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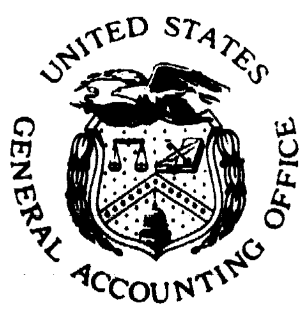
STUDY BY THE STAFF OF THE U.S.

General Accounting Office

International Oil Pollution: Current And Alternative Liability And Compensation Arrangements Affecting The United States

A patchwork of international, national, and State arrangements currently governs liability and compensation for cleanup and damages resulting from oil spills by seagoing tankers. This study discusses the present arrangements, alternatives under consideration, and recent developments.



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P R E F A C E

A patchwork of international, national, and State arrangements currently governs liability and compensation for cleanup and damages resulting from oil spills by seagoing tankers.

This study provides pertinent background about the incidence and impact of ocean oil spills, describes the current liability and compensation regimes, identifies the principal perceived defects of the present arrangements, and discusses alternatives that have been proposed.

In this study we seek to distill the voluminous information on the subject and the wide range of informed opinion--reflecting the concerns of government officials, industrial interests, damage claimants, scholars, environmental groups, and others--which is already at hand. It is intended for use by the Congress and executive branch officials in their further assessment of policy issues in this field.

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STAFF STUDY BY THE U.S.
GENERAL ACCOUNTING OFFICE

INTERNATIONAL OIL POLLUTION: CURRENT AND ALTERNATIVE LIABILITY AND COMPENSATION ARRANGEMENTS AFFECTING THE UNITED STATES

D I G E S T

A patchwork of international, national and State arrangements currently governs ocean oil spill cleanup, liability coverage, and damage compensation. Informed observers generally agree that this system does not effectively protect U.S. public and private interests from the risks of ocean oil pollution. The principal perceived defects are that present arrangements:

--Require an unnecessary expenditure of appropriated Federal funds for cleanup operations because this cost is not adequately internalized in the price of transporting oil.

--May compel spill victims to seek damage compensation under the costly, time-consuming procedures available under common law or disparate State or Federal statutes.

--Create uncertainty as to the spiller's liability and subject the oil and tanker industries to multiple claims and oil taxes under different legal provisions in various international and domestic jurisdictions.

--Entail duplication of Federal administrative arrangements and activity, maintenance of four Federal funds where one might suffice, and enforcement of separate regulations for identical purposes in different areas.

--Can produce inadequate and erratic funding to defray cleanup costs, resulting in occasional "prioritizing" and possible curtailment of cleanup operations.

--Rely heavily on liability and compensation arrangements established under two worldwide voluntary agreements among tanker owners and

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the major oil companies. Although these agreements have alleviated some of the difficulties that would otherwise have arisen, they are seen as having their own limitations and uncertainties.

--Reduce U.S. Government influence within the international forums where the standards and procedures for a uniform international liability and compensation regime are currently under review.

To overcome such perceived defects, three main options have been proposed: ratification (assuming satisfactory revision) of the pertinent international conventions, enactment of a U.S. statute that would provide a uniform and comprehensive Federal regime, or a combination of the two.

To date the Senate has declined to give consent to U.S. ratification of the international civil liability and fund conventions, primarily because the coverage and limits are considered inadequate. Recently, member nations of the International Maritime Organization, where the conventions originated, initiated efforts to substantially broaden the conventions' coverage and raise their liability limits.

The idea of supplementing the conventions with a comprehensive U.S. oil spill liability and compensation statute has evoked considerable interest both from the private sector and within the Federal Government. Proponents claim that such a single Federal oil "superfund" statute could provide compensation and coverage over and above the limits of the international conventions, consolidate four Federal funding programs, reduce overlapping Government administrative expense and regulation, and assure adequate funding for a quick-response capability for oil spills from all sources.

The principal unresolved issue in such an approach relates to the role of the U.S. coastal States. The international conventions would preempt the laws of such States concerning liability limits and financial responsibility requirements for seagoing tankers. As set forth in one bill, the new Federal statute would eventually supersede

provisions of State laws, including the right to assess fees on oil to create compensation and/or cleanup funds.

Although State authorities who have expressed opinions generally support the idea of comprehensive Federal legislation, they continue to uphold the necessity of an important role for the States. Some have indicated a willingness to accept international or Federal liability limits (if adequate) in order to gain the advantages of a Federal regime, provided the States retain the right to maintain their own funds for established purposes.

The executive branch is reassessing the U.S. position on the issues, and the Department of Transportation has commissioned a study of the cost and benefits of adopting the two international conventions.

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ABBREVIATIONS

CLC	International Convention on Civil Liability for Oil Pollution Damage
CRISTAL	Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution
FWPCA	Federal Water Pollution Control Act
TOVALOP	Tanker Owner's Voluntary Agreement Concerning Liability for Oil Pollution

CHAPTER 1

INTRODUCTION

Despite considerable progress in the past 15 years, the United States still faces a number of unresolved issues in dealing with ocean oil pollution. Serious discharges from oil tankers continue to occur in U.S. coastal waters, and "catastrophic" spills are always possible. Yet present arrangements to cover the costs of cleanup and damage compensation are widely considered to be inadequate and in need of a major overhaul. At stake are legitimate interests of the American taxpayer, prospective spill victims, and the transportation and oil industries.

INCIDENCE AND IMPACT OF OIL SPILLS

In a July 1982 report, oil industry sources listed 148 "historical major spill incidents" throughout the world between 1970 and 1980. The report does not purport to be a complete tally of such incidents nor does it include countless lesser spills.

Although there are other sources of ocean oil pollution, 1/ marine transportation activities account for perhaps a third of total volume. In recent years the incidence of oil spills worldwide has fluctuated widely with no clear trend, while at the same time the number of reported spills in U.S. waters has declined.

According to the Pollution Incident Reporting System of the U.S. Coast Guard, during 1978-81 the number of oil discharges in U.S. navigable waters decreased 39.7 percent and the volume discharged fell 30.1 percent. The Coast Guard attributes this decline in part to U.S. tanker safety regulations which took effect in 1978 governing crew training, navigation aids, and oil handling machinery; to enhanced efforts on the part of shipping and oil industries; and to the decline in the volume of imported oil. The Coast Guard also initiated a recordkeeping system designed to pinpoint ships with poor safety records and prevent them from entering U.S. waters. The improved efforts of the shipping and oil interests have been spurred by government and public pressure as well as the rising commercial cost of lost petroleum.

Serious tanker accidents, although occurring infrequently, can cause catastrophic damage. The resulting loss of income and destruction of natural resources can entail sizable outlays of funds to finance cleanup operations and compensate victims.

