

be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

**(e) Compensation of board members**

Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, be fully reimbursed for travel, subsistence and related expenses.

**(f) Enforcement proceedings**

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, ch. 758, title III, §310, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 860.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

**§ 1321. Oil and hazardous substance liability**

**(a) Definitions**

For the purpose of this section, the term—

(1) “oil” means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 1342 of this title, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 1342 of this title, and subject to a condition in such permit,<sup>1</sup> (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of this title, which are caused by events occurring within the scope of relevant operating or treatment systems, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section;

(3) “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;

(4) “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 such vessel is engaged in commerce;

(5) “United States” means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

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

(7) “person” includes an individual, firm, corporation, association, and a partnership;

(8) “remove” or “removal” refers to containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to prevent, 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;

(9) “contiguous zone” means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) “onshore facility” means any facility (including, but not limited to, motor vehicles

<sup>1</sup> So in original.

and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) “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;

(12) “act of God” means an act occasioned by an unanticipated grave natural disaster;

(13) “barrel” means 42 United States gallons at 60 degrees Fahrenheit;

(14) “hazardous substance” means any substance designated pursuant to subsection (b)(2) of this section;

(15) “inland oil barge” means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) “inland waters of the United States” means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intra-coastal Waterway;

(17) “otherwise subject to the jurisdiction of the United States” means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party;

(18) “Area Committee” means an Area Committee established under subsection (j) of this section;

(19) “Area Contingency Plan” means an Area Contingency Plan prepared under subsection (j) of this section;

(20) “Coast Guard District Response Group” means a Coast Guard District Response Group established under subsection (j) of this section;

(21) “Federal On-Scene Coordinator” means a Federal On-Scene Coordinator designated in the National Contingency Plan;

(22) “National Contingency Plan” means the National Contingency Plan prepared and published under subsection (d) of this section;

(23) “National Response Unit” means the National Response Unit established under subsection (j) of this section;

(24) “worst case discharge” means—

(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of an offshore facility or on-shore facility, the largest foreseeable discharge in adverse weather conditions;

(25) “removal costs” means—

(A) the costs of removal of oil or a hazardous substance that are incurred after it is discharged; and

(B) in any case in which there is a substantial threat of a discharge of oil or a hazardous substance, the costs to prevent, minimize, or mitigate that threat;

(26) “nontank vessel” means a self-propelled vessel that—

(A) is at least 400 gross tons as measured under section 14302 of title 46 or, for vessels not measured under that section, as measured under section 14502 of that title;

(B) is not a tank vessel;

(C) carries oil of any kind as fuel for main propulsion; and

(D) operates on the navigable waters of the United States, as defined in section 2101(17a) of that title;

(27) the term “best available science” means science that—

(A) maximizes the quality, objectivity, and integrity of information, including statistical information;

(B) uses peer-reviewed and publicly available data; and

(C) clearly documents and communicates risks and uncertainties in the scientific basis for such projects;

(28) the term “Chairperson” means the Chairperson of the Council;

(29) the term “coastal political subdivision” means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico;

(30) the term “Comprehensive Plan” means the comprehensive plan developed by the Council pursuant to subsection (t);

(31) the term “Council” means the Gulf Coast Ecosystem Restoration Council established pursuant to subsection (t);

(32) the term “Deepwater Horizon oil spill” means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment;

(33) the term “Gulf Coast region” means—

(A) in the Gulf Coast States, the coastal zones (as that term is defined in section 1453 of title 16),<sup>1</sup> except that, in this section, the term “coastal zones” includes land within the coastal zones that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government)<sup>1</sup> that border the Gulf of Mexico;

(B) any adjacent land, water, and watersheds, that are within 25 miles of the coastal zones described in subparagraph (A) of the Gulf Coast States; and

(C) all Federal waters in the Gulf of Mexico;

(34) the term “Gulf Coast State” means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas; and

(35) the term “Trust Fund” means the Gulf Coast Restoration Trust Fund established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

**(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions; penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs, alternative remedies, and withholding clearance of vessels**

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under

the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined in accordance with title 18, or imprisoned for not more than 5 years, or both. Notification received pursuant to this paragraph shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement.

**(6) ADMINISTRATIVE PENALTIES.—**

(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

- (i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or
- (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject,

may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, or the Administrator.

(B) CLASSES OF PENALTIES.—

(i) CLASS I.—The amount of a class I civil penalty under subparagraph (A) may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Administrator or Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) CLASS II.—The amount of a class II civil penalty under subparagraph (A) may not exceed \$10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5. The Administrator and Secretary may issue rules for discovery procedures for hearings under this paragraph.

(C) RIGHTS OF INTERESTED PERSONS.—

(i) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this paragraph the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(ii) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a class II civil penalty under this paragraph shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and to present evidence.

(iii) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under subparagraph (B) before issuance of an order assessing a class II civil penalty under this paragraph, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in

accordance with subparagraph (B)(ii). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(D) FINALITY OF ORDER.—An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (G) or a hearing is requested under subparagraph (C)(iii). If such a hearing is denied, such order shall become final 30 days after such denial.

(E) EFFECT OF ORDER.—Action taken by the Administrator or Secretary, as the case may be, under this paragraph shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter; except that any violation—

(i) with respect to which the Administrator or Secretary has commenced and is diligently prosecuting an action to assess a class II civil penalty under this paragraph, or

(ii) for which the Administrator or Secretary has issued a final order assessing a class II civil penalty not subject to further judicial review and the violator has paid a penalty assessed under this paragraph,

shall not be the subject of a civil penalty action under section 1319(d), 1319(g), or 1365 of this title or under paragraph (7).

(F) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this chapter.

(G) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subparagraph (C) may obtain review of such assessment—

(i) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(ii) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the

same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(H) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(i) after the assessment has become final, or

(ii) after a court in an action brought under subparagraph (G) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly non-payment penalty for each quarter during which such failure to pay persists. Such non-payment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(I) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this paragraph. In case of contumacy or refusal to obey a subpoena issued pursuant to this subparagraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(7) CIVIL PENALTY ACTION.—

(A) DISCHARGE, GENERALLY.—Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

(B) FAILURE TO REMOVE OR COMPLY.—Any person described in subparagraph (A) who, without sufficient cause—

(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c) of this section; or

(ii) fails to comply with an order pursuant to subsection (e)(1)(B) of this section;

shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

(C) FAILURE TO COMPLY WITH REGULATION.—Any person who fails or refuses to comply with any regulation issued under subsection (j) of this section shall be subject to a civil penalty in an amount up to \$25,000 per day of violation.

(D) GROSS NEGLIGENCE.—In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than \$100,000, and not more than \$3,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

(E) JURISDICTION.—An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty.

(F) LIMITATION.—A person is not liable for a civil penalty under this paragraph for a discharge if the person has been assessed a civil penalty under paragraph (6) for the discharge.

(8) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under paragraphs (6) and (7), the Administrator, Secretary, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(9) MITIGATION OF DAMAGE.—In addition to establishing a penalty for the discharge of oil or a hazardous substance, the Administrator or the Secretary of the department in which the Coast Guard is operating may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(10) RECOVERY OF REMOVAL COSTS.—Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 1319(b) of this title.

(11) LIMITATION.—Civil penalties shall not be assessed under both this section and section 1319 of this title for the same discharge.

(12) WITHHOLDING CLEARANCE.—If any owner, operator, or person in charge of a vessel is liable for a civil penalty under this subsection, or if reasonable cause exists to believe that the owner, operator, or person in charge may be subject to a civil penalty under this subsection, the

Secretary of the Treasury, upon the request of the Secretary of the department in which the Coast Guard is operating or the Administrator, shall with respect to such vessel refuse or revoke—

(A) the clearance required by section 60105 of title 46;

(B) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313);<sup>2</sup> and

(C) a permit to depart required under section 1443<sup>2</sup> of title 19;

as applicable. Clearance or a permit refused or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Secretary of the department in which the Coast Guard is operating or the Administrator.

**(c) Federal removal authority**

**(1) General removal requirement**

(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance—

(i) into or on the navigable waters;

(ii) on the adjoining shorelines to the navigable waters;

(iii) into or on the waters of the exclusive economic zone; or

(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(B) In carrying out this paragraph, the President may—

(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

**(2) Discharge posing substantial threat to public health or welfare**

(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government—

(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

**(3) Actions in accordance with National Contingency Plan**

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j) of this section, or as directed by the President, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

**(4) Exemption from liability**

(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance.

(B) Subparagraph (A) does not apply—

(i) to a responsible party;

(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(iii) with respect to personal injury or wrongful death; or

(iv) if the person is grossly negligent or engages in willful misconduct.

(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

**(5) Obligation and liability of owner or operator not affected**

Nothing in this subsection affects—

(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

(B) the liability of a responsible party under the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.].

**(6) “Responsible party” defined**

For purposes of this subsection, the term “responsible party” has the meaning given that term under section 1001 of the Oil Pollution Act of 1990 [33 U.S.C. 2701].

**(d) National Contingency Plan**

**(1) Preparation by President**

The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

<sup>2</sup> See References in Text note below.

**(2) Contents**

The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

(B) Identification, procurement, maintenance, and storage of equipment and supplies.

(C) Establishment or designation of Coast Guard strike teams, consisting of—

(i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;

(ii) adequate oil and hazardous substance pollution control equipment and material; and

(iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife.

(D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.

(E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.

(F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.

(G) A schedule, prepared in cooperation with the States, identifying—

(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,

(ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and

(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

(H) A system whereby the State or States affected by a discharge of oil or hazardous

substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

(I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2) of this section.

(J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j) of this section.

(L) Establishment of procedures for the coordination of activities of—

(i) Coast Guard strike teams established under subparagraph (C);

(ii) Federal On-Scene Coordinators designated under subparagraph (K);

(iii) District Response Groups established under subsection (j) of this section; and

(iv) Area Committees established under subsection (j) of this section.

(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

**(3) Revisions and amendments**

The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

**(4) Actions in accordance with National Contingency Plan**

After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

**(e) Civil enforcement****(1) Orders protecting public health**

In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living

and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b) of this section, the President may—

(A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or

(B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

**(2) Jurisdiction of district courts**

The district courts of the United States shall have jurisdiction to grant any relief under this subsection that the public interest and the equities of the case may require.

**(f) Liability for actual costs of removal**

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection

(c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.



**(g) Third party liability**

Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) of this section for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

**(h) Rights against third parties who caused or contributed to discharge**

The liabilities established by this section shall in no way affect any rights which (1) the owner

or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The<sup>3</sup> United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

**(i) Recovery of removal costs**

In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Federal Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

**(j) National Response System****(1) In general**

Consistent with the National Contingency Plan required by subsection (c)(2)<sup>2</sup> of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

**(2) National Response Unit**

The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina. The Secretary, acting through the National Response Unit—

(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate

<sup>3</sup> So in original. Probably should not be capitalized.

to response groups and area committees, and which shall be available to Federal and State agencies and the public;

(B) shall provide technical assistance, equipment, and other resources requested by a Federal On-Scene Coordinator;

(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);

(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

(F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

(G) shall review each of those plans that affects its responsibilities under this subsection.

### (3) Coast Guard District Response Groups

(A) The Secretary of the department in which the Coast Guard is operating shall establish in each Coast Guard district a Coast Guard District Response Group.

(B) Each Coast Guard District Response Group shall consist of—

(i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;

(ii) additional prepositioned equipment; and

(iii) a district response advisory staff.

(C) Coast Guard district response groups—

(i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;

(ii) shall maintain all Coast Guard response equipment within its district;

(iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and

(iv) shall review each of those plans that affect its area of geographic responsibility.

### (4) Area Committees and Area Contingency Plans

(A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified—

(i) personnel of Federal, State, and local agencies; and

(ii) members of federally recognized Indian tribes, where applicable.

(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—

(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

(ii) work with State, local, and tribal officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate

procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife, including advance planning with respect to the closing and reopening of fishing areas following a discharge; and

(iii) work with State, local, and tribal officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator, Federal, State, and local agencies, and tribal governments, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

(v) compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

(vii) include a framework for advance planning and decisionmaking with respect to the closing and reopening of fishing areas following a discharge, including protocols and standards for the closing and reopening of fishing areas;

(viii) include any other information the President requires; and

(ix) be updated periodically by the Area Committee.

