

## REFERENCES IN TEXT

The Wilderness Act, referred to in text, is Pub. L. 88-577, Sept. 3, 1964, 78 Stat. 890, as amended, which is classified generally to chapter 23 (§ 1131 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1131 of Title 16 and Tables.

## CODIFICATION

Section was enacted as part of the Alaska National Interest Lands Conservation Act, and not as part of the Federal Land Policy and Management Act of 1976 which comprises this chapter.

## CHAPTER 36—OUTER CONTINENTAL SHELF RESOURCE MANAGEMENT

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**§ 1801. Congressional findings**

The Congress finds and declares that—

(1) the demand for energy in the United States is increasing and will continue to increase for the foreseeable future;

(2) domestic production of oil and gas has declined in recent years;

(3) the United States has become increasingly dependent upon imports of oil from foreign nations to meet domestic energy demand;

(4) increasing reliance on imported oil is not inevitable, but is rather subject to significant reduction by increasing the development of domestic sources of energy supply;

(5) consumption of natural gas in the United States has greatly exceeded additions to domestic reserves in recent years;

(6) technology is or can be made available which will allow significantly increased domestic production of oil and gas without undue harm or damage to the environment;

(7) the Outer Continental Shelf contains significant quantities of oil and natural gas and is a vital national resource reserve which must be carefully managed so as to realize fair value, to preserve and maintain competition, and to reflect the public interest;

(8) there presently exists a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the development of the oil and natural gas reserves of the Outer Continental Shelf;

(9) environmental and safety regulations relating to activities on the Outer Continental Shelf should be reviewed in light of current technology and information;

(10) the development, processing, and distribution of the oil and gas resources of the Outer Continental Shelf, and the siting of related energy facilities, may cause adverse impacts on various States and local governments;

(11) policies, plans, and programs developed by States and local governments in response to activities on the Outer Continental Shelf cannot anticipate and ameliorate such adverse impacts unless such States, working in close cooperation with affected local governments, are provided with timely access to information regarding activities on the Outer Continental Shelf and an opportunity to review and comment on decisions relating to such activities;

(12) funds must be made available to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(13) because of the possible conflicts between exploitation of the oil and gas resources in the Outer Continental Shelf and other uses of the marine environment, including fish and shellfish growth and recovery, and recreational activity, the Federal Government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation;

(14) the oil and gas resources of the Outer Continental Shelf are limited, nonrenewable resources which must be developed in a manner which takes into consideration the Nation's long-range energy needs and also assures adequate protection of the renewable

resources of the Outer Continental Shelf which are a continuing and increasingly important source of food and protein to the Nation and the world; and

(15) funds must be made available to pay for damage to commercial fishing vessels and gear resulting from activities involving oil and gas exploration, development, and production on the Outer Continental Shelf.

(Pub. L. 95-372, title I, § 101, Sept. 18, 1978, 92 Stat. 630.)

#### SHORT TITLE

Section 1 of Pub. L. 95-372 provided: "That this Act [enacting this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amending sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 1348 and 1811 of this title] may be cited as the 'Outer Continental Shelf Lands Act Amendments of 1978'."

#### § 1802. Congressional declaration of purposes

The purposes of this chapter are to—

(1) establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf which are intended to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;

(2) preserve, protect, and develop oil and natural gas resources in the Outer Continental Shelf in a manner which is consistent with the need (A) to make such resources available to meet the Nation's energy needs as rapidly as possible, (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments, (C) to insure the public a fair and equitable return on the resources of the Outer Continental Shelf, and (D) to preserve and maintain free enterprise competition;

(3) encourage development of new and improved technology for energy resource production which will eliminate or minimize risk of damage to the human, marine, and coastal environments;

(4) provide States, and through States, local governments, which are impacted by Outer Continental Shelf oil and gas exploration, development, and production with comprehensive assistance in order to anticipate and plan for such impact, and thereby to assure adequate protection of the human environment;

(5) assure that States, and through States, local governments, have timely access to information regarding activities on the Outer Continental Shelf, and opportunity to review and comment on decisions relating to such activities, in order to anticipate, ameliorate, and plan for the impacts of such activities;

(6) assure that States, and through States, local governments, which are directly affected by exploration, development, and production of oil and natural gas are provided an op-

portunity to participate in policy and planning decisions relating to management of the resources of the Outer Continental Shelf;

(7) minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas, and the recovery of other resources such as fish and shellfish;

(8) establish an oilspill liability fund to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(9) insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time; and

(10) establish a fishermen's contingency fund to pay for damages to commercial fishing vessels and gear due to Outer Continental Shelf activities.

(Pub. L. 95-372, title I, § 102, Sept. 18, 1978, 92 Stat. 631.)

#### REFERENCES IN TEXT

This chapter, referred to in opening provision, was in the original "this Act", meaning Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### SUBCHAPTER I—OFFSHORE OIL SPILL POLLUTION FUND

##### § 1811. Definitions

For the purposes of this subchapter, the term—

(1) "Secretary" means the Secretary of Transportation;

(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 1812 of this title;

(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 1301(a)(2) of this title), and which is

transporting oil directly from an offshore facility;

(6) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

(B) is not engaged in commercial service;

(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 1502(10) of title 33);

(9) "oil pollution" means—

(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 1301(a)(2) of this title), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this subchapter;

(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this subchapter;

(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this subchapter;

(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Com-

monwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs;

(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

(17) "claim" means a demand in writing for a sum certain;

(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

(20) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

(21) "property" means littoral, riparian, or marine property;

(22) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 1321 of title 33, and section 1474 of title 33; and

(B) cleanup costs, other than the costs described in subparagraph (A);

(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(Pub. L. 95-372, title III, § 301, Sept. 18, 1978, 92 Stat. 670.)

#### REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in par. (9), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

#### EFFECTIVE DATE

Section 315 of Pub. L. 95-372 provided that:

"(a) This section, subsection (e) of section 304 [section 1814(e) of this title], subsection (d) of section 305 [section 1815(d) of this title], and all provisions of this title [this subchapter] authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title [Sept. 18, 1978].

"(b) All other provisions of this title [this subchapter], and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title [Sept. 18, 1978]."

#### EX. ORD. NO. 12123. DELEGATION OF CERTAIN FUNCTIONS OF PRESIDENT

Ex. Ord. No. 12123, Feb. 26, 1979, 44 F.R. 11199, provided:

By the authority vested in me as President of the United States of America by Section 303(b)(3), 305, and 312(a) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 674, 677, and 684, 43 U.S.C. 1813(b)(3), 1815, and 1822 [1822(a)]), relating to the Offshore Oil Spill Pollution Fund, and by Section 301 of Title 3 of the United States Code, and in order to assign certain management responsibilities related to protecting the environment from offshore oil spill damage, it is hereby ordered as follows:

##### 1-1. ASSERTION OF OIL POLLUTION CLAIMS

1-101. The authority vested in the President by Section 303(b)(3) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978, hereinafter referred to as the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)), is delegated to the Secretary of Commerce with respect to those natural resources which are subject to his management or control.

1-102. The authority vested in the President by Section 303(b)(3) of the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)) is delegated to the Secretary of the Interior with respect to those natural resources which are subject to his management or control.

