

FOREIGN SPILL PROTECTION ACT OF 2016

APRIL 25, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 1684]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1684) to amend the Oil Pollution Act of 1990 and the Federal Water Pollution Control Act to impose penalties and provide for the recovery of removal costs and damages in connection with certain discharges of oil from foreign offshore units, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Foreign Spill Protection Act of 2016”.

**SEC. 2. LIABILITY OF OWNERS AND OPERATORS OF FOREIGN FACILITIES.**

Section 1001(32) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(32)) is amended—

(1) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively;

(2) by inserting after subparagraph (C) the following:

“(D) FOREIGN FACILITIES.—In the case of a foreign offshore unit or other facility located seaward of the boundary of the exclusive economic zone, any person or other entity owning or operating the facility, and any leaseholder, permit holder, assignee, or holder of a right of use and easement granted under applicable foreign law for the area in which the facility is located.”; and

(3) in subparagraph (G), as so redesignated, by striking “or offshore facility, the persons” and inserting “offshore facility, or foreign offshore unit or other facility located seaward of the boundary of the exclusive economic zone, the persons or entities”.

PURPOSE OF LEGISLATION

H.R. 1684, the Foreign Spill Protection Act, as amended, modifies the Oil Pollution Act definition of “responsible party” to include a defined term for “foreign facilities” and further clarify the entities considered a responsible party in the case of abandonment.

BACKGROUND AND NEED FOR LEGISLATION

The Oil Pollution Act of 1990 (OPA) was enacted in response to the 1989 T/V Exxon Valdez oil spill in Alaska. The Exxon Valdez incident highlighted the lack of federal funding available to respond to spills and the limits in federal law regarding damage payments. OPA established an oil spill prevention, response, liability, and compensation regime that partially uses Clean Water Act authorities.

Prevention measures include double hulls for tankers, the use of towing vessels, and vessel communication systems, as well as liners for onshore facilities. Response measures are in the form of contingency planning, national response units, Coast Guard district response groups, and tank vessel and facility response plans.

Liability measures prescribed under OPA section 1002 require a “responsible party” (as defined under section 1001, paragraph (32)) to be the owner or operator of a vessel, or an onshore or offshore facility; 33 U.S.C. 2701) to pay for removal costs and any damages created by a spill.

Compensation measures in OPA allow an injured party to seek payment for spill damages occurring to natural resources, personal or real property, subsistence use, or loss of revenues. OPA also created the Oil Spill Liability Trust Fund (OSLTF) financed by a per barrel tax on oil, recovery costs from responsible parties, civil and criminal penalties, and interest income. The OSLTF is available to clean up spills, in the absence of a responsible party, or if the responsible party is unable to fund clean-up measures.

Section 1001 also defines “foreign offshore unit” as a facility located in whole or part in the territorial sea or on the continental shelf of a foreign country and used to explore, drill, produce, store,

handle, transfer, process, or transport oil. As previously mentioned, OPA states that a responsible party for a vessel or onshore or offshore facility where a spill occurs or poses a substantial threat of a discharge of oil in or upon navigable waters or adjoining shoreline of the United States is liable for damages and cleanup costs as a result of an incident. A “foreign offshore unit” or other facility located outside the United States exclusive economic zone are not referenced explicitly either in section 1002 or the definition of “responsible party” in section 1001(32). However, it has been commonly assumed that such facilities fall under the broader reference to a vessel or onshore or offshore facility in the definition of the term “responsible party”. As such, H.R. 1684 is intended to make clear in OPA what has been the common understanding on the reach of United States law to spills emanating from outside of the United States exclusive economic zone.

OPA covers oil spills originating in the United States. It also allows foreign claimants to recover removal costs or damages if recovery is covered by a Treaty or agreement between the United States and the claimant’s country or if there is a comparable remedy for United States claimants. However, if there is a spill originating in foreign waters from a foreign offshore unit or other facility owned or operated by a foreign entity with no connection to the United States, and that spill reaches the jurisdictional waters of the United States, OPA does not explicitly cover that foreign facility. When there is no responsible party under OPA for an oil spill originating in foreign waters that reaches United States waters and shores, the OSLTF covers in such instances the costs of cleanup and damages. However, OPA limits cleanup and claims from the OSLTF to \$150 million and \$850 million, respectively.

