

Original Sponsors: Croft, Kerttula,
and Poland

Offered: 5/18/76
Referred: Judiciary

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 406

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil terminal facilities and the
7 marine transportation of crude oil, refined petroleum
8 products or their by-products; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 30 is amended by adding a new chapter to read:

12 CHAPTER 20. REGULATION OF TANK VESSEL TRAFFIC.

13 Sec. 30.20.010. POLICY AND PURPOSE. (a) Because of the danger of
14 spills, the legislature finds and declares that the marine transporta-
15 tion of crude oil, refined petroleum products or their by-products by
16 tankers or other carriers so engaged in the coastal waters and inside
17 coastal waters of the state creates a great potential hazard to impor-
18 tant natural resources of the state and to jobs and incomes dependent on
19 these resources. The legislature also recognizes that the state's
20 coastal and inside coastal waters are a relatively confined saltwater
21 environment with irregular shorelines and therefore there is a greater
22 than usual likelihood of long-term damage from a large oil discharge.
23 Certain areas of the state's coastal and inside coastal waters have
24 limited space for maneuvering large tank vessels engaged in the marine
25 transportation of crude oil, refined petroleum products or their by-
26 products. These waters also contain many natural obstacles and pheno-
27 mena and at certain times and places a high density of commercial,
28 fishing and pleasure boat traffic. Thus, it is important that large
29 tank vessels have sufficient capability for rapid maneuvering responses.

1 (b) It is also the purpose of this chapter to decrease the likeli-
2 hood of oil discharges in the coastal and inside coastal waters of the
3 state and its shorelines by requiring tank vessels engaged in the marine
4 transportation of crude oil, refined petroleum products or their by-
5 products to be equipped with certain safety and maneuvering capability
6 features and, if these vessels are above a certain size but lack these
7 features, to be escorted by tugs while navigating in the coastal and
8 inside coastal waters of the state.

9 (c) The legislature further finds and declares that the particular
10 marine environment of the state through which tank vessels engaged in
11 the marine transportation of crude oil, refined petroleum products or
12 their by-products will navigate is potentially more hazardous than other
13 maritime routes. The introduction of crude oil, refined petroleum pro-
14 ducts or their by-products into the marine environment of the state's
15 coastal and inside coastal waterways causes extreme damage to the
16 marine, estuarine and adjacent terrestrial environment lasting beyond
17 the visible existence of the spilled, discharged or escaped oil and is
18 potentially destructive of the valuable species of fish and shellfish
19 that are harvested in Alaskan waters.

20 Sec. 30.20.020. STANDARD SAFETY, MANEUVERABILITY FEATURES. (a) A
21 tank vessel engaged in the marine transportation of crude oil, refined
22 petroleum products or their by-products while navigating those portions
23 of the navigable coastal, inside coastal or other navigable waters of
24 the state prescribed by the department by regulation shall be equipped
25 or fitted with

26 (1) LORAN-C navigational system receivers and other position
27 location systems as may be prescribed from time to time by the depart-
28 ment by regulation;

29 (2) electronically controlled collision avoidance systems

1 where applicable to an appropriate vessel prescribed by the department
2 by regulation; and

3 (3) two radars of types prescribed by the department by regu-
4 lation in working order, one of which is operating.

5 (b) A tank vessel engaged in the marine transportation of crude
6 oil, refined petroleum products or their by-products of 40,000 dead-
7 weight tons or more, which lacks the following maneuverability and
8 stopping features, must be escorted by tugs with an aggregate shaft
9 horsepower equivalent to five per cent of the deadweight tons of that
10 tank vessel while navigating those portions of the navigable coastal,
11 inside coastal or other navigable waters of the state prescribed by the
12 department by regulation:

13 (1) lateral thrusters;

14 (2) controllable pitch propellers or astern horsepower equal
15 to 40 per cent of rated horsepower; and

16 (3) redundant boilers, an auxiliary propulsion source or
17 other backup equipment that the department may require by regulation to
18 provide for a vessel's safe operation if the primary equipment fails.

19 (c) However, the department may by regulation exempt a tank vessel
20 from the tug escort provisions of (b) of this section in certain ports,
21 harbors or navigable waters of the state or at certain times of the
22 year, as in the judgment of the department are dictated by meteorolo-
23 gical or oceanographic conditions.

24 Sec. 30.20.030. TANK VESSEL TRAFFIC REGULATIONS. (a) The depart-
25 ment shall adopt and maintain a comprehensive, uniform system of traffic
26 regulations for the operation of tank vessels engaged in the transporta-
27 tion of crude oil, refined petroleum products or their by-products in
28 the navigable waters of the state that may be required to implement the
29 provisions of this chapter and that are not in conflict with traffic

1 regulations contained in federal navigation laws or regulations promul-
2 gated by the United States Coast Guard.

3 (b) In adopting these regulations, the department may prescribe
4 the maximum and minimum speed for vessels subject to this chapter and
5 the weather conditions under which the movement of these vessels may be
6 prohibited.

7 (c) The department shall consult and cooperate with the United
8 States Coast Guard in the establishment, adoption, maintenance, adminis-
9 tration and enforcement of the traffic regulations adopted under this
10 chapter.

11 (d) The Administrative Procedure Act (AS 44.62) applies to
12 regulations adopted by the department under this chapter.

13 Sec. 30.20.040. ENFORCEMENT; PENALTIES. (a) This chapter and the
14 regulations adopted under it shall be enforced by a peace officer or an
15 employee of the department or other state agency authorized by the com-
16 missioner.

17 (b) An owner or operator of a tank vessel who violates a provision
18 of this chapter, or a regulation adopted under it, upon conviction is
19 guilty of a misdemeanor and is punishable by a fine of not less than
20 \$1,000 nor more than \$25,000, or by imprisonment for not more than one
21 year, or by both. Each day on which a violation occurs may be con-
22 sidered a separate and additional offense.

23 Sec. 30.20.050. INTERSTATE, FOREIGN COMPACTS, OTHER AGREEMENTS,
24 ARRANGEMENTS AUTHORIZED. Subject to the approval of the legislature or
25 of the Congress of the United States, as may be required under appli-
26 cable provisions of law, the governor may execute supplementary agree-
27 ments, reciprocal arrangements or compacts with any other state or with
28 a foreign government to implement the purposes of this chapter.

