

105TH CONGRESS
1ST SESSION

H. R. 238

To amend the Oil Pollution Act of 1990 to make the Act more effective in preventing oil pollution in the Nation's waters through enhanced prevention of, and improved response to, oil spills, and to ensure that citizens and communities injured by oil spills are promptly and fully compensated, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. MENENDEZ introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To amend the Oil Pollution Act of 1990 to make the Act more effective in preventing oil pollution in the Nation's waters through enhanced prevention of, and improved response to, oil spills, and to ensure that citizens and communities injured by oil spills are promptly and fully compensated, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Oil Spill Prevention and Response Improvement Act”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of Secretary.

TITLE I—ENHANCEMENT OF OIL SPILL PREVENTION

- Sec. 101. Interim oil spill prevention measures for single-hull vessels.
- Sec. 102. Incentive for oil shippers to convert single hull vessels to double hull vessels.
- Sec. 103. Prevention of oil spills by improvement of safety of towing vessels.
- Sec. 104. Other oil prevention enhancement measures.

TITLE II—IMPROVEMENT OF RESPONSES TO OIL SPILLS

- Sec. 201. Access to timely short-term financial assistance for persons injured by oil spills.
- Sec. 202. Advance planning and coordination to ensure prompt decisionmaking on reopening and closing of fishing grounds.
- Sec. 203. Qualification of major oil spills as major disasters.
- Sec. 204. Access to oil spill liability trust fund for natural resource damages.
- Sec. 205. Access to necessary information, expertise, and funding to mitigate near-term ecological injury resulting from oil spill.
- Sec. 206. Compliance with response plans.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term “Secretary” means the Secretary of Transportation, acting through the United States Coast Guard.

TITLE I—ENHANCEMENT OF OIL SPILL PREVENTION

SEC. 101. INTERIM OIL SPILL PREVENTION MEASURES FOR SINGLE-HULL VESSELS.

(a) EFFECTIVENESS OF PROPOSED RULE.—Section 4115(b) of the Oil Pollution Act of 1990 (46 U.S.C. 3703a note) is amended—

(1) by striking “The Secretary” and inserting the following:

1 “(1) IN GENERAL.—The Secretary”; and

2 (2) by adding at the end the following:

3 “(2) OPERATIONAL ELEMENTS.—If a final rule
4 under this subsection with respect to operational ele-
5 ments does not become effective by the date that is
6 59 months after the date specified in paragraph (1),
7 the proposed rule in the Supplemental Notice of
8 Proposed Rulemaking (60 Fed. Reg. 55,904 (1995))
9 shall be considered to be in effect as a final rule as
10 of that date and shall remain in effect until a final
11 rule becomes effective.

12 “(3) STRUCTURAL ELEMENTS.—If a final rule
13 under this subsection with respect to structural ele-
14 ments does not become effective by the date that is
15 64 months after the date specified in paragraph (1),
16 the proposed rule in the Notice of Proposed Rule-
17 making (58 Fed. Reg. 54,870 (1993)) shall be con-
18 sidered to be in effect as a final rule as of that date
19 and shall remain in effect until a final rule becomes
20 effective.”.

21 (b) PREVENTION MEASURES.—Section 4115(b) of
22 the Oil Pollution Act of 1990 (46 U.S.C. 3703a note), as
23 amended by subsection (a) of this section, is amended by
24 adding at the end the following:

25 “(4) PROVISIONS TO BE INCLUDED.—

1 “(A) IN GENERAL.—In issuing rules under
2 this subsection, the Secretary shall include the
3 following provisions to the greatest extent prac-
4 ticable:

5 “(i) A requirement that a single hull
6 barge over 5,000 gross tons operating in
7 open ocean or coastal waters that is af-
8 fected by this section have at least 1 of the
9 following:

10 “(I) A crew member on board
11 and an operable anchor.

12 “(II) An emergency system on
13 board the vessel towing the barge to
14 retrieve the barge if the tow line rup-
15 tures.

16 “(III) Adoption of any other
17 measure that provides comparable
18 protection against grounding of the
19 barge as that provided by a measure
20 described in subclause (I) or (II).

21 “(ii) In cooperation with the captain
22 of the port for each port in which any tank
23 vessel not fitted with a double bottom that
24 covers the entire cargo tank length oper-
25 ates, establishment of a minimum under-

1 keel clearance for the vessel when entering
2 the port or place of destination and when
3 departing port.

4 “(B) CONSIDERATIONS.—In issuing rules
5 under this subsection, the Secretary shall—

6 “(i) require the use of all measures
7 that advance the objectives of this section,
8 not only those determined to be the most
9 cost-effective or most cost-efficient;

10 “(ii) take account of human safety,
11 including the safety of crew members on
12 affected tank vessels; and

13 “(iii) consider measures that prevent
14 collision or grounding of a tank vessel in
15 addition to those that reduce oil outflow
16 after such a collision or grounding has oc-
17 curred.”.