(D) The President shall—

(i) review and approve Area Contingency Plans under this paragraph; and

(ii) periodically review Area Contingency Plans so approved.

**(5) Tank vessel, nontank vessel, and facility response plans**

(A)(i) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (C) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

(ii) The President shall also issue regulations which require an owner or operator of a nontank vessel to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.

(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a nontank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of a noxious liquid substance that is not designated as a hazardous substance or regulated as oil in any other law or regulation. For purposes of this paragraph, the term “noxious liquid substance” has the same meaning when that term is used in the MARPOL Protocol described in section 1901(a)(3)<sup>2</sup> of this title.

(C) The tank vessels, nontank vessels, and facilities referred to in subparagraphs (A) and (B) are the following:

(i) A tank vessel, as defined under section 2101 of title 46.

(ii) A nontank vessel.

(iii) An offshore facility.

(iv) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

(D) A response plan required under this paragraph shall—

(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(iv) describe the training, equipment testing, periodic unannounced drills, and re-

sponse actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(v) be updated periodically; and

(vi) be resubmitted for approval of each significant change.

(E) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall—

(i) promptly review such response plan;

(ii) require amendments to any plan that does not meet the requirements of this paragraph;

(iii) approve any plan that meets the requirements of this paragraph;

(iv) review each plan periodically thereafter; and

(v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on August 9, 2004, and ensure consistency to the extent practicable.

(F) A tank vessel, nontank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—

(i) in the case of a tank vessel, nontank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (E), the plan has been approved by the President; and

(ii) the vessel or facility is operating in compliance with the plan.

(G) Notwithstanding subparagraph (E), the President may authorize a tank vessel, nontank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, nontank vessel, or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

(H) The owner or operator of a tank vessel, nontank vessel, offshore facility, or onshore facility may not claim as a defense to liability under title I of the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.] that the owner or operator was acting in accordance with an approved response plan.

(I) The Secretary shall maintain, in the Vessel Identification System established under chapter 125 of title 46, the dates of approval and review of a response plan under this paragraph for each tank vessel and nontank vessel that is a vessel of the United States.

**(6) Equipment requirements and inspection**

The President may require—

(A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges; and

(B) vessels operating on navigable waters and carrying oil or a hazardous substance in bulk as cargo, and nontank vessels carrying oil of any kind as fuel for main propulsion, to carry appropriate removal equipment that employs the best technology economically feasible and that is compatible with the safe operation of the vessel.

**(7) Area drills**

The President shall periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required under this subsection and under relevant tank vessel, nontank vessel, and facility response plans. The drills may include participation by Federal, State, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drills, including assessments of the effectiveness of the plans and a list of amendments made to improve plans.

**(8) United States Government not liable**

The United States Government is not liable for any damages arising from its actions or omissions relating to any response plan required by this section.

**(k) Repealed. Pub. L. 101-380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507****(l) Administration**

The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

**(m) Administrative provisions****(1) For vessels**

Anyone authorized by the President to enforce the provisions of this section with respect to any vessel may, except as to public vessels—

(A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone,

(B) with or without a warrant, arrest any person who in the presence or view of the authorized person violates the provisions of this section or any regulation issued thereunder, and

(C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

**(2) For facilities****(A) Recordkeeping**

Whenever required to carry out the purposes of this section, the Administrator, the

Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.

**(B) Entry and inspection**

Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator or Secretary, upon presentation of appropriate credentials, may—

(i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and

(ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

**(C) Arrests and execution of warrants**

Anyone authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section with respect to any facility may—

(i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and

(ii) execute any warrant or process issued by an officer or court of competent jurisdiction.

**(D) Public access**

Any records, reports, or information obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to records, reports, and information obtained pursuant to section 1318 of this title.

**(n) Jurisdiction**

The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1) of this section, arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

**(o) Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected**

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State, or with respect to any removal activities related to such discharge.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

**(p) Repealed. Pub. L. 101-380, title II, § 2002(b)(4), Aug. 18, 1990, 104 Stat. 507**

**(q) Establishment of maximum limit of liability with respect to onshore or offshore facilities**

The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than \$50,000,000, but not less than \$8,000,000.

**(r) Liability limitations not to limit liability under other legislation**

Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.].

**(s) Oil Spill Liability Trust Fund**

The Oil Spill Liability Trust Fund established under section 9509 of title 26 shall be available to carry out subsections (b), (c), (d), (j), and (l) of this section as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund except as provided in subsection (t).

**(t) Gulf Coast restoration and recovery**

**(1) State allocation and expenditures**

**(A) In general**

Of the total amounts made available in any fiscal year from the Trust Fund, 35 percent shall be available, in accordance with the requirements of this section, to the Gulf Coast States in equal shares for expenditure for ecological and economic restoration of the Gulf Coast region in accordance with this subsection.

**(B) Use of funds**

**(i) Eligible activities in the Gulf Coast region**

Subject to clause (iii), amounts provided to the Gulf Coast States under this subsection may only be used to carry out 1 or more of the following activities in the Gulf Coast region:

(I) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) Mitigation of damage to fish, wildlife, and natural resources.

(III) Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(IV) Workforce development and job creation.

(V) Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill.

(VI) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(VII) Coastal flood protection and related infrastructure.

(VIII) Planning assistance.

(IX) Administrative costs of complying with this subsection.

**(ii) Activities to promote tourism and seafood in the Gulf Coast region**

Amounts provided to the Gulf Coast States under this subsection may be used to carry out 1 or more of the following activities:

(I) Promotion of tourism in the Gulf Coast Region, including recreational fishing.

(II) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

**(iii) Limitation**

**(I) In general**

Of the amounts received by a Gulf Coast State under this subsection, not more than 3 percent may be used for administrative costs eligible under clause (i)(IX).

**(II) Claims for compensation**

Activities funded under this subsection may not be included in any claim for compensation paid out by the Oil Spill Liability Trust Fund after July 6, 2012.

**(C) Coastal political subdivisions**

**(i) Distribution**

In the case of a State where the coastal zone includes the entire State—

(I) 75 percent of funding shall be provided directly to the 8 disproportionately affected counties impacted by the Deepwater Horizon oil spill; and

(II) 25 percent shall be provided directly to nondisproportionately impacted counties within the State.

**(ii) Nondisproportionately impacted counties**

The total amounts made available to coastal political subdivisions in the State of Florida under clause (i)(II) shall be distributed according to the following weighted formula:

(I) 34 percent based on the weighted average of the population of the county.

(II) 33 percent based on the weighted average of the county per capita sales tax collections estimated for fiscal year 2012.

(III) 33 percent based on the inverse proportion of the weighted average distance from the Deepwater Horizon oil rig to each of the nearest and farthest points of the shoreline.

**(D) Louisiana****(i) In general**

Of the total amounts made available to the State of Louisiana under this paragraph:

(I) 70 percent shall be provided directly to the State in accordance with this subsection.

(II) 30 percent shall be provided directly to parishes in the coastal zone (as defined in section 1453 of title 16) of the State of Louisiana according to the following weighted formula:

(aa) 40 percent based on the weighted average of miles of the parish shoreline oiled.

(bb) 40 percent based on the weighted average of the population of the parish.

(cc) 20 percent based on the weighted average of the land mass of the parish.

**(ii) Conditions****(I) Land use plan**

As a condition of receiving amounts allocated under this paragraph, the chief executive of the eligible parish shall certify to the Governor of the State that the parish has completed a comprehensive land use plan.

**(II) Other conditions**

A coastal political subdivision receiving funding under this paragraph shall meet all of the conditions in subparagraph (E).

**(E) Conditions**

As a condition of receiving amounts from the Trust Fund, a Gulf Coast State, including the entities described in subparagraph (F), or a coastal political subdivision shall—

(i) agree to meet such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund will be used in accordance with this subsection;

(ii) certify in such form and in such manner as the Secretary of the Treasury determines necessary that the project or program for which the Gulf Coast State or coastal political subdivision is requesting amounts—

(I) is designed to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast;

(II) carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B);

(III) was selected based on meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations; and

(IV) in the case of a natural resource protection or restoration project, is based on the best available science;

(iii) certify that the project or program and the awarding of a contract for the expenditure of amounts received under this paragraph are consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements; and

(iv) develop and submit a multiyear implementation plan for the use of such amounts, which may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

**(F) Approval by State entity, task force, or agency**

The following Gulf Coast State entities, task forces, or agencies shall carry out the duties of a Gulf Coast State pursuant to this paragraph:

**(i) Alabama****(I) In general**

In the State of Alabama, the Alabama Gulf Coast Recovery Council, which shall be comprised of only the following:

(aa) The Governor of Alabama, who shall also serve as Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council.

(bb) The Director of the Alabama State Port Authority, who shall also serve as Vice Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council in the absence of the Chairperson.

(cc) The Chairman of the Baldwin County Commission.

(dd) The President of the Mobile County Commission.

(ee) The Mayor of the city of Bayou La Batre.

(ff) The Mayor of the town of Dauphin Island.

(gg) The Mayor of the city of Fairhope.

(hh) The Mayor of the city of Gulf Shores.

(ii) The Mayor of the city of Mobile.

(jj) The Mayor of the city of Orange Beach.

**(II) Vote**

Each member of the Alabama Gulf Coast Recovery Council shall be entitled to 1 vote.

**(III) Majority vote**

All decisions of the Alabama Gulf Coast Recovery Council shall be made by majority vote.

**(IV) Limitation on administrative expenses**

Administrative duties for the Alabama Gulf Coast Recovery Council may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

**(ii) Louisiana**

In the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

**(iii) Mississippi**

In the State of Mississippi, the Mississippi Department of Environmental Quality.

**(iv) Texas**

In the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

**(G) Compliance with eligible activities**

If the Secretary of the Treasury determines that an expenditure by a Gulf Coast State or coastal political subdivision of amounts made available under this subsection does not meet one of the activities described in clauses (i) and (ii) of subparagraph (B), the Secretary shall make no additional amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until such time as an amount equal to the amount expended for the unauthorized use—

(i) has been deposited by the Gulf Coast State or coastal political subdivision in the Trust Fund; or

(ii) has been authorized by the Secretary of the Treasury for expenditure by the Gulf Coast State or coastal political subdivision for a project or program that meets the requirements of this subsection.

**(H) Compliance with conditions**

If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), where applicable, the Secretary of the Treasury shall make no amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until all conditions of this paragraph are met.

**(I) Public input**

In meeting any condition of this paragraph, a Gulf Coast State may use an appropriate procedure for public consultation in that Gulf Coast State, including consulting with one or more established task forces or

other entities, to develop recommendations for proposed projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

**(J) Previously approved projects and programs**

A Gulf Coast State or coastal political subdivision shall be considered to have met the conditions of subparagraph (E) for a specific project or program if, before July 6, 2012—

(i) the Gulf Coast State or coastal political subdivision has established conditions for carrying out projects and programs that are substantively the same as the conditions described in subparagraph (E); and

(ii) the applicable project or program carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B).

**(K) Local preference**

In awarding contracts to carry out a project or program under this paragraph, a Gulf Coast State or coastal political subdivision may give a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

**(L) Unused funds**

Funds allocated to a State or coastal political subdivision under this paragraph shall remain in the Trust Fund until such time as the State or coastal political subdivision develops and submits a plan identifying uses for those funds in accordance with subparagraph (E)(iv).

**(M) Judicial review**

If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), the Gulf Coast State or coastal political subdivision may obtain expedited judicial review within 90 days after that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

**(N) Cost-sharing****(i) In general**

A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available under this paragraph to that Gulf Coast State or coastal political subdivision to satisfy the non-Federal share of the cost of any project or program authorized by Federal law that is an eligible activity described in clauses (i) and (ii) of subparagraph (B).

**(ii) Effect on other funds**

The use of funds made available from the Trust Fund to satisfy the non-Federal share of the cost of a project or program that meets the requirements of clause (i)

shall not affect the priority in which other Federal funds are allocated or awarded.

**(2) Council establishment and allocation**

**(A) In general**

Of the total amount made available in any fiscal year from the Trust Fund, 30 percent shall be disbursed to the Council to carry out the Comprehensive Plan.

**(B) Council expenditures**

**(i) In general**

In accordance with this paragraph, the Council shall expend funds made available from the Trust Fund to undertake projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

**(ii) Allocation and expenditure procedures**

The Secretary of the Treasury shall develop such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund to the Council to implement the Comprehensive Plan will be used in accordance with this paragraph.

