to make research grants to universities, research institutions and others.

Title VIII — Trans-Alaska Pipeline System

Liability provisions of the Trans-Alaska Pipeline Authorization Act would continue to apply to Alaska pipeline-related spill onshore. The law provides that pipeline right-of-way holders are responsible for paying all costs and are strictly liable for $5 million in damages. The bill would raise that limit to $350 million.

Information on provisions for future termination of the TAPS fund was not available at press time.

The bill would expedite compensation for the *Exxon Valdez* spill, which is subject to liability and compensation provisions of the trans-Alaska act. The bill would make retroactive changes in TAPS liability provisions. Also, compensation would be available from the existing TAPS fund if the vessel owner or operator has not paid a claim within 90 days after a claim is submitted. This would include the first $14 million in claims, the amount of a vessel owner's liability under the act.

A presidential task force would be created to conduct a comprehensive two-year audit of the trans-Alaska pipeline and terminal operations and make recommendations concerning prevention of oil spills and health and environmental damage. The audit would include a review of whether Alyeska Pipeline Service Co., the right-of-way holder, is in compliance with laws, regulations and agreements. The provision authorizes $5 million annually for the task force from the comprehensive fund.

Penalties: The authority of the Minerals Management Service to impose penalties on outer continental shelf facilities would be clarified.

The interior secretary could impose civil penalties of up to $1,000 per barrel for pipeline spills in Alaska.

Alaska native corporations could bring claims for oil spill damages to lands validly selected under the Alaska Native Claims Settlement Act.

The bill calls on the secretary of state, in consultation with others, to negotiate a treaty with Canada concerning oil spills in the Arctic Ocean.

Amendments to Internal Revenue Code

Amendments to the Internal Revenue Code would allow up to $1 billion per spill for cleanup costs and damages to be spent from the fund. The amount that could be spent on natural resource damage restoration or replacement would be limited to $500 million per spill. The fund could borrow up to $1 billion in the aggregate from the general treasury.

The trust fund could be used only for purposes enumerated elsewhere in the bill. Certain specified penalties would be deposited into the comprehensive fund.

North Carolina offshore leasing

The Jones amendment would prohibit new leasing, exploration or development off the shore of North Carolina until Oct. 1, 1991, or until the secretary of the interior certifies to Congress that environmental information is adequate, based on the findings of a scientific review panel. (Due to incorrect information stated at the conference meeting, this provision was incorrectly described in the July 30 *Weekly Bulletin*.)

101ST CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
101-653

OIL POLLUTION ACT OF 1990

AUGUST 1, 1990.—Ordered to be printed

Mr. JONES of North Carolina, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 1465]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1465) to establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Oil Pollution Act of 1990".

SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 1001. DEFINITIONS.

For the purposes of this Act, the term—

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

(2) "barrel" means 42 United States gallons at 60 degrees fahrenheit;

(3) "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident;

(4) "claimant" means any person or government who presents a claim for compensation under this title;

(5) "damages" means damages specified in section 1002(b) of this Act, and includes the cost of assessing these damages;

(6) "deepwater port" is a facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524);

(7) "discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not lim-

ited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exclusive economic zone" means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990;

(9) "facility" means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes;

(10) "foreign offshore unit" means a facility which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and which is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(11) "Fund" means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509);

(12) "gross ton" has the meaning given that term by the Secretary under part J of title 46, United States Code;

(13) "guarantor" means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this Act;

(14) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil;

(15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe;

(16) "lessee" means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as that term is defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a))) or on submerged lands of the outer Continental Shelf, granted or maintained under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);

(17) "liable" or "liability" shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

(18) "mobile offshore drilling unit" means a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility;

(19) "National Contingency Plan" means the National Contingency Plan prepared and published under section 311(d) of

the Federal Water Pollution Control Act, as amended by this Act, or revised under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9605);

(20) "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

(21) "navigable waters" means the waters of the United States, including the territorial sea;

(22) "offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(23) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act;

(24) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(25) the term "Outer Continental Shelf facility" means an offshore facility which is located, in whole or in part, on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(26) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(27) "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body;

(28) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) or applicable State law;

(29) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce;

(30) "remove" or "removal" means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(31) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(32) "responsible party" means the following:

(A) VESSELS.—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(B) ONSHORE FACILITIES.—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) OFFSHORE FACILITIES.—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(D) DEEPWATER PORTS.—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(E) PIPELINES.—In the case of a pipeline, any person owning or operating the pipeline.

(F) ABANDONMENT.—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

(33) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(34) "tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters; or

(C) transfers oil or hazardous material in a place subject to the jurisdiction of the United States;

(35) "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the

coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles;

(36) "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States; and

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

SEC. 1002. ELEMENTS OF LIABILITY.

(a) IN GENERAL.—Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) that result from such incident.

(b) COVERED REMOVAL COSTS AND DAMAGES.—

(1) REMOVAL COSTS.—The removal costs referred to in subsection (a) are—

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (l) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) DAMAGES.—The damages referred to in subsection (a) are the following:

(A) NATURAL RESOURCES.—Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

(B) REAL OR PERSONAL PROPERTY.—Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

(C) SUBSISTENCE USE.—Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) REVENUES.—Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) PROFITS AND EARNING CAPACITY.—Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(F) PUBLIC SERVICES.—Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.

(c) EXCLUDED DISCHARGES.—This title does not apply to any discharge—

(1) permitted by a permit issued under Federal, State, or local law;

(2) from a public vessel; or

(3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

(d) LIABILITY OF THIRD PARTIES.—

(1) IN GENERAL.—

(A) THIRD PARTY TREATED AS RESPONSIBLE PARTY.—Except as provided in subparagraph (B), in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in section 1003(a)(3) (or solely by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this title.

(B) SUBROGATION OF RESPONSIBLE PARTY.—If the responsible party alleges that the discharge or threat of a discharge was caused solely by an act or omission of a third party, the responsible party—

(i) in accordance with section 1013, shall pay removal costs and damages to any claimant; and

(ii) shall be entitled by subrogation to all rights of the United States Government and the claimant to recover removal costs or damages from the third party or the Fund paid under this subsection.

(2) LIMITATION APPLIED.—

(A) OWNER OR OPERATOR OF VESSEL OR FACILITY.—If the act or omission of a third party that causes an incident occurs in connection with a vessel or facility owned or operated by the third party, the liability of the third party shall be subject to the limits provided in section 1004 as applied with respect to the vessel or facility.

(B) OTHER CASES.—In any other case, the liability of a third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if the responsible party were liable.

SEC. 1003. DEFENSES TO LIABILITY.

(a) COMPLETE DEFENSES.—A responsible party is not liable for removal costs or damages under section 1002 if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party—

(A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

(4) any combination of paragraphs (1), (2), and (3).

(b) DEFENSES AS TO PARTICULAR CLAIMANTS.—A responsible party is not liable under section 1002 to a claimant, to the extent that the incident is caused by the gross negligence or willful misconduct of the claimant.

(c) LIMITATION ON COMPLETE DEFENSE.—Subsection (a) does not apply with respect to a responsible party who fails or refuses—

(1) to report the incident as required by law if the responsible party knows or has reason to know of the incident;

(2) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(3) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

SEC. 1004. LIMITS ON LIABILITY.

(a) GENERAL RULE.—Except as otherwise provided in this section, the total of the liability of a responsible party under section 1002 and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed—

(1) for a tank vessel, the greater of—

(A) $1,200 per gross ton; or

(B)(i) in the case of a vessel greater than 3,000 gross tons, $10,000,000; or

(ii) in the case of a vessel of 3,000 gross tons or less, $2,000,000;

(2) for any other vessel, $600 per gross ton or $500,000, whichever is greater;

(3) for an offshore facility except a deepwater port, the total of all removal costs plus $75,000,000; and

(4) for any onshore facility and a deepwater port, $350,000,000.

(b) DIVISION OF LIABILITY FOR MOBILE OFFSHORE DRILLING UNITS.—

(1) TREATED FIRST AS TANK VESSEL.—For purposes of determining the responsible party and applying this Act and except as provided in paragraph (2), a mobile offshore drilling unit which is being used as an offshore facility is deemed to be a tank vessel with respect to the discharge, or the substantial threat of a discharge, of oil on or above the surface of the water.

(2) TREATED AS FACILITY FOR EXCESS LIABILITY.—To the extent that removal costs and damages from any incident described in paragraph (1) exceed the amount for which a responsible party is liable (as that amount may be limited under subsection (a)(1)), the mobile offshore drilling unit is deemed to be an offshore facility. For purposes of applying subsection (a)(3), the amount specified in that subsection shall be reduced by the amount for which the responsible party is liable under paragraph (1).

(c) EXCEPTIONS.—

(1) ACTS OF RESPONSIBLE PARTY.—Subsection (a) does not apply if the incident was proximately caused by—

(A) gross negligence or willful misconduct of, or

(B) the violation of an applicable Federal safety, construction, or operating regulation by,

the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail).

(2) FAILURE OR REFUSAL OF RESPONSIBLE PARTY.—Subsection (a) does not apply if the responsible party fails or refuses—

(A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;

(B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(3) OCS FACILITY OR VESSEL.—Notwithstanding the limitations established under subsection (a) and the defenses of section 1003, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(d) ADJUSTING LIMITS OF LIABILITY.—

(1) ONSHORE FACILITIES.—Subject to paragraph (2), the President may establish by regulation, with respect to any class or category of onshore facility, a limit of liability under this section of less than $350,000,000, but not less than $8,000,000, taking into account size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(2) DEEPWATER PORTS AND ASSOCIATED VESSELS.—

(A) STUDY.—The Secretary shall conduct a study of the relative operational and environmental risks posed by the transportation of oil by vessel to deepwater ports (as defined in section 3 of the Deepwater Port Act of 1974 (33 U.S.C. 1502)) versus the transportation of oil by vessel to other ports. The study shall include a review and analysis of offshore lightering practices used in connection with that transportation, an analysis of the volume of oil transported by vessel using those practices, and an analysis of the frequency and volume of oil discharges which occur in connection with the use of those practices.

(B) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the results of the study conducted under subparagraph (A).

(C) RULEMAKING PROCEEDING.—If the Secretary determines, based on the results of the study conducted under this subparagraph (A), that the use of deepwater ports in connection with the transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports, the Secretary shall initiate, not later than the 180th day following the date of submission of the report to the Congress under subparagraph (B), a rulemaking proceeding to lower the limits of liability under this section for deepwater ports as the Secretary determines appropriate. The Secretary may establish a limit of liability of less than $350,000,000, but not less than $50,000,000, in accordance with paragraph (1).

(3) PERIODIC REPORTS.—The President shall, within 6 months after the date of the enactment of this Act, and from time to time thereafter, report to the Congress on the desirability of adjusting the limits of liability specified in subsection (a).

(4) ADJUSTMENT TO REFLECT CONSUMER PRICE INDEX.—The President shall, by regulations issued not less often than every 3 years, adjust the limits of liability specified in subsection (a) to reflect significant increases in the Consumer Price Index.

SEC. 1005. INTEREST.

(a) GENERAL RULE.—The responsible party or the responsible party's guarantor is liable to a claimant for interest on the amount paid in satisfaction of a claim under this Act for the period described in subsection (b).

(b) PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), the period for which interest shall be paid is the period beginning

on the 30th day following the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claim is paid.

(2) EXCLUSION OF PERIOD DUE TO OFFER BY GUARANTOR.—If the guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in paragraph (1) does not include the period beginning on the date the offer is made and ending on the date the offer is accepted. If the offer is made within 60 days after the date on which the claim is presented under section 1013(a), the period described in paragraph (1) does not include any period before the offer is accepted.

(3) EXCLUSION OF PERIODS IN INTERESTS OF JUSTICE.—If in any period a claimant is not paid due to reasons beyond the control of the responsible party or because it would not serve the interests of justice, no interest shall accrue under this section during that period.

(4) CALCULATION OF INTEREST.—The interest paid under this section 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.

(5) INTEREST NOT SUBJECT TO LIABILITY LIMITS.—

(A) IN GENERAL.—Interest (including prejudgment interest) under this paragraph is in addition to damages and removal costs for which claims may be asserted under section 1002 and shall be paid without regard to any limitation of liability under section 1004.

(B) PAYMENT BY GUARANTOR.—The payment of interest under this subsection by a guarantor is subject to section 1016(g).

SEC. 1006. NATURAL RESOURCES.

(a) LIABILITY.—In the case of natural resource damages under section 1002(b)(2)(A), liability shall be—

(1) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States;

(2) to any State for natural resources belonging to, managed by, controlled by, or appertaining to such State or political subdivision thereof;

(3) to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe; and

(4) in any case in which section 1007 applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(b) DESIGNATION OF TRUSTEES.—

(1) IN GENERAL.—The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources.

(2) FEDERAL TRUSTEES.—The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act.

(3) STATE TRUSTEES.—The Governor of each State shall designate State and local officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of the designation.

(4) INDIAN TRIBE TRUSTEES.—The governing body of any Indian tribe shall designate tribal officials who may act on behalf of the tribe or its members as trustee for natural resources under this Act and shall notify the President of the designation.

(5) FOREIGN TRUSTEES.—The head of any foreign government may designate the trustee who shall act on behalf of that government as trustee for natural resources under this Act.

(c) FUNCTIONS OF TRUSTEES.—

(1) FEDERAL TRUSTEES.—The Federal officials designated under subsection (b)(2)—

(A) shall assess natural resource damages under section 1002(b)(2)(A) for the natural resources under their trusteeship;

(B) may, upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's trusteeship; and

(C) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(2) STATE TRUSTEES.—The State and local officials designated under subsection (b)(3)—

(A) shall assess natural resource damages under section 1002(b)(2)(A) for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(3) INDIAN TRIBE TRUSTEES.—The tribal officials designated under subsection (b)(4)—

(A) shall assess natural resource damages under section 1002(b)(2)(A) for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(4) FOREIGN TRUSTEES.—The trustees designated under subsection (b)(5)—

(A) shall assess natural resource damages under section 1002(b)(2)(A) for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(5) NOTICE AND OPPORTUNITY TO BE HEARD.—Plans shall be developed and implemented under this section only after ade-

quate public notice, opportunity for a hearing, and consideration of all public comment.

(d) MEASURE OF DAMAGES.—

(1) IN GENERAL.—The measure of natural resource damages under section 1002(b)(2)(A) is—

(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;

(B) the diminution in value of those natural resources pending restoration; plus

(C) the reasonable cost of assessing those damages.

(2) DETERMINE COSTS WITH RESPECT TO PLANS.—Costs shall be determined under paragraph (1) with respect to plans adopted under subsection (c).

(3) NO DOUBLE RECOVERY.—There shall be no double recovery under this Act for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(e) DAMAGE ASSESSMENT REGULATIONS.—

(1) REGULATIONS.—The President, acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies, not later than 2 years after the date of the enactment of this Act, shall promulgate regulations for the assessment of natural resource damages under section 1002(b)(2)(A) resulting from a discharge of oil for the purpose of this Act.

(2) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act made under subsection (d) by a Federal, State, or Indian trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(f) USE OF RECOVERED SUMS.—Sums recovered under this Act by a Federal, State, Indian, or foreign trustee for natural resource damages under section 1002(b)(2)(A) shall be retained by the trustee in a revolving trust account, without further appropriation, for use only to reimburse or pay costs incurred by the trustee under subsection (c) with respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(g) COMPLIANCE.—Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty under this section that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred. The court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party. Nothing in this subsection shall restrict any right which any person may have to seek relief under any other provision of law.

SEC. 1007. RECOVERY BY FOREIGN CLAIMANTS.

(a) REQUIRED SHOWING BY FOREIGN CLAIMANTS.—

(1) IN GENERAL.—In addition to satisfying the other requirements of this Act, to recover removal costs or damages resulting from an incident a foreign claimant shall demonstrate that—

(A) the claimant has not been otherwise compensated for the removal costs or damages; and

(B) recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(2) EXCEPTIONS.—Paragraph (1)(B) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in subsection (b)(4).

(b) DISCHARGES IN FOREIGN COUNTRIES.—A foreign claimant may make a claim for removal costs and damages resulting from a discharge, or substantial threat of a discharge, of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country, only if the discharge is from—

(1) an Outer Continental Shelf facility or a deepwater port;

(2) a vessel in the navigable waters;

(3) a vessel carrying oil as cargo between 2 places in the United States; or

(4) a tanker that received the oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), for transportation to a place in the United States, and the discharge or threat occurs prior to delivery of the oil to that place.

(c) FOREIGN CLAIMANT DEFINED.—In this section, the term "foreign claimant" means—

(1) a person residing in a foreign country;

(2) the government of a foreign country; and

(3) an agency or political subdivision of a foreign country.

SEC. 1008. RECOVERY BY RESPONSIBLE PARTY.

(a) IN GENERAL.—The responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, may assert a claim for removal costs and damages under section 1013 only if the responsible party demonstrates that—

(1) the responsible party is entitled to a defense to liability under section 1003; or

(2) the responsible party is entitled to a limitation of liability under section 1004.

(b) EXTENT OF RECOVERY.—A responsible party who is entitled to a limitation of liability may assert a claim under section 1013 only to the extent that the sum of the removal costs and damages incurred by the responsible party plus the amounts paid by the responsible party, or by the guarantor on behalf of the responsible party, for claims asserted under section 1013 exceeds the amount to which the total of the liability under section 1002 and removal costs and

damages incurred by, or on behalf of, the responsible party is limited under section 1004.

SEC. 1009. CONTRIBUTION.

A person may bring a civil action for contribution against any other person who is liable or potentially liable under this Act or another law. The action shall be brought in accordance with section 1017.

SEC. 1010. INDEMNIFICATION AGREEMENTS.

(a) AGREEMENTS NOT PROHIBITED.—Nothing in this Act prohibits any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this Act.

(b) LIABILITY NOT TRANSFERRED.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer liability imposed under this Act from a responsible party or from any person who may be liable for an incident under this Act to any other person.

(c) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this Act, including the provisions of subsection (b), bars a cause of action that a responsible party subject to liability under this Act, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

SEC. 1011. CONSULTATION ON REMOVAL ACTIONS.

The President shall consult with the affected trustees designated under section 1006 on the appropriate removal action to be taken in connection with any discharge of oil. For the purposes of the National Contingency Plan, removal with respect to any discharge shall be considered completed when so determined by the President in consultation with the Governor or Governors of the affected States. However, this determination shall not preclude additional removal actions under applicable State law.

SEC. 1012. USES OF THE FUND.

(a) USES GENERALLY.—The Fund shall be available to the President for—

(1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan—

(A) by Federal authorities; or

(B) by a Governor or designated State official under subsection (d);

(2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 1006 for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan;

(3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;

(4) the payment of claims in accordance with section 1013 for uncompensated removal costs determined by the President to be

consistent with the National Contingency Plan or uncompensated damages;

(5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (l) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, with respect to prevention, removal, and enforcement related to oil discharges, provided that—

(A) not more than $25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;

(B) not more than $30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 311(j) of the Federal Water Pollution Control Act, as amended by this Act, including the purchase and prepositioning of oil spill removal equipment; and

(C) not more than $27,250,000 in each fiscal year shall be available to carry out title VII of this Act.

(b) DEFENSE TO LIABILITY FOR FUND.—The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) OBLIGATION OF FUND BY FEDERAL OFFICIALS.—The President may promulgate regulations designating one or more Federal officials who may obligate money in accordance with subsection (a).

(d) ACCESS TO FUND BY STATE OFFICIALS.—

(1) IMMEDIATE REMOVAL.—In accordance with regulations promulgated under this section, the President, upon the request of the Governor of a State or pursuant to an agreement with a State under paragraph (2), may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(2) AGREEMENTS.—

(A) IN GENERAL.—The President shall enter into an agreement with the Governor of any interested State to establish procedures under which the Governor or a designated State official may receive payments from the Fund for removal costs pursuant to paragraph (1).

(B) TERMS.—Agreements under this paragraph—

(i) may include such terms and conditions as may be agreed upon by the President and the Governor of a State;

(ii) shall provide for political subdivisions of the State to receive payments for reasonable removal costs; and

(iii) may authorize advance payments from the Fund to facilitate removal efforts.

(e) REGULATIONS.—The President shall—

(1) not later than 6 months after the date of the enactment of this Act, publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection shall be exercised; and

(2) not later than 3 months after the close of the comment period for such proposed regulations, promulgate final regulations for that purpose.

(f) RIGHTS OF SUBROGATION.—Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

(g) AUDITS.—The Comptroller General shall audit all payments, obligations, reimbursements, and other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the date of the enactment of this Act. The Comptroller General shall thereafter audit the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) PERIOD OF LIMITATIONS FOR CLAIMS.—

(1) REMOVAL COSTS.—No claim may be presented under this title for recovery of removal costs for an incident unless the claim is presented within 6 years after the date of completion of all removal actions for that incident.

(2) DAMAGES.—No claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under section 1002(b)(2)(A), if later, the date of completion of the natural resources damage assessment under section 1006(e).

(3) MINORS AND INCOMPETENTS.—The time limitations contained in this subsection shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for the incompetent.

(i) LIMITATION ON PAYMENT FOR SAME COSTS.—In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a), no other claim may be paid from the Fund for the same removal costs or damages.

(j) OBLIGATION IN ACCORDANCE WITH PLAN.—

(1) IN GENERAL.—Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources only in accordance with a plan adopted under section 1006(c).

(2) EXCEPTION.—Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources

or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(k) PREFERENCE FOR PRIVATE PERSONS IN AREA AFFECTED BY DISCHARGE.—

(1) IN GENERAL.—In the expenditure of Federal funds for removal of oil, including for distribution of supplies, construction, and other reasonable and appropriate activities, under a contract or agreement with a private person, preference shall be given, to the extent feasible and practicable, to private persons residing or doing business primarily in the area affected by the discharge of oil.

(2) LIMITATION.—This subsection shall not be considered to restrict the use of Department of Defense resources.

SEC. 1013. CLAIMS PROCEDURE.

(a) PRESENTATION.—Except as provided in subsection (b), all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 1014(a).

(b) PRESENTATION TO FUND.—

(1) IN GENERAL.—Claims for removal costs or damages may be presented first to the Fund—

(A) if the President has advertised or otherwise notified claimants in accordance with section 1014(c);

(B) by a responsible party who may assert a claim under section 1008;

(C) by the Governor of a State for removal costs incurred by that State; or

(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a).

(2) LIMITATION ON PRESENTING CLAIM.—No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 1014(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with this section and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.

(e) PROCEDURE FOR CLAIMS AGAINST FUND.—The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund.

SEC. 1014. DESIGNATION OF SOURCE AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the President receives information of an incident, the President shall, where possible and appropriate, designate the source or sources of the discharge or threat. If a designated source is a vessel or a facility, the President shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the President, within 5 days after receiving notification of a designation under subsection (a), of the party's or the guarantor's denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented, in accordance with regulations promulgated by the President. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the President shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than 30 days.

(c) ADVERTISEMENT BY PRESIDENT.—If—

(1) the responsible party and the guarantor both deny a designation within 5 days after receiving notification of a designation under subsection (a),

(2) the source of the discharge or threat was a public vessel, or

(3) the President is unable to designate the source or sources of the discharge or threat under subsection (a),

the President shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

SEC. 1015. SUBROGATION.

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

(b) ACTIONS ON BEHALF OF FUND.—At the request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any responsible party or (subject to section 1016) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

SEC. 1016. FINANCIAL RESPONSIBILITY.

(a) REQUIREMENT.—The responsible party for—

(1) any vessel over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States; or

(2) any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States;

shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, in the case of a tank vessel, the responsible party could be subject under section 1004 (a)(1) or (d) of this Act, or to which, in the case of any other vessel, the responsible party could be subjected under section 1004 (a)(2) or (d), in a case where the responsible party would be entitled to limit liability under that section. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the amount of the maximum liability applicable to the vessel having the greatest maximum liability.

(b) SANCTIONS.—

(1) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this section that does not have the evidence of financial responsibility required for the vessel under this section.

(2) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary may—

(A) deny entry to any vessel to any place in the United States, or to the navigable waters, or

(B) detain at the place,

any vessel that, upon request, does not produce the evidence of financial responsibility required for the vessel under this section.

(3) SEIZURE OF VESSEL.—Any vessel subject to the requirements of this section which is found in the navigable waters without the necessary evidence of financial responsibility for the vessel shall be subject to seizure by and forfeiture to the United States.

(c) OFFSHORE FACILITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be subjected under section 1004(a) in a case in which the responsible party would be entitled to limit liability under that section. In a case in which a person is the responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the facility having the greatest maximum liability.

(2) DEEPWATER PORTS.—Each responsible party with respect to a deepwater port shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 1004(a) of this Act in a case where the responsible

party would be entitled to limit liability under that section. If the Secretary exercises the authority under section 1004(d)(2) to lower the limit of liability for deepwater ports, the responsible party shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability so established. In a case in which a person is the responsible party for more than one deepwater port, evidence of financial responsibility need be established only to meet the maximum liability applicable to the deepwater port having the greatest maximum liability.

(e) METHODS OF FINANCIAL RESPONSIBILITY.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods which the Secretary (in the case of a vessel) or the President (in the case of a facility) determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the Secretary or the President, as appropriate, may specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility to effectuate the purposes of this Act.

(f) CLAIMS AGAINST GUARANTOR.—Any claim for which liability may be established under section 1002 may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke (1) all rights and defenses which would be available to the responsible party under this Act, (2) any defense authorized under subsection (e), and (3) the defense that the incident was caused by the willful misconduct of the responsible party. The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(g) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for a responsible party.

(h) CONTINUATION OF REGULATIONS.—Any regulation relating to financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, is deemed and shall be construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by a new regulation issued under this section.

(i) UNIFIED CERTIFICATE.—The Secretary may issue a single unified certificate of financial responsibility for purposes of this Act and any other law.

SEC. 1017. LITIGATION, JURISDICTION, AND VENUE.

(a) REVIEW OF REGULATIONS.—Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) JURISDICTION.—Except as provided in subsections (a) and (c), the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) STATE COURT JURISDICTION.—A State trial court of competent jurisdiction over claims for removal costs or damages, as defined under this Act, may consider claims under this Act or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of this Act.

(d) ASSESSMENT AND COLLECTION OF TAX.—The provisions of subsections (a), (b), and (c) shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, or to the review of any regulation promulgated under the Internal Revenue Code of 1986.

(e) SAVINGS PROVISION.—Nothing in this title shall apply to any cause of action or right of recovery arising from any incident which occurred prior to the date of enactment of this title. Such claims shall be adjudicated pursuant to the law applicable on the date of the incident.

(f) PERIOD OF LIMITATIONS.—

(1) DAMAGES.—Except as provided in paragraphs (3) and (4), an action for damages under this Act shall be barred unless the action is brought within 3 years after—

(A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or

(B) in the case of natural resource damages under section 1002(b)(2)(A), the date of completion of the natural resources damage assessment under section 1006(c).

(2) REMOVAL COSTS.—An action for recovery of removal costs referred to in section 1002(b)(1) must be commenced within 3 years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. Except as otherwise provided in this paragraph, an action may be commenced under this title for re-

covery of removal costs at any time after such costs have been incurred.

(3) CONTRIBUTION.—No action for contribution for any removal costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) SUBROGATION.—No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than 3 years after the date of payment of such claim.

(5) COMMENCEMENT.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

SEC. 1018. RELATIONSHIP TO OTHER LAW.

(a) PRESERVATION OF STATE AUTHORITIES; SOLID WASTE DISPOSAL ACT.—Nothing in this Act or the Act of March 3, 1851 shall—

(1) affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—

(A) the discharge of oil or other pollution by oil within such State; or

(B) any removal activities in connection with such a discharge; or

(2) affect, or be construed or interpreted to affect or modify in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law.

(b) PRESERVATION OF STATE FUNDS.—Nothing in this Act or in section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509) shall in any way affect, or be construed to affect, the authority of any State—

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

(c) ADDITIONAL REQUIREMENTS AND LIABILITIES; PENALTIES.—Nothing in this Act, the Act of March 3, 1851 (46 U.S.C. 183 et seq.), or section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) to impose additional liability or additional requirements; or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law;

relating to the discharge, or substantial threat of a discharge, of oil.

(d) FEDERAL EMPLOYEE LIABILITY.—For purposes of section 2679(b)(2)(B) of title 28, United States Code, nothing in this Act shall be construed to authorize or create a cause of action against a Federal officer or employee in the officer's or employee's personal or individual capacity for any act or omission while acting within the scope of the officer's or employee's office or employment.

SEC. 1019. STATE FINANCIAL RESPONSIBILITY.

A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under section 1016.

SEC. 1020. APPLICATION.

This Act shall apply to an incident occurring after the date of the enactment of this Act.

TITLE II—CONFORMING AMENDMENTS

SEC. 2001. INTERVENTION ON THE HIGH SEAS ACT.

Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486) is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

SEC. 2002. FEDERAL WATER POLLUTION CONTROL ACT.

(a) APPLICATION.—Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) shall not apply with respect to any incident for which liability is established under section 1002 of this Act.

(b) CONFORMING AMENDMENTS.—Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) is amended as follows:

(1) Subsection (i) is amended by striking "(1)" after "(i)" and by striking paragraphs (2) and (3).

(2) Subsection (k) is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the Fund. The Fund shall assume all liability incurred by the revolving fund established under that subsection.

(3) Subsection (l) is amended by striking the second sentence.

(4) Subsection (p) is repealed.

(5) The following is added at the end thereof:

"(s) The Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509) shall be available to carry out subsections (b), (c), (d), (j), and (l) as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.".

SEC. 2003. DEEPWATER PORT ACT.

(a) CONFORMING AMENDMENTS.—The Deepwater Port Act of 1974 (33 U.S.C. 1502 et seq.) is amended—

(1) in section 4(c)(1) by striking "section 18(l) of this Act;" and inserting "section 1016 of the Oil Pollution Act of 1990"; and

(2) by striking section 18.

(b) AMOUNTS REMAINING IN DEEPWATER PORT FUND.—Any amounts remaining in the Deepwater Port Liability Fund established under section 18(f) of the Deepwater Port Act of 1974 (33 U.S.C. 1517(f)) shall be deposited in the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509). The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

SEC. 2004. OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.

Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1811-1824) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title (43 U.S.C. 1812) shall be deposited in the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509). The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund.

TITLE III—INTERNATIONAL OIL POLLUTION PREVENTION AND REMOVAL

SEC. 3001. SENSE OF CONGRESS REGARDING PARTICIPATION IN INTERNATIONAL REGIME.

It is the sense of the Congress that it is in the best interests of the United States to participate in an international oil pollution liability and compensation regime that is at least as effective as Federal and State laws in preventing incidents and in guaranteeing full and prompt compensation for damages resulting from incidents.

SEC. 3002. UNITED STATES-CANADA GREAT LAKES OIL SPILL COOPERATION.

(a) REVIEW.—The Secretary of State shall review relevant international agreements and treaties with the Government of Canada, including the Great Lakes Water Quality Agreement, to determine whether amendments or additional international agreements are necessary to—

(1) prevent discharges of oil on the Great Lakes;

(2) ensure an immediate and effective removal of oil on the Great Lakes; and

(3) fully compensate those who are injured by a discharge of oil on the Great Lakes.

(b) CONSULTATION.—In carrying out this section, the Secretary of State shall consult with the Department of Transportation, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Great Lakes States, the International Joint Commission, and other appropriate agencies.

(c) REPORT.—The Secretary of State shall submit a report to the Congress on the results of the review under this section within 6 months after the date of the enactment of this Act.

SEC. 3003. UNITED STATES-CANADA LAKE CHAMPLAIN OIL SPILL COOPERATION.

(a) REVIEW.—The Secretary of State shall review relevant international agreements and treaties with the Government of Canada, to determine whether amendments or additional international agreements are necessary to—

(1) prevent discharges of oil on Lake Champlain;

(2) ensure an immediate and effective removal of oil on Lake Champlain; and

(3) fully compensate those who are injured by a discharge of oil on Lake Champlain.

(b) CONSULTATION.—In carrying out this section, the Secretary of State shall consult with the Department of Transportation, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the States of Vermont and New York, the International Joint Commission, and other appropriate agencies.

(c) REPORT.—The Secretary of State shall submit a report to the Congress on the results of the review under this section within 6 months after the date of the enactment of this Act.

SEC. 3004. INTERNATIONAL INVENTORY OF REMOVAL EQUIPMENT AND PERSONNEL.

The President shall encourage appropriate international organizations to establish an international inventory of spill removal equipment and personnel.

SEC. 3005. NEGOTIATIONS WITH CANADA CONCERNING TUG ESCORTS IN PUGET SOUND.

Congress urges the Secretary of State to enter into negotiations with the Government of Canada to ensure that tugboat escorts are required for all tank vessels with a capacity over 40,000 deadweight tons in the Strait of Juan de Fuca and in Haro Strait.

TITLE IV—PREVENTION AND REMOVAL

Subtitle A—Prevention

SEC. 4101. REVIEW OF ALCOHOL AND DRUG ABUSE AND OTHER MATTERS IN ISSUING LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS.

(a) LICENSES AND CERTIFICATES OF REGISTRY.—Section 7101 of title 46, United States Code, is amended by adding at the end the following:

"(g) The Secretary may not issue a license or certificate of registry under this section unless an individual applying for the license or certificate makes available to the Secretary, under section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), any information contained in the National Driver Register related to an offense described in section 205(a)(3) (A) or (B) of that Act committed by the individual.

"(h) The Secretary may review the criminal record of an individual who applies for a license or certificate of registry under this section.

"(i) The Secretary shall require the testing of an individual who applies for issuance or renewal of a license or certificate of registry under this chapter for use of a dangerous drug in violation of law or Federal regulation.".

(b) MERCHANT MARINERS' DOCUMENTS.—Section 7302 of title 46, United States Code, is amended by adding at the end the following:

"(c) The Secretary may not issue a merchant mariner's document under this chapter unless the individual applying for the document makes available to the Secretary, under section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), any information contained in the National Driver Register related to an offense described in section 205(a)(3) (A) or (B) of that Act committed by the individual.

"(d) The Secretary may review the criminal record of an individual who applies for a merchant mariner's document under this section.

"(e) The Secretary shall require the testing of an individual applying for issuance or renewal of a merchant mariner's document under this chapter for the use of a dangerous drug in violation of law or Federal regulation.".

SEC. 4102. TERM OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS; CRIMINAL RECORD REVIEWS IN RENEWALS.

(a) LICENSES.—Section 7106 of title 46, United States Code, is amended by inserting "and may be renewed for additional 5-year periods" after "is valid for 5 years".

(b) CERTIFICATES OF REGISTRY.—Section 7107 of title 46, United States Code, is amended by striking "is not limited in duration." and inserting "is valid for 5 years and may be renewed for additional 5-year periods.".

(c) MERCHANT MARINERS' DOCUMENTS.—Section 7302 of title 46, United States Code, is amended by adding at the end the following:

"(f) A merchant mariner's document issued under this chapter is valid for 5 years and may be renewed for additional 5-year periods.".

(d) TERMINATION OF EXISTING LICENSES, CERTIFICATES, AND DOCUMENTS.—A license, certificate of registry, or merchant mariner's document issued before the date of the enactment of this section terminates on the day it would have expired if—

(1) subsections (a), (b), and (c) were in effect on the date it was issued; and

(2) it was renewed at the end of each 5-year period under section 7106, 7107, or 7302 of title 46, United States Code.

(e) CRIMINAL RECORD REVIEW IN RENEWALS OF LICENSES AND CERTIFICATES OF REGISTRY.—

(1) IN GENERAL.—Section 7109 of title 46, United States Code, is amended to read as follows:

"§ 7109. Review of criminal records

"The Secretary may review the criminal record of each holder of a license or certificate of registry issued under this part who applies for renewal of that license or certificate of registry.".

(2) CLERICAL AMENDMENT.—The analysis for chapter 71 of title 46, United States Code, is amended by striking the item relating to section 7109 and inserting the following:

"7109. Review of criminal records.".

SEC. 4103. SUSPENSION AND REVOCATION OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS FOR ALCOHOL AND DRUG ABUSE.

(a) AVAILABILITY OF INFORMATION IN NATIONAL DRIVER REGISTER.—

(1) IN GENERAL.—Section 7702 of title 46, United States Code, is amended by adding at the end the following:

"(c)(1) The Secretary shall request a holder of a license, certificate of registry, or merchant mariner's document to make available to the Secretary, under section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register related to an offense described in section 205(a)(3) (A) or (B) of that Act committed by the individual.

"(2) The Secretary shall require the testing of the holder of a license, certificate of registry, or merchant mariner's document for use of alcohol and dangerous drugs in violation of law or Federal regulation. The testing may include preemployment (with respect to dangerous drugs only), periodic, random, reasonable cause, and post accident testing.

"(d)(1) The Secretary may temporarily, for not more than 45 days, suspend and take possession of the license, certificate of registry, or merchant mariner's document held by an individual if, when acting under the authority of that license, certificate, or document—

"(A) that individual performs a safety sensitive function on a vessel, as determined by the Secretary; and

"(B) there is probable cause to believe that the individual—

"(i) has performed the safety sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

"(ii) has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; or

"(iii) within the 3-year period preceding the initiation of a suspension proceeding, has been convicted of an offense described in section 205(a)(3) (A) or (B) of the National Driver Register Act of 1982.

"(2) If a license, certificate, or document is temporarily suspended under this section, an expedited hearing under subsection (a) of this section shall be held within 30 days after the temporary suspension.".

(2) DEFINITION OF DANGEROUS DRUG.—(A) Section 2101 of title 46, United States Code, is amended by inserting after paragraph (8) the following new paragraph:

"(8a) 'dangerous drug' means a narcotic drug, a controlled substance, or a controlled substance analog (as defined in sec-

tion 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).".

(B) Sections 7503(a) and 7704(a) of title 46, United States Code, are repealed.

(b) BASES FOR SUSPENSION OR REVOCATION.—Section 7703 of title 46, United States Code, is amended to read as follows:

"§ 7703. Bases for suspension or revocation

"A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder—

"(1) when acting under the authority of that license, certificate, or document—

"(A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or

"(B) has committed an act of incompetence, misconduct, or negligence;

"(2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document; or

"(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 205(a)(3) (A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401 note).".

(c) TERMINATION OF REVOCATION.—Section 7701(c) of title 46, United States Code, is amended to read as follows:

"(c) When a license, certificate of registry, or merchant mariner's document has been revoked under this chapter, the former holder may be issued a new license, certificate of registry, or merchant mariner's document only after—

"(1) the Secretary decides, under regulations prescribed by the Secretary, that the issuance is compatible with the requirement of good discipline and safety at sea; and

"(2) the former holder provides satisfactory proof that the bases for revocation are no longer valid.".

SEC. 4104. REMOVAL OF MASTER OR INDIVIDUAL IN CHARGE.

Section 8101 of title 46, United States Code, is amended by adding at the end the following:

"(i) When the 2 next most senior licensed officers on a vessel reasonably believe that the master or individual in charge of the vessel is under the influence of alcohol or a dangerous drug and is incapable of commanding the vessel, the next most senior master, mate, or operator licensed under section 7101(c) (1) or (3) of this title shall—

"(1) temporarily relieve the master or individual in charge;

"(2) temporarily take command of the vessel;

"(3) in the case of a vessel required to have a log under chapter 113 of this title, immediately enter the details of the incident in the log; and

"(4) report those details to the Secretary—

"(A) by the most expeditious means available; and

"(B) in written form transmitted within 12 hours after the vessel arrives at its next port.".

SEC. 4105. ACCESS TO NATIONAL DRIVER REGISTER.

(a) ACCESS TO REGISTER.—Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by redesignating the second paragraph (5) (as added to the end of that section by section 4(b)(1) of the Rail Safety Improvement Act of 1988) as paragraph (6); and

(2) by adding at the end the following:

"(7)(A) Any individual who holds or who has applied for a license or certificate of registry under section 7101 of title 46, United States Code, or a merchant mariner's document under section 7302 of title 46, United States Code, may request the chief driver licensing official of a State to transmit to the Secretary of the department in which the Coast Guard is operating in accordance with subsection (a) information regarding the motor vehicle driving record of the individual.

"(B) The Secretary—

"(i) may receive information transmitted by the chief driver licensing official of a State pursuant to a request under subparagraph (A);

"(ii) shall make the information available to the individual for review and written comment before denying, suspending, or revoking the license, certificate of registry, or merchant mariner's document of the individual based on that information and before using that information in any action taken under chapter 77 of title 46, United States Code; and

"(iii) may not otherwise divulge or use that information, except for the purposes of section 7101, 7302, or 7703 of title 46, United States Code.

"(C) Information regarding the motor vehicle driving record of an individual may not be transmitted to the Secretary under this paragraph if the information was entered in the Register more than 3 years before the date of the request for the information, unless the information relates to revocations or suspensions that are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this title shall be subject to access for the purpose of this paragraph during the transition to the Register described under section 203(c) of this title.".

(b) CONFORMING AMENDMENTS.—

(1) REVIEW OF INFORMATION RECEIVED FROM REGISTER.—Chapter 75 of title 46, United States Code, is amended by adding at the end the following:

"§ 7505. Review of information in National Driver Register

"The Secretary shall make information received from the National Driver Register under section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) available to an individual for review and written comment before denying, suspending, revoking, or taking any other action relating to a license, certificate of registry, or merchant mariner's document authorized to be issued for that individual under this part, based on that information.".

(2) PENALTY FOR NEGLIGENT OPERATION OF VESSEL.—Section 2302(c) of title 46, United States Code, is amended by striking

"intoxicated" and inserting "under the influence of alcohol, or a dangerous drug in violation of a law of the United States".

(c) CLERICAL AMENDMENT.—The analysis for chapter 75 of title 46, United States Code, is amended by adding at the end the following:

"7505. Review of information in National Driver Register.".

SEC. 4106. MANNING STANDARDS FOR FOREIGN TANK VESSELS.

(a) STANDARDS FOR FOREIGN TANK VESSELS.—Section 9101(a) of title 46, United States Code, is amended to read as follows:

"(a)(1) The Secretary shall evaluate the manning, training, qualification, and watchkeeping standards of a foreign country that issues documentation for any vessel to which chapter 37 of this title applies—

"(A) on a periodic basis; and

"(B) when the vessel is involved in a marine casualty required to be reported under section 6101(a) (4) or (5) of this title.

"(2) After each evaluation made under paragraph (1) of this subsection, the Secretary shall determine whether—

"(A) the foreign country has standards for licensing and certification of seamen that are at least equivalent to United States law or international standards accepted by the United States; and

"(B) those standards are being enforced.

"(3) If the Secretary determines under this subsection that a country has failed to maintain or enforce standards at least equivalent to United States law or international standards accepted by the United States, the Secretary shall prohibit vessels issued documentation by that country from entering the United States until the Secretary determines those standards have been established and are being enforced.

"(4) The Secretary may allow provisional entry of a vessel prohibited from entering the United States under paragraph (3) of this subsection if—

"(A) the owner or operator of the vessel establishes, to the satisfaction of the Secretary, that the vessel is not unsafe or a threat to the marine environment; or

"(B) the entry is necessary for the safety of the vessel or individuals on the vessel.".

(b) Reporting Marine Casualties.—

(1) REPORTING REQUIREMENT.—Section 6101(a) of title 46, United States Code, is amended by adding at the end the following:

"(5) significant harm to the environment.".