29 Sec. 30.20.060. DEFINITIONS. In this chapter

1 (1) "carrier" means a person who owns or who, for compensa-
2 tion, operates or otherwise provides a tank vessel engaged in, used or
3 capable of being used for, the marine transportation of crude oil,
4 refined petroleum products or their by-products on the waters of this
5 state;

6 (2) "commissioner" means the commissioner of environmental
7 conservation;

8 (3) "deadweight tons" or "DWT" means the difference in metric
9 tons between the lightweight displacement and the total displacement of
10 a vessel measured in water of specific gravity 1.025 at the load water-
11 line corresponding to the assigned summer freeboard;

12 (4) "department" means the Department of Environmental Con-
13 servation;

14 (5) "crude oil, refined petroleum products or their by-
15 products" means oil of any kind and in any form including, but not
16 limited to, petroleum, fuel oil, gasoline, lubricating oils, oily
17 sludge, oil refuse, oil mixed with other wastes, crude oils, liquified
18 natural gas, propane, butane or other liquid hydrocarbons regardless of
19 specific gravity;

20 (6) "operate" means to navigate or otherwise use a vessel
21 subject to the provisions of this chapter;

22 (7) "operator" means the person who operates or has charge of
23 the navigation or use of a vessel subject to the provisions of this
24 chapter;

25 (8) "owner" means a person, other than a lienholder, having
26 the property in or title to a vessel; the term includes a person en-
27 titled to the use or possession of a vessel subject to an interest of
28 another person reserved or created by agreement and securing payment or
29 performance of an obligation, but the term excludes a lessee under a

1 lease not intended as security;

2 (9) "tank vessel" means a self-propelled vessel that is
3 specially constructed or converted to carry liquid bulk cargo in tanks
4 and includes tankers, tankships and combination carriers when carrying
5 crude oil, petroleum products or their by-products in bulk; it does not
6 include vessels carrying crude oil, petroleum products or their by-
7 products in drums, barrels, or other packages, or vessels carrying crude
8 oil, petroleum products or their by-products as fuel or stores for that
9 vessel;

10 (10) "waters of the state" means the navigable coastal, inside
11 coastal and other navigable waters within the territorial limits of this
12 state, and the marginal sea adjacent to this state, as defined in
13 AS 44.03 and AS 46.03.900(22).

14 Sec. 30.20.070. SHORT TITLE. This chapter may be cited as the
15 Tank Vessel Traffic Regulation Act.

16 * Sec. 2. AS 30 is amended by adding a new chapter to read:

17 CHAPTER 25. OIL TERMINAL FACILITIES: TRANSFER
18 OF CRUDE OIL, REFINED PETROLEUM PRODUCTS OR THEIR BY-PRODUCTS.

19 Sec. 30.25.010. DECLARATION OF POLICY AND PURPOSE. (a) The
20 legislature finds and declares that it is a matter of the highest
21 urgency and priority to protect the coastal and inside coastal waters,
22 estuaries, wetlands, beaches and public lands adjoining the seacoast,
23 taking into account multiple use accommodations necessary to provide the
24 broadest possible protection of public and private interests with the
25 least possible conflicts among these diverse uses.

26 (b) The legislature further finds and declares that the transfer
27 of crude oil, petroleum products or their by-products between vessels,
28 and between vessels and onshore or offshore facilities within the juris-
29 diction of the state is a hazardous undertaking. Spills, discharges and

1 escapes of crude oil, refined petroleum or their by-products that may
2 occur as a result of procedures involved in the transfer and storage of
3 these products pose threats of great danger and damage to the marine,
4 estuarine and adjacent terrestrial environment of the state, to owners
5 and users of shorefront property, to public and private recreation, to
6 residents of the state and other interests deriving livelihood from
7 fishing and other marine-related activities, and to the beauty of the
8 state's coastline. These spills have occurred frequently and present
9 future threats of potentially catastrophic proportions, all of which are
10 expressly declared to be inimical to the paramount interests of the
11 state as set out in this section. These state interests outweigh any
12 economic and liability burdens imposed by the legislature upon those
13 engaged in transferring crude oil, refined petroleum products or their
14 by-products and related activities.

15 (c) The legislature intends by the enactment of this legislation
16 to

17 (1) exercise the police power of the state through the
18 Department of Environmental Conservation by conferring upon the depart-
19 ment the authority to deal with the hazards and threats of danger and
20 damage posed by these transfers and related activities and to encourage
21 and ensure cooperation with the United States Coast Guard and any other
22 state or federal department or agency;

23 (2) require, through the maximum practicable utilization of
24 contractual services, the prompt containment and removal of the pollu-
25 tion occasioned by oil spills;

26 (3) provide procedures whereby persons suffering damage from
27 these occurrences may be made whole promptly;

28 (4) establish a fund to provide for the inspection and super-
29 vision of oil transfer activities and guarantee the prompt cleanup of

1 oil spills and the payment of those costs; and

2 (5) to establish a system of regulation by requiring the
3 possession of a certificate of risk avoidance, the payment of risk
4 charges and the proof of financial responsibility by owners or operators
5 of oil terminal facilities and tank vessels engaged in the transporta-
6 tion or transfer of crude oil, refined petroleum products or their by-
7 products; the risk avoidance scheme is designed to provide incentives to
8 owners or operators of tank vessels engaged in the marine transportation
9 of crude oil, refined petroleum products or their by-products to incor-
10 porate safety and maneuvering capability features in those tank vessels
11 to reduce the risk that these vessels will release crude oil, refined
12 petroleum products or their by-products into the marine environment by
13 granting a reduction in the risk established under sec. 250 of this
14 chapter and by reducing requirements for proof of financial responsi-
15 bility under sec. 50 of this chapter.

16 (d) The legislature further finds and declares that the preserva-
17 tion of the public uses referred to in this section is of grave public
18 interest and concern to the state in promoting its general welfare,
19 promoting health and providing for the public safety, and that the
20 state's interest in the preservation of these interests outweighs any
21 burdens of strict liability imposed by the legislature upon those en-
22 gaged in transferring crude oil, refined petroleum products or their by-
23 products and related activities.

24 ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE
25 CARRIERS; ISSUANCE OF CERTIFICATES OF RISK AVOIDANCE.

26 Sec. 30.25.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF
27 THE STATE PROHIBITED. Except as provided in AS 46.03.740, the discharge
28 of crude oil, refined petroleum products or their by-products into or
29 upon any waters and lands of the state, as defined in AS 46.03.826(7),

1 is prohibited.

2 Sec. 30.25.030. AUTHORITY OF DEPARTMENT. (a) The authority of
3 the department under this chapter extends to the areas described in
4 sec. 20 of this chapter, and in AS 44.03.

5 (b) Certificates of risk avoidance required under this chapter
6 shall be obtained from and proof of financial responsibility shall be
7 submitted to the department subject to the terms and conditions pre-
8 scribed in this chapter and regulations adopted under it.

9 Sec. 30.25.040. OPERATION WITHOUT A CERTIFICATE PROHIBITED; APPLI-
10 CATION; PERIODIC INSPECTION. (a) No person may operate, or cause to be
11 operated in the state, an oil terminal facility used or capable of being
12 used in the transfer of crude oil, refined petroleum products or their
13 by-products without proof of financial responsibility submitted to, and
14 a certificate of risk avoidance issued by, the department under this
15 chapter.