H.R. 1684, as amended, amends OPA to clarify that the scope of OPA liability for removal costs and damages extends to foreign offshore units and other facilities for oil spills originating in foreign waters that reach United States waters. The bill includes in the definition of “responsible party” a definition of “foreign facilities”. The bill also further clarifies the entities considered a “responsible party” in the case of “abandonment” to include foreign offshore units and other facilities.

#### HEARINGS

The Subcommittee on Coast Guard and Maritime Transportation held a hearing on the *Federal Radionavigation Plan, H.R. 1684, the Foreign Spill Protection Act of 2015, and H.R. – – – the National Icebreaker Fund Act of 2015* on July 28, 2015, and received, as part of the hearing, testimony regarding H.R. 1684.

#### LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 1684 was introduced by Congressman Carlos Curbelo (R-FL) on March 26, 2015. On March 2, 2016, the Committee on Transportation and Infrastructure met in open session to consider H.R. 1684, and ordered the bill, as amended, reported favorably to the House of Representatives by voice vote with a quorum present.

Representative Curbelo (R-FL) offered an amendment in the nature of a substitute which was adopted by voice vote. The amendment modifies the definition of “responsible party” in OPA to in-

clude in the definition “foreign facilities”. With respect to a foreign offshore unit or other foreign facility located seaward of the boundary of the United States exclusive economic zone, a “responsible party” would include any person or other entity owning or operating the facility, and any leaseholder, permit holder, assignee, or holder of a right of use and easement granted under applicable foreign law for the area the facility is located. The inclusion of “foreign facilities” in the definition of “responsible party” provides further clarity. The amendment also modifies the “abandonment” provision within the definition of “responsible party” to include a reference to a foreign offshore unit or other facility located seaward of the boundary of the United States exclusive economic zone.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 1684. A motion to order H.R. 1684, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

#### COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 1684, as amended, from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 21, 2016.*

Hon. BILL SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1684, the Foreign Oil Spill Protection Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jon Sperl and Peter Huether.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 1684—Foreign Oil Spill Protection Act of 2016*

Summary: H.R. 1684 would expose owners and operators of oil production facilities located offshore and outside of the United States to liability for cleanup costs and damages from oil spills. Under the bill, such foreign entities could be held responsible for oil spills that originate outside U.S. waters if they threaten or cause damage in the United States. Those entities also could be penalized under the Federal Water Pollution Control Act (Clean Water Act), the Deepwater Port Act, and the Trans-Alaska Pipeline Authorization Act.

Because H.R. 1684 would expand the number of entities that are subject to U.S. laws, the federal government might recover additional costs and collect additional penalties under the legislation. CBO estimates that enacting H.R.1684 would increase recoveries to the Oil Spill Liability Trust Fund (OSLTF) by \$7 million over the 2017–2026 period. Those recoveries are recorded as reductions in direct spending. CBO estimates that the bill also would increase revenues from penalty collections by \$5 million over that period. The estimated amounts reflect CBO’s assessment of the low likelihood that a significant oil spill originating outside the United States would occur over the next decade and the small probability that responsible entities would be identified from whom the federal government could collect recoveries and penalties.

Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply. CBO estimates that enacting H.R. 1684 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 1684 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effects of H.R. 1684 are shown in the following table. Those effects fall within budget function 300 (natural resources and environment).

	By fiscal year, in million of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
DECREASES IN DIRECT SPEND												
Oil Spill Cost Recoveries												
Estimated Budget Authority .....	*	*	*	-1	-1	-1	-1	-1	-1	-1	-2	-7
Estimated Outlays ....	*	*	*	-1	-1	-1	-1	-1	-1	-1	-2	-7
INCREASES IN REVENUE												
Civil Penalties .....	*	*	*	*	*	*	*	1	1	2	1	5

	By fiscal year, in million of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
	NET DECREASE IN THE DEFICIT											
Impact on Deficit .....	*	*	*	-1	-1	-1	-1	-2	-2	-3	-3	-12

Notes \* = between -\$500,00 and \$500,000; components may not sum to totals because of rounding.