1/ Other sources include river and urban runoff, coastal refineries, industrial and municipal waste, atmospheric fallout, natural seeps, and offshore oil production.

Marine plants and animals, as well as birds, may be destroyed in large numbers. Beaches and shoreline businesses may have to be closed, causing significant losses of income from tourism. Fishermen may also lose considerable income during the spill and its aftermath. Finally, the Government, in turn, may lose tax revenues as a result of these income losses as well as incurring unreimbursed cleanup costs.

In 1967, the tanker Torrey Canyon ran aground on a reef off the southwest coast of England, spilling between 20 million and 25 million gallons of crude oil. The oil slick covered 630 square miles; much of it washed ashore along the British and French coasts. As a result, some 30,000 birds were killed, 2,500 acres of oysters were decimated, tourism at shorefront resorts was affected dramatically, and in Paris, fish market sales declined 40 percent. Cleanup costs totaled more than $16 million, and estimated damage to private property, fishing, and marine life exceeded that figure many times over.

Even more spectacular was the spill of the supertanker Amoco Cadiz off the coast of Brittany, France in 1978. The ship went aground during a storm, dumping 65 million gallons of oil into the sea. Important fishing grounds and resort beaches were devastated, resulting in the world's most expensive damage claims to date. The case is still in litigation, with claims for damages totaling about $2 billion.

Both cases vividly illustrate the extent of destruction, both environmental and economic, that can occur.

The long-term impact of oil spills is less readily measured. More information is needed on the effects of oil on marine ecosystems over time. Past studies have indicated that the environment is fairly resilient to oil pollution, using natural processes to disperse and break down the oil. Ecological recovery usually takes anywhere from a few weeks to a few years. However, there may be long-term consequences which have remained undiscovered. As a result, the full financial impact of an accident may never be known.

CONCEPTS OF LIABILITY, LIABILITY LIMITS, AND FUNDS

Because of the continuing risk of oil spills, including catastrophic incidents, various arrangements have been established to fund cleanup operations, compensate victims, and restore natural resources. The principle underlying such arrangements is that the spiller should be held liable for spills caused by its vessel.

In most regimes, however, the shipowner's liability is limited to a certain monetary level to preserve the viability of the shipping industry by making insurance coverage possible.

Insurance companies are reluctant to insure shipowners with strict and unlimited liability. The level of shipowner liability is usually supplemented by funds generated by fines, appropriations, levies on transported oil, or some combination thereof. Such funds, administered by governmental or private entities, finance cleanup operations and compensate victims in the event of a "catastrophic" spill--e.g., one whose costs exceed the shipowner's liability limits--or a spill in which the spiller is unknown or has no liability. The funds may or may not have compensation ceilings.

ROLE OF THE U.S. GOVERNMENT

Several Federal statutes and agencies are involved in U.S. efforts to protect the ocean, its resources, and U.S. shores from the damage of oil pollution. The laws include the Federal Water Pollution Control Act, Outer Continental Shelf Lands Act, Deepwater Port Act, and Trans-Alaska Pipeline Authorization Act.

Federal agencies involved in oil pollution control include the Departments of State, Commerce (notably the National Oceanic and Atmospheric Administration), Interior, and Transportation (notably the Coast Guard); the Environmental Protection Agency (the lead agency for inland water pollution responses); Federal Maritime Commission; and the Council on Environmental Quality. However, primary responsibility for protecting the United States from ocean oil pollution resides in the Coast Guard and the Department of State. The Coast Guard generally enforces, or arranges for and monitors, cleanup of ocean spills. It also administers three of the four U.S. Government funds. The State Department formulates U.S. policy on international ocean affairs and in concert with the Coast Guard represents the United States in negotiations with other member countries of the International Maritime Organization, a specialized agency of the United Nations.

OBJECTIVES, SCOPE, AND METHODOLOGY

In recent years, much pertinent data and informed opinion about the prevention and cleanup of oil tanker pollution and compensation for such pollution have been placed on the public record. The subject today can profit as much from efforts to sort out and digest such data as to augment it. In this study we seek to distill the available information and the wide range of informed opinion at hand.

This study provides pertinent background about the incidence and effect of ocean oil tanker spills, describes the current liability and compensation regimes, identifies the principal perceived defects of present arrangements, and discusses alternatives that have been proposed. We believe this information will be useful to the Congress and the executive branch in their further assessment of policy issues in this field.

Our work was performed in accordance with generally accepted auditing standards. We interviewed officials and examined documents at the Departments of State and Transportation (Coast Guard). We consulted authorities in 10 key U.S. coastal States 1/ by letter and/or interview, reviewed appropriate congressional hearings and committee reports, and interviewed a number of congressional staff members. We consulted other informed individuals, including spokesmen for some oil and tanker interests, representatives of environmental organizations, and several private citizens. We also examined pertinent scholarly literature and applicable reports of the International Maritime Organization and industrial associations.

Individuals actively concerned with these matters at the Departments of State and Transportation reviewed a draft of this study and expressed general agreement with it. Their informal comments and suggestions helped to ensure the clarity and accuracy of the study.

1/ Maine, Massachusetts, New York, New Jersey, Maryland, Virginia, Florida, Texas, California, and Alaska.

CHAPTER 2

CURRENT LIABILITY AND COMPENSATION REGIMES

In the United States, the current ocean oil pollution liability and compensation regime embraces a broad patchwork of four Federal statutes, laws of various U.S. coastal States, common law, and two worldwide private agreements. Additionally, there are two international conventions which the United States helped to initiate but has not ratified.

FEDERAL LAWS

The Federal Water Pollution Control Act (FWPCA), as amended, holds any spiller strictly responsible (i.e., without regard to fault) for cleaning up its oil pollution in U.S. navigable waters. If the spiller fails to do so or does an unacceptable job, the spiller is liable up to the Act's limits of liability for cleanup costs. The U.S. Government assumes the job of cleaning up all oil spills not otherwise attended to in U.S. navigable waters, coastlines, and waters of the continguous zone (3 to 12 miles off shore). 1/ It then seeks to recover its costs from the spiller.

Oil tankers' liability under FWPCA for accidental spills is limited to $150/gross ton of the vessel or $250,000 whichever is greater. For each incident, this effectively sets both a minimum ($250,000) and a maximum (based on tonnage). Under the Act, a spiller may avoid or mitigate its legal liability with defenses that include an act of God; an act of war; negligence on the part of the U.S. Government; an act or omission of a third party, regardless of negligence; or any combination of these. However, if the spill resulted from willful negligence or misconduct on the part of the spiller, liability is unlimited.

Any vessel in U.S. waters must demonstrate financial responsibility (e.g., by insurance or surety bond) up to the Act's liability limits to obtain a certificate of financial responsibility from the Federal Maritime Commission. Any vessel caught without the certificate is subject to detention and a maximum $10,000 fine.