(2) APPLICATION TO FOREIGN VESSELS.—Section 6101(d) of title 46, United States Code, is amended—

(A) by inserting "(1)" before "This part"; and

(B) by adding at the end the following:

"(2) This part applies, to the extent consistent with generally recognized principles of international law, to a foreign vessel constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue involved in a marine casualty described under subsection (a)(4) or (5) in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 9(a) of the Ports and Waterways Safety Act (33 U.S.C. 1228(a)) is amended—

(1) in the matter preceding paragraph (1), by striking "section 4417a of the Revised Statutes, as amended," and inserting "chapter 37 of title 46, United States Code,";

(2) in paragraph (2), by striking "section 4417a of the Revised Statutes, as amended," and inserting "chapter 37 of title 46, United States Code,"; and

(3) in paragraph (5), by striking "section 4417a(11) of the Revised Statutes, as amended," and inserting "section 9101 of title 46, United States Code,".

SEC. 4107. VESSEL TRAFFIC SERVICE SYSTEMS.

(a) IN GENERAL.—Section 4(a) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)) is amended—

(1) by striking "Secretary may—" and inserting "Secretary—";

(2) in paragraph (1) by striking "establish, operate, and maintain" and inserting "may construct, operate, maintain, improve, or expand";

(3) in paragraph (2) by striking "require" and inserting "shall require appropriate";

(4) in paragraph (3) by inserting "may" before "require";

(5) in paragraph (4) by inserting "may" before "control"; and

(6) in paragraph (5) by inserting "may" before "require".

(b) DIRECTION OF VESSEL MOVEMENT.—

(1) STUDY.—The Secretary shall conduct a study—

(A) of whether the Secretary should be given additional authority to direct the movement of vessels on navigable waters and should exercise such authority; and

(B) to determine and prioritize the United States ports and channels that are in need of new, expanded, or improved vessel traffic service systems, by evaluating—

(i) the nature, volume, and frequency of vessel traffic;

(ii) the risks of collisions, spills, and damages associated with that traffic;

(iii) the impact of installation, expansion, or improvement of a vessel traffic service system; and

(iv) all other relevant costs and data.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the results of the study conducted under paragraph (1) and recommendations for implementing the results of that study.

SEC. 4108. GREAT LAKES PILOTAGE.

(a) INDIVIDUALS WHO MAY SERVE AS PILOT ON UNDESIGNATED GREAT LAKE WATERS.—Section 9302(b) of title 46, United States Code, is amended to read as follows:

"(b) A member of the complement of a vessel of the United States operating on register or of a vessel of Canada may serve as the pilot required on waters not designated by the President if the member is licensed under section 7101 of this title, or under equivalent provisions of Canadian law, to direct the navigation of the vessel on the waters being navigated.".

(b) PENALTIES.—Section 9308 of title 46, United States Code, is amended in each of subsections (a), (b), and (c) by striking "$500" and inserting "no more than $10,000".

SEC. 4109. PERIODIC GAUGING OF PLATING THICKNESS OF COMMERCIAL VESSELS.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations for vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue—

(1) establishing minimum standards for plating thickness; and

(2) requiring, consistent with generally recognized principles of international law, periodic gauging of the plating thickness of all such vessels over 30 years old operating on the navigable waters or the waters of the exclusive economic zone.

SEC. 4110. OVERFILL AND TANK LEVEL OR PRESSURE MONITORING DEVICES.

(a) STANDARDS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish, by regulation, minimum standards for devices for warning persons of overfills and tank levels of oil in cargo tanks and devices for monitoring the pressure of oil cargo tanks.

(b) USE.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations establishing, consistent with generally recognized principles of international law, requirements concerning the use of—

(1) overfill devices, and

(2) tank level or pressure monitoring devices,

which are referred to in subsection (a) and which meet the standards established by the Secretary under subsection (a), on vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue on the navigable waters and the waters of the exclusive economic zone.

SEC. 4111. STUDY ON TANKER NAVIGATION SAFETY STANDARDS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall initiate a study to determine whether existing laws and regulations are adequate to ensure the safe navigation of vessels transporting oil or hazardous substances in bulk on the navigable waters and the waters of the exclusive economic zone.

(b) CONTENT.—In conducting the study required under subsection (a), the Secretary shall—

(1) determine appropriate crew sizes on tankers;

(2) evaluate the adequacy of qualifications and training of crewmembers on tankers;

(3) evaluate the ability of crewmembers on tankers to take emergency actions to prevent or remove a discharge of oil or a hazardous substance from their tankers;

(4) evaluate the adequacy of navigation equipment and systems on tankers (including sonar, electronic chart display, and satellite technology);

(5) evaluate and test electronic means of position-reporting and identification on tankers, consider the minimum standards

suitable for equipment for that purpose, and determine whether to require that equipment on tankers;

(6) evaluate the adequacy of navigation procedures under different operating conditions, including such variables as speed, daylight, ice, tides, weather, and other conditions;

(7) evaluate whether areas of navigable waters and the exclusive economic zone should be designated as zones where the movement of tankers should be limited or prohibited;

(8) evaluate whether inspection standards are adequate;

(9) review and incorporate the results of past studies, including studies conducted by the Coast Guard and the Office of Technology Assessment;

(10) evaluate the use of computer simulator courses for training bridge officers and pilots of vessels transporting oil or hazardous substances on the navigable waters and waters of the exclusive economic zone, and determine the feasibility and practicality of mandating such training;

(11) evaluate the size, cargo capacity, and flag nation of tankers transporting oil or hazardous substances on the navigable waters and the waters of the exclusive economic zone—

(A) identifying changes occurring over the past 20 years in such size and cargo capacity and in vessel navigation and technology; and

(B) evaluating the extent to which the risks or difficulties associated with tanker navigation, vessel traffic control, accidents, oil spills, and the containment and cleanup of such spills are influenced by or related to an increase in tanker size and cargo capacity; and

(12) evaluate and test a program of remote alcohol testing for masters and pilots aboard tankers carrying significant quantities of oil.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Congress a report on the results of the study conducted under subsection (a), including recommendations for implementing the results of that study.

SEC. 4112. DREDGE MODIFICATION STUDY.

(a) STUDY.—The Secretary of the Army shall conduct a study and demonstration to determine the feasibility of modifying dredges to make them usable in removing discharges of oil and hazardous substances.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Army shall submit to the Congress a report on the results of the study conducted under subsection (a) and recommendations for implementing the results of that study.

SEC. 4113. USE OF LINERS.

(a) STUDY.—The President shall conduct a study to determine whether liners or other secondary means of containment should be used to prevent leaking or to aid in leak detection at onshore facilities used for the bulk storage of oil and located near navigable waters.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the President shall submit to the Congress a report on the

results of the study conducted under subsection (a) and recommendations to implement the results of the study.

(c) IMPLEMENTATION.—Not later than 6 months after the date the report required under subsection (b) is submitted to the Congress, the President shall implement the recommendations contained in the report.

SEC. 4114. TANK VESSEL MANNING.

(a) RULEMAKING.—In order to protect life, property, and the environment, the Secretary shall initiate a rulemaking proceeding within 180 days after the date of the enactment of this Act to define the conditions under, and designate the waters upon, which tank vessels subject to section 3703 of title 46, United States Code, may operate in the navigable waters with the auto-pilot engaged or with an unattended engine room.

(b) WATCHES.—Section 8104 of title 46, United States Code, is amended by adding at the end the following new subsection:

"(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, 'work' includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.".

(c) MANNING REQUIREMENT.—Section 8101(a) of title 46, United States Code, is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(3) a tank vessel shall consider the navigation, cargo handling, and maintenance functions of that vessel for protection of life, property, and the environment.".

(d) STANDARDS.—Section 9102(a) of title 46, United States Code, is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) instruction in vessel maintenance functions.".

(e) RECORDS.—Section 7502 of title 46, United States Code, is amended by striking "maintain records" and inserting "maintain computerized records".

SEC. 4115. ESTABLISHMENT OF DOUBLE HULL REQUIREMENT FOR TANK VESSELS.

(a) DOUBLE HULL REQUIREMENT.—Chapter 37 of title 46, United States Code, is amended by inserting after section 3703 the following new section:

"3703a. Tank vessel construction standards

"(a) Except as otherwise provided in this section, a vessel to which this chapter applies shall be equipped with a double hull—

"(1) if it is constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue; and

"(2) when operating on the waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

"(b) This section does not apply to—

"(1) a vessel used only to respond to a discharge of oil or a hazardous substance;

"(2) a vessel of less than 5,000 gross tons equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil; or

"(3) before January 1, 2015—

"(A) a vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

"(B) a delivering vessel that is offloading in lightering activities—

"(i) within a lightering zone established under section 3715(b)(5) of this title; and

"(ii) more than 60 miles from the baseline from which the territorial sea of the United States is measured.

"(c)(1) In this subsection, the age of a vessel is determined from the later of the date on which the vessel—

"(A) is delivered after original construction;

"(B) is delivered after completion of a major conversion; or

"(C) had its appraised salvage value determined by the Coast Guard and is qualified for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14).

"(2) A vessel of less than 5,000 gross tons for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel of less than 5,000 gross tons that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14) before January 1, 1994, may not operate in the navigable waters or the Exclusive Economic Zone of the United States after January 1, 2015, unless the vessel is equipped with a double hull or with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil.

"(3) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14) before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull—

"(A) in the case of a vessel of at least 5,000 gross tons but less than 15,000 gross tons—

"(i) after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

"(ii) after January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

"(iii) after January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

"(iv) after January 1, 1998, if the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;

"(v) after January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

"(vi) after January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides; and

"(vii) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

"(B) in the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons—

"(i) after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

"(ii) after January 1, 1996, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

"(iii) after January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

"(iv) after January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;

"(v) after January 1, 1999, if the vessel is 32 years old or older and has a single hull, or 37 years old or older and has a double bottom or double sides;

"(vi) after January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;

"(vii) after January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;

"(viii) after January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

"(ix) after January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

"(x) after January 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides; and

"(xi) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and

"(C) in the case of a vessel of at least 30,000 gross tons—

"(i) after January 1, 1995, if the vessel is 28 years old or older and has a single hull, or 33 years old or older and has a double bottom or double sides;

"(ii) after January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

"(iii) after January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

"(iv) after January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

"(v) after January 1, 1999, if the vessel is 24 years old or older and has a single hull, or 29 years old or older and has a double bottom or double sides; and

"(vi) after January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides.

"(4) Except as provided in subsection (b) of this section—

"(A) a vessel that has a single hull may not operate after January 1, 2010; and

"(B) a vessel that has a double bottom or double sides may not operate after January 1, 2015.".

(b) RULEMAKING.—The Secretary shall, within 12 months after the date of the enactment of this Act, complete a rulemaking proceeding and issue a final rule to require that tank vessels over 5,000 gross tons affected by section 3703a of title 46, United States Code, as added by this section, comply until January 1, 2015, with structural and operational requirements that the Secretary determines will provide as substantial protection to the environment as is economically and technologically feasible.

(c) CLERICAL AMENDMENT.—The analysis for chapter 37 of title 46, United States Code, is amended by inserting after the item relating to section 3703 the following:

"3703a. Tank vessel construction standards.".

(d) LIGHTERING REQUIREMENTS.—Section 3715(a) of title 46, United States Code, is amended—

(1) in paragraph (1), by striking "; and" and inserting a semicolon;

(2) in paragraph (2), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(3) the delivering and the receiving vessel had on board at the time of transfer, a certificate of financial responsibility as would have been required under section 1016 of the Oil Pollution Act of 1990, had the transfer taken place in a place subject to the jurisdiction of the United States;

"(4) the delivering and the receiving vessel had on board at the time of transfer, evidence that each vessel is operating in compliance with section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)); and

"(5) the delivering and the receiving vessel are operating in compliance with section 3703a of this title.".

(e) SECRETARIAL STUDIES.—

(1) OTHER REQUIREMENTS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall determine, based on recommendations from the National Academy of Sciences or other qualified organizations, whether other structural and operational tank vessel requirements will provide protection to the marine environment equal to or greater than that provided by double hulls, and shall report to the Congress that determination and recommendations for legislative action.

(2) REVIEW AND ASSESSMENT.—The Secretary shall—

(A) periodically review recommendations from the National Academy of Sciences and other qualified organizations on methods for further increasing the environmental and operational safety of tank vessels;

(B) not later than 5 years after the date of enactment of this Act, assess the impact of this section on the safety of the marine environment and the economic viability and operational makeup of the maritime oil transportation industry; and

(C) report the results of the review and assessment to the Congress with recommendations for legislative or other action.

(f) VESSEL FINANCING.—Section 1104 of the Merchant Marine Act of 1936 (46 App. U.S.C. 1274) is amended—

(1) by striking "SEC. 1104." and inserting "SEC. 1104A."; and

(2) by inserting after section 1104A (as redesignated by paragraph (1)) the following:

"SEC. 1104B. (a) Notwithstanding the provisions of this title, except as provided in subsection (d) of this section, the Secretary, upon the terms the Secretary may prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing and refinancing, including reimbursement to an obligor for expenditures previously made, of a contract for construction or reconstruction of a vessel or vessels owned by citizens of the United States which are designed and to be employed for commercial use in the coastwise or intercoastal trade or in foreign trade as defined in section 905 of this Act if—

"(1) the construction or reconstruction by an applicant is made necessary to replace vessels the continued operation of which is denied by virtue of the imposition of a statutorily mandated change in standards for the operation of vessels, and where, as a matter of law, the applicant would otherwise be denied the right to continue operating vessels in the trades in which the applicant operated prior to the taking effect of the statutory or regulatory change;

"(2) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section, and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by changes in operating standards imposed by statute;

"(3) the capacity of the vessels to be constructed or reconstructed under this title will not increase the cargo carrying capacity of the vessels being replaced;

"(4) the Secretary has not made a determination that the market demand for the vessel over its useful life will diminish so as to make the granting of the guarantee fiduciarily imprudent; and

"(5) the Secretary has considered the provisions of section 1104A(d)(1)(A) (iii), (iv), and (v) of this title.

"(b) For the purposes of this section—

"(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

"(2) obligations guaranteed may not exceed 75 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

"(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years.

"(c)(1) The Secretary shall by rule require that the applicant provide adequate security against default. The Secretary may, in addition to any fees assessed under section 1104A(e), establish a Vessel Replacement Guarantee Fund into which shall be paid by obligors under this section—

"(A) annual fees which may be an additional amount on the loan guarantee fee in section 1104A(e) not to exceed an additional 1 percent; or

"(B) fees based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

"(2) The Vessel Replacement Guarantee Fund shall be a subaccount in the Federal Ship Financing Fund, and shall—

"(A) be the depository for all moneys received by the Secretary under sections 1101 through 1107 of this title with respect to guarantee or commitments to guarantee made under this section;

"(B) not include investigation fees payable under section 1104A(f) which shall be paid to the Federal Ship Financing Fund; and

"(C) be the depository, whenever there shall be outstanding any notes or obligations issued by the Secretary under section 1105(d) with respect to the Vessel Replacement Guarantee Fund, for all moneys received by the Secretary under sections 1101 through 1107 from applicants under this section.

"(d) The program created by this section shall, in addition to the requirements of this section, be subject to the provisions of sections 1101 through 1103; 1104A(b) (1), (4), (5), (6); 1104A(e); 1104A(f); 1104A(h); and 1105 through 1107; except that the Federal Ship Financing Fund is not liable for any guarantees or commitments to guarantee issued under this section.".

SEC. 4116. PILOTAGE.

(a) PILOT REQUIRED.—Section 8502(g) of title 46, United States Code, is amended to read as follows:

"(g)(1) The Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, if any, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed under section 7101 of this title.

"(2) In any area of Prince William Sound, Alaska, where a vessel subject to this section is required to be under the direction and control of a pilot licensed under section 7101 of this title, the pilot may not be a member of the crew of that vessel and shall be a pilot licensed by the State of Alaska who is operating under a Federal license, when the vessel is navigating waters between 60°49′ North latitude and the Port of Valdez, Alaska.".

(b) SECOND PERSON REQUIRED.—Section 8502 of title 46, United States Code, is amended by adding at the end the following:

"(h) The Secretary shall designate waters on which tankers over 1,600 gross tons subject to this section shall have on the bridge a master or mate licensed to direct and control the vessel under section 7101(c)(1) of this title who is separate and distinct from the pilot required under subsection (a) of this section.".

(c) ESCORTS FOR CERTAIN TANKERS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall initiate issuance of regulations under section 3703(a)(3) of title 46, United States Code, to define those areas, including Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction), on which single hulled tankers over 5,000 gross tons transporting oil in bulk shall be escorted by at least two towing vessels (as defined under section 2101 of title 46, United States Code) or other vessels considered appropriate by the Secretary.

(d) TANKER DEFINED.—In this section the term "tanker" has the same meaning the term has in section 2101 of title 46, United States Code.

SEC. 4117. MARITIME POLLUTION PREVENTION TRAINING PROGRAM STUDY.

The Secretary shall conduct a study to determine the feasibility of a Maritime Oil Pollution Prevention Training program to be carried out in cooperation with approved maritime training institutions. The study shall assess the costs and benefits of transferring suitable vessels to selected maritime training institutions, equipping the vessels for oil spill response, and training students in oil pollution response skills. The study shall be completed and transmitted to the Congress no later than one year after the date of the enactment of this Act.

SEC. 4118. VESSEL COMMUNICATION EQUIPMENT REGULATIONS.

The Secretary shall, not later than one year after the date of the enactment of this Act, issue regulations necessary to ensure that vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (33 U.S.C. 1203) are also equipped as necessary to—

(1) receive radio marine navigation safety warnings; and

(2) engage in radio communications on designated frequencies with the Coast Guard, and such other vessels and stations as may be specified by the Secretary.

Subtitle B—Removal

SEC. 4201. FEDERAL REMOVAL AUTHORITY.

(a) IN GENERAL.—Subsection (c) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) is amended to read as follows:

"(c) FEDERAL REMOVAL AUTHORITY.—

"(1) GENERAL REMOVAL REQUIREMENT.—(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance—

"(i) into or on the navigable waters;

"(ii) on the adjoining shorelines to the navigable waters;

"(iii) into or on the waters of the exclusive economic zone; or

"(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

"(B) In carrying out this paragraph, the President may—

"(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

"(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

"(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

"(2) DISCHARGE POSING SUBSTANTIAL THREAT TO PUBLIC HEALTH OR WELFARE.—(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

"(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government—

"(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

"(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

"(3) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall

act in accordance with the National Contingency Plan or as directed by the President.

"(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j), or as directed by the President.

"(4) EXEMPTION FROM LIABILITY.—(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President.

"(B) Subparagraph (A) does not apply—

"(i) to a responsible party;

"(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(iii) with respect to personal injury or wrongful death; or

"(iv) if the person is grossly negligent or engages in willful misconduct.

"(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

"(5) OBLIGATION AND LIABILITY OF OWNER OR OPERATOR NOT AFFECTED.—Nothing in this subsection affects—

"(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

"(B) the liability of a responsible party under the Oil Pollution Act of 1990.

"(6) RESPONSIBLE PARTY DEFINED.—For purposes of this subsection, the term 'responsible party' has the meaning given that term under section 1001 of the Oil Pollution Act of 1990.".

(b) NATIONAL CONTINGENCY PLAN.—Subsection (d) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)) is amended to read as follows:

"(d) NATIONAL CONTINGENCY PLAN.—

"(1) PREPARATION BY PRESIDENT.—The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

"(2) CONTENTS.—The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

"(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

"(B) Identification, procurement, maintenance, and storage of equipment and supplies.

"(C) Establishment or designation of Coast Guard strike teams, consisting of—

"(i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;

"(ii) adequate oil and hazardous substance pollution control equipment and material; and

"(iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife.

"(D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.

"(E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.

"(F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.

"(G) A schedule, prepared in cooperation with the States, identifying—

"(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,

"(ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and

"(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

"(H) A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990, in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

"(I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2).

"(J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

"(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j).

"(L) Establishment of procedures for the coordination of activities of—

"(i) Coast Guard strike teams established under subparagraph (C);

"(ii) Federal On-Scene Coordinators designated under subparagraph (K);

"(iii) District Response Groups established under subsection (j); and

"(IV) Area Committees established under subsection (j).

"(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

"(3) REVISIONS AND AMENDMENTS.—The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

"(4) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.".

(b) DEFINITIONS.—Section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)) is amended—

(1) in paragraph (8), by inserting "containment and" after "refers to"; and

(2) in paragraph (16) by striking the period at the end and inserting a semicolon;

(3) in paragraph (17)—

(A) by striking "Otherwise" and inserting "otherwise"; and

(B) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(18) 'Area Committee' means an Area Committee established under subsection (j);

"(19) 'Area Contingency Plan' means an Area Contingency Plan prepared under subsection (j);

"(20) 'Coast Guard District Response Group' means a Coast Guard District Response Group established under subsection (j);

"(21) 'Federal On-Scene Coordinator' means a Federal On-Scene Coordinator designated in the National Contingency Plan;

"(22) 'National Contingency Plan' means the National Contingency Plan prepared and published under subsection (d);

"(23) 'National Response Unit' means the National Response Unit established under subsection (j); and

"(24) 'worst case discharge' means—

"(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

"(B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.".

(c) REVISION OF NATIONAL CONTINGENCY PLAN.—Not later than one year after the date of the enactment of this Act, the President shall revise and republish the National Contingency Plan prepared under section 311(c)(2) of the Federal Water Pollution Control Act (as in effect immediately before the date of the enactment of this Act) to implement the amendments made by this section and section 4202.

SEC. 4202. NATIONAL PLANNING AND RESPONSE SYSTEM.

(a) IN GENERAL.—Subsection (j) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) is amended—

(1) by striking "(j)" and inserting the following:

"(j) NATIONAL RESPONSE SYSTEM.—";

(2) by moving paragraph (1) so as to begin immediately below the heading for subsection (j) (as added by paragraph (1) of this subsection);

(3) by moving paragraph (1) two ems to the right, so the left margin of that paragraph is aligned with the left margin of paragraph (2) of that subsection (as added by paragraph (6) of this subsection);

(4) in paragraph (1) by striking "(1)" and inserting the following:

"(1) IN GENERAL.—";

(5) by striking paragraph (2); and

(6) by adding at the end the following:

"(2) NATIONAL RESPONSE UNIT.—The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina. The Secretary, acting through the National Response Unit—

"(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), which shall be available to Federal and State agencies and the public;

"(B) shall provide technical assistance, equipment, and other resources requested by a Federal On-Scene Coordinator;

"(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a dis-

charge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

"(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);

"(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

"(F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

"(G) shall review each of those plans that affects its responsibilities under this subsection.

"(3) COAST GUARD DISTRICT RESPONSE GROUPS.—(A) The Secretary of the department in which the Coast Guard is operating shall establish in each Coast Guard district a Coast Guard District Response Group.

"(B) Each Coast Guard District Response Group shall consist of—

"(i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;

"(ii) additional prepositioned equipment; and

"(iii) a district response advisory staff.

"(C) Coast Guard district response groups—

"(i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;

"(ii) shall maintain all Coast Guard response equipment within its district;

"(iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and

"(iv) shall review each of those plans that affect its area of geographic responsibility.

"(4) AREA COMMITTEES AND AREA CONTINGENCY PLANS.—(A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies.

"(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—

"(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

"(ii) work with State and local officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

"(iii) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

"(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

"(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

"(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

"(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

"(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

"(v) describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

"(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

"(vii) include any other information the President requires; and

"(viii) be updated periodically by the Area Committee.

"(D) The President shall—

"(i) review and approve Area Contingency Plans under this paragraph; and

"(ii) periodically review Area Contingency Plans so approved.

"(5) TANK VESSEL AND FACILITY RESPONSE PLANS.—(A) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (B) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

"(B) The tank vessels and facilities referred to in subparagraph (A) are the following:

"(i) A tank vessel, as defined under section 2101 of title 46, United States Code.

"(ii) An offshore facility.

"(iii) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

"(C) A response plan required under this paragraph shall—

"(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

"(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

"(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

"(iv) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

"(v) be updated periodically; and

"(vi) be resubmitted for approval of each significant change.

"(D) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel or offshore facility, the President shall—

"(i) promptly review such response plan;

"(ii) require amendments to any plan that does not meet the requirements of this paragraph;

"(iii) approve any plan that meets the requirements of this paragraph; and

"(iv) review each plan periodically thereafter.

"(E) A tank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—

"(i) in the case of a tank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (D), the plan has been approved by the President; and

"(ii) the vessel or facility is operating in compliance with the plan.

"(F) Notwithstanding subparagraph (E), the President may authorize a tank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

"(G) The owner or operator of a tank vessel, offshore facility, or onshore facility may not claim as a defense to liability under title I of the Oil Pollution Act of 1990 that the owner or operator was acting in accordance with an approved response plan.

"(H) The Secretary shall maintain, in the Vessel Identification System established under chapter 125 of title 46, United States Code, the dates of approval and review of a response plan under this paragraph for each tank vessel that is a vessel of the United States.

"(6) EQUIPMENT REQUIREMENTS AND INSPECTION.—Not later than 2 years after the date of enactment of this section, the President shall require—

"(A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges; and

"(B) vessels operating on navigable waters and carrying oil or a hazardous substance in bulk as cargo to carry appropriate removal equipment that employs the best technology economically feasible and that is compatible with the safe operation of the vessel.

"(7) AREA DRILLS.—The President shall periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required under this subsection and under relevant tank vessel and facility response plans. The drills may include participation by Federal, State, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drills, including assessments of the effectiveness of the plans and a list of amendments made to improve plans.

"(8) UNITED STATES GOVERNMENT NOT LIABLE.—The United States Government is not liable for any damages arising from its actions or omissions relating to any response plan required by this section.".

(b) IMPLEMENTATION.—

(1) AREA COMMITTEES AND CONTINGENCY PLANS.—(A) Not later than 6 months after the date of the enactment of this Act, the President shall designate the areas for which Area Committees are established under section 311(j)(4) of the Federal Water Pollution Control Act, as amended by this Act. In designating such areas, the President shall ensure that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan under that section.

(B) Not later than 18 months after the date of the enactment of this Act, each Area Committee established under that section shall submit to the President the Area Contingency Plan required under that section.

(C) Not later than 24 months after the date of the enactment of this Act, the President shall—

(i) promptly review each plan;

(ii) require amendments to any plan that does not meet the requirements of section 311(j)(4) of the Federal Water Pollution Control Act; and

(iii) approve each plan that meets the requirements of that section.

(2) NATIONAL RESPONSE UNIT.—Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in accordance with section 311(j)(2) of the Federal Water Pollution Control Act, as amended by this Act.

(3) COAST GUARD DISTRICT RESPONSE GROUPS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish Coast Guard District Response Groups in accordance with section 311(j)(3) of the Federal Water Pollution Control Act, as amended by this Act.

(4) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

(B) During the period beginning 30 months after the date of the enactment of this paragraph and ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.

(c) STATE LAW NOT PREEMPTED.—Section 311(o)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1321(o)(2)) is amended by inserting before the period the following: ", or with respect to any removal activities related to such discharge".

SEC. 4203. COAST GUARD VESSEL DESIGN.

The Secretary shall ensure that vessels designed and constructed to replace Coast Guard buoy tenders are equipped with oil skimming systems that are readily available and operable, and that complement the primary mission of servicing aids to navigation.

SEC. 4204. DETERMINATION OF HARMFUL QUANTITIES OF OIL AND HAZARDOUS SUBSTANCES.

Section 311(b)(4) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(4)) is amended by inserting "or the environment" after "the public health or welfare".

SEC. 4205. COASTWISE OIL SPILL RESPONSE COOPERATIVES.

Section 12106 of title 46, United States Code, is amended by adding at the end the following:

"(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if—

"(A) the vessel is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative who dedicate the vessel to use by the cooperative;

"(B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title;

"(C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and

"(D) use of the vessel is restricted to—

"(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or

"(ii) for training exercises to prepare to respond to such a discharge.

"(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.".

Subtitle C—Penalties and Miscellaneous

SEC. 4301. FEDERAL WATER POLLUTION CONTROL ACT PENALTIES.

(a) NOTICE TO STATE AND FAILURE TO REPORT.—Section 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(5)) is amended—

(1) by inserting after the first sentence the following: "The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance.";

(2) by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting "fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both"; and

(3) in the last sentence by—

(A) striking "or information obtained by the exploitation of such notification"; and

(B) inserting "natural" before "person".

(b) PENALTIES FOR DISCHARGES AND VIOLATIONS OF REGULATIONS.—Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) is amended by striking paragraph (6) and inserting the following new paragraphs:

"(6) ADMINISTRATIVE PENALTIES.—

"(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

"(i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or

"(ii) who fails or refuses to comply with any regulation issued under subsection (j) to which that owner, operator, or person in charge is subject,

may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is operating or the Administrator.

"(B) CLASSES OF PENALTIES.—

"(i) CLASS I.—The amount of a class I civil penalty under subparagraph (A) may not exceed $10,000 per

violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed $25,000. Before assessing a civil penalty under this clause, the Administrator or Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(ii) CLASS II.—The amount of a class II civil penalty under subparagraph (A) may not exceed $10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed $125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Administrator and Secretary may issue rules for discovery procedures for hearings under this paragraph.

"(C) RIGHTS OF INTERESTED PERSONS.—

"(i) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this paragraph the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

"(ii) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a class II civil penalty under this paragraph shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and to present evidence.

"(iii) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under subparagraph (B) before issuance of an order assessing a class II civil penalty under this paragraph, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with subparagraph (B)(ii). If the Administrator or Secretary denies a hearing

under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

"(D) FINALITY OF ORDER.—An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (G) or a hearing is requested under subparagraph (C)(iii). If such a hearing is denied, such order shall become final 30 days after such denial.

"(E) EFFECT OF ORDER.—Action taken by the Administrator or Secretary, as the case may be, under this paragraph shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act; except that any violation—

"(i) with respect to which the Administrator or Secretary has commenced and is diligently prosecuting an action to assess a class II civil penalty under this paragraph, or

"(ii) for which the Administrator or Secretary has issued a final order assessing a class II civil penalty not subject to further judicial review and the violator has paid a penalty assessed under this paragraph,

shall not be the subject of a civil penalty action under section 309(d), 309(g), or 505 of this Act or under paragraph (7).

"(F) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this Act.

"(G) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subparagraph (C) may obtain review of such assessment—

"(i) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

"(ii) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional

civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

"(H) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

"(i) after the assessment has become final, or

"(ii) after a court in an action brought under subparagraph (G) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

"(I) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this paragraph. In case of contumacy or refusal to obey a subpoena issued pursuant to this subparagraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(7) CIVIL PENALTY ACTION.—

"(A) DISCHARGE, GENERALLY.—Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to $25,000 per day of violation or an amount up to $1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

"(B) FAILURE TO REMOVE OR COMPLY.—Any person described in subparagraph (A) who, without sufficient cause—

"(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c); or

"(ii) fails to comply with an order pursuant to subsection (e)(1)(B);

shall be subject to a civil penalty in an amount up to $25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

"(C) FAILURE TO COMPLY WITH REGULATION.—Any person who fails or refuses to comply with any regulation issued under subsection (j) shall be subject to a civil penalty in an amount up to $25,000 per day of violation.

"(D) GROSS NEGLIGENCE.—In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than $100,000, and not more than $3,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

"(E) JURISDICTION.—An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty.

"(F) LIMITATION.—A person is not liable for a civil penalty under this paragraph for a discharge if the person has been assessed a civil penalty under paragraph (6) for the discharge.

"(8) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under paragraphs (6) and (7), the Administrator, Secretary, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

"(9) MITIGATION OF DAMAGE.—In addition to establishing a penalty for the discharge of oil or a hazardous substance, the Administrator or the Secretary of the department in which the Coast Guard is operating may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

"(10) RECOVERY OF REMOVAL COSTS.—Any costs of removal incurred in connection with a discharge excluded by subsection

(a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act.

"(11) LIMITATION.—Civil penalties shall not be assessed under both this section and section 309 for the same discharge.".

(c) CRIMINAL PENALTIES.—Section 309(c) of the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) is amended by inserting after "308," each place it appears the following: "311(b)(3),".

SEC. 4302. OTHER PENALTIES.

(a) NEGLIGENT OPERATIONS.—Section 2302 of title 46, United States Code, is amended—

(1) in subsection (b) by striking "shall be fined not more than $5,000, imprisoned for not more than one year, or both.", and inserting "commits a class A misdemeanor."; and

(2) in subsection (c)—

(A) by striking ", shall be" in the matter preceding paragraph (1);

(B) by inserting "is" before "liable" in paragraph (1); and

(C) by amending paragraph (2) to read as follows:

"(2) commits a class A misdemeanor.".

(b) INSPECTIONS.—Section 3318 of title 46, United States Code, is amended—

(1) in subsection (b) by striking "shall be fined not more than $10,000, imprisoned for not more than 5 years, or both." and inserting "commits a class D felony.";

(2) in subsection (c) by striking "shall be fined not more than $5,000, imprisoned for not more than 5 years, or both." and inserting "commits a class D felony.";

(3) in subsection (d) by striking "shall be fined not more than $5,000, imprisoned for not more than 5 years, or both." and inserting "commits a class D felony.";

(4) in subsection (e) by striking "shall be fined not more than $10,000, imprisoned for not more than 2 years, or both." and inserting "commits a class A misdemeanor."; and

(5) in the matter preceding paragraph (1) of subsection (f) by striking "shall be fined not less than $1,000 but not more than $10,000, and imprisoned for not less than 2 years but not more than 5 years," and inserting "commits a class D felony.".

(c) CARRIAGE OF LIQUID BULK DANGEROUS CARGOES.—Section 3718 of title 46, United States Code, is amended—

(1) in subsection (b) by striking "shall be fined not more than $50,000, imprisoned for not more than 5 years, or both." and inserting "commits a class D felony."; and

(2) in subsection (c) by striking "shall be fined not more than $100,000, imprisoned for not more than 10 years, or both." and inserting "commits a class C felony.".

(d) LOAD LINES.—Section 5116 of title 46, United States Code, is amended—

(1) in subsection (d) by striking "shall be fined not more than $10,000, imprisoned for not more than one year, or both." and inserting "commits a class A misdemeanor."; and

(2) in subsection (e) by striking "shall be fined not more than $10,000, imprisoned for not more than 2 years, or both." and inserting "commits a class A misdemeanor.".

(e) COMPLEMENT OF INSPECTED VESSELS.—Section 8101 of title 46, United States Code, is amended—

(1) in subsection (e) by striking "$50" and inserting "$1,000";

(2) in subsection (f) by striking "$100, or, for a deficiency of a licensed individual, a penalty of $500." and inserting "$10,000."; and

(3) in subsection (g) by striking "$500." and inserting "$10,000.".

(f) WATCHES.—Section 8104 of title 46, United States Code, is amended—

(1) in subsection (i) by striking "$100." and inserting "$10,000."; and

(2) in subsection (j) by striking "$500." and inserting "$10,000.".

(g) COASTWISE PILOTAGE.—Section 8502 of title 46, United States Code, is amended—

(1) in subsection (e) by striking "$500." and inserting "$10,000."; and

(2) in subsection (f) by striking "$500." and inserting "$10,000.".

(h) FOREIGN COMMERCE PILOTAGE.—Section 8503(e) of title 46, United States Code, is amended by striking "shall be fined not more than $50,000, imprisoned for not more than five years, or both." and inserting "commits a class D felony.".

(i) CREW REQUIREMENTS.—Section 8702(e) of title 46, United States Code, is amended by striking "$500." and inserting "$10,000.".

(j) PORTS AND WATERWAYS SAFETY ACT.—Section 13(b) of the Port and Waterways Safety Act (33 U.S.C. 1232(b)) is amended—

(1) in paragraph (1) by striking "shall be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both." and inserting "commits a class D felony."; and

(2) in paragraph (2) by striking "shall, in lieu of the penalties prescribed in paragraph (1), be fined not more than $100,000, or imprisoned for not more than 10 years, or both." and inserting "commits a class C felony.".

(k) VESSEL NAVIGATION.—Section 4 of the Act of April 28, 1908 (33 U.S.C. 1236), is amended—

(1) in subsection (b) by striking "$500." and inserting "$5,000.";

(2) in subsection (c) by striking "$500," and inserting "$5,000,"; and

(3) in subsection (d) by striking "$250." and inserting "$2,500.".

(l) INTERVENTION ON THE HIGH SEAS ACT.—Section 12(a) of the Intervention of the High Seas Act (33 U.S.C. 1481(a)) is amended—

(1) in the matter preceding paragraph (1) by striking "Any person who" and inserting "A person commits a class A misdemeanor if that person"; and

(2) in paragraph (3) by striking ", shall be fined not more than $10,000 or imprisoned not more than one year, or both".

(m) DEEPWATER PORT ACT OF 1974.—Section 15(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1514(a)) is amended by striking "shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than 1 year, or both." and inserting "commits a class A misdemeanor for each day of violation.".

(n) ACT TO PREVENT POLLUTION FROM SHIPS.—Section 9(a) of the Act to Prevent Pollution from Ships (33 U.S.C. 1908(a)) is amended by striking "shall, for each violation, be fined not more than $50,000 or be imprisoned for not more than 5 years, or both." and inserting "commits a class D felony.".

SEC. 4303. FINANCIAL RESPONSIBILITY CIVIL PENALTIES.

(a) ADMINISTRATIVE.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 1016 or the regulations issued under that section, or with a denial or detention order issued under subsection (c)(2) of that section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(b) JUDICIAL.—In addition to, or in lieu of, assessing a penalty under subsection (a), the President may request the Attorney General to secure such relief as necessary to compel compliance with this section 1016, including a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant any relief as the public interest and the equities of the case may require.

SEC. 4304. DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND.

Penalties paid pursuant to section 311 of the Federal Water Pollution Control Act, section 309(c) of that Act, as a result of violations of section 311 of that Act, and the Deepwater Port Act of 1974, shall be deposited in the Oil Spill Liability Trust Fund created under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

SEC. 4305. INSPECTION AND ENTRY.

Section 311(m) of the Federal Water Pollution Control Act (33 U.S.C. 1321(m)) is amended to read as follows:

"(m) ADMINISTRATIVE PROVISIONS.—

"(1) FOR VESSELS.—Anyone authorized by the President to enforce the provisions of this section with respect to any vessel may, except as to public vessels—

"(A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone,

"(B) with or without a warrant, arrest any person who in the presence or view of the authorized person violates the

provisions of this section or any regulation issued thereunder, and

"(C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

"(2) FOR FACILITIES.—

"(A) RECORDKEEPING.—Whenever required to carry out the purposes of this section, the Administrator or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.

"(B) ENTRY AND INSPECTION.—Whenever required to carry out the purposes of this section, the Administrator or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator or Secretary, upon presentation of appropriate credentials, may—

"(i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and

"(ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

"(C) ARRESTS AND EXECUTION OF WARRANTS.—Anyone authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section with respect to any facility may—

"(i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and

"(ii) execute any warrant or process issued by an officer or court of competent jurisdiction.

"(D) PUBLIC ACCESS.—Any records, reports, or information obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to records, reports, and information obtained pursuant to section 308.".

SEC. 4306. CIVIL ENFORCEMENT UNDER FEDERAL WATER POLLUTION CONTROL ACT.

Section 311(e) of the Federal Water Pollution Control Act (33 U.S.C. 1321) is amended to read as follows:

"(e) CIVIL ENFORCEMENT.—

"(1) ORDERS PROTECTING PUBLIC HEALTH.—In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial

threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b), the President may—

"(A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or

"(B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

"(2) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States shall have jurisdiction to grant any relief under this subsection that the public interest and the equities of the case may require.".

TITLE V—PRINCE WILLIAM SOUND PROVISIONS

SEC. 5001. OIL SPILL RECOVERY INSTITUTE.

(a) ESTABLISHMENT OF INSTITUTE.—The Secretary of Commerce shall provide for the establishment of a Prince William Sound Oil Spill Recovery Institute (hereinafter in this section referred to as the "Institute") to be administered by the Secretary of Commerce through the Prince William Sound Science and Technology Institute and located in Cordova, Alaska.

(b) FUNCTIONS.—The Institute shall conduct research and carry out educational and demonstration projects designed to—

(1) identify and develop the best available techniques, equipment, and materials for dealing with oil spills in the arctic and subarctic marine environment; and

(2) complement Federal and State damage assessment efforts and determine, document, assess, and understand the long-range effects of the EXXON VALDEZ oil spill on the natural resources of Prince William Sound and its adjacent waters (as generally depicted on the map entitled "EXXON VALDEZ oil spill dated March 1990"), and the environment, the economy, and the lifestyle and well-being of the people who are dependent on them, except that the Institute shall not conduct studies or make recommendations on any matter which is not directly related to the EXXON VALDEZ oil spill or the effects thereof.

(c) ADVISORY BOARD.—

(1) IN GENERAL.—The policies of the Institute shall be determined by an advisory board, composed of 18 members appointed as follows:

(A) One representative appointed by each of the Commissioners of Fish and Game, Environmental Conservation, Natural Resources, and Commerce and Economic Develop-

ment of the State of Alaska, all of whom shall be State employees.

(B) One representative appointed by each of—

(i) the Secretaries of Commerce, the Interior, Agriculture, Transportation, and the Navy; and

(ii) the Administrator of the Environmental Protection Agency;

all of whom shall be Federal employees.

(C) 4 representatives appointed by the Secretary of Commerce from among residents of communities in Alaska that were affected by the EXXON VALDEZ oil spill who are knowledgeable about fisheries, other local industries, the marine environment, wildlife, public health, safety, or education. At least 2 of the representatives shall be appointed from among residents of communities located in Prince William Sound. The Secretary shall appoint residents to serve terms of 2 years each, from a list of 8 qualified individuals to be submitted by the Governor of the State of Alaska based on recommendations made by the governing body of each affected community. Each affected community may submit the names of 2 qualified individuals for the Governor's consideration. No more than 5 of the 8 qualified persons recommended by the Governor shall be members of the same political party.

(D) 3 Alaska Natives who represent Native entities affected by the EXXON VALDEZ oil spill, at least one of whom represents an entity located in Prince William Sound, to serve terms of 2 years each from a list of 6 qualified individuals submitted by the Alaska Federation of Natives.

(E) One nonvoting representative of the Institute of Marine Science.

(F) One nonvoting representative appointed by the Prince William Sound Science and Technology Institute.

(2) CHAIRMAN.—The representative of the Secretary of Commerce shall serve as Chairman of the Advisory Board.

(3) POLICIES.—Policies determined by the Advisory Board under this subsection shall include policies for the conduct and support, through contracts and grants awarded on a nationally competitive basis, of research, projects, and studies to be supported by the Institute in accordance with the purposes of this section.

(d) SCIENTIFIC AND TECHNICAL COMMITTEE.—

(1) IN GENERAL.—The Advisory Board shall establish a scientific and technical committee, composed of specialists in matters relating to oil spill containment and cleanup technology, arctic and subarctic marine ecology, and the living resources and socioeconomics of Prince William Sound and its adjacent waters, from the University of Alaska, the Institute of Marine Science, the Prince William Sound Science and Technology Institute, and elsewhere in the academic community.