**(iii) Administrative expenses**

Of the amounts received by the Council under this paragraph, not more than 3 percent may be used for administrative expenses, including staff.

**(C) Gulf Coast Ecosystem Restoration Council**

**(i) Establishment**

There is established as an independent entity in the Federal Government a council to be known as the “Gulf Coast Ecosystem Restoration Council”.

**(ii) Membership**

The Council shall consist of the following members, or in the case of a Federal agency, a designee at the level of the Assistant Secretary or the equivalent:

(I) The Secretary of the Interior.

(II) The Secretary of the Army.

(III) The Secretary of Commerce.

(IV) The Administrator of the Environmental Protection Agency.

(V) The Secretary of Agriculture.

(VI) The head of the department in which the Coast Guard is operating.

(VII) The Governor of the State of Alabama.

(VIII) The Governor of the State of Florida.

(IX) The Governor of the State of Louisiana.

(X) The Governor of the State of Mississippi.

(XI) The Governor of the State of Texas.

**(iii) Alternate**

A Governor appointed to the Council by the President may designate an alternate

to represent the Governor on the Council and vote on behalf of the Governor.

**(iv) Chairperson**

From among the Federal agency members of the Council, the representatives of States on the Council shall select, and the President shall appoint, 1 Federal member to serve as Chairperson of the Council.

**(v) Presidential appointment**

All Council members shall be appointed by the President.

**(vi) Council actions**

**(I) In general**

The following actions by the Council shall require the affirmative vote of the Chairperson and a majority of the State members to be effective:

(aa) Approval of a Comprehensive Plan and future revisions to a Comprehensive Plan.

(bb) Approval of State plans pursuant to paragraph (3)(B)(iv).

(cc) Approval of reports to Congress pursuant to clause (vii)(VII).

(dd) Approval of transfers pursuant to subparagraph (E)(i)(I).

(ee) Other significant actions determined by the Council.

**(II) Quorum**

A majority of State members shall be required to be present for the Council to take any significant action.

**(III) Affirmative vote requirement considered met**

For approval of State plans pursuant to paragraph (3)(B)(iv), the certification by a State member of the Council that the plan satisfies all requirements of clauses (i) and (ii) of paragraph (3)(B), when joined by an affirmative vote of the Federal Chairperson of the Council, shall be considered to satisfy the requirements for affirmative votes under subclause (I).

**(IV) Public transparency**

Appropriate actions of the Council, including significant actions and associated deliberations, shall be made available to the public via electronic means prior to any vote.

**(vii) Duties of Council**

The Council shall—

(I) develop the Comprehensive Plan and future revisions to the Comprehensive Plan;

(II) identify as soon as practicable the projects that—

(aa) have been authorized prior to July 6, 2012, but not yet commenced; and

(bb) if implemented quickly, would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, barrier islands, dunes, and coastal wetlands of the Gulf Coast region;



(III) establish such other 1 or more advisory committees as may be necessary to assist the Council, including a scientific advisory committee and a committee to advise the Council on public policy issues;

(IV) collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring carried out pursuant to sections 1604 and 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(V) develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State;

(VI) prepare an integrated financial plan and recommendations for coordinated budget requests for the amounts proposed to be expended by the Federal agencies represented on the Council for projects and programs in the Gulf Coast States; and

(VII) submit to Congress an annual report that—

(aa) summarizes the policies, strategies, plans, and activities for addressing the restoration and protection of the Gulf Coast region;

(bb) describes the projects and programs being implemented to restore and protect the Gulf Coast region, including—

(AA) a list of each project and program;

(BB) an identification of the funding provided to projects and programs identified in subitem (AA);

(CC) an identification of each recipient for funding identified in subitem (BB); and

(DD) a description of the length of time and funding needed to complete the objectives of each project and program identified in subitem (AA);

(cc) makes such recommendations to Congress for modifications of existing laws as the Council determines necessary to implement the Comprehensive Plan;

(dd) reports on the progress on implementation of each project or program—

(AA) after 3 years of ongoing activity of the project or program, if applicable; and

(BB) on completion of the project or program;

(ee) includes the information required to be submitted under section 1605(c)(4) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

(ff) submits the reports required under item (dd) to—

(AA) the Committee on Science, Space, and Technology, the Committee on Natural Resources, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives; and

(BB) the Committee on Environment and Public Works, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Appropriations of the Senate.

**(viii) Application of Federal Advisory Committee Act**

The Council, or any other advisory committee established under this subparagraph, shall not be considered an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.).

**(ix) Sunset**

The authority for the Council, and any other advisory committee established under this subparagraph, shall terminate on the date all funds in the Trust Fund have been expended.

**(D) Comprehensive plan**

**(i) Proposed plan**

**(I) In general**

Not later than 180 days after July 6, 2012, the Chairperson, on behalf of the Council and after appropriate public input, review, and comment, shall publish a proposed plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

**(II) Inclusions**

The proposed plan described in subclause (I) shall include and incorporate the findings and information prepared by the President's Gulf Coast Restoration Task Force.

**(ii) Publication**

**(I) Initial plan**

Not later than 1 year after July 6, 2012, and after notice and opportunity for public comment, the Chairperson, on behalf of the Council and after approval by the Council, shall publish in the Federal Register the initial Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

**(II) Cooperation with Gulf Coast Restoration Task Force**

The Council shall develop the initial Comprehensive Plan in close coordination with the President's Gulf Coast Restoration Task Force.

**(III) Considerations**

In developing the initial Comprehensive Plan and subsequent updates, the

Council shall consider all relevant findings, reports, or research prepared or funded under section 1604 or 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

**(IV) Contents**

The initial Comprehensive Plan shall include—

(aa) such provisions as are necessary to fully incorporate in the Comprehensive Plan the strategy, projects, and programs recommended by the President's Gulf Coast Restoration Task Force;

(bb) a list of any project or program authorized prior to July 6, 2012, but not yet commenced, the completion of which would further the purposes and goals of this subsection and of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(cc) a description of the manner in which amounts from the Trust Fund projected to be made available to the Council for the succeeding 10 years will be allocated; and

(dd) subject to available funding in accordance with clause (iii), a prioritized list of specific projects and programs to be funded and carried out during the 3-year period immediately following the date of publication of the initial Comprehensive Plan, including a table that illustrates the distribution of projects and programs by the Gulf Coast State.

**(V) Plan updates**

The Council shall update—

(aa) the Comprehensive Plan every 5 years in a manner comparable to the manner established in this subparagraph for each 5-year period for which amounts are expected to be made available to the Gulf Coast States from the Trust Fund; and

(bb) the 3-year list of projects and programs described in subclause (IV)(dd) annually.

**(iii) Restoration priorities**

Except for projects and programs described in clause (ii)(IV)(bb), in selecting projects and programs to include on the 3-year list described in clause (ii)(IV)(dd), based on the best available science, the Council shall give highest priority to projects that address 1 or more of the following criteria:

(I) Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region.

(II) Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(III) Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(IV) Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

**(E) Implementation**

**(i) In general**

The Council, acting through the Federal agencies represented on the Council and Gulf Coast States, shall expend funds made available from the Trust Fund to carry out projects and programs adopted in the Comprehensive Plan.

**(ii) Administrative responsibility**

**(I) In general**

Primary authority and responsibility for each project and program included in the Comprehensive Plan shall be assigned by the Council to a Gulf Coast State represented on the Council or a Federal agency.

**(II) Transfer of amounts**

Amounts necessary to carry out each project or program included in the Comprehensive Plan shall be transferred by the Secretary of the Treasury from the Trust Fund to that Federal agency or Gulf Coast State as the project or program is implemented, subject to such conditions as the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

**(III) Limitation on transfers**

**(aa) Grants to nongovernmental entities**

In the case of funds transferred to a Federal or State agency under subclause (II), the agency shall not make 1 or more grants or cooperative agreements to a nongovernmental entity if the total amount provided to the entity would equal or exceed 10 percent of the total amount provided to the agency for that particular project or program, unless the 1 or more grants have been reported in accordance with item (bb).

**(bb) Reporting of grantees**

At least 30 days prior to making a grant or entering into a cooperative agreement described in item (aa), the name of each grantee, including the amount and purpose of each grant or cooperative agreement, shall be published in the Federal Register and delivered to the congressional committees listed in subparagraph (C)(vii)(VII)(ff).

**(cc) Annual reporting of grantees**

Annually, the name of each grantee, including the amount and purposes of each grant or cooperative agreement, shall be published in the Federal Register and delivered to Congress as part of the report submitted pursuant to subparagraph (C)(vii)(VII).

**(IV) Project and program limitation**

The Council, a Federal agency, or a State may not carry out a project or program funded under this paragraph outside of the Gulf Coast region.

**(F) Coordination**

The Council and the Federal members of the Council may develop memoranda of understanding establishing integrated funding and implementation plans among the member agencies and authorities.

**(3) Oil spill restoration impact allocation****(A) In general****(i) Disbursement**

Of the total amount made available from the Trust Fund, 30 percent shall be disbursed pursuant to the formula in clause (ii) to the Gulf Coast States on the approval of the plan described in subparagraph (B)(i).

**(ii) Formula**

Subject to subparagraph (B), for each Gulf Coast State, the amount disbursed under this paragraph shall be based on a formula established by the Council by regulation that is based on a weighted average of the following criteria:

(I) 40 percent based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill.

(II) 40 percent based on the inverse proportion of the average distance from the mobile offshore drilling unit *Deepwater Horizon* at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State.

(III) 20 percent based on the average population in the 2010 decennial census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

**(iii) Minimum allocation**

The amount disbursed to a Gulf Coast State for each fiscal year under clause (i)

shall be at least 5 percent of the total amounts made available under this paragraph.

**(B) Disbursement of funds****(i) In general**

The Council shall disburse amounts to the respective Gulf Coast States in accordance with the formula developed under subparagraph (A) for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region, subject to the condition that each Gulf Coast State submits a plan for the expenditure of amounts disbursed under this paragraph that meets the following criteria:

(I) All projects, programs, and activities included in the plan are eligible activities pursuant to clauses (i) and (ii) of paragraph (1)(B).

(II) The projects, programs, and activities included in the plan contribute to the overall economic and ecological recovery of the Gulf Coast.

(III) The plan takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan, as described in paragraph (2)(B)(i).

**(ii) Funding****(I) In general**

Except as provided in subclause (II), the plan described in clause (i) may use not more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i).

**(II) Exception**

The plan described in clause (i) may propose to use more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i) if the plan certifies that—

(aa) ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(bb) additional investment in infrastructure is required to mitigate the impacts of the Deepwater Horizon Oil Spill to the ecosystem or economy.

**(iii) Development**

The plan described in clause (i) shall be developed by—

(I) in the State of Alabama, the Alabama Gulf Coast Recovery Council established under paragraph (1)(F)(i);

(II) in the State of Florida, a consortia<sup>4</sup> of local political subdivisions that includes at a minimum 1 representative of each affected county;

(III) in the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana;

(IV) in the State of Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and

<sup>4</sup>So in original. Probably should be "consortium".

(V) in the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

**(iv) Approval**

Not later than 60 days after the date on which a plan is submitted under clause (i), the Council shall approve or disapprove the plan based on the conditions of clause (i).

**(C) Disapproval**

If the Council disapproves a plan pursuant to subparagraph (B)(iv), the Council shall—

(i) provide the reasons for disapproval in writing; and

(ii) consult with the State to address any identified deficiencies with the State plan.

**(D) Failure to submit adequate plan**

If a State fails to submit an adequate plan under this paragraph, any funds made available under this paragraph shall remain in the Trust Fund until such date as a plan is submitted and approved pursuant to this paragraph.

**(E) Judicial review**

If the Council fails to approve or take action within 60 days on a plan, as described in subparagraph (B)(iv), the State may obtain expedited judicial review within 90 days of that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

**(F) Cost-sharing**

**(i) In general**

A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State or coastal political subdivision under this paragraph to satisfy the non-Federal share of any project or program that—

(I) is authorized by other Federal law; and

(II) is an eligible activity described in clause (i) or (ii) of paragraph (1)(B).