FWPCA also establishes a revolving fund with a current authorized maximum of $35 million. This fund, financed from

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1/ The Act also covers oil discharges from outer continental shelf activities and U.S. vessels from the 12-mile limit to the limit of the fishery conservation zone (200 miles) as well as discharges from onshore facilities.

general appropriations, supplemented by fines and collections, and administered by the Coast Guard (with Treasury serving as "banker"), provides immediate financing to the Coast Guard and the Environmental Protection Agency for Government-incurred cleanup costs. To the extent possible within the liability limits, the U.S. Government recovers such costs from the spiller, and to the extent necessary, the Congress (in principle) replenishes the fund through supplemental or regular appropriations. State-incurred cleanup costs may also be reimbursed under the FWPCA. 1/

Three other Federal "site specific" oil pollution statutes also cover cleanup costs, but, unlike FWPCA, they also cover third-party damages for oil spills. These statutes apply, respectively, to the outer continental shelf (Outer Continental Shelf Lands Act Amendments of 1978), deepwater ports (Deepwater Port Act of 1974), and sea transporation associated with trans-Alaska pipeline oil (Trans-Alaska Pipeline Authorization Act of 1973). Each act establishes a separate compensation fund, financed by separate per-barrel fees levied on oil, and sets up its own definition of tanker liability, liability limits, and financial responsibility.

STATE AND COMMON LAW

The FWPCA does not prevent any State from imposing any requirement or liability for oil spills in any waters within the State. Although some States have merely codified applicable common law, others have responded to the rising concern about oil and hazardous substance pollution by imposing strict liability on polluters for government cleanup and sometimes for third-party damages as well, often imposing liability limits higher than Federal law or providing unlimited liability. Laws providing damage

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1/ Under FWPCA, a nationwide contingency plan provides guidance for coordinated action to minimize damage from oil and hazardous substance discharges. Under the plan, the Coast Guard has responsibility for coastal waters through the on-scene coordinators. The coordinators, usually captains of the port, coordinate and direct Federal pollution control efforts at the site of the pollution incident or potential incident. Regional response teams and a national response team composed of representatives of various Federal agencies provide advice and assistance. The plan includes assignment of duties and responsibilities among Federal agencies and coordination with State and local agencies; identification, procurement, maintenance, and storage of equipment and supplies; development of procedures and techniques to identify, contain, disperse, and remove oil and hazardous substances; and establishment of a national response center to provide coordination and direction.

compensation and/or cleanup regimes have been adopted by 21 of the U.S. coastal States shown in appendix I.

In general, the State regimes prohibit and penalize oil discharges (with limited exceptions), require spillers to report spills and to clean them up, and designate a State authority to coordinate State cleanup efforts and cooperate with Coast Guard and Environmental Protection Agency officials (thereby qualifying for reimbursement under FWPCA). A number of States have also created funds to pay for emergency cleanup operations. Such funds may be financed by license fees, penalties, fines, and/or appropriations. Five states--Maine, New Hampshire, New York, New Jersey and Florida--finance their fund, at least in part, by yet another means, a per-barrel tax on oil. State law provisions regarding such matters as coverage, legal defenses, procedures for settling claims and liability limits also vary widely. (App. I summarizes the wide disparities in the laws of the various States.)

In general, a private American party injured by oil pollution from a ship must now legally depend for compensation either on State statutes if applicable or on tort suits in the civil courts. Broadly defined, a tort is a breach of a civil legal duty, not based on contract, for which the law will permit recovery of civil damages. To file a tort action, the plaintiff must identify the source of the damage. If the appropriate court or agency can then get jurisdiction over the offending vessel, the plaintiff must carry the burden of proof that the vessel caused the damage and that the oil was discharged negligently or intentionally or that the spill resulted from the unseaworthiness of the ship or constituted an actionable trespass. Even if the plaintiff establishes an actionable cause, the spiller can often avoid or mitigate its liability by invoking one or several legally recognized defenses, such as an act of God. Finally, under the Limitation of Liability Act dating from 1851, the spiller can seek to limit its liability to the value of the vessel and pending freight at the end of the voyage.

INDUSTRY AGREEMENTS

In the Torrey Canyon incident, Britain and France incurred costs exceeding $16 million. The tanker's owners reached an out-of-court settlement with the British and French governments, which divided a $7.2 million damage payment.

The ensuing public interest in proposals to establish national and/or international liability and compensation regimes led the oil and tanker industries to adopt a plan for voluntary liability for spill cleanup and damages. They did this, as an industry official explained, "to deter governments from legislating unilaterally in the first place but, if this could not be done, then at least to try to persuade them by example to legislate sensibly."

TOVALOP

The result as to tanker liability was TOVALOP (Tanker Owner's Voluntary Agreement Concerning Liability for Oil Pollution), which took effect in 1969. It was originally intended to provide stopgap liability and compensation pending implementation of an international convention that was then being considered. Although that instrument, the International Convention on Civil Liability for Oil Pollution Damage (CLC), came into effect in 1975, TOVALOP (for reasons noted below) remains in force.

Under TOVALOP, tanker owners (and bareboat charterers 1/) agree to compensate individuals and governments for cleanup costs and damages resulting from oil discharges or from efforts to either mitigate or prevent such discharges. The agreement is administered by the International Tanker Owners Pollution Federation, Ltd., in London. A tanker owner's liability is strict, subject to certain limited defenses. However, the agreement is not legally enforceable against owners by damage claimants, and an owner's liability is limited to the lesser of $160 per gross ton of the vessel or $16.8 million per incident.

Owners and bareboat charterers must satisfy the Federation as to their financial ability to meet obligations under the agreement. They normally arrange insurance coverage with a protection and indemnity insurance association, and must carry enough insurance to cover the maximum liability. Claims are paid directly by insurers.

In contrast to the CLC, which covers cleanup and damage costs incurred in the territorial waters of a member nation, TOVALOP is "ship specific," covering spill damage by a participating tanker owner affecting the territorial waters of any state, except when an international convention applies to such damage. Originally, TOVALOP was merely intended to provide an interim "bridge" to and model for the expected intergovernmental conventions. Because several nations, including the United States, have yet to ratify the applicable international conventions, TOVALOP has been kept in force and continues to provide coverage in a substantial part of the world. Current TOVALOP membership comprises some 98 percent of free world tankers plus about 4 million tons of East bloc tankers.

