Statement of Secretary of Transportation

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Before the

Coast Guard Navigation Subcommittee on

Oil Spill Liability and Compensation

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Good Morning Mr. Chairman.

It is a pleasure for me to be here this morning to discuss the Administration's support for oil spill liability and compensation legislation, including adoption of the 1984 protocols revising the 1969 Civil Liability and 1971 FUND Conventions. With me this morning is Rear Admiral Bobby F. Hollingsworth, Chief of the Coast Guard's Office of Marine Environment and Systems. Admiral Hollingsworth led the United States delegation to the Diplomatic Conference which revised the two conventions just two weeks ago, at the Headquarters of the International Maritime Organization (IMO) in London. I will also comment on a number of companion oil spill initiatives which the Administration has been actively pursuing.

Mr. Chairman, large oil spills are dirty, nasty and emotional events which none of us look forward to. Just the same, being the largest oil consuming country in the world, we simply cannot expect that our oil spill prevention program will be one hundred

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percent effective in preventing major spills - or that our recent good luck in avoiding major spills will hold indefinitely. Should an oil spill of epic proportion occur in or near our waters I am determined that our response will be prompt and effective and, to the extent possible, that damaged natural resources will be restored. I believe that H.R. 3278 offers the potential for a comprehensive oil spill regime which, if modified as we suggested, can be the foundation for a comprehensive national approach in dealing with oil pollution.

H.R. 3278, as reported by the Committee on Merchant Marine and Fisheries, establishes a comprehensive domestic system to provide for the payment of removal costs and claims for damages resulting from oil pollution incidents. First, it sets a strict liability standard for spillers and liability limits for vessels as well as outer continental shelf and deepwater port facilities. Second, it establishes a fund financed by a fee on oil which would be immediately available to pay for governmental removal costs, and to pay for specified claims when the claimants would otherwise be uncompensated. Third, it preempts States from establishing liability and financial responsibility regimes for recovery of damages compensable under the bill and bars States from requiring persons to contribute to funds whose purpose is to compensate for such damages, except for contributions to current State funds, which may continue for three years. Fourth, it corrects the problems encountered by the Coast Guard in

administering title III of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA), concerning financial responsibility, liability, and clean-up cost recovery. Finally, it provides for the adoption by the United States of the Civil Liability (International Convention on Civil Liability for Oil Pollution Damage) and the Fund (International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage) Conventions (CLC and Fund).

Let me address the international conventions first. The Administration firmly supports the integration of the amended international Civil Liability and Fund regime for seagoing tankers with our domestic oil pollution liability and compensation system. That regime establishes a clear, internationally recognized standard of liability. Jurisdiction is clearly established in the courts of the country where damage occurs. The shipowner's liability is backed by an internationally enforced compulsory insurance scheme. Judgments rendered in courts having jurisdiction under the Civil Liability Convention must be recognized in courts of other countries which are parties to the convention. If the United States were party to such a regime, the certainty of recoveries by United States citizens for damages resulting from oil pollution incidents off our coasts would be enhanced. Our participation in the IMO Diplomatic Conference focused on achieving revisions to make the CLC and Fund revisions acceptable to the United States.

As revised the Conventions will cover oil pollution cleanup costs and damage:

- sustained by governments and private parties, including reasonable measures actually undertaken to restore the marine environment,
- from seagoing tankers, laden or unladen, and combination carriers when carrying *persistent oil in bulk as cargo, and on subsequent voyages,
- seaward to the outer edge of the exclusive economic zone (200 miles),
- including pre-spill preventive measures, wherever taken, as a result of grave and imminent threats of damage.

*Persistent oils include crude, heavy diesel and fuel, and lube oil.

Of major importance to the U.S. delegation was raising the limits of liability to levels which would see all legitimate claimants adequately compensated. This was a tough battle but one that eventually resulted in levels which we support. Although the following amounts are expressed in U.S. dollars, the amounts expressed in the protocols are in "special drawing rights" (SDR), which fluctuates with exchange rates. Currently one U.S. dollar equals 1.04 SDR.

- The revised CLC provides a minimum vessel liability of 3.12 million dollars for vessels of 5000 gross registered tons (GRT) and below. For larger vessels liability would be 437 dollars per GRT to a maximum of 62.0 million dollars.
- The revised Fund Convention provides a total incident coverage of 140.4 million dollars. The coverage can be expanded to 208 million dollars when 3 signatory countries whose total oil imports reach 600 million tons per year ratify. Since U.S. contributing oil approximates 450 millions tons per year, U.S. ratification would virtually assure expanded coverage.

