Chapter V. International and Domestic Regulatory Authority

A. Introduction

This section is a discussion of legal and jurisdictional aspects of tanker regulation and control. The discussion is limited to a treatment of law relating to non-military vessels since a different set of legal rules applies to military vessels and these need not be treated here.

This section seeks to provide a brief but complete synopsis of the general legal rules applicable to jurisdiction over vessels, and, in particular, tankers. Both international and national law is discussed. An understanding of these basic rules and statutes is a prerequisite to understanding the public policy issues raised in this report.

B. International Law and Jurisdiction

International Law is a body of rules which nations consider t hey are bound to observe in their mutual relations. The sources of international law are:

1. **customary practice of nations;**
2. **Treaties and other international agreements;**
3. **General principles of law recognized by civilized nations; and**
4. **,Judicial decisions and scholarly legal works as supplemental to other sources.**

‘rho domimmt legal concept concerning jurisdiction over vessel-related matters is the notion of freedom of the seas which recogniz~~ minimum national control of the oceans. .4 corollary of that concept is the rule of nearly exclusi~’e flag-nation control over vessels. According to this generally recognized principle, a vessel is subject to the jurisdiction of the nation whose flag it flies for almost all matters, including pollution control and safety. How-ever, a coastal-nation can exert control over other nations’ vessels for certain purposes while such vessels are in the coastal-nation% waters or ports. The breakdown of authority between flag-nation and coastal-nation is in~portant to understand] for this allocation of authority determines who sets the rules and what are the respective rights and duties. There are at least three fundamental questions, relating to jurisdiction o~’er pollution from ships, which ought to be kept in mind:

1. **\What are the duties of a flag-nation to prevent pollution from its vessels ?**
2. **lt~hat are the rights of coastal- (or port-) nation to protect itself f ronl I’essel-source pollution?**

3. **What are the** interests of the world community at large in these matters ?

Definition of these rights, duties and interests. because of historic practice. is a function of geography-—-e.,., where on the ocean the vessel is located?

In general, all nations have a duty to prevent pollution of the sea from whatever source. Instructive on what nations consider to be general principles of international law are periodic statements and resolutions issued from international conferences. In 1972, nations attending the Stockholm Conference on the Human Environment made the following statement of principle:

> States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine 1 life, to damage amenities or to interfere with other legitimate uses of the sea.

Another basic, general principle of international law threading through all ocean legal rules is the concept of reasonableness. Nations are bound to **use the ocean in a reasonable fashion and must act so as not to adversely affect the ocean interests of other nations.**

These are the overriding standards of conduct which give general, but vague, guidance, to the conduct of nations in the sea. Further elaboration of rights and duties is contained in various treaties on the subject of law of the sea.

1. The High&m

The Convention on the High Seas (15 UST/1606; TIAs 5639) reflects the basic principles of vessel jurisdiction and expressly provides in article 2:

> The high seas being open to all nations, no state may validly purport to subject any part of them to its ,sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by other rules of international law. It comprises. ***inter alia,*** both for coastal and non-coastal states :
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> (1) feedom of navigation;
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> * * * * * * *
>
> 'These freedoms, find others which are recognized' by the general principles of international law, shall be exercised by all states with reasonable regard to the interests of the other states in their exercise of the freedom of the high seas.

The high seas are defined in the Convention as constituting all parts of the ocean beyond the generally recognized limits of the territorial sea (now set at three miles from shore, but likely to be extended to 12 miles shortly).

Article 5 of the Convention defines the jurisdictional authority and related duties, of the flag-nation over its vessels:

1. Each state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship; in particular, the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

The duties of the flag-nation in connection with vessel safety and pollution prevention are defined in articles 10 and 24 of the treaty:

ARTICLE 10

1. Every state shall talie such measures for ships under its flag as are necessary to ensure snfety at sea with regard inter a.lia to:

(a) The use of signals, the maintenance of communications and the Prevention of collisions;

(b) The manning of ships and lahour conditions for crews taking into account the applicable international labour instruments;

(c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each state is required to conform to generally accepted international standards and to take any steps which may he necessary to ensure their observance.

ARTICLE 24

Every state shall draw UP regulations to prevent pollution of the seas by the discharge of oil from ships * * *, taking into account existing treaty provisions on the subject.

