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TANKER SAFETY INCENTIVE: 
A LEGISLATIVE PROPOSAL

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Recent oil tanker accidents near American coastlines, such as the Argo Merchant grounding in 1976 twenty-eight miles off Nantucket Island, have demonstrated that oil tankers pose serious threats to the United States' marine and coastal environments. Upgrading minimum construction and equipment standards, traditionally considered a means of improving the safety record of oil tanker operations,¹ has not prevented these mishaps. Tanker standards in the past have not been strict, nor have they affected crew quality. Furthermore, enforcement of minimum standards has been sporadic or has occurred too late in a ship's voyage to be effective. Compounding this problem, the costs of constructing, equipping, and operating tankers, and of training tanker crews beyond present safety standards, place safety-conscious shipbuilders and shipowners at a financial disadvantage relative to their competitors.

The United States can protect its national coastal and marine interests, however, by creating incentives for shipbuilders to construct and equip, and for shipowners to operate, the safest practicable tankers. This Article proposes a Tanker Safety Incentive Act (TSIA)²


² The proposed TSIA provisions pertinent to this analysis are included in the Appendix to this Article. Some of these regulatory ideas are not original with the authors. For example, both Houses of Congress considered legislation in 1977 concerning oil cargo preference, see H.R. 1037, reprinted in H.R. REP. No. 589, 95th Cong., 1st Sess. 1 (1977); S. 568 & S. 682, 95th Cong., 1st Sess. (1977),
as a legislative vehicle for providing the necessary incentive. Under existing law, tankers must meet minimum safety standards to operate in American ports. Supplementing these minimum standards with stricter construction, equipment, operations, and financing requirements, the TSIA will authorize the Coast Guard to classify all tankers, irrespective of flag, according to their level of compliance with the new standards. Most importantly, the bill will award priority in the carriage of oil to tankers with the highest safety classification.

The proposed legislation will require anyone seeking to transport oil for landing in the United States to convey that petroleum in the safest tanker available. The TSIA provides that oil may be imported at any time in any class A tanker, in a class B vessel if no class A ships are available within a reasonable period of time and at fair rates, and in a class C tanker as a last alternative. The class C cate-

reprinted in Recent Tanker Accidents: Legislation, supra note 1, at 540, 548; and oil pollution liability and compensation, see H.R. 6803, 95th Cong., 1st Sess.; S. Rep. No. 427, 95th Cong., 1st Sess. 1 (1977). In addition, the Senate Commerce, Science, and Transportation Committee held hearings on several bills proposing tanker equipment, construction, and operations safety standards, see S. 182, S. 568, S. 682, & S. 715, 95th Cong., 1st Sess. (1977), reprinted in Recent Tanker Accidents: Legislation, supra note 1, at 500, 540, 548, 586. This Article does not undertake a comprehensive review of the various bills designed to promote safe tanker operations; instead, it views the regulatory problem from a novel perspective and proposes a bill that the authors believe is sufficiently distinct from its predecessors to eliminate many, if not all, of the objections raised to them.

3. The Coast Guard presently has the power to establish operating procedures and construction standards necessary to prevent oil discharges by tankers. Section 201 of the Ports and Waterways Safety Act of 1972, 46 U.S.C. § 391a (Supp. II 1972), grants broad regulatory authority to the Secretary of the department in which the Coast Guard is operating over all vessels transporting oil that enter the navigable waters of the United States. Sections 101-104 of this Act, 33 U.S.C. §§ 1221-1224 (Supp. II 1972), authorize the Secretary to establish vessel traffic systems for ports, harbors, and other congested waters and to require vessels to comply with the equipment standards necessary for the use of any particular system. See notes 28-29 infra & accompanying text.


5. The draft bill defines the term “oil” to include liquified natural gas. Appendix, § 3(c) (adding § 401(e)(8)). The safe tanker incentive program regulates liquified natural gas carriers as well as oil tankers.

6. Id. (adding § 401(d)(1)(A)).

7. Id. (adding § 401(d)(1)(B)).
gory is divided into subcategories based on the degree of conformity with class A safety requirements. The lowest subcategory will comprise safety standards under existing law. According to the regulations, as more ships meeting the high standards for class A and B vessels are constructed, class C ships should gradually fall into disuse as surplusage. Thus, the system provides incentive to construct, equip, and operate vessels to the safest feasible extent.

Unfortunately, the poor safety record of tanker operations often has been viewed as a problem only in those areas of the country that rely upon petroleum imported from other geographic regions. States producing oil should be equally concerned, however, because a large portion of their product is transported by marine tankers to other locations of the country. This heavy volume of tanker traffic in oil-producing regions, such as Alaska, will conflict with other uses of the oceans if not regulated properly. The potential conflicts between tanker users and the commercial fishing industry in Alaska, for example, illustrate the magnitude of the problem.

1. Id. (adding § 401(d)(1)(C)).

2. A collateral benefit of the TSIA will be its economic stimulus to the shipbuilding and related industries in the United States and other maritime nations. These countries build and operate the safest tankers in the world, and, because of the current inadequacy in the availability of class A and B vessels meeting American oil transportation needs, an investor building a tanker that complies with class A or B safety standards will enjoy an increased probability of acquiring cargo and maximizing profits. See generally H. REP. No. 589, 95th Cong., 1st Sess. 3 (1977).