**(ii) Effect on other funds**

The use of funds made available from the Trust Fund under this paragraph to satisfy the non-Federal share of the cost of a project or program described in clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

**(4) Authorization of interest transfers**

Of the total amount made available for any fiscal year from the Trust Fund that is equal to the interest earned by the Trust Fund and proceeds from investments made by the Trust Fund in the preceding fiscal year—

(A) 50 percent shall be divided equally between—

(i) the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program authorized in section 1604 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

(ii) the centers of excellence research grants authorized in section 1605 of that Act; and

(B) 50 percent shall be made available to the Gulf Coast Ecosystem Restoration Council to carry out the Comprehensive Plan pursuant to paragraph (2).

(June 30, 1948, ch. 758, title III, §311, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 862; amended Pub. L. 93-207, §1(4), Dec. 28, 1973, 87 Stat. 906; Pub. L. 95-217, §§57, 58(a)-(g), (i), (k)-(m), Dec. 27, 1977, 91 Stat. 1593-1596; Pub. L. 95-576, §1(b), Nov. 2, 1978, 92 Stat. 2467; Pub. L. 96-478, §13(b), Oct. 21, 1980, 94 Stat. 2303; Pub. L. 96-483, §8, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97-164, title I, §161(5), Apr. 2, 1982, 96 Stat. 49; Pub. L. 100-4, title V, §502(b), Feb. 4, 1987, 101 Stat. 75; Pub. L. 101-380, title II, §2002(b), title IV, §§4201(a), (b), (b)[(c)], 4202(a), (c), 4204, 4301(a), (b), 4305, 4306, Aug. 18, 1990, 104 Stat. 507, 523-527, 532, 533, 540, 541; Pub. L. 102-388, title III, §349, Oct. 6, 1992, 106 Stat. 1554; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-324, title XI, §§1143, 1144, Oct. 19, 1996, 110 Stat. 3992; Pub. L. 105-383, title IV, §411, Nov. 13, 1998, 112 Stat. 3432; Pub. L. 108-293, title VII, §701(a), (b), (d), Aug. 9, 2004, 118 Stat. 1067, 1068; Pub. L. 109-241, title VI, §608, title IX, §901(i), July 11, 2006, 120 Stat. 558, 564; Pub. L. 112-90, §10, Jan. 3, 2012, 125 Stat. 1912; Pub. L. 112-141, div. A, title I, §1603, July 6, 2012, 126 Stat. 589; Pub. L. 113-281, title III, §313, Dec. 18, 2014, 128 Stat. 3048.)

REFERENCES IN TEXT

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012, referred to in subsecs. (a)(35) and (t)(2)(C)(vii)(IV), (VII)(ee), (D)(ii)(III), (IV)(bb), (E)(ii)(II), (4)(A), is subtitle F (§§1601-1608) of title I of div. A of Pub. L. 112-141, July 6, 2012, 126 Stat. 588, which is set out as a note below.

The Outer Continental Shelf Lands Act, referred to in subsecs. (b)(1), (2)(A), (3) and (r), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

The Deepwater Port Act of 1974, referred to in subsecs. (b)(1), (2)(A), (3) and (r), is Pub. L. 93-627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(1), (2)(A), (3), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The date of enactment of this paragraph, referred to in subsec. (b)(2)(B), probably means the date of enactment of Pub. L. 95-576, which amended subsec. (b)(2)(B) and which was approved Nov. 2, 1978.

The penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500, referred to in subsec. (b)(2)(B), probably means the penalty provision of subsec.

(b)(2)(B)(iii)(bb) of this section as added by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 864, prior to the amendment to subsec. (b)(2)(B) by section 1(b)(3) of Pub. L. 95-576. Prior to amendment, subsec. (b)(2)(B)(iii)(bb) read as follows: “a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than \$5,000,000 in the case of a discharge from a vessel and \$500,000 in the case of a discharge from an onshore or offshore facility.”

Section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313), referred to in subsec. (b)(12)(B), was repealed by Pub. L. 103-182, title VI, § 690(a)(21), Dec. 8, 1993, 107 Stat. 2223.

Section 1443 of title 19, referred to in subsec. (b)(12)(C), was repealed by Pub. L. 103-182, title VI, § 690(b)(6), Dec. 8, 1993, 107 Stat. 2223.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (c)(4)(B)(ii), is Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

The Oil Pollution Act of 1990, referred to in subsecs. (c)(5)(B), (d)(2)(H), and (j)(5)(H), is Pub. L. 101-380, Aug. 18, 1990, 104 Stat. 484, which is classified principally to chapter 40 (§2701 et seq.) of this title, Title I of the Act is classified generally to subchapter I (§2701 et seq.) of chapter 40 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Subsection (c)(2) of this section, referred to in subsec. (j)(1), was generally amended by Pub. L. 101-380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions establishing a National Contingency Plan. However, such provisions are contained in subsec. (d) of this section.

Par. (3) of section 1901(a) of this title, referred to in subsec. (j)(5)(B), was redesignated par. (4) by Pub. L. 110-280, §3(1), July 21, 2008, 122 Stat. 2611.

The Federal Advisory Committee Act, referred to in subsec. (t)(2)(C)(viii), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### CODIFICATION

In subsec. (b)(12)(A), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

#### AMENDMENTS

2014—Subsec. (j)(4)(A). Pub. L. 113-281, §313(1), substituted “qualified—” for “qualified personnel of Federal, State, and local agencies.” in introductory provisions and added cls. (i) and (ii).

Subsec. (j)(4)(B)(ii). Pub. L. 113-281, §313(2), substituted “, local, and tribal” for “and local” and “wildlife, including advance planning with respect to the closing and reopening of fishing areas following a discharge;” for “wildlife;”.

Subsec. (j)(4)(B)(iii). Pub. L. 113-281, §313(3), substituted “, local, and tribal” for “and local”.

Subsec. (j)(4)(C)(iv). Pub. L. 113-281, §313(4)(A), substituted “, Federal, State, and local agencies, and tribal governments” for “and Federal, State, and local agencies”.

Subsec. (j)(4)(C)(vii) to (ix). Pub. L. 113-281, §313(4)(B), (C), added cl. (vii) and redesignated former cls. (vii) and (viii) as (viii) and (ix), respectively.

2012—Subsec. (a)(27) to (35). Pub. L. 112-141, §1603(1), added pars. (27) to (35).

Subsec. (b)(6)(A). Pub. L. 112-90, §10(b), substituted “operating, the Secretary of Transportation, or” for “operating or” in concluding provisions.

Subsec. (m)(2)(A), (B). Pub. L. 112-90, §10(a), which directed amendment of subpars. (A) and (B) by substituting “Administrator, the Secretary of Transportation, or” for “Administrator or” was executed by making the substitution the first place appearing in each subpar., to reflect the probable intent of Congress.

Subsec. (s). Pub. L. 112-141, §1603(2), inserted “except as provided in subsection (t)” before period at end.

Subsec. (t). Pub. L. 112-141, §1603(3), added subsec. (t). 2006—Subsec. (a)(26). Pub. L. 109-241, §608, amended par. (26) generally. Prior to amendment, par. (26) read as follows: “‘nontank vessel’ means a self-propelled vessel of 400 gross tons as measured under section 14302 of title 46 or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that—

“(A) is a vessel of the United States; or

“(B) operates on the navigable waters of the United States.”

Subsec. (j)(5)(A)(ii), (B), (F), and (G). Pub. L. 109-241, §901(i)(1), substituted “nontank” for “non-tank” wherever appearing.

Subsec. (j)(5)(H). Pub. L. 109-241, §901(i)(2), amended directory language of Pub. L. 108-293, §701(b)(9). See 2004 Amendment note below.

2004—Subsec. (a)(26). Pub. L. 108-293, §701(a), added par. (26).

Subsec. (j)(5). Pub. L. 108-293, §701(b)(1), inserted “, nontank vessel,” after “vessel” in heading.

Subsec. (j)(5)(A). Pub. L. 108-293, §701(b)(2), (d)(3), designated existing text as cl. (i), substituted “subparagraph (C)” for “subparagraph (B)”, and added cl. (ii).

Subsec. (j)(5)(B). Pub. L. 108-293, §701(d)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 108-293, §701(b)(3), (4), inserted “, nontank vessels,” after “vessels” in introductory provisions, added cl. (ii), and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (j)(5)(C). Pub. L. 108-293, §701(d)(1), (4), redesignated subpar. (B) as (C) and substituted “subparagraphs (A) and (B)” for “subparagraph (A)” in introductory provisions. Former subpar. (C) redesignated (D).

Subsec. (j)(5)(D). Pub. L. 108-293, §701(d)(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Pub. L. 108-293, §701(b)(5), inserted “, nontank vessel,” after “vessel” in introductory provisions and added cl. (v).

Subsec. (j)(5)(E). Pub. L. 108-293, §701(d)(1), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Pub. L. 108-293, §701(b)(6), inserted “non-tank vessel,” after “vessel,” in two places.

Subsec. (j)(5)(F). Pub. L. 108-293, §701(d)(1), (5), redesignated subpar. (E) as (F) and substituted “subparagraph (E),” for “subparagraph (D),” in cl. (i). Former subpar. (F) redesignated (G).

Pub. L. 108-293, §701(b)(7), inserted “non-tank vessel,” after “vessel,” and substituted “vessel, non-tank vessel, or” for “vessel or”.

Subsec. (j)(5)(G). Pub. L. 108-293, §701(d)(1), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Pub. L. 108-293, §701(b)(8), inserted “nontank vessel,” after “vessel;”.

Subsec. (j)(5)(H). Pub. L. 108-293, §701(d)(1), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Pub. L. 108-293, §701(b)(9), as amended by Pub. L. 109-241, §901(i)(2), inserted “and nontank vessel” after “each tank vessel”.

Subsec. (j)(5)(I). Pub. L. 108-293, §701(d)(1), redesignated subpar. (H) as (I).

Subsec. (j)(6). Pub. L. 108-293, §701(b)(10), substituted “The President may require—” for “Not later than 2 years after August 18, 1990, the President shall require—” in introductory provisions.

Subsec. (j)(6)(B). Pub. L. 108-293, §701(b)(11), inserted “, and nontank vessels carrying oil of any kind as fuel for main propulsion,” after “cargo”.

Subsec. (j)(7). Pub. L. 108-293, §701(b)(12), inserted “, nontank vessel,” after “vessel”.

1998—Subsec. (a)(2). Pub. L. 105-383, §411(b), substituted “, (C)” for “and (C)” and inserted “, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section” before semicolon at end.

Subsec. (a)(8). Pub. L. 105-383, §411(a)(1), substituted “to prevent, minimize, or mitigate damage” for “to minimize or mitigate damage”.

Subsec. (a)(25). Pub. L. 105-383, §411(a)(2), added par. (25).

Subsec. (c)(4)(A). Pub. L. 105-383, §411(a)(3), inserted “relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance” before period at end.

1996—Subsec. (b)(1), (2)(A), (3). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery” wherever appearing.

Subsec. (c)(3)(B). Pub. L. 104-324, §1144, inserted “, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects” before period at end.

Subsec. (j)(2)(A). Pub. L. 104-324, §1143(1), inserted “and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate to response groups and area committees, and” after “paragraph (4),”.

Subsec. (j)(4)(C)(v). Pub. L. 104-324, §1143(2), inserted “compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and” before “describe”.

1992—Subsec. (b)(12). Pub. L. 102-388 added par. (12).

Subsec. (i). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1990—Subsec. (a)(8). Pub. L. 101-380, §4201(b)(1)[(c)(1)], inserted “containment and” after “refers to”.

Subsec. (a)(16). Pub. L. 101-380, §4201(b)(2)[(c)(2)], substituted semicolon for period at end.

Subsec. (a)(17). Pub. L. 101-380, §4201(b)(3)[(c)(3)], substituted “otherwise” for “Otherwise” and semicolon for period at end.

Subsec. (a)(18) to (24). Pub. L. 101-380, §4201(b)(4)[(c)(4)], added pars. (18) to (24).

Subsec. (b)(4). Pub. L. 101-380, §4204, inserted “or the environment” after “the public health or welfare”.

Subsec. (b)(5). Pub. L. 101-380, §4301(a), inserted after first sentence “The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance.”, substituted “fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both” for “fined not more than \$10,000, or imprisoned for not more than one year, or both”, struck out “or information obtained by the exploitation of such notification” before “shall not be used”, and inserted “natural” before “person in any”.