In sum, when a vessel is on the high seas, it is primarily the duty of its flag-nation to see that the vessel does not pollute the ocean. Safety features are inextricably tied to the pollution problem: a structurally unsound tanker can break up and sink, injuring the environment. Since vessels generate oily waste water which needs to be either discharged overboard or retained for pumping ashore, discharge standards during the voyage are also important. In fact, intentional discharges at sea are the greatest oil pollution problem in terms of volume. Consequently, the treaty requires both safe construction and discharge standards from the flag-nation.

Until recently, each maritime nation set its own standards for its vessels, or set no standards, largely without the benefit of generally agreed upon international standards. It was not until the establishment of the Intergovernmental Maritime Consultative Organization (IMCO) that international discharge and construction standards were codified by treaty to any real extent. (Treaty law development has been slow largely because only in the last few years has oil pollution been identified as a serious world problem.) IMCO was set up in 1959 under the auspices of the United Nations to deal with traditional maritime problems. l~hen pollution became a concern, IMCO

began to focus on liability, construction standards, and discharge limits.

Treaties on the subject of vessel-source pollution continue the flag-nation principle for enforcement of treaty provisions, where they exist, while the vessel is on the high seas. Unfortunately, the effectiveness of this principle (and> in fact, the principle itself) in controlling pollution from ships is being called into question, and alternate regimes are being considered in the U'.N. Law of the Sea Conference. In addition, standard setting for both discharge and construction has increasingly become a multilateral undertaking through IMCO.

.2. TJte Territon"aZ Seat and ~ontiguous Zone

Once a vessel enters the territorial sea or contiguous zone of a coastal nation, it becomes subject to increased control by that nation. Of course, the duties of the flag-nation (and the vessel itself) under the general principles mentioned above continue. But, because of the obvious interest of the coastal nation to protect its waters, shorelines, and natural resources, jurisdictional competence to regulate vessels for certain purposes is afforded the coastal nation by the law of the sea.

One particular concern in ocean law has been resolving the conflict between the basic freedom of navigation and the coastal state's sovereign rights in the territorial sea, that area of the ocean which is included within a nation% boundaries. An accommodation between these divergent interests has been accomplished, somewhat imperfectly, by what is known as the "right of innocent passage". Article 14 of the 1958 Convention on the Territorial Sea and the Contiguous Zone (15 UST/1606; TI~S 5639) outlines this general right:

> **1.** Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.
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> * * * * * * *
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> ***4.*** **Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and other rules of international law.**

Article 1'7 specifies the general duty of vessels exercising the right of innocent passage:

> Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

The right of imocent passage has been criticized by some as allowing too much subjective latitude to the coastal nation in determining

what passage is innocent and what is not. Yet the concept seems to have worked reasonably well in its application, despite doubts about the theory. On the other hand, criticism of the concept of the right of innocent passage centers on the definition of and perception of what is innocent.

The contiguous zone is an area of the high seas contiguous to the territorial sea. In this zone, the coastal nation may exercise authority necessary to (a) prevent infringement of its customs, fiscal, immigration and sanitary regulations within its territory or territorial sea, or (b) punish infringement of such regulations committed within its territory or territorial sea. The term "sanitary" is considered broad enough to encompass pollution control. The contiguous zone can extend no farther than 12 miles from the baseline by which the territorial sea is measured.

Accordingly, pollution prevention is one of the coastal-nation interests which must be observed by vessels in imocent passage. Failure of a vessel to observe regulations promulgated by the coastal nation, such .w discharge restrictions, traffic lanes or pilotage, among others, could be viewed as a threat to the coastal nation and as amounting to non-innocent passage. A ship which does not comply with antipollution provisions can be denied access to a coastal nation's territorial sea or ports; if the vessel violates such provisions while in the territorial sea or contiguous zone, the master or owner is subject to prosecution by the coastal nation. Moreover, the vessel would bc liable for any pollution damage it caused.

3. The 1973 IMCO *Conference on Matiw PoZZ@on from i5%ip8*

The Conventions just discussed serve to describe the general international law on the question of pollution from ships. None of the "~onvention articles, however, set down specific international community standards for pollution prevention. An accommodation of maritime and coastal nation interests on particular standards obtains no guidance from these unspecific precepts.