4. At peak capacity the Prudhoe Bay oil field will supply the trans-Alaska pipeline with an estimated two million barrels per day for transport to its southern terminus, Valdez. All oil flowing through the pipeline system is shipped from Valdez to consumer markets or to other pipeline systems by marine oil tanker. Moreover, a petrochemical complex on the Kenai Peninsula both imports and exports petroleum products by tanker. Furthermore, Alaska is expected to become the nation's largest producer of outer continental shelf oil and natural gas, which also must be transported by tanker.

5. Alaska has the most productive domestic commercial fishery in the nation, and this industry is the state's largest source of private sector employment. Fish products landed in Alaska are valued in excess of $160,000,000 annually. Fishing vessels from the Soviet Union, Japan, Poland, Korea, Taiwan, and Canada exploit Alaska's commercial fishery. Much of the state's oil and natural gas development, however, will occur in commercial fishing areas. Petroleum-related activities, including oil tanker operations, therefore must be conducted with the utmost safety.
incentive program therefore must operate within two parameters: while recognizing that the satisfaction of American energy requirements for the foreseeable future depends upon the continued transportation by ship of imported oil into the United States, the system should attempt to minimize the threat of tanker accidents, which generally result in loss of life and property, damage to ocean and coastal resources, and injury to fisheries that are subject to the exclusive management authority of the United States.

THE TANKER SAFETY INCENTIVE ACT

The proposed TSIA establishes a safe tanker preference program through a series of amendments to the Fishery Conservation and Management Act of 1976 (FCMA). Conceptually, the FCMA, which obligates the United States to conserve and protect fishery resources, provides a suitable vehicle for the implementation of a safety system designed to alleviate tanker accidents that directly threaten fishery prosperity. More importantly, the FCMA contains intricate provisions for monitoring and enforcing United States law upon vessels of foreign nations; amending the FCMA eliminates the need to enact comparable provisions.

The TSIA will expand the scope of the FCMA by adding a new Title IV entitled “Protection of Fishery Resources from Accidents Involving Tankers” and several technical conforming amendments. Title IV establishes three classes of tankers, A, B, and C.

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15. Id. None of the legislation discussed in note 4, supra, proposed amending the FCMA.
17. See id. §§ 201(c), 204, 305, 307-311, 16 U.S.C.A. §§ 1821(c), 1824, 1855, 1857-1861.
18. Appendix, § 3(c).
19. These will amend the substantive provisions of the FCMA to conform mechanically with the proposed Title IV. Section 3(d) of the TSIA amends § 307 of the FCMA, 16 U.S.C.A. § 1857 (Supp. 1977), to prohibit conduct contrary to the tanker safety incentive provisions. Section 3(e) of the draft bill amends the FCMA, 16 U.S.C.A. § 1861 (Supp. 1977), to provide that regulations with respect to tankers may be enforced by those officers authorized to execute the fishing limits imposed by the FCMA. Section 4 of the proposed legislation amends § 201 of the FCMA, 16 U.S.C.A. § 1821 (Supp. 1977) by adding a new subsection “(h),” which defines the requirements for a Governing International Tanker Agreement (GITA). See Appendix, §§ 8(d)-3(f), 4.
and requires that owners or consignors of oil that is transported in bulk by tanker in foreign commerce for ultimate landing in the United States use only vessels with the highest available classification. Section 401(c) of the new title prescribes the general construction, equipment, operations, and financing standards that vessels must meet to qualify as a class A or B tanker.

To be certified as a class A tanker, a vessel must conform to all standards established by the TSIA and be a vessel either of the United States or of a foreign nation with which this country has entered into a governing international tanker agreement (GITA).

To be certified as a class B tanker, a vessel must conform to all standards established by the TSIA except that class B tankers need not fly the flag of a nation that has entered into a GITA. To be certified as a class C tanker, a vessel must at least comply with the requirements of the Ports and Waterways Safety Act of 1972. In addition, the Secretary of the department in which the Coast Guard is operating will assign each class C tanker a "safety rating" based on the degree of its conformance with the bill's requirements for certification as a class A tanker.

Construction and Equipment Requirements

Any program encouraging tanker safety must establish vessel construction and equipment criteria that are more stringent than present standards, which only meet minimal safety requirements. Sec-

20. Appendix, § 3(c) (adding § 401(b) (1)-(3)).
21. Id. (adding § 401(d) (1)). Although vessels of any qualifying nation may be certified as class A tankers, see id. (adding § 401(b) (1) (B)), the TSIA permits only tankers documented under United States law to transport oil in domestic (interstate) commerce. See id. (adding §§ 401(b) (1) (B), 401(d) (2)). This restriction complements present law under the Jones Act, 46 U.S.C. § 11 (1970), which grants United States-flag vessels the exclusive right to convey cargo in domestic trade.
22. Appendix, § 3(c) (adding § 401(b) (1)).
23. Id. For a discussion of the requirements and effects of a GITA see notes 51-62 infra & accompanying text.
24. Appendix, § 3(c) (adding § 401(b) (2)).
25. Id.
27. Appendix, § 3(c) (adding § 401(b) (3)). Under this regulatory scheme, some existing tankers probably will not qualify for any classification.
28. Coast Guard tanker safety regulations are found in scattered sections in 33, 46 C.F.R. (1977).
29. The Coast Guard recently has promulgated stronger regulations for navigation procedures, preliminary tests, and minimum equipment for vessels weigh-
tion 401(c)(1) of the proposed Title IV regulates construction and structural design and mandates certain navigational equipment to ensure the safest possible tanker operations. This provision requires class A and B tankers to incorporate several features into their design and construction, including a segregated ballast system and a gas inerting system for vessels weighing in excess of 20,000 deadweight tons, a double hull if the tanker weighs in excess of


30. Appendix, § 3(c) (adding § 401(c)(1)). The most significant causes of tanker accidents from 1969-73, in terms of oil lost, were grounding (25%), collision (24%), and structural failure (16%). Recent Tanker Accidents, supra note 2, at 348.