18 **SEC. 102. INCENTIVE FOR OIL SHIPPERS TO CONVERT SIN-**
19 **GLE HULL VESSELS TO DOUBLE HULL VES-**
20 **SELS.**

21 Section 1004(c) of the Oil Pollution Act of 1990 (33
22 U.S.C. 2704(c)) is amended—

23 (1) in paragraph (1) by striking “Subsection
24 (a)” and inserting “Except as provided in paragraph
25 (4), subsection (a)”; and

1 (2) by adding at the end the following:

2 “(4) DOUBLE-HULLED VESSELS.—The excep-
3 tion in paragraph (1)(B) shall not apply—

4 “(A) to a tank vessel that, as of the date
5 of enactment of this paragraph, is equipped
6 with a double hull; or

7 “(B) to a double hull vessel that is replac-
8 ing another tank vessel not equipped with a
9 double hull that is being retired at least 5 years
10 prior to the applicable retirement date under
11 section 3703a(c) of title 46, United States
12 Code.”.

13 **SEC. 103. PREVENTION OF OIL SPILLS BY IMPROVEMENT**
14 **OF SAFETY OF TOWING VESSELS.**

15 (a) DEADLINE ON ISSUANCE OF FINAL REGULA-
16 TIONS.—If a final rule on navigation safety equipment for
17 towing vessels does not become effective by September 30,
18 1996, the proposed rule in the Notice of Proposed Rule-
19 making (60 Fed. Reg. 55890 (1995)) shall be considered
20 to be in effect as a final rule as of that date and shall
21 remain in effect until a final rule becomes effective.

22 (b) CONSIDERATION OF FIRE-SUPPRESSION EQUIP-
23 MENT IN TOWING SAFETY RULEMAKING.—In issuing a
24 final rule on navigation safety equipment for towing ves-
25 sels in accordance with subsection (a), the Secretary shall

1 establish a requirement that a towing vessel have a fire-
 2 suppression system or other equipment to provide ade-
 3 quate assurance that an onboard fire can be suppressed
 4 under reasonably foreseeable circumstances.

5 **SEC. 104. OTHER OIL PREVENTION ENHANCEMENT MEAS-**
 6 **URES.**

7 (a) REQUIREMENT FOR STUDY OF OIL SPILL
 8 RISKS.—

9 (1) IN GENERAL.—The Secretary shall coordi-
 10 nate with the Marine Board of the National Re-
 11 search Council on a study into how the designation
 12 of waters through which tank vessels transport oil,
 13 and the designation of shipping lanes for tank ves-
 14 sels, affect the risk of an oil spill.

15 (2) RECOMMENDATIONS.—In the study under
 16 paragraph (1), the Marine Board of the National
 17 Research Council shall recommend to the Secretary
 18 any changes to designations of waters that would
 19 minimize the risk of oil spills.

20 (b) LIGHTERING OPERATIONS.—The first sentence of
 21 section 3715(b) of title 46, United States Code, is amend-
 22 ed by striking “of this section” and inserting “that include
 23 requirements that the Secretary determines will provide
 24 protection to the environment that is as substantial as is
 25 economically and technologically feasible”.

TITLE II—IMPROVEMENT OF RESPONSES TO OIL SPILLS

SEC. 201. ACCESS TO TIMELY SHORT-TERM FINANCIAL ASSISTANCE FOR PERSONS INJURED BY OIL SPILLS.

(a) DAMAGES FOR LOSS OF PROFITS OR IMPAIRMENT OF EARNING CAPACITY.—Section 1002(b)(2)(E) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)(E)) is amended by striking the period at the end and inserting the following: “, in part or in full. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled under this subparagraph shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.”.

(b) CLAIMS PROCEDURE.—Section 1013(d) of the Oil Pollution Act of 1990 (33 U.S.C. 2713(d)) is amended by inserting after “unavailable” the following: “including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled,”.

(c) ADVERTISEMENT.—Section 1014(b) of the Oil Pollution Act of 1990 (33 U.S.C. 2714(b)) is amended—

(1) by striking “If a responsible party” and inserting the following:

1 “(1) IN GENERAL.—If a responsible party”;
2 and

3 (2) by adding at the end the following:

4 “(2) CLAIM FOR INTERIM DAMAGES.—An ad-
5 vertisement under paragraph (1) shall state that a
6 claimant may present a claim for interim, short-term
7 damages representing less than the full amount of
8 damages to which the claimant ultimately may be
9 entitled and payment of such a claim shall not pre-
10 clude recovery for damages not reflected in the paid
11 or settled partial claim.”.