Subsec. (b)(6) to (11). Pub. L. 101-380, §4301(b), added pars. (6) to (11) and struck out former par. (6) which related to assessment of civil penalties, limited to \$5,000 for each offense, against any owner, operator, or person in charge of any onshore or offshore facility from which oil or a hazardous substance was discharged in violation of par. (3).

Subsec. (c). Pub. L. 101-380, §4201(a), amended subsec. (c) generally, substituting present provisions for provisions authorizing President to arrange for removal of discharge of oil or a hazardous substance into or upon the navigable waters of the U.S., unless he determined such removal would be properly conducted by owner or

operator of the vessel causing discharge, and directed President to prepare and publish a National Contingency Plan within 60 days after October 18, 1972.

Subsec. (d). Pub. L. 101-380, §4201(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil or hazardous substance.”

Subsec. (e). Pub. L. 101-380, §4306, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.”

Subsec. (i). Pub. L. 101-380, §2002(b)(1), struck out par. (1) designation before “In any case” and struck out pars. (2) and (3) which read as follows:

“(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

“(3) Any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section shall be paid from the funds established pursuant to subsection (k) of this section.”

Subsec. (j). Pub. L. 101-380, §4202(a), amended heading, inserted heading for par. (1) and realigned its margin, added pars. (2) to (8), and struck out former par. (2) which read as follows: “Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than \$5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of subsection (b) of this section unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.”

Subsec. (k). Pub. L. 101-380, §2002(b)(2), struck out subsec. (k) which authorized appropriations and supplemental appropriations to create and maintain a revolving fund to carry out subsecs. (c), (d), (i), and (l) of this section.

Subsec. (l). Pub. L. 101-380, §2002(b)(3), struck out after first sentence "Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section."

Subsec. (m). Pub. L. 101-380, §4305, amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: "Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction."

Subsec. (o)(2). Pub. L. 101-380, §4202(c), inserted ", or with respect to any removal activities related to such discharge" after "within such State".

Subsec. (p). Pub. L. 101-380, §2002(b)(4), struck out subsec. (p) which provided for establishment and maintenance of evidence of financial responsibility by vessels over 300 gross tons carrying oil or hazardous substances.

Subsec. (s). Pub. L. 101-380, §2002(b)(5), added subsec. (s).

1987—Subsec. (a)(5). Pub. L. 100-4 substituted "the Commonwealth of the Northern Mariana Islands" for "the Canal Zone".

1982—Subsec. (i)(1), (3). Pub. L. 97-164 substituted "Claims Court" for "Court of Claims".

1980—Subsec. (b)(1), (2)(A), (3). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

Subsec. (b)(3)(A). Pub. L. 96-478 struck out "of oil" after "in the case of such discharges" and substituted "Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973" for "International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended".

Subsec. (c)(1). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

Subsec. (k). Pub. L. 96-483 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (a)(2). Pub. L. 95-576, §1(b)(1), excluded discharges described in cls. (A) to (C) from term "discharge".

Subsec. (a)(17). Pub. L. 95-576, §1(b)(2), added par. (17).

Subsec. (b)(2)(B). Pub. L. 95-576, §1(b)(3), substituted requirement that a study be made respecting methods, mechanisms, and procedures for creating incentives to achieve higher standard of care in management and movement of hazardous substances, including consideration of enumerated items, and a report made to Congress within 18 months after Nov. 2, 1978, for provisions concerning actual removability of any designated hazardous substance, liability during two year period commencing Oct. 18, 1972 based on toxicity, degradability, and dispersal characteristics of the substance limited to \$50,000 and without limitation in cases of willful negligence or willful misconduct, liability after such two year period ranging from \$500 to \$5,000 based on toxicity, etc., or liability for penalty determined by number of units discharged multiplied by amount established for the unit limited to \$5,000,000 in the case of a discharge from a vessel and to \$500,000 in the case of a discharge from onshore or offshore facility, establishment by regulation of a unit of measurement based upon the usual trade practice for each designated hazardous substance and establishment for such unit a fixed monetary amount ranging from \$100 to \$1,000 based on toxicity, etc.

Subsec. (b)(3). Pub. L. 95-576, §1(b)(4), substituted "such quantities as may be harmful" for "harmful quantities".

Subsec. (b)(4). Pub. L. 95-576, §1(b)(5), struck out ", to be issued as soon as possible after October 18, 1972," after "regulation" and substituted "substances" for "substance" and "discharge of which may be harmful" for "discharge of which, at such times, locations, circumstances, and conditions, will be harmful".

Subsec. (b)(5). Pub. L. 95-576, §1(b)(6), inserted "at the time of the discharge" after "otherwise subject to the jurisdiction of the United States".

Subsec. (b)(6)(A) to (E). Pub. L. 95-576, §1(b)(7), designated existing provisions as subpar. (A), inserted "at the time of the discharge" after "jurisdiction of the United States", and added subpars. (B) to (E).

1977—Subsec. (a)(11). Pub. L. 95-217, §58(k), inserted ", 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," after "United States".

Subsec. (a)(15), (16). Pub. L. 95-217, §58(d)(1), added pars. (15) and (16).

Subsec. (b)(1). Pub. L. 95-217, §58(a)(1), inserted reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(A). Pub. L. 95-217, §58(a)(2), inserted reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(B)(v). Pub. L. 95-217, §57, added cl. (v).

Subsec. (b)(3). Pub. L. 95-217, §58(a)(3), (4), designated part of existing provisions preceding cl. (A) as cl. (i) and added cl. (ii), and, in cl. (A), inserted "or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)" after "waters of the contiguous zone" and struck out "article IV of" before "the International Convention for the Prevention of Pollution of the Sea by Oil, 1954".

Subsec. (b)(4). Pub. L. 95-217, §58(a)(5), struck out provisions under which, in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threatened the fishery resources of the contiguous zone or threatened to pollute or contribute to the pollution of the territory or the territorial sea of the United States could be determined to be harmful.

Subsec. (b)(5). Pub. L. 95-217, §58(a)(6), added cls. (A), (B), and (C) between "Any such person" and "who fails to notify".

Subsec. (b)(6). Pub. L. 95-217, §58(a)(7), (8), substituted "Any owner, operator, or person in charge of any onshore facility, or offshore facility" for "Any owner or operator of any vessel, onshore facility, or offshore facility" in provision relating to violations of par. (3) of this subsection, and inserted provisions directing the assessment of a civil penalty of not more than \$5,000 for each offense by the Secretary of the department in which the Coast Guard is operating to be assessed against any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States.

Subsec. (c)(1). Pub. L. 95-217, §58(b), (c)(1), inserted "or there is a substantial threat of such discharge," after "Whenever any oil or a hazardous substance is discharged," and "or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natu-

ral resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)' after "waters of the contiguous zone."

Subsec. (c)(2)(D). Pub. L. 95-217, §58(e), substituted "and imminent threats of such discharges to the appropriate State and Federal agencies;" for "to the appropriate Federal agency;"

Subsec. (d). Pub. L. 95-217, §58(c)(2), inserted "or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof)" after "Any expense incurred under this subsection".

Subsec. (f)(1). Pub. L. 95-217, §58(d)(2), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton of such vessel or \$14,000,000, whichever is lesser."

Subsec. (f)(2), (3). Pub. L. 95-217, §58(d)(5), (6), substituted "\$50,000,000" for "\$8,000,000".

Subsec. (f)(4), (5). Pub. L. 95-217, §58(g), added pars. (4) and (5).

Subsec. (g). Pub. L. 95-217, §58(d)(3), (f), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater" for "\$100 per gross ton of such vessel or \$14,000,000, whichever is the lesser" in the existing provisions and inserted provision under which, where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsec. (b) of this section, alleges that the discharge was caused solely by an act or omission of a third party, the owner or operator must pay to the United States Government the actual costs incurred under subsec. (c) of this section for removal of the oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover the costs from the third party under this subsection.

Subsec. (i)(2). Pub. L. 95-217, §58(m), inserted reference to the Deepwater Port Act of 1974.

Subsec. (j)(2). Pub. L. 95-217, §58(c)(3), inserted provision that subsec. (j)(2) shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsec. (b)(3)(ii) of this section unless the owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States.

Subsec. (k). Pub. L. 95-217, §58(l), substituted "such sums as may be necessary to maintain such fund at a level of \$35,000,000" for "not to exceed \$35,000,000".

Subsec. (p)(1). Pub. L. 95-217, §58(d)(4), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton, or \$14,000,000 whichever is the lesser."

Subsecs. (q), (r). Pub. L. 95-217, §58(i), added subsecs. (q) and (r).

1973—Subsec. (f). Pub. L. 93-207, §1(4)(A), (B), substituted "(b)(3)" for "(b)(2)" wherever appearing in pars. (1) to (3), and substituted "Administrator" for "Secretary" in last sentence of par. (2).

Subsecs. (g), (i). Pub. L. 93-207, §1(4)(C), substituted "(b)(3)" for "(b)(2)" wherever appearing.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-241, title IX, §901(i)(2), July 11, 2006, 120 Stat. 564, provided in part that the amendment made by section 901(i)(2) is effective Aug. 9, 2004.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300, provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

Amendment by Pub. L. 96-478 effective Oct. 2, 1983, see section 14(a) of Pub. L. 96-478, set out as an Effective Date note under section 1901 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-217, §58(h), Dec. 27, 1977, 91 Stat. 1596, provided that: "The amendments made by paragraphs (5) and (6) of subsection (d) of this section [amending this section] shall take effect 180 days after the date of enactment of the Clean Water Act of 1977 [Dec. 27, 1977]."

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to spill prevention, containment and countermeasure plans with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.



## DELEGATION OF FUNCTIONS

For delegation of certain functions of President under this section, see Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended, set out as a note under section 9615 of Title 42, The Public Health and Welfare.

## TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

## COAST GUARD RESPONSE PLAN REQUIREMENTS

Pub. L. 113-281, title III, §317, Dec. 18, 2014, 128 Stat. 3050, provided that:

“(a) VESSEL RESPONSE PLAN CONTENTS.—The Secretary of the department in which the Coast Guard is operating shall require that each vessel response plan prepared for a mobile offshore drilling unit includes information from the facility response plan prepared for the mobile offshore drilling unit regarding the planned response to a worst case discharge, and to a threat of such a discharge.

“(b) DEFINITIONS.—In this section:

“(1) MOBILE OFFSHORE DRILLING UNIT.—The term ‘mobile offshore drilling unit’ has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

“(2) RESPONSE PLAN.—The term ‘response plan’ means a response plan prepared under section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)).

“(3) WORST CASE DISCHARGE.—The term ‘worst case discharge’ has the meaning given that term under section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the Coast Guard to review or approve a facility response plan for a mobile offshore drilling unit.”

## RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

Pub. L. 112-141, div. A, title I, subtitle F, July 6, 2012, 126 Stat. 588, provided that:

## “SEC. 1601. SHORT TITLE.

“This subtitle may be cited as the ‘Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012’.

## “SEC. 1602. GULF COAST RESTORATION TRUST FUND.

“(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the ‘Gulf Coast Restoration Trust Fund’ (referred to in this section as the ‘Trust Fund’), consisting of such amounts as are deposited in the Trust Fund under this Act [probably means this subtitle] or any other provision of law.

“(b) TRANSFERS.—The Secretary of the Treasury shall deposit in the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid by responsible parties after the date of enactment of this Act [July 6, 2012] in connection with the explosion on,

and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

“(c) EXPENDITURES.—Amounts in the Trust Fund, including interest earned on advances to the Trust Fund and proceeds from investment under subsection (d), shall—

“(1) be available for expenditure, without further appropriation, solely for the purpose and eligible activities of this subtitle and the amendments made by this subtitle [amending this section]; and

“(2) remain available until expended, without fiscal year limitation.

“(d) INVESTMENT.—Amounts in the Trust Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be available for expenditure in accordance with this subtitle and the amendments made by this subtitle.

“(e) ADMINISTRATION.—Not later than 180 days after the date of enactment of this Act, after providing notice and an opportunity for public comment, the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, shall establish such procedures as the Secretary determines to be necessary to deposit amounts in, and expend amounts from, the Trust Fund pursuant to this subtitle, including—

“(1) procedures to assess whether the programs and activities carried out under this subtitle and the amendments made by this subtitle achieve compliance with applicable requirements, including procedures by which the Secretary of the Treasury may determine whether an expenditure by a Gulf Coast State or coastal political subdivision (as those terms are defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321)) pursuant to such a program or activity achieves compliance;

“(2) auditing requirements to ensure that amounts in the Trust Fund are expended as intended; and

“(3) procedures for identification and allocation of funds available to the Secretary under other provisions of law that may be necessary to pay the administrative expenses directly attributable to the management of the Trust Fund.