31. Presently, after a ship's oil has been unloaded, sea water is placed in its cargo tanks for cleaning and ballasting. Subsequently, during deballasting operations, oil remnants are discharged with the water. Because a tanker's ballast must be discharged before it may be reloaded with petroleum, the problems created by deballasting operations are prevalent in oil-producing areas, and the Department of Transportation estimates that 85% of the oil discharged into the oceans results from these intentional ballasting operations. See DEPT OF TRANSPORTATION INTERIM REPORT, supra note 2, reprinted in Recent Tanker Accidents, supra note 4, at 338. Others estimate the total discharge to range from 300 to 900 billion gallons annually. Recent Tanker Accidents at 135, 147 (statements of C. Champion and A. McKenzie). Segregated ballast systems separate ballast and cargo areas, thus eliminating the need to discharge oily ballast water.

32. Hydrocarbon vapors form in the cargo tanks of oil tankers in the space not occupied by petroleum. When the tank is full or nearly full, this mixture is too rich for contribution to occur. When the ship is being loaded or unloaded, however, an explosive mixture of hydrocarbon vapors and oxygen forms. For example, on December 16, 1976, the 810-foot tanker Sansienena exploded in Los Angeles, killing nine people and injuring fifty. The vessel was not equipped with a gas inerting system. See Recent Tanker Accidents, supra note 4, at 395. A gas inerting system reduces the oxygen content in cargo tanks below the level necessary for an explosion. Id. at 141 (statement of C. Champion).

33. Appendix, § 3(c) (adding § 401(c)(1)(B)).

34. A double hulled or bottomed tanker provides a safety margin against oil spillage. Experts believe that double hulls could reduce spillage substantially in
40,000 deadweight tons;\(^{35}\) a redundant propulsion source, and a shaft horsepower in the ratio of one horsepower to each two and one-half deadweight tons.\(^{36}\) Mandatory tanker equipment consists of a comprehensive radar system having collision avoidance capabilities and true-north features, a long-range navigational aid, either a transponder or other similar position-fixing and identification equipment, satellite navigational instruments,\(^{37}\) a fathometer; two gyrocompasses, current charts, and adequate communications equipment.\(^{38}\) The Secretary of the department in which the Coast Guard is operating may prescribe any other design, construction, and equipment features that may contribute to safety, the preservation of fisheries, or the protection of other ocean and coastal resources that are subject to the management authority of the United States.\(^{39}\)

**Operations and Financing Requirements**

Routine Coast Guard inspections of vessels entering American ports demonstrate that some foreign-flag tankers contain improperly maintained safety equipment; in addition, poor general upkeep often endangers a ship's structural integrity.\(^{40}\) Although the United States denies port privileges to such vessels, isolated inspection cannot apprehend all violators. To correct this deficiency in the present program the TSIA requires that all class A and B tankers maintain a capital construction fund agreement with the Secretary of Commerce. Supplied through a mandatory deposit schedule, this fund will be adequate to accommodate expenditures for such vessel modernization and reconstruction and equipment acquisition, installation, and replacement as the Secretary shall prescribe.\(^{41}\)

the event of tanker collisions or groundings. See Recent Tanker Accidents, supra note 4, at 140-41, 150 (statements of C. Champion and A. McKenzie).

35. Appendix, § 3(c) (adding § 401(c)(1)(D)).

36. Id. (adding § 401(c)(1)(C)). The redundant propulsion source and shaft horsepower requirements will reduce the potential for groundings or collisions in restrictive waters; a tanker's maneuverability and braking power are dependent upon its screw.

37. Id. (adding § 401(c)(1)(A)).

38. Id. (adding § 401(c)(1)(C)). A majority of tanker accidents off United States coasts occur as a result of human error rather than equipment failure. By requiring a duplication of some navigational equipment, the Bill helps to safeguard against the miscalculations that might result from an evaluation of the output from a single set of instruments.

39. Id. (adding § 401(c)(1)(E)).

40. In the past seven years seven tankers have sunk near the east coast of the United States as a result of structural failure, killing 132 seamen. Recent Tanker Accidents, supra note 4, at 146 (statement of A. McKenzie).

41. Appendix, § 3(c) (adding § 401(c)(2)(C)). Before the Secretary requires
The TSIA also establishes operational, educational, and health-related requirements for tanker personnel and provides that each vessel must be operated by officers and crew members who meet tanker-service standards prescribed by the Secretary of the department containing the Coast Guard. These standards shall describe qualifications and prerequisites, based on experience, training, and performance, for issuance and renewal of licenses for specific crew-member positions on vessels in various size categories. In addition, the Secretary must outline the necessary instruction, both in coastal waters and on the high seas, in vessel and cargo handling and navigation under normal and emergency situations. Other tanker-service standards will establish guidelines both for the use of simulators developed for the training of relevant skills when measuring compliance with license issuance and renewal requirements and for continuing education of personnel. The proposed bill further requires the delineation of health and physical fitness criteria for all officers and crew members and the procedures for suspending the licenses of persons whose records of compliance with the tanker-service standards are unsatisfactory. Finally, the Secretary may designate any other requirements necessary to improve tanker operations.