To serve as the institutional mechanism for establishing worldwide vessel standards, the Intergovernmental Maritime Consultative Organization (IMCO) was founded in 1959 under the auspices of the United hT~ti$_{on}$S$_{o}$ since its inCeptiOn, IMCO htts been primarily a maritin~e ‘a-tion agency dealing with technical maritime problems. The costs of IMCO administration are divided among the maritime nations according to the tonnage of vessels flying each nation's flag. ~Non-nlaritime nations have a standing in~'itation to attend IMCO meetings, but few have done so and their ~'otin~ power has not been substantial.

The **followin**g **international** conventions developed bv or under the jurisdiction of IMCO relate to vessel safety and p~lluti& prevention:

1. Convention for Safety of Life at Sea, 1960. (General life saving requirements for vessels.)
2. International Convention on bad Lines, 1966. (Establishes load limits.)
3. International Regulation for Preventing Collisions at Sea, 19'71. (~"oluntary rules of the road.)
4. International Convention for the Prevention of Pollution of the Sea By Oil, 1954. (operation discharge standards and prohibited discharge zones: amended 1962, 1969 and 1971; amendments not yet in force.)
5. International L'onvention Relating to Intervention on the High Seas in Cases of Oil Pollution, 1971. (Right of coastal-nation to protect itself from a disabled vessel carrying oil.)
6. International Convention on Civil Liability for oil Pollution Damage, 1969. (Sets strict liability with limits for shipowners in cases of oil pollution-expected to be in force by mid 1975.)
7. Convention on the Establishment of an International Fund for Compensation for oil Pollution Damage, 1971. (Creates an international funcl to cover oil pollution damages beyond the liability of the shipowner up to about $36 million—not yet in force.)
8. International Convention for Prevention of Pollution From Ships. 19'73. (hTew clischarge and construction standard treaty for all polluting substances designed to substitute for the 1954 Convention-not yet in force.)

International efforts to strictly control vessel-soume pollution were act ually initiated at, the behest of the United States. A conference on the subject convened in 1926 *in* Washington, D. C., but a U.S. proposal for a total prohibition of oil discharges from ships was defeated two to one. It was not until 1954 that a convention was finally concluded—but v'it.hout a discharge ban. Intentional discharges were merely limited znfl en for~'ement, was to b-e carried out by the flag-nation, using penalties it determined appropriate. Nations other than the flag-nation could inspect the vessel% oil record book (mandated by the Convention) only when it called at their ports and, if discrepancies were discovered, they would have to request the flag-nation to take enforcement action.

The discharge standards and prohibited zones were made more stringent in 1962. The 1969 amendments (not yet in force) did away with zones altogether and limited the rate of discharge of oil even further. But the discharge standards aclopted would still permit a 300.000 deadweight ton tanker to discharge a maximum of 20 tons during the course of any one ballast. voyage at a rate not to exceed 60 liters per mile.

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The 1971 amendments to the 1954 convention are more significant. For the first time construction standards were developed to prevent or minimize oil outflow in the even of an accident. These requirements restrict cargo tank size as a means of limiting maximum oil outflow resulting from a tanker collision or grounding. Unfortunately, these amendments have not entered into force.

Although the recently agreed-upon IMCO Convention for Prevention of Pollution from Ships will, when ratified, substitute for the 1954 Convention, the 1954 Convention is still existing law for signatory nations on the subjects it covers. However, the histury of its enforcement is extremely poor, and it is generally viewed as being largely ineffectual in stemming the growing incidence of vessel-source oil pollution in the ocean.1

In 1969, the IMCO assembly decided to convene in 1973 an International Conference on Marine Pollution for improving international constraints on the contamination of the sea by ships. Two years later, the Assembly further decided by Resolution A. 237 (VII) that "the Conference should have as its main objectives the achievements by 1975 if possible, but certainly by the end of the decade, of the complete elimination of the willful and intentional pollution of the sea by oil and noxious substance other than oil, and the minimization of accidental spills."

