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ACT TO PREVENT POLLUTION FROM SHIPS

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February 24, 2004

ACT TO PREVENT POLLUTION FROM SHIPS

[As Amended Through P.L. 108–201, February 24, 2004]

AN ACT To implement the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and for other purposes.¹⁻¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Act to Prevent Pollution from Ships”.

SEC. 2. (a) Unless the context indicates otherwise, as used in this Act—

(1) “Antarctica” means the area south of 60 degrees south latitude;

(2) “Antarctic Protocol” means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, and includes any future amendments thereto which have entered into force;

(3) “MARPOL Protocol” means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention;

(4) “Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols or Annexes which have entered into force for the United States;

(5) “discharge” and “garbage” and “harmful substance” and “incident” shall have the meanings provided in the Convention;

(6) “owner” means any person holding title to, or in the absence of title, any other indicia of ownership of, a ship or terminal, but does not include a person who, without participating in the management or operation of a ship or terminal, holds indicia of ownership primarily to protect a security interest in the ship or terminal;

(7) “operator” means—

(a) in the case of a ship, 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 a terminal, any person, except the owner, responsible for the operation of the terminal by agreement with the owner;

¹⁻¹ Section 204 of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1902a) provides that “Notwithstanding any other provision of law, the discharge from a vessel of any agricultural cargo residue material in the form of hold washings shall be governed exclusively by the provisions of the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) that implement Annex V to the International Convention for the Prevention of Pollution from Ships.”

(8) “person” means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body;

(9) “Secretary” means the Secretary of the department in which the Coast Guard is operating;

(10) “ship” means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms;

(11) “submersible” means a submarine, or any other vessel designed to operate under water; and

(12) “terminal” means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

(b) For purposes of this Act, the requirements of Annex V shall apply to the navigable waters of the United States, as well as to all other waters and vessels over which the United States has jurisdiction.

(c) For the purposes of this Act, the requirements of Annex IV to the Antarctic Protocol shall apply in Antarctica to all vessels over which the United States has jurisdiction.

(33 U.S.C. 1901)

SEC. 3. (a) This Act shall apply—

(1) to a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

(2) with respect to Annexes I and II to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters of the United States;

(3) with respect to the requirements of Annex V to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters or the exclusive economic zone of the United States; and

(4) with respect to regulations prescribed under section 6 of this Act, any port or terminal in the United States.

(b)(1) Except as provided in paragraph (2), this Act shall not apply to—

(A) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

(B) any other ship specifically excluded by the MARPOL Protocol or the Antarctic Protocol.

(2)(A) Notwithstanding any provision of the MARPOL Protocol, and subject to subparagraph (B) of this paragraph, the requirements of Annex V to the Convention shall apply as follows:

(i) After December 31, 1993, to all ships referred to in paragraph (1)(A) of this subsection other than those owned or operated by the Department of the Navy.

(ii) Except as provided in subsection (c) of this section, after December 31, 1998, to all ships referred to in paragraph (1)(A) of this subsection other than submersibles owned or operated by the Department of the Navy.

(iii) Except as provided in subsection (c) of this section, after December 31, 2008, to all ships referred to in paragraph (1)(A) of this subsection.

(B) This paragraph shall not apply during time of war or a declared national emergency.

(c) DISCHARGES IN SPECIAL AREAS.—(1) Except as provided in paragraphs (2) and (3), not later than December 31, 2000, all surface ships owned or operated by the Department of the Navy, and not later than December 31, 2008, all submersibles owned or operated by the Department of the Navy, shall comply with the special area requirements of Regulation 5 of Annex V to the Convention.

(2)(A) Subject to subparagraph (B), any ship described in subparagraph (C) may discharge, without regard to the special area requirements of Regulation 5 of Annex V to the Convention, the following non-plastic, non-floating garbage:

(i) A slurry of seawater, paper, cardboard, or food waste that is capable of passing through a screen with openings no larger than 12 millimeters in diameter.

(ii) Metal and glass that have been shredded and bagged so as to ensure negative buoyancy.

(iii) With regard to a submersible, nonplastic garbage that has been compacted and weighted to ensure negative buoyancy.

(B)(i) Garbage described in subparagraph (A)(i) may not be discharged within 3 nautical miles of land.

(ii) Garbage described in clauses (ii) and (iii) of subparagraph (A) may not be discharged within 12 nautical miles of land.