(2) FUNCTIONS.—The Scientific and Technical Committee shall provide such advice to the Advisory Board as the Advisory Board shall request, including recommendations regarding

the conduct and support of research, projects, and studies in accordance with the purposes of this section. The Advisory Board shall not request, and the Committee shall not provide, any advice which is not directly related to the EXXON VALDEZ oil spill or the effects thereof.

(e) DIRECTOR.—The Institute shall be administered by a Director appointed by the Secretary of Commerce. The Prince William Sound Science and Technology Institute, the Advisory Board, and the Scientific and Technical Committee may each submit independent recommendations for the Secretary's consideration for appointment as Director. The Director may hire such staff and incur such expenses on behalf of the Institute as are authorized by the Advisory Board.

(f) EVALUATION.—The Secretary of Commerce may conduct an ongoing evaluation of the activities of the Institute to ensure that funds received by the Institute are used in a manner consistent with this section.

(g) AUDIT.—The Comptroller General of the United States, and any of his or her duly authorized representatives, shall have access, for purposes of audit and examination, to any books documents, papers, and records of the Institute and its administering agency that are pertinent to the funds received and expended by the Institute and its administering agency.

(h) STATUS OF EMPLOYEES.—Employees of the Institute shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(i) TERMINATION.—The Institute shall terminate 10 years after the date of the enactment of this Act.

(j) USE OF FUNDS.—All funds authorized for the Institute shall be provided through the National Oceanic and Atmospheric Administration. No funds made available to carry out this section may be used to initiate litigation. No funds made available to carry out this section may be used for the acquisition of real property (including buildings) or construction of any building. No more than 20 percent of funds made available to carry out this section may be used to lease necessary facilities and to administer the Institute. None of the funds authorized by this section shall be used for any purpose other than the functions specified in subsection (b).

(k) RESEARCH.—The Institute shall publish and make available to any person upon request the results of all research, educational, and demonstration projects conducted by the Institute. The Administrator shall provide a copy of all research, educational, and demonstration projects conducted by the Institute to the National Oceanic and Atmospheric Administration.

(l) DEFINITIONS.—In this section, the term "Prince William Sound and its adjacent waters" means such sound and waters as generally depicted on the map entitled "EXXON VALDEZ oil spill dated March 1990".

SEC. 5002. TERMINAL AND TANKER OVERSIGHT AND MONITORING.

(a) SHORT TITLE AND FINDINGS.—

(1) SHORT TITLE.—This section may be cited as the "Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990".

(2) FINDINGS.—The Congress finds that—

(A) the March 24, 1989, grounding and rupture of the fully loaded oil tanker, the EXXON VALDEZ, spilled 11 million gallons of crude oil in Prince William Sound, an environmentally sensitive area;

(B) many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the EXXON VALDEZ oil spill;

(C) one way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans;

(D) a mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals;

(E) such a mechanism presently exists at the Sullom Voe terminal in the Shetland Islands and this terminal should serve as a model for others;

(F) because of the effective partnership that has developed at Sullom Voe, Sullom Voe is considered the safest terminal in Europe;

(G) the present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation;

(H) only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus;

(I) a pilot program patterned after Sullom Voe should be established in Alaska to further refine the concepts and relationships involved; and

(J) similar programs should eventually be established in other major crude oil terminals in the United States because the recent oil spills in Texas, Delaware, and Rhode Island indicate that the safe transportation of crude oil is a national problem.

(b) DEMONSTRATION PROGRAMS.—

(1) ESTABLISHMENT.—There are established 2 Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs (hereinafter referred to as "Programs") to be carried out in the State of Alaska.

(2) ADVISORY FUNCTION.—The function of these Programs shall be advisory only.

(3) PURPOSE.—The Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located South of the latitude at Point Possession and North of the latitude at Amatuli Island, including offshore facilities in Cook Inlet.

(4) SUITS BARRED.—No program, association, council, committee or other organization created by this section may sue any

person or entity, public or private, concerning any matter arising under this section except for the performance of contracts.

(c) OIL TERMINAL FACILITIES AND OIL TANKER OPERATIONS ASSOCIATION.—

(1) ESTABLISHMENT.—There is established an Oil Terminal Facilities and Oil Tanker Operations Association (hereinafter in this section referred to as the "Association") for each of the Programs established under subsection (b).

(2) MEMBERSHIP.—Each Association shall be comprised of 4 individuals as follows:

(A) One individual shall be designated by the owners and operators of the terminal facilities and shall represent those owners and operators.

(B) One individual shall be designated by the owners and operators of the crude oil tankers calling at the terminal facilities and shall represent those owners and operators.

(C) One individual shall be an employee of the State of Alaska, shall be designated by the Governor of the State of Alaska, and shall represent the State government.

(D) One individual shall be an employee of the Federal Government, shall be designated by the President, and shall represent the Federal Government.

(3) RESPONSIBILITIES.—Each Association shall be responsible for reviewing policies relating to the operation and maintenance of the oil terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of their respective terminals. Each Association shall provide a forum among the owners and operators of the terminal facilities, the owners and operators of crude oil tankers calling at those facilities, the United States, and the State of Alaska to discuss and to make recommendations concerning all permits, plans, and site-specific regulations governing the activities and actions of the terminal facilities which affect or may affect the environment in the vicinity of the terminal facilities and of crude oil tankers calling at those facilities.

(4) DESIGNATION OF EXISTING ORGANIZATION.—The Secretary may designate an existing nonprofit organization as an Association under this subsection if the organization is organized to meet the purposes of this section and consists of at least the individuals listed in paragraph (2).

(d) REGIONAL CITIZENS' ADVISORY COUNCILS.—

(1) ESTABLISHMENT.—There is established a Regional Citizens' Advisory Council (hereinafter in this section referred to as the "Council") for each of the programs established by subsection (b).

(2) MEMBERSHIP.—Each Council shall be composed of voting members and non-voting members, as follows:

(A) VOTING MEMBERS.—Voting members shall be Alaska residents and, except as provided in clause (vii) of this paragraph, shall be appointed by the Governor of the State of Alaska from a list of nominees provided by each of the following interests, with one representative appointed to represent each of the following interests, taking into consideration the need for regional balance on the Council:

(i) Local commercial fishing industry organizations, the members of which depend on the fisheries resources of the waters in the vicinity of the terminal facilities.

(ii) Aquaculture associations in the vicinity of the terminal facilities.

(iii) Alaska Native Corporations and other Alaska Native organizations the members of which reside in the vicinity of the terminal facilities.

(iv) Environmental organizations the members of which reside in the vicinity of the terminal facilities.

(v) Recreational organizations the members of which reside in or use the vicinity of the terminal facilities.

(vi) The Alaska State Chamber of Commerce, to represent the locally based tourist industry.

(vii)(I) For the Prince William Sound Terminal Facilities Council, one representative selected by each of the following municipalities: Cordova, Whittier, Seward, Valdez, Kodiak, the Kodiak Island Borough, and the Kenai Peninsula Borough.

(II) For the Cook Inlet Terminal Facilities Council, one representative selected by each of the following municipalities: Homer, Seldovia, Anchorage, Kenai, Kodiak, the Kodiak Island Borough, and the Kenai Peninsula Borough.

(B) NONVOTING MEMBERS.—One ex-officio, nonvoting representative shall be designated by, and represent, each of the following:

(i) The Environmental Protection Agency.

(ii) The Coast Guard.

(iii) The National Oceanic and Atmospheric Administration.

(iv) The United States Forest Service.

(v) The Bureau of Land Management.

(vi) The Alaska Department of Environmental Conservation.

(vii) The Alaska Department of Fish and Game.

(viii) The Alaska Department of Natural Resources.

(ix) The Division of Emergency Services, Alaska Department of Military and Veterans Affairs.

(3) TERMS.—

(A) DURATION OF COUNCILS.—The term of the Councils shall continue throughout the life of the operation of the Trans-Alaska Pipeline System and so long as oil is transported to or from Cook Inlet.

(B) THREE YEARS.—The voting members of each Council shall be appointed for a term of 3 years except as provided for in subparagraph (C).

(C) INITIAL APPOINTMENTS.—The terms of the first appointments shall be as follows:

(i) For the appointments by the Governor of the State of Alaska, one-third shall serve for 3 years, one-third shall serve for 2 years, and one-third shall serve for one year.

(ii) For the representatives of municipalities required by subsection (d)(2)(A)(vii), a drawing of lots among the appointees shall determine that one-third of that group serves for 3 years, one-third serves for 2 years, and the remainder serves for 1 year.

(4) SELF-GOVERNING.—Each Council shall elect its own chairperson, select its own staff, and make policies with regard to its internal operating procedures. After the initial organizational meeting called by the Secretary under subsection (i), each Council shall be self-governing.

(5) DUAL MEMBERSHIP AND CONFLICTS OF INTEREST PROHIBITED.—(A) No individual selected as a member of the Council shall serve on the Association.

(B) No individual selected as a voting member of the Council shall be engaged in any activity which might conflict with such individual carrying out his functions as a member thereof.

(6) DUTIES.—Each Council shall—

(A) provide advice and recommendations to the Association on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of the terminal facilities;

(B) monitor through the committee established under subsection (e), the environmental impacts of the operation of the terminal facilities and crude oil tankers;

(C) monitor those aspects of terminal facilities' and crude oil tankers' operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities;

(D) review through the committee established under subsection (f), the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers, operating in Prince William Sound or in Cook Inlet;

(E) provide advice and recommendations to the Association on port operations, policies and practices;

(F) recommend to the Association—

(i) standards and stipulations for permits and site-specific regulations intended to minimize the impact of the terminal facilities' and crude oil tankers' operations in the vicinity of the terminal facilities;

(ii) modifications of terminal facility operations and maintenance intended to minimize the risk and mitigate the impact of terminal facilities, operations in the vicinity of the terminal facilities and to minimize the risk of oil spills;

(iii) modifications of crude oil tanker operations and maintenance in Prince William Sound and Cook Inlet intended to minimize the risk and mitigate the impact of oil spills; and

(iv) modifications to the oil spill prevention and contingency plans for terminal facilities and for crude oil tankers in Prince William Sound and Cook Inlet in-

tended to enhance the ability to prevent and respond to an oil spill; and

(G) create additional committees of the Council as necessary to carry out the above functions, including a scientific and technical advisory committee to the Prince William Sound Council.

(7) NO ESTOPPEL.—No Council shall be held liable under State or Federal law for costs or damages as a result of rendering advice under this section. Nor shall any advice given by a voting member of a Council, or program representative or agent, be grounds for estopping the interests represented by the voting Council members from seeking damages or other appropriate relief.

(8) SCIENTIFIC WORK.—In carrying out its research, development and monitoring functions, each Council is authorized to conduct its own scientific research and shall review the scientific work undertaken by or on behalf of the terminal operators or crude oil tanker operators as a result of a legal requirement to undertake that work. Each Council shall also review the relevant scientific work undertaken by or on behalf of any government entity relating to the terminal facilities or crude oil tankers. To the extent possible, to avoid unnecessary duplication, each Council shall coordinate its independent scientific work with the scientific work performed by or on behalf of the terminal operators and with the scientific work performed by or on behalf of the operators of the crude oil tankers.

(e) COMMITTEE FOR TERMINAL AND OIL TANKER OPERATIONS AND ENVIRONMENTAL MONITORING.—

(1) MONITORING COMMITTEE.—Each Council shall establish a standing Terminal and Oil Tanker Operations and Environmental Monitoring Committee (hereinafter in this section referred to as the "Monitoring Committee") to devise and manage a comprehensive program of monitoring the environmental impacts of the operations of terminal facilities and of crude oil tankers while operating in Prince William Sound and Cook Inlet. The membership of the Monitoring Committee shall be made up of members of the Council, citizens, and recognized scientific experts selected by the Council.

(2) DUTIES.—In fulfilling its responsibilities, the Monitoring Committee shall—

(A) advise the Council on a monitoring strategy that will permit early detection of environmental impacts of terminal facility operations and crude oil tanker operations while in Prince William Sound and Cook Inlet;

(B) develop monitoring programs and make recommendations to the Council on the implementation of those programs;

(C) at its discretion, select and contract with universities and other scientific institutions to carry out specific monitoring projects authorized by the Council pursuant to an approved monitoring strategy;

(D) complete any other tasks assigned by the Council; and

(E) provide written reports to the Council which interpret and assess the results of all monitoring programs.

(f) COMMITTEE FOR OIL SPILL PREVENTION, SAFETY, AND EMERGENCY RESPONSE.—

(1) TECHNICAL OIL SPILL COMMITTEE.—Each Council shall establish a standing technical committee (hereinafter referred to as "Oil Spill Committee") to review and assess measures designed to prevent oil spills and the planning and preparedness for responding to, containing, cleaning up, and mitigating impacts of oil spills. The membership of the Oil Spill Committee shall be made up of members of the Council, citizens, and recognized technical experts selected by the Council.

(2) DUTIES.—In fulfilling its responsibilities, the Oil Spill Committee shall—

(A) periodically review the respective oil spill prevention and contingency plans for the terminal facilities and for the crude oil tankers while in Prince William Sound or Cook Inlet, in light of new technological developments and changed circumstances;

(B) monitor periodic drills and testing of the oil spill contingency plans for the terminal facilities and for crude oil tankers while in Prince William Sound and Cook Inlet;

(C) study wind and water currents and other environmental factors in the vicinity of the terminal facilities which may affect the ability to prevent, respond to, contain, and clean up an oil spill;

(D) identify highly sensitive areas which may require specific protective measures in the event of a spill in Prince William Sound or Cook Inlet;

(E) monitor developments in oil spill prevention, containment, response, and cleanup technology;

(F) periodically review port organization, operations, incidents, and the adequacy and maintenance of vessel traffic service systems designed to assure safe transit of crude oil tankers pertinent to terminal operations;

(G) periodically review the standards for tankers bound for, loading at, exiting from, or otherwise using the terminal facilities;

(H) complete any other tasks assigned by the Council; and

(I) provide written reports to the Council outlining its findings and recommendations.

(g) AGENCY COOPERATION.—On and after the expiration of the 180-day period following the date of the enactment of this section, each Federal department, agency, or other instrumentality shall, with respect to all permits, site-specific regulations, and other matters governing the activities and actions of the terminal facilities which affect or may affect the vicinity of the terminal facilities, consult with the appropriate Council prior to taking substantive action with respect to the permit, site-specific regulation, or other matter. This consultation shall be carried out with a view to enabling the appropriate Association and Council to review the permit, site-specific regulation, or other matters and make appropriate recommendations regarding operations, policy or agency actions. Prior consultation shall not be required if an authorized Federal agency representative reasonably believes that an emergency exists requiring action without delay.

(h) RECOMMENDATIONS OF THE COUNCIL.—In the event that the Association does not adopt, or significantly modifies before adoption, any recommendation of the Council made pursuant to the authority granted to the Council in subsection (d), the Association shall provide to the Council, in writing, within 5 days of its decision, notice of its decision and a written statement of reasons for its rejection or significant modification of the recommendation.

(i) ADMINISTRATIVE ACTIONS.—Appointments, designations, and selections of individuals to serve as members of the Associations and Councils under this section shall be submitted to the Secretary prior to the expiration of the 120-day period following the date of the enactment of this section. On or before the expiration of the 180-day period following that date of enactment of this section, the Secretary shall call an initial meeting of each Association and Council for organizational purposes.

(j) LOCATION AND COMPENSATION.—

(1) LOCATION.—Each Association and Council established by this section shall be located in the State of Alaska.

(2) COMPENSATION.—No member of an Association or Council shall be compensated for the member's services as a member of the Association or Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Association or Council not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code. However, each Council may enter into contracts to provide compensation and expenses to members of the committees created under subsections (d), (e), and (f).

(k) FUNDING.—

(1) REQUIREMENT.—Approval of the contingency plans required of owners and operators of the Cook Inlet and Prince William Sound terminal facilities and crude oil tankers while operating in Alaskan waters in commerce with those terminal facilities shall be effective only so long as the respective Association and Council for a facility are funded pursuant to paragraph (2).

(2) PRINCE WILLIAM SOUND PROGRAM.—The owners or operators of terminal facilities or crude oil tankers operating in Prince William Sound shall provide, on an annual basis, an aggregate amount of not more $2,000,000, as determined by the Secretary. Such amount—

(A) shall provide for the establishment and operation of the environmental oversight and monitoring program in Prince William Sound;

(B) shall be adjusted annually by the Anchorage Consumer Price Index; and

(C) may be adjusted periodically upon the mutual consent of the owners or operators of terminal facilities or crude oil tankers operating in Prince William Sound and the Prince William Sound terminal facilities Council.

(3) COOK INLET PROGRAM.—The owners or operators of terminal facilities, offshore facilities, or crude oil tankers operating in Cook Inlet shall provide, on an annual basis, an aggregate amount of not more than $1,000,000, as determined by the Secretary. Such amount—

(A) shall provide for the establishment and operation of the environmental oversight and monitoring program in Cook Inlet;

(B) shall be adjusted annually by the Anchorage Consumer Price Index; and

(C) may be adjusted periodically upon the mutual consent of the owners or operators of terminal facilities, offshore facilities, or crude oil tankers operating in Cook Inlet and the Cook Inlet Council.

(l) REPORTS.—

(1) ASSOCIATIONS AND COUNCILS.—Prior to the expiration of the 36-month period following the date of the enactment of this section, each Association and Council established by this section shall report to the President and the Congress concerning its activities under this section, together with its recommendations.

(2) GAO.—Prior to the expiration of the 36-month period following the date of the enactment of this section, the General Accounting Office shall report to the President and the Congress as to the handling of funds, including donated funds, by the entities carrying out the programs under this section, and the effectiveness of the demonstration programs carried out under this section, together with its recommendations.

(m) DEFINITIONS.—As used in this section, the term—

(1) "terminal facilities" means—

(A) in the case of the Prince William Sound Program, the entire oil terminal complex located in Valdez, Alaska, consisting of approximately 1,000 acres including all buildings, docks (except docks owned by the City of Valdez if those docks are not used for loading of crude oil), pipes, piping, roads, ponds, tanks, crude oil tankers only while at the terminal dock, tanker escorts owned or operated by the operator of the terminal, vehicles, and other facilities associated with and necessary for assisting tanker movement of crude oil into and out of the oil terminal complex; and

(B) in the case of the Cook Inlet program, the entire oil terminal complex including all buildings, docks, pipes, piping, roads, ponds, tanks, vessels, vehicles, crude oil tankers only while at the terminal dock, tanker escorts owned or operated by the operator of the terminal, emergency spill response vessels owned or operated by the operator of the terminal, and other facilities associated with, and necessary for, assisting tanker movement of crude oil into and out of the oil terminal complex;

(2) "crude oil tanker" means a tanker (as that term is defined under section 2101 of title 46, United States Code)—

(A) in the case of the Prince William Sound Program, calling at the terminal facilities for the purpose of receiving and transporting oil to refineries, operating north of Middleston Island and bound for or exiting from Prince William Sound; and

(B) in the case of the Cook Inlet Program, calling at the terminal facilities for the purpose of receiving and transporting oil to refineries and operating in Cook Inlet and the

Gulf of Alaska north of Amatuli Island, including tankers transiting to Cook Inlet from Prince William Sound;

(3) "vicinity of the terminal facilities" means that geographical area surrounding the environment of terminal facilities which is directly affected or may be directly affected by the operation of the terminal facilities; and

(4) "Secretary" means the Secretary of Transportation.

(n) SAVINGS CLAUSE.—

(1) REGULATORY AUTHORITY.—Nothing in this section shall be construed as modifying, repealing, superseding, or preempting any municipal, State or Federal law or regulation, or in any way affecting litigation arising from oil spills or the rights and responsibilities of the United States or the State of Alaska, or municipalities thereof, to preserve and protect the environment through regulation of land, air, and water uses, of safety, and of related development. The monitoring provided for by this section shall be designed to help assure compliance with applicable laws and regulations and shall only extend to activities—

(A) that would affect or have the potential to affect the vicinity of the terminal facilities and the area of crude oil tanker operations included in the Programs; and

(B) are subject to the United States or State of Alaska, or municipality thereof, law, regulation, or other legal requirement.

(2) RECOMMENDATIONS.—This subsection is not intended to prevent the Association or Council from recommending to appropriate authorities that existing legal requirements should be modified or that new legal requirements should be adopted.

(o) ALTERNATIVE VOLUNTARY ADVISORY GROUP IN LIEU OF COUNCIL.—The requirements of subsections (c) through (l), as such subsections apply respectively to the Prince William Sound Program and the Cook Inlet Program, are deemed to have been satisfied so long as the following conditions are met:

(1) PRINCE WILLIAM SOUND.—With respect to the Prince William Sound Program, the Alyeska Pipeline Service Company or any of its owner companies enters into a contract for the duration of the operation of the Trans-Alaska Pipeline System with the Alyeska Citizens Advisory Committee in existence on the date of enactment of this section, or a successor organization, to fund that Committee or organization on an annual basis in the amount provided for by subsection (k)(2)(A) and the President annually certifies that the Committee or organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

(2) COOK INLET.—With respect to the Cook Inlet Program, the terminal facilities, offshore facilities, or crude oil tanker owners and operators enter into a contract with a voluntary advisory organization to fund that organization on an annual basis and the President annually certifies that the organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Cook Inlet.

SEC. 5003. BLIGH REEF LIGHT.

The Secretary of Transportation shall within one year after the date of the enactment of this title install and ensure operation of an automated navigation light on or adjacent to Bligh Reef in Prince William Sound, Alaska, of sufficient power and height to provide long-range warning of the location of Bligh Reef.

SEC. 5004. VESSEL TRAFFIC SERVICE SYSTEM.

The Secretary of Transportation shall within one year after the date of the enactment of this title—

(1) acquire, install, and operate such additional equipment (which may consist of radar, closed circuit television, satellite tracking systems, or other shipboard dependent surveillance), train and locate such personnel, and issue such final regulations as are necessary to increase the range of the existing VTS system in the Port of Valdez, Alaska, sufficiently to track the locations and movements of tank vessels carrying oil from the Trans-Alaska Pipeline when such vessels are transiting Prince William Sound, Alaska, and to sound an audible alarm when such tankers depart from designated navigation routes; and

(2) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the feasibility and desirability of instituting positive control of tank vessel movements in Prince William Sound by Coast Guard personnel using the Port of Valdez, Alaska, VTS system, as modified pursuant to paragraph (1).

SEC. 5005. EQUIPMENT AND PERSONNEL REQUIREMENTS UNDER TANK VESSEL AND FACILITY RESPONSE PLANS.

(a) IN GENERAL.—In addition to the requirements for response plans for vessels established by section 311(j) of the Federal Water Pollution Control Act, as amended by this Act, a response plan for a tank vessel operating on Prince William Sound, or a facility permitted under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), shall provide for—

(1) prepositioned oil spill containment and removal equipment in communities and other strategic locations within the geographic boundaries of Prince William Sound, including escort vessels with skimming capability; barges to receive recovered oil; heavy duty sea boom, pumping, transferring, and lightering equipment; and other appropriate removal equipment for the protection of the environment, including fish hatcheries;

(2) the establishment of an oil spill removal organization at appropriate locations in Prince William Sound, consisting of trained personnel in sufficient numbers to immediately remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater;

(3) training in oil removal techniques for local residents and individuals engaged in the cultivation or production of fish or fish products in Prince William Sound;

(4) practice exercises not less than 2 times per year which test the capacity of the equipment and personnel required under this paragraph; and

(5) periodic testing and certification of equipment required under this paragraph, as required by the Secretary.

(b) DEFINITIONS.—In this section—

(1) the term "Prince William Sound" means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchenbrook Entrance out to and encompassing Seal Rocks; and

(2) the term "worst case discharge" means—

(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of a facility, the largest foreseeable discharge in adverse weather conditions.

SEC. 5006. FUNDING.

(a) SECTION 5001.—Amounts in the Fund shall be available, subject to appropriations, and shall remain available until expended, to carry out section 5001 as follows:

(1) $5,000,000 shall be available for the first fiscal year beginning after the date of enactment of this Act.

(2) $2,000,000 shall be available for each of the 9 fiscal years following the fiscal year described in paragraph (1).

(b) SECTIONS 5003 AND 5004.—Amounts in the Fund shall be available, without further appropriations and without fiscal year limitation, to carry out sections 5003 and 5004, in an amount not to exceed $5,000,000.

SEC. 5007. LIMITATION.

Notwithstanding any other law, tank vessels that have spilled more than 1,000,000 gallons of oil into the marine environment after March 22, 1989, are prohibited from operating on the navigable waters of Prince William Sound, Alaska.

TITLE VI—MISCELLANEOUS

SEC. 6001. SAVINGS PROVISIONS.

(a) CROSS-REFERENCES.—A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this Act.

(b) CONTINUATION OF REGULATIONS.—An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision of this Act until repealed, amended, or superseded.

(c) RULE OF CONSTRUCTION.—An inference of legislative construction shall not be drawn by reason of the caption or catch line of a provision enacted by this Act.

(d) ACTIONS AND RIGHTS.—Nothing in this Act shall apply to any rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act, except as provided by this section, and shall be adjudicated pursuant to the law applicable on the date prior to the date of the enactment of this Act.

(e) ADMIRALTY AND MARITIME LAW.—Except as otherwise provided in this Act, this Act does not affect—

(1) admiralty and maritime law; or

(2) the jurisdiction of the district courts of the United States with respect to civil actions under admiralty and maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

SEC. 6002. ANNUAL APPROPRIATIONS.

(a) REQUIRED.—Except as provided in subsection (b), amounts in the Fund shall be available only as provided in annual appropriation Acts.

(b) EXCEPTIONS.—Subsection (a) shall not apply to sections 1006(f), 1012(a)(4), or 5006(b), and shall not apply to an amount not to exceed $50,000,000 in any fiscal year which the President may make available from the Fund to carry out section 311(c) of the Federal Water Pollution Control Act, as amended by this Act, and to initiate the assessment of natural resources damages required under section 1006. Sums to which this subsection applies shall remain available until expended.

SEC. 6003. OUTER BANKS PROTECTION.

(a) SHORT TITLE.—This section may be cited as the "Outer Banks Protection Act".

(b) FINDINGS.—The Congress finds that—

(1) the Outer Banks of North Carolina is an area of exceptional environmental fragility and beauty;

(2) the annual economic benefits of commercial and recreational fishing activities to North Carolina, which could be adversely affected by oil or gas development offshore the State's coast, exceeds $1,000,000,000;

(3) the major industry in coastal North Carolina is tourism, which is subject to potentially significant disruption by offshore oil or gas development;

(4) the physical oceanographic characteristics of the area offshore North Carolina between Cape Hatteras and the mouth of the Chesapeake Bay are not well understood, being affected by Gulf Stream western boundary perturbations and accompanying warm filaments, warm and cold core rings which separate from the Gulf Stream, wind stress, outflow from the Chesapeake Bay, Gulf Stream meanders, and intrusions of Virginia coastal waters around and over the Diamond shoals;

(5) diverse and abundant fisheries resources occur in the western boundary area of the Gulf Stream offshore North Carolina, but little is understood of the complex ecological relationships between the life histories of those species and their physical, chemical, and biological environment;

(6) the environmental impact statements prepared for Outer Continental Shelf lease sales numbered 56 (1981) and 78 (1983) contain insufficient and outdated environmental information from which to make decisions on approval of additional oil and gas leasing, exploration, and development activities;

(7) the draft environmental report, dated November 1, 1989, and the preliminary final environmental report dated June 1, 1990, prepared pursuant to a July 14, 1989 memorandum of understanding between the State of North Carolina, the Department of the Interior, and the Mobil Oil Company, have not allayed concerns about the adequacy of the environmental infor-

mation available to determine whether to proceed with additional offshore leasing, exploration, or development offshore North Carolina; and

(8) the National Research Council report entitled "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California", issued in 1989, concluded that—

(A) information with respect to those States, which have received greater scrutiny than has North Carolina, is inadequate; and

(B) there are serious generic defects in the Minerals Management Service's methods of environmental analysis,

reinforcing concerns about the adequacy of the scientific and technical information which are the basis for a decision to lease additional tracts or approve an exploration plan offshore North Carolina, especially with respect to oceanographic, ecological, and socioeconomic information.

(c) PROHIBITION OF OIL AND GAS LEASING, EXPLORATION, AND DEVELOPMENT.—

(1) PROHIBITION.—The Secretary of the Interior shall not—

(A) conduct a lease sale;

(B) issue any new leases;

(C) approve any exploration plan;

(D) approve any development and production plan;

(E) approve any application for permit to drill; or

(F) permit any drilling,

for oil or gas under the Outer Continental Shelf Lands Act on any lands of the Outer Continental Shelf offshore North Carolina.

(2) BOUNDARIES.—For purposes of paragraph (1), the term "offshore North Carolina" means the area within the lateral seaward boundaries between areas offshore North Carolina and areas offshore—

(A) Virginia as provided in the joint resolution entitled "Joint resolution granting the consent of Congress to an agreement between the States of North Carolina and Virginia establishing their lateral seaward boundary" approved October 27, 1972 (86 Stat. 1298); and

(B) South Carolina as provided in the Act entitled "An Act granting the consent of Congress to the agreement between the States of North Carolina and South Carolina establishing their lateral seaward boundary" approved October 9, 1981 (95 Stat. 988).

(3) DURATION OF PROHIBITION.—

(A) IN GENERAL.—The prohibition under paragraph (1) shall remain in effect until the later of—

(i) October 1, 1991; or

(ii) 45 days of continuous session of the Congress after submission of a written report to the Congress by the Secretary of the Interior, made after consideration of the findings and recommendations of the Environmental Sciences Review Panel under subsection (e)—

(I) certifying that the information available, including information acquired pursuant to subsec-

tion (d), is sufficient to enable the Secretary to carry out his responsibilities under the Outer Continental Shelf Lands Act with respect to authorizing the activities described in paragraph (1); and

(II) including a detailed explanation of any differences between such certification and the findings and recommendations of the Environmental Sciences Review Panel under subsection (e), and a detailed justification of each such difference.

(B) CONTINUOUS SESSION OF CONGRESS.—In computing any 45-day period of continuous session of Congress under subparagraph (A)(ii)—

(i) continuity of session is broken only by an adjournment of the Congress sine die; and

(ii) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain are excluded.

(d) ADDITIONAL ENVIRONMENTAL INFORMATION.—The Secretary of the Interior shall undertake ecological and socioeconomic studies, additional physical oceanographic studies, including actual field work and the correlation of existing data, and other additional environmental studies, to obtain sufficient information about all significant conditions, processes, and environments which influence, or may be influenced by, oil and gas leasing, exploration, and development activities offshore North Carolina to enable the Secretary to carry out his responsibilities under the Outer Continental Shelf Lands Act with respect to authorizing the activities described in subsection (c)(1). During the time that the Environmental Sciences Review Panel established under subsection (e) is in existence, the Secretary of the Interior shall consult with such Panel in carrying out this subsection.

(e) ENVIRONMENTAL SCIENCES REVIEW PANEL.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There shall be established an Environmental Sciences Review Panel, to consist of—

(A) 1 marine scientist selected by the Secretary of the Interior;

(B) 1 marine scientist selected by the Governor of North Carolina; and

(C) 1 person each from the disciplines of physical oceanography, ecology, and social science, to be selected jointly by the Secretary of the Interior and the Governor of North Carolina from a list of individuals nominated by the National Academy of Sciences.

(2) FUNCTIONS.—Not later than 6 months after the date of the enactment of this Act, the Environmental Sciences Review Panel shall—

(A) prepare and submit to the Secretary of the Interior findings and recommendations—

(i) assessing the adequacy of available physical oceanographic, ecological, and socioeconomic information in enabling the Secretary to carry out his responsibilities under the Outer Continental Shelf Lands Act with respect to authorizing the activities described in subsection (c)(1); and

(ii) if such available information is not adequate for such purposes, indicating what additional information is required to enable the Secretary to carry out such responsibilities; and

(B) consult with the Secretary of the Interior as provided in subsection (d).

(3) EXPENSES.—Each member of the Environmental Sciences Review Panel shall be reimbursed for actual travel expenses and shall receive per diem in lieu of subsistence for each day such member is engaged in the business of the Environmental Sciences Review Panel.

(4) TERMINATION.—The Environmental Sciences Review Panel shall be terminated after the submission of all findings and recommendations required under paragraph (2)(A).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Interior to carry out this section not to exceed $500,000 for fiscal year 1991, to remain available until expended.

SEC. 6004. COOPERATIVE DEVELOPMENT OF COMMON HYDROCARBON-BEARING AREAS.

(a) AMENDMENT TO OUTER CONTINENTAL SHELF LANDS ACT.—Section 5 of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1334), is amended by adding a new subsection (j) as follows:

"(j) COOPERATIVE DEVELOPMENT OF COMMON HYDROCARBON-BEARING AREAS.—

"(1) FINDINGS.—

"(A) The Congress of the United States finds that the unrestrained competitive production of hydrocarbons from a common hydrocarbon-bearing geological area underlying the Federal and State boundary may result in a number of harmful national effects, including—

"(I) the drilling of unnecessary wells, the installation of unnecessary facilities and other imprudent operating practices that result in economic waste, environmental damage, and damage to life and property;

"(II) the physical waste of hydrocarbons and an unnecessary reduction in the amounts of hydrocarbons that can be produced from certain hydrocarbon-bearing areas; and

"(III) the loss of correlative rights which can result in the reduced value of national hydrocarbon resources and disorders in the leasing of Federal and State resources.

"(2) PREVENTION OF HARMFUL EFFECTS.—The Secretary shall prevent, through the cooperative development of an area, the harmful effects of unrestrained competitive production of hydrocarbons from a common hydrocarbon-bearing area underlying the Federal and State boundary.".

(b) EXCEPTION FOR WEST DELTA FIELD.—Section 5(j) of the Outer Continental Shelf Lands Act, as added by this section, shall not be applicable with respect to Blocks 17 and 18 of the West Delta Field offshore Louisiana.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary to provide compensation, including interest, to the State of Louisiana and its lessees, for net drainage of oil and gas resources as determined in the Third Party Factfinder Louisiana Boundary Study dated March 21, 1989. For purposes of this section, such lessees shall include those persons with an ownership interest in State of Louisiana leases SL10087, SL10088 or SL10187, or ownership interests in the production or proceeds therefrom, as established by assignment, contract or otherwise. Interest shall be computed for the period March 21, 1989 until the date of payment.

TITLE VII—OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

SEC. 7001. OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM.

(a) INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—

(1) ESTABLISHMENT.—There is established an Interagency Coordinating Committee on Oil Pollution Research (hereinafter in this section referred to as the "Interagency Committee").

(2) PURPOSES.—The Interagency Committee shall coordinate a comprehensive program of oil pollution research, technology development, and demonstration among the Federal agencies, in cooperation and coordination with industry, universities, research institutions, State governments, and other nations, as appropriate, and shall foster cost-effective research mechanisms, including the joint funding of research.

(3) MEMBERSHIP.—The Interagency Committee shall include representatives from the Department of Commerce (including the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology), the Department of Energy, the Department of the Interior (including the Minerals Management Service and the United States Fish and Wildlife Service), the Department of Transportation (including the United States Coast Guard, the Maritime Administration, and the Research and Special Projects Administration), the Department of Defense (including the Army Corps of Engineers and the Navy), the Environmental Protection Agency, the National Aeronautics and Space Administration, and the United States Fire Administration in the Federal Emergency Management Agency, as well as such other Federal agencies as the President may designate.

A representative of the Department of Transportation shall serve as Chairman.

(b) OIL POLLUTION RESEARCH AND TECHNOLOGY PLAN.—

(1) IMPLEMENTATION PLAN.—Within 180 days after the date of enactment of this Act, the Interagency Committee shall submit to Congress a plan for the implementation of the oil pollution research, development, and demonstration program established pursuant to subsection (c). The research plan shall—

(A) identify agency roles and responsibilities;

(B) assess the current status of knowledge on oil pollution prevention, response, and mitigation technologies and effects of oil pollution on the environment;

(C) identify significant oil pollution research gaps including an assessment of major technological deficiencies in responses to past oil discharges;

(D) establish research priorities and goals for oil pollution technology development related to prevention, response, mitigation, and environmental effects;

(E) estimate the resources needed to conduct the oil pollution research and development program established pursuant to subsection (c), and timetables for completing research tasks; and

(F) identify, in consultation with the States, regional oil pollution research needs and priorities for a coordinated, multidisciplinary program of research at the regional level.

(2) ADVICE AND GUIDANCE.—The Chairman, through the Department of Transportation, shall contract with National Academy of Sciences to—

(A) provide advice and guidance in the preparation and development of the research plan; and

(B) assess the adequacy of the plan as submitted, and submit a report to Congress on the conclusions of such assessment.

The National Institute of Standards and Technology shall provide the Interagency Committee with advice and guidance on issues relating to quality assurance and standards measurements relating to its activities under this section.

(c) OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM.—

(1) ESTABLISHMENT.—The Interagency Committee shall coordinate the establishment, by the agencies represented on the Interagency Committee, of a program for conducting oil pollution research and development, as provided in this subsection.

(2) INNOVATIVE OIL POLLUTION TECHNOLOGY.—The program established under this subsection shall provide for research, development, and demonstration of new or improved technologies which are effective in preventing or mitigating oil discharges and which protect the environment, including—

(A) development of improved designs for vessels and facilities, and improved operational practices;

(B) research, development, and demonstration of improved technologies to measure the ullage of a vessel tank, prevent discharges from tank vents, prevent discharges during lightering and bunkering operations, contain discharges on the deck of a vessel, prevent discharges through the use of vacuums in tanks, and otherwise contain discharges of oil from vessels and facilities;

(C) research, development, and demonstration of new or improved systems of mechanical, chemical, biological, and other methods (including the use of dispersants, solvents, and bioremediation) for the recovery, removal, and disposal of oil, including evaluation of the environmental effects of the use of such systems;

(D) research and training, in consultation with the National Response Team, to improve industry's and Government's ability to quickly and effectively remove an oil discharge, including the long-term use, as appropriate, of the National Spill Control School in Corpus Christi, Texas;

(E) research to improve information systems for decision-making, including the use of data from coastal mapping, baseline data, and other data related to the environmental effects of oil discharges, and cleanup technologies;

(F) development of technologies and methods to protect public health and safety from oil discharges, including the population directly exposed to an oil discharge;

(G) development of technologies, methods, and standards for protecting removal personnel, including training, adequate supervision, protective equipment, maximum exposure limits, and decontamination procedures;

(H) research and development of methods to restore and rehabilitate natural resources damaged by oil discharges;

(I) research to evaluate the relative effectiveness and environmental impacts of bioremediation technologies; and

(J) the demonstration of a satellite-based, dependent surveillance vessel traffic system in Narragansett Bay to evaluate the utility of such system in reducing the risk of oil discharges from vessel collisions and groundings in confined waters.

(3) OIL POLLUTION TECHNOLOGY EVALUATION.—The program established under this subsection shall provide for oil pollution prevention and mitigation technology evaluation including—

(A) the evaluation and testing of technologies developed independently of the research and development program established under this subsection;

(B) the establishment, where appropriate, of standards and testing protocols traceable to national standards to measure the performance of oil pollution prevention or mitigation technologies; and

(C) the use, where appropriate, of controlled field testing to evaluate real-world application of oil discharge prevention or mitigation technologies.

(4) OIL POLLUTION EFFECTS RESEARCH.—(A) The Committee shall establish a research program to monitor and evaluate the environmental effects of oil discharges. Such program shall include the following elements:

(i) The development of improved models and capabilities for predicting the environmental fate, transport, and effects of oil discharges.

(ii) The development of methods, including economic methods, to assess damages to natural resources resulting from oil discharges.

(iii) The identification of types of ecologically sensitive areas at particular risk to oil discharges and the preparation of scientific monitoring and evaluation plans, one for each of several types of ecological conditions, to be implemented in the event of major oil discharges in such areas.

(iv) The collection of environmental baseline data in ecologically sensitive areas at particular risk to oil discharges where such data are insufficient.

(B) The Department of Commerce in consultation with the Environmental Protection Agency shall monitor and scientifically evaluate the long-term environmental effects of oil discharges if—

(i) the amount of oil discharged exceeds 250,000 gallons;

(ii) the oil discharge has occurred on or after January 1, 1989; and

(iii) the Interagency Committee determines that a study of the long-term environmental effects of the discharge would be of significant scientific value, especially for preventing or responding to future oil discharges.

Areas for study may include the following sites where oil discharges have occurred: the New York/New Jersey Harbor area, where oil was discharged by an Exxon underwater pipeline, the T/B CIBRO SAVANNAH, and the M/V BT NAUTILUS; Narragansett Bay where oil was discharged by the WORLD PRODIGY; the Houston Ship Channel where oil was discharged by the RACHEL B; the Delaware River, where oil was discharged by the PRESIDENTE RIVERA, and Huntington Beach, California, where oil was discharged by the AMERICAN TRADER.

(C) Research conducted under this paragraph by, or through, the United States Fish and Wildlife Service shall be directed and coordinated by the National Wetland Research Center.

(5) MARINE SIMULATION RESEARCH.—The program established under this subsection shall include research on the greater use and application of geographic and vessel response simulation models, including the development of additional data bases and updating of existing data bases using, among others, the resources of the National Maritime Research Center. It shall include research and vessel simulations for—

(A) contingency plan evaluation and amendment;

(B) removal and strike team training;

(C) tank vessel personnel training; and

(D) those geographic areas where there is a significant likelihood of a major oil discharge.

(6) DEMONSTRATION PROJECTS.—The United States Coast Guard, in conjunction with other such agencies in the Department of Transportation as the Secretary of Transportation may designate, shall conduct 3 port oil pollution minimization demonstration projects, one each with (A) the Port Authority of New York and New Jersey, (B) the Ports of Los Angeles and Long Beach, California, and (C) the Port of New Orleans, Louisiana, for the purpose of developing and demonstrating integrated port oil pollution prevention and cleanup systems which utilize the information and implement the improved practices and technologies developed from the research, development, and demonstration program established in this section. Such systems shall utilize improved technologies and management practices for reducing the risk of oil discharges, including, as appropriate, improved data access, computerized tracking of oil shipments, improved vessel tracking and navigation systems, advanced tech-

nology to monitor pipeline and tank conditions, improved oil spill response capability, improved capability to predict the flow and effects of oil discharges in both the inner and outer harbor areas for the purposes of making infrastructure decisions, and such other activities necessary to achieve the purposes of this section.

(7) SIMULATED ENVIRONMENTAL TESTING.—Agencies represented on the Interagency Committee shall ensure the long-term use and operation of the Oil and Hazardous Materials Simulated Environmental Test Tank (OHMSETT) Research Center in New Jersey for oil pollution technology testing and evaluations.

(8) REGIONAL RESEARCH PROGRAM.—(A) Consistent with the research plan in subsection (b), the Interagency Committee shall coordinate a program of competitive grants to universities or other research institutions, or groups of universities or research institutions, for the purposes of conducting a coordinated research program related to the regional aspects of oil pollution, such as prevention, removal, mitigation, and the effects of discharged oil on regional environments. For the purposes of this paragraph, a region means a Coast Guard district as set out in part 3 of title 33, Code of Federal Regulations (1989).