CRISTAL

The voluntary agreement among tanker owners was supplemented in 1971 by the establishment of a compensation scheme to cover

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1/ A bareboat charterer provides the crew and assumes liability as if he were the shipowner.

pollution damages that exceed TOVALOP's limits. Under the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL), signatory oil companies (representing about 92 percent of total crude and fuel oil transported by sea) contribute to the fund to provide supplemental compensation up to a total of $36 million per spill incident (i.e, the difference between the aggregate amount of compensation available from all other sources and $36 million). CRISTAL's administering agency (the Oil Companies Institute for Marine Pollution Compensation, Ltd.) has authority to raise the maximum limit to $72 million. Participants are assessed a contribution based on the value of terminal receipts collected by tankers for "persistent" oil (i.e., oil products that do not readily dissipate in water) during the previous year.

The fund is maintained at between $3 million and $5 million; when it falls below a specified level it is replenished by "calls" on the participants. CRISTAL provides supplemental compensation for pollution damage from tanker incidents covered by either TOVALOP or the international liability convention. Like TOVALOP, it has become a supplement to the international governmental regime rather than merely an interim measure.

The oil spilled must be owned by a CRISTAL member firm and the tanker must be a participant in TOVALOP for coverage to be applicable. Claims under CRISTAL are made directly to the Institute, which alone determines the compensation. In the first 7 years, CRISTAL received 21 claims--9 of which were settled for a total of $4.7 million and 3 of which were rejected. The 9 outstanding claims had a total potential liability of about $1 million. Most of the claims concerned reimbursements for shipowners or their agents for cleanup costs they themselves incurred. Because inflation has substantially eroded the value of the TOVALOP liability limits, CRISTAL has been increasingly drawn upon to cover damage or cleanup compensation which the oil industry feels should be the responsibility of the tanker owners.

INTERNATIONAL CONVENTIONS

The convention liability and compensation regime for ocean oil spills came into force several years after TOVALOP and CRISTAL took effect; it parallels their provisions in general outline while differing in some particulars. Developed in the International Maritime Organization, the International Convention on Civil Liability for Oil Pollution Damage and its companion treaty the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund) sought to establish a uniform worldwide liability and compensation regime.

The CLC was adopted in November 1969 and took effect in June 1975 following the required ratification by eight nations,

including five with tanker gross tonnage of 1 million or more. The Fund Convention was adopted in December 1971 and took effect in October 1978.

The CLC establishes and limits tanker owner liability for cleanup and damage costs incurred in the territorial waters of a member nation to the lesser of about $175 per gross registered ton of the vessel or about $18.4 million per incident. 1/ To avail themselves of the limitation, the tanker owners must establish a fund in this amount with a court having jurisdiction (usually a court in the country affected by the pollution) from which claimants can be paid. The liability is strict, meaning that the tanker owner can be held liable up to the specified monetary limit regardless of fault, subject to certain defenses. Moreover, if the claimant can prove fault or privity 2/ on the part of the owner, the owner's liability is unlimited. The owner can, however, reduce or eliminate its liability through certain defenses, including an act of war, hostilities, civil war, or insurrection; a natural phenomenon of irresistible character (for example, a bolt of lightning); an act or omission by a third party with intent to cause damage; the negligence or wrongful act of a government responsible for navigational aids; or a willful or negligent act or omission by the claimant. The claimant has the option of suing the owner or the owner's insurer.

The CLC requires that any vessel carrying more than 2,000 tons of oil as cargo have the means to meet its financial responsibility (e.g., insurance, bank guarantee) for amounts up to the liability limit. Each member nation must verify such financial responsibility for all ships under its flag and issue certificates so attesting. Any member nation is entitled to verify that every ship of other member nations that enters its ports or offshore terminals possesses the required certificate. If it believes any such ship cannot meet the terms of the certificate, it may consult with the government of the flag nation.

The CLC covers incidents that inflict damage within a member nation's territorial sea, including damage caused by discharges beyond that limit. It also covers efforts beyond that limit to prevent or minimize such damage. The CLC provides that no compensation for pollution damage shall be claimed against the shipowner otherwise than in accordance with the convention.

1/ These are the approximate dollar equivalents of the CLC limits, which are expressed in gold francs.

2/ Privity exists when the acts complained of are committed by persons to whom full control and authority have been given by the owner.

The Fund Convention was designed to supplement the CLC by providing the possibility of compensation for cleanup costs and damages over and above the tanker owner's liability under the CLC. It was also intended to compensate spill victims for losses incurred under certain circumstances where the CLC would not apply. These include certain incidents in which (1) the tanker owner cannot be held liable (the Fund's defenses are fewer than those granted the tanker owner under CLC), (2) the tanker owner is unable to cover his liabilities under CLC, or (3) the victim is unable to prove which vessel was responsible for the discharge. The Fund covers pollution in the territory of member nations caused by any vessel, regardless of whether or not it is registered in a member country.

In all cases where the Fund applies, it will provide, together with liability payments under CLC, up to about $59 million for any one incident. This Fund ceiling can be increased to approximately $79 million by a three-fourths vote of the Fund Assembly, which consists of representatives of participating nations. It is authorized to determine the conditions under which claimants may receive "provisional payments" with a view to assuring prompt relief to spill victims. The Fund will also indemnify the tanker owner or its insurer for part of its liability under the CLC, providing it was not guilty of willful misconduct in the incident and is in compliance with four specified international conventions affecting safety at sea. In such cases, the Fund will indemnify the owner for the part of the owner's liability under the CLC which is between $131 per gross ton or $11 million, whichever is lower, and the liability limit under the CLC ($175 per gross ton or $18.4 million, whichever is lower). Revisions now under consideration would eliminate this indemnification.

The Fund is financed by mandatory contributions from receivers of oil assessed on the basis of an amount per ton on the quantity of persistent oil they receive by sea at ports and terminals of member nations or at ports and terminals of non-member nations when the oil is subsequently transported to a member. Only companies receiving more than 150,000 tons of oil a year are subject to this annual assessment.

The court with jurisdiction under the CLC also has jurisdiction over claims against the Fund for a particular incident. The same territorial limits on jurisdiction apply. A nation cannot become a member of the Fund if it is not already a member of the CLC.

The Fund works closely with the tanker owners' insurers in conducting investigations and determining the merit of claims. Claimants thus need to deal with only one party rather than two and can be paid promptly after agreement has been reached. While settlement of major claims takes considerable time, Fund officials

assert they have a good record in making quick payments of minor claims (the Fund paid one claimant about $470,000 only 20 hours after it received the claim).

Current U.S. position

The United States took a leading role in the negotiation of both conventions. It has signed both but has yet to ratify either. When the CLC was sent to the Senate for advice and consent to ratification in 1970, the Foreign Relations Committee reported favorably on the treaty but advised the Senate to withhold its approval pending adoption of the supplemental Fund convention.

