

## **INTERVENTION ON THE HIGH SEAS ACT**

**Acronym:** High Seas Act

**Citation:** 33 U.S.C. §§ 1471-1487 (2002).

***Legislative Purpose:***

The act authorizes the U.S. Coast Guard to intervene when there is a ship collision, stranding, or other incident or occurrence which creates, as determined by the Secretary of the Treasury, a grave and imminent danger to the coastline or related interests of the United States.

***Summary:***

The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties was drafted in 1969 and allows a coastal nation to take defensive action against a vessel on the high seas where pollution by oil is threatened.

The United States has implemented the Intervention Convention by the Intervention on the High Seas Act. The enactment tracks the Convention language as to action which may be taken in the case of imminent danger to the coastline or related interests of the United States from pollution or threat of pollution. The measures taken to abate the pollution shall be proportionate to the damage, actual or threatened, and, if they are not, the U.S. shall be liable for damages. It is noted that the revolving fund established under the Clean Water Act is available for intervention activities.

The act gives the Coast Guard intervention authority in circumstances when a ship is threatening to spill crude oil, fuel oil, diesel oil, or lubricating oil into the seas. The U.S. Coast Guard has the authority to take measures on the high seas to mitigate such dangers. The Secretary, after consultation with the EPA administrator and the Secretary of Commerce, is allowed to expand the list of substances to that which is beyond the Intervention Convention.

The Secretary is charged with coordinating and directing all public and private efforts designed to remove or eliminate the threatened pollution; to undertake the whole or any part of any salvage operation of the polluting vessel; and to remove and destroy the ship and the cargo which is the source of the damage. Before intervening, the Secretary of the Treasury must get the Secretary of State to consult with the flag country of the ship involved. Also, the Secretary must consult with any other agency or persons whose interests can be reasonably expected to be affected by the proposed measures, except in cases of extreme emergency.

The United States shall pay damages for measures which exceed those which are reasonably necessary, and the jurisdiction is in the United States Court of Federal Claims. The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under this section.

The Secretary of Treasury has the authority to appoint a panel of experts to propose amendments to the

list of substances calling for intervention.

## TITLE 33. NAVIGATION AND NAVIGABLE WATERS

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

33 U.S.C. §§ 1471-1487 (2002).

#### § 1471. Definitions

As used in this Act [[33 USC § 1471](#) et seq.]--

- (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 4(a) [[33 USC § 1473\(a\)](#)];
- (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.

§ 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 10 [[33 USC § 1479](#)], without liability for any damage to the owners or operators of the ship, to her cargo or crew, or 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 Act [[33 USC §§ 1471](#) et seq.], to prevent, mitigate, or eliminate that danger.

§ 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.

§ 1474. Federal intervention actions

Upon a determination under section 3 of this Act [[33 USC § 1472](#)] 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.

§ 1475. Consultation procedure

Before taking any measure under section 5 of this Act [[33 USC § 1474](#)], 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.

§ 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 6 of this Act [[33 USC § 1475](#)] or without the continuation of consultations already

begun.

§ 1477. Reasonable measures; considerations

(a) Measures directed or conducted under this Act [[33 USC §§ 1471](#) et seq.] 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.

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

In the direction and conduct of measures under this Act [[33 USC §§ 1471](#) et seq.] 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.

§ 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 3 [[33 USC § 1472](#)].

(b) Jurisdiction. Actions against the United States seeking compensation for any excessive measures may be brought in the United States Claims Court [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, United States Code. For purposes of this Act [[33 USC §§ 1471](#) et seq.], 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 4(a) [[33 USC § 1473\(a\)](#)], 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.

§ 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 Act [[33 USC §§ 1471](#) et seq.].

§ 1481. Violations; penalties

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

- (1) willfully violates a provision of this Act [[33 USC §§ 1471](#) et seq.] or a regulation issued thereunder; or
- (2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this Act [[33 USC §§ 1471](#) et seq.]; or
- (3) willfully obstructs any person who is acting in compliance with an order or direction under this Act [[33 USC §§ 1471](#) et seq.].

(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 or that he had reasonable cause to believe that compliance would have resulted in serious risk to human life.

§ 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.

§ 1483. Foreign government ships; immunity

No measures may be taken under authority of this Act [[33 USC §§ 1471](#) et seq.] against any warship or other ship owned or operated by a country and used, for the time being, only on Government noncommercial service.

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

This Act [[33 USC §§ 1471](#) et seq.] 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 Act [[33 USC §§ 1471](#) et seq.] may be interpreted to prejudice any otherwise applicable right, duty, privilege, or immunity or deprive any country or person of any remedy otherwise applicable.

§ 1485. Rules and regulations

The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this Act [[33 USC §§ 1471](#) et seq.].

§ 1486. Oil Spill Liability Trust Fund; availability

The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 5 and 7 of this Act [[33 USC §§ 1474, 1476](#)].

§ 1487. Effective date

This Act [[33 USC §§ 1471](#) et seq.] shall be effective upon the date of enactment [enacted Feb. 5, 1974], or upon the date the convention becomes effective as to the United States, whichever is later.