(B) The Interagency Committee shall coordinate the publication by the agencies represented on the Interagency Committee of a solicitation for grants under this subsection. The application shall be in such form and contain such information as may be required in the published solicitation. The applications shall be reviewed by the Interagency Committee, which shall make recommendations to the appropriate granting agency represented on the Interagency Committee for awarding the grant. The granting agency shall award the grants recommended by the Interagency Committee unless the agency decides not to award the grant due to budgetary or other compelling considerations and publishes its reasons for such a determination in the Federal Register. No grants may be made by any agency from any funds authorized for this paragraph unless such grant award has first been recommended by the Interagency Committee.

(C) Any university or other research institution, or group of universities or research institutions, may apply for a grant for the regional research program established by this paragraph. The applicant must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program. With respect to a group application, the entity or entities which will carry out the substantial portion of the proposed research must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program.

(D) The Interagency Committee shall make recommendations on grants in such a manner as to ensure an appropriate balance within a region among the various aspects of oil pollution research, including prevention, removal, mitigation, and the effects of discharged oil on regional environments. In addition,

the Interagency Committee shall make recommendations for grants based on the following criteria:

(i) There is available to the applicant for carrying out this paragraph demonstrated research resources.

(ii) The applicant demonstrates the capability of making a significant contribution to regional research needs.

(iii) The projects which the applicant proposes to carry out under the grant are consistent with the research plan under subsection (b)(1)(F) and would further the objectives of the research and development program established in this section.

(E) Grants provided under this paragraph shall be for a period up to 3 years, subject to annual review by the granting agency, and provide not more than 80 percent of the costs of the research activities carried out in connection with the grant.

(F) No funds made available to carry out this subsection may be used for the acquisition of real property (including buildings) or construction of any building.

(G) Nothing in this paragraph is intended to alter or abridge the authority under existing law of any Federal agency to make grants, or enter into contracts or cooperative agreements, using funds other than those authorized in this Act for the purposes of carrying out this paragraph.

(9) FUNDING.—For each of the fiscal years 1991, 1992, 1993, 1994, and 1995, $6,000,000 of amounts in the Fund shall be available to carry out the regional research program in paragraph (8), such amounts to be available in equal amounts for the regional research program in each region; except that if the agencies represented on the Interagency Committee determine that regional research needs exist which cannot be addressed within such funding limits, such agencies may use their authority under paragraph (10) to make additional grants to meet such needs. For the purposes of this paragraph, the research program carried out by the Prince William Sound Oil Spill Recovery Institute established under section 5001, shall not be eligible to receive grants under this paragraph.

(10) GRANTS.—In carrying out the research and development program established under this subsection, the agencies represented on the Interagency Committee may enter into contracts and cooperative agreements and make grants to universities, research institutions, and other persons. Such contracts, cooperative agreements, and grants shall address research and technology priorities set forth in the oil pollution research plan under subsection (b).

(11) In carrying out research under this section, the Department of Transportation shall continue to utilize the resources of the Research and Special Programs Administration of the Department of Transportation, to the maximum extent practicable.

(d) INTERNATIONAL COOPERATION.—In accordance with the research plan submitted under subsection (b), the Interagency Committee shall coordinate and cooperate with other nations and foreign research entities in conducting oil pollution research, development, and demonstration activities, including controlled field tests of oil discharges.

(e) BIENNIAL REPORTS.—The Chairman of the Interagency Committee shall submit to Congress every 2 years on October 30 a report on the activities carried out under this section in the preceding 2 fiscal years, and on activities proposed to be carried out under this section in the current 2 fiscal year period.

(f) FUNDING.—Not to exceed $21,250,000 of amounts in the Fund shall be available annually to carry out this section except for subsection (c)(8). Of such sums—

(1) funds authorized to be appropriated to carry out the activities under subsection (c)(4) shall not exceed $5,000,000 for fiscal year 1991 or $3,500,000 for any subsequent fiscal year; and

(2) not less than $2,250,000 shall be available for carrying out the activities in subsection (c)(6) for fiscal years 1992, 1993, 1994, and 1995.

All activities authorized in this section, including subsection (c)(8), are subject to appropriations.

TITLE VIII—TRANS-ALASKA PIPELINE SYSTEM

SEC. 8001. SHORT TITLE.

This title may be cited as the "Trans-Alaska Pipeline System Reform Act of 1990".

Subtitle A—Improvements to Trans-Alaska Pipeline System

SEC. 8101. LIABILITY WITHIN THE STATE OF ALASKA AND CLEANUP EFFORTS.

(a) CAUSE OF ACCIDENT.—Section 204(a)(1) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(a)(1)) is amended by striking out "caused by" in the first sentence and inserting in lieu thereof "caused solely by".

(b) LIMITATION OF LIABILITY.—Section 204(a)(2) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(a)(2)) is amended by striking "$50,000,000" each place it occurs and inserting in lieu thereof "$350,000,000".

(c) CLEANUP EFFORTS.—Section 204(b) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b)) is amended in the first sentence—

(1) by inserting after "any area" the following: "in the State of Alaska";

(2) by inserting after "any activities" the following: "related to the Trans-Alaska Pipeline System, including operation of the terminal,"; and

(3) by inserting after "other Federal" the first place it appears the following: "or State".

SEC. 8102. TRANS-ALASKA PIPELINE LIABILITY FUND.

(a) TERMINATION OF CERTAIN PROVISIONS.—

(1) REPEAL.—Section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed, effective as provided in paragraph (5).

(2) DISPOSITION OF FUND BALANCE.—

(A) RESERVATION OF AMOUNTS.—The trustees of the Trans-Alaska Pipeline Liability Fund (hereafter in this subsection referred to as the "TAPS Fund") shall reserve the following amounts in the TAPS Fund—

(i) necessary to pay claims arising under section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)); and

(ii) administrative expenses reasonably necessary for and incidental to the implementation of section 204(c) of that Act.

(B) DISPOSITION OF THE BALANCE.—After the Comptroller General of the United States certifies that the requirements of subparagraph (A) have been met, the trustees of the TAPS Fund shall dispose of the balance in the TAPS Fund after the reservation of amounts are made under subparagraph (A) by—

(i) rebating the pro rata share of the balance to the State of Alaska for its contributions as an owner of oil; and then

(ii) transferring and depositing the remainder of the balance into the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

(C) DISPOSITION OF THE RESERVED AMOUNTS.—After payment of all claims arising from an incident for which funds are reserved under subparagraph (A) and certification by the Comptroller General of the United States that the claims arising from that incident have been paid, the excess amounts, if any, for that incident shall be disposed of as set forth under subparagraphs (A) and (B).

(D) AUTHORIZATION.—The amounts transferred and deposited in the Fund shall be available for the purposes of section 1012 of the Oil Pollution Act of 1990 after funding sections 5001 and 8103 to the extent that funds have not otherwise been provided for the purposes of such sections.

(3) SAVINGS CLAUSE.—The repeal made by paragraph (1) shall have no effect on any right to recover or responsibility that arises from incidents subject to section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) occurring prior to the date of enactment of this Act.

(4) TAPS COLLECTION.—Paragraph (5) of section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is amended by striking the period at the end of the second sentence and adding at the end the following: ", except that after the date of enactment of the Oil Pollution Act of 1990, the amount to be accumulated shall be $100,000,000 or the amount determined by the trustees and certified to the Congress by the Comptroller General as necessary to pay claims arising from incidents occurring prior to the date of enactment of that Act and administrative costs, whichever is less.".

(5) EFFECTIVE DATE.—(A) The repeal by paragraph (1) shall be effective 60 days after the date on which the Comptroller General of the United States certifies to the Congress that—

(i) all claims arising under section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) have been resolved,

(ii) all actions for the recovery of amounts subject to section 204(c) of the Trans-Alaska Pipeline Authorization Act have been resolved, and

(iii) all administrative expenses reasonably necessary for and incidental to the implementation of section 204(c) of the Trans-Alaska Pipeline Authorization Act have been paid.

(B) Upon the effective date of the repeal pursuant to subparagraph (A), the trustees of the TAPS Fund shall be relieved of all responsibilities under section 204(c) of the Trans-Alaska Pipeline Authorization Act, but not any existing legal liability.

(6) TUCKER ACT.—This subsection is intended expressly to preserve any and all rights and remedies of contributors to the TAPS Fund under section 1491 of title 28, United States Code (commonly referred to as the "Tucker Act").

(b) CAUSE OF ACCIDENT.—Section 204(c)(2) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(2)) is amended by striking out "caused by" in the first sentence and inserting in lieu thereof "caused solely by".

(c) DAMAGES.—Section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)), as amended by this title, is further amended by adding at the end the following new paragraphs:

"(13) For any claims against the Fund, the term 'damages' shall include, but not be limited to—

"(A) the net loss of taxes, revenues, fees, royalties, rents, or other revenues incurred by a State or a political subdivision of a State due to injury, destruction, or loss of real property, personal property, or natural resources, or diminished economic activity due to a discharge of oil; and

"(B) the net cost of providing increased or additional public services during or after removal activities due to a discharge of oil, including protection from fire, safety, or health hazards, incurred by a State or political subdivision of a State.

"(14) Paragraphs (1) through (13) shall apply only to claims arising from incidents occurring before the date of enactment of the Trans-Alaska Pipeline System Reform Act of 1990. The Oil Pollution Act of 1990 shall apply to any incident, or any claims arising from an incident, occurring on or after the date of the enactment of that Act.".

(d) PAYMENT OF CLAIMS BY FUND.—Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(3)) is amended by adding at the end the following: "The Fund shall expeditiously pay claims under this subsection, including such $14,000,000, if the owner or operator of a vessel has not paid any such claim within 90 days after such claim has been submitted to such owner or operator. Upon payment of any such claim, the Fund shall be subrogated under applicable State and Federal laws to all rights of any person entitled to recover under this subsection. In any action brought by

the Fund against an owner or operator or an affiliate thereof to recover amounts under this paragraph, the Fund shall be entitled to recover prejudgment interest, costs, reasonable attorney's fees, and, in the discretion of the court, penalties.".

(e) OFFICERS OR TRUSTEES.—Section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(4)) is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end the following:

"(B) No present or former officer or trustee of the Fund shall be subject to any liability incurred by the Fund or by the present or former officers or trustees of the Fund, other than liability for gross negligence or willful misconduct.

"(C)(i) Subject to clause (ii), each officer and each trustee of the Fund—

"(I) shall be indemnified against all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as an officer or trustee, or by reason of any action taken, omitted, or neglected by him or her as an officer or trustee; and

"(II) shall be reimbursed for all attorney's fees reasonably incurred in connection with any claim or liability.

"(ii) No officer or trustee shall be indemnified against, or be reimbursed for, any expenses incurred in connection with, any claim or liability arising out of his or her gross negligence or willful misconduct.".

SEC. 8103. PRESIDENTIAL TASK FORCE.

(a) ESTABLISHMENT OF TASK FORCE.—

(1) ESTABLISHMENT AND MEMBERS.—(A) There is hereby established a Presidential Task Force on the Trans-Alaska Pipeline System (hereinafter referred to as the "Task Force") composed of the following members appointed by the President:

(i) Three members, one of whom shall be nominated by the Secretary of the Interior, one by the Administrator of the Environmental Protection Agency, and one by the Secretary of Transportation.

(ii) Three members nominated by the Governor of the State of Alaska, one of whom shall be an employee of the Alaska Department of Natural Resources and one of whom shall be an employee of the Alaska Department of Environmental Conservation.

(iii) One member nominated by the Office of Technology Assessment.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his or her term until a successor, if applicable, has taken office.

(2) COCHAIRMEN.—The President shall appoint a Federal cochairman from among the Federal members of the Task Force appointed pursuant to paragraph (1)(A) and the Governor shall designate a State cochairman from among the State members of the Task Force appointed pursuant to paragraph (1)(B).

(3) COMPENSATION.—Members shall, to the extent approved in appropriations Acts, receive the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Task Force, except that members who are State, Federal, or other governmental employees shall receive no compensation under this paragraph in addition to the salaries they receive as such employees.

(4) STAFF.—The cochairman of the Task Force shall appoint a Director to carry out administrative duties. The Director may hire such staff and incur such expenses on behalf of the Task Force for which funds are available.

(5) RULE.—Employees of the Task Force shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(b) DUTIES OF THE TASK FORCE.—

(1) AUDIT.—The Task Force shall conduct an audit of the Trans-Alaska Pipeline System (hereinafter referred to as "TAPS") including the terminal at Valdez, Alaska, and other related onshore facilities, make recommendations to the President, the Congress, and the Governor of Alaska.

(2) COMPREHENSIVE REVIEW.—As part of such audit, the Task Force shall conduct a comprehensive review of the TAPS in order to specifically advise the President, the Congress, and the Governor of Alaska concerning whether—

(A) the holder of the Federal and State right-of-way is, and has been, in full compliance with applicable laws, regulations, and agreements;

(B) the laws, regulations, and agreements are sufficient to prevent the release of oil from TAPS and prevent other damage or degradation to the environment and public health;

(C) improvements are necessary to TAPS to prevent release of oil from TAPS and to prevent other damage or degradation to the environment and public health;

(D) improvements are necessary in the onshore oil spill response capabilities for the TAPS; and

(E) improvements are necessary in security for TAPS.

(3) CONSULTANTS.—(A) The Task Force shall retain at least one independent consulting firm with technical expertise in engineering, transportation, safety, the environment, and other applicable areas to assist the Task Force in carrying out this subsection.

(B) Contracts with any such firm shall be entered into on a nationally competitive basis, and the Task Force shall not select any firm with respect to which there may be a conflict of interest in assisting the Task Force in carrying out the audit and review. All work performed by such firm shall be under the direct and immediate supervision of a registered engineer.

(4) PUBLIC COMMENT.—The Task Force shall provide an opportunity for public comment on its activities including at a minimum the following:

(A) Before it begins its audit and review, the Task Force shall review reports prepared by other Government entities conducting reviews of TAPS and shall consult with those Government entities that are conducting ongoing investigations including the General Accounting Office. It shall also hold at least 2 public hearings, at least 1 of which shall be held in a community affected by the Exxon Valdez oil spill. Members of the public shall be given an opportunity to present both oral and written testimony.

(B) The Task Force shall provide a mechanism for the confidential receipt of information concerning TAPS, which may include a designated telephone hotline.

(5) TASK FORCE REPORT.—The Task Force shall publish a draft report which it shall make available to the public. The public will have at least 30 days to provide comments on the draft report. Based on its draft report and the public comments thereon, the Task Force shall prepare a final report which shall include its findings, conclusions, and recommendations made as a result of carrying out such audit. The Task Force shall transmit (and make available to the public), no later than 2 years after the date on which funding is made available under paragraph (7), its final report to the President, the Congress, and the Governor of Alaska.

(6) PRESIDENTIAL REPORT.—The President shall, within 90 days after receiving the Task Force's report, transmit a report to the Congress and the Governor of Alaska outlining what measures have been taken or will be taken to implement the Task Force's recommendations. The President's report shall include recommended changes, if any, in Federal and State law to enhance the safety and operation of TAPS.

(7) EARMARK.—Of amounts in the Fund, $5,000,000 shall be available, subject to appropriations, annually without fiscal year limitation to carry out the requirements of this section.

(c) GENERAL ADMINISTRATION AND POWERS OF THE TASK FORCE.—

(1) AUDIT ACCESS.—The Comptroller General of the United States, and any of his or her duly appointed representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of the Task Force that are pertinent to the funds received and expended by the Task Force.

(2) TERMINATION.—The Task Force shall cease to exist on the date on which the final report is provided pursuant to subsection (b)(5).

(3) FUNCTIONS LIMITATION.—With respect to safety, operations, and other matters related to the pipeline facilities (as such term is defined in section 202(4) of the Hazardous Liquid Pipeline Safety Act of 1979) of the TAPS, the Task Force shall not perform any functions which are the responsibility of the Secretary of Transportation under the Hazardous Liquid Pipeline Safety Act of 1979, as amended. The Secretary may use the information gathered by and reports issued by the Task Force in carrying out the Secretary's responsibilities under that Act.

(4) POWERS.—The Task Force may, to the extent necessary to carry out its responsibilities, conduct investigations, make re-

ports, issue subpoenas, require the production of relevant documents and records, take depositions, and conduct directly or, by contract, or otherwise, research, testing, and demonstration activities.

(5) EXAMINATION OF RECORDS AND PROPERTIES.—The Task Force, and the employees and agents it so designates, are authorized, upon presenting appropriate credentials to the person in charge, to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining whether such persons have acted or are acting in compliance with applicable laws and agreements.

(6) FOIA.—The information gathered by the Task Force pursuant to subsection (b) shall not be subject to section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act"), until its final report is issued pursuant to subsection (b)(6).

Subtitle B—Penalties

SEC. 8201. AUTHORITY OF THE SECRETARY OF THE INTERIOR TO IMPOSE PENALTIES ON OUTER CONTINENTAL SHELF FACILITIES.

Section 24(b) of the Outer Continental Shelf Lands Act (43 U.S.C. 1350(b)) is amended—

(1) by striking out "If any" and inserting in lieu thereof "(1) Except as provided in paragraph (2), if any";

(2) by striking out "$10,000" and inserting in lieu thereof "$20,000";

(3) by adding at the end of paragraph (1) the following new sentence: "The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor."; and

(4) by adding at the end the following new paragraph:

"(2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.".

SEC. 8202. TRANS-ALASKA PIPELINE SYSTEM CIVIL PENALTIES.

The Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) is amended by adding at the end thereof the following new section:

"CIVIL PENALTIES

"SEC. 207. (a) PENALTY.—Except as provided in subsection (c)(4), the Secretary of the Interior may assess and collect a civil penalty under this section with respect to any discharge of oil—

"(1) in transit from fields or reservoirs supplying oil to the trans-Alaska pipeline; or

"(2) during transportation through the trans-Alaska pipeline or handling at the terminal facilities, that causes damage to, or threatens to damage, natural resources or public or private property.

"(b) PERSONS LIABLE.—In addition to the person causing or permitting the discharge, the owner or owners of the oil at the time the discharge occurs shall be jointly, severally, and strictly liable for the full amount of penalties assessed pursuant to this section, except that the United States and the several States, and political subdivisions thereof, shall not be liable under this section.

"(c) AMOUNT.—(1) The amount of the civil penalty shall not exceed $1,000 per barrel of oil discharged.

"(2) In determining the amount of civil penalty under this section, the Secretary shall consider the seriousness of the damages from the discharge, the cause of the discharge, any history of prior violations of applicable rules and laws, and the degree of success of any efforts by the violator to minimize or mitigate the effects of such discharge.

"(3) The Secretary may reduce or waive the penalty imposed under this section if the discharge was solely caused by an act of war, act of God, or third party action beyond the control of the persons liable under this section.

"(4) No civil penalty assessed by the Secretary pursuant to this section shall be in addition to a penalty assessed pursuant to section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)).

"(d) PROCEDURES.—A civil penalty may be assessed and collected under this section only after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. In any proceeding for the assessment of a civil penalty under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(e) STATE LAW.—(1) Nothing in this section shall be construed or interpreted as preempting any State or political subdivision thereof from imposing any additional liability or requirements with respect to the discharge, or threat of discharge, of oil or other pollution by oil.

"(2) Nothing in this section shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to discharges of oil.".

Subtitle C—Provisions Applicable to Alaska Natives

SEC. 8301. LAND CONVEYANCES.

The Alaska National Interest Lands Conservation Act (Public Law 96-487) is amended by adding the following after section 1437:

"SEC. 1438. Solely for the purpose of bringing claims that arise from the discharge of oil, the Congress confirms that all right, title, and interest of the United States in and to the lands validly selected pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by Alaska Native corporations are deemed to have vested in the respective corporations as of March 23, 1989. This section shall take effect with respect to each Alaska Native corporation only upon its irrevocable election to accept an interim conveyance of such land and notice of such election has been formally transmitted to the Secretary of the Interior.".

SEC. 8302. IMPACT OF POTENTIAL SPILLS IN THE ARCTIC OCEAN ON ALASKA NATIVES.

Section 1005 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3145) is amended—

(1) by amending the heading to read as follows:

"WILDLIFE RESOURCES PORTION OF STUDY AND IMPACT OF POTENTIAL OIL SPILLS IN THE ARCTIC OCEAN";

(2) by inserting "(a)" after "SEC. 1005."; and

(3) by adding at the end the following:

"(b)(1) The Congress finds that—

"(A) Canada has discovered commercial quantities of oil and gas in the Amalagak region of the Northwest Territory;

"(B) Canada is exploring alternatives for transporting the oil from the Amalagak field to markets in Asia and the Far East;

"(C) one of the options the Canadian Government is exploring involves transshipment of oil from the Amalagak field across the Beaufort Sea to tankers which would transport the oil overseas;

"(D) the tankers would traverse the American Exclusive Economic Zone through the Beaufort Sea into the Chuckchi Sea and then through the Bering Straits;

"(E) the Beaufort and Chuckchi Seas are vital to Alaska's Native people, providing them with subsistence in the form of walrus, seals, fish, and whales;

"(F) the Secretary of the Interior has conducted Outer Continental Shelf lease sales in the Beaufort and Chuckchi Seas and oil and gas exploration is ongoing;

"(G) an oil spill in the Arctic Ocean, if not properly contained and cleaned up, could have significant impacts on the indigenous people of Alaska's North Slope and on the Arctic environment; and

"(H) there are no international contingency plans involving our two governments concerning containment and cleanup of an oil spill in the Arctic Ocean.

"(2)(A) The Secretary of the Interior, in consultation with the Governor of Alaska, shall conduct a study of the issues of recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean.

"(B) The Secretary shall, no later than January 31, 1991, transmit a report to the Congress on the findings and conclusions reached as the result of the study carried out under this subsection.

"(c) The Congress calls upon the Secretary of State, in consultation with the Secretary of the Interior, the Secretary of Transportation, and the Governor of Alaska, to begin negotiations with the Foreign Minister of Canada regarding a treaty dealing with the complex issues of recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean.

"(d) The Secretary of State shall report to the Congress on the Secretary's efforts pursuant to this section no later than June 1, 1991.".

TITLE IX—AMENDMENTS TO OIL SPILL LIABILITY TRUST FUND, ETC.

SEC. 9001. AMENDMENTS TO OIL SPILL LIABILITY TRUST FUND.

(a) TRANSFERS TO TRUST FUND.—Subsection (b) of section 9509 of the Internal Revenue Code of 1986 is amended by striking all that follows paragraph (1) and inserting the following:

"(2) amounts recovered under the Oil Pollution Act of 1990 for damages to natural resources which are required to be deposited in the Fund under section 1006(f) of such Act,

"(3) amounts recovered by such Trust Fund under section 1015 of such Act,

"(4) amounts required to be transferred by such Act from the revolving fund established under section 311(k) of the Federal Water Pollution Control Act,

"(5) amounts required to be transferred by the Oil Pollution Act of 1990 from the Deepwater Port Liability Fund established under section 18(f) of the Deepwater Port Act of 1974,

"(6) amounts required to be transferred by the Oil Pollution Act of 1990 from the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978,

"(7) amounts required to be transferred by the Oil Pollution Act of 1990 from the Trans-Alaska Pipeline Liability Fund established under section 204 of the Trans-Alaska Pipeline Authorization Act, and

"(8) any penalty paid pursuant to section 311 of the Federal Water Pollution Control Act, section 309(c) of such Act (as a result of violations of such section 311), the Deepwater Port Act of 1974, or section 207 of the Trans-Alaska Pipeline Authorization Act."

(b) EXPENDITURES FROM TRUST FUND.—Paragraph (1) of section 9509(c) of such Code is amended to read as follows:

"(1) EXPENDITURE PURPOSES.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropria-

tion Acts or section 6002(b) of the Oil Pollution Act of 1990, only for purposes of making expenditures—

"(A) for the payment of removal costs and other costs, expenses, claims, and damages referred to in section 1012 of such Act,

"(B) to carry out sections 5 and 7 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(C) for the payment of liabilities incurred by the revolving fund established by section 311(k) of the Federal Water Pollution Control Act,

"(D) to carry out subsections (b), (c), (d), (j), and (l) of section 311 of the Federal Water Pollution Control Act with respect to prevention, removal, and enforcement related to oil discharges (as defined in such section),

"(E) for the payment of liabilities incurred by the Deepwater Port Liability Fund, and

"(F) for the payment of liabilities incurred by the Offshore Oil Pollution Compensation Fund."

(c) INCREASE IN EXPENDITURES PERMITTED PER INCIDENT.—Subparagraph (A) of section 9509(c)(2) of such Code is amended—

(1) by striking "$500,000,000" each place it appears and inserting "$1,000,000,000", and

(2) by striking "$250,000,000" and inserting "$500,000,000".

(d) INCREASE IN BORROWING AUTHORITY.—

(1) INCREASE IN BORROWING PERMITTED.—Paragraph (2) of section 9509(d) of such Code is amended by striking "$500,000,000" and inserting "$1,000,000,000".

(2) CHANGE IN FINAL REPAYMENT DATE.—Subparagraph (B) of section 9509(d)(3) of such Code is amended by striking "December 31, 1991" and inserting "December 31, 1994".

(e) OTHER CHANGES.—

(1) Paragraph (2) of section 9509(e) of such Code is amended by striking "Comprehensive Oil Pollution Liability and Compensation Act" and inserting "Oil Pollution Act of 1990".

(2) Subparagraph (B) of section 9509(c)(2) of such Code is amended by striking "described in paragraph (1)(A)(i)" and inserting "of removal costs".

(3) Subsection (f) of section 9509 of such Code is amended to read as follows:

"(f) REFERENCES TO OIL POLLUTION ACT OF 1990.—Any reference in this section to the Oil Pollution Act of 1990 or any other Act referred to in a subparagraph of subsection (c)(1) shall be treated as a reference to such Act as in effect on the date of the enactment of this subsection."

SEC. 9002. CHANGES RELATING TO OTHER FUNDS.

(a) REPEAL OF PROVISION RELATING TO TRANSFERS TO OIL SPILL LIABILITY FUND.—Subsection (d) of section 4612 of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(b) CREDIT AGAINST OIL SPILL RATE ALLOWED ON AFFILIATED GROUP BASIS.—Subsection (d) of section 4612 of such Code is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, all taxpayers which would be mem-

bers of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting '100 percent' for '80 percent' shall be treated as 1 taxpayer."

And the Senate agree to the same.

From the Committee on Merchant Marine and Fisheries, for consideration of the House bill (except title VIII), and the Senate amendment (except secs. 601 and 602), and modifications committed to conference:

WALTER B. JONES,
GERRY STUDDS,
BILLY TAUZIN,
THOMAS C. CARPER,
BILL HUGHES,
BOB DAVIS,
DON YOUNG,
NORMAN F. LENT

(Provided, Mr. Shumway is appointed in place of Mr. Young of Alaska for consideration of title I and sec. 2004 of the House bill, and title I and sec. 405 of the Senate amendment),

From the Committee on Public Works and Transportation, for consideration of the House bill (except title VIII), and the Senate amendment (except secs. 601 and 602), and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND

(Provided, Mr. Kolter is appointed in place of Mr. Anderson for consideration of sec. 4114 of the House bill; Mr. Rahall is appointed in place of Mr. Roe for consideration of title VII of the House bill, and secs. 205, 309, 354, and 356 of the Senate amendment; Mr. Laughlin is appointed in place of Mr. Roe for consideration of secs. 1002 and 1004 of the House bill, and corresponding portions of sec. 102 of the Senate amendment; Mr. Borski is appointed in place of Mr. Roe for consideration of secs. 4101 through 4205 of the House bill, and corresponding portions of the Senate amendment; and Mr. Upton is appointed in place of Mr. Shuster for consideration of sec. 4203 of the House bill and sec. 203 of the Senate amendment),

JOE KOLTER,
NICK RAHALL,
GREG LAUGHLIN,
BOB BORSKI,
FRED UPTON,

From the Committee on Foreign Affairs, for consideration of title III of the House bill, and secs. 603 and 604 of the Senate amendment, and modifications committed to conference:

DANTE B. FASCELL,
GUS YATRON,

WAYNE OWENS,
TOM LANTOS,
EDWARD F. FEIGHAN,
WM. BROOMFIELD,
DOUG BEREUTER,
JOHN MILLER,

From the Committee on Science, Space, and Technology, for consideration of title VII of the House bill, and secs. 205, 309, 354, and 506 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
JIM H. SCHEUER,
GEORGE E. BROWN, Jr.,
MARILYN LLOYD,
DOUG WALGREN,
ROBERT A. WALKER,
CLAUDINE SCHNEIDER,
SID MORRISON,

From the Committee on Interior and Insular Affairs, for consideration of title I and sec. 2004 of the House bill, and title I and sec. 405 of the Senate amendment, and modifications committed to conference:

MOE UDALL,
G. MILLER,
PHIL SHARP,
DON YOUNG,
LARRY E. CRAIG,

From the Committee on Interior and Insular Affairs, for consideration of title VIII of the House bill, and secs. 601 and 602 of the Senate amendment, and modifications committed to conference:

MOE UDALL,
G. MILLER,
PHIL SHARP,
BRUCE F. VENTO,
PETER DEFAZIO,
DON YOUNG,
RON MARLENEE,
LARRY E. CRAIG,

From the Committee on Energy and Commerce, for consideration of secs. 8103, 8201, and 8202 of the House bill, and sec. 601 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
RALPH M. HALL,
NORMAN F. LENT,

From the Committee on Merchant Marine and Fisheries, for consideration of title VIII of the House bill, and secs. 601 and 602 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
BILLY TAUZIN,
TOM CARPER,
BOB DAVIS,
JACK FIELDS,

From the Committee on Public Works and Transportation, for consideration of title VIII of the House bill, and secs. 601 and 602 of the Senate amendment, and modifications committed to conference:

GLENN M. ANDERSON,
NORMAN Y. MINETA,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,
ARLAN STANGELAND,

From the Committee on Ways and Means, for consideration of title VII and secs. 1001(10), 1006(f), 1006(g)(4), 4302, 8102(f) of the House bill and so much of sec. 8202 of the House bill as would add a new sec. 210(c)(5) to the Trans-Alaska Pipeline Authorization Act, and secs. 103(b), 103(c), 356, 401(b), and 512 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
C.B. RANGEL,
PETE STARK,
BILL ARCHER,
GUY VANDER JAGT,
PHIL CRANE,

Managers on the Part of the House.

From the Committee on Environment and Public Works:

QUENTIN BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
FRANK R. LAUTENBERG,
JOHN BREAUX,
JOHN CHAFEE,
DAVE DURENBERGER,
JOHN WARNER,
JIM JEFFORDS,
GORDON HUMPHREY,

From the Committee on Commerce, Science, and Transportation:

FRITZ HOLLINGS,
DANIEL INOUYE,
JOHN F. KERRY,
JOHN BREAUX,
JOHN C. DANFORTH,
BOB PACKWOOD,
TED STEVENS,

From the Committee on Finance:

LLOYD BENTSEN,
MAX BAUCUS,
BOB PACKWOOD,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1465) to establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 1001. DEFINITIONS

Section 101 of the Senate amendment contains definitions of terms used in the Act. The terms "vessel", "public vessel", "owner or operator", "onshore facility", "offshore facility", "barrel", "person", "navigable waters", "remove" and "removal" and "territorial seas" are defined by reference to existing definitions contained in either section 311 or section 502 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321, 1362). The remaining terms are either not defined in the FWPCA or reflect the generally broader scope of the Senate amendment as opposed to existing law.

Section 1001 of the House bill contains definitions of many of the same terms. Rather than define terms by reference to the FWPCA, the House bill contains free-standing definitions even for terms that are defined in that Act.

The Conference substitute generally adopts the format of the House bill with respect to definitions. Specifically, the terms "act of God", "claim", "damages", "deepwater port", "discharge", "facility", "Fund", "gross ton", "guarantor", "incident", "lessee", "mobile offshore drilling unit", "National Contingency Plan", "natural resources", "permittee", "responsible party", "tank vessel", and "United States" and "State" are taken from the House bill.

The terms "offshore facility", "onshore facility", "owner or operator", "public vessel" and "vessel" are re-stated verbatim from sec-

tion 311(a) of the FWPCA. The terms "navigable waters", "person" and "territorial seas" are re-stated verbatim from section 502 of the FWPCA. The term "remove" or "removal" under section 311(a) of the FWPCA is amended by this act to include containment of oil discharges. That amended FWPCA definition is included in section 1001 of the Conference substitute. In each case, these FWPCA definitions shall have the same meaning in this legislation as they do under the FWPCA and shall be interpreted accordingly. To the extent that docks, piping, wharves, piers and other similar appurtenances that rest on submerged land and that are directly or indirectly connected to a land-based terminal are deemed to be part of an onshore facility under the FWPCA, they are likewise deemed to be part of an onshore facility under the Conference substitute.

"Incident" is defined to mean an occurrence or series of related occurrences because, as under other Federal law it is the intent of the Conferees that the entire series of events resulting in the spill of oil comprises one "incident".

The term "liable" or "liability" is taken from the Senate amendment and is to be construed to be the standard of liability which obtains under section 311 of the FWPCA for liability for removal costs and damages from discharges of oil. That standard of liability has been determined repeatedly to be strict, joint and several liability. The terms "foreign offshore unit" and "Outer Continental Shelf facility" also are taken from the Senate amendment.

The term "tank vessel" has the same meaning as that term has under section 2101 of title 46, United States Code.

The Conference substitute includes a definition of the term "oil", which is based on the definition of the term in section 311 of the FWPCA. The definition has been modified, however, to clarify that it does not include any constituent or component of oil which may fall within the definition of "hazardous substances", as that term is defined for the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This ensures that there will be no overlap in the liability provisions of CERCLA and the Oil Pollution Act.

SEC. 1002. ELEMENTS OF LIABILITY

Section 102(a) of the Senate amendment provides that owners or operators of vessels or facilities from which oil is discharged or which poses a threat of a discharge are liable for removal costs and damages for economic loss and loss of natural resources. The damages include injury to property, loss of use of property, injury to, or loss of use of natural resources, loss of income, and loss of taxes.

Subsections (a) and (b) of section 1002 of the House bill provide that responsible parties for vessels and facilities from which oil is discharged or which pose the substantial threat of a discharge are jointly, severally, and strictly liable for removal costs and for a wide range of damages generally comparable to those listed in the Senate amendment. Secondary liability for oil cargo owners is also established. Removal costs incurred by the United States, a State, or an Indian tribe are compensable under the House bill if they are not inconsistent with the National Contingency Plan and applicable State law. Removal costs incurred by other persons must be

consistent with the National Contingency Plan and applicable State law. Subsection (c) excludes certain types of discharges from coverage. Subsection (d) addresses the liability of third parties.

The Conference substitute combines some of the provisions of the Senate amendment with those of the House bill.

Section 1002(a) of the Conference substitute establishes liability and creates a cause of action for removal costs and damages that are specified in subsection (b) and that result from an incident. The responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, is liable for these costs and damages. Liability under this Act is established notwithstanding any other provision or rule of the law. This means that the liability provisions of this Act would govern compensation for removal costs and damages notwithstanding any limitations under existing statutes such as the act of March 3, 1851 (46 U.S.C. 183), or under existing requirements that physical damage to the proprietary interest of the claimant be shown.

Subsection (b) identifies the removal costs and damages which are compensable under the Conference substitute, and the claimants who may recover for those costs and damages. Removal costs are covered by the Conference substitute if they are: (1) incurred by the United States, a State, or an Indian tribe under the appropriate sections of the FWPCA, under the Intervention on the High Seas Act, or under applicable State law; or (2) incurred by a person acting in a manner consistent with the National Contingency Plan.

Six categories of damages are compensable under the substitute. Under section 1002(b)(2)(A), damages for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs of assessing the injury, destruction, or loss are recoverable by trustees. Subsection (b)(2)(B) allows a person who owns or leases real or personal property to recover for injury to, or economic losses resulting from the destruction of that property. Subsection (b)(2)(C) provides a right of recovery for loss of subsistence use of natural resources, without regard to the ownership or management of those resources.

Section 1002(b)(2)(D) of the Conference substitute provides that the United States, a State, or a political subdivision of a State may recover for any net loss of taxes, royalties, rents, fees, or net profit shares resulting from the injury, destruction, or loss of real or personal property or natural resources resulting from an incident. Subsection (b)(2)(E) provides that any claimant may recover for loss of profits or impairment of earning capacity resulting from injury to property or natural resources. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income. For example, a fisherman may recover lost income due to damaged fisheries resources, even though the fisherman does not own those resources.

Subsection (b)(2)(F) provides that a State or local government may recover damages for the net costs of providing increased or additional public services during or after removal actions.

Subsection (c) excludes from coverage under this substitute any discharge of oil that (1) is authorized by law, (2) emanates from a public vessel, or (3) is discharged from onshore facilities subject to the Trans-Alaska Pipeline Authorization Act which are covered by

the liability regime under section 204 of that Act. Liability for discharges from vessels once the oil is loaded is covered under the Conference substitute.

Subsection (d) provides that if a responsible party can establish that the removal costs and damages resulting from an incident were caused solely by an act or omission of a third party, the third party shall be treated as the responsible party for the removal costs and damages resulting from that incident. In such a case, the responsible party is still required to settle claims in accordance with section 1013, but shall be entitled by subrogation, to the extent of any claim paid, to all rights of the claimant to recover costs or damages from the third party or the Fund. Subsection (d)(2) describes the liability of a third party under this section.

SEC. 1003. DEFENSES TO LIABILITY

Section 1003 of the House bill provides for a complete defense to liability if the responsible party proves that an incident resulted from an act of God, an act of war, hostilities, civil war, or an insurrection. It also provides that a responsible party is not liable if the responsible party proves that the incident was solely caused by an act or omission of a person other than a responsible party, an employee or agent of a responsible party, or one whose act or omission occurs in connection with a contractual relationship with a responsible party except when the contractual relationship involves carriage of oil by a common carrier by rail.

The section provides that a responsible party is not liable to a claimant to the extent the incident was caused by the negligence of the claimant.

The House provision also provides that the defenses to liability would not be available to a responsible party who did not (1) report the incident and knew about it or had reason to know about it; (2) cooperate with a responsible official in connection with removal activities; or (3) without sufficient cause, comply with orders issued pursuant to sections 311(c) or 311(e) of the FWPCA. The section also makes the defenses unavailable to a tanker involved in an incident when operating without a tug escort in Puget Sound waters between Port Angeles, Washington, and Vancouver, British Columbia, Canada.

The Senate amendment similarly provides a defense to liability if an incident is caused by an act of God or an act of war. It also contains a third party defense similar to, although more detailed than, the House provision. Like the House bill, the Senate bill includes a provision exempting railroads from liability when involved in common carriage, except that it is limited to a contractual arrangement arising from a published tariff and acceptance for carriage by a common carrier by rail.

The Senate section does not contain provisions comparable to the House provisions dealing with defenses as to particular claimants; describing when the defenses to liability would not apply; or relating to the operation of tankers in the Puget Sound without a tug escort.

The Conference substitute adopts the Senate language on complete defenses to liability. The substitute refers to any contractual

arrangement rather than direct or indirect contractual relationships as referred to in the Senate amendment and to responsible party rather than defendant as in the Senate amendment. The substitute also includes the House language concerning contractual arrangements arising in connection with carriage by a common carrier by rail rather than the comparable Senate language that was limited to tariffs.

The substitute adopts the House language concerning defenses to liability to a particular claimant, with the exception that the standard is changed from negligence to gross negligence or willful misconduct. The substitute also adopts the House bill's provisions describing when the defenses do not apply. The Conferees did not include the language related to Puget Sound.

Section 1003 of the Conference substitute exonerates the responsible party from the liability imposed by section 1002, provided that the responsible party proves by a preponderance of the evidence that the incident resulted from (1) an act of God; (2) an act of war; (3) an act or omission of a third party, other than an employee or agent of the responsible party or one whose act or omission occurs in connection with a contractual relationship with the responsible party; or (4) any combination of the three previous situations. In the situation involving a contractual relationship, no liability exists for a responsible party if the contractual arrangement arises in connection with carriage by a common carrier by rail. Furthermore, with regard to acts by third parties, the responsible party must prove that the responsible party exercised due care in handling the oil and took precautions against foreseeable acts of the third party and any foreseeable consequences of those actions.

Under this section, the responsible party is not liable to a claimant to the extent the incident is caused by the claimant's gross negligence or willful misconduct.

The defenses contained in this section are not available to a responsible party who fails or refuses to (1) report the incident as required by law if the responsible party knew or had reason to know about the incident; (2) cooperate with a responsible official on removal; or (3) without sufficient cause, comply with an order issued under section 311(c) or 311(e) of the FWPCA or the Intervention on the High Seas Act.

SEC. 1004. LIMITS ON LIABILITY

Section 102(c) of the Senate amendment sets limits of liability at the greater of $1,000 per gross ton or $10 million for tankers and barges, the greater of $600 per gross ton or $500,000 for other vessels, $75 million plus removal costs for outer Continental Shelf (OCS) facilities, and $350 million for deepwater ports and other facilities. If the discharge is caused by willful misconduct, gross negligence, or a violation of applicable Federal law concerning safety, construction, or operating standards or regulations, the owner or operator responsible for a discharge is not entitled to a limitation liability. In addition, if the owner or operator fails or refuses to report the discharge or cooperate with a responsible official in the removal action or to provide removal action at the order of such

official, the liability will be the total of damages plus removal costs.

The Senate provision also requires that, notwithstanding the liability limits, the owner or operator of a facility or vessel involved in an OCS spill must pay all Federal, State and local government removal costs. In addition, section 102(c) requires the President to adjust the liability limits, at least once every three years, to reflect significant increases in the Consumer Price Index.

Section 1004 of the House bill limits liability for tank vessels to the greater of $1,200 per gross ton or $10 million for tank vessels greater than 3,000 gross tons or $1,200 per gross ton or $2 million for tank vessels of 3,000 gross tons or less. Non-tank vessels may limit liability to the greater of $600 per gross ton or $500,000. Liability for offshore facilities is the total of removal costs plus $75 million. Liability for onshore facilities and deepwater ports is $350 million.

In the case of tank vessels, liability is divided between the vessel owner or operator and the cargo owner with the vessel owner or operator liable for the first 50 percent of the liability limit and the cargo owner liable for the second 50 percent. If the vessel owner or operator has unlimited liability, the cargo owner is liable for up to 50 percent of the applicable limit for the amount of liability which the vessel owner does not compensate. Mobile offshore drilling unit (MODU) discharges on or above the water are treated as if the MODU were a tank vessel, unless the removal costs and damages exceed the liability limit. In that instance the excess liability is treated as if the MODU were a facility.

Liability is unlimited if the incident was proximately caused by gross negligence, willful misconduct, or the violation of an applicable Federal safety, construction or operating regulation, or by the failure or refusal of the responsible party to report the incident, cooperate with a responsible official in the removal action, or comply with an order under section 311(c) or 311(e) of the FWPCA. Provisions also address tug escorts for tank vessels in Puget Sound.

Section 1004(d) provides for the adjustment of liability limits for onshore facilities and deepwater ports and associated vessels. Generally, the President may establish (by regulation) liability limits for onshore facilities of less than the statutorily prescribed amount of $350 million, but not less than $8 million, taking into account various factors. For deepwater ports (and associated vessels), the Secretary must study and compare the transportation risks of using deepwater ports versus other ports. If the risks associated with deepwater ports are less, the Secretary must initiate a rulemaking to lower the liability limits to a level between $350 million and $50 million. The Secretary is also required to make various reports to Congress.