**Basis of estimate:** Under current law, entities responsible for oil spills in U.S. waters are liable for cleanup costs, damages, and penalties. H.R. 1684 would expand the definition of responsible parties under the Oil Pollution Act of 1990 (OPA) to include owners and operators of production facilities operating offshore in foreign waters. As a result, those entities could be liable for oil spills that originate outside the boundaries of the United States' exclusive economic zone but threaten or cause damage inside those boundaries.

Because H.R. 1684 would increase the number of entities that could be liable for damages and subject to penalties under U.S. laws, the bill could enhance the ability of the United States to recover cleanup costs and collect damages from foreign entities. However, the effect the bill would have on recoveries and penalties is uncertain. Any increase in recoveries or penalties would depend on the scale of foreign oil production near the United States, the size of future oil spills caused by foreign entities, and whether those entities have a legal connection with the United States.

**Changes in direct spending:** According to the U.S. Coast Guard (USCG), enacting H.R. 1684 could bolster—relative to existing means of recovery under international agreements—the ability of the United States to recover costs related to oil spills and to collect damages from foreign entities that own or operate offshore facilities. There have been no oil spills caused by foreign entities outside of U.S. waters for which the United States has attempted recovery since OPA was enacted in 1990. While CBO expects that enacting H.R. 1684 could increase recoveries if foreign entities responsible for a spill conduct business in, or have a connection with, the United States, the legislation would probably have little effect on the government's ability to recover from entities that do not conduct business in the United States.

Given those uncertainties about the federal government's ability to recover costs from foreign entities, as well as uncertainties about the size and likelihood of oil spills in the future, CBO calculated a range of possible outcomes and estimates that enacting H.R. 1684 would increase recoveries to the OSLTF by roughly one percent per year above the amounts CBO projects will be collected under current law. (That estimate includes the very small chance of a major oil spill near U.S. waters that could result in hundreds of millions of dollars in damages and cleanup costs as well as the higher probability of smaller spills.) Those recoveries, which are treated as reductions in direct spending, would total \$7 million over the 2017–2026 period, CBO estimates.

**Changes in revenues:** because H.R. 1684 would potentially expand the number of entities that are subject to penalties from oil spills under existing U.S. laws, such as the Clean Water Act, the federal government could collect additional penalties under the bill. Based in part on information provided by the USCG, CBO esti-

mates that enacting H.R. 1684 would result in \$5 million in additional penalty collections, which are revenues, over the 2017–2026 period, largely in the second half of the 10-year period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in direct spending and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1684, AS ORDERED BY THE HOUSE  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE ON MARCH 2, 2016

	By fiscal year, in millions of dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016– 2021	2016– 2026
NET DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact ....	0	0	0	0	–1	–1	–1	–1	–2	–2	–3	–3	–12
Memorandum:													
Changes in Outlays .....	0	0	0	0	–1	–1	–1	–1	–1	–1	–1	–2	–7
Changes in Revenues .....	0	0	0	0	0	0	0	0	1	1	2	1	5

**Notes:** Components may not sum to totals because of rounding.

**Increase in Long-term deficit and direct spending:** CBO estimates that enacting H.R. 1684 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

**Intergovernmental and private-sector impact:** H.R. 1684 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Jon Sperl; Federal Revenues: Peter Huether; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to amend the Oil Pollution Act to include a foreign offshore unit or other facility located seaward of the boundary of the exclusive economic zone as a responsible party under the Act.

#### ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 1684, as amended, estab-

lishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 1684, as amended, directs no rule makings.

#### FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 1684, as amended, does not preempt any state, local, or tribal law.

#### ADVISORY COMMITTEE STATEMENT

No new advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation, as amended.

#### APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

#### SECTION-BY-SECTION ANALYSIS OF LEGISLATION

##### *Section 1. Short title*

Section 1 provides that the short title of this Act is to be cited as the ‘Foreign Spill Protection Act of 2016’.