Another important issue at the Diplomatic Conference related to future updating of the limits so that the current situation of outdated limits would not arise again. A simplified amendment procedure involving the IMO Legal Committee, rather than a full diplomatic conference, was adopted, and is one which we fully support. Under it an amendment would be:

- proposed by one fourth of the Contracting States,
- circulated to all IMO members,
- considered at a Legal Committee meeting,
- adopted by two thirds majority of Contracting States present and voting,
- binding on all contracting States unless rejected by at least one fourth.

(Increases may not exceed 6 per cent per year compounded annually from 1984. An increased limit may at no time exceed 3 times the original amount.

In my visit with the Secretary General of the IMO during the Diplomatic Conference, I was impressed with the world maritime community's interest in seeing the United States as a full partner in the CLC and FUND regime. Admiral Hollingsworth has reported to me that a number of compromises were greatly facilitated, to our satisfaction, as word grew of the escalating interest of the Congress and Administration in ratification of the Conventions, if suitably amended. Flexibility increased as belief grew that U.S. ratification could become a reality. The Administration believes that ratification of the instruments negotiated at the Conference will serve U.S. interests well and will further our reputation as good faith negotiators. In short, this Administration looks forward to working with the Congress in aligning a domestic system with the now improved international regime.

I will now address a few of the characteristics of H.R. 3278 of particular interest to us. First, the Administration sees an opportunity here to reduce governmental costs. There are currently four statutes addressing oil pollution liability and compensation. Three of these - section 204(c) of the Trans-Alaska Pipeline Authorization Act, section 18 of the Deepwater Port Act, and title III of OCSLAA - provide separate liability

systems, financial responsibility regimes, and supplementary compensation funds. The fourth, section 311 of the Federal Water Pollution Control Act (FWPCA), contains a liability system applicable to Federal Government removal costs and natural resource damage, a financial responsibility regime in support of that system, and a revolving fund which is immediately available to finance Federal Government removal actions. The duplication, conflict, and unnecessary administrative costs resulting from these multiple statutes should be eliminated.

Accordingly, insofar as oil pollution damage liability is concerned, we support the bill's limited coverage, that is, all vessels and only outer continental shelf and deepwater port facilities. The liability of onshore facilities and facilities in State waters should be subject to State laws. However, the liability of these facilities for Federal removal costs should continue to be covered under section 311 of the FWPCA. Initial financing for all Federal removal costs would be drawn from the Trust Fund called for by H.R. 3278.

The single Federal oil pollution damage liability system should be backed with one financial responsibility regime applying to all vessels covered and another financial responsibility regime applying to outer continental shelf facilities.

While we fully support the concept of a single fund instead of maintaining four separate funds, we believe the proposed Trust Fund's liability for damage claims is too broad. Unless section 104(d) of H.R. 3278 is amended to limit the Trust Fund's liability to removal costs and a narrow class of damages, the Administration cannot offer its full support. We feel strongly that the Trust Fund must not become a "deep pocket" for speculative claims. Whatever the scope of damages under section 103 for which vessels and facilities would be liable, the Trust Fund should be liable only for removal costs and the costs to replace or restore personal or real property and the costs to a State or the Federal Government for the actual replacement or restoration of natural resources when claimants have exhausted their remedy against the spiller by reason of their claims exceeding the liability limit. The Trust Fund's liability should not include lost profits or taxes or the value of natural resources that are destroyed but cannot be replaced. In the case of a mystery spill or when the spiller has a legal defense to liability, the Trust Fund should be liable only for removal costs. Of course, the Trust Fund must be immediately available to cover Federal Government removal costs. I also support State utilization of the Trust Fund, for removal costs, as now provided in section 311 of the Clean Water Act.

For this system to be effective, adequate liability limits with corresponding financial responsibility requirements are essential in H.R. 3278. We cannot support the low liability limit levels presently set out in the bill, including those established for inland oil barges. Due to the nature of their operation, that is, frequent trips and oil transfers, navigation in congested waters and proximity to environmentally sensitive areas, inland oil barges present risks of oil pollution damage equivalent to that posed by self-propelled vessels of similar size. The distinction between liability limits for inland oil barges and limits for ships has not been rationalized and should be eliminated. The liability limits should be adequate to compensate all anticipated removal costs and anticipated damages resulting from an oil spill incident. I recently recommended that the rate for liability limits for ships and other vessels be raised to $1000 per gross ton, with a maximum liability of $75 million. I also recommended that minimum liability limits be set substantially higher than provided for in H.R. 3278. The Administration is looking forward to working with the Congress to raise the liability limits of H.R. 3278 while bearing in mind the limits of the amendments recently agreed on with respect to CLC and Fund.