##### 1-2. DETERMINATION OF FINANCIAL RESPONSIBILITY AND THE ASSESSMENT AND COMPROMISE OF PENALTIES

1-201. The authority vested in the President by Section 305(a)(1) of the Act (92 Stat. 677, 43 U.S.C. 1815(a)(1)), relating to vessels, is delegated to the Federal Maritime Commission.

1-202. The authority vested in the President by Section 305(b) of the Act (92 Stat. 678, 43 U.S.C. 1815(b)), relating to offshore facilities, is delegated to the Secretary of Transportation.

1-203. The authority vested in the President by Section 312(a)(2) of the Act (92 Stat. 684, 43 U.S.C. 1822(a)(2)), relating to the assessment and compromise of penalties concerning vessels, is delegated to the Federal Maritime Commission.

JIMMY CARTER.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1812, 1814 of this title.

#### § 1812. Offshore Oil Pollution Compensation Fund

(a) Establishment in Treasury; limitation on amount; administration by Secretary of Transportation and Secretary of Treasury

There is hereby established in the Treasury of the United States on ' Offshore Oil Pollution Compensation Fund in an amount not to exceed \$200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this subchapter. The Fund may sue and be sued in its own name.

(b) Sources of deposits

The Fund shall be composed of—

(1) all fees collected pursuant to subsection (d) of this section; and

(2) all other moneys recovered or collected on behalf of the Fund under section 1818 of this title or any other provision of this subchapter.

(c) Use of moneys; promulgation of regulations

The Fund shall be immediately available for—

(1) removal costs described in section 1811(22) of this title;

(2) the processing and settlement of claims under section 1817 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this subchapter, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 1818 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

(d) Fee; levy and collection; rate; civil penalty; criminal violation; promulgation of regulations

(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to

<sup>1</sup>So in original. Probably should be "an".

insure that the Fund is maintained at a level of not less than \$100,000,000 and not more than \$200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed \$10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

(e) Determination of level of funding; investment of excess moneys

(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

(f) Notes and other obligations to meet insufficiencies in Fund

If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of

the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31. The purpose for which securities may be issued under that chapter are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(Pub. L. 95-372, title III, § 302, Sept. 18, 1978, 92 Stat. 672.)

#### CODIFICATION

In subsec. (f), "chapter 31 of title 31" and "that chapter" were substituted for "the Second Liberty Bond Act" and "that Act", respectively, on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1811, 1823 of this title.

#### § 1813. Claims for economic loss from oil pollution

##### (a) Permissible claims

Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

- (1) removal costs; and
- (2) damages, including—
  - (A) injury to, or destruction of, real or personal property;
  - (B) loss of use of real or personal property;
  - (C) injury to, or destruction of, natural resources;
  - (D) loss of use of natural resources;
  - (E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and
  - (F) loss of tax revenue for a period of one year due to injury to real or personal property.

##### (b) Persons entitled to assert claims

A claim authorized by subsection (a) of this section may be asserted—

- (1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—
  - (A) that he is entitled to a defense to liability under section 1814(c)(1) or 1814(c)(2) of this title; or
  - (B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 1814(b) of this title, except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under paragraphs (2)(A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under paragraph (2)(C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

(5) under paragraph (2)(F), by the Federal Government and any State or political subdivision thereof;

(6) under paragraphs (2)(A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

(c) Class action where Attorney General fails to take action

If the Attorney General fails to take action under paragraph (7) of subsection (b) of this section within sixty days of the date on which the Secretary designates a source under section 1816 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

(Pub. L. 95-372, title III, § 303, Sept. 18, 1978, 92 Stat. 674.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (b)(6)(C), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1814, 1815, 1817, 1818 of this title.

§ 1814. Scope of liability

(a) Liability of owners and operators of nonpublic vessels or offshore facilities

Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 1811(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 1813 of this title.

(b) Limitation of liability

Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

(1) in the case of a vessel, limited to \$250,000 or \$300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to \$35,000,000 for all damages.

(c) Exceptions and defenses

There shall be no liability under subsection (a) of this section—

(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

\*So in original. Probably should be "irresistible".

**(d) Costs of removal**

Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

**(e) Report to Congress**

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

**(f) Liability of Fund**

(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 1813 of this title, to the extent that such losses are not otherwise compensated.

(2) Except for the removal costs specified in section 1811(22) of this title, there shall be no liability under paragraph (1) of this subsection—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

**(g) Interest**

(1) In addition to the losses for which claims may be asserted under section 1813 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 1816 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

**(h) Actions by owners or operators**

Nothing in this subchapter shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

**(i) Inconsistent provisions**

To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 183(a) of title 46.

(Pub. L. 95-372, title III, § 304, Sept. 18, 1978, 92 Stat. 675.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1813, 1815, 1817, 1818 of this title.

**§ 1815. Financial responsibility**

(a) Establishment of evidence by owners and operators of vessels; acceptable methods; authority of Secretary to deny entry to port and detain at port; access of Secretary to offshore facilities and vessels

(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 1814(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary, in accordance with regulations promulgated by him, shall—

(A) deny entry to any port or place in the United States or to the navigable waters to; and

(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], and such



facilities and vessels shall, upon request, show certification of financial responsibility.

(b) Establishment of evidence by owners and operators of offshore facilities

The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 1814(b) of this title, or \$35,000,000, whichever is less.

(c) Claims against guarantor

Any claim authorized by section 1813(a) of this title may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this subchapter. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

(d) Study respecting private oil pollution insurance; submittal of reports

The President shall conduct a study to determine—

(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

The President shall submit the results of his study, together with his recommendation, within one year after September 18, 1978, and shall submit an interim report on his study within three months after September 18, 1978.

(Pub. L. 95-372, title III, § 305, Sept. 18, 1978, 92 Stat. 677.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(3), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1822 of this title.

§ 1816. Notification, designation, and advertisement

(a) Notification of incident to Secretary; use as evidence

The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

(b) Designation of source of oil pollution; notification of owners, operators, and guarantors; advertisement of designation and procedures respecting claims against owners, operators, and guarantors

(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

(c) Advertisement or other notification respecting claims against Fund

In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

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

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

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

(d) Commencement of advertisement

Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

(Pub. L. 95-372, title III, § 306, Sept. 18, 1978, 92 Stat. 678.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1813, 1814, 1817, 1818, 1822 of this title.

## § 1817. Claims settlement

## (a) Claims presented to owner, operator, or guarantor

Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

## (b) Claims presented to Fund

All claims shall be presented to the Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 1816(c) of this title; or

(2) where the owner or operator may recover under the provisions of section 1813(b)(1) of this title.

## (c) Irrevocable election to commence court action or present claim to Fund

In the case of a claim presented in accordance with subsection (a) of this section, and in which—

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

(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 1816(b)(2) of this title, whichever is later.