16 (b) No person may operate, or cause to be operated, a tank vessel
17 engaged in the marine transportation of crude oil, refined petroleum
18 products or their by-products without proof of financial responsibility
19 submitted to, and a certificate of risk avoidance issued by, the depart-
20 ment under this chapter

21 (1) to or from oil terminal facilities located onshore in the
22 ports, harbors or elsewhere in the state;

23 (2) to or from deepwater port facilities located offshore in
24 the waters of the state; or

25 (3) through the waters of the state.

26 (c) The department shall prohibit the loading or unloading of a
27 tank vessel subject to the provisions of this chapter, that does not
28 possess a certificate of risk avoidance or proof of financial responsi-
29 bility, or both the certificate and proof.

1 (d) Certificates of risk avoidance shall be issued on an annual
2 basis subject to those terms and conditions the department considers
3 necessary and prescribes by regulation to carry out the purposes of this
4 chapter.

5 (e) As a condition precedent to the issuance or renewal of a
6 certificate of risk avoidance the department shall require payment of an
7 annual risk charge established under sec. 250 of this chapter and sub-
8 mission of satisfactory evidence that the applicant has, or is in the
9 process of implementing state and federal plans and regulations for
10 control of pollution related to crude oil, refined petroleum products or
11 their by-products and the abatement of the pollution when a discharge
12 occurs.

13 (f) In addition to the evidence supplied under this section,
14 applicants for an oil terminal facility certificate shall demonstrate
15 that they can provide all necessary equipment, personnel and supplies to
16 prevent, contain, and remove discharges of oil and other pollutants, and
17 shall submit information to the department in a form satisfactory to it,
18 describing the following:

19 (1) the barrel or other measurement capacity of the terminal
20 facility;

21 (2) all containment and removal equipment, including but not
22 limited to vehicles, vessels, pumps, skimmers, booms, chemicals and
23 communications devices to which the facility has access, whether through
24 direct ownership or by contract or membership in an oil cleanup organi-
25 zation; and

26 (3) the terms of agreement and operation plan of any dis-
27 charge cleanup organization to which the owner or operator of the
28 terminal facility belongs.

29 (g) In addition to the other evidence supplied under this section,

1 applicants for a marine carrier certificate shall demonstrate that they
2 can provide all necessary equipment, personnel and supplies to prevent,
3 contain, and remove discharges of oil and other pollutants, and shall
4 submit information to the department in a form satisfactory to it,
5 describing the following:

6 (1) the name and description of each tank vessel for which a
7 certificate is sought that is engaged in, used or capable of being used
8 by the carrier for the marine transportation of crude oil, refined
9 petroleum products or their by-products to and from onshore and offshore
10 oil terminal facilities in this state; the vessel description shall in-
11 clude, but is not limited to, the overall length, beam, draft, gross
12 tonnage, deadweight tonnage, net tonnage, and design capacity for trans-
13 porting crude oil, refined petroleum products or their by-products, and
14 a detailed statement as to the tank vessel's seaworthiness; the depart-
15 ment may, in addition, require that the carrier furnish a marine survey
16 of the tank vessel's condition;

17 (2) a projection of the number of visits each tank vessel
18 will make annually to or from an oil terminal facility in the state, or
19 through the waters of the state;

20 (3) all containment and removal equipment, including but not
21 limited to vehicles, vessels, pumps, skimmers, booms, chemicals, and
22 communication devices to which the carrier or the tank vessel has
23 access, whether through direct ownership or by contract or membership in
24 an approved discharge cleanup organization; and

25 (4) the terms of agreement and operation plan of any dis-
26 charge cleanup organization to which the carrier or the owner or opera-
27 tor of the tank vessel belongs.

28 (h) Upon showing of satisfactory containment and removal or
29 cleanup capability under this section, and upon payment of the annual

1 risk charge, the department shall issue the applicant a certificate of
2 risk avoidance for each terminal facility and related appurtenances or
3 for each tank vessel. In addition to the annual risk charge, the
4 department may assess a penalty for late applications and a fee for the
5 processing of an application for the issuance or renewal of a certi-
6 ficate of risk avoidance under this section. This fee shall be reason-
7 ably related to the administrative costs of verifying the data submitted
8 under (e), (f) and (g) of this section.

9 (i) Oil terminal facilities engaged in the transfer of, and
10 carriers engaged in the marine transportation of crude oil, refined
11 petroleum products or their by-products, that are applicants for, or are
12 holders of, a certificate of risk avoidance under this section are
13 subject to inspection by the department to ensure compliance with the
14 provisions of this chapter.

15 Sec. 30.25.050. PROOF OF FINANCIAL RESPONSIBILITY. (a) Carriers
16 and facilities subject to the provisions of this chapter shall present
17 to the department evidence of insurance, bonding or other forms of
18 financial responsibility acceptable to the department for property
19 damage, personal injuries, loss of income or other losses resulting from
20 the unlawful discharge of crude oil, refined petroleum products or their
21 by-products.

22 (b) The amount of financial responsibility required for each
23 carrier shall not be less than \$20,000,000, or an amount required under
24 applicable federal law or regulation.

25 (c) The amount of financial responsibility required for each
26 facility with a capacity of less than 200,000 barrels of crude oil,
27 refined petroleum products or their by-products is \$100,000; the amount
28 for the same type of facility with a capacity of 200,000 barrels or more
29 of crude oil, refined petroleum products or their by-products is

1 \$1,000,000.

2 Sec. 30.25.060. EXEMPTIONS. (a) Because of the restricted nature
3 of marina and limited capacity facility operations and the minimal
4 danger to the environment posed by their activities, a marina used or
5 capable of being used to store less than 10,000 barrels of refined
6 petroleum products or their by-products, or an onshore limited capacity
7 facility used or capable of being used to store less than 25,000 barrels
8 of refined petroleum products or their by-products, is exempt from the
9 proof of financial responsibility requirements of sec. 50 of this
10 chapter and the certificate of risk avoidance requirements of sec. 40 of
11 this chapter.

12 (b) For the purposes of (a) of this section

13 (1) "marina" means a person or facility engaged in the
14 business, whether onshore or offshore, of servicing the fuel require-
15 ments of aircraft, pleasure watercraft, fishing boats and other com-
16 mercial vessels, where the purchaser and the consumer are the same
17 entity, and the fuel capacity of the servicing or serviced vessel is
18 less than 10,000 barrels of refined petroleum products or their by-
19 products, and is not covered by the definition of limited capacity
20 facility in (2) of this subsection; however, a marina does not include
21 a seafood processing vessel or tender when, incidental to its seafood
22 processing operations, it transfers refined petroleum products to a
23 fishing boat;

24 (2) "limited capacity facility" means a small tank farm,
25 small bulk fuel storage facility, or other onshore facility storing
26 refined petroleum products or their by-products, except asphalt, and
27 which is engaged in the business of servicing the requirements of pro-
28 duct transporters and vendors, or storing the fuel requirements for
29 village domestic, school or commercial use, including but not limited to

1 fish processing, logging operations, construction projects or electric
2 power generation.