Defenses to liability should be narrow. We have noted that the responsible party's defenses to liability set out in section 104(c) are similar to the language in the Civil Liability Convention. The Department has no objection to these defenses.

We interpret the "resulted from" defenses in section 104(c)(1)(A) as having the same meaning as the Conventions' term, "wholly caused by". However, if a majority of the Committee disagrees with our interpretation, we will recommend amendatory language consistent with our position.

We also support the preemption of claims for damages covered by the system. With a uniformly high liability limit, narrow defenses to liability, a broad range of compensable damages, and a per barrel fee on oil, it is only fair to the owners and operators of vessels and facilities that they receive protection from overlapping and duplicative claims. States would be able to establish their own liability and compensation systems for facilities in their waters and on their shores.

Turning to operation of the Trust Fund, the Administration supports public rather than private administration of the Trust Fund for two reasons. First, we believe that it would not be appropriate for a non-governmental entity to exercise discretionary authority over monies derived from fees assessed and collected by the Federal Government. Second, the Trust Fund to be established by H.R. 3278 differs substantially, for instance, from the Trans-Alaska Pipeline Liability Fund (TAPS Fund) which derives its fee revenue from a limited number of easily identifiable contributors, and which addresses pollution from a single identifiable trade.

The Trust Fund would draw its revenue from virtually all oil produced in or imported into the United States. In addition, the Trust Fund would be far more active than the TAPS Fund has been. It would provide "up-front" financing for all Federal oil pollution removal actions taken under section 311 of the FWPCA, and would cover certain classes of damages stemming from vessel source pollution and that from outer continental shelf and deepwater port facilities. H.R. 3278 would have the Trust Fund make the necessary contributions to the international fund, in lieu of the "receivers" who otherwise would be called upon to make those contributions, a concept we fully support. These differences in financing, function, and activity call for the administration of the Trust Fund by a governmental entity capable of dealing efficiently, and in the public interest, with the broad scope of concerns involved.

The Administration supports the "user fee" concept of charging 1.3 cents per barrel of oil to finance the Trust Fund. This is consistent with the Adminstration's philosophy of having those who benefit from a service, or potentially burden the government because of their activities, pay their fair share.

However, we believe that the current language of section 202(a) improperly identifies the persons who should be responsible for paying the fees to the Trust Fund. In addition, there appears to be some collection duplication between domestic refiners and producers in section 202(a). Accordingly, this subsection should be revised to specify that the fee will be paid on the following:

- crude oil received at a United States refinery, by the operator of that refinery;
- crude oil or other petroleum products entered into the United States for consumption, use, or warehousing, by the person so entering the crude oil or other petroleum product; and
- crude oil exported from the United States, by the person exporting the crude oil.

Where a quantity of imported crude oil upon which a fee has been paid at its point of entry is received at a refinery, no additional fee should be paid on that quantity by the refinery's operator. We believe this approach is equitable and can be implemented with a minimum of administrative cost.

Finally, we object to the provisions of sections 203(b) and 302(b). Section 203(b) would rebate Trust Fund income beyond 300 million dollars. Due to the heavy administrative burden and costs associated with the distribution of these amounts we do not believe that such income should be rebated. In the case of

section 302(b), we believe that amounts in the Trans-Alaska Pipeline (TAPS) Liability fund should be transferred to the Trust Fund, just as the balances of the Offshore Oil Pollution Compensation Fund and the Deepwater Port Liability Fund are transferred under this bill, in order that the new Trust Fund may begin to meet its obligations in a short period of time. The TAPS funds have been collected in accordance with a statutory requirement for a clearly public purpose, to provide compensation for oil pollution damages, including clean-up costs, in accordance with a statutorily created regime under regulations issued by the Secretary of the Interior. The need to provide compensation above the responsible parties' (including owners and operators of vessels carrying TAPS oil) liability will remain upon the enactment of H.R. 3278.

Now, Mr. Chairman, I would like to call your attention to other ways the Administration is demonstrating its very real interest in preventing oil spills and minimizing damages they can cause. The unfortunate grounding and breakup of the Argo Merchant near Georges Bank in December 1976 provided the impetus for signicant improvements to our National Contingency Plan. That Plan, now under the stewardship of the Environmental Protection Agency, is periodically reviewed by all National Response Team members and in particular by the Coast Guard as it relates to oil spills in coastal areas. I believe the Plan as it exists today, is the most enlightened document of its type and serves as a model world-wide. To complement the plan, the Coast

Guard has recently announced intentions to develop an "Extraordinary Spill Plan" for our coastal waters. The new plan will address, in a more detailed way, measures to combat oil spills of epic proportions or of an unusual nature. It will focus on solutions to the logistical and coordination problems which often make these spills difficult to deal with.