**Governing International Tanker Agreements**

Foreign tanker owners and operators seeking class A certification, in addition to complying with the tanker standards enunciated in section 401 (c) of the proposed Title IV, must register their vessels under the laws of a foreign nation that has negotiated either a bilateral or multilateral GITA with the United States. Each signatory nation to a GITA will acknowledge the jurisdiction of the United States to protect those fishery resources subject to its exclusive man-

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42. *Id.* (adding § 401 (c) (2)).
43. *Id.* (adding § 401 (c) (2) (A)).
44. *Id.* (adding § 401 (c) (2) (A) (ii)). Present licensing does not differentiate between size or classes of vessels. A merchant marine officer may operate a small coastal freighter one day and a supertanker or very large crude carrier the next day without supplemental training or certification.
45. *Id.* (adding § 401 (c) (2) (A) (i)).
46. *Id.* (adding § 401 (c) (2) (A) (iii)).
47. *Id.* (adding § 401 (c) (2) (A) (v)).
48. *Id.* (adding § 401 (c) (2) (A) (iv)).
49. *Id.* (adding § 401 (c) (2) (A) (vi)).
50. *Id.* (adding § 401 (c) (2) (A) (vii)).
51. *Id.* (adding § 401 (b) (1) (B)).
agement authority under the FCMA against the risk of spills from tankers transporting oil for landing in this country.\textsuperscript{52} Under a GITA a foreign nation is obligated to ensure that its flag vessels bound for American ports are properly classified in accordance with the provisions of the TSIA.\textsuperscript{53} Similarly, the owners, operators, or charterers of any foreign tanker registered by the signatory must abide by all applicable regulations promulgated under the TSIA,\textsuperscript{54} including any additional standards promulgated under the Act subsequent to the signing of a GITA.\textsuperscript{55}

Each GITA will subject tankers registered in signatory states and landing oil in the United States to the degree of Coast Guard monitoring and surveillance currently imposed by the FCMA upon foreign fishing vessels.\textsuperscript{56} Thus, enforcement officers may board, search, or inspect an oil tanker on demand; when such activities provide them with a reasonable belief that the provisions of the Act, as amended by the proposed bill, have been violated, the officials can make arrests and seizures or take other appropriate action.\textsuperscript{57} The TSIA also authorizes officers to examine on request a tanker's certification permit,\textsuperscript{58} and requires that United States observers be accommodated on ships operating pursuant to a GITA.\textsuperscript{59} Moreover, under an agreement, signatory states and their vessel owners must appoint agents within the United States who are authorized to receive process\textsuperscript{60} and must assume responsibility for damages caused by their tankers to United States citizens' fishing vessels, gear, or catch.\textsuperscript{61} Finally, a GITA mandates that its signatories will not document under their domestic law the tankers of persons whose purpose for seeking such registration is to

\textsuperscript{52} Id. § 4 (adding § 201(h)).
\textsuperscript{53} Id. (adding § 201(h) (1) (A)).
\textsuperscript{54} Id.
\textsuperscript{55} See text accompanying notes 39, 50 supra.
\textsuperscript{56} Appendix, § 4 (adding § 201(h) (1) (B)). Section 201(c) (2) lists the monitoring and surveillance requirements imposed by FCMA. 16 U.S.C.A. § 1821 (c) (2) (Supp. 1977).
\textsuperscript{57} FCMA, § 201(c) (2) (A) (i)-(ii), 16 U.S.C.A. § 1821(c) (2) (A) (i)-(ii) (Supp. 1977). Section 307 of the FCMA, 16 U.S.C.A. § 1857 (Supp. 1977), as amended by § 3 (d) of the proposed bill in the Appendix, lists the actions prohibited by the FCMA and the new TSIA. See note 19 supra.
\textsuperscript{58} Appendix, § 3(c) (adding § 401(b) (4)).
\textsuperscript{59} FCMA, § 201(c) (2) (D), 16 U.S.C.A. § 1821(c) (2) (D) (Supp. 1977).
\textsuperscript{60} Id. § 201(c) (2) (F), 16 U.S.C.A. § 1821(c) (2) (F).
\textsuperscript{61} Id. § 201(c) (2) (G), 16 U.S.C.A. § 1821(c) (2) (G). This provision mandates the establishment of claims systems through which American fishermen can seek compensation for their losses caused by foreign tanker operations. Such systems could be similar to the claims boards established under the FCMA to provide a means for United States fisherman to seek reimbursement for damages caused by foreign fishing vessels.
avoid United States legal safety, labor, taxation, or environmental protection requirements.\textsuperscript{62}

**Tanker Safety Incentive Under International Law**

The 1958 Geneva Convention on the High Seas\textsuperscript{63} delineated the relationship between freedom of the seas and the responsibility of flag states to ensure that their vessels operate safely. The Convention places an affirmative burden on flag states to ensure that their ships comply with generally recognized safety standards.\textsuperscript{64} Presently accepted standards obligate flag states to police violations of regulations regarding the discharge of oil at sea\textsuperscript{65} and to ensure that their vessels operate safely to protect life at sea.\textsuperscript{66} These safety requirements have been codified in part either in technical international conventions adopted under the aegis of the International Maritime Consultative Organization (IMCO)\textsuperscript{67} or in other international agreements. Significant safety violations found during routine Coast Guard inspections of vessels registered by flag of convenience\textsuperscript{68} nations, however, demonstrate clearly that those nations fail to meet their international treaty obligations. A disproportionate number of marine accidents involving ships registered in those countries result from omitted or defective safety equipment or crew negligence.\textsuperscript{69}