Both the Nixon and Ford administrations submitted implementing bills to the Congress, neither of which was approved. Congressional objections focused primarily on the conventions' compensation limits, which were considered too low, and on the fact that ratification would entail the preemption of any provision of State and Federal law that conflicted with those of the conventions. The Carter administration decided against further efforts to ratify and concentrated on proposals to establish a comprehensive Federal statute. Such a "superfund" statute for ocean oil pollution, discussed further in chapter 4, was approved by large majorities in the House in two successive Congresses but did not pass in the Senate. The Reagan administration testified in 1981 that it opposed such legislation on the ground that it conflicted with administration policy against increased Government regulation and spending. As noted below, however, the administration is now reexamining its position on oil pollution liability and compensation regimes. It has not yet commented officially on the international conventions but is currently studying the issue.

CHAPTER 3

PERCEIVED DEFECTS OF PRESENT ARRANGEMENTS AFFECTING AMERICAN INTERESTS

There is broad though not unanimous agreement among informed observers that the arrangements affecting the ability of public and private American interests to obtain compensation for cleanup and damage costs of oil tanker pollution are inadequate. The principal perceived defects are discussed below.

UNNECESSARY EXPENDITURE OF APPROPRIATED FUNDS

Under the Federal Water Pollution Control Act, the Government finances its oil spill cleanup costs through a revolving fund established and largely maintained by Federal appropriations. The expenditure of appropriated funds for cleanup, coupled with the Government's failure to recover its full costs from the spiller, burdens the taxpayer with costs that should be included in the price of transporting oil.

The FWPCA fund is used for both oil and hazardous substance cleanup. In 1981, the U.S. Coast Guard recorded about 10,000 pollution discharges in and near U.S. navigable waters. About 83 percent were oil spills, which accounted for about 90 percent of the volume. Of the 10,000 recorded discharges, however, only 560 required expenditures from the FWPCA fund.

During fiscal years 1971-82, the U.S. Government obligated about $124 million from the FWPCA revolving fund but was able to recover only about $49 million from spillers, as shown below. Thus, the U.S. Government used federally appropriated funds totaling more than $75 million for pollution cleanup.

FWPCA Pollution Revolving Fund 1971-82

Congressional appropriations	$100,000,000
Recovered from spillers	49,029,274
Cumulative total resources	$149,029,274
Obligations	-$124,348,512
Balance at 9-30-82	$ 24,680,762

As of November 1, 1982, 77 cases involving U.S. Government efforts to recover about $36.5 million for the FWPCA fund from identified spillers were in some form of litigation. Also pending

were 16 cases involving about $7.5 million in claims against the FWPCA fund.

INSUFFICIENT, ERRATIC FUNDING OF CLEANUP

Because the Government has been unable to achieve full recovery of cleanup costs from the spillers; the Coast Guard has had to rely on regular or supplemental appropriations to meet cleanup requirements. Congress has not consistently met the full need. In fiscal year 1977 the Coast Guard was obliged to transfer $5 million of its own funds to cleanup operations and was later reimbursed only $3.5 million. If the Coast Guard does not or cannot again reprogram its funds in such a situation, it is possible that a cleanup will not be fully carried out unless or until further funds are appropriated.

Although the FWPCA revolving fund is authorized at $35 million, it has never been funded at that level and, according to the Coast Guard, has on occasion been fully depleted. Congress now requires the Secretary of Transportation to request additional funds whenever the level of the FWPCA fund dips below $12 million. Cleanup costs of the Amoco Cadiz incident (see page 2) have been estimated between $80 million and $100 million. A catastrophic spill of that sort could leave the Coast Guard short of the resources necessary for a timely and adequate response.

Because of inadequate funding, the Coast Guard has sometimes had to make priority decisions limiting the use of the fund and the on-scene coordinator's freedom to obligate the fund. As the House Merchant Marine and Fisheries Committee has observed, past cleanup deficiencies reported by some State authorities have occurred not because of inadequate Coast Guard standards but because "Coast Guard flexibility in this area was limited by the small amount of appropriated funds available to them."

INADEQUATE NON-STATUTORY REMEDIES FOR PRIVATE CLAIMANTS

To the extent that a damage claimant must rely on common law rather than statutory law, the prospects for recovering against a spiller are likely to be minimal. The outlook is complicated by the fact that each State, as well as the Federal Government, has its own body of common law and that in this rather new field relatively little case law has been built up. Generally, as noted earlier, the claimant would have to identify the spiller and make its case under tort law by proving negligent or intentional wrongdoing. To avoid lengthy, costly, and uncertain litigation, the claimant may be forced to abandon its claim or accept an inadequate out-of-court settlement with a spiller whose resources may be considerably greater than its own. Moreover, even if the claimant has adequate grounds for a favorable

judgment, the shipowner can, under the Federal Limitation of Liability Act, seek in some circumstances to limit its liability to the value of the ship and pending freight after the voyage.

MULTIPLE CLAIMS AND UNCERTAIN LIABILITY FOR INDUSTRY

The proliferation of Federal, State, foreign, and international law and regulations governing liability and compensation has become a major concern of the oil and tanker industries. Their concern is widely shared by others, including government officials, scholars, and environmentalists, who see in the present patchwork serious potential inequities for spill victims, and confusion as well as excessive costs for the oil-related companies. The companies have testified that the need to comply with such a variety of laws and regulations raises their liability insurance costs, imposes undue administrative burdens, requires them to contribute to numerous compensation funds, and so increases the cost of energy to consumers.

Of the 23 coastal States shown in appendix I, 21 have enacted oil spill liability laws; the laws of 14 of these States are backed by compensation funds (and 5 of the 14 are financed by fees levied on the oil and tanker industries). As the House Committee on Merchant Marine and Fisheries commented, "A spill occurring in a river or the mouth of a bay might cause damage to citizens in two or three states, be subject to several different state laws, and result in levels of liability and compensation of different descriptions in each case."

OVERLAPPING FEDERAL STATUTES

The existence of four Federal statutes dealing with the consequences of ocean oil pollution entails duplication of administrative arrangements and activity, the maintenance of four funds, and the enforcement of disparate regulations for essentially the same purposes in different areas. The FWPCA, Outer Continental Shelf, and Deepwater Port funds are administered by the Coast Guard, and the Trans-Alaska Pipeline fund is administered by holders of the pipeline right of way through a special-tax exempt Government corporation.

To date, only FWPCA has been drawn upon to serve the established purpose of coping with the consequences of ocean oil spills. Under the other funds, money has been collected and invested, and expenditures to date have been fully covered by the interest earnings. The expenditures have served solely to defray administrative costs associated with accounting and auditing, investment advisory services, meetings, legal services, and other purposes, such as evaluating applications for certificates of financial responsibility under the Outer Continental Shelf

Lands Act (a task normally assigned to the Federal Maritime Commission). There have been many oil discharges within the jurisdiction of the "unused" statutes, but none to date has been large enough to result in claims exceeding the liability of the tanker owners and thus none compelling resort to the funds.