3 Sec. 30.25.070. SCOPE OF REGULATIONS. The department shall adopt
4 regulations to carry out the purposes of this chapter that do not con-
5 flict with federal law or regulations issued by any federal department
6 or agency, including but not limited to the following:

7 (1) operating and inspection requirements for oil terminal
8 facilities, tank vessels, personnel, equipment, supplies and other
9 matters relating to the insured's operations under sec. 40 of this
10 chapter;

11 (2) procedures and methods of reporting discharges and other
12 occurrences prohibited by this chapter;

13 (3) procedures, methods, means and equipment to be used by
14 persons subject to this chapter and the implementing regulations;

15 (4) procedures, methods, means and equipment to be used in
16 the removal of oil and petroleum pollutants;

17 (5) development and implementation of criteria and plans to
18 meet oil and petroleum pollution discharges, spills or other occurrences
19 of various degrees and kinds;

20 (6) requirements for the safety and operation of tank vessels
21 and motor vehicles, motorized equipment and other equipment relating to
22 the use and operation of terminals, facilities and refineries and the
23 approach and departure from terminals, facilities and refineries;

24 (7) establishment of the risk charges for annual issuance of
25 the certificate of risk avoidance; and

26 (8) those other regulations that may be required by or for
27 emergency conditions or that reasonably may be necessary to carry out
28 the purposes of this chapter.

29 ARTICLE 3. EMERGENCIES.

1 Sec. 30.25.080. GOVERNOR'S POWERS: EMERGENCY PROCLAMATION. (a) In
2 addition to exercising his civil defense powers under AS 26.20, or
3 directing the department to exercise its emergency powers under AS 46.-
4 03.820, when a disaster or catastrophe occurs or appears imminent aris-
5 ing from the discharge of crude oil, refined petroleum products or their
6 by-products, the governor, or in his absence or inability, the lieute-
7 nant governor, shall by proclamation declare (1) that fact and (2) that
8 an emergency exists in one, several or all sections of the state. A
9 copy of the proclamation shall be filed with the lieutenant governor in
10 the manner prescribed by law.

11 (b) The governor has general direction and control of the depart-
12 ment and is responsible for carrying out the provisions of this chapter
13 when a disaster or catastrophe occurs or appears imminent arising from
14 the discharge of crude oil, refined petroleum products or their by-
15 products.

16 (c) In performing his duties under this chapter, the governor may

17 (1) issue, amend and rescind the necessary orders and regu-
18 lations to carry out the provisions of this chapter within the limits of
19 the authority conferred upon him and not inconsistent with the regula-
20 tions and directives of the President of the United States or of any
21 federal department or agency that has specifically authorized emergency
22 functions;

23 (2) delegate any authority vested in him under this chapter
24 and provide for the subdelegation of that authority.

25 (d) When the governor is satisfied that an emergency no longer
26 exists, he shall terminate the proclamation issued under (a) of this
27 section by another proclamation affecting the sections of the state
28 covered by the original proclamation. The proclamation shall be pub-
29 lished in the newspapers of general circulation in the state and posted

1 at other places that the governor, or the person acting in that capa-
2 city, considers appropriate.

3 (e) The provisions of AS 26.20 as they apply to eminent domain and
4 compensation, mutual aid, immunity, aid in emergency, right-of-way, en-
5 forcement and compensation apply to disasters or catastrophes proclaimed
6 by the governor under this chapter.

7 Sec. 30.25.090. INTERAGENCY COOPERATION. In performing his duties
8 under sec. 80 of this chapter, the governor shall secure cooperation
9 from all departments and agencies of the federal government, and the
10 governments of other states and foreign countries, and the political
11 subdivisions of them, as well as from private agencies, in all matters
12 relating to disaster or catastrophe.

13 ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

14 Sec. 30.25.100. IMMEDIATE REMOVAL REQUIRED. A person discharging
15 crude oil, refined petroleum products or their by-products in a manner
16 prohibited by sec. 20 of this chapter shall immediately undertake to
17 remove the discharge to the department's satisfaction. Notwithstanding
18 this requirement, the department may undertake the removal of the
19 discharge and may retain agents and enter into contracts for that
20 purpose notwithstanding the provisions of AS 37.05.220 - 37.05.280.
21 These agents or contractors shall operate under the direction of the
22 department.

23 Sec. 30.25.110. UNEXPLAINED DISCHARGES. An unexplained discharge
24 of crude oil, refined petroleum products or their by-products within the
25 state's jurisdiction or discharge of crude oil, refined petroleum pro-
26 ducts or their by-products occurring in waters beyond state jurisdiction
27 that for any reason penetrates within state jurisdiction shall be re-
28 moved by or under the direction of the department. Expenses involved in
29 the removal of discharges, whether by the person causing the discharge,

1 the person reporting it, or the department by itself, or through its
2 agents or contracts shall be paid solely from the coastal protection
3 fund established under this chapter.

4 Sec. 30.25.120. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT. (a)

5 The department may establish and maintain at ports, harbors or other
6 locations in the state, the personnel, equipment and supplies that, in
7 its judgment, may be necessary to carry out the provisions of this
8 chapter. Whenever feasible, the department shall enter into contracts
9 with persons or private organizations to provide the oil discharge
10 cleanup personnel, equipment or other services or supplies that may be
11 required to carry out the provisions of this chapter.

12 (b) The salaries of department employees and the cost of equip-
13 ment, supplies and contracts entered into under (a) of this section re-
14 quired to carry out the provisions of this chapter shall be paid from
15 the coastal protection fund.

16 (c) The department and the Departments of Natural Resources and
17 Fish and Game shall consult with one another periodically relative to
18 procedures for the prevention of oil discharges into the coastal and
19 inside coastal waters of the state from offshore drilling production
20 facilities. These departments shall jointly establish predesignated
21 sites for the deposit of oil discharge refuse and waste.

22 (d) Those inspection and enforcement employees of the department
23 designated by the commissioner are peace officers under AS 01.10.060(6)
24 in their line duty under this chapter and AS 46.03.

25 ARTICLE 5. ENFORCEMENT; PENALTIES.

26 Sec. 30.25.130. ADMINISTRATIVE ADJUDICATION. When it appears,
27 after investigation, that there is a violation of a regulation, order or
28 certificate issued by the department, the department shall proceed in
29 accordance with the provisions of this chapter and the regulations

1 adopted under it.

2 Sec. 30.25.140. CRIMINAL SANCTIONS. A person who violates sec. 20
3 of this chapter is punishable under AS 46.03.760 or 46.03.790. A person
4 who falsifies information required under sec. 40 of this chapter is
5 punishable under AS 46.03.760 or 46.03.790.

6 Sec. 30.25.150. CIVIL PENALTIES. A person who violates a provi-
7 sion of this chapter or a regulation or order of the department is
8 subject to the penalties prescribed in AS 46.03.760 - 46.03.780.