(C) This paragraph applies to any ship that is owned or operated by the Department of the Navy that, as determined by the Secretary of the Navy—

(i) has unique military design, construction, manning, or operating requirements; and

(ii) cannot fully comply with the special area requirements of Regulation 5 of Annex V to the Convention because compliance is not technologically feasible or would impair the operations or operational capability of the ship.

(3)(A) Not later than December 31, 2000, the Secretary of the Navy shall prescribe and publish in the Federal Register standards to ensure that each ship described in subparagraph (B) is, to the maximum extent practicable without impairing the operations or operational capabilities of the ship, operated in a manner that is consistent with the special area requirements of Regulation 5 of Annex V to the Convention.

(B) Subparagraph (A) applies to surface ships that are owned or operated by the Department of the Navy that the Secretary plans to decommission during the period beginning on January 1, 2001, and ending on December 31, 2005.

(C) At the same time that the Secretary publishes standards under subparagraph (A), the Secretary shall publish in the Federal Register a list of the ships covered by subparagraph (B).

(d) The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol, including regulations conforming to and giving effect to the requirements of Annex V as they apply under subsection (a) of section 3, to ensure

that their treatment is not more favorable than that accorded ships to parties to the MARPOL Protocol.

(e) COMPLIANCE BY EXCLUDED VESSELS.—(1) The Secretary of the Navy shall develop and, as appropriate, support the development of technologies and practices for solid waste management aboard ships owned or operated by the Department of the Navy, including technologies and practices for the reduction of the waste stream generated aboard such ships, that are necessary to ensure the compliance of such ships with Annex V to the Convention on or before the dates referred to in subsections (b)(2)(A) and (c)(1) of this section.

(2) Notwithstanding any effective date of the application of this section to a ship, the provisions of Annex V to the Convention with respect to the disposal of plastic shall apply to ships equipped with plastic processors required for the long-term collection and storage of plastic aboard ships of the Navy upon the installation of such processors in such ships.

(3) Except when necessary for the purpose of securing the safety of the ship, the health of the ship's personnel, or saving life at sea, it shall be a violation of this Act for a ship referred to in subsection (b)(1)(A) of this section that is owned or operated by the Department of the Navy:

(A) With regard to a submersible, to discharge buoyant garbage or plastic.

(B) With regard to a surface ship, to discharge plastic contaminated by food during the last 3 days before the ship enters port.

(C) With regard to a surface ship, to discharge plastic, except plastic that is contaminated by food, during the last 20 days before the ship enters port.

(4) The Secretary of Defense shall publish in the Federal Register:

(A) Beginning on October 1, 1994, and each year thereafter until October 1, 2000, the amount and nature of the discharges in special areas, not otherwise authorized under Annex V to the Convention, during the preceding year from ships referred to in subsection (b)(1)(A) of this section owned or operated by the Department of the Navy.

(B) Beginning on October 1, 1996, and each year thereafter until October 1, 1998, a list of the names of such ships equipped with plastic processors pursuant to section 1003(e) of the National Defense Authorization Act for Fiscal Year 1994.

(f) WAIVER AUTHORITY.—The President may waive the effective dates of the requirements set forth in subsection (c) of this section and in subsection 1003(e) of the National Defense Authorization Act for Fiscal Year 1994 if the President determines it to be in the paramount interest of the United States to do so. Any such waiver shall be for a period not in excess of one year. The President shall submit to the Congress each January a report on all waivers from the requirements of this section granted during the preceding calendar year, together with the reasons for granting such waivers.

(g) The heads of Federal departments and agencies shall prescribe standards applicable to ships excluded from this Act by subsection (b)(1) of this section and for which they are responsible.

Standards prescribed under this subsection shall ensure, so far as is reasonable and practicable without impairing the operations or operational capabilities of such ships, that such ships act in a manner consistent with the MARPOL Protocol.

(33 U.S.C. 1902)

SEC. 4. (a) Unless otherwise specified herein, the Secretary shall administer and enforce the MARPOL Protocol and this Act. In the administration and enforcement of the MARPOL Protocol and this Act, Annexes I and II of the MARPOL Protocol, Annex IV to the Antarctic Protocol, shall be applicable only to seagoing ships.

(b)(1) The Secretary shall prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this Act.

