

US Code

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TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

CHAPTER 28—POLLUTION CASUALTIES ON THE HIGH SEAS: UNITED STATES INTERVENTION

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CHAPTER 28—POLLUTION CASUALTIES ON THE HIGH SEAS: UNITED STATES INTERVENTION

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§ 1471. Definitions

As used in this chapter—

- (1) “a substance other than convention oil” means those oils, noxious substances, liquefied gases, and radioactive substances—
 - (A) enumerated in the protocol, or
 - (B) otherwise determined to be hazardous under section 1473 (a) of this title;
- (2) “convention” means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto;
- (3) “convention oil” means crude oil, fuel oil, diesel oil, and lubricating oil;
- (4) “Secretary” means the Secretary of the department in which the Coast Guard is operating;
- (5) “ship” means—
 - (A) a seagoing vessel of any type whatsoever, and
 - (B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;
- (6) “protocol” means the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil, 1973, including annexes thereto; and
- (7) “United States” means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

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

References in Text

For definition of Canal Zone, referred to in par. (7), see section 3602 (b) of Title 22, Foreign Relations and Intercourse.

Amendments

1978—Pub. L. 95–302 in cl. (1) substituted definition of “a substance other than convention oil” for definition of “ship”, in cl. (2) substituted definition of “convention” for definition of “oil”, in cl. (3) substituted definition of “convention oil” for definition of “convention”, in cl. (5) substituted definition of “ship” for definition of “United States”, and added cls. (6) and (7).

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.

Short Title

Section 1 of Pub. L. 93–248 provided: “That this Act [enacting this chapter] may be cited as the ‘Intervention on the High Seas Act’.”

Transfer of Functions

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

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.

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§ 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.

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§ 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.

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§ 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.)

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§ 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.)

.....

§ 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.)

.....

§ 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.)

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§ 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.)

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§ 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

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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.

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§ 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.

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(Pub. L. 93–248, § 12, Feb. 5, 1974, 88 Stat. 10; Pub. L. 101–380, title IV, § 4302(1), 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. 101–380, set out as an Effective Date note under section 2701 of this title.

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§ 1482. Consultation for nomination and nomination of experts, negotiators, etc.; proposal of amendments to list of substances other than convention oil; Presidential acceptance of amendments

(a) Nomination of experts and proposal of amendments to list of substances

The Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, may nominate individuals to the list of experts provided for in article III of the convention and article II of the protocol and may propose amendments to the list of substances other than convention oil in accordance with article III of the protocol.

(b) Consultations for designation or nomination of negotiators, etc., provided for by convention and protocol

The Secretary of State, in consultation with the Secretary, shall designate or nominate, as appropriate and necessary, the negotiators, conciliators, or arbitrators provided for by the convention and the protocol.

(c) Presidential acceptance of amendments to list of substances other than convention oil in accordance with protocol

The President may accept amendments to the list of substances other than convention oil in accordance with article III of the protocol.

(Pub. L. 93–248, § 13, Feb. 5, 1974, 88 Stat. 10; Pub. L. 95–302, § 1(5), June 26, 1978, 92 Stat. 345.)

Amendments

1978—Subsec. (a). Pub. L. 95–302, § 1(5)(A), inserted provisions relating to applicability of article II of the protocol and provisions for proposal of amendments to the list of substances other than convention oil.

Subsec. (b). Pub. L. 95–302, § 1(5)(B), substituted “protocol” for “annexes thereto”.

Subsec. (c). Pub. L. 95–302, § 1(5)(C), added subsec. (c).

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.

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§ 1483. Foreign government ships; immunity

No measures may be taken under authority of this chapter against any warship or other ship owned or operated by a country and used, for the time being, only on Government noncommercial service.

(Pub. L. 93–248, § 14, Feb. 5, 1974, 88 Stat. 10.)

.....

§ 1484. Interpretation and administration; other right, duty, privilege, or immunity and other remedy unaffected

This chapter shall be interpreted and administered in a manner consistent with the convention, the protocol, and other international law. Except as specifically provided, nothing in this chapter may be interpreted to prejudice any otherwise applicable right, duty, privilege, or immunity or deprive any country or person of any remedy otherwise applicable.

(Pub. L. 93–248, § 15, Feb. 5, 1974, 88 Stat. 10; Pub. L. 95–302, § 1(6), June 26, 1978, 92 Stat. 345.)

Amendments

1978—Pub. L. 95–302 inserted “, the protocol,” after “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.

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§ 1485. Rules and regulations

The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this chapter.

(Pub. L. 93–248, § 16, Feb. 5, 1974, 88 Stat. 10.)

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§ 1486. Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 1474 and 1476 of this title.

(Pub. L. 93–248, § 17, Feb. 5, 1974, 88 Stat. 10; Pub. L. 101–380, title II, § 2001, Aug. 18, 1990, 104 Stat. 506.)

Amendments

1990—Pub. L. 101–380 amended section generally. Prior to amendment, section read as follows: “The revolving fund established under section 1321 (k) of this title shall be available to the Secretary for Federal actions and activities under section 1474 of this title.”

Effective Date of 1990 Amendment

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

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§ 1487. Effective date

This chapter shall be effective upon February 5, 1974, or upon the date the convention becomes effective as to the United States, whichever is later.

(Pub. L. 93–248, § 18, Feb. 5, 1974, 88 Stat. 10.)

TITLE 33 - Section 1487 - Effective date

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References in Text

The date the convention became effective as to the United States, referred to in text, is May 6, 1975.

Effective Date of 1978 Amendment

Pub. L. 95-302, § 2, June 26, 1978, 92 Stat. 345, provided that: "This Act [amending sections 1471 to 1473, 1479, 1482, and 1484 of this title] shall be effective upon the date of enactment [June 26, 1978], or upon the date the protocol becomes effective as to the United States, whichever is later." [The protocol was adopted by the United States on Sept. 7, 1978, to be effective as to the United States upon its adoption by 15 countries. The protocol became effective as to the United States Mar. 30, 1983.