##### *Section 2. Liability of owners and operators of foreign facilities*

Section 2 amends Section 1001(32) of OPA, the “responsible party” definition, to include a new subparagraph (D) to define “foreign facilities”. In the new definition of “foreign facilities” any person or other entity owning or operating a foreign offshore unit or other facility located seaward of the boundary of the exclusive economic zone, and any leaseholder, permit holder, assignee, or holder of a right of use and easement granted under applicable foreign law would be a “responsible party” under the Act. Again, this term

has been commonly construed to fall under the broader reference to a vessel or onshore or offshore facility in the definition of the term “responsible party”. As such, H.R. 1648 is intended to make clear in OPA what has been the common understanding on the reach of United States law to spills emanating from outside of the United States exclusive economic zone.

This section also amends the redesignated subparagraph (G) of paragraph (32), pertaining to “abandonment”, to include reference to a foreign offshore unit or other facility located seaward of the boundary of the exclusive economic zone.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

### OIL POLLUTION ACT OF 1990

\* \* \* \* \*

## 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 limited 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 petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance 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”—

(A) means—

(i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(ii) in the case of an onshore or offshore facility, any person owning or operating such facility;

(iii) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(iv) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand;

(v) notwithstanding subparagraph (B)(i), and in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including for purposes of liability under section 1002, any State or local government that has caused or contributed to a discharge or substantial threat of a discharge of oil from a vessel or facility ownership

or control of which was acquired involuntarily through—

(I) seizure or otherwise in connection with law enforcement activity;

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

(vi) notwithstanding subparagraph (B)(ii), a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

(I) exercises decision making control over the environmental compliance related to the vessel or facility, such that the person has undertaken responsibility for oil handling or disposal practices related to the vessel or facility; or

(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

(aa) for the overall management of the vessel or facility encompassing day-to-day decision making with respect to environmental compliance; or

(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance; and

(B) does not include—

(i) A unit of state or local government that acquired ownership or control of a vessel or facility involuntarily through—

(I) seizure or otherwise in connection with law enforcement activity;

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

(ii) a person that is a lender that does not participate in management of a vessel or facility, but holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility; or

(iii) a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a removal action under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements;

(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. In the case of a vessel, the term “responsible party” also includes the owner of oil being transported in a tank vessel with a single hull after December 31, 2010 (other than a vessel described in section 3703a(b)(3) of title 46, United States Code).

(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) FOREIGN FACILITIES.— *In the case of a foreign offshore unit or other facility located seaward of the boundary of the exclusive economic zone, any person or other entity owning or operating the facility, and any leaseholder, permit holder, assignee, or holder of a right of use and easement granted under applicable foreign law for the area in which the facility is located.*

~~[(D)]~~ (E) 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)]~~ (F) PIPELINES.— In the case of a pipeline, any person owning or operating the pipeline.

~~[(F)]~~ (G) ABANDONMENT.— In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, ~~or offshore facility, the persons~~ *offshore facility, or foreign offshore unit or other facility located seaward of the boundary of the exclusive economic zone, the persons or entities* 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;

(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;

(38) “participate in management”—

(A)(i) means actually participating in the management or operational affairs of a vessel or facility; and

(ii) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations; and

(B) does not include—

(i) performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility;

(ii) holding a security interest or abandoning or releasing a security interest;

(iii) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(iv) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(v) monitoring or undertaking one or more inspections of the vessel or facility;

(vi) requiring a removal action or other lawful means of addressing a discharge or substantial threat of a discharge of oil in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

(vii) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

(viii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(ix) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(x) conducting a removal action under 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, if such actions do not rise to the level of participating in management under subparagraph (A) of this paragraph and paragraph (26)(A)(vi);

(39) “extension of credit” has the meaning provided in section 101(20)(G)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(i));

(40) “financial or administrative function” has the meaning provided in section 101(20)(G)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(ii));

(41) “foreclosure” and “foreclose” each has the meaning provided in section 101(20)(G)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iii));

(42) “lender” has the meaning provided in section 101(20)(G)(iv) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iv));

(43) “operational function” has the meaning provided in section 101(20)(G)(v) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(v)); and

(44) “security interest” has the meaning provided in section 101(20)(G)(vi) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(vi)).

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