(2) The Secretary of the department in which the Coast Guard is operating shall—

(A) prescribe regulations which—

(i) require certain ships described in section 3(a)(1) to maintain refuse record books and shipboard management plans, and to display placards which notify the crew and passengers of the requirements of Annex V to the Convention and of Annex IV to the Antarctic Protocol” after “the Convention; and

(ii) specify the ships described in section 3(a)(1) to which the regulations apply;

(B) seek an international agreement or international agreements which apply requirements equivalent to those described in subparagraph (A)(i) to all vessels subject to Annex V to the Convention; and

(C) within 2 years after the effective date of this paragraph, report to the Congress—

(i) regarding activities of the Secretary under subparagraph (B); and

(ii) if the Secretary has not obtained agreements pursuant to subparagraph (B) regarding the desirability of applying the requirements described in subparagraph (A)(i) to all vessels described in section 3(a) which call at United States ports.

(c) The Secretary may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the MARPOL Protocol, this Act, or the regulations thereunder.

(33 U.S.C. 1903)

SEC. 5. (a) The Secretary shall designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol. A certificate required by the MARPOL Protocol shall not be issued to a ship which is registered in or of the nationality of a country which is not a party to the MARPOL Protocol.

(b) A certificate issued by a country which is a party to the MARPOL Protocol has the same validity as a certificate issued by the Secretary under the authority of the MARPOL Protocol.

(c) A ship required by the MARPOL Protocol to have a certificate—

(1) shall carry a valid certificate onboard in the manner prescribed by the authority issuing the certificate; and

(2) is subject to inspection while in a port or terminal under the jurisdiction of the United States.

(d) An inspection conducted under subsection (c)(2) of this section is limited to verifying whether or not a valid certificate is onboard, unless clear grounds exist which reasonably indicate that the condition of the ship or its equipment does not substantially agree with the particulars of its certificate. This section shall not limit the authority of any official or employee of the United States under any other treaty, law, or regulation to board and inspect a ship or its equipment.

(e) In addition to the penalties prescribed in section 9 of the Act, a ship required by the MARPOL Protocol to have a certificate—

(1) which does not have a valid certificate onboard; or

(2) whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate onboard;

shall be detained by order of the Secretary at the port or terminal where the violation is discovered until, in the opinion of the Secretary, the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment. The detention order may authorize the ship to proceed to the nearest appropriate available shipyard rather than remaining at the place where the violation was discovered.

(f) If a ship is under a detention order under this section, the Secretary of the Treasury, upon the request of the Secretary, may refuse or revoke—

(1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or

(2) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. 313) or section 442 of the Tariff Act of 1930, as amended (19 U.S.C. 1443).

(g) A person whose ship is subject to a detention order under this section may petition the Secretary, in the manner prescribed by regulation, to review the detention order. Upon receipt of a petition under this subsection, the Secretary shall affirm, modify, or withdraw the detention order within the time prescribed by regulation.

(h) A ship unreasonably detained or delayed by the Secretary acting under the authority of this Act is entitled to compensation for any loss or damage suffered thereby.

(33 U.S.C. 1904)

SEC. 6. (a)(1) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall establish regulations setting criteria for determining the adequacy of a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances and shall establish procedures whereby a person in charge of a port or terminal may request the Secretary to certify that the port's or terminal's facilities for receiving the resi-

dues and mixtures containing oil or noxious liquid substance from seagoing ships are adequate.

(2) The Secretary, after consulting with appropriate Federal agencies, shall establish regulations setting criteria for determining the adequacy of reception facilities for garbage at a port or terminal, and stating such additional measures and requirements as are appropriate to ensure such adequacy. Persons in charge of ports and terminals shall provide reception facilities, or ensure that such facilities are available, for receiving garbage in accordance with those regulations.

(b) In determining the adequacy of reception facilities required by the MARPOL Protocol or the Antarctic Protocol at a port or terminal, and in establishing regulations under subsection (a) of this section, the Secretary may consider, among other things, the number and types of ships or seagoing ships using the port or terminal, including their principal trades.

(c)(1) If reception facilities of a port or terminal meet the requirements of Annex I and Annex II to the Convention and the regulations prescribed under subsection (a)(1), the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant.

(2)(A) Subject to subparagraph (B), if reception facilities of a port or terminal meet the requirements of Annex V to the Convention and the regulations prescribed under subsection (a)(2), the Secretary may, after consultation with appropriate Federal agencies, issue a certificate to that effect to the person in charge of the port or terminal.

(B) The Secretary may not issue a certificate attesting to the adequacy of reception facilities under this paragraph unless, prior to the issuance of the certificate, the Secretary conducts an inspection of the reception facilities of the port or terminal that is the subject of the certificate.