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

## (d) Uncompensated damages

In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 1814(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

## (e) Transmittal of claims and supporting documents to Fund

In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

## (f) Submittal of dispute to Secretary; election to commence court action

In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

(1) denies all liability for the claim, for any reason; or

(2) does not settle the claim by payment to the claimant within sixty days after the date

upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 1816(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

## (g) Establishment of procedures and standards for appraisal and settlement of claims against Fund; use of private insurance and claims adjustment organizations and State agencies to process claims; use of Federal personnel to process claims

(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 5 of title 41 upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of \$100,000, or two or more claims aggregating in excess of \$200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

## (h) Appointment of panels

Notwithstanding subsection (b) of section 556 of title 5, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may

be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

(i) Referral of disputes; qualifications of administrative law judges; adjudication and decision pursuant to title 5; conduct of hearing; review by Secretary; review of final orders of Secretary

(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5 or (B) a panel appointed under subsection (h) of this section.

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5. In any proceeding subject to this subsection, the presiding officer may require by subpoena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5 and rules promulgated by the Secretary. If a person fails or refuses to obey a subpoena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5 in the district courts of the United States.

(j) Service of complaint and other pleadings upon Fund; intervention by Fund; dismissal of Fund from action; conclusiveness of judgment; failure to give notice to Fund

(1) In any action brought pursuant to this subchapter against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this subchapter, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 1814(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

(k) Joinder

In any action brought against the Fund under this subchapter, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this subchapter.

(l) Time for presenting claims; limitation of actions

No claim may be presented, nor may an action be commenced for economic losses recoverable under this subchapter, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 1813(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

(Pub. L. 95-372, title III, § 307, Sept. 18, 1978, 92 Stat. 679.)

#### REFERENCES IN TEXT

Executive Order 11222, as amended referred to in subsec. (h), is set out as a note under section 201 of Title 18, Crimes and Criminal Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1812, 1818 of this title.

## § 1818. Subrogation

## (a) Rights, claims, and causes of action of compensated claimants

Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 1813 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this subchapter.

## (b) Action commenced by Attorney General

Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this subchapter. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

## (c) Elements of recovery

In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b) of this section, the Fund shall recover—

(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 1817(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 1817(c)(1) of this title—

(A) subject only to the limitation of liability to which the defendant is entitled under section 1814(b) of this title, the amount the Fund has paid to the claimant, without reduction;

(B) interest on such amount, at the rate calculated in accordance with section 1814(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the Fund pursuant to section 1817(c)(2) of this title—

(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 1814(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount which the Fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 1814(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 1816 of this title, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

## (d) Payment of interest to claimant

The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A) of this section, for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

## (e) Recovery of interest and costs by Fund

The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this subchapter.

(Pub. L. 95-372, title III, § 308, Sept. 18, 1978, 92 Stat. 682.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1812 of this title.

**§ 1819. Jurisdiction and venue**

(a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this subchapter, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(Pub. L. 95-372, title III, § 309, Sept. 18, 1978, 92 Stat. 683.)

**§ 1820. Relationship to other State or Federal laws****(a) Compensation for damages or removal costs**

Any person who receives compensation for damages or removal costs pursuant to this subchapter shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this subchapter.

**(b) Establishment of evidence of financial responsibility**

No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

**(c) Concurrent liability**

Except as otherwise provided in this subchapter, this subchapter shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

(Pub. L. 95-372, title III, § 310, Sept. 18, 1978, 92 Stat. 684.)

**§ 1821. Oil discharge prohibition**

The discharge of oil from any offshore facility or vessel, in quantities which the President under section 1321(b) of title 33 determines to be harmful, is prohibited.

(Pub. L. 95-372, title III, § 311, Sept. 18, 1978, 92 Stat. 684.)

**§ 1822. Penalties**

(a)(1) Any person who fails to comply with the requirements of section 1815 of this title, the regulations promulgated thereunder, or any

denial or detention order, shall be subject to a civil penalty of not to exceed \$10,000.

(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 1815(a)(1) of this title, and by the Secretary, in connection with section 1815(a)(3) and section 1815(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 1816(a) of this title shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(Pub. L. 95-372, title III, § 312, Sept. 18, 1978, 92 Stat. 684.)

**§ 1823. Authorization of appropriations**

(a) There is authorized to be appropriated for the administration of this subchapter \$10,000,000 for the fiscal year ending September 30, 1979, \$5,000,000 for the fiscal year ending September 30, 1980, and \$5,000,000 for the fiscal year ending September 30, 1981.

(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this subchapter, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 1812(f) of this title.

(c) Notwithstanding any other provision of this subchapter, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 1812(f) of this title, to charge and collect fees pursuant to section 1812(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after September 18, 1978.

(Pub. L. 95-372, title III, § 313, Sept. 18, 1978, 92 Stat. 685.)

**§ 1824. Annual report**

Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this subchapter.

(Pub. L. 95-372, title III, § 314, Sept. 18, 1978, 92 Stat. 685.)

**SUBCHAPTER II—FISHERMEN'S  
CONTINGENCY FUND**

**§ 1841. Definitions**

As used in this subchapter, the term—

(1) "area affected by Outer Continental Shelf activities" means any geographic area:

(A) which is under oil or gas lease on the Outer Continental Shelf;

(B) where Outer Continental Shelf exploration, development or production activities have been permitted, except geophysical activities;

(C) where pipeline rights-of-way have been granted; or

(D) otherwise impacted by such activities including but not limited to expired lease areas, relinquished rights-of-way and easements, Outer Continental Shelf supply vessel routes, or other areas as determined by the Secretary;

(2) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State, or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least 75 per centum of the interest of therein owned by citizens of the United States. Seventy-five per centum of the interest in the corporation shall not be deemed to be owned by citizens of the United States—

(A) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;

(B) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States;

(C) if through any contract or understanding it is so arranged that more than 25 per centum of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or

(D) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States;

(3) "commercial fisherman" means any citizen of the United States who owns, operates, or derives income from being employed on a commercial fishing vessel;

(4) "commercial fishing vessel" means any vessel, boat, ship, or other craft which is (A) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (B) used for, equipped to be used for, or of a type which is normally used for commercial purposes for the catching, taking, or harvesting of fish or

the aiding or assisting of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing;

(5) "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species;

(6) "fishing gear" means (A) any commercial fishing vessel, and (B) any equipment of such vessel, whether or not attached to such a vessel;

(7) "Fund" means the Fishermen's Contingency Fund established under section 1842 of this title; and

(8) "Secretary" means the Secretary of Commerce or the designee of such Secretary.

(Pub. L. 95-372, title IV, § 401, Sept. 18, 1978, 92 Stat. 685; Pub. L. 97-212, §§ 1, 8, June 30, 1982, 96 Stat. 143, 147.)

**AMENDMENTS**

1982—Pub. L. 97-212 added par. (1), redesignated former pars. (1) to (7) as (2) to (8), respectively, and struck out "at sea" following "the aiding or assisting" in par. (4)(B) as redesignated.

**EFFECTIVE DATE OF 1982 AMENDMENT**

Section 9 of Pub. L. 97-212 provided that:

"(a) Except as provided for in subsection (b), the amendments made by this Act [amending sections 1841 to 1845 of this title, repealing section 1847 of this title, enacting a provision set out as a note under section 1823 of Title 16, Conservation, and amending a provision set out as a note under section 1823 of Title 16] shall apply with respect to claims for damages that are filed, on or after the date of the enactment of this Act [June 30, 1982], with the Secretary of Commerce under section 405(a) of the Outer Continental Shelf Lands Act Amendments of 1978 [section 1845(a) of this title].