Flag of convenience nations encourage extensive vessel registrations under their flags by failing to enforce safety or environmental standards.\textsuperscript{70} These flags of convenience offer shipowners monetary savings in terms of wages, taxes, liability, and security.\textsuperscript{71} Because

\begin{itemize}
\item \textsuperscript{62} Appendix, § 4 (adding § 201(h)(2)). In addition, any prior documentation must be revoked or cancelled within 180 days after a GITA becomes effective. \textit{Id.}
\item \textsuperscript{63} [1962] 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.
\item \textsuperscript{64} Id. art. 10, § 1
\item \textsuperscript{67} IMCO was established under United Nations supervision on March 17, 1948, to provide a forum for the development of internationally recognized marine safety standards. [1958] 9 U.S.T. 621, T.I.A.S. No. 4044, 289 U.N.T.S. 48. IMCO conventions frequently have been criticized for failing to consider seriously United States' positions. \textit{See, e.g., Recent Tanker Accidents, supra note 4, at 56-57 (statements of R. Train).}
\item \textsuperscript{68} See U.S. Coast Guard, Foreign Tanker Vessel Examination Program Fact Sheet (1977).
\item \textsuperscript{69} \textit{See COMMITTEE OF INQUIRY INTO SHIPPING, ROCHDALE REPORT, CMND. No. 4337, at ¶ 1294 (1970).}
\item \textsuperscript{70} \textit{Recent Tanker Accidents, supra} note 4, at 216-20 (statement of H. Brand).
\item \textsuperscript{71} \textit{See id.} at 345.
\end{itemize}
foreign documentation affords substantial investment opportunities for American nationals. United States citizens or companies beneficially own nearly one-half of the tanker tonnage registered under flags of convenience. Nevertheless, under international law, these vessels are subject to the authority of the flag nation for licensing and regulatory purposes.

The TSIA enables the United States to upgrade the safety standards of United States-bound foreign-flag tankers without encroaching upon the regulatory powers reserved by the nation of registry under the doctrine of the high seas. Unlike the FCMA, which creates a contiguous fishery conservation zone, the proposed bill does not establish a 200 mile exclusive pollution control or safety zone. The concept of a pollution control zone conflicts with the freedom of the seas doctrine because it purports to grant jurisdiction to coastal states over the safety standards of all vessels located in the zone, regardless of a vessel's nation of registry or destination.


73. Recent Tanker Accidents, supra note 4, at 219 (statement of H. Brand); see also Anderson, National and International Efforts to Prevent Traumatic Vessel Source Oil Pollution, 30 U. MIAMI L. REV. 985 (1976).

74. See 9 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1-51 (1968); see also text accompanying note 64 supra.

Proponents of flag of convenience practices, which reduce vessel operational expenses through lower wages and less stringent safety requirements, emphasize that the resulting lower oil transport costs benefit American consumers. Hearings on Energy, supra note 72, at 490 (statement of American Petroleum Institute). This rationale, however, disregards the significant expenses borne by American taxpayers who must pay the cleaning costs resulting from oil spills. See Anderson and Whitten, The Oil Industry's Power to Pollute, Wash. Post, Jan. 12, 1977, at C19, reprinted in Recent Tanker Accidents, supra note 4, at 108-09.


76. Various conventions reserve nations' rights to unhindered passage through the world's oceans. See, e.g., Convention on the High Seas, [1962] 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82, art. 4 (“Every State ... has the right to sail ships under its flag on the high seas.”); Convention on the Territorial Sea and the Contiguous Zone, [1964] 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205, art. 14, ¶ 1 (“[S]hips of all States ... shall enjoy the right of innocent passage through the territorial sea.”); Convention on Intervention on the High Seas in Cases of Oil Pollution Casualties, [1975] — U.S.T. —, T.I.A.S. No. 8068, — U.N.T.S. —, art. 1, ¶ 2 (“[N]o measure shall be taken ... against any warship or ship owned or operated by a State and used, for the time being, only on government non-commercial service.”).

Some Congressmen advocate the implementation of a 200 nautical mile pollution control zone. See, e.g., S. 182, 95th Cong., 1st Sess. (1977). Canada has created a pollution control zone in her Arctic waters. Act to Prevent Pollution of
Instead of creating an exclusive zone, the TSIA establishes a measuring point inside of which the United States will enforce reasonable requirements on the use of its ports and facilities. As a result, the proposed bill may be upheld under the doctrine of port state authority, which permits the host nation to establish reasonable requirements, such as those contained in the TSIA, for use and entry of its ports. These requirements may include the creation of incentives for constructing and operating modern, safe tankers irrespective of the flag state's safety policies.

Under the doctrine of port state authority, coastal nations may refuse entry to vessels not meeting their safety requirements. Because the doctrine only permits a coastal nation to establish vessel restrictions designed to protect its ports and territorial sea, however, the legal principle provides no support for an economic zone, in which a coastal state exercises jurisdiction over ships regardless of their destination. Accordingly, under the TSIA, the United States may not exert authority over a vessel in transit between two foreign ports.

International law does not specify when a coastal nation may inform a vessel operator that his ship will be denied port privileges. Presently, the United States Coast Guard conducts routine inspections

Areas of the Artic Waters Adjacent to the Mainland and Islands of the Canadian Artic, 9 INT'L LEGAL MATERIALS 543 (1970). For a discussion of the legitimacy of the Canadian pollution control zone see Green, International Law and Canada’s Anti-Pollution Legislation, 50 ORE. L. REV. 462 (1971).