(C) The Secretary may, with respect to certificates issued under this paragraph prior to the date of enactment of the Coast Guard Authorization Act of 1996, prescribe by regulation differing periods of validity for such certificates.

(3) A certificate issued under this subsection—

(A) is valid for the 5-year period beginning on the date of issuance of the certificate, except that if—

(i) the charge for operation of the port or terminal is transferred to a person or entity other than the person or entity that is the operator on the date of issuance of the certificate—

(I) the certificate shall expire on the date that is 30 days after the date of the transfer; and

(II) the new operator shall be required to submit an application for a certificate before a certificate may be issued for the port or terminal; or

(ii) the certificate is suspended or revoked by the Secretary, the certificate shall cease to be valid; and

(B) shall be available for inspection upon the request of the master, other person in charge, or agent of a ship using or intending to use the port or terminal.

(4) The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by the Secretary in the manner prescribed by regulation.

(d)(1) The Secretary shall maintain a list of ports or terminals with respect to which a certificate issued under this section—

(A) is in effect; or

(B) has been revoked or suspended.

(2) The Secretary shall make the list referred to in paragraph (1) available to the general public.

(e)(1) Except in the case of force majeure, the Secretary shall deny entry to a seagoing ship required by the Convention or the Antarctic Protocol to retain onboard while at sea, residues and mixtures containing oil or noxious liquid substances, if—

(A) the port or terminal is one required by the Annexes I and II of the Convention or Article 9 of Annex IV to the Antarctic Protocol or regulations hereunder to have adequate reception facilities; and

(B) the port or terminal does not hold a valid certificate issued by the Secretary under this section.

(2) The Secretary may deny the entry of a ship to a port or terminal required by regulations issued under this section to provide adequate reception facilities for garbage if the port or terminal is not in compliance with those regulations.

(f)(1) The Secretary is authorized to conduct surveys of existing reception facilities in the United States to determine measures needed to comply with the MARPOL Protocol or the Antarctic Protocol.

(2)(A)¹ Not later than 18 months after the date of enactment of the Coast Guard Authorization Act of 1996, the Secretary shall promulgate regulations that require the operator of each port or terminal that is subject to any requirement of the MARPOL Protocol relating to reception facilities to post a placard in a location that can easily be seen by port and terminal users. The placard shall state, at a minimum, that a user of a reception facility of the port or terminal should report to the Secretary any inadequacy of the reception facility.

(33 U.S.C. 1905)

SEC. 7. (a) The master, person in charge, owner, charterer, manager, or operator of a ship involved in an incident shall report the incident in the manner prescribed by Article 8 of the Convention in accordance with regulations promulgated by the Secretary for that purpose.

(b) The master or person in charge of—

(1) a ship of United States registry or nationality, or operated under the authority of the United States, wherever located;

(2) another ship while in the navigable waters of the United States; or

(3) a sea port or oil handling facility subject to the jurisdiction of the United States,

¹ Paragraph (2) as added by section 801(b)(2) of P.L. 104-324 (110 Stat. 3944) probably should have read "(2)" not "(2)(A)".

shall report a discharge, probable discharge, or presence of oil in the manner prescribed by Article 4 of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (adopted at London, November 30, 1990), in accordance with regulations promulgated by the Secretary for that purpose.

(33 U.S.C. 1906)

SEC. 8. (a) It is unlawful to act in violation of the MARPOL Protocol, Annex IV to the Antarctic Protocol, this Act, or the regulations issued thereunder. The Secretary shall cooperate with other parties to the MARPOL Protocol or to the Antarctic Protocol in the detection of violations and in enforcement of the MARPOL Protocol and Annex IV to the Antarctic Protocol. The Secretary shall use all appropriate and practical measures of detection and environmental monitoring, and shall establish adequate procedures for reporting violations and accumulating evidence.

(b) Upon receipt of evidence that a violation has occurred, the Secretary shall cause the matter to be investigated. In any investigation under this section the Secretary may issue subpoenas to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpoena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Upon completion of the investigation, the Secretary shall take the action required by the MARPOL Protocol or the Antarctic Protocol and whatever further action he considers appropriate under the circumstances. If the initial evidence was provided by a party to the MARPOL Protocol or the Antarctic Protocol, the Secretary, acting through the Secretary of State, shall inform that party of the action taken or proposed.

(c)(1) This subsection applies to inspections relating to possible violations of Annex I or Annex II to the Convention, of Article 3 or Article 4 of Annex IV to the Antarctic Protocol, or of this Act by any seagoing ship referred to in section 3(a)(2) of this Act.