“(f) SUNSET.—The authority for the Trust Fund shall terminate on the date all funds in the Trust Fund have been expended.

## “SEC. 1603. GULF COAST NATURAL RESOURCES RESTORATION AND ECONOMIC RECOVERY.

“[Amended this section.]

## “SEC. 1604. GULF COAST ECOSYSTEM RESTORATION SCIENCE, OBSERVATION, MONITORING, AND TECHNOLOGY PROGRAM.

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the National Oceanic and Atmospheric Administration.

“(2) COMMISSION.—The term ‘Commission’ means the Gulf States Marine Fisheries Commission.

“(3) DIRECTOR.—The term ‘Director’ means the Director of the United States Fish and Wildlife Service.

“(4) PROGRAM.—The term ‘program’ means the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program established under this section.

“(b) ESTABLISHMENT OF PROGRAM.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [July 6, 2012], the Administrator, in consultation with the Director, shall establish the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico.

“(2) EXPENDITURE OF FUNDS.—For each fiscal year, amounts made available to carry out this subsection may be expended for, with respect to the Gulf of Mexico—

“(A) marine and estuarine research;

“(B) marine and estuarine ecosystem monitoring and ocean observation;

“(C) data collection and stock assessments;

“(D) pilot programs for—

“(i) fishery independent data; and

“(ii) reduction of exploitation of spawning aggregations; and

“(E) cooperative research.

“(3) COOPERATION WITH THE COMMISSION.—For each fiscal year, amounts made available to carry out this subsection may be transferred to the Commission to establish a fisheries monitoring and research program, with respect to the Gulf of Mexico.

“(4) CONSULTATION.—The Administrator and the Director shall consult with the Regional Gulf of Mexico Fishery Management Council and the Commission in carrying out the program.

“(c) SPECIES INCLUDED.—The research, monitoring, assessment, and programs eligible for amounts made available under the program shall include all marine, estuarine, aquaculture, and fish species in State and Federal waters of the Gulf of Mexico.

“(d) RESEARCH PRIORITIES.—In distributing funding under this subsection, priority shall be given to integrated, long-term projects that—

“(1) build on, or are coordinated with, related research activities; and

“(2) address current or anticipated marine ecosystem, fishery, or wildlife management information needs.

“(e) DUPLICATION.—In carrying out this section, the Administrator, in consultation with the Director, shall seek to avoid duplication of other research and monitoring activities.

“(f) COORDINATION WITH OTHER PROGRAMS.—The Administrator, in consultation with the Director, shall develop a plan for the coordination of projects and activities between the program and other existing Federal and State science and technology programs in the States of Alabama, Florida, Louisiana, Mississippi, and Texas, as well as between the centers of excellence.

“(g) LIMITATION ON EXPENDITURES.—

“(1) IN GENERAL.—Not more than 3 percent of funds provided in subsection (h) shall be used for administrative expenses.

“(2) NOAA.—The funds provided in subsection (h) may not be used—

“(A) for any existing or planned research led by the National Oceanic and Atmospheric Administration, unless agreed to in writing by the grant recipient;

“(B) to implement existing regulations or initiate new regulations promulgated or proposed by the National Oceanic and Atmospheric Administration; or

“(C) to develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853a)) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

“(h) FUNDING.—Of the total amount made available for each fiscal year for the Gulf Coast Restoration Trust Fund established under section 1602, 2.5 percent shall be available to carry out the program.

“(i) SUNSET.—The program shall cease operations when all funds in the Gulf Coast Restoration Trust Fund established under section 1602 have been expended.

“SEC. 1605. CENTERS OF EXCELLENCE RESEARCH GRANTS.

“(a) IN GENERAL.—Of the total amount made available for each fiscal year from the Gulf Coast Restora-

tion Trust Fund established under section 1602, 2.5 percent shall be made available to the Gulf Coast States (as defined in section 311(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(a)] (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012)), in equal shares, exclusively for grants in accordance with subsection (c) to establish centers of excellence to conduct research only on the Gulf Coast Region (as defined in section 311 of the Federal Water Pollution Control Act (33. [sic] U.S.C. 1321)).

“(b) APPROVAL BY STATE ENTITY, TASK FORCE, OR AGENCY.—The duties of a Gulf Coast State under this section shall be carried out by the applicable Gulf Coast State entities, task forces, or agencies listed in section 311(t)(1)(F) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012), and for the State of Florida, a consortium of public and private research institutions within the State, which shall include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission, for that Gulf Coast State.

“(c) GRANTS.—

“(1) IN GENERAL.—A Gulf Coast State shall use the amounts made available to carry out this section to award competitive grants to nongovernmental entities and consortia in the Gulf Coast region (including public and private institutions of higher education) for the establishment of centers of excellence as described in subsection (d).

“(2) APPLICATION.—To be eligible to receive a grant under this subsection, an entity or consortium described in paragraph (1) shall submit to a Gulf Coast State an application at such time, in such manner, and containing such information as the Gulf Coast State determines to be appropriate.

“(3) PRIORITY.—In awarding grants under this subsection, a Gulf Coast State shall give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants with interest and expertise in any discipline described in subsection (d) on which the proposal of the center of excellence will be focused.

“(4) REPORTING.—

“(A) IN GENERAL.—Each Gulf Coast State shall provide annually to the Gulf Coast Ecosystem Restoration Council established under section 311(t)(2)(C) of the Federal Water Pollution Control Act [31 U.S.C. 1321(t)(2)(C)] (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012) information regarding all grants, including the amount, discipline or disciplines, and recipients of the grants, and in the case of any grant awarded to a consortium, the membership of the consortium.

“(B) INCLUSION.—The Gulf Coast Ecosystem Restoration Council shall include the information received under subparagraph (A) in the annual report to Congress of the Council required under section 311(t)(2)(C)(vii)(VII) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012).

“(d) DISCIPLINES.—Each center of excellence shall focus on science, technology, and monitoring in at least 1 of the following disciplines:

“(1) Coastal and deltaic sustainability, restoration and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

“(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

“(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

“(4) Sustainable and resilient growth, economic and commercial development in the Gulf Coast Region.

“(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

“SEC. 1606. EFFECT.

“(a) DEFINITION OF DEEPWATER HORIZON OIL SPILL.—In this section, the term ‘Deepwater Horizon oil spill’ has the meaning given the term in section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

“(b) EFFECT AND APPLICATION.—Nothing in this subtitle or any amendment made by this subtitle—

“(1) supersedes or otherwise affects any other provision of Federal law, including, in particular, laws providing recovery for injury to natural resources under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) and laws for the protection of public health and the environment; or

“(2) applies to any fine collected under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) for any incident other than the Deepwater Horizon oil spill.

“(c) USE OF FUNDS.—Funds made available under this subtitle may be used only for eligible activities specifically authorized by this subtitle and the amendments made by this subtitle.

“SEC. 1607. RESTORATION AND PROTECTION ACTIVITY LIMITATIONS.

“(a) WILLING SELLER.—Funds made available under this subtitle may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

“(b) ACQUISITION OF FEDERAL LAND.—None of the funds made available under this subtitle may be used to acquire land in fee title by the Federal Government unless—

“(1) the land is acquired by exchange or donation; or

“(2) the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region and has the concurrence of the Governor of the State in which the acquisition will take place.

“SEC. 1608. INSPECTOR GENERAL.

“The Office of the Inspector General of the Department of the Treasury shall have authority to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under this subtitle and the amendments made by this subtitle.”

RULEMAKINGS

Pub. L. 111-281, title VII, § 701(a), (b), Oct. 15, 2010, 124 Stat. 2980, provided that:

“(a) STATUS REPORT.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Oct. 15, 2010], the Secretary of the department in which the Coast Guard is operating shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of all Coast Guard rulemakings required or otherwise being developed (but for which no final rule has been issued as of the date of enactment of this Act) under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

“(2) INFORMATION REQUIRED.—The Secretary shall include in the report required in paragraph (1)—

“(A) a detailed explanation with respect to each such rulemaking as to—

- “(i) what steps have been completed;
- “(ii) what areas remain to be addressed; and
- “(iii) the cause of any delays; and

“(B) the date by which a final rule may reasonably be expected to be issued.

“(b) FINAL RULES.—The Secretary shall issue a final rule in each pending rulemaking described in subsection (a) as soon as practicable, but in no event later

than 18 months after the date of enactment of this Act.”

IMPLEMENTATION DATE FOR VESSEL RESPONSE PLANS FOR NONTANK VESSELS

Pub. L. 108-293, title VII, § 701(c), Aug. 9, 2004, 118 Stat. 1068, provided that: “No later than one year after the date of enactment of this Act [Aug. 9, 2004], the owner or operator of a nontank vessel (as defined [sic] section 311(j)(9) [311(a)(26)] of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(9) [1321(a)(26)]), as amended by this section) shall prepare and submit a vessel response plan for such vessel.”

REPORT ON OIL SPILL RESPONDER IMMUNITY

Pub. L. 107-295, title IV, § 440, Nov. 25, 2002, 116 Stat. 2130, provided that:

“(a) REPORT TO CONGRESS.—Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, jointly with the Secretary of Commerce and the Secretary of the Interior, and after consultation with the Administrator of the Environmental Protection Agency and the Attorney General, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the immunity from criminal and civil penalties provided under existing law of a private responder (other than a responsible party) in the case of the incidental take of federally listed fish or wildlife that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by that responder during an oil spill removal activity where the responder was acting in a manner consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator for the spill, and on the circumstances under which such penalties have been or could be imposed on a private responder. The report shall take into consideration the procedures under the Inter-Agency Memorandum for addressing incidental takes.

“(b) DEFINITIONS.—In this section—

“(1) the term ‘Federal On-Scene Coordinator’ has the meaning given that term in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

“(2) the term ‘incidental take’ has the meaning given that term in the Inter-Agency Memorandum;

“(3) the term ‘Inter-Agency Memorandum’ means the Inter-Agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities under the Federal Water Pollution Control Act’s National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act [of 1973, 16 U.S.C. 1531 et seq.], effective on July 22, 2001;

“(4) the terms ‘National Contingency Plan’, ‘removal’, and ‘responsible party’ have the meanings given those terms under section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701); and

“(5) the term ‘private responder’ means a non-governmental entity or individual that is carrying out an oil spill removal activity at the direction of a Federal agency or a responsible party.”

OIL SPILL LIABILITY UNDER OIL POLLUTION ACT OF 1990

Pub. L. 101-380, title II, § 2002(a), Aug. 18, 1990, 104 Stat. 507, provided that: “Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) shall not apply with respect to any incident for which liability is established under section 1002 of this Act [33 U.S.C. 2702].”

TRANSFER OF MONEYS TO OIL SPILL LIABILITY TRUST FUND

Pub. L. 101-380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507, provided that: “Subsection (k) [of this section] is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the [Oil Spill Liability Trust] Fund. The

Fund shall assume all liability incurred by the revolving fund established under that subsection.”

#### REVISION OF NATIONAL CONTINGENCY PLAN

Pub. L. 101-380, title IV, § 4201(c)(d), Aug. 18, 1990, 104 Stat. 527, provided that: “Not later than one year after the date of the enactment of this Act [Aug. 18, 1990], the President shall revise and republish the National Contingency Plan prepared under section 311(c)(2) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c)(2)] (as in effect immediately before the date of the enactment of this Act) to implement the amendments made by this section and section 4202 [amending this section].”

[For delegation of functions of President under section 4201(c) of Pub. L. 101-380, set out above, see Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended, set out as a note under section 9615 of Title 42, The Public Health and Welfare.]

#### IMPLEMENTATION OF NATIONAL PLANNING AND RESPONSE SYSTEM

Pub. L. 101-380, title IV, § 4202(b), Aug. 18, 1990, 104 Stat. 531, provided that:

“(1) AREA COMMITTEES AND CONTINGENCY PLANS.—(A) Not later than 6 months after the date of the enactment of this Act [Aug. 18, 1990], the President shall designate the areas for which Area Committees are established under section 311(j)(4) of the Federal Water Pollution Control Act [33 U.S.C. 1321(j)(4)], as amended by this Act. In designating such areas, the President shall ensure that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan under that section.