77. See Convention on the Territorial Sea and the Contiguous Zone, [1958] 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205, which states that a coastal nation may establish a contiguous zone, not exceeding twelve nautical miles from its baseline, to “prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea.” Id. art. 24, ¶ (1) (a). Oil pollution falls within the scope of “sanitary regulations.” See also Convention on Fishing and Conservation of the Living Resources of the High Seas, [1966] 17 U.S.T. 139, T.I.A.S. No. 5969, 559 U.S.T.S. 285, which provides that coastal states have a “special interest in the maintenance of the high seas adjacent to its territorial sea,” id. art. 11, ¶ 1, and that “any coastal state may . . . adopt unilateral measures of conservation. . . .” Id. art. 12, ¶ 1.


79. See note 77 supra.

80. See notes 76-77 supra & accompanying text.

81. See Appendix, § 3(d) (6) (adding § 307(3) (C)). By denying the United States jurisdiction over all vessels within the fishery conservation zone, the TSIA does not provide the absolute protection offered by an exclusive pollution zone. Nevertheless, the proposed bill does permit this country to exercise the maximum authority permitted by international law.
of vessels just prior to a ship’s entry. In other instances, however, the vessels are not inspected until they have entered a port; if they are found to violate the safety standards, the nonconforming ships are ordered to leave without unloading their cargo. The TSIA authorizes the Coast Guard to inspect and to refuse port privileges to unsafe tankers bound for American ports when those vessels enter waters over which the United States exercises fishery conservation and management authority. By informing tanker operators that their ships will be denied access to United States ports at a time when those vessels are nearly 200 miles from American shorelines, the potential for accidents occurring in waters affecting this nation’s fishery resources will be diminished substantially.82

CONCLUSION

The United States, as a responsible world power, has met its treaty obligations regarding maritime safety, and its vessels are among the most seaworthy in the world. Safety is expensive, however, and the costs of building and operating an American-flag ship exceed the corresponding expenses incurred by a group whose vessel flies a flag of convenience. To the extent that this cost differential reflects a flag nation’s failure to require adequate safety equipment, maintenance, and crew standards, it constitutes a form of discrimination against United States vessels. A tanker safety incentive program provides a means for the United States, through the establishment of a system providing investment opportunities for groups owning well-constructed ships, to combat this discrimination. Moreover, such a program will also have the effect of improving the quality of the world’s tanker fleet.

82. The Argo Merchant grounding is one disaster that would have been prevented by this program. Enroute from Venezuela to Boston, the tanker ran aground on the Nantucket Shoals and spilled 7,700,000 gallons of oil into the Atlantic. U.S. DEP’T OF COMMERCE, THE ARGO MERCHANT OIL SPILL—A PRELIMINARY SCIENTIFIC REPORT 3 (1977). Finding that the vessel was a frequent violator of United States safety standards, the Coast Guard had intended to inspect the tanker prior to its entry into Boston harbor, Recent Tanker Accidents, supra note 4, at 170 (statement of Admiral Siler), but the Argo Merchant ran aground before it reached Boston. In a public statement following the grounding, the ship’s captain indicated that much of the vessel’s navigation equipment was inoperative. N.Y. Times, Dec. 28, 1976, § 1, at 1, col. 4. If the tanker had been inspected at the time it entered the waters over which this country exercises fishery conservation and management authority, it would have been refused port privileges in the United States and the accident never would have occurred.
SUBSTANTIVE PROVISIONS OF THE PROPOSED TANKER SAFETY INCENTIVE ACT

SEC. 3. INCENTIVE FOR SAFE TANKERS.

(a) Section 2(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. § 1801(a)) is amended by adding at the end of paragraph (3) thereof the following: “These fishery resources are also threatened by the operation of, and the risk of accidents involving, tankers that are transporting oil in bulk intended for landing in the United States.”.

(b) Section 2(b) of such Act is amended by striking out “and” in paragraph (1) immediately before “(B)” and by striking out the semicolon at the end thereof and inserting in lieu the following: “, and (C) an incentive for safe tankers in areas subject to the exclusive fishery management authority of the United States;”.

(c) Title IV of such Act is redesignated as Title V of such Act; sections 401 through 406 of such Act are redesignated as sections 501 through 506 of such Act; the table of contents in section 1 of such Act is amended to conform to these changes; and such Act is further amended by adding the following new Title IV immediately after section 312 thereof:

“TITLE IV—PROTECTION OF FISHERY RESOURCES FROM ACCIDENTS INVOLVING TANKERS

“SEC. 401. TANKER SAFETY INCENTIVE PROGRAM.

“(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall, in cooperation with the Secretary, establish and administer a tanker safety incentive program in accordance with this section to protect fishery resources subject to the exclusive fishery management authority of the United States and to protect the Nation’s ocean and coastal resources from the risk of oil spills from tankers carrying oil in bulk for landing in the United States.

“(b) CLASSIFICATION OF TANKERS.—(1) The Secretary of the department in which the Coast Guard is operating shall certify a tanker to be a class A tanker if it meets the requirements set forth pursuant to subsection (c) (1) and if it is—

“(A) built in the United States and a vessel of the United States; or
"(B) documented under the laws of any foreign nation with which the United States has entered into a governing international tanker agreement, as described in section 201(h), which is in effect.