The Conference substitute incorporates provisions from both the Senate amendment and the House bill. The Conferees retained the dollar limits in the House bill for tank vessels and other vessels but deleted the House language on dividing liability between vessel owners or operators and cargo owners. Conferees also adopted House provisions on MODU discharges and on exceptions to liability. therefore, liability is unlimited if proximately caused by (1) gross negligence or willful misconduct or violation of applicable

Federal safety, construction, or operating regulations, and (2) failure or refusal to cooperate in a removal action. Conferees deleted provisions on tug escorts in Puget Sound.

In addition, the substitute includes the Senate's language on OCS facilities and vessels. The Conference substitute adopts House language on adjusting liability limits for onshore and deepwater port facilities and the Senate language on adjusting liability based on increases in the Consumer Price Index.

SEC. 1005. INTEREST

Sections 102(c)(1) and 103(e)(3) of the Senate amendment provide for the recovery of interest, including prejudgment interest, from owners and operators without regard to limitations on liability.

Section 1005 of the House bill provides that the responsible party or the responsible party's guarantor is liable to claimants for interest on the amount paid in satisfaction of a claim, notwithstanding limitations of liability. Under this section, the responsible party or guarantor is generally liable for interest on the amount paid in settlement of a claim starting 30 days after the claim is presented, and ending on the date the claim is paid. However, if the guarantor offers a claimant an amount that is equal to or greater than the amount ultimately paid to settle the claim, there shall be no liability for interest accruing between the time the offer was made and the time it was accepted. If the offer is made within 60 days of the presentation of a claim, there shall be no liability for interest except for the period between the time the offer is accepted and the time it is paid. Section 1005(b)(4) specifies the means by which interest rates under the section shall be calculated.

The Conference substitute adopts the House provision, with the clarification that this section applies to prejudgment interest.

SEC. 1006. NATURAL RESOURCES

Section 102(d) of the Senate amendment provides that liability for injury to, destruction of, or loss of natural resources shall be to the United States Government, a State government, or to a foreign government (or to some combination thereof) depending on the ownership, management or control of the injured resources involved. Federal officials designated by the President and the authorized representatives of states and foreign governments shall act on behalf of the public as trustees to recover damages under this section. Sums recovered by the United States Government are to be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of the harmed natural resources. The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, is directed to establish a system for assessing damages to natural resources including a measure of damages equal to the costs of restoration, replacement or acquisition of equivalent resources, and the diminution in value of those resources pending restoration.

Section 1006 of the House bill is similar except that it includes Indian tribes as trustees for resources under their ownership or control. Subsection (c) spells out the responsibility of trustees to assess natural resource damages and to develop and implement res-

toration plans. Subsection (d) provides that the measure of damages shall be the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the damaged natural resources, plus the diminution in value of those resources pending restoration. Subsection (e) requires the President to promulgate regulations within two years for the assessment of natural resource damages arising out of an incident. Subsection (f) provides that sums recovered under the House bill by a trustee shall be retained by the trustee in a revolving trust account, without further appropriation, for use only to reimburse or pay costs incurred by the trustee under subsection (c). Any amounts in excess of those required for this purpose shall be deposited in the Fund. Finally, subsection (g) authorizes the imposition of a civil penalty against a responsible party liable for damages to natural resources that cannot be restored, rehabilitated or replaced, and for which no equivalent can be acquired.

The Conference substitute accepts the House provision with six changes. First, the substitute includes a technical change to subsection (a), specifying that the section applies only to injury to natural resources under the Conference substitute. Second, subsection (e) of the substitute adopts the Senate provision vesting the Under Secretary of Commerce for Oceans and Atmosphere with the responsibility for promulgating natural resource damage assessment regulations. Third, a conforming change is made in subsection (d) to make it clear that the standard for measuring damages to natural resources shall apply to all actions for such damages brought under the Conference substitute. Fourth, the substitute adds a new subsection (d)(1)(C) providing that the measure of damages shall include the reasonable costs of assessing those damages. Fifth, the substitute deletes subsection (g) of the House bill, dealing with civil penalties. Finally, a new subsection (g) is added, dealing with judicial review.

Thus, in addition to providing remedies for removal costs and for economic damages suffered by private parties, the legislation requires trustees to act on behalf of the public to assess natural resource damages, prepare and implement a plan for repairing the injury done to the environment, and to seek compensation from the responsible party.

The substitute provides that, in addition to the reasonable costs of assessment, the measure of damages in any action for natural resource damages shall be the cost to restore, rehabilitate, replace, or acquire the equivalent of the injured resources, plus the diminution in value of those resources until they are restored. "Diminution of value" refers to the standard for measuring natural resource damages used in the recent D.C. Circuit Court decision, *Ohio et al.* v. *U.S. Department of the Interior,* 880 F.2d 432, 462–480 (D.C. Cir. 1989).

The trustees, in developing plans under subsection (c), shall give priority to efforts to restore, rehabilitate and replace damaged resources. The alternative of acquiring equivalent resources should be chosen only when the other alternatives are not possible, or when the cost of those alternatives would, in the judgment of the trustee, be grossly disproportionate to the value of the resources involved.

"Equivalent" resources under this section are resources that the trustee determines are comparable to the injured resources. Equivalent resources should be acquired to enhance the recovery, productivity, and survival of the ecosystem affected by a discharge, preferably in proximity to the affected area.

Calculating the total measure of damages under this section will ordinarily be dependent upon the development by the trustees of the appropriate plans for mitigating the injury to those resources. This is because the estimated cost of implementing the plans will be a major component of the measure of damages. Therefore, the trustees should, in sequence, conduct the necessary assessments, develop and estimate the cost of implementing the appropriate plans, and calculate the diminution in lost use and other values of the injured resources pending restoration. At that point, the total liability of a responsible party under this section can be calculated.

There may be instances where two or more trustees share jurisdiction or control over natural resources. In such cases, trustees should exercise joint management or control of the shared resources. Thus, one class of trustee cannot preempt the right of other classes of trustees to exercise their trusteeship responsibilities. The substitute does, however, prohibit double recovery of damages. The trustees should coordinate their assessments and the development of restoration plans, but the substitute does not preclude different trustees from conducting parallel assessments and developing individual plans.

The substitute requires that the regulations for assessing natural resource damages under this section will be issued in a timely manner. These regulations, not regulations previously issued by the Department of the Interior for assessing damages to natural resources, shall apply to all oil spill incidents occurring after the enactment of this substitute. The regulations should faithfully reflect the standard of measurement referred to in subsection (d), and should be designed to simplify the trustees' task of assessing and recovering the full measure of damages resulting from an incident.

The concept in subsection (f) that sums recovered by natural resource trustees shall be available to, and used by, the trustees to repair and otherwise mitigate injury to natural resources is similar to that contained in section 107 of the Comprenhensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.). However, trustees have had difficulty, to date, in gaining access to already recovered sums because the money has been deposited in the General Fund of the Treasury. The language in subsection (f) is intended to avoid this problem by stating explicitly that sums recovered for natural resource damages, including reimbursement for the costs of assessing those damages, shall be retained in separate, interst-bearing accounts within the Treasury and shall be directly available to trustees to carry out the purposes specified in the substitute. Amounts that are clearly in excess of those needs shall be depositied in the Fund.

Subsection (g) provides that a person may seek review in the Federal district courts of the actions of any Federal official who is alleged to have failed to perform a non-discretionary duty under section 1006 of the substitute (dealing with the rights and responsibilities of natural resource trustees). The Conferees do not intend that

this provision expand or diminish rights existing under current law.

SEC. 1007. RECOVERY BY FOREIGN CLAIMANTS

Section 102(e) of the Senate amendment provides for recovery by foreign claimants who have not been otherwise compensated. Recovery is available where there has been a discharge, or threat of a discharge, into the territorial sea, internal waters, or adjacent shoreline of the claimant's country, and one of the following is the source of the discharge or threat of a discharge: (1) an OCS or deepwater port facility; (2) a vessel within the navigable waters of the U.S.; (3) a vessel carrying oil as cargo between two ports subject to the jurisdication of the U.S.; or (4) a tanker transporting oil from the Trans-Alaska Pipeline System (TAPS) to a U.S. port. Except for those seeking compensation for a discharge from a tank vessel carrying TAPS oil, the claimant must show that recovery is either authorized by treaty or agreement between the U.S. and the claimant's country or that the Secretary of State, in consultation with the Attorney General, has certified that a comparable remedy would be available in that country for U.S. claimants.

Section 1007 of the House bill is similar, except that it does not specify recovery for a discharge, or threat of a discharge, from a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States. The section also requires foreign claimants to seek compensation under two international oil pollution conventions before presenting a claim to the Fund. Finally, the section clarifies that only Canadian residents may present claims for TAPS-related spills, notwithstanding the requirement for an authorizing treaty or certification of comparable treatment for U.S. citizens.

The Conference substitute accepts the Senate provision, with technical changes, and with the clarification in the House bill concerning the right of Canadian residents to bring claims for TAPS-related spills.

SEC. 1008. RECOVERY BY RESPONSIBLE PARTY

The Senate amendment has no comparable provision.

Section 1008 of the House bill allows a responsible party or the owner of oil on a tank vessel, or a guarantor for that responsible party or owner of oil, to assert a claim for removal costs and damages only if the responsible party or owner can show that the responsible party or owner has a defense to liability, or is entitled to a limitation of liability. In the latter case, a claim may be submitted only to the extent amounts paid by the responsible party or owner, or by a guarantor on the responsible party's or owner's behalf, exceeds the applicable limit on liability.

The Conference substitute accepts the House provision with the deletion of references to the owner of oil.

SEC. 1009. CONTRIBUTION

The Senate amendment has no comparable provision.

Section 1009 of the House bill permits a person to bring an action for contribution against another person liable or potentially

liable under the House bill, provided that the action shall be brought in accordance with section 1013 of the bill.

The Conference substitute accepts the House provision with a change requiring that the action for contribution be brought in accordance with section 1017. Thus, the action must be brought within three years after the date of judgment in any action under this substitute, or within three years after the date of a judicially approved settlement. This section does not bar any action for contribution that is available under other law.

The Conference substitute is also changed to allow actions for contribution against any person who is liable or may be liable under any law.

The Conferees note that this section might come into play in an instance where more than one party is involved with a spill. For example, a spill may occur when oil is being transferred between a vessel and an onshore facility. If the discharge comes from the vessel, it is the vessel that will be the responsible party for purposes of the Conference substitute. Nevertheless, if action or omission of the onshore facility contributed to the discharge, the operation of this section or section 1015 on subrogation could result in the facility being held accountable financially in part or in whole.

SEC. 1010. INDEMNIFICATION AGREEMENTS

Section 102(f) of the Senate amendment provides that no indemnification, hold harmless or similar agreement or conveyance may transfer the liability established under the amendment. However, this does not preclude agreements where one party agrees to pay for all or part of the liability to which another party is subject under the amendment. In addition, the section provides that nothing in the amendment shall bar a cause of action that an owner or operator, or a guarantor, would have by reason of subrogation or other law against another person.

Section 1010 of the House bill is similar, except that it uses the term "responsible party", rather than "owner or operator".

The Conference substitute accepts the House provision.

SEC. 1011. CONSULTATION ON REMOVAL ACTIONS

Section 106(d) of the Senate amendment requires the President to consult with an affected State or States on the appropriate removal action to be taken. The action shall be considered completed when determined by the President and the Governor or Governors of the affected States.

Section 1011 of the House bill requires that the President consult with the natural resource trustees on the appropriate removal action to be taken. For the purposes of the National Contingency Plan, removal with respect to any discharge is considered completed when so determined by the President in consultation with the Governor or Governors of the affected States. However, this determination does not preclude additional removal actions under applicable State law.

The Conference substitute adopts the House provision. However, it should be noted that, under section 1012(a) of the Conference agreement, the Fund is available to pay removal costs only if the

President determines that the costs are consistent with the National Contingency Plan. Ordinarily, removal costs incurred by a Governor after the President has determined that cleanup is complete will not be recoverable from the Fund unless the President determines that the additional costs were necessary to maintain the level of cleanup previously approved by the President. Reimbursement may be sought, however, from the responsible party, or from the responsible party's guarantor, for all removal costs covered by this substitute.

SEC. 1012. USES GENERALLY

Section 1012(a). Uses of the Fund

Section 103(a) of the Senate amendment enumerates the purposes for which the President may use the Fund. These include the payment of: (1) all removal costs incurred by the Federal government; (2) claims for removal costs and damages that are not settled in accordance with section 103(c); (3) removal costs and damages from spills from foreign offshore units; (4) removal costs incurred by a State under section 103(d); (5) the costs of assessing damages to natural resources; (6) the costs of restoring, replacing, rehabilitating or acquiring the equivalent of the damaged resources, except that Federal efforts to acquire land or interests therein are subject to appropriations; (7) the costs, up to $50 million, of establishing a national oil spill response system; (8) the costs, subject to appropriations, of maintaining the oil spill response system, including an oil spill research and development program; (9) the costs of a program to take enforcement and abatement action against discharges of oil; and (10) all administrative and personnel costs of administering the Fund and the substitute.

Section 1012(a) of the House bill sets out a list of seven purposes for which the President may use the Fund. These are: (1) the payment of Federal removal costs, including the cost of monitoring removal actions; (2) the costs incurred by trustees, other than foreign trustees, in assessing damages to natural resources and developing restoration plans; (3) the payment of State removal costs incurred under subsection (d); (4) the payment of removal costs and damages for discharges from a foreign offshore unit; (5) the payment of the administrative, personnel and enforcement expenses of the Act, including the research program established in title VII; (6) payments to the International Oil Spill Fund; and (7) all otherwise uncompensated removal costs and damages in accordance with the claims procedures of section 1013 of the House bill.

The Conference substitute includes provisions from both the House bill and the Senate amendment, while combining some categories that were deemed duplicative. In addition, the substitute places a limitation on certain expenditures, drops the provision in the House bill authorizing payments to the International Fund, and provides a specific authorization of payments from the Fund for certain purposes.

Under the substitute, the Fund is available to the President for five purposes:

(1) the payment of removal costs, including the cost of monitoring removal actions, by Federal authorities or by a Gover-

nor or designated State official under subsection (d) of this section. The purpose of these payments is to allow authorized Federal officials and, to a limited extent, authorized State officials to act quickly to prevent or minimize damages from an incident;

(2) the costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 1006 of the Act;

(3) the payment of removal costs and damages resulting from a discharge, or a substantial threat of a discharge, from a foreign offshore unit;

(4) the payment of uncompensated removal costs or damages in accordance with the claims procedure under section 1013; and

(5) the payment of Federal administrative, operational and personnel costs and expenses reasonably necessary for and incidental to, the implementation, administration and enforcement of this Act. Specific reference is made to some of the provisions of the Act for which payments of the Fund are authorized. In addition, specific authorizations are included for three categories of expenditures as follows: not more than $25 million in any fiscal year for Coast Guard operating expenses necessary to implement the Act, which amounts are in addition to the $50 million made available annually without further appropriation under section 6002(b) of the Conference substitute; not more than an additional $30 million in each of the next two fiscal years to be used to establish the National Response System under section 311(j) of the FWPCA, as amended by the Conference substitute, including the purchase and prepositioning of oil spill removal equipment; and not more than $27.25 million in any fiscal year to carry out the research and development program authorized in title VII.

Payments for removal costs and natural resource damage assessment in categories (1), (2), (3), and (4) may be made only if they are deemed by the President to be consistent with the National Contingency Plan.

To understand fully the potential uses of moneys in the Fund, it is necessary to read this subsection in connection with section 6002 of the Act and section 9509 of the Internal Revenue Code. The former relates to the need for appropriations prior to the expenditure of money from the Fund; the latter restricts the total amount available from the Fund for an incident to $1 billion and, within that overall limit, restricts damages for injury to natural resources to $500 million per incident.

Expenditures from the Fund may occur in four ways. First, up to $50 million is available, without further appropriation, in any fiscal year, for oil spill removal actions and to initiate the assessment of damages to natural resources under section 1006. These purposes fall within categories (1) and (2) of section 1012(a).

Second, additional amounts are available as needed, subject to appropriations, for categories (1), (2) and (3). These amounts may be obligated by the Federal official or officials designated under the regulations authortized in subsection (c), and are not necessarily subject to the claims procedures in section 1013.

Third, amounts are available under category (4), without further appropriation, to pay uncompensated claims in accordance with section 1013.

Finally, amounts are available, subject to appropriations, for the purposes listed in category (5), except that $5 million is made available, without further appropriation, to carry out sections 5003 and 5004 of this Act (concerning safety of navigation in Prince William Sound, Alaska).

Whenever payments are made out of the Fund for the purposes listed in categories (1) through (4), vigorous efforts should be made by the Fund to seek prompt and full reimbursement from the responsible party or, in the case of a foreign offshore unit, from the person or government responsible for that unit.

A dispute has arisen among several Federal agencies with respect to reimbursements from the Fund established by section 311(k) of the FWPCA for costs incurred by those agencies while responding to the *Exxon Valdez* oil spill. At issue is whether Federal agencies should be reimbursed only for the incremental costs incurred as the result of a spill (primarily travel and overtime), or whether the base salaries of individuals diverted from other duties to work on oil spill response should be included. Under the Conference substitute, both incremental and base costs should be included, except for persons normally available for oil spill response, when calculating the cost of Federal efforts to respond to a spill. Reimbursement for these costs should be sought from the responsible party, and agencies that assist in oil spill response actions should be fully compensated by the Fund or by the responsible party for that assistance.

SEC. 1012(b). DEFENSE TO LIABILITY FOR FUND

Section 103(f) of the Senate amendment provides that the Fund shall not be available to pay any claim for costs or damages to the extent the discharge or the damages were caused by the gross negligence or willful misconduct of that particular claimant.

Section 1012(b) of the House bill is a similar provision stating that the Fund shall not be available to pay a claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the negligence of the claimant.

The Conference substitute adopts the Senate provision, with technical changes. Thus, the subsection provides a defense to liability for the Fund with respect to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

Section 1012(c). Obligation of Fund by Federal Officials

Section 103(c) of the Senate amendment authorizes the President to designate the Federal officials authorized to obligate money from the Fund and to perform other functions under this section. The President is also authorized to delegate authority to State officials to obligate money in the Fund or to settle calims if the State has an adequate program operating under a cooperative agreement with the Federal Government. The section also requires the Secre-

tary of the Treasury, at the request of the Secretary of Transportation, to provide advance payments of up to $1 billion per incident from the Fund to pay removal costs or damages.

Section 1012(c) of the House bill authorizes the President to promulgate regulations designating one or more Federal officials, in addition to the Commandant of the Coast Guard, who may obligate money in the Fund. The President may also delegate this authority to State officials operating under a cooperative agreement.

The Conference substitute provides simply that the President may promulgate regulations designating one or more Federal officials who may obligate money in accordance with subsection (a).

Section 1012 (d) and (e). Access to Fund by State Officials Regulations

Section 103(d) of the Senate amendment authorizes the Governor of a State to obligate up to $250,000 from the Fund for the payment of removal costs for an incident, subject to notification of the President within 24 hours. The President and the States are authorized to enter into agreements for further response actions by the State. Regulations governing the obligation authority and agreements are to be proposed within six months of enactment.

Section 1012(d) of the House bill is a similar provision that authorizes States to obligate up to $250,000 for costs required to respond to a discharge of oil. A Governor must advise the Secretary within 24 hours of any obligation from the Fund. As with the Senate amendment, proposed regulations for obligations and agreements are required to be published within six months of enactment.

The Conference substitute differs from both the House bill and the Senate amendment by removing the authority of a State Governor to obligate money directly from the Fund. Instead, any decision to obligate funds must be made by the President, upon the request of a Governor, for up to $250,000 for removal costs consistent with the National Contingency Plan.

The substitute includes language from the Senate amendment authorizing the President to enter into cooperative agreements with the States for the purpose of establishing procedures, in advance, under which a Governor may receive expedited payments under this section to respond to a discharge. This provision is intended to provide a mechanism for immediate response by State officials to discharges posing a substantial threat to the Public health or welfare. Subsection (e) requires the President to promulgate regulations within six months detailing the manner in which agreements under subsection (d) are to be developed.

Section 1012(f). Rights of Subrogation

Section 103(e) of the Senate amendment authorizes the Fund to acquire by subrogation the rights of claimants to which the Fund paid removal costs or damages and to recover those removal costs or damages from the responsible party.

Section 1012(f) of the House bill is a similar provision stating that the payment of any claim or obligation by the Fund shall be subject to the United States Government acquiring by subrogation

all rights of the claimant or State to recover from the responsible party.

The Conference substitute adopts the House provision.

Section 1012(g). Audits

Section 103(g) of the Senate amendment and section 1012(g) of the House bill are similar provisions requiring the Comptroller General to submit to Congress a complete audit report on the Fund one year after enactment, and later as appropriate.

The Conference substitute adopts the House provision.

Section 1012(h). Period of Limitations for Claims

Section 103(h) of the Senate amendment establishes a statute of limitations for presentation of claims for recovery of removal costs of six years after the completion of the removal action, and a limitation for claims for damages of three years after the date of discovery of the loss. With respect to claims for damages to natural resources, claims must be presented by the later of: (1) three years from the date of discovery of the loss; or (2) the date of completion of the natural resource damage assessment under section 1006. Exceptions to the time limitations are provided for minors and incompetent persons.

Section 1012(h) of the House bill is similar except that the statute of limitations for claims for removal costs is three years.

The Conference substitute adopts the Senate provision.

Section 1012(i). Limitation on Payment for Same Costs

Section 103(i) of the Senate amendment and section 1012(i) of the House bill are similar provisions prohibiting the double payment from the Fund for any removal costs or damages.

The Conference substitute adopts the House provision.

Section 1012(j). Obligation in Accordance With Plan

Section 103(j) of the Senate amendment and section 1012(j) of the House bill are similar provisions requiring that any obligation of the Fund to repair injury to natural resources be in accordance with the plans for natural resource restoration, rehabilitation, replacement, or acquisition required to be developed by trustees under section 1006. This requirement does not apply in situations requiring immediate action to preserve natural resources.

The Conference substitute adopts the House provision.

Section 1012(k). Preference for Private Persons in Area Affected by Discharge

Section 103(k) of the Senate amendment requires that preference be given local residents when Federal funds are used for contracting for the removal of oil.

The House bill has no similar provision.

The Conference substitute adopts the Senate provision, with the stipulation that this subsection shall not be considered to restrict the use of Department of Defense resources.

SEC. 1013. CLAIMS PROCEDURE

Section 103(c)(4)(D) of the Senate amendment provides that no claim may be asserted against the Fund unless the claim is first presented to the applicable owner or operator, and the claim is not satisfied within 180 days. No claim against the Fund may be approved or certified during the pendency of any action by the claimant in court to recover costs which are the subject of the claim. The President is required to promulgate regulations governing the consideration and settlement of claims under this Act.

Section 1013 of the House bill provides, with certain exceptions, that claims shall first be presented to the responsible party or, when appropriate, to the owner of the oil. If each person to whom the claim is presented denies liability, or if the claim is not settled within 90 days after the claim was presented, or advertising was begun pursuant to section 1014(b), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. The section also provides that claims may be presented first to the Fund in any of the four circumstances listed in subsection (b). If full compensation is not available to settle a claim presented in accordance with this section, a claim for the uncompensated removal costs and damages may be presented to the Fund. As in the Senate provision, the President is required to promulgate regulations governing the consideration and settlement of claims.

The Conference substitutes adopts the House provision with the deletion of references to the owner of oil, and with the addition of the Senate provision, in modified form, providing that no claim by a particular claimant may be approved or certified during the pendency of an action by the claimant in court to recover the costs which are the subject of the claim.

In implementing this section, the President may use the facilities and services of private insurance and claims adjustment organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. The Conferees also intend that the President may make advance payments to the contractor to be used for the payment of claims.

SEC. 1014. DESIGNATION OF SOURCE AND ADVERTISEMENT

Section 103(c)(4)(B) of the Senate amendment requires the President to notify an owner or operator or guarantor whenever the President receives notice of an allegation that his or her vessel or facility is or may be liable under section 102 of the amendment. The owner or operator or guarantor may deny the allegation or the liability within five days after being notified by the President. Section 103(c)(4)(C) requires the owner or operator of a vessel or facility from which oil has been discharged to provide notice of all potentially injured parties.

Section 1014 of the House bill sets out the procedures for disseminating information about an incident, taking into account that under FWPCA, the person in charge of a vessel or facility must immediately notify the appropriate Federal official of an incident. Failure to give that notice subjects the person to the penalties provided in FWPCA and, under section 1003 of the House bill, denies

that person a defense to liability. Under subsection (a) of section 1014, the Secretary is required, after receiving notice of an incident, to designate, when possible and appropriate, the source of the discharge or threat of a discharge, and to notify the responsible party and guarantor, if known. As in the Senate provision, the responsible party or guarantor has five days to deny the designation. Otherwise, the responsible party or guarantor is required, within 15 days, to begin advertising the designation and the procedures by which claims may be presented. If no advertising is begun, the Secretary shall do so. Advertising shall continue for at least 30 days.

Under this section, the Secretary is only required to designate the source "where possible and appropriate". An example of when a designation might not be appropriate is an incident where the Secretary determines there is no possibility that any removal costs or damages will be sustained by any potential claimant.

The Conference substitute adopts the House provision. The Conferees intend that uniform procedures shall be established and that these procedures are used by both public and private parties.

SEC. 1015. SUBROGATION

Section 103(e)(2) of the Senate amendment and section 1015 of the House are similar provisions providing a right of subrogation to anyone who compensates a claimant for costs or damages under this Act.

The Conference substitute adopts the House provision with one technical change.

SEC. 1016. FINANCIAL RESPONSIBILITY

Section 104 of the Senate amendment and section 1016 of the House bill are generally similar provisions setting out the requirements for evidence of financial responsibility necessary to satisfy the liability provisions of section 102(c) and section 1004, respectively. However, there are two significant differences in the provisions. First, the House provision gave the responsibility for promulgating regulations under this section to the Secretary, while the Senate provision gave this responsibility to the President. Second, the House bill included requirements for demonstration of financial responsibility, where appropriate, by the owner of oil transported as cargo on a vessel.

The Conference substitute adopts the House provision, except that the responsibility for promulgating regulations governing financial responsibility for facilities is vested with the President, and the requirements for demonstration of financial responsibility by a cargo owner are dropped.

Section 1016 of the Conference substitute is intended to ensure that there will be adequate funds immediately available to compensate injured parties. Since the primary responsibility to compensate victims of oil pollution rests with the person responsible for the source of the pollution, that person is required to establish the capability to meet at least the amount of liability specified in section 1004 of this Act.

Subsection (a) of this section imposes on the parties responsible for tank vessels over 300 gross tons using U.S. waters or ports, or

for tank vessels using the water of the Exclusive Economic Zone to transship or lighter oil destined for a place subject to U.S. jurisdiction, the requirement that they have insurance, surety bonds, qualify as self insurers or have other evidence of financial responsibility sufficient to meet their liability up to the level of the limitation available under section 1004. This requirement to maintain evidence of financial responsibility is imposed on the responsible party for all vessels (except a public vessel or non-self-propelled vessel that does not carry oil as cargo or fuel), including foreign vessels using navigable waters of the United States or calling at offshore facilities subject to the jurisdiction of the United States, as covered by this substitute. Each vessel must carry on board at all times a certificate, issued by the appropriate U.S. government agency, evidencing financial responsibility.

Subsection (b) provides the necessary sanctions for enforcing the financial responsibility requirements. Failure to comply with subsection (a) will trigger a refusal of necessary clearances by the Secretary of the Treasury under customs laws, and may result in the denial of entry or detention of noncomplying vessels by the Secretary. In addition, paragraph (3) subjects any vessel and any oil carried as cargo on the vessel to seizure and forfeiture if the vessel is found in the navigable waters without evidence of financial responsibility.

Comparable requirements to maintain evidence of financial responsibility are placed on the responsible parties for offshore facilities. All offshore facilities, except deepwater ports, must establish necessary evidence of financial responsibility of $150 million.

In the case of deepwater ports, whose limits of liability may be reduced by the Secretary based on the study required under section 1004(d)(2), financial responsibility must be established to meet the maximum of liability under section 1004(a)(4), or if reduced, under section 1004(d)(2)(C).

In general, a person who is the responsible party for more than one offshore facility, more than one deepwater port, or more than one vessel, need only establish financial responsibility equal to meet the maximum liability applicable to the facility, port, or vessel having the highest potential liability under this Act. In practice, this means that if a person is the responsible party for more than one offshore facility, that person must provide evidence of $150 million in financial responsibility. If a person is the responsible party for more than one vessel, the person will be required to provide evidence of financial responsibility equal to that required for the largest vessel. However, the financial responsibility required under this section must be applicable to each offshore facility, or deepwater port, or vessel owned or operated by the responsible party. The insurance coverage, or other evidence of financial responsibility, shall not be limited to the largest facility, port, or vessel in question.

To provide claimants with a full range of options for pursuing their claims, subsection (f) authorizes direct action against anyone providing financial responsibility, as required by this section, for a responsible party. The defenses afforded to persons providing financial responsibility are limited to facilitate prompt recovery by claimants. The person providing financial responsibility can assert

rights and defenses that the responsible party could have asserted, and can invoke the defense that the responsible party caused the incident through willful misconduct. In addition, the Secretary may authorize other policy terms and defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility to foster a continuing market for providers of financial responsibility. No guarantor shall be liable in excess of the amount of financial responsibility which the guarantor has provided.

In accordance with subsection (h) owners and operators required to have evidence of financial responsibility may continue to operate under their current certificates of financial responsibility issued by the Coast Guard until the new regulations are promulgated and new certificates issued. However, this does not alter the liability in section 1002.

To avoid undue administrative burdens, the regulations for financial responsibility for vessels should be consolidated, wherever possible, with those under other Federal statutes. In this manner, only one certificate would be required for vessels to meet the requirements for financial responsibility for the statutes consolidated by this Act, and other pollution laws such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. This unified certificate, which is authorized in subsection (i), is intended to simplify administrative procedures only. Certification under one statute by a guarantor would not necessarily result in certification under another statute.

SEC. 1017. LITIGATION, JURISDICTION, AND VENUE

Section 105 of the Senate amendment and section 1017 of the House bill are generally similar provisions establishing the rules for litigation, jurisdiction, and venue.

The Conference substitute blends the provisions of the Senate amendment and the House bill.

Under subsection (a) of the Conference substitute, review of regulations under this Act may be undertaken only in the Circuit Court of Appeals of the United States for the District of Columbia and must be sought within 90 days of the promulgation of the regulations. Any matter which is subject to review under this provision is not subject to review in any civil or criminal proceeding for enforcement or to obtain damages or removal costs.

Subsection (b) provides that the United States District Courts shall have exclusive original jurisdiction over all controversies arising under the Act, except for regulatory review under subsection (a) and State court actions under subsection (c). Venue lies in any district in which the discharge, injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process.

Appropriate State courts are given jurisdiction in subsection (c) over claims for removal costs and damages, and final judgments of those courts are valid and enforceable for all purposes of this Act.

Subsection (d) provides that subsection (a), (b), and (c) shall not apply to any controversy resulting from the assessment or collection of a tax, or related regulations, under the Internal Revenue Code of 1986.

Subsection (e) clarifies that nothing in this title shall apply to a cause of action or right of recovery arising from an incident that occurred prior to the enactment of this substitute, even if no action regarding such claims has been filed as of the date of enactment of this Act.

Subsection (f) establishes the following time limitations for bringing actions for removal costs and damages under the Act:

An action for damages is barred unless it is brought within three years after the later of: (1) the date of discovery of the loss and its connection with the discharge; and (2) in the case of damages payable to natural resource trustees described in section 1002(b)(2)(A), the date of completion of the natural resource damage assessment.

An action for recovery of removal costs must be commenced within three years after the completion of the removal action. In a removal action, the court is required to enter a declaratory judgment on liability that will be binding on any subsequent action involving the same parties. An action for removal costs may be brought at any time after the costs have been incurred.

An action for contribution for removal costs or damages must be commenced within three years after the date of judgment or settlement.

An action based on rights subrogated by reason of a payment of a claim must begin within three years of the date of payment of a claim.

The rights of minors and incompetent persons are preserved until such time as they become legally competent or a guardian ad litum is appointed.

SEC. 1018. RELATIONSHIP TO OTHER LAW

Section 106 of the Senate amendment and section 1018 of the House bill are generally similar provisions preserving the authority of any State to impose its own requirements or standards with respect to discharges of oil within that State. Both provisions preserve the authority of any State to establish or maintain funds for cleanup or compensation purposes and to collect any fees or penalties imposed under State law. Both provisions also authorize States to enforce the financial responsibility requirements of this Act on their own navigable waters.

The Conference substitute blends the provisions of the House and Senate bills, and adds a new subsection (d) pertaining to the liability of Federal employees.

Thus, subsection (a) of section 1018 of the substitute states explicitly that nothing in the substitute, or the Act of March 3, 1851 (the Limitation of Liability Act), shall affect in any way the authority of a State or local government to impose additional liability or other requirements with respect to oil pollution or to the discharge of oil within that State or with respect to any removal activities in connection with such a discharge. The subsection also makes it clear that nothing in this substitute or in the Limitation of Liability Act shall affect in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State or common law.

Subsection (b) states that nothing in the substitute or in section 9509 of the Internal Revenue Code (the provision establishing the Fund) shall affect in any way the authority of a State to establish or maintain a fund, or to require a person to contribute to a fund, the purpose of which is, in whole or in part, to pay for costs or damages resulting from an incident.

Similarly, subsection (c) clarifies that nothing in the substitute, the Limitation of Liability Act, or in section 9509 of the Internal Revenue Code shall affect in any way the authority of the United States or any State or local government to impose additional liability or requirements, or to determine the amount of, any civil or criminal penalty for any violation of law.

Finally, the substitute adds a new subsection clarifying that, for the purposes of section 2679(b)(2)(B) of title 28 of the U.S. Code, nothing in this substitute shall authorize or create a cause of action against a Federal officer or employee in that person's individual capacity for any act or omission while the person is acting within the scope of the person's office or employment.

The Conference substitute does not disturb the Supreme Court's decision in *Ray* v. *Atlantic Richfield Company,* 435 U.S. 151 (1978).

SEC. 1019. STATE FINANCIAL RESPONSIBILITY

Section 106(c) of the Senate amendment and section 1019 of the House bill are similar provisions providing that a State may enforce, on the navigable waters of the State, the requirements for financial responsibility imposed under section 1016 of the Act. This authority includes the right to inspect vessels and facilities, to require the display of evidence of financial responsibility and to impose sanctions for failure to comply with the requirements.

The Conference substitute adopts the House provision.

SEC. 1020. APPLICATION

The Senate amendment has no comparable provision.

Section 1020 of the House bill provides that this Act shall apply to an incident occurring after the date of enactment of this Act.

The Conference substitute adopts the House provision.

TITLE II—CONFORMING AMENDMENTS

SEC. 2001. INTERVENTION ON THE HIGH SEAS ACT

Section 402 of the Senate amendment amends the Intervention on the High Seas Act to make available to the Secretary, for intervention procedures relating to the discharge of oil authorized by that Act, the Fund implemented by this Act.

Section 2001 of the House bill provides the same availability of the Fund.

The Conference substitute adopts the House provision with a clarification that the Fund is available for intervention procedures relating to the discharge of oil only.

SEC. 2002. FEDERAL WATER POLLUTION CONTROL ACT

Section 403 of the Senate amendment amends section 311 of the FWPCA. The amendments serve numerous purposes described in the following paragraphs.

Subsection (a) amends subsection (d) of section 311 by deleting a sentence which is made unnecessary by the Senate amendment.

Paragraph (b)(1) clarifies that subsections (f), (g), and (i) of section 311 are not applicable to any incident for which liability is established under section 1002 of the Act. Paragraph (b)(2) amends subsection (f) of section 311 specifically to provide that owners of onshore facilities are responsible for removal costs.

Subsection (c) amends subsection (i) of section 311 by deleting clauses made unnecessary by the Senate amendment.

Subsection (d) repeals subsection (k) of section 311 and transfers any remaining amounts in the account created under subsection 311(k) to the Oil Spill Liability Trust Fund. The Fund shall assume all liability incurred by the 311(k) fund in the future.

Subsection (e) makes a conforming amendment to subsection (1) by striking out the second sentence relating to expenditures from the 311(k) fund.

Subsection (f) repeals subsection (p) of section 311 relating to liability standards for vessels that are superseded by this Act.

Subsection (g) creates a new subsection 311(s) to provide that the Oil Spill Liability Trust Fund is available to carry out the provisions of sections (c), (d), (i), and (1), as those subsections relate to discharges of oil.

The House bill also amends section 311 of the FWPCA in a similar fashion. The amendments serve numerous purposes described in the following paragraphs.

The first two amendments are to paragraph (c)(2) of section 311 of the FWPCA. Their effect is to modify the National Contingency Plan for removal of oil and hazardous substances, as prepared and published by the President, to include changes reflecting: (1) the continued operation and further enhancement of a system of surveillance and notice designed not only to provide notice of spills but also to help the Vessel Traffic Service System currently operated by the United States Coast Guard; and (2) authorizing reimbursement from the Fund established by this Act for reasonable costs in removing discharges of oil pursuant to the National Contingency Plan.

Subsection (d) of section 311 is amended to delete a clause made unnecessary by the House bill.

Subsection (e) of section 311 is amended to confer upon the President the authority to issue orders or seek injunctive relief through court action to compel persons to clean up oil spills. This authority is to complement the two other ways that the Act authorizes cleanup activities: voluntary cleanup activities financed by the responsible party, and Fund-financed cleanups. The House bill then provides that the Attorney General may bring an action to enforce a cleanup order against a responsible party, may assess a civil penalty of no more than $25,000 per day for each violation, and may assess treble damages if the responsible party refuses without suffi-

cient cause to comply with an order. Lastly, the U.S. District Courts are given jurisdiction to grant relief under this subsection.

Subsections (f), (g), (h), and (i) of section 311 of the FWPCA are clarified to be nonapplicable to any incident for which liability is established under section 1002 of the House bill.

Subsection (i) of section 311 is amended to delete clauses made unnecessary by the House bill.

Subsection (k) of section 311 is repealed and any amounts remaining in the fund created under section 311(k) shall be deposited in the general account of the Treasury. The newly established Oil Spill Liability Trust Fund shall assume all liability incurred by the 311(k) fund.

Subsection (l) of section 311 is amended by striking the second sentence regarding expenditures from the 311(k) fund.

Subsection (p) of section 311 is repealed because it sets out liability standards for vessels that are superseded by the House bill.

A new subsection (s) is added to provide that the Oil Spill Liability Trust Fund shall be available to carry out the provisions of sections (c), (d), (i), and (l), as those sections relate to discharges of oil.

The Conference substitute adopts sections 2002 (4), (5), (6), (7), (8), and (9) of the House bill. The Conference substitute amends paragraph (g) to require funding of subsections (b), (c), (d), (j), and (l) of section 311. It is important to note that following enactment, liability and compensation for oil pollution removal costs and damages caused by a discharge from a vessel or facility (as defined in this substitute) will be determined in accordance with this substitute. The Fund implemented by this substitute, however, will be available to the Coast Guard and other government agencies for immediate removal of spills of all types of oil from all sources in the same manner as the fund established by section 311(k) is presently available to respond to such spills.

SEC. 2003. DEEPWATER PORT ACT

Section 404 of the Senate amendment amends the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524) by repealing various subsections in section 18 of that Act pertaining to oil pollution liability and compensation which are superseded by the Senate amendment. This subsection also provides that amounts remaining in the Deepwater Port Liability Fund shall be deposited in the Fund. The Fund will assume all liabilities of the Deepwater Port Liability Fund.

Section 2003 of the House bill contains similar provisions. In addition, it amends section 19 of the Deepwater Port Act of 1974 to make it clear that civil penalties for discharges from a deepwater port or from a vessel in a deepwater port safety zone can be assessed only under section 18 of the Deepwater Port Act, thereby eliminating overlapping and conflicting coverage of deepwater ports for civil penalties.

The Conference substitute adopts the House provisions with the exception that all of section 18 of the Deepwater Port Act of 1974 is repealed because this liability provision is superseded by this substitute. Further amendments to section 19 were not adopted.

SEC. 2004. OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

Section 405 of the Senate amendments provides that the remaining balance of the Offshore Oil Pollution Compensation Fund established under the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) is transferred to the Oil Spill Liability Trust Fund and that the Fund will assume all liabilities of the former fund. Title III of that law (Public Law 95-372), which established the Offshore Oil Pollution Compensation Fund, is repealed in its entirety.

Section 2004 of the House bill is virtually identical.

The Conference substitute adopts the House provision.

PROVISIONS RELATING TO EFFECTIVE DATE

Section 2005 of the House bill sets the effective dates of various provisions in this title consistent with the commencement date provided in section 4611(f)(2) of the Internal Revenue Code of 1986. This was not included in the Conference substitute because it is an erroneous cross reference.

TITLE III—INTERNATIONAL OIL POLLUTION PREVENTION AND REMOVAL

SEC. 3001. SENSE OF CONGRESS REGARDING PARTICIPATION IN INTERNATIONAL REGIME

The Senate amendment has no similar provision.

Title III of the House bill, entitled "Implementation of International Conventions", provides statutory authority to implement the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984. These provisions would have been effective only after ratification by the Senate. The Conventions provide for United States participation in a global oil spill liability and compensation regime which grants jurisdiction over vessels operating in innocent passage and outside our territorial waters if they cause oil pollution damage to the United States. The Conventions also allow for coverage of up to approximately $280 million per incident from the International Fund in addition to coverage provided by domestic law. The following paragraphs describe the specific House provisions.

Section 3001 of the House bill provides that the terms defined have the same meaning as defined in the International Convention on Civil Liability, 1984. Further, the section defines "Civil Liability Convention", "financial responsibility", "Fund Convention", and "International Fund".

Section 3002 of the House bill states that when the Civil Liability Convention and the Fund Convention are in place, liability shall be determined in accord with those Conventions. Subsection (b) provides that the Oil Spill Liability Trust Fund must indemnify and defend the responsible party in actions brought under any law (including State law) for any incident covered by the Civil Liability Convention. In this case, the Fund acts as the defendant, and after payment to the claimants may then collect reimbursable costs from

the shipowner and the International Fund, as provided under the Conventions.

Section 3003 of the House bill provides that the International Fund is recognized as a person under U.S. law and that the Fund Director is the legal representative of the International Fund. The Secretary of State is the Fund's agent for service of process. Lastly, the Fund and its agents are exempt from all direct taxation of assessment of duties in the United States. These exemptions have their basis in paragraphs 1 and 4 of article 34 of the International Fund Convention.

Section 3004 of the House bill requires that the International Fund be served a copy of any complaint and any subsequent pleading filed in any action brought in the United States under the Civil Liability Convention. It also entitles the Fund to intervene as a party in any such actions.

Section 3005 of the House bill provides that the Fund shall be responsible for the payment of annual contributions to the International Fund. The Secretary is granted the authority to require persons making contributions to the Fund to furnish all necessary information regarding oil delivered.