"(b)(1) Any commercial fisherman who filed a claim with the Secretary of Commerce for compensation under title IV of such amendments of 1978 [this subchapter] before the date of the enactment of this Act [June 30, 1982] may, if no decision on such claim was rendered under section 405(d) of such title IV [section 1845(d) of this title] before such date of enactment [June 30, 1982], refile such claim with the Secretary if the claimant notifies the Secretary in writing within thirty days after notification under paragraph (2) of his eligibility to refile the claim that he intends to so refile. If timely notification of intent to refile is made under the preceding sentence, any action pending with respect to the original claim shall be suspended pending the refiling of the claim under paragraph (2) and, if such refiling is timely made, such action shall be vacated.

"(2) The Secretary shall notify each claimant eligible to refile a claim under paragraph (1) of such eligibility within 10 days after the date of enactment of this Act [June 30, 1982].

"(3) A claim for which notification on intent to refile was timely made under paragraph (1) must be refilled with the Secretary within the thirty-day period after the date on which the regulations promulgated to implement the amendments made by this Act become final or action shall be resumed with respect to such claim without regard to the amendments made by this Act.

"(4) The amendments made by this Act shall apply with respect to any claim that is refilled on a timely basis under paragraph (3)."

<sup>1</sup>So in original. The "of" is probably unnecessary.

**§ 1842. Fishermen's Contingency Fund**

(a) Establishment; availability; source of deposits; limitation on amount; interest-bearing accounts; litigation

(1) There is established in the Treasury of the United States a Fishermen's Contingency Fund. The Fund shall be available to the Secretary without fiscal year limitations as a revolving fund for the purpose of making payments pursuant to this section. The Fund shall consist of—

(A) revenues received from investments made under paragraph (3);

(B) amounts collected under subsection (b) of this section; and

(C) amounts recovered by the Secretary under section 1845(h)(2) of this title.

The total amount in the Fund that is collected under subsection (b) of this section may at no time exceed \$2,000,000; and the total amount in the Fund which is attributable to revenue received under paragraph (3) or recovered by the Secretary under section 1845(h)(2) of this title shall be expended prior to amounts collected under subsection (b) of this section. Not more than 8 percent of the total amount in the Fund may be expended in any fiscal year for paying the administrative and personnel expenses referred to in paragraph (2)(A).

(2) The Fund shall be available, as provided for in appropriation Acts solely for the payment of—

(A) the personnel and administrative expenses incurred in carrying out this subchapter;

(B) any claim, in accordance with procedures established under this section, for damages that are compensable under this subchapter; and

(C) attorney and other fees awarded under section 1845(e) of this title with respect to any such claim.

(3) Sums in the Fund that are not currently needed for the purposes of the Fund shall be kept on deposit in appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury or invested in obligations of, or guaranteed by, the United States. Any revenue accruing from such deposits and investments shall be deposited into the Fund.

(4) The Fund may sue and be sued in its own name. All litigation by or against the Fund shall be referred to the Attorney General.

(b) Payments by each holder of lease, permit, easement, or right-of-way

(1) Except as provided in paragraph (2), each holder of a lease that is issued or maintained under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] and each holder of an exploration permit, or an easement or right-of-way for the construction of a pipeline in any area of the Outer Continental Shelf, shall pay an amount specified by the Secretary. The Secretary of the Interior shall collect such amount and deposit it into the Fund. In any calendar year, no holder of a lease, permit, easement, or right-of-way shall be required to pay an amount in excess of \$5,000 per lease, permit, easement, or right-of-way.

(2) Payments may not be required under paragraph (1) by the Secretary of the Interior with respect to geological permits and geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(Pub. L. 95-372, title IV, § 402, Sept. 18, 1978, 92 Stat. 686; Pub. L. 97-212, § 2, June 30, 1982, 96 Stat. 143.)

**REFERENCES IN TEXT**

The Outer Continental Shelf Lands Act, referred to in subsec. (b)(1), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

**AMENDMENTS**

1982—Subsec. (a). Pub. L. 97-212 redesignated as subsec. (a)(1) former subsec. (a) and in subsec. (a)(1) as so redesignated substituted provisions relating to the source of funds, that the total amount of the Fund would not exceed \$2,000,000, that the total amount in the Fund which is attributable to revenue received under par. (3) as amended or recovered by the Secretary under section 1845(h)(2) of this title be expended prior to amounts collected under subsec. (b) as amended, and that not more than 8 percent of the total amount in the Fund be expended in any fiscal year for the paying of administrative and personnel expenses, for provisions that the amounts paid pursuant to former subssecs. (c) and (d) of this section be deposited in the Fund, and that the total amount in the Fund not exceed \$1,000,000, redesignated as subsec. (a)(2) former subsec. (e), and as so redesignated struck out provision that the amounts disbursed for administrative or personnel expenses not exceed 15 percent of the amounts deposited in a revolving account for that fiscal year, added as subsec. (a)(3) provisions that the sums of the Fund be kept on deposit in interest-bearing accounts, and added as subsec. (a)(4) provision that all litigation be referred to the Attorney General.

Subsec. (b). Pub. L. 97-212 redesignated as subsec. (b)(1) provisions of former subsec. (c) and added as subsec. (b)(2) provision that payments not be required under par. (1) by the Secretary of the Interior with respect to geological and geophysical permits other than prelease exploratory drilling permits issued under section 1340 of this title. Former subsec. (b) relating to the establishment and maintenance of an area account within the Fund was struck out.

Subsec. (c). Pub. L. 97-212 redesignated subsec. (c) as (b)(1).

Subsec. (d). Pub. L. 97-212 struck out subsec. (d) which related to the level of area account funds.

Subsec. (e). Pub. L. 97-212 redesignated subsec. (e) as (a)(2).

**EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97-212 applicable with respect to claims for damages filed on or after June 30, 1982, with the Secretary of Commerce under section 1845(a) of this title, with provision for the refile of previously filed claims under certain circumstances, see section 9 of Pub. L. 97-212, set out as a note under section 1841 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1841 of this title.

### § 1843. Duties and powers of Secretary

- (a) Prescription and amendment of regulations respecting settlement of claims; identification classification of potential hazards to commercial fishing

In carrying out the provisions of this subchapter, the Secretary shall—

- (1) prescribe, and from time to time amend, regulations for the filing, processing, and fair and expeditious settlement of claims pursuant to this subchapter, including a time limitation on the filing of such claims (except that, notwithstanding any other provision of law, final regulations implementing the 1981 amendments to this subchapter shall be published in the Federal Register within 120 days after the date of the enactment of such amendments); and
- (2) identify and classify all potential hazards to commercial fishing caused by Outer Continental Shelf oil and gas exploration, development, and production activities, including all obstructions on the bottom, throughout the water column, and on the surface.

- (b) Establishment of regulations respecting color coding, stamping, or labeling of equipment, tools, etc., used on Outer Continental Shelf

The Secretary of the Interior shall establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.

