

§ 1472. Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas

Whenever a ship collision, stranding, or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by convention oil or of the sea or atmosphere by a substance other than convention oil which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 1479 of this title, without liability for any damage to the owners or operators of the ship, to her cargo or crew, to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the convention, the protocol and this chapter, to prevent, mitigate, or eliminate that danger.

(Pub. L. 93-248, §3, Feb. 5, 1974, 88 Stat. 8; Pub. L. 95-302, §1(2), June 26, 1978, 92 Stat. 344.)

AMENDMENTS

1978—Pub. L. 95-302 substituted “convention oil or of the sea or atmosphere by a substance other than convention oil” for “oil”, and “convention, the protocol” for “Convention”.

EFFECTIVE DATE OF 1978 AMENDMENT

For effective date of amendment by Pub. L. 95-302, see section 2 of Pub. L. 95-302, set out as a note under section 1487 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1474, 1479 of this title.

§ 1473. Consultations and determinations respecting creation of hazards to human health, etc.; criteria for determinations respecting grave and imminent dangers of major harmful consequences to United States coastline or related interests

(a) The Secretary, after consultation with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, shall determine when a substance other than those enumerated in the protocol is liable to create a hazard to human health, to harm living resources, to damage amenities, or to interfere with other legitimate uses of the sea.

(b) In determining whether there is grave and imminent danger of major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States directly threatened or affected including but not limited to, human health, fish, shellfish, and other living marine resources, wildlife, coastal zone and estuarine activities, and public and private shorelines and beaches.

(Pub. L. 93-248, §4, Feb. 5, 1974, 88 Stat. 9; Pub. L. 95-302, §1(3), June 26, 1978, 92 Stat. 344.)

AMENDMENTS

1978—Pub. L. 95-302 added subsec. (a), designated existing provisions as subsec. (b), and inserted “human health,” before “fish”.

EFFECTIVE DATE OF 1978 AMENDMENT

For effective date of amendment by Pub. L. 95-302, see section 2 of Pub. L. 95-302, set out as a note under section 1487 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1471, 1479 of this title.

§ 1474. Federal intervention actions

Upon a determination under section 1472 of this title of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may—

(1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;

(2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and

(3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

(Pub. L. 93-248, §5, Feb. 5, 1974, 88 Stat. 9.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1486 of this title; title 26 section 9509.

§ 1475. Consultation procedure

Before taking any measure under section 1474 of this title, the Secretary shall—

(1) consult, through the Secretary of State, with other countries affected by the marine casualty, and particularly with the flag country of any ship involved;

(2) notify without delay the Administrator of the Environmental Protection Agency and any other persons known to the Secretary, or of whom he later becomes aware, who have interests which can reasonably be expected to be affected by any proposed measures; and

(3) consider any views submitted in response to the consultation or notification required by subsections (1) and (2) of this section.

(Pub. L. 93-248, §6, Feb. 5, 1974, 88 Stat. 9.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1476 of this title.

§ 1476. Emergencies

In cases of extreme urgency requiring measures to be taken immediately, the Secretary may take those measures rendered necessary by the urgency of the situation without the prior consultation or notification as required by section 1475 of this title or without the continuation of consultations already begun.

(Pub. L. 93-248, §7, Feb. 5, 1974, 88 Stat. 9.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1486 of this title; title 26 section 9509.

§ 1477. Reasonable measures; considerations

(a) Measures directed or conducted under this chapter shall be proportionate to the damage,

actual or threatened, to the coastline or related interests of the United States and may not go beyond what is reasonably necessary to prevent, mitigate, or eliminate that damage.

(b) In considering whether measures are proportionate to the damage the Secretary shall, among other things, consider—

- (1) the extent and probability of imminent damage if those measures are not taken;
- (2) the likelihood of effectiveness of those measures; and
- (3) the extent of the damage which may be caused by those measures.

(Pub. L. 93-248, § 8, Feb. 5, 1974, 88 Stat. 9.)

§ 1478. Personal, flag state, and foreign state considerations

In the direction and conduct of measures under this chapter the Secretary shall use his best endeavors to—

- (1) assure the avoidance of risk to human life;
- (2) render all possible aid to distressed persons, including facilitating repatriation of ships' crews; and
- (3) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

(Pub. L. 93-248, § 9, Feb. 5, 1974, 88 Stat. 9.)

§ 1479. Federal liability for unreasonable damages

(a) Payment of compensation

The United States shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in section 1472 of this title.

(b) Jurisdiction

Actions against the United States seeking compensation for any excessive measures may be brought in the United States Court of Federal Claims, in any district court of the United States, and in those courts enumerated in section 460 of title 28. For purposes of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii, and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

(c) Burden of proof

With respect to intervention for a substance identified pursuant to section 1473(a) of this title, the United States has the burden of establishing that, under the circumstances present at the time of the intervention, the substance could reasonably pose a grave and imminent danger analogous to that posed by a substance enumerated in the protocol.

(Pub. L. 93-248, § 10, Feb. 5, 1974, 88 Stat. 10; Pub. L. 95-302, § 1(4), June 26, 1978, 92 Stat. 345; Pub. L. 97-164, title I, § 161(6), Apr. 2, 1982, 96 Stat. 49; Pub. L. 102-572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1982—Subsec. (b). Pub. L. 97-164 substituted “Claims Court” for “Court of Claims”.

1978—Subsec. (c). Pub. L. 95-302 added subsec. (c).

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

For effective date of amendment by Pub. L. 95-302, see section 2 of Pub. L. 95-302, set out as a note under section 1487 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1472 of this title.

§ 1480. Notification by Secretary of State

The Secretary of State shall notify without delay foreign states concerned, the Secretary-General of the Inter-Governmental Maritime Consultative Organization, and persons affected by measures taken under this chapter.

(Pub. L. 93-248, § 11, Feb. 5, 1974, 88 Stat. 10.)

§ 1481. Violations; penalties

(a) A person commits a class A misdemeanor if that person—

- (1) willfully violates a provision of this chapter or a regulation issued thereunder; or
- (2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this chapter; or
- (3) willfully obstructs any person who is acting in compliance with an order or direction under this chapter.

(b) In a criminal proceeding for an offense under paragraph (1) or (2) of subsection (a) of this section it shall be a defense for the accused to prove that he used all due diligence to comply with any order or direction that he had reasonable cause to believe that compliance would have resulted in serious risk to human life.

(Pub. L. 93-248, § 12, Feb. 5, 1974, 88 Stat. 10; Pub. L. 101-380, title IV, § 4302(l), Aug. 18, 1990, 104 Stat. 539.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-380 substituted “A person commits a class A misdemeanor if that person” for “Any person who” in introductory provisions and struck out “, shall be fined not more than \$10,000 or imprisoned not more than one year, or both” after “under this chapter” in par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L.