12 (d) SUBROGATION.—Section 1015(a) of the Oil Pol-
13 lution Act of 1990 (33 U.S.C. 2715(a)) is amended—

14 (1) by redesignating subsection (b) as sub-
15 section (c); and

16 (2) by inserting after subsection (a) the follow-
17 ing:

18 “(b) INTERIM DAMAGES.—

19 “(1) IN GENERAL.—If a responsible party, a
20 guarantor, or the Fund has made payment to a
21 claimant for interim, short-term damages represent-
22 ing less than the full amount of damages to which
23 the claimant ultimately may be entitled, subrogation
24 under subsection (a) shall apply only with respect to

1 the portion of the claim reflected in the paid interim
2 claim.

3 “(2) FINAL DAMAGES.—Payment of such a
4 claim shall not foreclose a claimant’s right to recovery
5 of all damages to which the claimant otherwise
6 is entitled under this title or any other law.”.

7 **SEC. 202. ADVANCE PLANNING AND COORDINATION TO EN-**
8 **SURE PROMPT DECISIONMAKING ON RE-**
9 **OPENING AND CLOSING OF FISHING**
10 **GROUND.**

11 (a) NATIONAL GUIDANCE.—Section 311(j)(4)(D) of
12 the Federal Water Pollution Control Act (33 U.S.C.
13 1321(j)(4)(D)) is amended—

14 (1) in clause (i) by striking “and” at the end;

15 (2) in clause (ii) by striking the period and inserting
16 “; and”; and

17 (3) by adding at the end the following:

18 “(iii) acting through the Under Sec-
19 retary of Commerce for Oceans and At-
20 mosphere and in consultation with the Ad-
21 ministrator, the Director of the United
22 States Fish and Wildlife Service, and other
23 affected agencies, issue guidance for Area

1 Committees to use in developing a frame-
2 work for advanced planning and decision-
3 making with respect to the closing and re-
4 opening of fishing grounds following an oil
5 spill, which guidance shall include model
6 protocols and standards for the closing and
7 reopening of fishing areas.”.

8 (b) REQUIREMENT THAT AREA CONTINGENCY
9 PLANS CONTAIN AREA-SPECIFIC PROTOCOLS AND
10 STANDARDS.—

11 (1) COOPERATION WITH STATE AND LOCAL OF-
12 FICIALS.—Section 311(j)(4)(B)(ii) of the Federal
13 Water Pollution Control Act (33 U.S.C.
14 1321(j)(4)(B)(ii)) is amended by inserting after
15 “wildlife” the following: “, including advance plan-
16 ning with respect to the closing and reopening of
17 fishing grounds following an oil spill”.

18 (2) FRAMEWORK.—Section 311(j)(4)(C) of the
19 Federal Water Pollution Control Act (33 U.S.C.
20 1321(j)(4)(C)) is amended—

21 (A) by redesignating clauses (vii) and (viii)
22 as clauses (viii) and (ix), respectively; and

23 (B) by inserting after clause (vi) the fol-
24 lowing:

“(vii) develop a framework for advanced planning and decisionmaking with respect to the closing and reopening of fishing grounds following an oil spill, including protocols and standards for the closing and reopening of fishing areas;”.

**SEC. 203. ACCESS TO OIL SPILL LIABILITY TRUST FUND
FOR NATURAL RESOURCE DAMAGES.**

Section 6002 of the Oil Pollution Act of 1990 (33 U.S.C. 2752) is amended by striking subsection (b) and inserting the following:

“(b) EXCEPTIONS.—

“(1) IN GENERAL.—Subsection (a) shall not apply to—

“(A) section 1006(f), 1012(a) (2) or (4), or 5006(b); or

“(b) an amount not exceeding \$50,000,000 for any fiscal year that the President may make available from the Fund to—

“(i) carry out section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c));

“(ii) conduct the assessment of natural resource damages required under section 1006;

1 “(iii) develop restoration plans; and
 2 “(iv) implement the initial phases of
 3 restoration plans.

4 “(2) AVAILABILITY.—Amounts to which this
 5 subsection applies shall remain available until ex-
 6 pended.”.