Section 3006 of the House bill requires U.S. courts to recognize decisions made under the International Conventions by a court of any nation which is a party to that Convention.

Section 3007 of the House bill sets out the financial responsibility requirements needed to implement the Civil Liability Convention and provide sanctions for failure to observe those requirements. This section also establishes a civil penalty of up to $25,000 per day for violation of the requirements of this section. Lastly, the section provides for the waiver of U.S. sovereign immunity with respect to any controversy arising under the Civil Liability Convention and relating to a ship owned by the United States and used for commercial purposes.

Section 3008 of the House bill provides the Secretary with authority to issue rules and regulations necessary to implement the two International Conventions.

During the Conference, the House made a proposal modifying these provisions to clarify the relationship of the International Protocols to domestic law and to provide for the repeal of legislation implementing the participation of the United States in the international regime within five years if certain amendments to the International Conventions were not adopted. This modification was not accepted by the Senate.

The Conference substitute is a compromise proposal offered by the House to express the sense of Congress that the best interests of the United States would be served by participation in an international regime that provides for preventive measures as well as full and prompt compensation for damages resulting from oil spills at least as effective as domestic law.

SEC. 3002. UNITED STATES-CANADA GREAT LAKES OIL SPILL COOPERATION

Section 603 of the Senate amendment requires a report by the Secretary of State on agreement between the United States and

da governing liability for potential oil spills in the Great
; and the St. Lawrence Seaway, and international contingency
. The report would be due 30 days after the date of enact-

tion 4115 of the House bill directs the Secretary of State to
w the relevant international agreements with the Government
nada, most importantly the Great Lakes Water Quality Agree-
, to determine whether additional international cooperative
s are necessary to protect the Great Lakes from oil spills and
ovide fully compensation of those injured by oil spills. The
w is to be conducted in consultation with the Great Lakes
s, the International Joint Commission and other appropriate
orities. A report on this review is due within six months of the
of enactment.
nference substitute adopts the House provision.

EC. 3003. UNITED STATES-CANADA LAKE CHAMPLAIN OIL SPILL COOPERATION

e Senate amendment has no similar provision.
tion 4116 of the House bill directs the Secretary of State to
w the relevant international agreements with the Government
nada, to determine whether additional international coopera-
fforts are necessary to protect Lake Champlain from oil spills
o provide full compensation of those injured by oil spills. The
w is to be conducted in consultation with the States of Ver-
and New York, the International Joint Commission, and
appropriate authorities. A report on this review is due within
onths of the date of enactment
e Conference substitute adopts the House provision.

3004. INTERNATIONAL INVENTORY OF REMOVAL EQUIPMENT AND PERSONNEL

tion 202(8) of the Senate amendment adds a new section
)(2)(K) to the FWPCA providing for the development and
tenance of an international inventory of equipment and per-
el to remove oil and hazardous substances.
bsection 4205(c) of the House bill calls on the President to en-
ge appropriate international organizations to establish an
national inventory of emergency removal resources.
e Conference substitute adopts the House provision with tech-
changes.

3005. NEGOTIATIONS WITH CANADA CONCERNING TUG ESCORTS IN PUGET SOUND

e Senate amendment has no similar provision.
ction 3009 of the House bill contains a provision urging the
tary of State to enter into negotiations with Canada regarding
scorts for tank vessels of 40,000 deadweight tons in the Strait
an de Fuca and Haro Strait.
e Conference substitute adopts the House provision.

TITLE IV—PREVENTION AND REMOVAL

SEC. 4001. DEFINITIONS

Section 301 of the Senate amendment contains definitions of terms used in title III.

Section 4001 of the House bill also has definitions.

The Conference substitute deletes the definitions as unnecessary.

Subtitle A—Prevention

SEC. 4101. REVIEW OF ALCOHOL AND DRUG ABUSE AND OTHER MATTERS IN ISSUING LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS

Subsection 303(c) of the Senate amendment requires an individual who has applied for a license, certificate of registry, or a merchant mariner's document or renewal of those documents to request the chief drivers licensing official of a State to provide to the Commandant of the Coast Guard information the Commandant deems appropriate regarding that individual's driving record.

Section 4101 of the House bill prohibits the Coast Guard from issuing a license, certificate, or document unless the individual makes available all information contained in the National Driver Register (NDR) regarding the driving record of that individual.

This section also provides for a review of the criminal record of individuals applying for a license, certificate, or document. The House bill also requires the Secretary to establish programs for drug testing individuals applying for issuance or renewal of these documents. The Senate had no similar provisions.

The Conference substitute adopts the House provisions with modifications. This section is intended to give the Secretary additional information on the background of applicants for licenses, certificates of registry, and merchant mariners' documents. The purpose of this section (and sections 4102, 4103, and 4105) is to ensure that the Coast Guard can identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs. Abuse of these substances may evince possible unsafe vessel operations, leading to additional accidents and oil spills. Alcohol impairment may have played a role in the *Exxon Valdez* incident.

These provisions are intended to provide an additional tool in the effort to promote a drug- and alcohol-free workplace in the maritime industry. The voluntary efforts that the industry has undertaken to improve the safety of marine transportation through testing and rehabilitation of the work force are recognized and encouraged.

Section 4101(a) of the Conference substitute amends title 46 of the United States Code to receive applicants for licenses or certificates of registry to provide access to information contained in the NDR. Subsection (b) extends this requirement to applicants for a merchant mariner's document.

The NDR is a national compilation of vehicle offenses voluntarily reported by states and maintained by the Secretary of Transportation under Public Law 97-364. Under current law, locomotive operators or those seeking such a position may provide access to the

NDR to a prospective employer. This provision is intended to expand and strengthen this practice for vessel personnel, given the relevancy of alcohol or drug infractions involving a motor vehicle to safe vessel navigation and the need for drug- and alcohol-free vessel operation.

Section 4101(a) also allows the Secretary to conduct a review of the criminal record of an applicant for a license. The Coast Guard is currently checking Federal Bureau of Investigation records. This provision codifies existing procedure. There is no intent to cause undue delay issuing a license.

SEC. 4102. TERM OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS; CRIMINAL RECORD REVIEWS IN RENEWALS

The Senate amendment had no similar provisions.

Subsection (a) of the House bill amends section 7107 of title 46, United States Code to set a five-year term for certificates of registry, with a five-year renewal period. Subsection (b) amends section 7302 of title 46 to set a five-year term for merchant mariner's documents, with a five-year renewal period. Subsection (c) sets January 1, 1990, as the effective date for subsections (a) and (b). Subsection (d) sets termination dates, calculated as though the changes under this section were in effect on the date the certificate or document was issued, for existing certificates and documents to provide for a staggered renewal period. Subsection (e) requires the Secretary to conduct a review of criminal records of individuals who seeks to renew a license.

The Conference substitute incorporates the House provision with technical changes. Providing an automatic five-year renewal period will allow the Secretary to ensure that vessel personnel continue to be qualified to operate a vessel safely.

SEC. 4103. SUSPENSION AND REVOCATION OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS FOR ALCOHOL AND DRUG ABUSE

Section 304 of the Senate amendment requires periodic, random, reasonable cause, and post-accident alcohol testing for personnel who perform safety sensitive functions on tankers in the navigable waters of the United States. It also directs the Coast Guard to determine whether to require holders to inform the Coast Guard when a holder is undergoing rehabilitation.

Subsection 4103(a) of the House bill authorizes the Secretary to request persons holding a license, certificate of registry, or merchant mariner's document to provide all information contained in the NDR. It also requires the Secretary to establish programs for testing persons holding a license, certificate, or document for use of alcohol and dangerous drugs. Programs may include periodic, random, reasonable cause, and post-accident testing.

The Conference substitute incorporates the House provisions and adds the requirement for pre-employment testing for dangerous drugs only.

Section 305 of the Senate amendment requires a temporary suspension of a license or document of an individual performing a

safety sensitive function on a tanker if there is reason to believe that the individual was denied a motor vehicle license for cause within five years; had a motor vehicle license cancelled, revoked, or suspended for cause within the previous five years; was convicted of an alcohol offense within the previous five years; or operated a vessel while under the influence of alcohol. An expedited hearing on the suspension is required to be commenced within 15 days after the temporary suspension.

Section 4103(a)(1) of the House bill also gives the Secretary new authority to temporarily suspend a license, certificate, or document if the individual performs a safety sensitive function on a vessel and there is probable cause to believe there are grounds for suspension. The grounds include that a holder has performed the sensitive function while under the influence of, or while using alcohol or a dangerous drug; has been denied a driver's license for cause within the five-year period immediately before the temporary suspension; or has been convicted of an offense for which a license, certificate, or document can be suspended or revoked under sections 7703(2) or 7703(3) of title 46 of the U.S. Code. This subsection also requires an expedited hearing within 15 days of the temporary suspension.

Section 4103(a)(1) of the Conference substitute incorporates provisions from both the House and Senate to provide for a temporary suspension of a license, certificate, or document for not more than 45 days if the holder, when acting under authority of that license, certificate, or document, performed a safety sensitive function and there is probable cause to believe that: (1) the individual performed the function in violation of the law regarding the use of alcohol or a dangerous drug; (2) has been convicted of an offense that would prevent the issuance or renewal of a license, certificate, or document; (3) within the 3-year period preceding the initiation of the suspension hearing, has been convicted of operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, or the individual was involved in a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways. This section also provides that if a license is temporarily suspended, an expedited hearing is required to be held within 30 days after the temporary suspension.

The deadlines of 30 days for the hearing and 45 days for a decision are intended to protect the rights of an individual whose license, certificate, or document has been temporarily suspended. Unless a determination is made quickly, the individual may suffer irreparable harm.

Subsection 303(b) of the Senate amendment permits the Coast Guard to suspend or revoke a license or document if it is shown after an opportunity for hearing that the holder was convicted of a serious criminal offense that would reflect adversely on the offender's character and fitness to serve consistent with the interest of safety at sea; was convicted of a NDR offense within the prior five years; has had a driver's license denied, cancelled, revoked, or suspended for cause; or fails to meet the standards for issuance of the license or document.

Section 4103(b) of the House bill has similar provisions.

Section 4103(b) of the Conference substitute combines provisions of both bills. It expands the existing bases in law for suspending or

revoking a license, certificate, or document by adding two new grounds: (1) the individual is convicted of an offense that would prevent the issuance of the license, certificate, or document; or (2) the individual is convicted of an offense described in the National Driver Register Act (such as driving under the influence of alcohol or dangerous drugs, reckless driving, or leaving the scene of an accident), within the three-year period immediately before the suspension or revocation.

The Senate amendment has no comparable provision regarding reissuance.

Section 4103(c) of the House bill adds a new requirement to existing law for reissuance of a revoked license, certificate, or document. The former holder must provide satisfactory proof that the bases for revocation are no longer valid. For example, if the basis for revocation concerns abuse of a dangerous drug, the former holder might show that he or she has successfully completed a drug treatment program and is involved in a substance abusers support group.

The Conference substitute adopts the House provision.

SEC. 4104. REMOVAL OF MASTER OR INDIVIDUAL IN CHARGE

There is no comparable provision in the Senate amendment.

House section 4104 establishes a procedure by which the two next most senior licensed officers on a vessel may temporarily relieve the master or individual in charge of a vessel when the individual in charge of a vessel is under the influence of alcohol or a dangerous drug and is incapable of commanding the vessel. Once the individual in charge of a vessel is relieved, the next most senior officer shall take command of the vessel, make a detailed entry in the vessel log, and report the incident by the most expeditious means available and in writing after reaching port. This section is intended to obligate the next most senior individuals on a vessel to remove the master if the master's ability to operate the vessel safely is impaired.

The Conference substitute adopts the House provision with technical amendments to clarify that the "next most senior officers" do not include engineers since these officers are not qualified under their license to command a vessel.

The Conferees intend the term "individual in charge of the vessel" to mean a person who is a member of the vessel's complement. The definition of "under the influence" is meant to be that amount of alcohol as determined in regulations promulgated by the Secretary.

SEC. 4105. ACCESS TO NATIONAL DRIVER REGISTER

Section 303(a) of the Senate amendment amends the National Driver Register Act to authorize any person holding or applying for a license, certificate, or document to request the chief driver's licensing official of a State to send to the Commandant of the Coast Guard current information on his or her driving records contained in the National Driver Register. It also requires the Commandant to make that information available to the individual for comment before the information can be used as a basis for denying or other-

wise affecting that person's license, certificate, or document. Information more than five years old, unless relating to sanctions still imposed, may not be transmitted.

The House provision, section 4105, is essentially the same.

Section 4105 of the Conference substitute incorporates these provisions but substitutes the Secretary as the person to whom information should be sent, and restricts transmittal of information that is more than three years old.

SEC. 4106. MANNING STANDARDS FOR FOREIGN TANK VESSELS

The Senate amendment does not have a similar provision.

Section 4106 of the House bill requires the Secretary to evaluate the manning, training, qualification, and watchkeeping standards for tank vessels of foreign countries on a periodic basis, and after a casualty involving a foreign tank vessel to ensure that those standards are equivalent to those of the United States or customary international law and that the standards are being enforced. The Secretary must deny entry to the United States to any foreign tank vessel that does not meet the equivalency and enforcement requirement, except that provisional entry for these vessels may be authorized if the vessel's owner or operator satisfies the Secretary that the vessel is not unsafe or a threat to the environment or that entry is necessary for the safety of the vessel or individuals on the vessel.

The Conference substitute includes House section 4106 with amendments. Instead of using the term "customary international law", the phrase "international standards accepted by the United States" is used in the substitute. The United States has not ratified the international Convention on Manning, Training, Certification, and Watchkeeping for Seafarers, although many maritime nations have adopted and are enforcing the Convention. Standards under United States law are more stringent than those contained in the Convention and those of many other nations. Enforcement of standards equivalent to those of the Convention should be considered as the minimum standard for meeting the requirement of this section so long as international law recognizes standards less stringent than those of the United States. The conferees intend that "standards equivalent to United States law" or "international standards accepted in the United States" may be considered to include the Convention on Standards for the Training, Certification, and Watchkeeping for Seafarers.

According to a study recently completed for the Coast Guard, the number of foreign tankers calling at United States ports has increased by more than 50 percent in the last three years. As the United States grows more dependent on foreign sources of oil and petroleum products, increased scrutiny of the growing foreign tank vessel traffic is necessary to protect the safety and the environment of United States ports.

The Conference substitute amends section 6101 of title 46, United States Code, by adding "significant harm to the environment" as a new class of casualties that must be reported by all vessels to the Secretary. It adds a new provision to 6101(d) to extend the reporting requirement to foreign tank vessels involved in certain marine

casualties on waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone. The marine casualties required to be reported under the new provision are those that involve material damage affecting the seaworthiness or efficiency of the vessel or when there is significant harm to the environment.

This provision is intended only to expand the Coast Guard's investigative authority in certain incidents. This language is not intended to and does not expand the authority of the National Transportation Safety Board (NTSB) to investigate incidents that occur on foreign vessels in international waters. The NTSB's sole jurisdiction is found in the Independent Safety Board Act of 1974 (49 U.S.C. 1901) and Title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441). Section 4106 does not amend either of these laws, nor does it offer any independent grant of marine investigative authority to the Board.

The Conferees do not intend that this section conflict with international comity or interfere with the right of innocent passage. This section should be interpreted to be consistent with the right of a nation to conduct activities it may deem necessary to protect the safety or environmental quality of its waters.

SEC. 4107. VESSEL TRAFFIC SERVICE SYSTEMS

Section 306 of the Senate amendment requires the Secretary, within one year of enactment, to report to certain committees of Congress a list of ports that are in need of new, expanded, or improved Vessel Traffic Service (VTS) systems. The ports are to be ranked in order of need based on factors, such as the nature, volume, and frequency of vessel traffic into and out of the ports; and the risks of collisions, spills, and damages associated with traffic that could be reduced or eliminated by a VTS system. In addition, this section authorizes the Secretary to establish and implement a system for the collection of payments by users of VTS systems in the United States.

Section 4107(a) of the House bill amends the Ports and waterways Safety act to require mandatory participation in VTS systems by appropriate vessels. It provides that no appropriation is to be made for a project to construct, operate, maintain, improve, or expand a VTS system unless it is approved by a resolution adopted by the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science, and Transportation. This subsection requires the Secretary to transmit to Congress a report on proposals concerning any VTS system.

Section 4107(b) of the House bill mandates the Secretary to study whether the Secretary should be given additional authority to direct the movement of vessels and should exercise that authority, and to determine and prioritize the United States ports and channels that are in need of new, expanded, or improved VTS systems by evaluating certain factors. This subsection also requires the Secretary to submit a report to Congress within a year on the results of this study along with recommendations for implementing the study.

Section 4107 of the Conference substitute adopts certain provisions from both bills. This section requires the Secretary to man-

date that certain appropriate vessels participate in VTS systems. This is meant to include those vessels that pose a significant threat of pollution from oil and thereby should be mandated to participate in a VTS system to reduce the possibility of accidents.

The requirement for a study to determine and prioritize which ports and channels are in need of VTS systems is retained along with the criteria contained in both bills. The Conferees intend to give the Secretary some discretion in completing this study. Due to the expansive nature of the study, it is acceptable for the Secretary to conduct the study and submit the report in separate and distinct parts.

The proposal for a user fee for VTS systems was not included.

AUTHORITY TO REQUIRE STATE PILOTAGE FOR TANKERS

Section 302(c) of the Senate amendment includes a provision to require the Secretary to submit a report to committees of Congress on the adequacy of current pilotage regulations in minimizing the risk of oil spills and to determine which areas warrant additional pilotage requirements.

Section 4108 of the House bill amends subsections 8501(d) and 8502(d) of title 46, United States Code, to provide a limited exemption from the general prohibition against States requiring State pilotage and levying pilot charges on coastwise vessels. This exemption provision applies only to coastwise tankers whose Federal pilot's license is not endorsed for that State's waters; it does not include other coastwise vessels, such as barges.

The Conference substitute does not contain either provision.

SEC. 4108. GREAT LAKES PILOTAGE

The Senate amendment does not have a similar provision.

Section 4109 of the House bill corrects a gap in existing pilotage laws for the Great Lakes to ensure that vessels will operate safely in the largest source of fresh water in the world.

The Conference substitute incorporates a modified version of the House provision that will eliminate the use of the "B certificate" on the undesignated waters of the Great Lakes. Under current law, pilots are required on all U.S. vessels operating on register and on all foreign vessels in the Great Lakes. However, the Canadian government will grant a "B certificate" to a non-Canadian master to operate on undesignated Great Lakes waters without a U.S. or Canadian registered pilot. "B certificates" are issued to foreign masters upon satisfying the following minimum requirements: (1) three round trips across the Lakes during a two-year period; (2) English speaking ability; (3) oral exam on the rules of the road; and (4) possession of a radiotelephone operator license. This is a much lower standard than the United States imposes on its licensed pilots under sections 7101(c)(2) and 9303 of title 46, United States Code, and is not consistent with the requirement of equivalency in current law.

The United States has been working with Canada to eliminate the use of "B certificates", but progress has been extremely slow. Despite repeated efforts by the United States, Federal officials have not been able to ascertain the content or the general guide-

lines of the Canadian oral exam. A recent Department of Transportation report includes accounts of near misses and incidents in which foreign masters failed to respond to radio calls or failed to demonstrate knowledge of local conditions. Elimination of the "B certificate" will have minimal economic effect on foreign vessels serving the Lakes since many vessels with "B certificate" masters currently take on pilots because they are not familiar with the waters or because of insurance requirements.

The Conference substitute section acknowledges provisions of Canadian law that accept "certificates of competency" from officers of certain other countries with standards and qualifications equivalent to those under Canadian law. These certificates of competency are valid for use on Canadian-flag vessels by officers employed on such vessels who generally are permanent residents or citizens of Canada.

The Conference substitute section increases penalties under section 9308 of title 46, United States Code, for violations of the Great Lakes pilotage requirements from $500 to allow a penalty of up to no more than $10,000.

SEC. 4109. PERIODIC GAUGING OF PLATING THICKNESS OF COMMERCIAL VESSELS

The Senate amendment does not have a similar provision.

Section 4110 of the House bill requires the Secretary to issue regulations within one year to establish minimum standards for the plating thickness of vessels transporting oil in bulk, and implement a program for requiring periodic gauging of vessels 30 years old or older to ensure that these standards are met.

The Conference substitute adopts the House provision with an amendment to clarify that the provision is to be applied in a manner consistent with international law. This section was added in response to the structural failure of tank barge 565 in the Chesapeake Bay last year. That vessel was built to specified standards and had been recently inspected and gauged. This provision also would apply to foreign vessels. The Conferees intend that the requirements conform to existing inspection schedules to ensure minimum disruption of vessel operations. In addition, the Coast Guard should consider gauging by classification societies, if equivalent to the Secretary's requirements, to be acceptable evidence of compliance with this section.

SEC. 4110. OVERFILL AND TANK LEVEL OR PRESSURE MONITORING DEVICES

The Senate amendment does not have a similar provision.

Section 4111 of the House bill requires the Secretary to issue regulations within one year to require warning devices to be installed on tank vessels and barges to prevent overfilling of oil tanks. The Secretary is also required to issue regulations establishing requirements concerning the use of overfill devices and tank vessel or monitoring devices.

The Conference substitute adopts the House provision with an amendment to clarify that this provision is to be applied in a

manner consistent with international law. This provision would apply to foreign tank vessels.

SEC. 4111. STUDY ON TANKER NAVIGATION SAFETY STANDARDS

Section 307 of the Senate amendment requires the Secretary within a year, to complete a rulemaking to determine whether electronic means of vessel position-reporting and identification should be carried on oil tankers.

Subsection 308(b) of the Senate amendment requires the Secretary, within one year, to submit to committees of Congress a report on the size, cargo capacity, and flag-nation of oil tankers, specifying changes over the past 20 years, evaluating the extent to which the risks associated with oil tanker navigation, vessel traffic control, accidents, oil spills, and the containment and cleanup of spills are related to size and cargo capacity. The Secretary is also required to submit a report on recommendations for legislation.

Subsection 4112(a) of the House bill requires the Secretary to review existing laws and regulations to determine if they are adequate to ensure safe navigation of vessels transporting oil and hazardous substances on the navigable waters and the Exclusive Economic Zone. Subsection (b) of the House bill requires the Secretary to conduct a study to evaluate a variety of factors including crew sizes, training, and qualifications; the adequacy of navigation equipment; navigation procedures; vessel design and construction criteria; double hulls; vacuum method of tanker design; overfill and tank pressure monitoring devices; inspection standards; computer simulator courses; and remote alcohol testing, among others.

The Conference substitute combines the Senate and House provisions and calls for a comprehensive study. Subsections (b)(1) through (b)(3) require specific examination of issues related to tanker crews. Areas to be examined include: appropriate crew sizes; qualification and training of crewmembers; and the emergency response capabilities of crews in the event of a spill. It has been alleged that the size of the crew and fatigue of the crew following cargo loading may have contributed to the *Exxon Valdez* and *Presidente Rivera* groundings. These allegations and many others specific to the *Exxon Valdez* are under investigation by the U.S Coast Guard and the National Transportation Safety Board. Without making a judgment on these specific allegations, a thorough, industry-wide examination of crew and manning standards must be undertaken. The findings of such a study will greatly contribute to Congressional consideration of international conventions and agreements, as well as legislative and regulatory actions that may be needed to improve the safety of tanker navigation.

Subsections (b) (4), (5) and (6) require specific examination of issues related to navigation. Areas to be examined include the adequacy of navigation equipment on tankers (including sonar, electronic chart display, and satellite technology); an evaluation of position-reporting and identification on tankers; and the adequacy of navigation procedures (including speed, daylight, presence of ice, tides, weather, and other conditions). Satellite technology offers great potential for improving both tanker navigation and tracking of tanker movements. In the examination of navigation equipment,

such technological innovations should be considered. On the other hand, existing tanker navigation equipment, automatic pilots for example, has been cited as potential contributing factors to tanker accidents; therefore, potential hazards of existing equipment should be examined. The Coast Guard should evaluate whether alarms for automatic pilots would be desirable. Navigation procedures have also been cited as potentially contributing factors to unsafe tanker operations. The Coast Guard should undertake a broad assessment of navigation procedures, including an analysis of existing requirements for personnel on the bridge, in engineering compartments, and at watch stations both at sea, while transiting pilotage waters, or loading in port. In addition, this study should review traffic separation schemes, tug escorts, and vessel speeds, among other things.

Subsection (b)(7) requires an evaluation of whether certain areas of the navigable waters and Exclusive Economic Zone should be declared "tanker free zones", areas where tanker movements should be limited or prohibited, particularly areas where oil and gas leasing, exploration, or development are prohibited by legislative action. Canada, for instance, has established "tanker free zones" to minimize the exposure of its sensitive shoreline areas to potential contamination from discharges of oil or hazardous substances. The Coast Guard should act expeditiously in evaluating whether tankers should be prohibited from using the channel between Montauk Point, New York, and Block Island, Rhode Island. The channel is extremely narrow and shallow and has been the site of numerous accidents. For other reasons, the Coast Guard should evaluate the advisability of declaring the Santa Barbara Channel off the coast of California a "tanker free zone". The Secretary should consider whether a "tanker free zone" would be consistent with offshore oil and gas development.

Subsection (b)(8) requires an evaluation of the adequacy of tanker inspection requirements. Adequate inspection of tankers should have a high priority in preventing spills. Consequently, the Coast Guard should review inspection standards to determine if they are adequate and if the frequency of inspections ought to be increased.

The Coast Guard has not been able to inspect on an annual basis every vessel that enters certain harbors. For instance, the Coast Guard was able to inspect only 58 percent of foreign vessels entering New York Harbor in one recent year. Of those foreign vessels inspected, 85 percent were found to have safety or other defects that warranted remediation. The Coast Guard should report to Congress about its ability to conduct annual inspections in harbors, the resources required to conduct those annual inspections, and the oil spill and emergency response benefits of the inspections.

Subsection (b)(9) requires that the comprehensive study review and incorporate the findings of past studies, including those by the Coast Guard and the Office of Technology Assessment.

Subsection (b)(10) directs the Coast Guard to evaluate computerized simulators for training bridge officers and vessel pilots. These simulators are already in limited use now, and the Coast Guard should consider the potential for expansion of this practice.

Subsection (b)(11) requires an evaluation of the size, cargo carrying capacity, and flag-nation of tankers transporting oil or hazard-

ous cargo on the navigable waters and the waters of the Exclusive Economic Zone.

The Coast Guard should also conduct a general review of the contribution of vessel design to maneuverability and whether impaired maneuverability contributes to collisions and groundings.

Subsection (b)(12) requires the Secretary to evaluate and test a program of remote alcohol testing for masters and pilots aboard tankers carrying significant quantities of oil.

Subsection (c) requires that the study findings, together with implementation recommendations, be transmitted to Congress not later than one year after the date of enactment of this Act.

SEC. 4112. DREDGE MODIFICATION STUDY

The Senate amendment does not have a similar provision.

Section 4113 of the House bill requires the Secretary of the Army to conduct a study and demonstration project to determine the feasibility of modifying dredges to make them usable in removing discharges of oil and hazardous substances. Subsection (b) requires the study findings, together with implementation recommendations, be transmitted to Congress within one year of enactment of this Act.

The Conference substitute adopts the House provision.

Modified dredges have been used successfully in oil recovery operations both in the United States and in Europe. The Conferees adopt the House provision by requiring the Secretary of the Army to study the feasibility of modifying dredges operated by the U.S. Army Corps of Engineers to make them usable in responding to discharges of oil and hazardous substances in section 4112 of the Conference substitute.

SEC. 4113. USE OF LINERS

The Senate amendment does not have a similar provision.

Section 4114 of the House bill requires the President to report to Congress on the utility of liners or other secondary containment means to prevent leaks, leaching, or spills from on-land oil storage tanks. Not later than six months after the report is submitted, the President is required to implement the recommendations.

Section 4113 of the Conference substitute adopts the House provision. The need for secondary containment was well illustrated by the Ashland Oil Company tank which ruptured and spilled 700,000 gallons of diesel oil into the Monongahela and Ohio Rivers in January 1988. Following the completion of the study, the President must implement any study recommendations. Because oil storage facilities fall under the jurisdiction of both the Environmental Protection Agency and the Coast Guard, it is expected that the agencies would work together promulgate any regulations required by this section.

SEC. 4114. TANK VESSEL MANNING

The Senate amendment does not have a comparable provision.

Section 4117 of the House bill directs the Secretary to conduct a rulemaking to determine the conditions under which a tank vessel may operate with the auto-pilot engaged or with an unattended engine room. The provision also limits crew working hours to 15

hours per 24-hour period, and no more than 36 hours per 72-hour period.

The Conference substitute adopts the House provision.

SEC. 4115. ESTABLISHMENT OF A DOUBLE HULL REQUIREMENT FOR TANK VESSELS

Section 308(a) of the Senate amendment requires the Secretary to require double hulls and double bottoms on newly-built oil tankers unless the Secretary determines that they would not enhance tanker navigation safety or environmental protection, or that equal or greater protections will be achieved by other structural requirements. It also provides that the Secretary may require other structural or navigation features that will enhance tanker navigation safety.

Section 4118 of the House bill amends section 3708 of title 46, United States Code, to require tank vessels to be equipped with a double hull. This requirement applies to all vessels constructed after the date of enactment of the House bills, and within 15 years of enactment for all other tank vessels.

Section 4119 of the House bill also amends section 3708 of title 46, United States Code, to require self-propelled tank vessels of at least 20,000 deadweight tons to be equipped with a double bottom within seven years.

Section 4115 of the Conference substitute requires that all newly-constructed tank vessels be equipped with double hulls, with the exception of vessels used only to respond to a discharge of oil or a hazardous substance. In addition, newly constructed tank vessels less than 5,000 gross tons are not required to have double hulls if they are equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil.

In making the determination that a particular double containment system is as effective as a double hull for the prevention of a discharge of oil, the Secretary may consider vessel size and the environment in which the vessel operates. The Secretary may find that flexible bladders, double sides, or other combinations of technologies are of equal effectiveness to double hulls for vessels under 5,000 gross tons operating in specified environments.

The requirement for double hull construction does not apply before January 1, 2015, to a vessel unloading oil in bulk at a deepwater port, or a delivering vessel that is offloading in lightering activities within a lightering zone established under section 3715(b)(5) of title 46, United States Code, more than 60 miles from the coast of the United States.

Subsection (a) of this section exempts vessels offloading oil at licensed deepwater ports before January 1, 2015. The limited exemption is supported by Coast Guard studies and testimony by the Chairman of the Council on Environmental Quality during congressional hearings on legislation authorizing the Federal licensing of deepwater ports. The Chairman concluded that the probability of a collision or grounding is reduced by 90 percent for vessels calling at deepwater ports located beyond 15 miles offshore.

Subsection (a) provides an exemption, before January 1, 2015, to delivering vessels offloading in zones established under section 3715(b)(5) of title 46, United States Code, located more than 60 miles from the baseline from which the territorial sea of the United States is measured. The Secretary under section 3715 has broad discretion to determine whether the establishment of any lightering zone is required and to impose by regulation requirements on lightering activities within the zones to protect the marine environment, after an environmental impact statement or environmental assessment has been completed and the public has been afforded an opportunity to comment on any proposed regulation.

Section 4115(c) of the Conference substitute phases out existing non-double hulled vessels beginning in 1995. By the year 2010, all vessels over 5,000 gross tons with single hulls would be prohibited from operating without double hulls, and by the year 2015 all vessels over 5,000 gross tons with double bottoms or double sides would be prohibited from operating without double hulls. All vessels under 5,000 gross tons must be equipped with a double hull, or a double containment system determined by the Secretary to be as effective as a double hull, after January 1, 2015.

The age of the vessel for purposes of subsections (c)(2) and (3) is determined from the later of the date on which the vessel is delivered after original construction; delivered after completion of a major conversion; or had its appraised salvage value determined by the Coast Guard and qualified for documentation under section 4136 of the Revised Statutes of the United States (the Wrecked Vessel Act).

For purposes of determining whether a vessel is an existing vessel and eligible for the phaseout provisions, the building contract or contract for major conversion must have been placed before June 30, 1990, and the vessel must be delivered under that contract before January 1, 1994. For purposes of the Wrecked Vessel Act, a vessel must have had its appraised salvage value determined by the Coast Guard before June 30, 1990, and must qualify for documentation before January 1, 1994.

Subsection (c)(2) provides that existing vessels of less than 5,000 gross tons are permitted to operate without a double hull or double containment system until January 1, 2015. The Conference substitute establishes a phaseout schedule for larger vessels based on age and tonnage. Different phaseout schedules apply for vessels of at least 5,000 gross tons but less than 15,000 gross tons, for vessels of at least 15,000 gross tons but less than 30,000 gross tons, and for vessels of at least 30,000 gross tons.

Section 4115 was drafted to ensure that the requirement for double hulls or double containment systems be implemented as quickly as possible. However, the Conferees understand that there are a number of considerations that require some attention. While the goal of this provision is to ensure that the environment is protected as quickly as possible from oil spills, the Conferees also recognize that there could be a substantial impact on the maritime, oil, and shipbuilding industries, as well as on the availability of vessels to transport fuel oil. To assure that existing operators will have time to plan to replace their fleets, to assure that there is

adequate shipping capacity, and to insure sufficient worldwide shipbuilding capability exists, the phaseout is staggered based on tonnage and age of vessels. The oldest vessels will be phased out beginning in 1995.

The reference in new section 3703a(a)(2) of title 46 to "a vessel to which this chapter applies . . . when operating in . . . the Exclusive Economic Zone" does not alter the jurisdictional application of chapter 37 of title 46 or the chapter's consistency with generally recognized principles of international law. The reference merely correlates with new section 3715(a)(5) concerning lightering in the marine environment, portions of which lie within the Exclusive Economic Zone. This section is not intended to apply to vessels transiting U.S. waters or transiting the Exclusive Economic Zone in innocent passage.

Vessels to which chapter 37 of title 46 apply are "tank vessels". Tank vessels include those vessels which transfer oil or hazardous substances in a place subject to the jurisdiction of the United States. The effect of new sections 3703a(a)(2) and 3715(a)(5), as applied to the Exclusive Economic Zone, is to bar a tank vessel that has received oil from another vessel at a lightering location within the Exclusive Economic Zone from transferring that oil at a place subject to the jurisdiction of the United States unless both vessels in the lightering operation are in compliance with new section 3703a.

With regard to the term "major conversion" as used in this section and defined in section 2101(14)(a), the Conferees intend this term to encompass a major recapitalization that is a major reconstruction of the hull structure that enhances environmental compatibility. The Conferees intend that such a major conversion should be exclusive of the Federally-mandated requirements of the Port and Tanker Safety Act of 1979. The Conferees intend that the *Coastal Corpus Christi* and the *Coastal Eagle Point* be deemed to have undergone a major conversion.

The Conferees recognize that it will be several years before some vessels are required to have double hulls. Subsection (b), therefore, requires the Secretary, within 12 months of enactment, to complete a rulemaking and issue a final rule to require tank vessels over 5,000 gross tons affected by the double hull requirement to comply, until January 1, 2015, with structural and operational requirements that the Secretary determines will provide as substantial protection to the environment as is economically and technologically feasible. The Conferees intend to have the Secretary evaluate other structural and operational means of environmental protection that may be imposed on existing vessels before they are required to have double hulls.

The Secretary is not required to impose both structural and operational requirements under this subsection. These requirements are not intended in any way to change the requirement that vessels be required to have double hulls as required by this section. Examples of structural and operational requirements the Secretary should evaluate and may require include hydrostatic loading, liners, spill rails, and devices to be carried on board a vessel to contain oil in the event of a spill. There may be other structural and

operational requirements which the Secretary may evaluate and require on vessels over 5,000 gross tons.

Section 4115(d) of the Conference substitute amends section 3715(a) of title 46, United States Code, by adding three new paragraphs providing conditions for a receiving vessel offloading oil at a place subject to the jurisdiction of the United States.

New paragraph (3) of section 3715(a) requires that both delivering and receiving vessels have at the time of the transfer evidence of financial responsibility as required under the Oil Pollution Act of 1990. The requirements for evidence of financial responsibility are contained in section 4016 of the Conference substitute.

New paragraph (4) of section 3715(a) requires that delivering and receiving vessels have at the time of the transfer evidence that each vessel is operating in compliance with section 311(j) of the Federal Water Pollution Control Act, including amendments under title IV of the Conference substitute.

New paragraph (5) of section 3715(a) requires that delivering and receiving vessels operate in compliance with the double hull requirements and other provisions of new section 3703a of title 46, United States Code.

The substitute requires the Secretary to conduct a study not later than six months after enactment to determine, based on recommendations from the National Academy of Sciences and other organizations, whether other structural and operational tank vessel requirements will provide protection to the marine environment equal to or greater than that provided by double hulls, and report to Congress with recommendations for legislative action.

In addition, the Secretary is required to periodically review recommendations from the National Academy of Sciences and others on methods for further increasing the environmental and operational safety of tank vessels; assess the impact of this section on the safety of the marine environment and the economic viability and operational makeup of the maritime oil transportation industry; and report to Congress.

This section also provides for loan guarantees under Title XI of the Merchant Marine Act of 1936. This section allows the Secretary to make loan guarantees for the construction or reconstruction of replacement vessels if the loan applicant is presently engaged in transporting cargoes in vessels of the type and class to be replaced; the capacity of the replacement vessel will not increase the cargo-carrying capacity of the vessel being replaced; and the Secretary has made a determination that the market demand for the vessel over its useful life will not diminish so as to make the granting of the guarantee imprudent. The section requires the applicant to provide adequate security against default.

SEC. 4116. PILOTAGE

Section 302(a) of the Senate amengedment requires tankers to maintain two officers on the bridge watch while in pilotage waters unless the tanker has a State-licensed pilot on board. One of the bridge watch individuals must fix the vessel's position every six minutes. It also requires at least two of the officers on board to be licensed for the waters being transited.

Section 302(b) of the Senate amendment authorizes the Coast Guard to waive or modify the requirements of subsection (a) if the Secretary determines that the requirements of subsection (a) would not substantially enhance tanker navigation safety.

Section 351 of the Senate amendment requires the Secretary to conduct a rulemaking to require tankers transiting between the Port of Valdez and Bligh Reef, Alaska, be directed by a piloted licensed by the Coast Guard and the State of Alaska.

Sections 1003 and 1004 of the House bill negated available defenses and liability limits for tank vessels over 40,000 deadweight tons that transit Puget Sound, Washington, without a tug escort.

Section 5003 of the House bill requires the Secretary to issue regulations to require tankers in Prince William Sound, Alaska, to have two escort vessels and a pilot licensed by the State of Alaska who is operating under a Federal license.

The Conference substitute incorporates provisions from both the House bill and the Senate amendment. Section 4116(a) of the Conference substitute amends section 8502(g) of title 46, United States Code. It codifies existing practice with respect to pilotage on vessels entering and departing from Prince William Sound. This provision will require that a vessel be under the direction and control of a pilot licensed not only by the U.S. Coast Guard but also by the State of Alaska. This amendment states that the pilot will be operating under the pilot's Federal license and thus will ensure that a pilot accused of negligence or malfeasance will be answerable to the Coast Guard. The requirement that this pilot not be a member of the crew should add a degree of independence and also ensure that the pilot is not in the employ of the tanker operator or owner. Finally, this provision will extend pilotage requirements past Bligh Reef. This later requirement, as well as the dual accountability provision, will promote the level of competence necessary in the uniquely vulnerable Prince William Sound.

Section 4116(b) of the Conference substitute requires the Secretary to designate waters on which the pilot must be a person who is separate and distinct from the person who is in command of the vessel. The Conferees intend that the Secretary will use this provision to identify sensitive areas and require that two persons, i.e., the captain and a separate pilot, both be on bridge to navigate a vessel through these areas.

Section 4116(c) of the Conference substitute requires the Secretary to designate areas, including Prince William Sound, Alaska, and Puget Sound, Washington, on which single hull tankers over 5,000 gross tons must be escorted by at least two towing vessels. The Conferees intend that the Secretary use this provision to require escort vessels for single hull tankers transiting environmentally sensitive areas or other areas that pose a high potential risk of a spill. The presence of escort vessels that can assist a tanker to maneuver or provide a tow in the case of mechanical difficulties could reduce the present high incidence of groundings by such vessels.

SEC. 4117. MARITIME POLLUTION PREVENTION TRAINING PROGRAM STUDY

This provision requires the Secretary to conduct a study and report to Congress within one year to determine the feasibility of a Maritime Oil Pollution Prevention Training Program to be carried out in cooperation with approved maritime training institutions. The study shall assess the costs and benefits of transferring suitable vessels to selected maritime institutions, equipping the vessels for oil spill response, and training students in oil pollution response skills.

SEC. 4118. VESSEL COMMUNICATION EQUIPMENT REGULATIONS

Section 355 of the Senate amendment requires the Coast Guard to ensure that every vessel transiting the Mississippi River is capable of radio communications to receive warnings and to communicate with the Coast Guard and other vessels.

The House bill does not have a similar provision.

The Conference substitute adopts section 355 of the Senate amendment but deletes the references to the Mississippi River and makes the reference to vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971.

This section requires that the Secretary issue regulations within one year after the date of enactment of the Act to ensure that vessels, subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (33 U.S.C. 1203), including foreign vessels, have the capability to receive navigation safety warnings and to engage in radio communications on designated frequencies with the Coast Guard, other vessels, and such stations as may be specified by the Secretary.

Many vessels do not have the capability to receive Coast Guard marine warnings. This is apparently due to the fact that the frequency the Coast Guard uses for its broadcasts is not always available on the equipment carried by vessels operating in that area.

The Conferees believe that it is essential that certain vessels be capable of communicating with the Coast Guard and with other vessels at all times. The Conferees do not expect that all vessels will be subjected to this requirement. Clearly, however, oil tankers and other vessels posing major risk should be in contact with the Coast Guard. The Secretary is given the discretion to determine the type of equipment necessary to achieve the purposes of this section.

Subtitle B—Removal

SEC. 4201. FEDERAL REMOVAL AUTHORITY

Section 201(a) of the Senate amendment amends section 311(c)(1) of the FWPCA to require the President to clean up or arrange for the cleanup of oil or hazardous substances unless the President finds that the cleanup is being done properly and promptly by the responsible party, and that the responsible party has the financial resources and technical capability to conduct a proper cleanup. Section 201(b) amends section 311(d) of the FWPCA to require the President to coordinate and direct all public and private cleanup efforts whenever there is a substantial threat of a pollution hazard

to the public health or welfare, and to allow the President to act without regard to any provisions of law governing competitive bidding, the employment of personnel or the expenditure of appropriated funds.

Section 202 of the Senate amendment amends section 311(c)(2) of the FWPCA to require the President to revise the National Contingency Plan (NCP). The revisions include development of an international inventory of oil spill equipment and personnel and establishment of criteria and procedures to ensure prompt and proper identification of, and response to, oil spills that create a substantial threat of a pollution hazard to the public health or welfare.

Section 4201 of the House bill amends FWPCA section 311(c)(1) to require the President to ensure effective and immediate removal of a discharge of oil or hazardous substance. The provision authorizes the President to remove or arrange for the removal of the discharge, direct the actions of all on-scene personnel, and monitor all removal actions. The provision exempts from liability for removal costs and damages all persons, other than the responsible party, conducting removal activities who are retained or directed by the President unless they are grossly negligent or guilty of willful misconduct. The liability exemption does not apply to removal of hazardous substances or to claims related to personal injury or wrongful death. Section 4205 of the House bill requires establishment of a comprehensive nationwide computer listing of emergency oil spill removal resources.