Legislation that has been under consideration in the Congress would consolidate these statutory funds. (See ch. 4.) Some observers have suggested, however, that actual creation of the fund may be unnecessary in advance of its use. That is, the Federal agency responsible for administering the consolidated fund would simply retain standby authority to levy the barrel fee on oil. In an emergency, the agency could immediately borrow from the Treasury and then promptly levy the fee to repay the loan.

LIMITATIONS AND UNCERTAINTIES OF VOLUNTARY AGREEMENTS

TOVALOP and CRISTAL have provided significant protection for the oil and tanker industries and victims of ocean spill damage. However, these industry agreements are not seen as meeting all the needs of a comprehensive liability and compensation regime for the United States. They do not establish legal liability that can be enforced worldwide by damage victims in courts of law. The liability limits and the size of the funds are determined solely by agents of the oil and tanker industries, as is the processing of claims against the fund. TOVALOP/CRISTAL combined limits are lower than those of the conventions; the legal defenses are more formidable; and unlike the conventions, TOVALOP and CRISTAL provide no protection against spills of unidentified origin where it has been determined that the source is a tanker.

The industry agreements, as noted, cover only tanker owners subject to TOVALOP and oil owned by a party to CRISTAL. The continued existence of these arrangements depends solely on the policies of private interests, and there is now some pressure within the oil industry to reduce or eliminate the CRISTAL fund.

REDUCED U.S. INFLUENCE IN INTERNATIONAL MARITIME FORUMS

Continued U.S. non-ratification of the CLC and the Fund has prompted a number of informed observers in and out of the U.S. Government to express concern that the United States is sacrificing much of its ability to influence efforts within the International Maritime Organization to strengthen the conventions in ways that would make them acceptable. Those who advocate U.S. ratification of the conventions point out that prospects for such improvement now appear promising.

Some have suggested that the risk the United States would incur by ratifying the conventions before they were properly strengthened could be covered by a statement filed at the time of ratification that the United States would denounce the treaties if, after a reasonable time, the necessary changes were not effected. Others would make revision a condition for ratification.

The United States has taken an active part in the International Maritime Organization discussions on this matter to date, but some participants report that the U.S. delegation has met with less responsiveness to its positions on some issues than it might receive if the United States were an adherent. It is also a consideration that unless the United States ratifies the conventions, it will be unable to take a full part in the diplomatic revision conference scheduled to be held in May 1984. At that time, the conventions are expected to be significantly amended.

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These are the principal perceived defects of present arrangements affecting the ability of public and private American interests to obtain compensation for cleanup and damage costs in oil tanker pollution incidents. Such defects have prompted major proposals for change.

CHAPTER 4

CURRENT PROPOSALS FOR CHANGE

In recent years, three main proposals have been advanced to overhaul present liability and compensation arrangements affecting U.S. public and private interests in cases of ocean oil pollution: (1) ratification (and amendment) of the international conventions, (2) a comprehensive Federal statute that would in some measure preempt all other domestic law in this field, and (3) a combination of the two.

RATIFICATION AND AMENDMENT OF CONVENTIONS

Some advocates of U.S. ratification of the international civil liability and fund conventions point out that, even in their present forms, the conventions offer certain distinct advantages, including:

--Replacement of disparate foreign, Federal, State, common law, and private arrangements with a uniform, worldwide liability and compensation regime.

--A degree of international legitimacy, legal enforceability, and jurisdictional scope not matched by the prevailing alternative private agreements.

--Higher compensation limits and fewer defenses than the private regime.

Most American advocates of ratification, however, acknowledge that the conventions' present terms require improvement; many premise their support for ratification on the condition that the perceived defects be corrected by formal amendment or on the expectation that they will be within a reasonable period.

An international effort to correct perceived defects by amendment has been under way for the past 2 years. The revision process is centered in the Legal Committee of the International Maritime Organization. Although the United States is not a party to the conventions, it is a member of the Organization and has participated in the effort to date. In June and December 1981, an informal working group of the Organization's Legal Committee met in Washington and in Stockholm, respectively, to discuss the possible revision of the conventions. A formal meeting of the Legal Committee was then held in March 1982. According to U.S. representatives attending that meeting, substantial progress was made in narrowing differences regarding the principal issues. On some issues, the Committee decided to propose draft amendments, occasionally with alternative wording. A further Committee meeting, dealing with both the procedures and the substance of amend-

ments, was held in October 1982. The Committee has scheduled two meetings in 1983 to complete drafts for the diplomatic conference in 1984.

On the basis of the discussions to date, many observers see a reasonable prospect that the principal deficiencies of the present conventions may be substantially corrected. A broad international consensus appears to have emerged in support of raising the liability limits, imposing a minimum liability limit for small ships, and covering damage caused by unladen tankers. Preliminary though not unanimous agreement was also reached regarding the need for coverage of threat-amelioration measures, deletion of shipowner indemnification provisions, and a mechanism to update periodically the liability limits. The principal proposed changes in the international conventions are summarized in appendix II.

COMPREHENSIVE FEDERAL STATUTE

The concept of a comprehensive U.S. oil spill liability and compensation regime, either "free standing" or in conjunction with the conventions, has won considerable support among various interested groups and individuals. Bills to create such a regime have been the subject of hearings and votes in the Congress since 1975 but have so far not been enacted. The House twice voted bills on the subject by wide margins on the basis of hearings and reports by the Merchant Marine and Fisheries Committee. Similar legislation has been introduced jointly in the Senate by the leadership of the Committees on Environment and Public Works and Commerce, Science and Transportation, and hearings were held in 1981 by the Subcommittee on Environmental Pollution and Resources Protection.

Both the House and Senate bills in the 97th Congress (H.R. 85 and S. 681) would have (1) established strict tanker liability for discharges, subject to certain limited defenses, (2) provided limits of spiller liability substantially higher than the current limits of the international convention, (3) required evidence of financial responsibility, (4) covered damage to real or personal property, natural resources, and earning capacity, and (5) applied to the navigable waters of the United States and its adjacent shoreline, territorial waters, and contiguous zone.

Both bills would have created a comprehensive oil pollution liability trust fund to compensate claimants above the spillers' limits of liability or to provide compensation if it could not be obtained in any other way. Under both bills the fund would be financed essentially by a per-barrel fee on oil movements, supplemented by fines and recoveries against spillers. Both would have superseded the liability provisions of the 1851 Limitation of Liability Act and supplanted the oil pollution funds established under the FWPCA and the statutes covering deepwater ports, the outer continental shelf, and the Trans-Alaska pipeline.