“(B) Not later than 18 months after the date of the enactment of this Act, each Area Committee established under that section shall submit to the President the Area Contingency Plan required under that section.

“(C) Not later than 24 months after the date of the enactment of this Act, the President shall—

“(i) promptly review each plan;

“(ii) require amendments to any plan that does not meet the requirements of section 311(j)(4) of the Federal Water Pollution Control Act; and

“(iii) approve each plan that meets the requirements of that section.

“(2) NATIONAL RESPONSE UNIT.—Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in accordance with section 311(j)(2) of the Federal Water Pollution Control Act, as amended by this Act.

“(3) COAST GUARD DISTRICT RESPONSE GROUPS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish Coast Guard District Response Groups in accordance with section 311(j)(3) of the Federal Water Pollution Control Act, as amended by this Act.

“(4) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

“(B) During the period beginning 30 months after the date of the enactment of this paragraph [Aug. 18, 1990] and ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

“(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.”

#### DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Penalties paid pursuant to this section and sections 1319(c) and 1501 et seq. of this title to be deposited in the Oil Spill Liability Trust Fund created under section 9509 of Title 26, Internal Revenue Code, see section 4304 of Pub. L. 101-380, set out as a note under section 9509 of Title 26.

#### ALLOWABLE DELAY IN ESTABLISHING FINANCIAL RESPONSIBILITY FOR INCREASE IN AMOUNTS UNDER 1977 AMENDMENT

Pub. L. 95-217, § 58(j), Dec. 27, 1977, 91 Stat. 1596, provided that: “No vessel subject to the increased amounts which result from the amendments made by subsections (d)(2), (d)(3), and (d)(4) of this section [amending this section] shall be required to establish any evidence of financial responsibility under section 311(p) of the Federal Water Pollution Control Act [subsec. (p) of this section] for such increased amounts before October 1, 1978.”

#### TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

#### EXECUTIVE ORDER NO. 11735

Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, as amended by Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, which assigned functions of the President regarding water pollution, was revoked by Ex. Ord. No. 12777, § 8(i), Oct. 18, 1991, 56 F.R. 54769, set out below.

#### EXECUTIVE ORDER NO. 12418

Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, which transferred certain functions relating to the financial responsibility of vessels for water pollution and established authority of Federal agencies to respond to discharges or substantial threats of discharges of oil and hazardous substances, was revoked by Ex. Ord. No. 12777, § 8(i), Oct. 18, 1991, 56 F.R. 54769, set out below.

#### EX. ORD. NO. 12777. IMPLEMENTATION OF THIS SECTION AND OIL POLLUTION ACT OF 1990

Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54757, as amended by Ex. Ord. No. 13286, § 34, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13638, § 1, Mar. 15, 2013, 78 F.R. 17589, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, (“FWPCA”) (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (Public Law 101-380) (“OPA”), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan, Area Committees, and Area Contingency Plans.* (a) [Amended Ex. Ord. No. 12580, set out as a note under section 9615 of Title 42, The Public Health and Welfare.]

(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b)(1) of OPA [set out as a note above], respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency (“Administrator”) for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).

SEC. 2. *National Response System.* (a) The functions vested in the President by Section 311(j)(1)(A) of FWPCA, respecting the establishment of methods and procedures for the removal of discharged oil and haz-

ardous substances, and by Section 311(j)(1)(B) of FWPCA respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(1) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports [Port] Act of 1974 (“DPA”) [33 U.S.C. 1501 et seq.], are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by Section 311(j)(1)(D) of FWPCA, respecting the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(d)(1) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA [set out as a note above], respecting the issuance of regulations requiring the owners or operators of non-transportation-related onshore facilities to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of non-transportation-related onshore facilities to operate without approved response plans, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA to operate without approved response plans, are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans, are delegated to the Secretary of the Interior.

(e)(1) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges on vessels, and at transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(f) The functions vested in the President by Section 311(j)(6)(B) of FWPCA, respecting requirements for vessels to carry appropriate removal equipment, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(g)(1) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for onshore and offshore facilities located in the inland zone, and the publishing of annual reports on those drills, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for tank vessels, and for onshore and offshore facilities located in the coastal zone, and the publishing of annual reports on those drills, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) No provision of Section 2 of this order, including, but not limited to, any delegation or assignment of any function hereunder, shall in any way affect, or be construed or interpreted to affect the authority of any Department or agency, or the head of any Department or agency under any provision of law other than Section 311(j) of FWPCA or Section 4202(b)(4) of OPA.

(i) The functions vested in the President by Section 311(j) of FWPCA or Section 4202(b)(4) of OPA which have been delegated or assigned by Section 2 of this order may be redelegated to the head of any Executive department or agency with his or her consent.

SEC. 3. *Removal.* The functions vested in the President by Section 311(c) of FWPCA and Section 1011 of OPA [33 U.S.C. 2711], respecting an effective and immediate removal or arrangement for removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance, the direction and monitoring of all Federal, State and private actions, the removal and destruction of a vessel, the issuance of directions, consulting with affected trustees, and removal completion determinations, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

SEC. 4. *Liability Limit Adjustment.* (a)(1) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of the department in which the Coast Guard is operating, acting in consultation with the Administrator, the Secretary of Transportation, the Secretary of the Interior, and the Attorney General:

(A) the adjustment of the limits of liability listed in section 1004(a) of OPA for vessels, onshore facilities, and deepwater ports subject to the DPA, to reflect significant increases in the Consumer Price Index;

(B) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of marine transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1), and of any limits of liability established under section 1004(d)(2) with respect to deepwater ports subject to the DPA,

to reflect significant increases in the Consumer Price Index; and

(C) the reporting to Congress on the desirability of adjusting limits of liability, with respect to vessels, marine transportation-related onshore facilities, and deepwater ports subject to the DPA.

(2) The Administrator and the Secretary of Transportation will provide necessary regulatory analysis support to ensure timely regulatory Consumer Price Index adjustments by the Secretary of the department in which the Coast Guard is operating of the limits of liability listed in section 1004(a) of OPA for onshore facilities under subparagraph (a)(1)(A) of this section.

(b) The following functions vested in the President by section 1004(d) of OPA are delegated to the Administrator, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, the Secretary of the Interior, the Secretary of Energy, and the Attorney General:

(1) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of non-transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1) by the Administrator to reflect significant increases in the Consumer Price Index; and

(2) the reporting to Congress on the desirability of adjusting limits of liability with respect to non-transportation-related onshore facilities.

(c) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of Transportation, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Administrator, the Secretary of the Interior, and the Attorney General:

(1) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of non-marine transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1) by the Secretary of Transportation to reflect significant increases in the Consumer Price Index; and

(2) the reporting to Congress on the desirability of adjusting limits of liability, with respect to non-marine transportation-related onshore facilities.

(d) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of the Interior, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Administrator, the Secretary of Transportation, and the Attorney General:

(1) the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA; and

(2) the reporting to Congress on the desirability of adjusting limits of liability with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA.

SEC. 5. *Financial Responsibility.* (a)(1) The functions vested in the President by Section 1016(e) of OPA [33 U.S.C. 2716(e)], respecting (in the case of offshore facilities other than deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Interior.

(2) The functions vested in the President by Section 1016(e) of OPA, respecting (in the case of deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b)(1) The functions vested in the President by Section 4303 of OPA [33 U.S.C. 2716a], respecting (in cases involving vessels) the assessment of civil penalties, the

compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(2) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving offshore facilities other than deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Interior.

(3) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

SEC. 6. *Enforcement.* (a) The functions vested in the President by Section 311(m)(1) of FWPCA, respecting the enforcement of Section 311 with respect to vessels, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b) The functions vested in the President by Section 311(e) of FWPCA, respecting determinations of imminent and substantial threat, requesting the Attorney General to secure judicial relief, and other action including issuing administrative orders, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

SEC. 7. *Management of the Oil Spill Liability Trust Fund and Claims.* (a)(1)(A) The functions vested in the President by Section 1012(a)(1), (3), and (4) of OPA [33 U.S.C. 2712(a)(1), (3), (4)] respecting payment of removal costs and claims and determining consistency with the National Contingency Plan (NCP) are delegated to the Secretary of the Department in which the Coast Guard is operating.

(B) The functions vested in the President by Section 6002(b) of the OPA [33 U.S.C. 2752(b)] respecting making amounts, not to exceed \$50,000,000 and subject to normal budget controls, in any fiscal year, available from the Fund (i) to carry out Section 311(c) of FWPCA, and (ii) to initiate the assessment of natural resources damages required under Section 1006 of OPA [33 U.S.C. 2706] are delegated to the Secretary of the Department in which the Coast Guard is operating. Such Secretary shall make amounts available from the Fund to initiate the assessment of natural resources damages exclusively to the Federal trustees designated in the NCP. Such Federal trustees shall allocate such amounts among all trustees required to assess natural resources damages under Section 1006 of OPA.

(2) The functions vested in the President by Section 1012(a)(2) of OPA [33 U.S.C. 2712(a)(2)], respecting the payment of costs and determining consistency with the NCP, are delegated to the Federal trustees designated in the NCP.

(3) The functions vested in the President by Section 1012(a)(5) of OPA, respecting the payment of costs and expenses of departments and agencies having responsibility for the implementation, administration, and enforcement of the Oil Pollution Act of 1990 and subsections (b), (c), (d), (j) and (l) of Section 311 of FWPCA, are delegated to each head of such department and agency.

(b) The functions vested in the President by Section 1012(c) of OPA, respecting designation of Federal officials who may obligate money, are delegated to each head of the departments and agencies to whom functions have been delegated under section 7(a) of this order for the purpose of carrying out such functions.

(c)(1) The functions vested in the President by Section 1012(d) and (e) of OPA, respecting the obligation of

the Trust Fund on the request of a Governor or pursuant to an agreement with a State, entrance into agreements with States, agreement upon terms and conditions, and the promulgation of regulations concerning such obligation and entrance into such agreement, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Administrator.

(2) The functions vested in the President by Section 1013(e) of OPA [33 U.S.C. 2713(e)], respecting the promulgation and amendment of regulations for the presentation, filing, processing, settlement, and adjudication of claims under OPA against the Trust Fund, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Attorney General.

(3) The functions vested in the President by Section 1012(a) of OPA, respecting the payment of costs, damages, and claims, delegated herein to the Secretary of the Department in which the Coast Guard is operating, include, *inter alia*, the authority to process, settle, and administratively adjudicate such costs, damages, and claims, regardless of amount.

(d)(1) The Coast Guard is designated the “appropriate agency” for the purpose of receiving the notice of discharge of oil or hazardous substances required by Section 311(b)(5) of FWPCA, and the Secretary of the Department in which the Coast Guard is operating is authorized to issue regulations implementing this designation.

(2) The functions vested in the President by Section 1014 of OPA [33 U.S.C. 2714], respecting designation of sources of discharges or threats, notification to responsible parties, promulgation of regulations respecting advertisements, the advertisement of designation, and notification of claims procedures, are delegated to the Secretary of the Department in which the Coast Guard is operating.

SEC. 8. *Miscellaneous.* (a) The functions vested in the President by Section 311(b)(3) and (4) of FWPCA, as amended by the Oil Pollution Act of 1990, respecting the determination of quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment and the determinations of quantities, time, locations, circumstances, or conditions, which are not harmful, are delegated to the Administrator.

(b) The functions vested in the President by Section 311(d)(2)(G) of FWPCA, respecting schedules of dispersant, chemical, and other spill mitigating devices or substances, are delegated to the Administrator.

(c) The functions vested in the President by Section 1006(b)(3) and (4) of OPA [33 U.S.C. 2706(b)(3), (4)] respecting the receipt of designations of State and Indian tribe trustees for natural resources are delegated to the Administrator.

(d) The function vested in the President by Section 3004 of OPA [104 Stat. 508], with respect to encouraging the development of an international inventory of equipment and personnel, is delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Secretary of State.

(e) The functions vested in the President by Section 4113 of OPA [104 Stat. 516], respecting a study on the use of liners or other secondary means of containment for onshore facilities, and the implementation of the recommendations of the study, are delegated to the Administrator.