7 **SEC. 204. ACCESS TO NECESSARY INFORMATION, EXPER-**
 8 **TISE, AND FUNDING TO MITIGATE NEAR-**
 9 **TERM ECOLOGICAL INJURY RESULTING**
 10 **FROM OIL SPILL.**

11 (a) ACCESS TO FUNDS TO MITIGATE NEAR-TERM
 12 INJURY.—Section 1012(a) of the Oil Pollution Act of
 13 1990 (33 U.S.C. 2712(a)) is amended—

14 (1) by striking the period at the end of para-
 15 graph (5) and inserting “; and”; and

16 (2) by adding at the end the following:

17 “(6) the payment of costs to mitigate ecological
 18 injury (including the immediate costs of manage-
 19 ment, at a level and of a type that are needed to
 20 mitigate ecological injury, as determined solely by
 21 the Federal On-Scene Coordinator).

22 (b) ACCESS TO SCIENTISTS WITH RELEVANT EX-
 23 PERTISE.—

24 (1) IDENTIFYING SCIENTISTS IN AREA CONTIN-
 25 GENCY PLANS.—Section 311(j)(4)(C) of the Federal

1 Water Pollution Control Act (as amended by section
2 202(b)(2) of this Act) is amended—

3 (A) by redesignating clauses (viii) and (ix)
4 as clauses (ix) and (x), respectively; and

5 (B) by inserting after clause (vii) the fol-
6 lowing:

7 “(viii) compile a list of local scientists,
8 both inside and outside Federal Government
9 service, with expertise in the environmental ef-
10 fects of spills of the types of oil typically trans-
11 ported in the area, who may be contacted to
12 provide information or participate in the sci-
13 entific support team convened in response to a
14 spill;”.

15 (c) ESTABLISHMENT OF SCIENTIFIC SUPPORT
16 TEAM.—Section 4202(b) of the Oil Pollution Act of 1990
17 (33 U.S.C. 1321 note) is amended by adding at the end
18 the following:

19 “(5) SCIENTIFIC SUPPORT TEAM.—

20 “(A) ESTABLISHMENT.—Not later than 6
21 months after the date of enactment of this
22 paragraph, the Secretary shall establish a proc-
23 ess under which a scientific support team shall
24 be convened immediately in response to each oil
25 spill covered by this Act.

1 “(B) PURPOSE.—The purpose of the sci-
2 entific support team shall be to provide useful
3 or necessary scientific information and support
4 to the response team and to recommend any
5 measures that will serve to mitigate ecological
6 injury immediately following such a spill.

7 “(C) PARTICIPATION BY SCIENTISTS WITH
8 EXPERTISE.—The process under subparagraph
9 (A) shall provide for consideration for participa-
10 tion on a scientific support team to be given to
11 scientists identified in the area contingency plan
12 with expertise in the environmental effects of
13 the kind of oil that has been spilled or that has
14 actually or potentially affected natural re-
15 sources.

16 “(D) OPERATIONS OPEN TO THE PUB-
17 LIC.—To the extent it does not interfere with
18 its expeditious operation, the operations of a
19 scientific team shall be open to the public.”.

20 (d) ACCESS TO USEFUL AND NECESSARY INFORMA-
21 TION.—

22 (1) ESTABLISHMENT OF INFORMATION CLEAR-
23 INGHOUSE.—Section 7001(a) the Oil Pollution Act
24 of 1990 (33 U.S.C. 2761(a)) is amended—

1 (A) by striking “may designate” at the end
2 of paragraph (3) and all that follows through
3 “representative” and inserting “may designate.
4 A representative”; and

5 (B) by adding at the end the following:

6 “(4) DISSEMINATION OF INFORMATION.—The
7 Interagency Committee shall disseminate and com-
8 pile information regarding previous spills, including
9 data from universities, research institutions, State
10 governments, and other nations, as appropriate.”.

11 (2) REQUIREMENT THAT NATIONAL RESPONSE
12 UNITS MAINTAIN INFORMATION ON ENVIRONMENTAL
13 EFFECTS OF OIL SPILLS.—Section 311(j)(2) of the
14 Federal Water Pollution Control Act (33 U.S.C.
15 1321(j)(2)) is amended—

16 (A) by redesignating subparagraphs (F)
17 and (G) as subparagraphs (G) and (H), respec-
18 tively; and

19 (B) by inserting the following after sub-
20 paragraph (E):

21 “(F) shall maintain and update a body of
22 information on the environmental effects of var-
23 ious types of oil spills and how best to mitigate
24 those effects, which shall be kept in a form that

1 is readily transmittable to response teams re-
2 sponding to a spill under this Act;”.

3 **SEC. 205. COMPLIANCE WITH RESPONSE PLANS.**

4 Section 311(c)(3)(B) of the Federal Water Pollution
5 Control Act (33 U.S.C. 1321(c)(3)(B)) is amended by
6 striking “or as directed by the President” and inserting
7 “unless the President or the on-scene coordinator deter-
8 mines that deviation from the plan would provide for a
9 more expeditious or effective response to the spill or miti-
10 gation of its environmental effects.”.

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