The principal difference between the House and Senate bills was that the former would have preempted all duplicative State laws while the latter lacked such a provision. Under the House bill, the existing patchwork of liability limits, financial responsibility provisions, and fee-based funds would have been superseded (State funds financed through appropriations were to be exempt) in favor of a uniform Federal framework. Under a Committee-sponsored amendment, however, States with fee-based funds already in existence when the statute became effective would have been allowed to maintain them for 3 years. This delay in fund preemption was designed to assuage States' fears that a comprehensive Federal regime would not provide the degree of protection afforded by existing State statutes. The 3-year period was intended to allow both the States and Federal Government to assess the effectiveness of the new Federal scheme--a process it was hoped would eventually permit what one observer called "preemption by atrophy."

COMBINING CONVENTIONS WITH FEDERAL LEGISLATION

Some observers have suggested that a properly designed Federal statute could be made to "wrap around" the conventions, thus providing uniform comprehensive oil spill liability and compensation schemes on both the national and international levels. This concept is not new. A U.S. fund designed to augment compensation under the conventions was originally proposed by some members of Congress in 1974. In July 1975, the Ford administration proposed a combined approach to Congress, but this failed to be passed.

Under the combined approach, the CLC, when ratified, would preempt all liability limits and financial responsibility provisions affecting seagoing tankers carrying persistent oil. The Federal statute, however, could apply in all areas not covered by the conventions, including incidents involving ships other than seagoing tankers (e.g., inland barges) and onshore and offshore facilities. For the time being, it could also include spills involving unladen tankers, non-persistent oil, cleanup and preventive measures taken to protect natural resources beyond the reach of the convention, and actual damages to those resources. All these types of coverage applicable to seagoing tankers are also being considered for inclusion in the revised conventions, and if they are included, seagoing tankers involved in such incidents would no longer remain under purely domestic jurisdiction for those purposes.

The Fund Convention would not preclude the United States from establishing a comprehensive fund for use in circumstances not covered by the conventions. This comprehensive fund would serve two purposes. First, it could be "stacked" on top of the conventions, thus providing compensation in the event that

a catastrophic spill exceeds the combined limits of the international conventions. If the revised conventions provide for higher limits, the U.S. fund could remain as a backup at a higher level. In the case of a spill outside the purview of the conventions, the fund would supplement shipowner liability directly.

The second function of the oil "superfund" would be to provide a quick-response capability, both in terms of cleanup costs and victim compensation. During a spill, this fund, functioning like the FWPCA fund under the present system, would finance Federal cleanup costs and subsequently seek recovery. For spills involving seagoing tankers, recovery could be made through the international conventions. For all other spills, recovery could be made by action against the shipowner under the Federal statute. The oil "superfund" could also make initial payments to States which have incurred cleanup costs and victims who have experienced damages and might be subject to undue hardship as a result of a protracted settlement with the spiller. The fund could then make recovery in either of the aforementioned ways.

Advocates of a combined approach (we found little opposition to it) believe the gain to the U.S. Government would be significant: the use of oil industry funds rather than appropriations to clean up oil spills would reduce the expenditure of appropriated funds and more fully internalize the cost of such spills within the price of oil. Since 1971, $75.3 million in Federal appropriations have been expended from the FWPCA fund on oil and hazardous substance spill cleanup, although some portion of this may yet be recovered through litigation.

In addition, although the United States would incur implementation costs under the conventions and statute, advocates believe the combined system should lead to an overall lessening of Government administrative expense and regulation. They contend that the consolidation of the four Federal statutes would substantially reduce Federal administrative burdens.

Proponents of this combined approach anticipate that private claimants would also gain through more expeditious and certain recovery under the strict liability framework erected by the conventions and the statute. The claimant would no longer have to prove negligence on the part of the shipowner where that would now be required.

Further, advocates note, industry would gain from the reduced compliance costs resulting from the preemption of duplicative Federal and State laws and the replacement of disparate domestic and foreign regimes with a uniform worldwide liability and compensation system.

Finally, environmental interests believe they would achieve important purposes as a result of increased funds being made available for cleanup and damage compensation.

VIEWS OF KEY COASTAL STATES

The principal unresolved questions in revising the present regime relate to the role of the States. The conventions would preempt individual States' liability limits and financial responsibility provisions for seagoing tankers, and a comprehensive Federal statute might eventually supersede all other duplicative provisions in State laws, including the right to assess fees on oil to create oil spill compensation and/or cleanup funds.

Some States fear that, if left without their own funds, they would be helpless in the event that the Federal Government or private parties failed to perform adequate cleanup operations. To allay these fears, the Merchant Marine and Fisheries Committee indicated in its 1981 report on H.R. 85 that it intended that all spills be cleaned up to the satisfaction of the States. To the same end the Committee also proposed amendments delaying Federal preemption of State funds for a trial period of 3 years and encouraging Federal fund administrators to use State agencies as claims adjusters.

Coastal State authorities who have expressed views on the matter generally support, with some qualification, the idea of a single comprehensive Federal statute on liability and compensation for costs of cleanup and damages associated with ocean oil spills. Some have indicated readiness to support preemption of State liability limits and financial responsibility requirements provided the Federal limits are made high enough. On the evidence available to date, however, it appears that States having funds financed by fees levied on oil would not willingly see them preempted, no matter what arrangements were made for a Federal fund. Moreover, the proposed 3-year moratorium on preemption of States' rights does not appear to have dispelled the concerns and doubts expressed by several States.

U.S. POSITION UNDER REVIEW

The Reagan administration's position on oil pollution liability and compensation regimes is now under review in the Department of Transportation. In September 1982, the Coast Guard contracted for a detailed study, to be completed by May 1983, on the costs and benefits that would accrue to the United States from ratification of the international conventions. (A preliminary analysis had indicated that the benefits of ratifying the conventions would outweigh the costs.) Meanwhile, the draft of a new comprehensive Federal statute, similar in many respects to the earlier bills discussed in this report and designed to "wrap around" and implement the conventions, has been prepared by the staff of the House Subcommittee on Coast Guard and Navigation for consideration by the 98th Congress.