The IMCO Convention on Marine Pollution from Ships developed in London in November, 1973, is the most comprehensive treaty yet on the question. Included are measures to control more pollutants than ever before and greater stress is put on prevention rather than cleanup and other post-accident measures. Briefly, the new treaty includes the following salient features:

1. regulates ship discharges of oil, various liquid substances, harmful package goods;
2. contro]s for the fimt time tankers carrying relined products;
3. requires segregated ballast for all tankers over 70,000 dwt contracted for after December 31, 1975 (but does not require double bottoms) ;
4. prohibits all oil discharges within 50 miles of land; (as did the 1969 amendments) ;
5. mandates all tankers to operate with the load-on-top system if capable;
6. reduces maximum permismble discharge for new tankers from 1/15,000 to 1/30,000 of cargo capacity (NOTE: no tc.td discharge prohibition) ;

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1 The U.S. Coast Chard's EIS on the IMCO 1973 Ptllution Convcut!on .Iescr!bed U.S. experience with flag state enforcement of the 1954 Convention. Of seven cased discharged during 1969-72 and referred to the flag state, only two were observed to rece!ve my action.

7. **regulates the carriage of 353 noxious liquid substances with requirements ranging from reception facilities to dilution prior to discharge;**

8. controls harmful package goods in terms of packaging, labeling, stowage and quantity limitations [z]

9. prohibits discharge of sewage within four miles of land unless the ship has an approved treatment plant in operation, and from 4 to 12 miles unless the sewage is macerated and disinfected; and

10. prohibits dispoa+x-il of all plastic garbage and sets specific minimum distance from land for disposing of other kinds of garbage.[2]

In the area of enforcement, the internatoinal legal status quo was modified to some degree. The flag-nation must punish all violations by the ship. But, a coastal nation has the right (as well as the duty) to punish a violation by a foreign-flag vessel occurrin$_g$ in its waters or to refer the violation to the flag-nation for prosecution. A provision giving nations the right to prosecute vessels in their ports for discharge violations wherever they occurred was defeated. Nations must also deny per]l~ission to leave their ports to ships which do not substantially comply with the treaty's construction requirements until such ships can sail without presenting an unreasonable threat to the marine environment. Nations which ratify the treaty must apply its terms to all vesds, including those flying flags of nations which do not sign the treaty? in order to prevent vessels of non-signatory nations from gaining competitive advantage. To settle any disputes, compulsory arbitration is a treaty requirement.

On the question of standarcl-setting authority, a provision was defeated which would have made the treaty provisions exclusive on the subjects it addressed. Consequently, there are no treaty restrictions on the right of coastal nations to set more stringent requirements within their jurisdictional waters.

As yet, the treaty has not been submitted to the Senate for ratification and complete international approval is not expected until later in this decade. This convention must be ratified by at least 15 nations which, between them, represent at least 50 percent of the tita.1 tonnage in the world fleet. (In that previous conventions required ratification by 32 nations, this represents a significant easing of the ratification process.) So far, only Australia hw ratified the 1973 Pollution Convention. It is expected that this convention will come before the U.S. Congres for ratification in 1975.

The 1973 Convention by no means covers the entire area of pollution prevention from ships. In fact, the official end-of-Conference

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[z] These features are stated as optional annexes to the Convention, Le., a state could adopt the Convention with or without any of these features.

press **release notes that it "may not cover completely the problem of accidental pollution." IMCO is proceeding with additional work on matters not covered in the Convention: Crew training, improvements of traffic separation schemes, development of effective methods of cleaning up, and other** safety and pollution prevention measures.

4. *The Law of the Sea*

Since 1973 tho third Law of the Sea Conference has become the forum for re-evaluating the fundamental questions of ocean jurisdiction, including pollution control jurisdiction. The 1973 IMCO Conference purposely shied away from jurisdictional issues wherever it could; the Stockholm Conference on the Human Environment did the same.

Three approaches to jurisdiction over vessels are being discussed in the Conference:

1. exclusive or near exclusive jurisdiction in the flag-nation;
2. jurisdiction by coastal nations over all vessels in their waters, whether calling at their ports or not;
3. jurisdiction by-nations over all vessels calling at their ports.

The "flag-nation)' approach contemplates international agreed-upon standards, but only flag-nations (and possibly port-nations) could set higher standards. The "coastal-nation" proposal would be coupled with an extended "pollution control zone" and would allow special standards to be set by a coastal nation whenever adequate international standards have not been established. The "port-nation" proposal would enable a nation to set standards higher than those internationally agreed upon for all vessels calling at its ports and to enforce violations occurring anywhere on the high seas. There are other variations, but these serve to illustrate the alternatives being discussed. A result combining these concepts is expected out of the Conference.