9 Sec. 30.25.160. INJUNCTIVE RELIEF. A person may be enjoined by
10 the superior court from committing a violation of a provision of this
11 chapter, or the implementing regulations.

12 Sec. 30.25.170. ACTIONS TO RECOVER PENALTIES, DAMAGES. (a)
13 Actions to recover penalties or damages under this chapter shall be
14 brought by the attorney general in a court of competent jurisdiction.

15 (b) All penalties recovered under sec. 140 or 150 of this chapter
16 shall be paid to the department and deposited by it in the coastal pro-
17 tection fund.

18 Sec. 30.25.180. EACH VIOLATION IS A SEPARATE OFFENSE. Each viola-
19 tion of a provision of this chapter, an implementing regulation, or an
20 order or certificate issued by the department under them, is a separate
21 and distinct offense and, in case of a continuing violation, each day
22 the violation continues constitutes a separate offense.

23 Sec. 30.25.190. PENALTIES CUMULATIVE. (a) All penalties imposed
24 under this chapter are cumulative.

25 (b) An action to recover a civil penalty is not a bar to an en-
26 forcement proceeding to require compliance, or to any other remedy or
27 sanction provided by this chapter.

28 Sec. 30.25.200. JOINDER OF ACTIONS. Under the applicable court
29 rules, appeals from orders of the department, and actions for recovery

1 of damages or penalties may be joined. The court may in the interests
2 of justice separate the actions.

3 Sec. 30.25.210. PRIVATE CAUSE OF ACTION. (a) A person subjected
4 to a prohibited discharge in violation of this chapter may sue in a
5 state court of appropriate jurisdiction for damages resulting from the
6 prohibited discharge.

7 (b) A person recovering damages under this section is entitled to
8 a reasonable attorney fee, fixed by the court, to be taxed and collected
9 as costs of the suit.

10 ARTICLE 6. COASTAL PROTECTION FUND.

11 Sec. 30.25.220. FUND CREATED; USES; LIMITATIONS; CHARGES. (a) The
12 coastal protection fund is created as a revolving fund. The fund shall
13 be used by the department to carry out the purposes of this chapter.

14 (b) To this fund shall be credited all risk charges, penalties and
15 other fees or charges established under or related to this chapter. To
16 this fund shall be charged all expenses of the department related to
17 this chapter, including administrative expenses, costs of removal of
18 discharges of pollutants, and costs of arbitration.

19 Sec. 30.25.230. SURPLUS FUNDS. Money in the fund not currently
20 needed to meet the obligations of the department in the exercise of its
21 responsibilities under this chapter shall be deposited with the com-
22 missioner of revenue to the credit of the fund and shall be invested in
23 the manner provided in AS 37.10. Interest received on that investment
24 shall be credited to the fund.

25 Sec. 30.25.240. RESEARCH AND DEVELOPMENT. The department may
26 allocate annually not more than five per cent of the amount than cur-
27 rently in the fund for research and development into the causes, effects,
28 prevention and removal of pollution of the aquatic environment caused by
29 crude oil, refined petroleum products, or their by-products. These

1 allocations shall be made in accordance with the Executive Budget Act
2 (AS 37.07).

3 Sec. 30.25.250. FUNDING; RISK CHARGES. (a) Annual risk charges
4 for each classification of certificates issued by the department under
5 sec. 40 of this chapter shall be based on the following factors:

6 (1) data submitted by applicants under that section;

7 (2) with respect to the issuance of certificates to carriers
8 engaged in the marine transportation of crude oil, refined petroleum
9 products or their by-products, the design characteristics of the tank
10 vessel for which the certificate is issued, including but not limited to

11 (A) the presence or absence of the standard safety or
12 maneuvering capability features prescribed in AS 30.20.020; and

13 (B) if the tank vessel is 40,000 deadweight tons or
14 more, the presence or absence of

15 (i) flue gas or other gas inerting systems to be
16 prescribed by the department by regulation; and

17 (ii) segregated ballast tanks, the combined capacity
18 of which shall be of sufficient size, as prescribed by the
19 department, so that the tank vessel can operate safely on
20 ballast voyages without recourse to the use of cargo tanks for
21 water ballast, and which is achieved in part by fitting,
22 throughout the cargo length, either a double bottom of a mini-
23 mum height of one-fifteenth of the beam or two meters, which-
24 ever is the greater, or a double hull throughout the cargo-
25 carrying length or compartments of the tank vessel of a mini-
26 mum of two meters;

27 (3) the risk experience of oil terminal facilities and
28 carriers during the previous period for which the certificate of risk
29 avoidance was issued and risk charges paid; and

1 (4) any other data, information or standards the department
2 considers relevant or essential to an appropriate determination of the
3 annual charges for the issuance of certificates of risk avoidance under
4 sec. 40 of this chapter.

5 (b) The annual risk charge for a tank vessel that lacks some or
6 all of the design characteristics prescribed in (a)(2) of this section
7 shall be increased accordingly in the manner prescribed by the depart-
8 ment. The annual risk charge shall be reduced when the tank vessel is
9 equipped or fitted with the design characteristics prescribed in (a)(2)
10 of this section.

11 (c) Charges may be adjusted from time to time during each year to
12 allow for risk experience or the equipping or fitting of design charac-
13 teristics prescribed in (a)(2) of this section during that period.

14 (d) The aggregate annual risk charges to be collected each year
15 shall be sufficient to cover anticipated authorized disbursements from
16 the fund for that year, except costs involved in the abatement of pol-
17 lution plus 20 per cent of the amount necessary to fund the pollution
18 abatement expense reserve established under (f) of this section.

19 (e) At the time the pollution abatement expense reserve has been
20 collected, there shall be returned to those holders of certificates of
21 risk avoidance who paid into the fund in its first year of operation
22 their pro rata share of the excess, if any, of risk charges paid over
23 all disbursements from the fund made for that year plus interest on the
24 amount of the excess returned. In each year thereafter, so long as the
25 pollution abatement expense reserve is maintained, excess risk charges,
26 if any, shall be paid to the certificate holders in the year following
27 the last year for which a return of excess risk charge has been made if
28 due or calculated and found not due.

29 (f) The initial pollution abatement expense reserve is \$20,000,000.

1 At least once every five years during the fund's operation, the depart-
2 ment shall determine an appropriate amount necessary to maintain ade-
3 quate funds to abate anticipated oil pollution and establish a new
4 amount for the pollution abatement expense reserve.

5 (g) Risk charges shall be paid to the department and upon receipt
6 by it deposited in the coastal protection fund.

7 Sec. 30.25.260. DISBURSEMENTS FROM FUND. (a) Money in the
8 coastal protection fund may be disbursed for the following purposes and
9 no other, subject to the provisions of AS 37.07 and AS 37.10:

10 (1) administrative expenses, personnel expenses, contract
11 fees, and equipment and supplies costs of the department related to the
12 enforcement of this chapter;

13 (2) all costs involved in the abatement of pollution related
14 to the discharge of crude oil, refined petroleum products or their by-
15 products covered by this chapter;

16 (3) sums allocated to research and development in accordance
17 with sec. 240 of this chapter;

18 (4) payment of costs of arbitration and arbitrators; and

19 (5) payment of costs of insurance by the state to implement
20 this chapter.