- (c) Disbursement of payments to compensate commercial fishermen; restrictions

(1) Payments shall be disbursed by the Secretary from the Fund to compensate commercial fishermen for actual and consequential damages, including resulting economic loss, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with Outer Continental Shelf oil and gas exploration, development, or production activities. The compensation payable under this section for resulting economic loss shall be an amount equal to 25 per centum of such loss. For purposes of this subsection, the term "resulting economic loss" means the gross income, as estimated by the Secretary, that a commercial fisherman who is eligible for compensation under this section will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, no payment may be made by the Secretary from the Fund—

(A) to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim;

(B) if the damage set forth in the claim was sustained prior to September 18, 1978;

(C) in the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed; and

(D) for any portion of the damages claimed with respect to which the claimant has received, or will receive, compensation from insurance.

(Pub. L. 95-372, title IV, § 403, Sept. 18, 1978, 92 Stat. 687; Pub. L. 96-561, title II, § 240(b)(2), Dec. 22, 1980, 94 Stat. 3301; Pub. L. 97-212, §§ 3, 7, June 30, 1982, 96 Stat. 144, 147.)

#### REFERENCES IN TEXT

The 1981 amendments to this subchapter, referred to in subsec. (a)(1), probably means the amendments made to this subchapter in 1982 by Pub. L. 97-212, which amended sections 1841 to 1845 of this title, repealed section 1847 of this title, and enacted a provision set out as a note under section 1841 of this title. Pub. L. 97-212 also enacted a provision set out as a note under section 1823 of Title 16, Conservation, and amended a provision set out as a note under section 1823 of Title 16.

The date of enactment of such amendments, referred to in subsec. (a)(1), probably means the date of enactment of Pub. L. 97-212, which was approved June 30, 1982.

#### AMENDMENTS

1982—Subsec. (a)(1). Pub. L. 97-212, § 7, substituted "claims (except that, notwithstanding any other provision of law, final regulations implementing the 1981 amendments to this subchapter shall be published in the Federal Register within 120 days after the date of the enactment of such amendments); and" for "claims; and".

Subsec. (c)(1). Pub. L. 97-212, § 3(1), substituted "Fund" for "appropriate area account" and "resulting economic loss" for "loss of profits", inserted "Outer Continental Shelf" following "items associated with", struck out "in such area, whether or not such damage occurred in such area" after "production activities", and added provisions that compensation payable under this section for resulting economic loss be an amount equal to 25 per centum of such loss and provision defining "resulting economic loss" for purposes of subsec. (c).

Subsec. (c)(2). Pub. L. 97-212, § 3(2), substituted "the Fund" for "any area account established under this subchapter" in provisions preceding subpar. (A), struck out subpars. (A) and (E) which had related, respectively, to damage caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party and the party admitted responsibility and to loss of profits for any period in excess of 6 months unless such claim was supported by records with respect to the claimant's profits during the previous 12-month period, redesignated subpars. (B), (C), and (D) as (A), (B), and (C) respectively, redesignated subpar. (F) as (D), and in subpar. (D) as so redesignated, substituted "received, or will receive," for "or will receive".

1980—Subsec. (c)(2)(A). Pub. L. 96-561 added reference to the party admitting responsibility.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-212 applicable with respect to claims for damages filed on or after June 30, 1982, with the Secretary of Commerce under section 1845(a) of this title, with provision for the refiling of previously filed claims under certain circumstances, see section 9 of Pub. L. 97-212, set out as a note under section 1841 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1845 of this title.



## § 1844. Burden of proof

With respect to any claim for damages filed under this subchapter, there shall be a presumption that such damages were due to activities related to oil and gas exploration, development, or production if the claimant establishes that—

(1) the commercial fishing vessel was being used for fishing and was located in an area affected by Outer Continental Shelf activities;

(2) a report on the location of the material, equipment, tool, container, or other item which caused such damages and the nature of such damages was made within fifteen days after the date on which the vessel first returns to a port after discovering such damages;

(3) there was no record on the latest nautical charts or Notice to Mariners in effect at least 15 days prior to the date such damages were sustained that such material, equipment, tool, container, or other item existed where such damages occurred, except that in the case of damages caused by a pipeline, the presumption established by this section shall obtain whether or not there was any such record of the pipeline on the damage date; and

(4) there was no proper surface marker or lighted buoy which was attached or closely anchored to such material, equipment, tool, container, or other item.

(Pub. L. 95-372, title IV, § 404, Sept. 18, 1978, 92 Stat. 688; Pub. L. 97-212, § 4, June 30, 1982, 96 Stat. 145.)

## AMENDMENTS

1982—Pub. L. 97-212, § 4(1), substituted "under this subchapter" for "pursuant to this subchapter" and "damages were due to activities related to oil and gas exploration, development, or production" for "claim is valid" in the provisions preceding par. (1).

Par. (2). Pub. L. 97-212, § 4(2), substituted "fifteen days after the date on which the vessel first returns to a port after discovering such damages" for "five days after the date on which such damages were discovered".

Par. (3). Pub. L. 97-212, § 4(3), inserted "the latest" following "no record on", struck out "the" preceding "Notice to Mariners", and substituted "in effect at least 15 days prior to the date" for "on the date" and "where such damages occurred, except that in the case of damages caused by a pipeline, the presumption established by this section shall obtain whether or not there was any such record of the pipeline on the damage date" for "in such area".

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-212 applicable with respect to claims for damages filed on or after June 30, 1982, with the Secretary of Commerce under section 1845(a) of this title, with provision for the refiling of previously filed claims under certain circumstances, see section 9 of Pub. L. 97-212, set out as a note under section 1841 of this title.

## § 1845. Claims procedure

## (a) Filing requirement; time to file

Any commercial fisherman suffering damages compensable under this subchapter may file a claim for compensation with the Secretary, except that no such claim may be filed more

than 60 days after the date of discovery of the damages with respect to which such claim is made.

## (b) Transmittal of copy of claim to Secretary of the Interior; reference to Secretary

Upon receipt of any claim under this section, the Secretary shall transmit a copy of the claim to the Secretary of the Interior and shall take such further action regarding the claim that is required under subsection (d) of this section.

## (c) Notification to persons engaged in activities associated with Outer Continental Shelf energy activities; response of persons notified; submittal of evidence

The Secretary of the Interior shall make reasonable efforts to notify all persons known to have engaged in activities associated with Outer Continental Shelf energy activity in the vicinity. Each such person shall promptly notify the Secretary and the Secretary of the Interior as to whether he admits or denies responsibility for the damages claimed. Any such person, including lessees or permittees or their contractors or subcontractors, may submit evidence at any proceeding conducted with respect to such claim.

## (d) Acceptance of claim by Secretary; time to render decision; review of initial determination

(1) The Secretary shall, under regulations prescribed pursuant to section 1843(a) of this title, specify the form and manner in which claims must be filed.