(2) While at a port or terminal subject to the jurisdiction of the United States, a ship to which the MARPOL Protocol or the Antarctic Protocol applies may be inspected by the Secretary—

(A) to verify whether or not the ship has discharged a harmful substance in violation of the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this Act; or

(B) to comply with a request from a party to the MARPOL Protocol or the Antarctic Protocol for an investigation as to whether the ship may have discharged a harmful substance anywhere in violation of the MARPOL Protocol or Annex IV to the Antarctic Protocol. An investigation may be undertaken under this clause only when the requesting party has furnished sufficient evidence to allow the Secretary reasonably to believe that a discharge has occurred.

If an inspection under this subsection indicates that a violation has occurred, the investigating officer shall forward a report to the Secretary for appropriate action. The Secretary shall undertake to notify the master of the ship concerned and, acting in coordination with the Secretary of State, shall take any additional action required by Article 6 of the Convention.

(d)(1) The Secretary may inspect a ship referred to in section 3(a)(3) of this Act to verify whether the ship has disposed of garbage in violation of Annex V to the Convention, Article 5 of Annex IV to the Antarctic Protocol, or this Act.

(2) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake enforcement action under section 9 of this Act.

(e)(1) The Secretary may inspect at any time a ship of United States registry or nationality or operating under the authority of the United States to which the MARPOL Protocol or the Antarctic Protocol applies to verify whether the ship has discharged a harmful substance or disposed of garbage in violation of those Protocols or this Act.

(2) If an inspection under this subsection indicates that a violation of the MARPOL Protocol, of Annex IV to the Antarctic Protocol, or of this Act has occurred the Secretary may undertake enforcement action under section 9 of this Act.

(f) Remedies and requirements of this Act supplement and neither amend nor repeal any other provisions of law, except as expressly provided in this Act. Nothing in this Act shall limit, deny, amend, modify, or repeal any other remedy available to the United States or any other person, except as expressly provided in this Act.

(33 U.S.C. 1907)

SEC. 9. (a) A person who knowingly violates the MARPOL Protocol,¹ Annex IV to the Antarctic Protocol, This Act, or the regulations issued thereunder commits a class D felony. In the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to conviction.

(b) A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol,¹ Annex IV to the Antarctic Protocol, this Act, or the regulations issued thereunder shall be liable to the United States for a civil penalty, not to exceed \$25,000 for each violation; or

(2) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol,¹ Annex IV to the Antarctic Protocol, this Act, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed \$5,000 for each statement or representation.

Each day of a continuing violation shall constitute a separate violation. The amount of the civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require. An amount equal to not more than ½

¹ Public Law 104-227 added an additional comma (110 Stat. 3013).

of such penalties may be paid by the Secretary to the person giving information leading to the assessment of such penalties.

(c) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to assessment or which has been assessed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States for collection in any appropriate district court of the United States.

(d) A ship operated in violation of the MARPOL Protocol,¹ Annex IV to the Antarctic Protocol, this Act, or the regulations thereunder is liable in rem for any fine imposed under subsection (a) or civil penalty assessed pursuant to subsection (b), and may be proceeded against in the United States district court of any district in which the ship may be found.

(e) If any ship subject to the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

(f) Notwithstanding subsection (a), (b), or (d) of this section, if the violation is by a ship registered in or of the nationality of a country party to the MARPOL Protocol or the Antarctic Protocol, or one operated under the authority of a country party to the MARPOL Protocol or the Antarctic Protocol, the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the ship's registry or nationality, or under whose authority the ship is operating for appropriate action, rather than taking the actions required or authorized by this section.

(33 U.S.C. 1908)

SEC. 10. (a) A proposed amendment to the MARPOL Protocol received by the United States from the Secretary-General of the International Maritime Organization pursuant to Article VI of the MARPOL Protocol, may be accepted on behalf of the United States by the President following the advice and consent of the Senate, except as provided for in subsection (b) of this section.

(b) A proposed amendment to Annex I, II, or V to the Convention, appendices to those Annexes, or Protocol I of the Convention received by the United States from the Secretary-General of the International Maritime Organization pursuant to Article VI of the MARPOL Protocol, may be the subject of appropriate action on behalf of the United States by the Secretary of State following consultation with the Secretary, who shall inform the Secretary of State as to what action he considers appropriate at least 30 days prior to the expiration of the period specified in Article VI of the

¹ Public Law 104-227 added an additional comma (110 Stat. 3013).