21 (b) The department shall submit annually to the legislature,
22 through the Department of Administration and the governor, in accordance
23 with the Executive Budget Act (AS 37.07), its recommendations for dis-
24 bursements from the fund under (a) of this section and sec. 240 of this
25 chapter.

26 Sec. 30.25.270. SPECIAL RISK CHARGES. (a) If a discharge occurs
27 in any year necessitating disbursements from the fund in excess of
28 expenses funded by that year's charges, the department shall collect
29 from all carriers and facilities subject to the provisions of this

1 chapter at the time the discharge occurs that amount which will reim-
2 burse the fund by the aggregate amount of the excess expenditures.

3 (b) The amount to be collected shall be prorated among those
4 carriers and facilities subject to this chapter at the time of the dis-
5 charge and shall be determined on the basis of the same criteria used to
6 determine annual risk charges under sec. 250 of this chapter.

7 (c) If a carrier or facility subject to (a) of this section re-
8 fuses to pay the special risk charges established under (a) of this
9 section, those charges shall be prorated among the remaining carriers or
10 facilities.

11 (d) Requests for payment of the special risk charges established
12 under (a) of this section, if not paid within 30 days of demand, shall
13 be turned over to the Department of Administration or the Department of
14 Law, or both, for collection.

15 Sec. 30.25.280. OIL TERMINAL FACILITY, CARRIER STRICTLY LIABLE.
16 An operator of an oil terminal facility and a carrier are strictly
17 liable, without regard to fault, under AS 46.03.822 - 46.03.828 for all
18 acts and omissions of their employees and agents. The liability of a
19 carrier extends from the time the vessel enters state waters until the
20 time the vessel leaves state waters.

21 ARTICLE 7. GENERAL; MISCELLANEOUS PROVISIONS.

22 Sec. 30.25.290. THIRD PARTY DAMAGES. (a) A person claiming to
23 have suffered damages to real estate or personal property or loss of
24 income directly or indirectly as a result of a discharge of crude oil,
25 refined petroleum products or their by-products prohibited by sec. 20 of
26 this chapter, or as the result of an unexplained discharge under sec.
27 110 of this chapter may elect within two years after occurrence of the
28 discharge to obtain an award of damages from a board of arbitration.

29 (b) Applications shall be made to the department stating the

1 amount of damage incurred as a result of the discharge. The department
2 shall prescribe appropriate forms and procedures for these applications.
3 The department may, upon petition, and for good cause shown, waive the
4 two-year limitation for filing damage claims.

5 (c) An award of damages to a person on a claim under (a) of this
6 section constitutes an election of that remedy and bars recovery in an
7 action by that person under sec. 210 of this chapter, AS 46.03.822 -
8 46.03.828, or any other provision of law on the same claim for the same
9 injury. A judgment awarded to a person on a claim under sec. 210 of
10 this chapter, AS 46.03.822 - 46.03.828, or any other provision of law,
11 bars a claim for award of damages under (a) of this section on the same
12 claim for the same injury.

13 (d) Third party damage claims by a single person shall be stated
14 in their entirety in one application. Damages omitted from any claim at
15 the time the award is made shall be considered waived, unless it can be
16 shown that the damages subsequently claimed could not have been reason-
17 ably foreseen when the original application was made.

18 Sec. 30.25.300. BOARD OF ARBITRATION. (a) The board of arbitra-
19 tion consists of three persons, one chosen by the person determined in
20 the first instance by the department to have caused the discharge, one
21 to be chosen by the department to represent the public interest, and one
22 person chosen by the first two appointed members to serve as a neutral
23 arbitrator. The neutral arbitrator shall serve as chairman. If the two
24 arbitrators fail to agree upon, select and name the neutral arbitrator
25 within 10 days after their appointment, the department shall request the
26 American Arbitration Association to use its procedures for the selection
27 of a neutral arbitrator. No employee of the department may serve as an
28 arbitrator.

29 (b) Arbitrators shall be named by their principals within 30 days

1 after the department receives an application for arbitration. If either
2 party fails to select its arbitrator within the 10-day period, the other
3 party shall request the American Arbitration Association to use its pro-
4 cedures for the selection of an arbitrator, and the two arbitrators
5 shall proceed to select the neutral arbitrator as provided in (a) of
6 this section.

7 (c) One board of arbitrators shall be established for and hear and
8 determine all claims arising from or related to a common single dis-
9 charge.

10 (d) Hearings before boards of arbitrators shall be informal, and
11 the rules of evidence prevailing in judicial proceedings are not bind-
12 ing. The adjudicatory provisions of the Administrative Procedure Act
13 (AS 44.62) are not applicable to proceedings under this subsection. The
14 board has the power to administer oaths and to require by subpoena the
15 attendance and testimony of witnesses, the production of books, records
16 and other evidence relative or pertinent to the issues represented to
17 them for determination.

18 (e) Determinations made by a majority of the board shall be final,
19 but they are subject to appeal under the Administrative Procedure Act
20 (AS 44.62).

21 (f) Representation on a board of arbitration shall not be con-
22 sidered an admission of liability for the discharge.

23 Sec. 30.25.310. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The
24 governor may execute supplementary agreements, reciprocal arrangements
25 or compacts with any other state or with foreign governments, subject to
26 the approval of the legislature and of the Congress of the United States
27 that may be required by applicable provisions of law, for the purpose of
28 implementing this chapter.

29 Sec. 30.25.320. ANNUAL REPORT. The department shall prepare and

1 publish an annual report to the governor and to the legislature review-
2 ing its work under this chapter and shall include in the report its
3 recommendations for the enactment of appropriate legislation.

4 Sec. 30.25.330. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED.
5 If a conflict occurs between a provision of this chapter, or a regula-
6 tion, certificate, order, decision or other determination of the depart-
7 ment and a charter, ordinance, permit, regulation, franchise, decision
8 or other determination of a municipality, the provisions of this chapter
9 or a regulation, certificate, order, decision or other determination of
10 the department prevails. However, nothing in this chapter may be con-
11 strued to preclude a municipality, by ordinance or regulation, from ex-
12 exercising its police powers in the area regulated by this chapter.

13 Sec. 30.25.340. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)
14 The administrative adjudication procedures of the Administrative
15 Procedure Act (AS 44.62) do not apply to the adjudicatory, certificate
16 issuing, or other proceedings of the department under this chapter.
17 However,

18 (1) final administrative determinations or orders by the
19 department are subject to judicial review under that Act; and

20 (2) department hearings shall be held only after at least 10
21 days public notice, unless it is an emergency hearing; they shall be
22 held at a place most convenient for those interested in the subject of
23 the hearing.