"(2) The Secretary of the department in which the Coast Guard is operating shall certify a tanker to be a class B tanker if it meets the requirements set forth pursuant to subsection (c)(1) and if it is documented under and subject to effective regulation pursuant to the laws of any foreign nation that prescribes and adequately enforces, in the judgment of such Secretary, operations and financing requirements that comply with the substance of the standards prescribed pursuant to subsection (c)(2).

"(3) The Secretary of the department in which the Coast Guard is operating shall certify a tanker to be a class C tanker if such Secretary finds that this tanker is in compliance with all requirements under the Ports and Waterways Safety Act of 1972. Such Secretary shall assign a 'safety rating' to each tanker that is certified under this paragraph on the basis of the extent to which it meets the requirements for certification as a class A tanker under paragraph (1).

"(4) The Secretary of the department in which the Coast Guard is operating shall prescribe procedures and conditions for certification under this subsection. An appropriate permit shall be issued to the owner of each tanker that is certified under this subsection, upon the payment of a reasonable and nondiscriminatory fee and upon adequate assurances that such permit (A) will be displayed in the wheelhouse of the tanker covered thereby, and (B) will, upon request, be shown to any officer authorized to enforce the provisions of this Act (as provided in section 311). Such Secretary may also—

"(i) establish and include in any permit issued under this paragraph any conditions and restrictions that are deemed necessary or appropriate to protect fishery resources subject to the exclusive fishery management authority of the United States; and

"(ii) promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out any provisions of this Act.

"(c) TANKER STANDARDS.—(1) CONSTRUCTION AND EQUIPMENT REQUIREMENTS.—The tanker shall incorporate in its design and construction and be equipped with—

"(A) a radar system with short-range and long-range capabilities and with true-north features, a long-range navigation aid, a transponder or other appropriate position-fixing and identification equipment, and satellite navigation capability, all in working order;
“(B) a segregated ballast system and a gas inerting system, if such tanker is of a size in excess of 20,000 deadweight tons;

“(C) a fathometer, two gyrocompasses, up-to-date navigation charts for the routes to be used, adequate communications equipment in working order, a redundant propulsion source, and shaft horsepower in the ratio of 1 horsepower to each 2½ deadweight tons;

“(D) a double hull if such tanker is of a size in excess of 40,000 deadweight tons and if such tanker was contracted for construction or if actual construction thereof commenced after June 1, 1977; and

“(E) any other design, construction, and equipment features that may contribute, directly or indirectly, to safety, the protection of fishery resources, or the protection of other ocean and coastal resources of or subject to the management authority of the United States, as determined by the Secretary of the department in which the Coast Guard is operating, after consultation with the Secretary.

Each item or feature enumerated in or pursuant to this paragraph shall comply with specifications that shall be prescribed, by regulation, by the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary.

“(2) OPERATIONS AND FINANCING REQUIREMENTS.—

“(A) The tanker shall be operated by officers and crew members who comply with tanker-service standards prescribed by the Secretary of the department in which the Coast Guard is operating and which shall include—

“(i) instruction, as specified, in vessel and cargo handling and navigation under operative conditions and in emergency situations, both in coastal waters and on the high seas;

“(ii) qualifications and prerequisites for the issuance and renewal of licenses for specific crew-member positions on vessels in various size categories, on the basis of experience, training completed, and regular performance testing, as specified;

“(iii) standards for using simulators developed for the training of relevant skills to measure compliance with qualification requirements for the issuance and renewal of licenses pursuant to clause (ii);

“(iv) health and physical fitness criteria for all officers and crew members;
“(v) requirements, as specified, for periodic re-
training and for special training of all or specified
personnel;
“(vi) procedures for recording violations on li-
censes and for suspending the licenses of officers
and crew members whose record of compliance with
these standards is unsatisfactory; and
“(vii) any other requirements designated by the
Secretary of the department in which the Coast
Guard is operating as necessary or appropriate to
improve tanker operations.
“(B) The tanker shall be operated pursuant to a Manual
of Operating Procedures, which shall be prepared, published,
and periodically revised by the Secretary of the department
in which the Coast Guard is operating.
“(C) The tanker shall be subject to a capital construction
fund agreement with the Secretary that is adequate to as-
sure, through a mandatory deposit schedule, such vessel
modernization, reconstruction, equipment acquisition and
installation, and replacement as the Secretary, after consul-
tation with the Secretary of the department in which the
Coast Guard is operating, prescribes.
“(d) ACTIVITIES OF TANKERS.—(1) The Secretary shall take
such steps as are necessary to assure that each owner or consignor of
oil that is or will be transported in bulk by tanker in foreign com-
merce for ultimate landing in the United States (whether transported
directly from the point or place of production to the United States or
indirectly from such point or place via any intermediate point or
place used for storage, refining, liquefaction, processing, packaging,
regasification, transfer, or other purpose) complies with the follow-
ing requirements:
“(A) Such an owner or consignor may cause any oil to be
so transported for such purpose at any time in any Class A
tanker; or
“(B) Such an owner or consignor may cause oil to be so
transported for such purpose in any class B tanker if no
class A tanker is available within a reasonable period of time
and at fair and reasonable rates for such transportation; or
“(C) Such an owner or consignor may cause oil to be so
transported for such purpose in a designated class C tanker
if—
“(i) no class A or Class B tanker is available
within a reasonable period of time and at fair and
reasonable rates for such transportation;
“(ii) the Secretary of the department in which
the Coast Guard is operating finds that no other
class C tanker, which has a higher safety rating
pursuant to subsection (b)(3) than the safety rat-
ing assigned to the designated tanker, is available
within a reasonable period of time and at fair and
reasonable rates for such transportation; and
“(iii) the Secretary of the department in which
the Coast Guard is operating issues a special trans-
portation permit for such designated tanker prior
to the transportation involved.