The Conference substitute replaces subsections (c) and (d) of section 311 of the FWPCA with a combination of the provisions in the Senate amendment and in the House bill. The substitute establishes a general requirement under new section 311(c)(1) of the FWPCA that the President ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or hazardous substances into or on the navigable waters or the waters of the Exclusive Economic Zone, on adjoining shorelines, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. With respect to removal of any discharge or mitigation or prevention of any substantial threat of a discharge, the President may assume responsibility and costs of these actions subject to reimbursement from the responsible party (i.e., "Federalize" the effort); direct or monitor all Federal, State and private actions; and remove and, if necessary, destroy a vessel discharging or threatening to discharge. As used in this new paragraph of the FWPCA, the term "Exclusive Economic Zone" is the zone established by Presidential Proclamation 5030 of March 10, 1983.

Section 311(c)(2) of the FWPCA, as amended by the Conference substitute, replaces section 311(d) of that Act to require the President to direct all Federal, State, and private actions to remove a discharge or to mitigate or prevent a substantial threat of a discharge if the discharge is of such size or character as to be a substantial threat to the public health or welfare of the United States. The public health or welfare of the United States includes, but is not limited to fish, shellfish, wildlife, other natural resources, or public and private shorelines and beaches. Examples of spills that

have posed such a substantial threat to the public health or welfare include the spills from the *Exxon Valdez* in Alaska's Prince William Sound and from the *American Trader* in California's coastal waters, and the spill and substantial threat of a larger spill from the *Mega Borg* in the waters of the Gulf of Mexico.

In addition to the requirement that the President direct a response in carrying out FWPCA section 311(c)(2), the President has the same authority as that provided under paragraph (1) of that section to Federalize removal, mitigation or prevention efforts and to remove and, if necessary, destroy a vessel; however, the President may take these actions without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government. The exemption from laws governing contracting procedures and employment of personnel, such as the requirements of section 1012(k) of this Act, is intended to facilitate emergency response and is not intended to apply to long-term removal actions. This subsection is designed to eliminate the confusion evident in recent spills where the lack of clear delineation of command and management responsibility impeded prompt and effective response.

The Conference substitute establishes a new parapraph (4) of FWPCA section 311(c) to provide limited immunity for persons involved in oil spill cleanup. The provision is similar to that contained in section 4201(a) of the House bill except that the limited immunity is extended not only to those persons retained or directed by the Federal On-Scene Coordinator but also to those persons rendering care, assistance or advice consistent with the NCP. The substitute's provision also clarifies that it does not apply to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

This subsection provides immunity from liability established under the substitute for those taking action in response to an oil spill or the threat of a spill, whether that action is performed under the aegis of the National Contingency Plan or under the direction of the President. This takes into account the fact that the NCP and Presidential orders may not cover every detail or eventuality of a spill response and that actions that are in keeping with the overall objectives of the NCP or Presidential order are deemed to be within the scope of this provision. This section reflects the Conferees' intention that responses to oil spills be immediate and effective. Without such a provision the substantial financial risks and liability exposures associated with spill response could deter vessel operators, cleanup contractors, and cleanup cooperatives from prompt, aggressive response.

The term "responsible party" as used in this new FWPCA paragraph has the same meaning that term has in section 1001 of the Oil Pollution Act of 1990. Finally, the Conference substitute amends section 311(o) of the FWPCA to preserve explicitly the authority of any State to impose its own requirement or standards with respect to the liability of persons involved in the removal of oil.

The Conference substitute moves the requirements of existing section 311(c)(2) of the FWPCA. which require the President to prepare and publish the NCP for removal of oil and hazardous sub-

stances, to new section 311(d) of that Act. The substitute adds to these requirements a number of the provisions in section 202 of the Senate amendment and a fish and wildlife response plan, which was added to the NCP under section 2002 of the House bill. Under new FWPCA section 311(d), the NCP must also include establishment of procedures and standards for removing a worst-case discharge of oil and for mitigating or preventing a substantial threat of such a discharge. In preparing the schedule found in paragraph (G) the President should consider the long- and short-term effects on the environment of spill mitigating devices and substances, and select those which are least harmful to the environment. Additionally, the revised NCP requires establishment of procedures for coordinating the activities of Coast Guard strike teams (formerly termed "strike forces"), Federal On-Scene Coordinators, District Response Groups, and Area Committees. The revised NCP must be republished within one year of that date of enactment of this Act.

The substitute amends section 311(a) of the FWPCA to define the new terms used in the NCP provisions, including the term "worst case discharge." In the case of a vessel, a "worst case discharge" is defined as a discharge in adverse weather conditions of the vessel's entire cargo. In the case of a facility, the term means the largest foreseeable discharge in adverse weather conditions. The more general term "largest foreseeable discharge" is used in the case of facilities because it is difficult to describe the entire contents of an offshore facility or an onshore facility such as a pipeline. The largest foreseeable discharge from a given type of facility is intended to describe a case that is worse than either the largest spill to date or the maximum probable spill for that facility type.

The Conferees note that in the aftermath of the *Exxon Valdez* spill untrained workers were involved in the cleanup. As a result, approximately 1,700 workers compensation claims have been filed under federal and Alaska law. The result is that these claims have increased the burden on the Alaska workers' compensation system by 20 to 25 percent. The Conferees note that proper worker training and enforcement of the Hazardous Waste and Emergency Response Standard of the Occupational Safety and Health Administration for members of the response teams as well as for workers employed after a spill will result in more efficient cleanup operations, increased protection of worker health and safety, and potential workers' compensation savings.

SEC. 4202. NATIONAL PLANNING AND RESPONSE SYSTEM

Section 204 of the Senate amendment amends section 311 of the FWPCA to require owners and operators of vessels and onshore and offshore facilities to prepare and submit a contingency plan for the prevention, containment and cleanup of oil spills from their vessels or facilities. If implemented, these plans must be capable, to the maximum extent practicable, of promptly and properly removing oil and minimizing environmental damage from a worst case discharge without the active participation of any federal personnel or equipment. The Senate amendment requires regular inspection of vessels, equipment and facilities; approval of contingency plans; and makes it unlawful to operate a vessel or a facility that is not

in compliance with a contingency plan submitted and approved under its provisions. Section 203 of the Senate amendment adds a new provision to section 311 of the FWPCA to establish, operate and maintain at least eight regional oil spill response teams capable of promptly and properly removing oil from a worst case discharge using all available public and private equipment and personnel.

Section 4202 of the House bill amends section 311(j) of the FWPCA to require contingency plans for areas and for tank vessels and facilities. Local contingency plans apply to areas designated by the President and are required to include descriptions of environmentally-sensitive areas: descriptions of the responsibilities of the responsible party, Federal, State and local agencies; and lists of available personnel and equipment. Vessel and facility contingency plans must be consistent with the NCP; describe actions that will be taken immediately to remove the most serious potential discharge; and ensure the availability of necessary removal personnel and equipment by contract or other means. The House bill requires review and approval of contingency plans and periodic inspections of equipment. Vessels or facilities are not permitted to operate without an approved contingency plan. Section 4203 of the House bill amends section 311(c)(2) of the FWPCA to establish at least seven regional strike teams to carry out the NCP and other local, vessel and facility contingency plans.

The Conference substitute combines elements of the Senate amendment and the House bill to establish a new national planning and response system under section 311(j) of the FWPCA. This system consists of a National Response Unit (NRU), Coast Guard Strike Teams, Coast Guard District Response Groups, Area Committees, Area Contingency Plans and vessel and facility response plans.

The National Response Unit is established at Elizabeth City, North Carolina, to (1) compile a list of oil spill removal resources, personnel, and equipment worldwide; (2) coordinate use of private and public personnel and equipment to remove a worst case discharge; (3) administer Coast Guard strike teams and provide technical assistance; and (4) review and maintain on file area contingency plans.

This section mandates the NRU to coordinate the use of private and public response resources. Implicit in this authority is the need for the Federal Government to avoid duplication of private initiatives. Both the House and Senate response provisions contemplated active use and involvement of private response resources, such as the Petroleum Industry Response Organization (PIRO) which may develop regional response centers. In such a case, the Federal Government should avoid duplicating private personnel and equipment.

The Conferees intend to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area. The Conferees recognize that adequate response may require use of private and public equipment and personnel located throughout the U.S. or the world.

Section 311(c)(2) of the FWPCA previously required establishment of strike forces under the NCP, which are located in San

Francisco, California, and Mobile, Alabama. The Conference substitute maintains the strike force requirement under new section 311(d) of that Act and renames these entities "Coast Guard strike teams." The Coast Guard strike teams consist of available trained personnel, adequate oil and hazardous substance pollution control equipment, and a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fish and wildlife. These teams are available upon request by any Federal On-Scene Coordinator to provide assistance, guidance, and training.

A Coast Guard District Response Group is established in each of the ten Coast Guard Districts. Each group consists of Coast Guard personnel and equipment for each port within the district, additional pre-positioned equipment, and district advisory staff. The Conferees instruct the Coast Guard to give priority emphasis to several factors in determining where to locate the Response Groups and pre-position equipment, including; (1) the availability of facilities suitable to load and unload heavy or bulky equipment by barge; (2) the proximity to an airport capable of supporting large military transport aircraft; (3) the flight time to provide response to oil spills in all areas of the Coast Guard district which hold the potential for marine casualties; (4) the availability of trained local personnel capable of responding in an oil spill emergency; and (5) areas where large quantities of petroleum products are transported.

The Department of Defense is currently testing the tiltrotor aircraft, the V-22, *Osprey,* which takes off and lands as a helicopter yet flies through the air as a fixed wing aircraft. The V-22 *Osprey* has been developed to satisfy a variety of military requirements and appears to have the potential and flexibility to be extended to oil spill response. The V-22 would allow oil spill task forces to rapidly reach the spill area loaded with enough equipment to contain major spills. Nothing in the current or projected Coast Guard inventory has this capability. The Coast Guard should look closely at the tiltrotor technology, especially in reviewing its equipment requirements under section 4202 of this Act.

Area Committees comprised of members appointed by the President from qualified personnel of Federal, state and local agencies are established to prepare area contingency plans. These plans must be reviewed and approved by the President and are required to ensure, when implemented in conjunction with other elements of the National Contingency Plan, the removal of a worst case spill from a vessel or facility operating in or near the area covered by the plan. All U.S. waters and adjoining shorelines would be subject to an area contingency plan.

In describing the procedures for decisions on the use of dispersants and other spill mitigating devices and substances, Area Committees should consider research conducted under section 7001(c)(2) of the substitute.

Owners and operators of vessels and facilities are required to prepare and submit individual response plans to the President. This requirement applies to all tank vessels, as defined under section 2101 of title 46, United States Code, and any facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the nav-

igable waters, adjoining shorelines, or the Exclusive Economic Zone. Consequently, under this standard, all offshore facilities are required to have response plans. Additionally, because even small discharges from an onshore facility could result in substantial harm under certain circumstances, the requirement for these facility owners and operators to prepare and submit response plans should be applied broadly.

Under a vessel or facility response plan, an owner or operator is required to identify and ensure by contract, or other means approved by the President, the availability of private personnel and equipment sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of such a discharge. The phrase "to the maximum extent practicable" should be construed to require the President to consider the technological limitations associated with oil spill removal, and the practical and techical limits of the spill response capabilities of individual owners and operators. This should not be construed to prevent a significant increase in commercial removal resources in each area for which a response plan is required, if the President determines an increase is needed to comply with the national planning and response system.

The President is required to review vessel and facility response plans; require amendments to any plan that does not meet the requirements established under the provisions of new section 311(j)(5) of the FWPCA; and approve any plan that does comply with those provisions. The President is required to review all submitted vessel response plans and any submitted response plan for a facility that, because of its location, could reasonably be expected to cause both significant and substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines or the Exclusive Economic Zone. The addition of the qualifying term "significant" is not meant to exclude from review and approval any response plan for an offshore facility. However, with respect to review and approval of response plans for onshore facilities, the President should develop criteria to select only those submitted plans for onshore facilities that, in the event of a discharge of oil, could cause both significant and substantial harm to the environment. Only some proportion of all submitted onshore facility response plans, therefore, are expected to be reviewed and approved by the President. Nationwide criteria to determine which onshore facilities are required to submit plans and which of those submitted plans are required to be reviewed and approved should be developed by regulation and with public comment under the Administrative Procedure Act.

The national criteria developed by the President should include, but not be limited to, oil storage capacity, location of environmentally sensitive areas, and location of potable water supplies. The criteria should not result in the selection of facilities based solely on the size or age of storage tanks. Specifically, the selection criteria should not necessarily omit those smaller facilities that are near major drinking water supplies or that are near environmentally-sensitive areas.

Any criteria developed by the President to select onshore facility response plans for review and approval do not preempt or super-

sede regulation of above-ground oil and hazardous materials storage tanks pursuant to other provisions of section 311 of the FWPCA and title III of the Superfund Amendments and Reauthorization Act (SARA), or the regulation of underground storage tanks pursuant to other provisions of FWPCA section 311 and subtitle I of the Solid Waste Disposal Act.

A substantial number of facilities that handle, store or transport hazardous substances are subject to emergency planning requirements under the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Occupational Safety and Health Act, and other federal statutes. Additionally, chemical emergency planning requirements are in effect for communities under title III of SARA. The requirements under the Conference substitute may well apply to facilities that also are required to prepare and submit hazardous substance emergency plans under one or more of the above laws. The provisions of the Conference substitute do not supplant, supersede or duplicate any of the reporting and planning requirements of title III of SARA or of any other statute. Any facility response plans should be consistent with plans prepared under other laws and any information developed under this section should be made available to the State Emergency Response Commissions and Local Emergency Planning Committees established under title III of SARA.

The President should select onshore facility response plans in a manner that will avoid duplicative or conflicting response plan review requirements and should ensure that such response plans are coordinated with the community emergency planning effort under title III of SARA.

Beginning 30 months after the date of enactment, a vessel or facility for which a response plan is required to be prepared and submitted may not operate unless such a plan has been submitted to the President. Thirty-six months after enactment, a vessel or facility subject to response plan requirements may not operate unless the response plan for that vessel or facility is operating in compliance with that plan. The number of plans requiring review may prevent the President from reviewing a response plan in a timely manner, with the result that a vessel or facility that had submitted a response plan would be prohibited from operating. In this situation and in the case of vessels coming into the U.S. trade, the Conference substitute authorizes the President to allow a vessel or facility to operate for up to two years after the plan has been submitted if the owner or operator has certified that owner or operator has ensured by contract or other means approved by the President the availability or private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

Finally, the national response and planning system established by the Conference substitute requires the President to conduct periodic inspection of oil spill removal equipment and period drills of removal capability, without prior notice.

SEC. 4203. COAST GUARD VESSEL DESIGN

The Senate amendment has no comparable provision.

Section 4204 of the House bill requires the Secretary to ensure that vessels designed and constructed to replace Coast Guard buoy tenders are equipped with oil skimming systems that complement the vessels' primary mission of servicing navigation aids.

The Conference substitute accepts the House provision.

SEC. 4204. DETERMINATION OF HARMFUL QUANTITIES OF OIL AND HAZARDOUS SUBSTANCES

Section 206(e) of the Senate amendment amends section 311(b)(4) of the FWPCA to require the determination by the President of the amounts of oil that may be harmful to the public health or welfare and to determine the quantities of oil that may be harmful to the environment.

The House bill has no comparable provision.

The Conference substitute accepts the provision in the Senate amendment.

SEC. 4205. COASTWISE OIL SPILL RESPONSE COOPERATIVES

This section applies to not-for-profit oil spill response cooperatives that use vessels only to deploy equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters or Exclusive Economic Zone of the United States or for training purposes to respond to a spill. In the 100th Congress, a change in the coastwise laws required vessels transporting valueless material to meet the Jones Act requirements of U.S. ownership, construction, and manning. Because some cooperatives are partly owned by foreign citizens, they cannot operate except in violation of the law. This section would allow these cooperatives to have not more than 50 percent foreign ownership and still be coastwise qualified.

Subtitle C—Penalties and Miscellaneous

The Senate amendment and the House bill amend the FWPCA and other statutes to provide for more stringent penalities for discharges of oil and for violations of various administrative requirements.

The Conference agreement consolidates and clarifies the penalty provisions of both bills.

SEC. 4301. FEDERAL WATER POLLUTION CONTROL ACT PENALTIES

Section 4301 of the Conference agreement increases penalties under the Federal Water Pollution Control Act for discharge of oil or hazardous substances and for other violations of the FWPCA.

Subsection 4301(a) amends FWPCA section 311(b)(5) to provide for more stringent penalties for failure to notify the appropriate agency of the Federal Government of a discharge. The existing statute provides for a fine of not more than $10,000 or imprisonment of not more than one year, or both. The Conference agreement provides for imprisonment of not more than three years (or not more than five years in the case of a subsequent conviction) and a fine of not more than $250,000 for an individual or not more than $500,000 for an organization.

Section 311(b)(5) is also revised to direct the Federal Government to notify a State which is, or may reasonably be expected to be, affected by the discharge.

Section 4301(a)(3) would eliminate all use immunity arising from a spill notification by persons other than natural persons, and would eliminate derivative use immunity arising from a spill notificiation by natural persons.

Section 4301(b) provides for more stringent administrative and civil penalities for discharges of oil or hazardous substances, for failure to comply with regulations concerning vessel and facility response plans under FWPCA section 311(j), and for failure to comply with orders of the President.

The existing administrative penalty in FWPCA section 311(b)(6)(A) is replaced by new authority comparable to the administrative civil penalty authority established in section 309(g) of the FWPCA. This new authority is available to the Administrator of the Environmental Protection Agency as well as the Secretary of Transportation.

The adoption of civil penalty authority comparable to that of section 309(g) has the effect of increasing the penalty for a discharge or a violation of FWPCA section 311(j) from $5,000 for each offense to the greater amounts established for Class I and Class II penalties (i.e. Class I, $10,000/not to exceed $25,000; Class II, $10,000/not to exceed $125,000).

The provisions of section 309(g) relating to rights of interested persons, finality and effect of orders, judicial review, collection, and subpoenas are generally continued in the new paragraph of section 311(b), with the exception that some provisions are limited to Class II penalities.

This subsection also revises existing civil penalty authority. This new authority is available to both the Administrator of the Environmental Protection Agency and the Secretary of Transportation.

Existing law provides for civil penalites for discharges of oil or hazardous substances of not more than $50,000 or, in a case of "willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge", not more than $250,000.

The Conference agreement provides for a penalty of up to $25,000 per day of violation or $1,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged. In addtion, in a case of gross negligence or willful misconduct, the penalty is to be not less than $100,000 but not more than $3,000 per barrel of oil or unit or reportable quantity discharged.

By the phrase "unit of reportable quantity of the spill substance", the Conferees mean the quantity (whether 1 pound or, in some cases, 5,000 pounds) that would give rise to a reporting obligation if the hazardous substance is spilled. It is intended to base the amount of the penalty on a measure of the danger that the substance may pose to the environment and the relative care that should be exercised with respect to such substance.

This provision also stipulates the factors to be considered in determining the amount of administrative and civil penalties, restates authority for mitigation of damage and recovery of removal

costs, and clarifies that civil penalties are not to be assessed under this section and section 309 of the FWPCA.

This provision offers general guidelines for determining the amount of civil penalty that may be assessed in the event of an oil spill. Each spill will involve a unique set of circumstances. Typically, oil spills involve a large element of human error. Civil penalties should serve primarily as an additional incentive to minimize and eliminate human error and thereby reduce the number and seriousness of oil spills. There are strong operational and economic incentives within the Conference substitute that should encourage responsible parties to prevent oil spills. In determining the amount of a civil penalty, particular weight should be given to the rapidity and effectiveness of the response actions by the responsible party.

Civil penalties are also established for failure to provide removal action under order of the President and failure to comply with an emergency order. In both cases, the penalty is an amount up to $25,000 per day of violation or an amount up to three times the costs incurred by the Fund.

In addition, civil penalties of up to $25,000 per day of violation are established for violations of the vessel and facility planning requirements of FWPCA section 311(j). Violations of section 311(j) are not subject to civil penalties under current law.

Section 4301(c) of the Conference substitute provides that violations of the prohibition on discharge of oil or hazardous substances are subject to criminal penalties established under section 309(c) of the Federal Water Pollution Control Act. These penalties are $2,500–$25,000/one year in prison for negligent violations, $5,000–$50,000/three years for knowing violations, and up to $250,000 and 15 years for knowing endangerment.

SEC. 4302. OTHER PENALTIES

Section 4302 of the Conference substitute strengthens penalties under a number of other marine transportation safety laws, including penalties for dangerous operation of a vessel and penalties under the Deepwater Port Act, the Intervention on the High Seas Act, the Ports and Waterways Safety Act, the Act to Prevent Pollution from Ships, and other laws.

SEC. 4303. FINANCIAL RESPONSIBILITY CIVIL PENALTIES

Section 4303 of the Conference substitute authorizes a penalty to be assessed by the Secretary of Transportation of up to $25,000 per day for violation of financial responsibility requirements and authorizes the Secretary of Transportation to seek a judicial order to compel compliance, including an order terminating operations.

SEC. 4304. DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Section 4304 of the Conference substitute provides that penalties in connection with oil spills imposed under the FWPCA, the Oil Pollution Act, and the Deepwater Port Act are to be deposited into the Oil Spill Liability Trust Fund.

SEC. 4305. INSPECTION AND ENTRY

Section 4305 of the Conference substitute establishes new inspection, entry and recordkeeping requirements for vessels and facilities subject to the substitute and provides Federal inspection and entry authority with respect to those vessels and facilities.

SEC. 4306. CIVIL ENFORCEMENT UNDER FEDERAL WATER POLLUTION CONTROL ACT

Section 4306 of the Conference substitute amends section 311(e) of the FWPCA to clarify and expand the authority of the President to take action in the case of imminent and substantial threat to the public health or welfare of the United States because of the actual or threatened discharge of oil or a hazardous substance.

PROVISIONS RELATING TO USER FEES

Section 207 of the Senate amendment contains a user fee for contingency plan review and approval inspection and evaluation of required equipment and personnel, and practice drills.

The House has no user fee proposal.

The Conference substitute adopts the House position and did not include an user fee provision in the legislation. However, there is authority under section 9701 of title 31, United States Code for the Secretary or EPA to collect user fees for services provided under Federal law.

TITLE V—PRINCE WILLIAM SOUND PROVISIONS

SEC. 5001. OIL SPILL RECOVERY INSTITUTE

Sections 354 and 356 of the Senate amendment provide for the establishment of the Prince William Sound Oil Spill Recovery Institute, to be administered by the Secretary of Commerce through the Prince William Sound Science and Technology Institute and located in Cordova, Alaska. In general, the Institute will conduct research and carry out educational and demonstration projects relating to the *Exxon Valdez* spill. The Senate amendment contains provisions establishing an Advisory Board and a Scientific and Technical Committee, as well as other administrative provisions. Section 356 authorizes $5,000,000 in the first fiscal year following the date of enactment of the Act, and $2,000,000 annually for the nine subsequent fiscal years.

The House bill contains two provisions relating to research in the Alaska region and related to the *Exxon Valdez* spill. Section 7001(b)(5) requires the Secretary of Commerce, in consultation with the Administrator of the Environmental Protection Agency, to undertake a 10-year comprehensive monitoring and research program relating to the long-term environmental effects of the *Exxon Valdez* discharge. Further, section 7001(f) establishes six regional research centers, one to be located in a region including the Alaska coastline and other Arctic and subarctic environments.

Section 5001 of the Conference substitute adopts the provisions in the Senate amendment establishing the Prince William Sound Oil Spill Recovery Institute. Section 5006 of the Conference substitute authorizes, from the Fund under this substitute and subject to ap-

propriations, $5,000,000 in the first fiscal year following the enactment of the substitute, and $2,000,000 for each of the nine subsequent fiscal years, to establish and carry out the Institute. The provisions in the House bill relating to a long-term monitoring study of the environmental effects of the *Exxon Valdez* spill were not included in the Conference substitute in view of the Institute's work in that area.

As part of the national research program established in the substitute, sections 7001 (c)(8) and (c)(9) of the Conference substitute establish a regional research program to be administered in 10 regions, including an Alaska region, defined by existing Coast Guard District boundaries. However, the Prince William Sound Oil Spill Recovery Institute is specifically prohibited from receiving grants authorized by sections 7001 (c)(8) and (c)(9). The Conferees intend that qualifying entities other than the Institute may receive grants under the regional research program established in title VII, which is discussed in more detail under Section 7001.

The Conference substitute adds language providing that none of the funds provided by this legislation for the Oil Spill Recovery Institute are to be used for any purpose which is not directly related to the *Exxon Valdez* oil spill and specifically authorized under this section. This language is intended by the Conferees to respond to the concern that the Institute or its administering body, the Prince William Sound Science Center and Technology Institute, will conduct studies and make recommendations which are unrelated to the oil spill and its effects.

SEC. 5002. TERMINAL AND TANKER OVERSIGHT AND MONITORING

Title V of the Senate amendment establishes oil terminal environmental monitoring and oversight programs for the oil terminal operations in Prince William Sound, Alaska, and Cook Inlet, Alaska. Advisory Committees composed of industry representatives, state and local officials, and public citizens are established to monitor terminal operations that affect the environment and assist in contingency planning. Money is made available from the Fund to pay for these committees.

Section 8103 of the House bill established a 10 year advisory council to monitor operation of the Trans-Alaska Pipeline Terminal in Prince William Sound, Alaska.

The Conference substitute adopts the Senate amendment with amendments to allow existing organizations to meet the requirements of this section and to specify that industry will fund these programs as a requirement for response plan approval. The Conferees expect that improved measures for the prevention and mitigation of oil spills in these areas will result through increased interaction and cooperation among local citizens, vessel and terminal operators, and public officials. The authority of the Citizens Advisory Councils is to advise, monitor, and make constructive recommendations to oil terminal and tanker operators and governmental officials. This section is not intended to affect the authority of the State of Alaska or the Federal Government with respect to the operation of oil tanker and terminal facilities.

SEC. 5003. BLIGH REEF LIGHT

Section 352 of the Senate amendment establishes a navigational light to promote marine safety on or adjacent to Bligh Reef in Prince William Sound, Alaska.

The House bill has no similar provision.

The Conference substitute incorporates section 352 of the Senate amendment.

SEC. 5004. VESSEL TRAFFIC SERVICE SYSTEM

Section 353 of the Senate amendment requires the Secretary to acquire, install, and operate additional equipment, train and provide additional personnel; and issue regulations to increase the range of the existing vessel Traffic Service System (VTS) in the Port of Valdez, Alaska. Section 353 requires the Secretary to submit to the Committees on Commerce, Science, and Transportation of the Senate and on Merchant Marine and Fisheries in the House of Representatives, a report on the feasibility and desirability of instituting positive control of tank vessel movements in Prince William Sound, Alaska, by the Coast Guard VTS System.

Section 5004 of the House bill requires the Secretary to prepare and implement a plan to modify surveillance coverage of vessels in Prince William Sound, Alaska, by the Coast Guard VTS system.

The Conference substitute incorporates section 353 of the Senate amendment, and extends the time period during which the Secretary must upgrade the Port of Valdez VTS system and submit the VTS system report to the House and Senate Committees from 180 days after the date of enactment of the substitute to one year. In light of the immense volume of oil transported through Prince William Sound and the navigational difficulty presented by the Sound, the Conferees have determined that the VTS System in the Port of Valdez needs significant improvement in its surveillance capability; its capacity for vessel warning and avoidance; and the area it monitors. The Conferees intend this section to provide an expanded VTS system equipped with updated vessel surveillance and warning devices.

SEC. 5005. EQUIPMENT AND PERSONNEL REQUIREMENTS UNDER TANK VESSEL AND FACILITY RESPONSE PLANS

The Senate amendment has no similar provision.

Section 5005 of the House bill requires that within 18 months after enactment of this Act, the Secretary of Transportation must require specific removal equipment and personnel as part of a local contingency plan prepared for Prince William Sound under section 311(j) of the FWPCA. These requirements include: prepositioning of oil spill removal equipment; establishing an oil spill removal team; requiring tank vessels operating in Prince William Sound to have appropriate equipment to remove a discharge of oil and minimize damage to the environment; requiring training in oil spill containment for local residents and the local fishing industry; and requiring practice exercises to test the effectiveness of the equipment and personnel under the contingency plan.

The Conference substitute modifies section 5005 of the House bill and makes it a free-standing provision rather than an amendment

to section 311(j) of the FWPCA. The effect of these changes is to impose on facilities located in Prince William Sound and vessels transiting the Sound oil spill removal requirements that are in addition to those required under section 311(j) of the FWPCA, as amended by the Conference substitute. The near failure of removal capability during the first few days after the *Exxon Valdez* oil spill on March 23, 1989, demonstrated that the oil spill contingency plans that were in effect for Prince William Sound prior to the *Exxon Valdez* accident were wholly inadequate. The requirements of section 311(j) are intended to ensure an effective and immediate response to an oil spill similar to the *Exxon Valdez* oil spill on March 23, 1989. The added requirements of section 5005 of the Conference substitute are intended to provide an even greater margin of safety.

Subsection (a)(1) of the Conference substitute requires the prepositioning of oil spill containment equipment in locations in Prince William Sound that may be adversely affected by a future oil spill. These locations include fish hatcheries and local communities, such as Valdez, Tatitlek, and Cordova. The equipment required by this section includes heavy-duty sea boom, pumping and transferring equipment, and barges to receive recovered oil. The Conferees intend that loaded tank vessels be escorted by vessels with skimming capability.

Subsection (a)(2) requires establishment of oil spill removal organizations at appropriate locations in Prince William Sound. These organizations should consist of trained personnel in sufficient numbers to immediately respond to a spill of 200,000 barrels, or a worst case discharge to the maximum extent practicable, whichever is greater. The Conferees intend that residents of the communities in Prince William Sound receive training in basic oil spill response techniques so that they may assist in cleanup and containment efforts in the event of a future catastrophic spill. This will allow local residents to assist in the cleanup and containment of oil spills as a means of protecting their property and economic interests from the adverse effects of a spill. Basic training should occur in areas including Valdez, Cordova, Whittier, Tatitlek, and Chenega.

Subsection (a)(3) requires special training in oil spill removal and containment techniques for those residents and individuals engaged in the cultivation or production of fish or fish products. This provision is essential to protect the environmental and economic integrity of several fish hatcheries and other fish cultivation projects. These hatcheries and cultivation projects are critical elements of the fishing industry and must be protected in the event of a future spill.

Subsection (a) (4) and (5) require periodic practice exercises and testing of equipment to ensure that the regional oil spill response readiness remains adequate to respond to a worst case discharge to the maximum extent practicable.

SEC. 5006. FUNDING

Section 356 of the Senate amendment provides funding without further appropriation from the Fund for the Prince William Sound Oil Spill Recovery Institute, the construction of a warning light or

Bligh Reef, and the upgrade of the Prince William Sound Vessel Traffic Service System.

Section 512 of the Senate amendment provides funding without further appropriation from the Fund for operation of the Oil Terminal Monitoring and Oversight program.

The House bill has no comparable provisions.

The Conference substitute provides funding without further appropriation from the Fund for sections 5003 and 5004, the Bligh Reef Light and Prince William Sound VTS upgrade. Authorization is provided for funding section 5001, Prince William Sound Oil Spill Recovery Institute, which would be subject to annual appropriations. No funds are authorized for section 5002 because the Conference substitute requires establishment and operation of the oversight and monitoring programs as a condition of response plan approval.

SEC. 5007. LIMITATION

Section 5007 of the Conference substitute prohibits a vessel that has spilled more than one million gallons of oil into the marine environment after March 22, 1989, from operating on the navigable waters of the Prince William Sound, Alaska.

TITLE VI—MISCELLANEOUS

SEC. 6001. SAVINGS CLAUSE

The Senate amendment has no savings provision regarding admiralty and maritime laws or jurisdiction.

Section 6001 of the House bill clarifies that the House bill does not affect admiralty and maritime law or the jurisdiction of the District Courts of the United States with respect to civil actions under admiralty and maritime jurisdiction, saving to suitors in all cases other remedies to which they are otherwise entitled. Article III, clause 2, of the Constitution creates the basis for admiralty and maritime law of the United States. This section is intended to clarify that the House bill does not supersede that law, nor does it change the jurisdiction of the District Courts under section 1333 of title 28, United States Code (the codified section of the Judiciary Act of 1789).

The Conference substitute also adds certain other boilerplate savings provisions, including those regarding repealed laws and legislative construction.

The Conference substitute adopts the House provision with respect to admiralty and maritime laws with an amendment clarifying that the provision was subject to the provisions of the substitute. Section 1002 of the Conference substitute establishes liability notwithstanding any other provision or rule of law, including the Act of March 3, 1851 (46 U.S.C. 183). Therefore, there is no change in current law unless there is a specific provision to the contrary.

It is not the intent of the Conferees to change the jurisdiction in incidents that are within the admiralty and maritime laws of the United States. The Conferees wish to promote uniformity regarding these laws.

SEC. 6002. ANNUAL APPROPRIATIONS

The Senate amendment has no similar provision.

Section 6003 of the House bill made amounts in the Oil Pollution Liability Trust Fund subject to annual appropriations except for certain funds recovered for natural resource damages or penalties under section 1006 (f) and (g)(4), of the House bill and for $30 million for use by the President to immediately respond to an oil spill. Sums appropriated are available until expended.

The Conference substitute modifies the House provision to make amounts in the Fund available without further appropriation with respect to (1) section 1006(f), regarding funds recovered by trustees for natural resource damages; (2) section 1012(a)(4), regarding payment of claims for uncompensated removal costs and damages that the President determines to be consistent with the National Contingency Plan; (3) section 5006(b), regarding a navigation light and Vessel Traffic Service system in Prince William Sound, Alaska; and (4) removal actions under section 311(c) of the FWPCA and initiation of natural resource damage assessments under section 1006. The Conference substitute makes up to $50 million directly available to the President in any fiscal year for category (4).

SEC. 6003. OUTER BANKS PROTECTION

This section adds provisions from H.R. 3861, the Outer Banks Protection Act. Although encompassing the entire area offshore the State of North Carolina, the section essentially addresses the proposal by the Mobil Oil Corporation and seven partners to drill an exploratory well about 40 miles off Cape Hatteras.

One of the principal and long-standing concerns expressed by the State of North Carolina has been the potential for oil spills and the environmental and economic impacts that may result from such spills. The State has consistently maintained that oil spill trajectory models are inadequate due to insufficient understanding of ocean currents offshore Cape Hatteras. While the Mobil Oil Company expects exploration offshore North Carolina to yield a natural gas discovery, they have indicated a possibility that oil may be discovered, and the State insists that this potential requires adequate preparation for oil spill contingency and response. Providing adequate information and assessments to address potential oil pollution problems, one of the key purposes of the Oil Pollution Act of 1990, is also one of the primary purposes of Section 6003.

Subsection (a) provides that this section may be cited as the "Outer Banks Protection Act."

Subsection (b) contains the findings characterizing the Outer Banks of North Carolina as an area of exceptional environmental fragility and beauty. The subsection notes that the area offshore North Carolina is extremely important to the recreational and commercial fishing industries, and to the tourism industry of the State. The subsection also notes that the physical oceanographic characteristics of the area offshore North Carolina between Cape Hatteras and the mouth of the Chesapeake Bay are not well understood. In addition, the subsection finds that more information needs to be gathered on the ecological relationships of the fisheries resources in the area

In addition, the subsection points out two weaknesses in the Department of the Interior's gathering of environmental data offshore North Carolina. First, neither the draft environmental report, dated November 1, 1989, nor the preliminary final environmental report, dated June 1, 1990, prepared pursuant to a July 14, 1989 memorandum of understanding between the State of North Carolina, the Department of the Interior, and the Mobil Oil Corporation, have allayed the concerns about the adequacy of environmental information. Second, the National Research Council (NRC) report entitled "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" issued in 1989, concluded that the available environmental information for those two states was inadequate. Both of those States have been the subject of more intense environmental review than North Carolina. The NRC report also noted that there are serious defects in the Minerals Management Service's (MMS) method of environmental analysis, reinforcing concerns about the adequacy of the scientific and technical information that has been gathered offshore North Carolina.

Subsection (c) specifies the scope and duration of a statutory moratorium and the procedural steps that are to guide the Secretary of the Interior regarding OCS oil and gas activities offshore North Carolina. Paragraph (1) prohibits the Secretary of the Interior from conducting a lease sale, issuing any new leases, approving any exploration plan, approving any development and production plan, approving any application for a permit to drill or permitting any drilling for oil or gas under the Outer Continental Shelf Lands Act (OCSLA) on any lands of the outer Continental Shelf offshore North Carolina.

Paragraph (2) of subsection (c) defines the boundaries of the term "offshore North Carolina" as being those reached by agreement between the State of North Carolina and the States of Virginia and South Carolina. These boundary agreements have been codified in the case of Virginia at 86 Stat. 1298, and in the case of South Carolina at 95 Stat. 988.

Paragraph (3) specifies the duration of the prohibition under paragraph (1) as being the later of October 1, 1991, or 45 days of continuous session of Congress after submission of a written report to Congress by the Secretary of the Interior certifying that the environmental information available, including the information acquired pursuant to subsection (d), is sufficient to enable the Secretary to carry out his responsibilities under the OCSLA. The written report certified by the Secretary shall contain a detailed explanation of any differences between the report and the findings and recommendations of the Environmental Sciences Review Panel (ESRP) described under subsection (e), and a detailed justification of any differences.

The Conferees understand that the written report will not be issued until after the Secretary has taken the time to consider thoroughly the findings and recommendations of the ESRP. However, the Secretary has it within his authority to make certain that the prohibition will end no later than October 1, 1991, provided that, at least 45 days of continuous session of the Congress prior to that date, the Secretary certifies to the Congress that environmen-

tal information is sufficient to authorize the prohibited activities. While the Secretary is not bound by the recommendations of the ESRP, the Secretary must address those recommendations in the report to Congress, with particular attention to any recommendations which have not been implemented.

Paragraph (3)(B) describes the method of computing a 45-day period of continuous session of Congress. Specifically, continuity of session is broken only by an adjournment of the Congress sine die. In addition, the days on which either House of Congress is not in session because of a time certain adjournment of more than three days are excluded.

Subsection (d) requires the Secretary of the Interior to undertake additional environmental studies in specified areas: ecology, socioeconomics, and physical oceanography. The Secretary is required to consult the ESRP in the design and conduct of these studies.

Subsection (e)(1) establishes the mechanism for determining the five members of the ESRP. One marine scientist each is to be chosen by the Governor of North Carolina and the Secretary of the Interior. The remaining three ESRP members, one each from the disciplines of physical oceanography, ecology, and social science, are to be chosen jointly by the Governor and the Secretary from a list of nominees provided by the National Academy of Sciences.

Subsection (e)(2) describes the functions of the ESRP. The panel is to prepare and submit to the Secretary of the Interior, not later than six months after enactment of this Act, findings and recommendations assessing the adequacy of physical oceanographic, ecological, and socioeconomic information available to the Secretary to carry out his responsibilities under the OCSLA with respect to authorizing OCS activities offshore North Carolina. If the ESRP determines that the available information is inadequate for such purpose, then the findings and recommendations should indicate, with as much specificity as possible, what additional information is required to enable the Secretary to carry out his responsibilities under the OCSLA. Finally, the ESRP is expected to consult with the Secretary in the development of additional environmental information under subsection (d).

The Conferees expect the Interior Department, in cooperation with the State of North Carolina, to move expeditiously to establish the ESRP and begin whatever environmental studies are necessary to carry out the provisions of this section.

Subsection (e)(3) provides for the reimbursement of each member of the ESRP for actual travel expenses and a per diem in lieu of subsistance for each day a member is engaged in the business of the ESRP.

Subsection (e)(4) requires that the ESRP be terminated after the submission of all findings and recommendations required under paragraph (2)(A).

Subsection (f) authorizes an appropriation of $500,000 to the Secretary of the Interior for fiscal year 1991, which shall remain available until expended, for the purpose of carrying out this section. Nothing in this subsection shall preclude the Secretary from earmarking additional sums from the MMS's fiscal year 1991 environmental studies budget for the purpose of carrying out the provisions of this section.

Finally, the Conferees considered the potential for financial liability to the Federal Government as a result of this provision. The Conferees are confident that no financial liability arises because this provision enacts only a temporary delay in approval of activities on existing leases offshore North Carolina. On or subsequent to October 1, 1991, the Secretary may proceed, at his discretion, subject to the 45 day period for Congressional review of the report required under subsection (c)(3). Therefore, this delay is temporary and definite in duration.

In addition, the delay is related to a legitimate and broad-based public purpose—environmental protection. This delay is imposed to provide for the collection and analysis of crucial oceanographic, ecological, and socioeconomic data, and therefore, is a reasonable action to prevent a public harm that could result from the lack of such information.

The Conferees understand that, under Department of the Interior regulations, the lease terms of all affected OCS tracts will be extended for the period of this moratorium, and therefore, the interests of the lessees will not be adversely affected to achieve the legitimate purposes of this section.

SEC. 6004. COOPERATIVE DEVELOPMENT OF COMMON HYDROCARBON-BEARING AREAS

Subsection 602(a) of the Senate amendment amends section 5 of the OCSLA by adding a new subsection (j). This subsection makes certain findings and requires the Secretary of the Interior to prevent, through the cooperative development of an area, the harmful effects of unrestricted competitive production of hydrocarbons from a common hydrocarbon-bearing area underlying the Federal and State boundary.

Section 602(b) makes new subsection 5(j) of the Outer Continental Shelf Lands Act inapplicable to Blocks 17 and 18 of the West Delta Field.

Section 602(c) authorizes appropriations to provide compensation, including interest, to the State of Louisiana and its lessees for net drainage of offshore oil and gas resources as determined in the Third Party Factfinder Louisiana Boundary Study dated March 21, 1989.

The House bill has no similar provision.

The Conference substitute adopts the Senate provision.

PROVISIONS RELATING TO DRUG-FREE WORKPLACE

The Senate bill has no similar provision.

Section 6004 of the House bill contains a provision regarding drug-free workplace requirements for activities paid for by the Oil Spill Liability Trust Fund and contracts for removal activities.

The Conference substitute does not adopt the House provision.

PROVISIONS RELATING TO STATUTORY WAIVERS

The Senate amendment has no similar provision.

Section 6001(a) of the House bill narrows the authority to waive navigation and safety laws under section 2113 of title 46, United States Code. The waiver authority would be limited to part B,

which deals with inspection and regulation of vessels; part C, which deals with load lines of vessels; part F (except section 8103), which deals with manning of vessels; and part H, which deals with documentation of vessels.

The section further clarifies that crises warranting waivers are limited to those involving national defense or discharges, or threats of discharges, of oil or hazardous substances into or on the navigable waters or Exclusive Economic Zone of the United States.

This section also authorizes the Secretary of Transportation to grant a waiver on the Secretary's initiative, or on the request of the head of another department, agency, or instrumentality of the United States Government.