(2) The Secretary may not accept any claim that does not meet the filing requirements specified under paragraph (1), and shall give a claimant whose claim is not accepted written notice of the reasons for nonacceptance. Such written notice must be given to the claimant within 30 days after the date on which the claim was filed and if the claimant does not refile an acceptable claim within 30 days after the date of such written notice, the claimant is not eligible for compensation under this subchapter for the damages concerned; except that the Secretary—

(A) shall in any case involving a good faith effort by the claimant to meet such filing requirements, or

(B) may in any case involving extenuating circumstances, accept a claim that does not meet the 30-day refiling requirement.

(3)(A) The Secretary shall make an initial determination with respect to the claim within 60 days after the day on which the claim is accepted for filing. Within 30 days after the day on which the Secretary issues an initial determination on a claim, the claimant, or any other interested person who submitted evidence relating to the initial determination, may petition the Secretary for a review of that determination.

(B) If a petition for the review of an initial determination is not filed with the Secretary within the 30-day period provided under subparagraph (A), the initial determination shall thereafter be treated as a final determination by the Secretary on the claim involved.

(C) If a petition for review of an initial determination is timely filed under subparagraph (A), the Secretary shall allow the petitioner 30 days after the day on which the petition is received to submit written or oral evidence relating to the initial determination. The Secretary shall then undertake such review and, on the basis of such review, issue a final determination no later than the 60th day after the day on which the Secretary received the petition for review of an initial determination.

(e) Claim preparation fees; attorney's fees

If the decision of the Secretary under subsection (d) of this section is in favor of the commercial fisherman filing the claim, the Secretary, as a part of the amount awarded, shall include reasonable claim preparation fees and reasonable attorney's fees, if any, incurred by the claimant in pursuing the claim.

(f) Powers of Secretary

(1) For purposes of any proceeding conducted pursuant to this section, the Secretary shall have the power to administer oaths and subpoena the attendance or testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.

(2) In any proceeding conducted pursuant to this section with respect to a claim for damages resulting from activities on any area of the Outer Continental Shelf, the Secretary shall consider evidence of obstructions in such area which have been identified pursuant to the survey conducted under section 1847 of this title.

(g) Place of proceeding

Any proceeding conducted with respect to an initial determination on a claim under subsection (d)(3)(A) of this section shall be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Secretary or, if no agreement can be reached, within the United States judicial district in which the home port of the claimant is located.

(h) Certification and disbursement of award; subrogation of rights; payment of costs of proceedings

(1) The amount awarded in an initial determination by the Secretary under subsection (d) of this section shall be immediately disbursed, subject to the limitations of this section, by the Secretary if the claimant—

(A) states in writing that he will not petition for review of the initial determination; and

(B) enters into an agreement with the Secretary to repay to the Secretary all or any part of the amount of the award if, after review under subsection (d)(3)(C) of this section or, if applicable, after judicial review, the amount of the award, or any part thereof, is not sustained.

(2) Upon payment of a claim by the Secretary pursuant to this subsection, the Secretary shall acquire by subrogation all rights of the claimant against any person found to be responsible for the damages with respect to which such claim was made. Any moneys recovered by the

Secretary through subrogation shall be deposited into the Fund.

(3) Any person who denies responsibility for damages with respect to which a claim is made and who is subsequently<sup>2</sup> found to be responsible for such damages, and any commercial fisherman who files a claim for damages and who is subsequently found to be responsible for such damages, shall pay the costs of the proceedings under this section with respect to such claim.

(i) Judicial review

Any claimant or other person who suffers a legal wrong or who is adversely affected or aggrieved by a final determination of the Secretary under subsection (d) of this section, may, no later than 30 days after such determination is made, seek judicial review of the determination in the United States district court for such United States judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States district court for the United States judicial district in which is located the home port of the claimant.

(Pub. L. 95-372, title IV, § 405, Sept. 18, 1978, 92 Stat. 688; Pub. L. 97-212, § 5, June 30, 1982, 96 Stat. 145.)

REFERENCES IN TEXT

Section 1847 of this title, referred to in subsec. (f)(2), was repealed by Pub. L. 97-212, § 6(a), June 30, 1982, 96 Stat. 147.

AMENDMENTS

1982—Subsec. (b). Pub. L. 97-212, § 5(1), struck out pars. (1) and (2) designations, and substituted "shall take such further action regarding the claim that is required under subsection (d) of this section" for "refer such matter to a hearing examiner appointed under section 3105 of title 5".

Subsec. (c). Pub. L. 97-212, § 5(2), substituted "proceeding" for "hearing".

Subsec. (d). Pub. L. 97-212, § 5(3), substituted provisions relating to the filing of claims with the Secretary of the Interior in order to be eligible for compensation under this subchapter, the time for such filing, the time in which the Secretary must make his initial determination with respect to the claim, and the submission of evidence by the petitioner when reviewing an initial determination by the Secretary, for provisions relating to the time in which a hearing examiner has to render a decision.

Subsec. (e). Pub. L. 97-212, § 5(4), substituted provisions that if the decision of the Secretary is in favor of the commercial fisherman filing the claim, the Secretary shall award to such claimant reasonable attorney's fees and claim preparation fees incurred by claimant in pursuing such claim for provisions that upon a decision in favor of the claimant fisherman, the hearing examiner include in the award reasonable attorney's fees incurred by the claimant in pursuing such claim.

Subsec. (f). Pub. L. 97-212, § 5(5), substituted "the Secretary" for "hearing examiner" and "proceeding" for "hearing" wherever appearing. The amendment which directed the substitution of "the Secretary" for "hearing examiner" was executed by substituting "the Secretary" for "the hearing examiner", as the probable intent of Congress, to avoid repeating the article "the" preceding "Secretary" in the two places it appeared.

<sup>2</sup>So in original. Probably should be "subsequently".

Subsec. (g). Pub. L. 97-212, § 5(6), substituted "Any proceeding conducted with respect to an initial determination on a claim under subsection (d)(3)(A) of this section shall be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Secretary or, if no agreement can be reached, within the United States judicial district in which the home port of the claimant is located" for "A hearing conducted under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred, or, if such matter occurred within two or more districts, in any of the affected districts, or, if such matter occurred outside of any district, in the nearest district".

Subsec. (h)(1). Pub. L. 97-212, § 5(7)(A), substituted provisions that the amount awarded in an initial determination by the Secretary under subsec. (d) be immediately disbursed by the Secretary if the claimant states in writing that he will not petition for review of the initial determination and he enters into an agreement with the Secretary to repay to the Secretary all or any part of the award that is not sustained upon later judicial review for provisions that upon a decision of the hearing examiner and in absence of judicial review, any amount to be paid would be certified to the Secretary who would promptly disburse the award and that such decision of the hearing examiner was not reviewable by the Secretary.

Subsec. (h)(2). Pub. L. 97-212, § 5(7)(B), inserted provision that any moneys recovered by the Secretary through subrogation shall be deposited into the Fund.

Subsec. (i). Pub. L. 97-212, § 5(8), substituted "Any claimant or other person who suffers a legal wrong or who is adversely affected or aggrieved by a final determination of the Secretary under subsection (d) of this section, may, no later than 30 days after such determination is made, seek judicial review of the determination in the United States district court for such United States judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States district court for the United States judicial district in which is located the home port of the claimant" for "Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner under this section may, no later than 60 days after such decision is made, seek judicial review of such decision in the United States court of appeals for the circuit in which the damage occurred, or if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit".

