



Clean Energy Jobs^{and} Oil Company Accountability Act

Background on Oil Spills and Liability Limits

Background

The Deepwater Horizon oil spill has brought national attention to the liability protections for companies drilling for oil and gas on the Outer Continental Shelf (OCS) as well as the different admiralty and maritime laws that provide liability protections. This section provides brief descriptions of some of those laws.

Oil Pollution Act of 1990

In 1990, Congress passed the *Oil Pollution Act* (OPA) which states that the responsible party for an oil spill is liable for:

- (1) All removal costs necessary for removing spilled oil from water and shorelines or taking other actions as may be necessary to minimize or mitigate damage to the public health or welfare and;
- (2) Damages, including injuries to natural resources, destruction of property, loss of subsistence use of natural resources, loss of tax revenue, loss of profits or earning capacity, and net increased costs for additional public services.

However, as outlined below, OPA enacted limits on liability for damages and differentiated the amount for damages by the type of vessel or facility that caused the oil spill:

- Offshore Facilities: \$75 million for damages from oil spills at an offshore facility
- Onshore Facilities: \$350 million for damages from oil spills at an onshore facility
- Deepwater Ports: \$350 million for damages from oil spills at a deepwater port
- Vessels: Various liability limits are set in OPA and adjusted for inflation in Coast Guard regulation based on vessel tonnage and whether the vessel has a single hull

These limitations on liability for damages do not apply if the incident was caused by gross negligence, willful misconduct, or violation of an applicable Federal regulation under certain circumstances.

The OPA also modified the Oil Spill Liability Trust Fund (Trust Fund), which is financed by a per-barrel tax on oil and is used to pay for removal costs and compensate for damages to the extent a responsible party is unknown, exceeds its liability caps or cannot meet its payment obligations. The Trust Fund can provide up to \$1 billion per “incident” for removal costs and damages. Additionally, there is a limit of \$500 million per incident for payments from the Trust Fund to compensate for natural resource damages.

National Marine Sanctuaries Act of 1972

The *National Marine Sanctuaries Act* (NMSA) classified certain marine environments as areas of special national significance and established comprehensive conservation and management plans:

- In the event that any National Marine Sanctuary is destroyed or damaged by an oil spill from a vessel the NMSA maintains that:
- The vessel is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

Clean Water Act

The *Clean Water Act* established civil penalties for the owner, operator, or person in charge of a vessel or onshore or offshore facility that discharges oil or other hazardous substances. Under the Act, such an entity could be fined:

- General Penalties: \$32,500 per day or \$1,100 per barrel released
- Gross Negligence/Willful Misconduct: In the case of a discharge that resulted from gross negligence or willful misconduct, not less than \$100,000 and not more than \$4,300 per barrel released.

Death on the High Seas Act of 1920

The *Death on the High Seas Act* was enacted to provide compensation to the families of seamen who died as the result of negligence in waters that are one marine league or three nautical miles from shore.

The law maintains that the families of the victims may only receive pecuniary damages such as the future lost wages (minus income taxes) and minus whatever the deceased would have consumed. Therefore, the party or parties responsible for the death of the individual, enjoy complete protection for having to pay for non-pecuniary damages (pain, suffering or emotional trauma).

Migratory Bird Treaty Act of 1918

The *Migratory Bird Treaty Act* contains provisions that prohibit the take, capture, kill, hunt, sale or shipment of certain migratory birds. The law maintains that any entity failing to comply with the law shall be guilty of a misdemeanor and subject to a fine of no more than \$15,000 or imprisoned for no more than six months, or both.

Limitation of Liability Act of 1851

In the days before modern insurance in the United States, the *Limitation of Liability Act* was enacted in order to help U.S. shipping businesses compete against foreign businesses that enjoyed liability protections.

The 1851 law allows the owner of a vessel to limit their liability for all claims arising from an incident involving the vessel to its post-voyage value and that of its cargo. The owner creates a fund equal to this post-accident value, from which all claimants, including personal injury and wrongful death claimants, are paid in proportion to the value of their claims in a single federal court proceeding.

State Laws

In addition to the various federal laws, numerous states have their own laws that provide liability limits for entities drilling for oil and gas, while others states provide no liability limits.