The U.S. position on vessel pollution on Law of the Sea reflects that of a maritime nation. The U.S. delegation has continually stated its belief that the best approach to vessel-source pollution problems is through exclusively international standards with supplemental standards by flag- and port-nations allowed on a limited basis. Key to this position is the assumption that conflicting and unduly restrictive standards will be imposed under any other regime, thereby greatly hindering the free flow of navigation. The U.S. position is foursquare against coastal-nation jurisdiction to set standards for regulating vessel-source pollution in broad zones off their coasts.

Enforcement, in the U.S. view, is best done by a combination of flag-nation/port-nation authority. But the United States would support coastal-nation enforcement jurisdiction beyond the territorial sea in

"carefully defined circumstances involving emergency situations or habitual violations of international standards by vessels flying a particular flag."

C. Federal Law and Jurisdiction

1. ~onstitutionul Authwz"ty

Federalism has three **important elements which are relevant here:**

1. the Federal government possesses certain "enumerated" powers;

2. the remaining "residual" go~"ernment powers reside with the individual States; and

3. the Federal government is supreme within areas of its assigned power over any conflicting assertion of State power.

The practical question of which level of government has legislative authority over vessel-source pollution is answered according to these three elements.

The IT.S. Congress derives its basic legislative authority over vessels from the so-called "commerce clause" of the Federal constitution (Article I, section 8, clause 3) :

> The Congress shall have power * * * to regulate Commerce with foreign nations, and among the several States * * ●

The courts long ago concluded that commerce includes navigation; therefore, the power to regulate vessels and navigation is a natural adjunct of the power to regulate commerce. In addition, the constitutional language extending the judicial authority of the United States to "all cases of admiralty &~d maritime jurisdiction" has, through historical practice, become the basis of broad legislative authority over vessels and maritime affairs.

From this legislative power over navigation and commerce has come the power to pret'ent pollution and environmental degradation. As an example, Congress can require that a permit for a project in navigable waters be denied solely on the basis of environmental protection, even though the project would not impair navigation. Federal authority exten(ls to all waters. salt or fresh, with or without tides, natural or art ificial which are navigable in fact by instruments of interstate or foreign commerce. These waters, but not those of the contiguous zone, are referred to as the navigable waters of the United States.

It is on the basis of constitutional authority over commerce and maritime matters that the Federal government has enacted pollution prevention statutes. Vessel-source pollution has traditionally been considered to be nearly exclusively in the Federal domain. The policy arguments on why this is, or should be, so are not unlike the arguments given f-or nearly exclusive international? as opposed to national

standards for preventing contamination from ships: IJniformity, harmony, avoidance of patch-work legislation, preventio]~ of undue interference, conflicting and inconsistent standards, and so on. But like all rules, the exclusive Federal authoritj' rule is not without its substantial exceptions.

The commerce clause ser}"es not only to give the Federal go~'ernment certain powers but also to restrain state power. For sure, the commerce clause standing alone cannot settle the question of what power is left to the states to regulate Commerce. Over time, the courts have filled the gaps and ha~'e concocted the following rules:

1. ~?ongress" **power over interstate commerce (and maritime matters) is exclusi~-e; e.g. l~o st:~te ~~ction is a]]o~~,e~~ as to tl~ose aspects which require uniform regulation whether congress has acted or not.**

2. Outside these exclusive areas, states enjoy concurrent power with the Federal government subject to override by Congressional action,

3. On a case-by-case basis, if a Federal statute preempts or take over an entire field of activity under the commerce c]nuse, no state law in that same field can stand.

4. On a case-by-case basis! if Congress has not acted in an area or its action leaves room for supplemental state legislation, a state may exercise its authority over matters of commerce if it is designed to effectuate a legitimate local public interest without unduly burdening commerce.

The Supreme C'ourt most recently applied these rules to the question of state vs. Federal pollution control in i4skeIo v. *American Water~L~ay8 o*$_{pera}$*t*$_{o}$*?>~]*$_{nce}$, *and* found constitutional a Florida statute imposing strirt liability on vessel owners for oil pollution damage to the state or private parties. Because the Florida ilct. did not interfere with maritime matters requiring uniforn1 Federal regulation and was not otherwise inconsistent with Federal legislation, it was ruled a proper exercise of the public power of the State.