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-212 applicable with respect to claims for damages filed on or after June 30, 1982, with the Secretary of Commerce under section 1845(a) of this title, with provision for the refiling of previously filed claims under certain circumstances, see section 9 of Pub. L. 97-212, set out as a note under section 1841 of this title.

#### COMPENSATION FOR CERTAIN FISHING VESSEL AND GEAR DAMAGE; APPLICATION

Authority to owners or operators of fishing vessels and commercial fishermen failing to make application for compensation within the time limitations of this section or section 1980 of Title 22, Foreign Relations and Intercourse, to make application for compensation within the 60-day period beginning on Dec. 22, 1980, see section 240(a), (b)(1) of Pub. L. 96-561, title II, Dec. 22, 1980, 94 Stat. 3300, set out as a note under section 1980 of Title 22.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1842 of this title.

#### § 1846. Annual report

(a) The Secretary shall submit an annual report to the Congress which shall set forth—

(1) a description of the types of damages set forth in claims filed with the Secretary during the previous year for compensation from the Fund;

(2) the amount of compensation awarded to claimants during the previous year; and

(3) the number of cases during the previous year in which damages were determined to be the responsibility of a lessee or permittee conducting operations on the Outer Continental Shelf, or the contractor or subcontractor of such a lessee or permittee.

(b) In addition to the material described in subsection (a) of this section, the Secretary shall, after consultation with the Secretary of the Interior, include in the first annual report an evaluation of the feasibility and comparative cost of preventing or reducing obstructions on the Outer Continental Shelf which pose potential hazards to commercial fishing or fishing gear by (1) imposing fines or penalties on lessees or permittees, or contractors or subcontractors of lessees or permittees, who are responsible for such obstructions, or (2) requiring the bonding of such lessees or permittees or such contractors or subcontractors.

(Pub. L. 95-372, title IV, § 406, Sept. 18, 1978, 92 Stat. 689.)

§ 1847. Repealed. Pub. L. 97-212, § 6(a), June 30, 1982, 96 Stat. 147

Section, Pub. L. 95-372, title IV, § 407, Sept. 18, 1978, 92 Stat. 690, related to survey of obstructions on Outer Continental Shelf and the development of charts for commercial fishermen.

#### EFFECTIVE DATE OF REPEAL

Repeal effective June 30, 1982, and applicable with respect to claims for damages filed on or after such date, with the Secretary of Commerce under section 1845(a) of this title, see section 9(a) of Pub. L. 97-212, set out as an Effective Date of 1982 Amendment note under section 1841.

#### SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 1861. Report to Comptroller General on shut-in and flaring oil and gas wells; submission of findings and recommendations to Congress

(a) In a report submitted within six months after September 18, 1978, and his annual report thereafter, the Secretary of the Interior shall list all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.]. Each such report shall be submitted to the Comptroller General and shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production on such a shut-in well or order cessation flaring.

(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in allowing the wells to be

shut-in or to flare natural gas and submit his findings and recommendations to the Congress.

(Pub. L. 95-372, title VI, § 601, Sept. 18, 1978, 92 Stat. 693.)

#### REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

#### § 1862. Natural gas distribution

(a) Expanded participation by local distribution companies in acquisition of leases and development of natural gas resources

The purpose of this section is to encourage expanded participation by local distribution companies in acquisition of leases and development of natural gas resources on the Outer Continental Shelf by facilitating the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company.

(b) Application and issuance of certificates of public convenience and necessity for transportation of natural gas

The Federal Energy Regulatory Commission shall, after opportunity for presentation of written and oral views, promulgate and publish in the Federal Register a statement of Commission policy which carries out the purpose of this section and sets forth the standards under which the Commission will consider applications for, and, as appropriate, issue certificates of public convenience and necessity, pursuant to section 717f of title 15, for the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company. Such statement of policy shall specify the criteria, limitations, or requirements the Commission will apply in determining—<sup>1</sup>

(1) whether the application of any local distribution company qualifies for consideration under the statement of policy; and

(2) whether the public convenience and necessity will be served by the issuance of the requested certificate of transportation.

Such statement of policy shall also set forth the terms or limitations on which the Commission may condition, pursuant to section 717f of title 15, the issuance of a certificate of transportation under such statement of policy. To the maximum extent practicable, such statement shall be promulgated and published within one year after September 18, 1978.

(c) Definitions

For purposes of this section, the term—

(1) "local distribution company" means any person—

(A) engaged in the distribution of natural gas at retail, including any subsidiary or affiliate thereof engaged in the exploration and production of natural gas; and

(B) regulated, or operated as a public utility, by a State or local government or agency thereof;

(2) "interstate commerce" shall have the same meaning as such term has under section 717a(7) of title 15; and

(3) "Commission" means the Federal Energy Regulatory Commission.

(Pub. L. 95-372, title VI, § 603, Sept. 18, 1978, 92 Stat. 694.)

#### § 1863. Unlawful employment practices; regulations

Each agency or department given responsibility for the promulgation or enforcement of regulations under this chapter or the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] shall take such affirmative action as deemed necessary to prohibit all unlawful employment practices and to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of this chapter or the Outer Continental Shelf Lands Act. The agency or department shall promulgate such rules as it deems necessary to carry out the purposes of this section, and any rules promulgated under this section, whether through agency and department provisions or rules, shall be similar to those established and in effect under title VI and title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq., 2000e et seq.].

(Pub. L. 95-372, title VI, § 604, Sept. 18, 1978, 92 Stat. 695.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, as amended, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1458, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Outer Continental Shelf Lands Act, referred to in text, 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 252, as amended. Title VI and VII of the Civil Rights Act of 1964 are classified generally to subchapters V (§ 2000d et seq.) and VI (§ 2000e et seq.) of chapter 21 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 2000a of Title 42 and Tables.

<sup>1</sup>So in original. Probably should be "determining—".

**§ 1864. Disclosure of financial interests by officers and employees of Department of the Interior**

**(a) Annual written statement**

Each officer or employee of the Department of the Interior who—

(1) performs any function or duty under this chapter or the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], as amended by this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit or lease under, or (B) is otherwise subject to the provisions of this chapter or the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.],

shall, beginning on February 1, 1979, annually file with the Secretary of the Interior a written statement concerning all such interests held by such officer or employee during the preceding<sup>2</sup> calendar year. Such statement shall be available to the public.

**(b) Definition of "known financial interest"; enforcement; report to Congress**

The Secretary of the Interior shall—

(1) within ninety days after September 18, 1978—

(A) define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

**(c) Officers and employees in nonregulatory or non-policymaking positions**

In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

**(d) Penalties**

Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

(Pub. L. 95-372, title VI, § 605, Sept. 18, 1978, 92 Stat. 695.)

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (a)(1) and (2), was in the original "this Act", meaning Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, as amended, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands

and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 8213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

This Act, referred to in subsec. (a)(1), is Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, as amended. See note above.