“(2) The Secretary shall take such steps as are necessary to assure
that each owner or consignor of oil that is or will be transported in
bulk by tanker in domestic commerce causes such oil to be transported
in a vessel that is (A) documented under the laws of the United
States and (B) has the highest safety classification pursuant to sub-
section (b) that is available within a reasonable period of time and
at fair and reasonable rates.

“(e) DEFINITIONS.—As used in this section:
“(1) The term ‘domestic commerce’ means any trade, traffic, trans-
portation, or other commerce between any port or place in the United
States, and any other port or place in the United States, either di-
rectly or via any foreign port or place.

“(2) The term ‘foreign commerce’ means any trade, traffic, trans-
portation, or other commerce between any port or place in the United
States and any port or place outside the United States, in any direc-
tion, either directly or via any other port or place.

“(3) The term ‘oil’ means any mixture of hydrocarbons that is in
liquid form; capable of being used as a source of energy (with or
without any refining, processing, or treatment); and capable of being
transported in bulk by tanker. The term includes crude oil, unfinished
fuel oil, gasoline, kerosene, aviation fuel, naphtha, cracking stocks, dis-
tillate heating oil, diesel oil, residual fuel oil, liquefied petroleum gas,
liquefied natural gas, any sludge or refuse containing any of the fore-
going, and any of the foregoing mixed with any wastes other than
dredged spoil.

“(4) The term ‘tanker’ means a vessel of not less than 10,000 dead-
weight tons that is capable of transporting oil in bulk.”.

(d) Section 307 of the Fishery Conservation and Management Act
of 1976 (16 U.S.C. § 1857) is amended—
(1) in paragraph (1)(B) thereof by inserting “, or to use any
tanker to engage in the transportation of oil in bulk for landing in the
United States,” immediately after “engage in fishing”;
(2) in paragraph (1) (C) thereof by inserting "or an applicable governing international tanker agreement described in section 201 (h)" immediately after "201 (c)";

(3) in paragraph (1) (D) thereof by inserting "or a tanker" immediately after "fishing vessel";

(4) in paragraph (1) (G) thereof by inserting "or any oil that is transported to and landed in the United States," immediately after "taken or retained";

(5) by striking out "and" and the end of paragraph (1) thereof;

(6) by striking out the period at the end of paragraph (2) thereof and inserting in lieu thereof "; and" and the following new paragraph:

"(3) for any tanker, and for the owner, operator, or charterer of any tanker, to—

"(A) load or offload oil in any State;

"(B) load or offload oil within the territorial sea of the United States or the fishery conservation zone if such oil subsequently will be landed in any State; or

"(C) transport oil in bulk in or through any area that is subject to the exclusive fishery management authority of the United States if such oil subsequently will be landed in any State;

unless such activity is authorized by and conducted in accordance with this Act."

(e) Section 311 of such Act (16 U.S.C. § 1861) is amended—

(1) in subsection (b) (1) (B) thereof by inserting "and any tanker" immediately after "fishing vessel";

(2) in subsection (b) (1) (C) thereof by inserting "and any tanker (together with its cargo)" immediately after "cargo";

(3) in subsection (b) (1) (D) thereof by inserting "or any oil transported, loaded, or offloaded," immediately after "retained"; and

(4) in subsection (e) (1) thereof by inserting "or the transportation of oil in bulk by tanker for landing in the United States" immediately after "foreign fishing."

(f) Such Act is amended in the table of contents thereof by adding the following at the appropriate place:

"Title IV—Protection of Fishery Resources from Accidents Involving Tankers "Sec. 401. Tanker Safety Incentive Program."

SEC. 4. GOVERNING INTERNATIONAL TANKER AGREEMENTS.
Section 201 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. § 1821) is amended by adding at the end thereof the following new subsection:

"(h) GOVERNING INTERNATIONAL TANKER AGREEMENTS.—A tanker that is not a vessel of the United States may be certified to be a class A tanker, under section 401 (b) (1), if it is documented under the laws of a foreign nation that has entered with the United States into a governing international tanker agreement (other than a treaty) that meets the requirements of this subsection. Such an agreement shall become effective only after application of section 203, and, for purposes of section 203, the term ‘governing international fishery agreement’ includes a governing international tanker agreement as described in this subsection. Each governing international tanker agreement shall acknowledge the authority of the United States to protect fishery resources subject to the exclusive fishery management authority of the United States from the risk of oil spills from tankers transporting oil in bulk for landing in the United States. Each such agreement shall include a binding commitment, on the part of any foreign nation that is a party to such agreement, to accept, comply, and enforce under its own laws the following terms and conditions:

"(1) The foreign nation and the owner, operator, or charterer of any foreign tanker conducting activities otherwise prohibited by section 307 will abide by—

"(A) all applicable regulations promulgated under this Act; and

"(B) requirements, which shall be specified in the agreement, that shall be the same as or the equivalent of the requirements set forth for fishing vessels in subsection 201 (c) (2).

"(2) Tankers will not be documented under the laws of such foreign nation if the reason for such documentation is related to avoidance of United States taxation, safety, labor, or environmental protection requirements. Any documentation that has occurred under the laws of such foreign nation, prior to the date of such agreement, will be cancelled or revoked by such foreign nation within 180 days after such agreement becomes effective."