24 (b) Notwithstanding the provisions of (a)(1) of this section, no
25 regulation or order of the department may be stayed pending appeal under
26 the provisions of the Administrative Procedure Act.

27 (c) The Administrative Procedure Act applies to regulations pro-
28 mulgated by the department.

29 Sec. 30.25.350. LIMITATION ON LIABILITY OF THE STATE. Neither the

1 state nor the fund is liable for any act or omission arising out of the
2 enforcement or implementation of this chapter or the failure to enforce
3 or implement this chapter.

4 Sec. 30.25.360. CONSTRUCTION. This chapter shall be liberally
5 construed to effect the purposes set out in sec. 10 of this chapter.

6 Sec. 30.25.370. DEFINITIONS. In this chapter, unless the context
7 requires otherwise,

8 (1) "barrel" means 42 U. S. gallons at 60 degrees Fahrenheit;

9 (2) "board" means a board of arbitration established under
10 this chapter;

11 (3) "carrier" means a person who owns or who, for compensa-
12 tion, operates or otherwise provides a vessel engaged in, used or capa-
13 ble of being used for, the marine transportation of crude oil, refined
14 petroleum products or their by-products on the waters of this state;

15 (4) "commissioner" means the commissioner of environmental
16 conservation;

17 (5) "deadweight tonnage" or "DWT" means the difference in
18 metric tons between the lightweight displacement and the total displace-
19 ment of a vessel measured in water of specific gravity 1.025 at the load
20 waterline corresponding to the assigned summer freeboard;

21 (6) "department" means the Department of Environmental Con-
22 servation;

23 (7) "discharge" means any spilling, leaking, pumping, pour-
24 ing, emitting, emptying, or dumping;

25 (8) "fund" means the state coastal protection fund;

26 (9) "municipality" means a home rule or general law borough
27 or city including but not limited to a unified municipality organized
28 under AS 29.68;

29 (10) "crude oil, refined petroleum products, or their by-

1 products" means oil of any kind and in any form including, but not
2 limited to, petroleum, fuel oil, gasoline, lubricating oils, oily
3 sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied
4 natural gas, propane, butane or other liquid hydrocarbons regardless of
5 specific gravity;

6 (11) "oil terminal facility" means an onshore or offshore
7 facility of any kind and related appurtenances, including but not
8 limited to a deepwater port, located in, on, or under the surface of any
9 land or water of the state, including tide and submerged land, which is
10 used or capable of being used for the purpose of transferring, proces-
11 sing or refining, or storing crude oil, refined petroleum products or
12 their by-products; a vessel shall be considered an oil terminal facility
13 only in the event of a ship-to-ship transfer of crude oil, refined
14 petroleum products or their by-products, and only that vessel going to
15 or coming from the place of transfer and the oil terminal facility;
16 however, an oil terminal facility does not include a seafood processing
17 vessel or tender when, incidental to its seafood processing operations,
18 it transfers refined petroleum products to a fishing boat;

19 (12) "operate" or "operator" means a person owning or oper-
20 ating an oil terminal facility or a carrier whether by lease, contract
21 or any other form of agreement, or a person who navigates or has charge
22 of the navigation or use of a vessel;

23 (13) "transferred" includes both onloading and offloading,
24 between terminal and vessel and vessel to vessel;

25 (14) "tank vessel" means a self-propelled vessel that is
26 specially constructed or converted to carry liquid bulk cargo in tanks
27 and includes tankers, tankships, and combination carriers when carrying
28 crude oil, petroleum products or their by-products in bulk; it does not
29 include vessels carrying crude oil, petroleum products or their by-

1 products in drums, barrels, or other packages, or vessels carrying
2 crude oil, petroleum products or their by-products as fuel or stores for
3 that vessel;

4 (15) "waters of the state" means the navigable waters within
5 the territorial limits of the state, and the marginal sea adjacent to
6 the state, and as defined in AS 44.03 and AS 46.03.900(22).

7 Sec. 30.25.380. SHORT TITLE. This chapter may be cited as the
8 Alaska Oil Discharge Prevention and Pollution Control Act.

9 * Sec. 3. AS 46.03.750 is amended by adding a new subsection to read:

10 (e) Cargo in tank vessels, as defined in AS 30.20.060(9), engaged
11 in the marine transportation of crude oil, refined petroleum products or
12 their by-products may not be placed in segregated ballast tanks, nor may
13 ballast be placed in cargo tanks of those tank vessels having segregated
14 ballast systems. However, the department may by regulation permit the
15 placing of ballast in the cargo tanks of those vessels in emergency
16 situations. All ballast placed in cargo tanks shall be processed by or
17 in an onshore ballast water treatment facility and may not be discharged
18 into the waters of the state.

19 * Sec. 4. AS 46.03 is amended by adding a new section to read:

20 Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a
21 facility, operation or vessel, as soon as he has knowledge of any dis-
22 charge from the facility, operation or vessel in violation of sec. 740
23 or 750 of this chapter or AS 30.25.020, shall immediately notify the
24 department of the discharge.

25 (b) Notwithstanding (a) of this section, the department may enter
26 into a written agreement with a person for the periodic reporting of
27 minor discharges other than into the waters of the state.

28 * Sec. 5. AS 46.03.760 is repealed and re-enacted to read:

29 Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A

1 person who violates or causes or permits to be violated a provision of
2 this chapter or AS 30.25.020, or a regulation, a lawful order of the
3 department, or a permit or certificate, or term or condition of a permit
4 or certificate issued under this chapter or AS 30.25 is liable, in a
5 civil action, to the state for a sum to be assessed by the court of not
6 less than \$500 nor more than \$100,000 for the initial violation, nor
7 more than \$5,000 for each day thereafter on which the violation
8 continues, and which shall reflect, when applicable,

9 (1) reasonable compensation in the nature of liquidated
10 damages for any adverse environmental effects caused by the violation,
11 which shall be determined by the court according to the toxicity, de-
12 gradability and dispersal characteristics of the substance discharged,
13 the sensitivity of the receiving environment, and the degree to which
14 the discharge degrades existing environmental quality;

15 (2) reasonable costs incurred by the state in detection,
16 investigation, and attempted correction of the violation, except dis-
17 bursements for pollution abatement costs under AS 30.25.260(a)(2); and

18 (3) the economic savings realized by the person in not com-
19 plying with the requirement for which a violation is charged.

20 (b) Actions under this section may not be used for punitive pur-
21 poses, and sums assessed by the court must be compensatory and remedial
22 in nature.

23 (c) The court, upon motion of the department or upon its own
24 motion, may defer assessment of all or part of that portion of the sum
25 imposed upon a person under (a)(3) of this section conditioned upon the
26 person complying, within the shortest feasible time, with the require-
27 ment for which a violation is shown.

28 (d) As used in this section, "economic savings" means that sum
29 which a person would be required to expend for the planning,

1 acquisition, siting, construction, installation and operation of facili-
2 ties necessary to effect compliance with the standard violated.