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(1) and (2), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

**§ 1865. Investigation of reserves of oil and gas in Outer Continental Shelf**

**(a) Declaration of Congressional findings**

The Congress hereby finds that—

(1) there is a serious lack of adequate basic energy information available to the Congress and the Secretary of the Interior with respect to the availability of oil and natural gas from the Outer Continental Shelf;

(2) there is currently an urgent need for such information;

(3) the existing collection of information by Federal departments and agencies relevant to the determination of the availability of such oil and natural gas is uncoordinated, is jurisdictionally limited in scope, and relies too heavily on unverified information from industry sources;

(4) adequate, reliable, and comprehensive information with respect to the availability of such oil and natural gas is essential to the national security of the United States; and

(5) this lack of adequate reserve data requires a reexamination of past data as well as the acquisition of adequate current data.

**(b) Declaration of Congressional purpose**

The purpose of this section is to enable the Secretary of the Interior and the Congress to gain the best possible knowledge of the status of Outer Continental Shelf oil and natural gas reserves, resources, productive capacity, and production available to meet current and future energy supply emergencies, to gain accurate knowledge of the potential quantity of oil and natural gas resources which could be made available to meet such emergencies, and to aid in establishing energy pricing and conservation policies.

**(c) Continuing investigation to determine reserves**

The Secretary of the Interior shall conduct a continuing investigation, based on data and information which he determines has been adequately and independently audited and verified, for the purpose of determining the availability of all oil and natural gas produced or located on the Outer Continental Shelf.

**(d) Scope of investigation**

The investigation conducted pursuant to this section shall include, among other items—

<sup>2</sup>So in original. Probably should be "preceding".

(1)(A) a determination of the maximum attainable rate of production (MAR) of crude oil and natural gas from significant fields on the Outer Continental Shelf; and

(B) an analysis of whether the actual production has been less than the MAR and, if so, the reasons for the differences;

(2) an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf;

(3) the relationship of any and all such information to the requirements of conservation, industry, commerce, and the national defense; and

(4) an independent evaluation of trade association procedures for estimating Outer Continental Shelf reserves, ultimate recovery, and productive capacity for years in which trade associations made such estimates. In order to provide maximum opportunity for evaluation and continuity, the Secretary shall obtain all the available data and other records, including a description of the methodology and estimating procedures, which the trade associations used in compiling their data with respect to the reserves.

**(e) Initial and subsequent reports to Congress**

The Secretary shall, not later than one year after September 18, 1978, submit an initial report to the Congress. The initial report shall include cost estimates for the separate components of the continuing investigation and a time schedule for meeting all of its specifications. The schedule shall provide for producing all the information required in subsections (d)(1)(A), (d)(2), and (d)(3) of this section on the day following the first complete calendar year after September 18, 1978, and every two years thereafter. The Secretary shall make separate reports on the data acquired pursuant to subsection (d)(4) of this section as follows:

(1) Within six months after September 18, 1978, a report on the acquisition and details of trade association data and information.

(2) Within twelve months after submission of the report required by subsection (e)(1) of this section, an evaluation of the trade association materials.

(3) Within twelve months after submission of the report required by paragraph (2) of this subsection, a report on the relationship between trade association data and the new data collected under this section.

**(f) Categories of information acquired; consultation with Federal Trade Commission; availability of information**

The Secretary of the Interior shall consult with the Federal Trade Commission regarding categories of information acquired pursuant to this section. Notwithstanding any other provision of law, the Secretary of the Interior shall, upon request of the Federal Trade Commission, make available to such Commission any information acquired under this section.

**(g) Definitions**

For purposes of this section, the term—

(1) "maximum attainable rate of production" or "MAR" means the maximum rate of production of crude oil and natural gas which may be produced under actual operating conditions without loss of ultimate recovery of crude oil and natural gas; and

(2) "Outer Continental Shelf" has the meaning given such term in section 1331(a) of this title.

(Pub. L. 95-372, title VI, § 606, Sept. 18, 1978, 92 Stat. 696.)

**§ 1866. Relationship to existing law**

(a) Except as otherwise expressly provided in this chapter, nothing in this chapter shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.], the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], the Mining and Mineral Policy Act of 1970 [30 U.S.C. 21a], or any other Act.

(b) Nothing in this chapter or any amendment made by this Act to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or any other Act shall be construed to affect or modify the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) which provide for the transferring and vesting of functions to and in the Secretary of Energy or any component of the Department of Energy.

(Pub. L. 95-372, title VI, § 608, Sept. 18, 1978, 92 Stat. 698.)

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, as amended, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (a), is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 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 4321 of Title 42 and Tables.

The Mining and Mineral Policy Act of 1970, referred to in subsec. (a), is Pub. L. 91-631, Dec. 31, 1970, 84 Stat. 1876, which is classified to section 21a of Title 30, Mineral Lands and Mining.

This Act, referred to in subsec. (b), is Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, as amended. See note above.

The Outer Continental Shelf Lands Act, referred to in subsec. (b), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to sub-

chapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (b), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 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 7101 of Title 42 and Tables.

#### CHAPTER 37—PUBLIC RANGELANDS IMPROVEMENT

- Sec.
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#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1752 of this title.

#### § 1901. Congressional findings and declaration of policy

##### (a) The Congress finds and declares that—

(1) vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition;

(2) such rangelands will remain in an unsatisfactory condition and some areas may decline further under present levels of, and funding for, management;

(3) unsatisfactory conditions on public rangelands present a high risk of soil loss, desertification,<sup>1</sup> and a resultant underproductivity for large acreages of the public lands; contribute significantly to unacceptable levels of siltation and salinity in major western watersheds including the Colorado River; negatively impact the quality and availability of scarce western water supplies; threaten important and frequently critical fish and wildlife habitat; prevent expansion of the forage

resource and resulting benefits to livestock and wildlife production; increase surface runoff and flood danger; reduce the value of such lands for recreational and esthetic purposes; and may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes;

(4) the above-mentioned conditions can be addressed and corrected by an intensive public rangelands maintenance, management, and improvement program involving significant increases in levels of rangeland management and improvement funding for multiple-use values;

(5) to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production;

(6) the Act of December 15, 1971 (85 Stat. 649, 16 U.S.C. 1331 et seq.), continues to be successful in its goal of protecting wild free-roaming horses and burros from capture, branding, harassment, and death, but that certain amendments are necessary thereto to avoid excessive costs in the administration of the Act, and to facilitate the humane adoption or disposal of excess wild free-roaming horses and burros which because they exceed the carrying capacity of the range, pose a threat to their own habitat, fish, wildlife, recreation, water and soil conservation, domestic livestock grazing, and other rangeland values;

(b) The Congress therefore hereby establishes and reaffirms a national policy and commitment to:

(1) inventory and identify current public rangelands conditions and trends as a part of the inventory process required by section 1711(a) of this title;

(2) manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to section 1712 of this title;

(3) charge a fee for public grazing use which is equitable and reflects the concerns addressed in paragraph (a)(5) above;

(4) continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values;

(c) The policies of this chapter shall become effective only as specific statutory authority for their implementation is enacted by this chapter or by subsequent legislation, and shall be construed as supplemental to and not in derogation of the purposes for which public rangelands are administered under other provisions of law.

(Pub. L. 95-514, § 2, Oct. 25, 1978, 92 Stat. 1803.)

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