(f) The function vested in the President by Section 5002(c)(2)(D) of OPA [33 U.S.C. 2732(c)(2)(D)], respecting the designating of an employee of the Federal Government who shall represent the Federal Government on the Oil Terminal Facilities and Oil Tanker Operations Associations, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(g) The functions vested in the President by Section 5002(o) of OPA, respecting the annual certification of alternative voluntary advisory groups, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) The function vested in the President by Section 7001(a)(3) of OPA [33 U.S.C. 2761(a)(3)], respecting the appointment of Federal agencies to membership on the Interagency Coordinating Committee on Oil Pollution Research, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(i) Executive Order No. 11735 of August 3, 1973, Executive Order No. 12123 of February 26, 1979, Executive Order No. 12418 of May 5, 1983 and the memorandum of August 24, 1990, delegating certain authorities of the President under the Oil Pollution Act of 1990 are revoked.

SEC. 9. *Consultation.* Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with statutory responsibilities which may be significantly affected, including, but not limited to, the Department of Justice.

SEC. 10. *Litigation.* (a) Notwithstanding any other provision of this order, any representation pursuant to or under this order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Oil Pollution Act of 1990 [see Short Title note set out under section 2701 of this title] shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this order, the authority under the Oil Pollution Act of 1990 to require the Attorney General to commence litigation is retained by the President.

(c) Notwithstanding any other provision of this order, the Secretaries of the Departments of Transportation, Commerce, Interior, Agriculture, the Secretary of the Department in which the Coast Guard is operating, and/or the Administrator of the Environmental Protection Agency may request that the Attorney General commence litigation under the Oil Pollution Act of 1990.

(d) The Attorney General, in his discretion, is authorized to require that, with respect to a particular oil spill, an agency refrain from taking administrative enforcement action without first consulting with the Attorney General.

EX. ORD. NO. 13626. GULF COAST ECOSYSTEM RESTORATION

Ex. Ord. No. 13626, Sept. 10, 2012, 77 F.R. 56749, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 311 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321), section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. 2706), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.* Executive Order 13554 of October 5, 2010, was issued after the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, and resulted in the largest oil spill in U.S. history (Deepwater Horizon Oil Spill). Executive Order 13554 recognized the Gulf Coast as a national treasure and addressed the longstanding ecological decline of that region, which was compounded by the Deepwater Horizon Oil Spill. In doing so, Executive Order 13554 established a Gulf Coast Ecosystem Restoration Task Force (Task Force) to coordinate intergovernmental efforts, planning, and the exchange of information in order to better implement Gulf Coast ecosystem restoration and facilitate appropriate accountability and support throughout the restoration process.

Since the implementation of Executive Order 13554, the Federal Government’s Gulf Coast ecosystem restoration planning efforts have advanced significantly. The Task Force’s Gulf of Mexico Regional Ecosystem Restoration Strategy (Strategy), created with input from Federal, State, tribal, and local governments, and thousands of involved citizens and organizations across the region, serves as a comprehensive restoration plan for addressing ecological concerns in the Gulf of Mex-

ico. In light of the release of the Strategy, the ongoing work of the Natural Resource Damage Trustee Council (Trustee Council) under the Oil Pollution Act, and the recent passage of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (title I, subtitle F of Public Law 112-141), this order affirms the Federal Government's Gulf Coast ecosystem restoration efforts and realigns responsibilities to ensure the most effective governmental planning and coordination to reach these goals.

SEC. 2. *Termination of the Gulf Coast Ecosystem Restoration Task Force.* The progress of the Task Force is noteworthy. It has completed the Strategy and the preliminary planning and coordination tasks that it was intended to produce and has significantly advanced important ecosystem restoration goals for the Gulf of Mexico. In light of the recent creation, described below, of the Gulf Coast Ecosystem Restoration Council (Gulf Restoration Council), which will build upon the Task Force's already successful collaboration between Federal, State, and tribal governments and, as directed by statute, include and incorporate in its proposed comprehensive plan the findings and information prepared by the Task Force, the Task Force shall terminate no later than 60 days after the Gulf Restoration Council commences its work. The functions of the Task Force will be performed by the Gulf Restoration Council and the Trustee Council to the extent practicable, as set forth in this order. Prior to its termination, the Task Force will provide such assistance as is appropriate to the Gulf Restoration Council.

SEC. 3. *The Gulf Coast Restoration Trust Fund and the Gulf Coast Ecosystem Restoration Council.*

(a) *Gulf Coast Restoration Trust Fund.* The RESTORE Act, which was signed into law as part of the Moving Ahead for Progress in the 21st Century Act (Public Law 112-141), established a mechanism for providing funding to the Gulf region to restore ecosystems and rebuild local economies damaged by the Deepwater Horizon Oil Spill. The RESTORE Act established in the Treasury of the United States the Gulf Coast Restoration Trust Fund (Trust Fund), consisting of 80 percent of an amount equal to any administrative and civil penalties paid after the date of the RESTORE Act by the responsible parties in connection with the Deepwater Horizon Oil Spill to the United States pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the FWPCA (33 U.S.C. 1321).

(b) *Gulf Coast Ecosystem Restoration Council.* The RESTORE Act established the Gulf Restoration Council, an independent entity charged with developing a comprehensive plan for ecosystem restoration in the Gulf Coast (Comprehensive Plan), as well as any future revisions to the Comprehensive Plan. Among its other duties, the Gulf Restoration Council is tasked with identifying projects and programs aimed at restoring and protecting the natural resources and ecosystems of the Gulf Coast region, to be funded from a portion of the Trust Fund; establishing such other advisory committees as may be necessary to assist the Gulf Restoration Council, including a scientific advisory committee and a committee to advise the Gulf Restoration Council on public policy issues; gathering information relevant to Gulf Coast restoration, including through research, modeling, and monitoring; and providing an annual report to the Congress on implementation progress. Consistent with the RESTORE Act, the Comprehensive Plan developed by the Gulf Restoration Council will include provisions necessary to fully incorporate the Strategy, projects, and programs recommended by the Task Force.

(c) Federal members of the Gulf Restoration Council and Trustee Council, as well as all Federal entities involved in Gulf Coast restoration, shall work closely with one another to advance their common goals, reduce duplication, and maximize consistency among their efforts. All Federal members are directed to consult with each other and with all non-federal members

in carrying out their duties on the Gulf Restoration Council.

SEC. 4. *Ongoing Role of the Natural Resource Damage Assessment Trustee Council.* (a) Executive Order 13554 recognized the role of the Trustee Council, and designated trustees as provided in 33 U.S.C. 2706, with trusteeship over natural resources injured, lost, or destroyed as a result of the Deepwater Horizon Oil Spill. Specifically, Executive Order 13554 recognized the importance of carefully coordinating the work of the Task Force with the Trustee Council, whose members have statutory responsibility to assess natural resources damages from the Deepwater Horizon Oil Spill, to restore trust resources, and seek compensation for lost use of those trust resources. Section 3(b) of Executive Order 13554 instructed the Task Force to "support the Natural Resource Damage Assessment process by referring potential ecosystem restoration actions to the \* \* \* Trustee Council for consideration and facilitating coordination among the relevant departments, agencies, and offices, as appropriate, subject to the independent statutory responsibilities of the trustees." The Department of Commerce (through the National Oceanic and Atmospheric Administration), the Department of the Interior (through the Fish and Wildlife Service and the National Park Service), and the Department of Justice have worked to identify linkages and opportunities for the Task Force to complement the restoration progress of the Trustee Council.

(b) Section 7(e) of Executive Order 13554 provides that nothing in that order shall interfere with the statutory responsibilities and authority of the Trustee Council or the individual trustees to carry out their statutory responsibilities to assess natural resource damages and implement restoration actions under 33 U.S.C. 2706 and other applicable law. Agencies that were members of the Task Force shall continue to comply with these requirements.

SEC. 5. *Designating Trustees for Natural Resource Damage Assessment.* Given their authorities, programs, and expertise, the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA) have institutional capacities that can contribute significantly to the Natural Resource Damage Assessment and restoration efforts, including scientific and policy expertise as well as experience gained in the Task Force process and other planning efforts in the Gulf area. In addition, EPA's and USDA's relevant authorities cover a range of natural resources and their supporting ecosystems, including waters, sediments, barrier islands, wetlands, soils, land management, air resources, and drinking water supplies. The inclusion of EPA and USDA as trustees participating in the Natural Resource Damage Assessment and restoration efforts will maximize coordination across the Federal Government and enhance overall efficiencies regarding Gulf Coast ecosystem restoration. Accordingly, without limiting the designations in Executive Order 12777 of October 18, 1991, or any other existing designations, and pursuant to section 2706(b)(2) of title 33, United States Code, I hereby designate the Administrator of EPA and the Secretary of Agriculture as additional trustees for Natural Resource Damage Assessment and restoration solely in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill. The addition of these Federal trustees does not, in and of itself, alter any existing agreements among or between the trustees and any other entity. All Federal trustees are directed to consult, coordinate, and cooperate with each other in carrying out all of their trustee duties and responsibilities.

The Administrator of EPA is hereby directed to revise Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan to reflect the designations for the Deepwater Horizon Oil Spill discussed in this section.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to a department or agency, or the head thereof; or



(ii) the functions of the Trustee Council, or those of the Director of the Office of Management and Budget, relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Executive Order 13554 of October 5, 2010, is hereby revoked concurrent with the termination of the Task Force under the terms described in section 2 of this order.

BARACK OBAMA.

### § 1321a. Prevention of small oil spills

#### (a) Prevention and education program

The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of the Department in which the Coast Guard is operating and other appropriate agencies, shall establish an oil spill prevention and education program for small vessels. The program shall provide for assessment, outreach, and training and voluntary compliance activities to prevent and improve the effective response to oil spills from vessels and facilities not required to prepare a vessel response plan under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), including recreational vessels, commercial fishing vessels, marinas, and aquaculture facilities. The Under Secretary may provide grants to sea grant colleges and institutes designated under section 1126 of this title and to State agencies, tribal governments, and other appropriate entities to carry out—

(1) regional assessments to quantify the source, incidence and volume of small oil spills, focusing initially on regions in the country where, in the past 10 years, the incidence of such spills is estimated to be the highest;

(2) voluntary, incentive-based clean marina programs that encourage marina operators, recreational boaters, and small commercial vessel operators to engage in environmentally sound operating and maintenance procedures and best management practices to prevent or reduce pollution from oil spills and other sources;

(3) cooperative oil spill prevention education programs that promote public understanding of the impacts of spilled oil and provide useful information and techniques to minimize pollution, including methods to remove oil and reduce oil contamination of bilge water, prevent accidental spills during maintenance and refueling and properly cleanup and dispose of oil and hazardous substances; and

(4) support for programs, including outreach and education to address derelict vessels and the threat of such vessels sinking and discharging oil and other hazardous substances, including outreach and education to involve efforts to the owners of such vessels.

#### (b) Authorization of appropriations

There are authorized to be appropriated to the Under Secretary of Commerce for Oceans and

Atmosphere to carry out this section, \$10,000,000 for each of fiscal years 2010 through 2014.

(Pub. L. 111-281, title VII, §705, Oct. 15, 2010, 124 Stat. 2982.)

#### REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

### § 1321b. Improved coordination with tribal governments

#### (a) In general

Within 6 months after October 15, 2010, the Secretary of the Department in which the Coast Guard is operating shall complete the development of a tribal consultation policy, which recognizes and protects to the maximum extent practicable tribal treaty rights and trust assets in order to improve the Coast Guard's consultation and coordination with the tribal governments of federally recognized Indian tribes with respect to oil spill prevention, preparedness, response and natural resource damage assessment.

#### (b) Inclusion of tribal government

The Secretary of the Department in which the Coast Guard is operating shall ensure that, as soon as practicable after identifying an oil spill that is likely to have a significant impact on natural or cultural resources owned or directly utilized by a federally recognized Indian tribe, the Coast Guard will—

(1) ensure that representatives of the tribal government of the affected tribes are included as part of the incident command system established by the Coast Guard to respond to the spill;

(2) share information about the oil spill with the tribal government of the affected tribe; and

(3) to the extent practicable, involve tribal governments in deciding how to respond to the spill.

#### (c) Cooperative arrangements

The Coast Guard may enter into memoranda of agreement and associated protocols with Indian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

(1) arrangements for the assistance of the tribal government to participate in the development of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;