3 (e) In addition to liability under (a) - (d) of this section, a
4 person who violates or causes or permits to be violated a provision of
5 secs. 740 - 750 of this chapter is liable to the state, in a civil
6 action brought under sec. 822 of this chapter, for the full amount of
7 actual damages caused to the state by the violation, including direct
8 and indirect costs associated with the abatement, containment or removal
9 of the pollutant, restoration of the environment to its former state,
10 and all incidental administrative costs. However, a person who holds a
11 risk avoidance certificate under AS 30.25.040 may be held liable only
12 for the prorated costs associated with the abatement, containment or
13 removal of the pollutant.

14 * Sec. 6. AS 46.03 is amended by adding a new section to read:

15 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction
16 to enjoin a violation of this chapter or AS 30.25, or of a regulation,
17 lawful order of the department, or permit or certificate, or term or
18 condition of a permit or certificate issued under this chapter or
19 AS 30.25. In actions brought under this section, temporary or prelim-
20 inary relief may be obtained upon a showing of an imminent threat of
21 continued violation, and probable success on the merits, without the
22 necessity of demonstrating physical irreparable harm. The balance of
23 equities in actions under this section may affect the timing of compli-
24 ance, but not the necessity of compliance within a reasonable period of
25 time.

26 * Sec. 7. AS 46.03.770 is amended to read:

27 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
28 FOR DAMAGES. A vessel which is used in or in aid of a violation of
29 secs. 740 - 750 of this chapter, or AS 30.25.020, may be detained after

1 a valid search by the department, an agent of the department, a peace
2 officer of the state, or an authorized protection officer of the Depart-
3 ment of Fish and Game. Upon judgment of the court having jurisdiction
4 that the vessel was used in or the cause of a violation of secs. 740 -
5 750 of this chapter, or AS 30.25.020, with knowledge of its owner or
6 under circumstances indicating that the owner should reasonably have had
7 this knowledge, the vessel may be held as security for payment to the
8 state of the amount [OF DAMAGES] assessed by the court under sec. 760(a)
9 [760(b)] of this chapter or upon determination by the department under
10 AS 30.25, and if the damages so assessed are not paid within 30 days
11 after judgment, final determination by the department or final deter-
12 mination of an appeal, the vessel shall be sold at public auction, or as
13 otherwise directed by the court or by the department, and the damages
14 paid from the proceeds. The balance, if any, shall be paid by the court
15 or the department to the owner of the vessel. The court shall permit
16 the release of the vessel upon posting of a bond set by the court or the
17 department in an amount not to exceed \$100,000. The damages received
18 under this section shall be transmitted to the department [PROPER STATE
19 OFFICER] for deposit in the coastal protection [GENERAL] fund estab-
20 lished under AS 30.25.220. A vessel seized under this section shall be
21 returned or the bond exonerated if no assessment is made [DAMAGES ARE
22 ASSESSED] under sec. 760(a) [760(b)] of this chapter or AS 30.25.

23 * Sec. 8. AS 46.03.780(a) is amended to read:

24 (a) A person who violates a provision of this chapter or AS 30.25,
25 or who fails to perform a duty imposed by this chapter or AS 30.25, or
26 violates or disregards an order, permit, or other determination of the
27 department made under the provisions of this chapter or AS 30.25,
28 respectively, and thereby causes the death of fish, animals, or vegeta-
29 tion or otherwise injures or degrades the environment of the state is

1 liable to the state for damages.

2 * Sec. 9. AS 46.03.790 is repealed and re-enacted to read:

3 Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates
4 or who causes or permits a violation of a provision of this chapter or
5 AS 30.25, or of a regulation, lawful order of the department, or permit
6 or certificate, or term or condition of a permit or certificate issued
7 under this chapter or AS 30.25 is guilty of a misdemeanor and, upon
8 conviction, is punishable by a fine of not more than \$25,000 and costs
9 of prosecution.

10 (b) A person who wilfully violates a provision of this chapter, or
11 of a regulation, lawful order of the department, or permit or certifi-
12 cate, or term or condition of a permit or certificate issued under this
13 chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is
14 punishable by a fine of not more than \$25,000 and costs of prosecution,
15 or by imprisonment for not more than one year, or by fine, costs, and
16 imprisonment.

17 (c) Each day on which a violation described in (a) or (b) of this
18 section occurs is considered a separate violation.

19 (d) A person who fails to provide or falsely states information
20 required under sec. 755 of this chapter or AS 30.25 is guilty of a mis-
21 demeanor and, upon conviction, is punishable by a fine of not more than
22 \$25,000, or by imprisonment for not more than one year, or by both.
23 Each unlawful act constitutes a separate offense.

24 * Sec. 10. AS 46.03 is amended by adding a new section to read:

25 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
26 the department, a person is violating or is about to violate a provision
27 of this chapter or AS 30.25, or a regulation or lawful order of the
28 department, or a permit or certificate, or a term or condition of a
29 permit or certificate issued by the department under this chapter or

1 AS 30.25, the department may notify the person of its determination by
2 personal service or certified mail. The determination and notice do not
3 constitute an order under sec. 820 of this chapter.

4 (b) The recipient of the determination must file with the depart-
5 ment, within the time period specified in the notice, a report stating
6 what measures have been and are being taken, or are proposed to be
7 taken, to correct or control the conditions outlined in the notice.

8 (c) After the report is filed under (b) of this section or the
9 time period specified for it has elapsed, the department may issue a
10 compliance order in conformity with the authority of the department and
11 the public policy declared in sec. 10 of this chapter. A copy of the
12 compliance order shall be served personally or sent by certified mail to
13 the person affected. A compliance order is effective upon receipt.

14 (d) Within 30 days after receipt the recipient may request a
15 hearing to review the compliance order. Failure to request a hearing
16 within 30 days after the receipt of a compliance order constitutes a
17 waiver of the recipient's right of review.

18 (e) The department shall hold a hearing within 20 days after
19 receipt of a request for one under (d) of this section. After the hear-
20 ing the department may rescind, modify or affirm the compliance order.

21 (f) The attorney general shall seek enforcement of a compliance
22 order.

23 * Sec. 11. AS 46.03 is amended by adding a new section to read:

24 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by
25 this chapter or AS 30.25 are cumulative, and the securing of relief,
26 whether injunctive, civil or criminal, under a section of this chapter
27 or AS 30.25 does not estop the state from obtaining relief under any
28 other section of this chapter or AS 30.25.

29 * Sec. 12. SEVERABILITY. If any provision of this Act or the application

1 of it to any person or circumstance is held invalid, particularly those pro-
2 visions that establish incentives for carriers to use vessels with certain
3 safety or maneuvering capability features, the remainder of this Act and the
4 application to other persons or circumstances, including but not limited to
5 those provisions which create a coastal protection fund, shall not be af-
6 fected.

7 * Sec. 13. This Act takes effect July 1, 1977.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29