MARPOL Protocol during which objection may be made to any amendment received.

(c) Following consultation with the Secretary, the Secretary of State may make a declaration that the United States does not accept an amendment proposed pursuant to Article VI of the MARPOL Protocol.

(33 U.S.C. 1909)

SEC. 11. (a) Except as provided in subsection (b) of this section, any person having an interest which is, or can be, adversely affected, may bring an action on his own behalf—

(1) against any person alleged to be in violation of the provisions of this Act, or regulations issued hereunder;

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary;

(3) against the Secretary of the Treasury where there is alleged a failure of the Secretary of the Treasury to take action under section 9(e) of this Act.

(b) No action may be commenced under subsection (a) of this section—

(1) prior to 60 days after the plaintiff has given notice, in writing and under oath, to the alleged violator, the Secretary concerned, and the Attorney General; or

(2) if the Secretary has commenced enforcement or penalty action with respect to the alleged violation and is conducting such procedures diligently.

(c) Any suit brought under this section shall be brought—

(1) in a case concerning an onshore facility or port, in the United States district court for the judicial district where the onshore facility or port is located;

(2) in a case concerning an offshore facility or offshore structure under the jurisdiction of the United States, in the United States district court for the judicial district nearest the offshore facility or offshore structure;

(3) in a case concerning a ship, in the United States district court for any judicial district wherein the ship or its owner or operator may be found; or

(4) in any case, in the District Court for the District of Columbia.

(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party including the Federal Government.

(e) In any action brought under this section, if the Secretary or Attorney General are not parties of record, the United States, though the Attorney General, shall have the right to intervene.

(33 U.S.C. 1910)

SEC. 12. On the effective date of this Act—

(a) the Oil Pollution Act, 1961, as amended (75 Stat. 402; 33 U.S.C. 1001 et seq.) is repealed. Any criminal or civil penalty proceeding under that Act for a violation which occurred prior to the effective date of this Act may be initiated or con-

tinued to conclusion as though that Act had not been repealed; and

(b) the Oil Pollution Act Amendments of 1973 (87 Stat. 428, Public Law 93-119) are repealed.

SEC. 13. (a) Section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a) is amended as follows—

(1) by amending subparagraph (C) of paragraph (2) by deleting the word “or” in clause (ii); by deleting the period at the end of clause (iii) and inserting “; or”; and by adding a new clause (iv) as follows:

“(iv) designated as a noxious liquid substance under Annex II of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973.”;

(2) by amending subparagraph (E) of paragraph (3) to read as follows:

“(E) which is constructed or adapted to carry, or which carries, oil or any hazardous materials in bulk as cargo or in residue.”.

(b) The Federal Water Pollution Control Act, as amended, is further amended in the first sentence of section 311(b)(3), after the words “except (A) in the case of such discharges”, by striking the words “of oil”; and by striking the phrase “the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended” and inserting in lieu thereof the phrase “the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973”.

SEC. 14. (a) Except as provided in subsection (b) of this section, this Act is effective upon the date of enactment, or on the date the MARPOL Protocol becomes effective as to the United States, whichever is later.

(b) The Secretary and the heads of Federal departments shall have the authority to issue regulations, standards, and certifications under sections 3(c), 3(d), 4(b), 5(a), 6(a), 6(c), and 6(f) effective on the date of enactment of this Act. Section 13(a)(2) is effective upon the date of enactment of this Act.

(c) Any rights or liabilities existing on the effective date of this Act shall not be affected by this enactment. Any regulations or procedures promulgated or effected pursuant to the Oil Pollution Act, 1961, as amended, remain in effect until modified or superseded by regulations promulgated under the authority of the MARPOL Protocol or this act.

SEC. 15. Nothing in this Act shall be construed as limiting, diminishing, or otherwise restricting any of the authority of the Secretary under the Port and Tanker Safety Act of 1978 (Public Law 95-474).

(33 U.S.C. 1911)

SEC. 16. (a) Subsection (c) of section 4 of the Act of 1956 (16 U.S.C. 742c(c)) is amended—

(1) by striking out “September 30, 1980,” each place it appears therein and inserting in lieu thereof “September 30, 1982,”; and

(2) by striking out the third, fourth, and fifth sentences thereof.

(b) The amendments made by subsection (a) shall take effect on September 1, 1980.

SEC. 17. Any action taken under this Act shall be taken in accordance with international law.

(33 U.S.C. 1912)