2. Federal Statutes and Programs

It is against the above backdrop of constitutional principles that Federal statutes can now be analyzed. For the most part, it is Federal law which governs vessel safety and pollution prevention.

The most important recent law governing the construction ancl operation of vessels carrying polluting substances, including oil in bulk, in U.S. waters is the l)orts and J\'aterways Safety Act of 19'72. This Act has two parts: Title I which provides the United States Coast Guard with broad authority for controlling vessels in the nation% ports, coastal waters, and waterways. for operating vessel

traffic **control** systems. and for otherwise improving the safety of the marine transportation system as a way of preventing pollution; and Title II which directs the ('east Guard to develop new regulatory standards for vessels carrying polluting substances.

('ongress adopted the Ports and Waterways Safety Act to complement and eventually implement the later developed IMCO Convention on Marine Pollution from Ships. However. the ('east Guard is to independently develop tanker regulations on the basis of best available pollution control technology, without regard to the relative adequacy of standards developed in the IMCO forum. It was Congress' intent that even if the IMCO Conference in 1973 **did not adopt** U.S. **proposals for tanker construction, the Coast Guard is required to implement its own proposals. through the Ports and Waterways Safety Act, not later than January 1, 1976.**

On June 28, 1974, the Coast Guard gave notice of proposed rulemaking for the design and operation of U. S. **vessels** certified to carry oil in the domestic trade. The domestic trade (trade between U.S. ports) by law is **restricted to vessels built in the United States, manned by U.S. crews, and** *owned by* **U.S.** citizens. It is expected that these new rules will be promulgated in their final form shorty. The Coast Guard has indicated that substantially the same regulations will apply to U.S. vessels engaged in the foreign trade as well as to foreign vessels in U.S. walers.

Within the contest of Title 1, the most important developments have been in the area of vessel traffic control systems. Through these systems, greater control over vessels in crowded harbors and waterways can be exerted. Traditionally the master of each vessel is given nearly complete control over his vessel's movements within the confines of the martime rules of the road. With a vessel traggic control system, the master or pilot will **be given additional assistance in congested areas, and, if necessary, his control will be restricted if the conditions or circumstances merit it.**

The *primary Federal* **statute governing U.S. vessel oil discharges on the high seas is the Oil Pollution Control Act of 1961. This Act implements the 1954 IMCO Convention, and amendments thereto, which (1) Prohibits oil discharges from ships within 50 miles from land; (2) sets standards for tank arrangements and limitation of tank size in tankers: (3) establishes discharge limits as a function of volume, speed of the ship, and the cargo carrying capacity of the vessel; and (4) establishes penalties and enforcement requirements.**

In addition, the Federal Water Pollution Control Act Amendments of 1972 regulates the discharge of pollutants from vessels in the territorial sea and contiguous zone. The Act also prohibits the discharge of oil into the navigable waters and contiguous zone of the United States. Penalties are spelled out for violators whatever the flag of the

vessel. The law **further provides for a National Contingency Plan for dealing with an oil spill event and authorizes the Federal government to inordinate and direct all public and private efforts for the removal or elimination of the oil. The owner or operator of a vessel can be held liable for cleanup costs to the extent of $100 per gross ton or $1-1,000,000, whichever is less.**

These are the primary sources of Federal law on the issue of pollution control of vessels.

D. State Law and Jurisdiction

Several states have enacted statutes relating to the control of pollut ion in their coastal waters to protect themselves from the economic and social costs which inevitably go along with an oil spill. If a state is seeking to protect a **legitimate local interest and Federal legislation has not occupied the field, a state can address the problem of ~'essel-source pollution. As the Supreme Court put it in tile Askew case :**

> [A] state, in the exercise of its police power, may establish rules applicable on land and water within its limits, even though these rules incidentally affect maritime affairs, provided that the state action "does not contravene any acts of Congress, nor work any prejudice to the characteristics features of maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relationship,"'

In the same vein, the Supreme Court adopted an inspection code of the State of Washington regarding the safety and seaworthiness of vessels (Kelly v. Washington, 302 U.S. 1. (1937')), and a Detroit Smoke Abatement Code as applied to vessels (Huron *Cement Co. v. Detroit, 362 U.S. 440* (1960)). Furthermore, the states have always had the power to legislate pilotage requirements in their waters.