A waiver granted under this section must state the reason for the waiver and state which requirements of law are being waived. In addition, the waiver must be for a specified period of time, not to exceed one year, may not be renewed, and must terminate when qualified individuals or vessels are available.

Subsection (b) is a conforming amendment that repeals the existing authority for waivers contained in the chapter 1 note of title 46, United States Code.

During deliberations on this provision, the Conferees considered two changes so that in the case of a request for a waiver required for national defense by the Secretary of Defense the time limit of one year would not apply, and the granting of a permissible waiver would be mandatory. The Administration insisted on two additional changes that the waiver not terminate when the reason for the waiver no longer existed, (i.e., when qualified individuals or vessels were available); and that section 8103 of title 46, United States Code, relating to citizenship requirements for the crew of a vessel, be subject to the waiver authority even though the President has the authority under section 8103(h) to suspend these citizenship requirements in certain circumstances.

The House recedes to the Senate position.

LOW PRESSURE OIL PIPELINE REGULATIONS

The Conferees are aware that the Department of Transportation will address the issue of regulating low pressure oil pipelines in a rulemaking proceeding that is scheduled to commence in August, 1990. The Conferees applaud this initiative and recommend that the rulemaking process be completed as quickly as possible.

We have been told that unregulated low pressure pipelines may have leaked significant quantities of oil into our Nation's waterways. It is certainly in our interest to determine quickly to what extent the imposition of more stringent safety safeguards will put a stop to this problem and promulgate the necessary regulations.

The Conferees and the Committees on Public Works and Transportation and Energy and Commerce in the House and the Committees on Energy and Natural Resources and Commerce, Science, and Transportation in the Senate who have regulatory and oversight jurisdiction over pipeline transportation intend to monitor the rulemaking proceeding. Finally, the Conferees urge the Department to act as expeditiously as possible on this important proceeding

TITLE VII—OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

Four separate sections of the Senate amendment (sections 205, 309, 354, and 506) relate to oil pollution research and development. Section 205 requires the President to establish a Federal research and development program authorizing $25 million annually from the Fund; section 309 establishes a National Council on Oil Spill Technology Research and Development; section 354 establishes an Oil Spill Recovery Institute; and section 506 establishes in the State of Alaska several scientific committees for environmental monitoring.

Title VII of the House bill establishes a national research, development, and demonstration program to create an Interagency Committee to coordinate Federal agency oil pollution research activities; evaluate oil pollution prevention and mitigation technologies, and the long-term environmental effects of oil pollution; and organize regional research centers for addressing regional oil pollution research needs. The House bill authorizes $28 million annually from the Fund to carry out these provisions.

The Conference substitute accepts in general the provisions of title VII of the House bill, in lieu of section 205 in the Senate amendment. Significant modifications were made to section 7001(b)(5), Special Studies, and section 7001(f), Regional Research Centers, of the House bill, as well as other modifications discussed in more detail below.

The Conferees also agreed to a set of priorities to guide the Federal research program authorized in title VII, recognizing the importance of ensuring that all research conducted under the substitute is conducted as cost-effectively as possible. The research priorities agreed to, listed in order of priority, are as follows: (1) prevention of oil discharges; (2) rapid and effective response and cleanup of oil discharges; and (3) increased understanding of the environmental effects of oil discharges, especially that which improves the ability to prevent or clean up future oil discharges. In addition, the Conferees intend that the Interagency Committee will coordinate with the States and the private sector to help ensure that Federal research activities fill research gaps and are consistent with sections 7001(b)(1) (C) and (D).

Sections 354 and 506 of the Senate amendment were incorporated, with modifications, into title V of the Conference substitute; sections 205 and 309 were not included.

SEC. 7001. OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

Subsection (a) establishes an Interagency Coordinating Committee to coordinate Federal oil pollution research activities, and lists members to be included on the Interagency Committee. The Conferees added the Research and Special Projects Administration in the Department of Transportation, in recognition of the high quality of its research efforts related to the movement of hazardous materials, which are conducted in response to the research needs of the U.S. Coast Guard, the U.S. Environmental Protection Agency, and other Federal agencies. In addition, the U.S. Fire Administration in the Federal Emergency Management Agency was added to the list of Interagency Committee members, in recognition of its

important role in preventing and responding to fires which can result in releases of oil to the environment. The Conferees agree that the Department of Transportation should serve as chair of the Interagency Committee.

In subsection (b), the oil pollution research and technology plan required by the House bill was augmented to include a provision requiring identification of oil pollution regional research needs. The Conferees anticipate that the States in each region will cooperate to develop a consensus regarding regional research needs with respect to the prevention, cleanup, and long-term environmental effects of oil pollution and provide recommendations to the Interagency Committee.

Subsection (c) establishes a Federal oil pollution research and development program. Subsection (c)(2) authorizes the research, development, and demonstration of innovative technologies which are designed to improve the ability to prevent, contain, recover, and otherwise clean up oil discharges. Examples of such technologies may include surveillance technologies, such as remote sensing and the use of aircraft; mechanical technologies, such as booms, skimmers, and containers for temporary storage of oil during recovery operations; chemical treatment methods, such as the use of dispersants and chemical agents which promote gelling, herding, and sinking; biological treatment methods, such as the introduction of microorganisms, the enhancement of indigenous microorganisms, and comparisons of the relative effectiveness of such methods; and in situ burning methods. Technologies developed under this subsection shall also include consideration of the following: technologies which are effective in preventing or mitigating oil discharges under harsh environmental conditions, including strong winds and water currents; technologies to deploy an onboard system for containing oil discharged from a damaged vessel; and tilt rotor aircraft technologies used for surveillance and equipment deployment.

Research conducted under subsection (c)(2)(C) to evaluate the environmental effects of the use of dispersants should include comparisons among different types of dispersants with respect to those characteristics described in the National Contingency Plan. The Conferees intend that the results of these comparisons should be considered in the development of schedules as required in the National Contingency Plan as amended by section 4201(b) of the Conference substitute.

Section 7001(c)(2) of the Conference substitute also includes provisions recognizing the capabilities of the National Spill Control School and mandating the demonstration of a satellite-based, dependent surveillance vessel traffic system in Narragansett Bay, understood by the Conferees to cost approximately $500,000, to evaluate the use of such a system in reducing the risk of oil discharges from vessel collisions and groundings in confined waters. The Conferees believe that developing satellite-based technology holds great potential for improving the accuracy, cost-effectiveness, and overall efficiency of Vessel Traffic Systems.

Subsection (c)(4) authorizes a research program to monitor and evaluate the long-term environmental effects of oil discharges. The Conference substitute provides for the identification of types of ecologically sensitive areas at particular risk to oil discharges and a

plan for monitoring each of such types of areas, rather than the identification of and plans for all ecologically sensitive areas as required in the House bill. This clarification was included in the interest of increasing the cost-effectiveness of research conducted under this title. For the same reason, the requirement that environmental baseline data be collected for areas ecologically sensitive to oil discharges was limited to collection of data only where such data are insufficient.

The Conference substitute does not contain the provision in the House bill calling for a 10-year comprehensive monitoring and research program to determine the long-term environmental effects of the oil discharged by the *Exxon Valdez* in Prince William Sound and the Gulf of Alaska. This provision was dropped in lieu of retaining in title V of the Conference substitute the text of section 354 of the Senate amendment which establishes the Prince William Sound Oil Spill Recovery Institute, the primary function of which is to study the long-term environmental effects of the *Exxon Valdez* incident.

Paragraph (c)(4)(B) of the Conference substitute, requiring monitoring and evaluation of the long-term environmental effects of oil discharges that meet specific criteria, was modified from the House bill in several ways. First, rather than requiring that three specific studies of sites where oil discharges have recently occurred, the substitute authorizes such studies to be conducted where the Interagency Committee determines that the studies would be of scientific value. The substitute also includes two spill sites as additional candidates for study: the discharge of oil by the *American Trader* off Huntington Beach, California; and the New York/New Jersey port area, which has been the site of several recent spills, including the T/B *Cibro Savannah* and the M/V *BT Nautilus*. By including two other criteria which must be met to begin an environmental effects study specifically that the discharge must exceed 250,000 gallons of oil and that the discharge must have occurred after January 1, 1989—the number of candidate sites is limited. Moreover, the total amount authorized for these studies is limited to $5 million in fiscal year 1991, and $3.5 million in subsequent fiscal years. Again, these modifications were made in the interest of increasing the cost-effectiveness of the research authorized in the Conference substitute.

A provision was added to the House bill under subsection (c)(4) which stipulates that all research conducted by the U.S. Fish and Wildlife Service (FWS) shall be directed and coordinated by the National Wetlands Research Center, located in Louisiana. This Center houses the FWS's expertise in wetlands research and is the logical organization to direct these research activities.

Section 7001(c)(6) of the Conference substitute provides for an integrated oil pollution prevention demonstration project to be carried out by the Coast Guard in each of three major port areas in the United States: New York/New Jersey, Los Angeles/Long Beach, and New Orleans, Louisiana. The projects are intended to bring together and apply the information obtained from the research, development, and demonstration program in a systematic and integrated fashion to reduce the risk of acute and chronic oil discharges in port environments. The projects are designed to

ensure that the results of the research program are applied in a real-world situation, and that attention is given to implementing oil pollution minimization programs which focus on the whole system of oil shipment, storage, and clean-up. While much attention has been given to the design of tankers and barges, and the development of improved cleanup technology, oil facility infrastructure and management practices must also be considered in a systems approach to pollution prevention. Technologies and management practices that are appropriate to be considered for this project include improved access to data relevant to oil discharges and clean-up methods, computerized tracking of oil shipments to improvement management techniques and response time in the event of a discharge, improved vessel tracking and navigation systems, advanced technology to monitor the status of pipelines and tank conditions to provide early warning and shutdown of leaks, as well as improved oil-spill response capability through the deployment of improved mechanical, chemical, and biological clean-up technologies and methods. The Conferees intend that such an integrated system, where successfully demonstrated, will provide models for other ports throughout the nation. The Conferees expect the Interagency Committee to evaluate the demonstration projects and report to Congress on the degree to which the projects have been successful.

In conducting the port oil pollution minimization demonstration project in New Orleans, Louisiana, the Conferees intend that the U.S. Coast Guard should utilize the expertise of private and public organizations, including universities located in Louisiana.

The three port oil minimization projects are authorized to begin one year after enactment of this Act, to allow time for the research and development program established in the Conference substitute to begin to produce methods and technologies which could be applied in these demonstration projects. The substitute authorizes not less than $750,000 per year for each port area for four fiscal years, beginning in 1992.

A provision was also added to section 7001(c)(7) of the Conference substitute which requires Agencies represented on the Interagency Committee to ensure the continued use of the Oil and Hazardous Materials Simulated Environmental Test Tank (OHMSETT). This facility, which was closed in 1988 for a lack of funds, has recently been reopened through a Memorandum of Understanding between the U.S. Navy and the Department of the Interior's Minerals Management Service. It is a highly useful facility for testing the effectiveness of cleanup technologies, especially mechanical technologies, for containing and recovering oil following a discharge.

The Conference substitute sets out a regional research program in section 7001(c)(8), in lieu of the regional centers provisions in the House bill. The House bill contains selection criteria and authorizes $1.0 million from the Fund for each of six regional centers for five years. The House bill directs the Interagency Committee to select a center for each region, upon application by universities or research institutions, or a consortium of universities or research institutions. The Senate amendment contains no comparable provisions.

The Conference substitute establishes a regional research grants program. Under section 7001(c)(8), the Interagency Committee is responsible for coordinating a program of competitive grants to universities or other research institutions, or groups of universities of research institutions, to carry out a coordinated regional oil pollution research program. While the types of projects eligible for grants are intended to be broad, these grants are required to be consistent with the research plan developed by the Interagency Committee and the research program as set out in this title.

The Conference substitute establishes 10 regions as defined by existing Coast Guard district boundaries. Grants are to be administered on a regional basis, with equal funding available for each region. Eligible applicants include universities and other non-profit research institutions. The Conferees encourage the development of consortia of eligible institutions for grants under this subsection. Generally, the applicant must be located in the region, and the project must be directly related to the regional research needs set out in the research plan or otherwise relevant to the needs of the specific region. In the event of a group application, the entity or entities carrying out the substantial portion of the proposed research must be located in the region. This language is intended to permit institutions with significant expertise outside of the region to join in consortia of universities or other non-profit research institutions located in the region to carry out a proposed research project of benefit to the region. In addition, a number of States are in two or more regions. In such cases, to permit institutions within such States to participate in research proposals for any of the regions of which the State is a part, the Conference substitute provides that the applicant must either be located in the region, or in a State a part of which is in the region.

With respect to Alaska, which comprises Coast Guard District 17, the Conference substitute provides that the Prince William Sound Oil Spill Recovery Institute established in section 5001 of the Conference substitute is not eligible to receive grants under the regional research program for that region. Accordingly, the Conferees intend that all funding, pursuant to subsection 7001(c)(8), for the Alaska region be available to any qualifying entity in the region other than the Institute. A related discussion appears under section 5001.

The Interagency Committee shall coordinate the solicitation of grant proposals, review the applications, and make recommendations for the grants. Since the Interagency Committee lacks power to enter into grants itself, the actual grant and the subsequent administration of the grant shall be the responsibility of the appropriate granting Agency represented on the Interagency Committee, as designated by the Committee. The Conferees intend, however, that the recommendations of the Interagency Committee on the grant awards should be given great weight by the granting Agency. The granting Agency must make the award unless budgetary constraints or other compelling reasons prevent it from making the award; in any event, the Agency must publish in the Federal Register its reasons for failing to make an award recommended by the Interagency Committee. Similarly, an Agency is not permitted to make a grant from the funds available for the regional research

program unless the grant has first been recommended by the Interagency Committee.

In making grant recommendations, the Interagency Committee is required to balance the merits of the particular proposed project and the need to provide an appropriate balance within a region among the various aspects of regional oil pollution research needs. In addition, the Interagency Committee must consider the individual merits of the proposal, as well as the criteria set out in section 7001(c)(8)(D).

To encourage stable, long-term research funding, the Conference substitute encourages grants to be made for up to three years, subject to appropriate annual reviews by the granting Agency to determine that the project supported by the grant is being properly carried out. Grants may not provide more than 80 percent of the costs of the research activities carried out in connection with the grant. The Conference substitute also makes it clear that grants cannot be used for land acquisition or building construction.

The Conferees have added language to make it clear that section 7001 is not intended to alter the existing authorities of Agencies represented on the Interagency Committee to make research grants using funds other than those authorized in this section.

The Conference substitute authorizes $6,000,000 for five fiscal years beginning in 1991 for the regional research program, to be allocated equally among the ten regions. Should the granting agencies determine that additional grant funding is required, the substitute permits the granting Agencies to use their authority under section 7001(c)(10) to make grants from funds authorized in section 7001(f).

Section 7001(d) of the Conference substitute accepts the provision in the House bill requiring the Interagency Committee to coordinate and cooperate with other nations and foreign research entities in conducting oil pollution research activities.

Section 7001(e) of the Conference substitute incorporates the regular reporting requirements in the House bill, but requires the report to be filed every two years instead of annually.

The Conferees agreed to a total funding level of $27,250,000 per fiscal year, of which $6,000,000 is authorized for the regional research program, and not less than $2,250,000 are authorized for the demonstration projects beginning in fiscal year 1992. Funding of $5,000,000 is authorized for environmental effects research for fiscal year 1991, which is decreased to $3,500,000 for fiscal years 1992 through 1995. Finally, this subsection states that all activities authorized under section 7001 are subject to appropriations.

It is the strong opinion of the Conferees that the Administration, in its budget request, should consider the oil pollution research and development program established in this Act as the basis for an agency budget cross-cut. Moreover, in conducting such a cross-cut, the Office of Management and Budget should seek the advice of the Interagency Committee established in this Act.

TITLE VIII—TRANS-ALASKA PIPELINE SYSTEM

SEC. 8001. SHORT TITLE

The Senate amendment has no comparable provision.

Section 8001 of the House bill provides that this title may be cited as the "Trans-Alaska Pipeline System Reform Act of 1990."

The Conference substitute accepts the House provision.

SEC. 8002. REFERENCES TO TRANS-ALASKA PIPELINE AUTHORIZATION ACT

The Senate amendment has no comparable provision.

Section 8002 of the House bill states that, except as otherwise expressly provided, any references in this title to "the Act" shall be considered to be made to a section or other provision of the Trans-Alaska Pipeline Authorization (TAPS) Act (43 U.S.C. 1651–1655).

The Conference substitute accepts the Senate provision.

Subtitle A—Improvements to Trans-Alaska Pipeline System

SEC. 8101. LIABILITY WITHIN THE STATE OF ALASKA AND CLEANUP EFFORTS

Section 401 of the Senate amendment limits the application of section 204(b) of the TAPS Act to removal costs in the State of Alaska which would not otherwise be covered by the regime established by the Senate amendment.

Section 8101 of the House bill exempts the Trans-Alaska Pipeline System (TAPS) (pipeline, terminal and related onshore facilities) from the liability regime established by the Oil Pollution Act of 1990 for similar facilities. Pursuant to section 204(a) of the TAPS Act, the holder of the pipeline right-of-way is strictly liable for all removal costs and strictly liable for up to $50 million for damages in connection with activities in the vicinity of the right-of-way. Section 8101 of the House bill amends the TAPS Act to remove the cap on strict liability for damages, to provide that damages must be caused solely by government negligence to provide a defense to strict liability, and to clarify that section 204(b) of the TAPS Act applies to damages caused by activities which are related to TAPS including operation of the terminal.

The Conference substitute accepts the House provision with the exception that section 204(a)(2) of the TAPS Act is amended to hold the right-of-way holder strictly liable for $350 million in damages. Liability standards under sections 204 (a) and (b) of the TAPS Act, as amended, will apply until TAPS oil is loaded aboard a vessel. TAPS Act liability shall apply if oil is spilled during the loading process at the terminal. Any subsequent discharge from the vessel shall be governed by the liability regime established by the Oil Pollution Act of 1990.

SEC. 8102. TRANS-ALASKA PIPELINE LIABILITY FUND

Section 401(b)(1) of the Senate amendment repeals section 204(c) of the TAPS Act and transfers both claims against the Trans-Alaska Pipeline Liability Fund (TAPS Fund) and the balance of the TAPS Fund to the Oil Spill Compensation Fund upon date of enactment. Section 401(b)(2) provides that the owners of the oil who were assessed a five cent fee at the time it was loaded on vessels from the pipeline, pursuant to section 204(c)(5) of the TAPS Act, shall re-

ceive a pro-rated tax credit for amounts transferred from the TAPS Fund to the Oil Spill Compensation Fund.

Section 8102 of the House bill limits the application of liability under section 204(c) of the TAPS Act to incidents occurring before the date of enactment of the Trans-Alaska Pipeline System Reform Act. Claims against the TAPS Fund would be preserved, but claims arising from any spill after the date of enactment would be subject to the liability regime of the Oil Pollution Act of 1990. No disposition is provided for any amounts which may be remaining in the TAPS Fund after claims are paid.

For purposes of claims against the TAPS Fund, section 8102(b) of the House bill provides that damages must be caused solely by government negligence in order to provide a defense to liability. Section 8102(c) allows for the recovery of damages from the TAPS Fund for the "net" loss of tax or other State and municipal revenue. Section 8102(d) requires claims arising from a TAPS spill to be paid by the TAPS Fund if the responsible vessel owner or operator has not made payment within 90 days. Upon payment of claims, the TAPS Fund receives equivalent subrogation rights to pursue the responsible party and to additionally recover interest, costs and attorneys fees. Section 8102(e) grants immunity from personal liability other than for gross negligence or willful misconduct for TAPS Fund trustees and provides for indemnification by the TAPS Fund as set forth in the Secretary of the Interior's regulations (43 CFR Subtitle A Part 29).

Section 8102(f) of the House bill authorizes annual expenditure of monies from the Oil Spill Liability Trust Fund in amounts up to $5 million for improved Federal enforcement and oversight related to the safe and environmentally sound operation of TAPS, up to $2 million in grants to be matched on a dollar-for-dollar basis by the State of Alaska, and up to $5 million for a Presidential Task Force and audit of TAPS.

The Conference substitute accepts with technical changes section 8102(b) (cause of accident), (c) (damages), (d) (payment of claims by the TAPS Fund), and (e) (officers or trustees) of the House bill. The Conference substitute accepts the Senate amendment, with modifications to provide for the repeal of section 204(c) of the TAPS Act. Any claim arising from an incident involving oil transported through TAPS and loaded on a vessel occurring on or after the date of enactment of this Act is governed by the Oil Pollution Act of 1990.

Section 8102(a)(2)(A) of the Conference substitute directs the TAPS Fund trustees to initially reserve amounts necessary to pay claims arising from incidents subject to section 204(c) of the TAPS Act occurring before the date of enactment and to reserve amounts necessary to pay administrative expenses of the TAPS Fund. Nothing in this title expands the scope or type of administrative expenses reimbursable from the TAPS Fund. If the TAPS Fund trustees determine and the Comptroller General certifies that amounts reserved satisfy the requirements of section 8102(a)(2)(A), then the excess funds shall be transferred to the Oil Spill Liability Trust Fund, with the exception that a pro-rated share of the amount being transferred must be rebated to the State of Alaska for its contribution as an owner of oil.

Section 8102(a)(2)(D) specifies that any TAPS Fund monies transferred to the Oil Spill Liability Trust Fund shall be earmarked for the purposes set forth in sections 5001 and 8301 and available for other purposes set forth in section 1012 only to the extent that funds have otherwise been provided for in sections 5001 and 8103.

The Conferees intend by section 8102(a)(2)(C) that when all claims arising from an incident for which funds are reserved pursuant to section 8102(a)(2)(A) are resolved, and the Comptroller General certifies that the requirements of section 8102(a)(2)(A) for the purposes of section 204(c) of the TAPS Act have been met, the excess amounts, if any, which were reserved for that incident shall be transferred, subject to the requirements for reservation of amounts necessary to pay claims from other incidents and administrative expenses as set forth in section 8102(a)(2)(A) to the Oil Spill Liability Trust Fund according to section 8102(a)(2)(B).

Section 8102(a)(4) amends section 204(c)(5) of the TAPS Act to provide that a five cent per barrel fee from owners of TAPS oil need not be collected if the TAPS Fund trustees determine and the Comptroller General certifies to Congress that sufficient monies are available in the TAPS Fund to pay all outstanding claims and administrative costs.

The repeal of section 204(c) of the TAPS Act is made effective 60 days after the Comptroller General certifies to Congress that: (1) all claims from all incidents arising under section 204(c) of the TAPS Act have been resolved; (2) all actions (including judicial review) for recovery of amounts subject to section 204(c) have been resolved; and, (3) all reasonably necessary expenses for administering the TAPS Fund have been paid. Section 8102(a)(3) specifies that the repeal of section 204(c) of the TAPS Act shall not prejudice any right to recovery or diminish any responsibility that arises from incidents which occur prior to the date of enactment of the Conference substitute.

The intent of section 8102 of the Conference substitute is that any transfer of monies from the TAPS Fund to the Oil Spill Liability Trust Fund be free of all claims and obligations. The Conferees strongly encourage the TAPS Fund trustees to expeditiously and fairly settle all outstanding obligations and to resolve all pending claims. To date, the TAPS Fund has not paid any claims, including those arising from the *Glacier Bay* oil spill in 1987.

SEC. 8103. PRESIDENTIAL TASK FORCE

The Senate amendment has no provision comparable to the Presidential Task Force. The Oil Terminal Environmental Advisory Council is similar in response to the Advisory Council in section 8103 of the House bill.

Section 8103 of the House bill provides for a Presidential Task Force on TAPS. The Task Force is directed to conduct a comprehensive audit and review of TAPS, including the terminal in Valdez. Section 8103 also establishes a Trans-Alaska Pipeline Terminal Advisory Council comprised of citizens of the Prince William Sound area.

The Conference substitute adopts the House provision, with amendments, to establish a Presidential Task Force on TAPS. The

House bill Advisory Council has been incorporated in section 5002 of the Conference substitute.

The Task Force established by the Conference substitute will be comprised of seven members, including three Federal officials, three nominated by the Governor of Alaska, and one member nominated by the Office of Technology Assessment. The Task Force is authorized to hire staff and to retain independent consulting firms.

No later than two years after funding is provided, the Task Force is directed to make public a report as to whether TAPS is in compliance with applicable laws, regulations and agreements, including the rights-of-way granted by the Secretary of the Interior and the State of Alaska. The Task Force is also directed to audit and report on whether structural or operational improvements to TAPS are necessary to reduce the risk of oil spills or to prevent other damage to the environment and human health. The Task Force must conduct a similar review of oil spill response capabilities and security for TAPS.

After receiving the Task Force's report, the President shall report to Congress and the Governor of Alaska what measures have been taken or will be taken to implement the Task Force's recommendations.

The Conferees intend that the TAPS operator and affiliated companies cooperate fully with the Task force. Nearly one quarter of the oil produced in the U.S. is transported by TAPS and the safe and environmentally sound operation of this system is a national priority.

Subtitle B—Penalties

SEC. 8201. AUTHORITY OF THE SECRETARY OF THE INTERIOR TO IMPOSE PENALTIES ON OUTER CONTINENTAL SHELF FACILITIES

Section 601 of the Senate amendment amends section 24(b) of the Outer Continental Shelf Lands Act (OCSLA) to clarify the Department of the Interior's authority to immediately assess a civil penalty for any violation that presents a serious threat to the environment, health, or safety. This clarification of OCSLA authority is necessary because of a 1983 judicial decision. This provision also increases the penalty amount to not more than $20,000 per day and requires the Secretary of the Interior to increase the amount to account for inflation at least once every three years.

Section 8201 of the House bill has the same provision.

The Conference substitute adopts the House and Senate provisions with technical changes.

SEC. 8202. TRANS-ALASKA PIPELINE SYSTEM CIVIL PENALTIES

The Senate amendment has no comparable provision.

Section 8202 of the House bill requires the Secretary of the Interior to impose a civil penalty of no less than $1,000 per barrel of oil spilled in transit to or through the Trans-Alaska Pipeline System, including handling at the terminal facilities.

The Conference substitute adopts the House provision for civil penalties with amendments. The Secretary of the Interior is authorized to impose a civil penalty of up to $1,000 per barrel of oil

spilled, but this penalty cannot be imposed in addition to Federal penalties assessed under section 31(b) of the Federal Water Pollution Control Act.

Subtitle C—Provisions Applicable to Alaska Natives

SECTION 8301. LAND CONVEYANCES

Section 102(h) of the Senate amendment provides that solely for the purposes of bringing claims that arise from the discharge of oil, Alaska Native corporations are deemed to have full title to land validly selected pursuant to the Alaska Native Claims Settlement Act as of March 23, 1989.

Section 8301 of the House bill contains a similar provision but adds the restriction that this section takes effect only upon an irrevocable election to accept an interim conveyance of land and formal notice to the Secretary of the Interior.

The Conference substitute adopts the House provision.

SEC. 8302. IMPACT OF POTENTIAL SPILLS IN THE ARCTIC OCEAN ON ALASKA NATIVES

Section 604 of the Senate amendment calls upon the Secretary of State to begin negotiations with Canada on a treaty concerning recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean.

Section 8302 of the House bill directs the Secretary of the Interior to conduct a study and provide a report to Congress on the issues of recovery of damages, contingency plans, and coordinated actions with the Canadian government in the event of an oil spill in the Arctic Ocean.

The Conference substitute adopts the Senate amendment with technical changes.

TITLE IX—AMENDMENTS TO OIL SPILL LIABILITY TRUST FUND, ETC.

1. DEFINITION OF FUND

Present Law

The Internal Revenue Code of 1986 contains the "Oil Spill Liability Trust Fund" ("Trust Fund") (Code sec. 9509).

House Bill

Under the House bill, "Fund" means the "Oil Spill Liability Trust Fund" in the Internal Revenue Code.

Senate Amendment

A separate "Oil Spill Compensation Fund" is established. The present Trust Fund is also retained. The Senate amendment requires the Secretary of the Treasury to transfer monies from the Trust Fund to the newly-created compensation fund on request to finance the newly-created compensation fund's activities.

Conference Agreement

The conference agreement follows the House bill.

2. LIMIT ON BORROWING BY THE FUND

Present Law

The Trust Fund is authorized to borrow from the Treasury. There is a $500 million aggregate borrowing limitation.

House Bill

No provision.

Senate Amendment

The Senate amendment overrides the Trust Fund provision to raise the borrowing limit to $1 billion per incident.

Conference Agreement

The conference agreement increases the Trust Fund borrowing limit to $1 billion in the aggregate. The conference agreement is effective on the date of enactment.

3. EXPENDITURE PURPOSES AND LIMITATIONS

Present Law

The Code permits the Trust Fund to make expenditures only for (1) certain removal expenses under the Federal Water Pollution Control Act ("FWPCA") and the Intervention on the High Seas Act ("IHSA") and (2) certain removal costs, payment of claims, and administrative expenses as provided in authorizing legislation that must be substantially identical to specified legislation passed previously by the House of Representatives. (Neither the House bill nor the Senate amendment was determined to be substantially identical to such legislation.) Code references to the FWPCA and IHSA are not restricted to those Acts as in existence when the Trust Fund was enacted.

House Bill

The House bill provides additional expenditure purposes by amending the FWPCA and the IHSA and by adding separate, new expenditure purposes.

Senate Amendment

The Senate amendment also provides for additional expenditure purposes (which differ somewhat from those in the House bill) by amending the FWPCA and the IHSA and by adding separate, new expenditure purposes.

Conference Agreement

The conference agreement amends the Internal Revenue Code to provide that the Trust Fund may be used only for expenditures that are enumerated under the other titles of the Oil Pollution Act of 1990. The conference agreement provides that any reference to the Oil Pollution Act of 1990 or to any other Act referred to (either directly or indirectly) in the provision relating to expenditure purposes shall be treated as a reference to such Act as in effect on the date of enactment of this Oil Pollution Act of 1990. The Code is amended to enumerate the permissible expenditure purposes,

which includes certain removal costs, payments of claims, and administrative expenses. In addition, the Trust Fund may be used for expenditures for the payment of liabilities incurred by the Deep Water Port Liability Fund and the Offshore Oil Pollution Compensation Fund. The conference agreement is effective on the date of enactment.

4. FUND EXPENDITURE LIMIT

Present Law

The Code provides a $500 million per-incident Trust Fund expenditure limit, with a separate $250 million per-incident limit on natural resource damages payments.

House Bill

No provision.

Senate Amendment

The Senate amendment raises the per-incident expenditure limit to $1 billion, with no separate limit on natural resource damages payments, but does not expressly amend the Trust Fund expenditure limitation provisions.

Conference Agreement

The conference agreement amends the Code by raising the per-incident expenditure limit to $1 billion and by raising the per-incident limit on natural resource damages payments to $500 million. The conference agreement is effective on the date of enactment.

5. DEPOSITS OF CERTAIN ADDITIONAL AMOUNTS INTO THE FUND

a. Deposit of certain transfers and excess natural resource damages

Present Law

The Code appropriates to the Trust Fund (1) the environmental tax on petroleum, (2) amounts recovered, collected or received in appropriate authorizing legislation (which was not determined to include the House bill or the Senate amendment), and (3) amounts that were remaining as of January 1, 1990, in the Deepwater Port Liability Fund established by the Deepwater Port Act of 1974 and the Offshore Oil Pollution Compensation Fund under the Outer Continental Shelf Lands Act Amendments of 1978. No excess natural resource damages are deposited in the Trust Fund. Liabilities against the Deepwater Port Liability and Offshore Oil Pollution Compensation Funds are not assumed by the Trust Fund.

House Bill

Sums recovered for damages to natural resources in excess of those required to reimburse costs with respect to the damaged natural resources are to be deposited in the Trust Fund.

Senate Amendment

Sums recovered for damages to natural resources must be used to restore, replace or acquire equivalent natural resources.

Conference Agreement

The conference agreement follows the House bill as to the deposit in the Trust Fund of excess natural resources damages. The conferees understand that amounts remaining in the Deepwater Port and Offshore Oil Pollution Compensation Funds have not yet been deposited in the Trust Fund. The conferees intend that all amounts (including interest through the date of the actual transfer) remaining in these two Funds be deposited in the Trust Fund and any liabilities against those two Funds be assumed by the Trust Fund. The conference agreement explicitly provides that amounts remaining in those two Funds must be transferred into the Trust Fund. The conference agreement is effective on the date of enactment.

b. Deposit of penalties

Present Law

Under present law, no penalties are deposited in the Trust Fund.

House Bill

The House bill provides for deposit to the Trust Fund of certain specified penalties.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides for deposit to the Trust Fund of certain penalties that are specifically enumerated in the Code (but not including all of those specified in the House bill). The conference agreement is effective on the date of enactment.

6. MODIFICATIONS TO THE TAPS FUND

Present Law

The TAPS Fund was established by the Trans-Alaska Pipeline System Authorization Act. It was not incorporated into the Trust Fund provisions.

After the trustees of the TAPS Fund have certified that all outstanding claims against the TAPS Fund have been resolved, the unobligated balance of the TAPS Fund may be deposited in the Trust Fund. If the unobligated balance of the TAPS Fund is deposited in the Trust Fund, the owners of the TAPS Fund will be provided a credit against future petroleum excise taxes for their pro rata share of amounts of the TAPS Fund deposited in the Trust Fund.

House Bill

The House bill restricts claims against the TAPS Fund to those occurring before the enactment of the Trans-Alaska Pipeline System Reform Act of 1989.

Senate Amendment

The Senate amendment abolishes the TAPS Fund, makes preexisting claims against the TAPS Fund enforceable against the newly-created compensation fund, transfers the balance of the TAPS Fund to that fund, and gives credits against future petroleum excise taxes to persons that paid into the TAPS Fund.

Conference Agreement

The conference agreement provides that specified amounts transferred out of the TAPS Fund pursuant to section 8102 of the Oil Pollution Act of 1990 are deposited into the Trust Fund. Liabilities from incidents occurring prior to the date of enactment will not be assumed by the Trust Fund. The conference agreement is effective on the date of enactment.

7. DELEGATION OF AUTHORITY TO STATES TO OBLIGATE THE FUND

Present Law

No provision.

House Bill

The President is authorized to delegate the authority to obligate money in the Trust Fund or to settle claims to Federal officials and to States with an adequate program operating under a cooperative agreement with the Federal Government. The President must designate the Commandant of the Coast Guard as a Federal official authorized to obligate the Fund.

In accordance with regulations to be promulgated, the Governor of each State, or his designee, is authorized to obligate the Trust Fund for payment in an amount not to exceed $250,000 for the purpose of immediate removal of a discharge of oil or threat of discharge.

Senate Amendment

The Senate amendment is the same as the House bill, except that it does not include the provision relating to the Coast Guard and the threat of discharge must be substantial.

Conference Agreement

The conference agreement provides that the authority to obligate the Trust Fund is restricted to Federal officials in all cases. In addition, the conference agreement provides that the standard by which State removal costs will be evaluated by Federal officials must be in accordance with the National Contingency Plan as published pursuant to section 311 of the Federal Water Pollution Control Act (as amended by this legislation). Consequently, no expenditure may be made from the Trust Fund for any State removal costs pursuant to standards that exceed those contained in the National Contingency Plan. The conference agreement is effective on the date of enactment.

From the Committee on Merchant Marine and Fisheries, for consideration of the House bill (except title VIII), and

the Senate amendment (except secs. 601 and 602), and modifications committed to conference:

WALTER B. JONES,
GERRY STUDDS,
BILLY TAUZIN,
THOMAS C. CARPER,
BILL HUGHES,
BOB DAVIS,
DON YOUNG,
NORMAN F. LENT

(Provided, Mr. Shumway is appointed in place of Mr. Young of Alaska for consideration of title I and sec. 2004 of the House bill, and title I and sec. 405 of the Senate amendment),

From the Committee on Public Works and Transportation, for consideration of the House bill (except title VIII), and the Senate amendment (except secs. 601 and 602), and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND

(Provided, Mr. Kolter is appointed in place of Mr. Anderson for consideration of sec. 4114 of the House bill; Mr. Rahall is appointed in place of Mr. Roe for consideration of title VII of the House bill, and secs. 205, 309, 354, and 356 of the Senate amendment; Mr. Laughlin is appointed in place of Mr. Roe for consideration of secs. 1002 and 1004 of the House bill, and corresponding portions of sec. 102 of the Senate amendment; Mr. Borski is appointed in place of Mr. Roe for consideration of secs. 4101 through 4205 of the House bill, and corresponding portions of the Senate amendment; and Mr. Upton is appointed in place of Mr. Shuster for consideration of sec. 4203 of the House bill and sec. 203 of the Senate amendment),

JOE KOLTER,
NICK RAHALL,
GREG LAUGHLIN,
BOB BORSKI,
FRED UPTON,

From the Committee on Foreign Affairs, for consideration of title III of the House bill, and secs. 603 and 604 of the Senate amendment, and modifications committed to conference:

DANTE B. FASCELL,
GUS YATRON,
WAYNE OWENS,
TOM LANTOS,
EDWARD F. FEIGHAN,
WM. BROOMFIELD,
DOUG BEREUTER,
JOHN MILLER,

From the Committee on Science, Space, and Technology, for consideration of title VII of the House bill, and secs. 205, 309, 354, and 506 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
JIM H. SCHEUER,
GEORGE E. BROWN, Jr.,
MARILYN LLOYD,
DOUG WALGREN,
ROBERT A. WALKER,
CLAUDINE SCHNEIDER,
SID MORRISON,

From the Committee on Interior and Insular Affairs, for consideration of title I and sec. 2004 of the House bill, and title I and sec. 405 of the Senate amendment, and modifications committed to conference:

MOE UDALL,
G. MILLER,
PHIL SHARP,
DON YOUNG,
LARRY E. CRAIG,

From the Committee on Interior and Insular Affairs, for consideration of title VIII of the House bill, and secs. 601 and 602 of the Senate amendment, and modifications committed to conference:

MOE UDALL,
G. MILLER,
PHIL SHARP,
BRUCE F. VENTO,
PETER DEFAZIO,
DON YOUNG,
RON MARLENEE,
LARRY E. CRAIG,

From the Committee on Energy and Commerce, for consideration of secs. 8103, 8201, and 8202 of the House bill, and sec. 601 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
RALPH M. HALL,
NORMAN F. LENT,

From the Committee on Merchant Marine and Fisheries, for consideration of title VIII of the House bill, and secs. 601 and 602 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
BILLY TAUZIN,
TOM CARPER,
BOB DAVIS,
JACK FIELDS,

From the Committee on Public Works and Transportation, for consideration of title VIII of the House bill, and secs. 601 and 602 of the Senate amendment, and modifications committed to conference:

GLENN M. ANDERSON,

NORMAN Y. MINETA,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,
ARLAN STANGELAND,

From the Committee on Ways and Means, for consideration of title VII and secs. 1001(10), 1006(f), 1006(g)(4), 4302, 8102(f) of the House bill and so much of sec. 8202 of the House bill as would add a new sec. 210(c)(5) to the Trans-Alaska Pipeline Authorization Act, and secs. 103(b), 103(c), 356, 401(b), and 512 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
C.B. RANGEL,
PETE STARK,
BILL ARCHER,
GUY VANDER JAGT,
PHIL CRANE,

Managers on the Part of the House.

From the Committee on Environment and Public Works:

QUENTIN BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
FRANK R. LAUTENBERG,
JOHN BREAUX,
JOHN CHAFEE,
DAVE DURENBERGER,
JOHN WARNER,
JIM JEFFORDS,
GORDON HUMPHREY,

From the Committee on Commerce, Science, and Transportation:

FRITZ HOLLINGS,
DANIEL INOUYE,
JOHN F. KERRY,
JOHN BREAUX,
JOHN C. DANFORTH,
BOB PACKWOOD,
TED STEVENS,

From the Committee on Finance:

LLOYD BENTSEN,
MAX BAUCUS,
BOB PACKWOOD,

Managers on the Part of the Senate.

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From Conference Report

hazardous substance.

TITLE V--PRINCE WILLIAM SOUND OIL SPILL REMOVAL

SECTION 5001 -- OIL SPILL RECOVERY INSTITUTE.

The House bill had no similar provision.

Section 354 of the Senate amendment establishes an Oil Spill Recovery Institute in Cordova, Alaska, to conduct research and carry out educational and demonstration projects to develop techniques, equipment, and materials to respond to oil spills in the arctic and sub-arctic marine environment, and to study the long-term effects of the EXXON VALDEZ oil spill.

The conference substitute incorporates section 354 of the Senate amendment to recognize the pressing need to examine the long-term effects of the EXXON VALDEZ oil spill and develop oil spill response technology related to oil spills in artic environments. The conference substitute adds language providing that none of the funds provided by this legislation for the Oil Spill Recovery Institute are to be used for any purpose which is not directly related to the EXXON VALDEZ oil spill and specifically authorized under this section. This language is intended by the conferees to respond to the concern that the Institute or its administering body, the Prince William Sound Science Center, will conduct studies and make recommendations which are unrelated to the oil spill and its effects. Of special concern are actions by the Institute that may limit multiple uses of land and resources involving other sectors of the economy.

SECTION 5002 -- TERMINAL AND TANKER OVERSIGHT AND MONITORING.

The conference substitute establishes a Citizens Advisory Council in both the Prince William Sound and the Cook Inlet, Alaska. The conferees expect that improved measures for the prevention and mitigation of oil spills in these areas will result through increased interaction and cooperation among local citizens, vessel and terminal operators, and public officials. The authority of the Citizens Advisory Councils is to advise and monitor, and make constructive recommendations to oil terminal and tanker operators and governmental officials. This section is not intended to affect the authority of the State of Alaska or the Federal government to regulate oil tanker and terminal facilities.

SECTION 5003 -- BLIGH REEF LIGHT.

The House bill had no similar provision.

Section 352 of the Senate amendment establishes a

Commerce shall provide for the establishment of a Prince William Sound Oil Spill Recovery Institute (hereinafter in this section referred to as the ``Institute'') to be administered by the Secretary of Commerce through the Prince William Sound Science and Technology Institute and located in Cordova, Alaska.

(b) FUNCTIONS.--The Institute shall conduct research and carry out educational and demonstration projects designed to--

(1) identify and develop the best available techniques, equipment, and materials for dealing with oil spills in the arctic and subarctic marine environment; and

(2) complement Federal and State damage assessment efforts and determine, document, assess, and understand the long-range effects of the EXXON VALDEZ oil spill on the natural resources of Prince William Sound and its adjacent waters (as generally depicted on the map entitled ``EXXON VALDEZ oil spill dated March 1990''), and the environment, the economy, and the lifestyle and well-being of the people who are dependent on them, except that the Institute shall not conduct studies or make recommendations on any matter which is not directly related to the EXXON VALDEZ oil spill or the effects thereof.

From Bill itself

to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b), the President may--

``(A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or

``(B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

``(2) JURISDICTION OF DISTRICT COURTS.--The district courts of the United States shall have jurisdiction to grant any relief under this subsection that the public interest and the equities of the case may require.''.

TITLE V--PRINCE WILLIAM SOUND PROVISIONS

SEC. 5001. OIL SPILL RECOVERY INSTITUTE.

(a) ESTABLISHMENT OF INSTITUTE.--The Secretary of