In recent years, the Regional Response Teams (RRTs) established as part of the National Response Mechanism have enjoyed tremendous success, due in large measure to the active participation of State representatives. I am emphasizing the importance of State RRT representatives, and that State members have a status equal to any Federal member serving on these important bodies. We want, and need, a strong State voice when addressing oftentimes sensitive and emotional situations involving oil spills. Both the Clean Water Act and the National Contingency Plan make provision for States to be reimbursed by the Coast Guard from the Oil Pollution Fund presently administered in the Department of Transportation by the Coast Guard. I support maximum State participation in supervising the removal of oil spills, and will ask all Governors to examine current procedures to determine if they are receiving the maximum benefit from the Fund.

On the international side we are extremely gratified with our Joint US/Canadian Plan for response to oil spills. That plan,

which has been successfully implemented on a number of occasions, has been under review and was significantly improved just last September. We are also pleased with a similar plan with the Government of Mexico and, while it is our good fortune that there has yet to be an occasion for response under this plan, I am concerned that we remain ready to do so. Recently we took steps to increase the level of dialogue with our Mexican counterparts and met, in Mexico City, on 26 and 27 March. We agreed on more frequent and meaningful discussions of plan readiness on the national, regional and local levels, as well as talks during spill response exercises on both the Pacific and Gulf Coasts.

We have for some time been coordinating with the Department of State to develop a multilateral regional oil spill plan for the Caribbean Islands, to protect our interests in Puerto Rico and the U.S. Virgin Islands, as well as to assist our friends in the Caribbean in the event of a major oil spill. The Coast Guard has established an Oil Spill Alerting Mechanism for the Caribbean and participated heavily in negotiation of the environmentally oriented Cartegena Convention which the President recently transmitted to the Senate for advice and consent. Earlier this year we proposed an oil spill contingency plan which was provisionally adopted by Caribbean States at an intergovernmental meeting in St. Lucia last month. The Coast Guard played a major role in these negotiations.

Exploration, production and transportation of oil in cold weather climates require efforts to improve our capability to respond to spills in these areas. We have been examining the potential for tracking and removing oil from ice laden waters and in climates which challenge the stamina of the hardiest of people. As recently as last February, the Coast Guard sponsored and participated, with Alaska State and local people, in an exercise to identify and solve some of the related problems. The Coast Guard will continue to sponsor cold weather exercises and will seek ways to modify existing hardware to more effectively cope with oil spills complicated by cold weather and ice.

The real solution to oil spills, however, lies not in emergency response, but in preventing them in the first place. The effective method of preventing pollution is to reduce the amount of oil discharged into the sea from ships, including discharges due to normal ship operations as well as accidental discharges from marine casualties. The Coast Guard has recently published proposed regulations to further this effort and is developing additional measures to reduce the likelihood of oil spills. These regulatory efforts are primarily based on the Port and Tanker Safety Act, and should further reduce the amount of oil discharged into the sea from oil tankers of between 20,000 and 40,000 tons by requiring segregated or dedicated clean ballast tanks and crude oil washing of cargo tanks, rather than allowing the discharge of oily cargo slops and ballast water.

We have also developed regulations to implement the oil pollution prevention requirements of MARPOL 73/78. These regulations were finalized concurrently with the entry into force of MARPOL 73/78 Annex I last October. They prescribe pollution prevention requirements for all ships, U.S. and foreign, subject to U.S. jurisdiction. These international requirements can significantly reduce the total amount of oil discharged into the sea worldwide. Of course, these regulatory efforts are only effective so long as they are strictly enforced. Therefore, I have directed the Coast Guard to pursue a policy of aggressive MARPOL enforcement. We presently have many enforcement tools at our disposal, including inspections to ensure material compliance for ships as well as boardings, patrols and overflights to ensure operational compliance. Failure to comply is punishable by both civil and criminal penalties. Detention of the ship until it is in compliance or denial of entry into U.S. ports are other important tools. Because the treaty will severely restrict the amount of oily wastes which may be discharged at sea, reception facilities for disposal ashore will be necessary - and indeed are required by both MARPOL and domestic law. Final rules for this important program are expected to be issued in August 1984.

By pursuing realistic oil spill legislation, incorporating the revised Civil Liability and Fund Conventions, by improving our contingency planning both domestically and internationally, and by making a dedicated effort to reduce oil spills, the

Administration is demonstrating its determination to reduce and deal with the effects of oil spills in a meaningful and responsible way. We look forward to working closely with the Congress, States, the public and industry in achieving these objectives.

Mr. Chairman, that concludes my testimony. I will be pleased to respond to any questions you may have.