STATE STATUTORY OIL SPILL LIABILITY AND COMPENSATION REGIMES (note a)

Region	State	Fund: Limit	Fund: Source	Fund: Uses: Cleanup	Fund: Uses: Damages	Liability systems: Limits	Liability systems: Defenses (note b)	Liability systems: Financial responsibility requirements (note c)
ATLANTIC COAST	Maine	$ 6,000,000	Fee-1c/bbl., penalties, reimbursements	Yes	Yes	No	Yes	No
ATLANTIC COAST	New Hampshire	$ 1,500,000	Fee-1c/bbl.	Yes	No	No	No	To be set by State Commission
ATLANTIC COAST	Massachusetts	No fund	(d)	(d)	(d)	No	No	$25,000 bond or other evidence
ATLANTIC COAST	Rhode Island	No fund	(d)	(d)	(d)	(d)	(d)	(d)
ATLANTIC COAST	Connecticut	No limit	Reimbursements, penalties	Yes	No	No	No	$50,000 bond or other evidence
ATLANTIC COAST	New York	$25,000,000	Fee-1c/bbl., penalties, reimbursements	Yes	Yes	e/$300/GT	Yes	No
ATLANTIC COAST	New Jersey	$50,000,000	Fee-1c/bbl., penalties, reimbursements	Yes	Yes	e/$150/GT	Yes	No
ATLANTIC COAST	Pennsylvania	No limit	Permit fees, penalties	Yes	No	(d)	(d)	(d)
ATLANTIC COAST	Delaware	No fund	(d)	(d)	(d)	e/$300/GT ($250,000 to $30 mil.)	Yes	Maximum liability
ATLANTIC COAST	Maryland	$1,000,000	License fees, reimbursements	Yes	No	No	No	e/Bond@$100/GT or Fed. Regs.
ATLANTIC COAST	Virginia	No limit	Appropriations, penalties, reimbursements	Yes	No	$5 mil.	Yes	No
ATLANTIC COAST	North Carolina	No limit	Appropriations, penalties, fees, reimbursements	Yes	No	No	Yes	No
ATLANTIC COAST	South Carolina	No fund	(d)	(d)	(d)	No	Yes	No
ATLANTIC COAST	Georgia	No fund	(d)	(d)	(d)	No	(f)	No
	Florida	$35,000,000	Fee-2c/bbl., penalties, appropriations	Yes	Yes	e/$100/GT to $14 mil.	Yes	Federal requirements
GULF COAST	Alabama	No fund	(d)	(d)	(d)	No	(f)	No
GULF COAST	Mississippi	No fund	(d)	(d)	(d)	No	No	No
GULF COAST	Louisiana	$1,000,000	Appropriations, penalties	Yes	No	No	No	No
GULF COAST	Texas	$5,000,000	Appropriations, fines, reimbursements	Yes	No	$5 mil.	Yes	No
PACIFIC COAST	California	No fund	(d)	(d)	(d)	No	No	No
PACIFIC COAST	Oregon	No fund	(d)	(d)	(d)	No	Yes	No
PACIFIC COAST	Washington	No limit	Fees, penalties, reimbursements	Yes	No	No	Yes	No
PACIFIC COAST	Alaska	No limit (account in Gen. Fund)	Penalties	Yes	No	$500 to $100,000	Yes	Fed. Regs.

a/ Based on 1982 Coast Guard data.

b/ Refers to defenses specified by statute. These commonly include acts of war, God, government, or third parties.

c/ May stipulate bond posting, evidence of financial responsibility from the Federal Government, State liability limit, or other. Data applies to vessels.

d/ Not applicable.

e/ Gross tons.

f/ In the Georgia and Alabama statutes, liability arises from negligence. In all other coastal States, liability is either strict (regardless of fault but with specified grounds for legal defense) or absolute (without legal defenses).

PROPOSED CHANGES IN

INTERNATIONAL OIL POLLUTION CONVENTIONS

The principal amendments to the conventions as discussed in the Legal Committee of the International Maritime Organization and the prospects for consensus on each are outlined below. This summary was prepared from information provided by the Department of State. As used here, "consensus" denotes general, not necessarily unanimous, agreement of those expressing views. The conclusions of the Legal Committee are not, of course, binding on the diplomatic conference, which is scheduled to act on these issues next year.

1. Raising the limits of liability

   This issue is at the heart of the current impetus to revise the conventions. Most of the nations represented agreed that the liability limits needed to be raised. The Committee left the question of specific amounts to a later date but took note of the fact that the cost of major spills might be twice as high as present compensation limits and that compensation payable under the conventions had also been reduced in real terms by inflation. The French delegation urged that the liability limit be raised to $100 million per incident, on the grounds that this was now within the capacity of the insurance market, and that the fund limit be raised to $200 million.

2. The small ship problem

   A broad consensus emerged in support of creating a minimum liability for ships under a certain size. This change would assure more adequate coverage for the significant share of oil pollution damage caused by the smaller tankers. The question of the tonnage ceiling was left to subsequent discussion.

3. Coverage for unladen tankers

   A majority of delegations at the March meeting favored amending both conventions to include unladen tankers. The proposal is important because operational discharges of oil ballast or from tank cleaning, rather than accidental spills, account for the greatest portion of oil pollution from ships.

4. Definition of preventive measures

A consensus developed that the present definition of preventive measures was ambiguous and that it should clearly include pre-discharge threat amelioration measures.

5. Extending the geographical scope

The Committee was divided on whether the conventions should be extended beyond the territorial sea to areas where nations have asserted sovereign rights to protect natural resources (including offshore fishing). This proposal reflects the fact that nations now claim more authority over environmental pollution than previously. Fishermen would be among the chief beneficiaries. The Committee concluded that this issue would have to be resolved at the diplomatic conference.

6. Elimination of shipowner indemnification

There was a general consensus that if an equitable balance between shipowner and cargo owner liability could be obtained in the revised conventions, indemnification provisions could be removed.

7. Updating liability limits

Broad agreement was achieved regarding the need for an expeditious method of modifying the liability limits to take account of changing conditions. It was also agreed that the process chosen should attempt to keep the number of varying limits around the world to a minimum. This situation could occur when a variety of previous limits remain in force for some nations while altered limits are implemented in others. A number of specific schemes for periodically raising the limits were discussed, but no agreement was reached. Indexing the limits to rise with inflation received little backing. Significant support emerged for a proposal for "tacit acceptance"--a procedure under which amendments of the liability limits can be adopted, enter into force and become binding providing nations do not take positive action to reject them.

8. Definition of oil pollution damage

The current CLC definition is very general in nature, i.e., "loss or damage caused outside the ship," and includes "preventive measures and any further loss or damage caused by preventive measures." This in

effect allows the courts of member nations wide latitude in determining which damages are compensable. One delegation proposed adding specific types of damage to the definition, e.g., "impairment of the marine environment" and "economic loss." No consensus has yet emerged on whether or not to change the current definition.

9. Channeling of liability

The Committee was split on whether all liability for oil pollution incidents should be channeled solely to the shipowner under the jurisdiction of the CLC. Such a provision would eliminate the need for other parties now subject to legal damage claims outside the CLC framework (e.g., the pilot, charterer, or salvager) to obtain pollution insurance. The victim could then bring action solely against the shipowner, who in turn has a right of recourse against those third parties. There was also a lack of consensus on a proposal to restrict this right of recourse to instances where such parties intended to cause damage or commit a reckless act with knowledge that loss would probably result. These provisions would significantly reduce the amount of extra-CLC litigation.