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Florida Oil Spill and Pollution Control Act, an Intrusion into the Federal Maritime Domain, The

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COMMENTS

THE FLORIDA OIL SPILL AND POLLUTION CONTROL ACT,* AN INTRUSION INTO THE FEDERAL MARITIME DOMAIN

The present campaign to prevent and control water pollution in the United States has been hampered by numerous jurisdictional conflicts between the federal and state governments. The Federal Water Pollution Control Act (FWPCA)[1] has been the primary federal response to the problem of water pollution. This act stresses state involvement. ". . . State and interstate action to abate pollution of interstate or navigable waters shall be encouraged. . . ."[2] The act has been characterized by confusion and inefficiency in its application, and its enforcement provisions[3] are extremely cumbersome and time consuming. In an effort to escape this dilemma and provide more efficient pollution control for its valuable coastal waters, Florida enacted the Oil Spill and Pollution Control Act[4] during the 1970 legislative session. The legislature was spurred into action following serious oil spills in Tampa Bay and the St. John's River near Jacksonville. This act was designed mainly to control local oil pollution by the shipping industry in waters within the territorial jurisdiction of the state of Florida. It imposed unlimited liability without fault upon virtually any vessel which discharged oil or any other pollutant, while destined for or leaving any Florida port.[5] On December 10, 1971, this act was challenged in the case of *American Waterways Operators, Inc.* v. *Askew* in the Fifth Circuit before a three judge federal court, after a temporary restraining order had been issued.[6]

Plaintiffs in this action were merchant shippers using Florida ports.[7] Their initial contention, which was eventually accepted by the court, was that the Florida Oil Spill and Pollution Control

*American Waterways Operators, Inc. v. Askew, 335 F. Supp. 1241 (M.D. Fla. 1971), *prob. juris. noted*, 405 U.S. 1063 (1972).

1. 33 U.S.C. § 1151 *et seq.* (Supp. 1972).
2. 33 U.S.C. § 1160(b) (1971).
3. 33 U.S.C. § 1160 (1971).
4. Fla. Stat. Ann. § 376 (Supp. 1972).
5. Fla. Stat. Ann. § 376.12 (Supp. 1972).
6. No. 71-156 (M.D. Fla. 1971), *prob. juris. noted*, 405 U.S. 1063 (1972).
7. *See* Brief for Plaintiff at 2-4, American Waterways Operators, Inc. v. Askew, 335 F. Supp. 1241 (M.D. Fla. 1971), *prob. juris. noted*, 405 U.S. 1063 (1972).

Act was invalid as an attempt to legislate substantive maritime law. According to the interpretation given Article III, section 2 of the United States Constitution, maritime law is a subject for federal legislation.[8] In the absence of conflicting federal legislation, the states may act. The Florida Act was obviously maritime legislation; and, in the words of the court, it was directly in conflict with the Water Quality Improvement Act (WQIA),[9] a 1970 amendment to the FWPCA. Though both the WQIA and the Florida Act subject vessels and onshore and offshore facilities to strict liability for clean-up costs, the latter imposes a much stricter measure of responsibility. For example, the WQIA excuses a shipper who demonstrates that the oil spillage was the result of an act of God, an act of war, or the act or omission of a third party.[10] The Florida Act allows these defenses to only a limited degree. The Florida Act sets no limit to the amount of recovery,[11] while the WQIA does.[12] In addition, the WQIA creates a duty solely for clean-up costs and leaves undisturbed the remedies in tort available under maritime law for private injury. However, the Florida Act creates strict liability for both the costs of governmental clean-up and damages resulting from injury to the state or private land owners.[13]

According to District Judge Tjoflat:

> [T]he Florida Act, if valid, would materially change the substantive maritime law governing the disposition of claims arising from the pollution of coastal waters.
>
> It is well settled that state legislation is invalid where it is in contradiction with general admiralty rules or congressional enactments in the maritime field.[14]

He rejected defendant's contentions that the state legislature had sought to act in an area of purely local concern, and the traditional view that state legislation may fill voids in maritime law by providing a remedy where the federal law provides none.[15]

Thus, it appears that the holding of this case is that where state

8. U.S. Const. art. III, § 2.
9. 33 U.S.C. § 1161 *et seq.* (1971).
10. 33 U.S.C. § 1161(f) (1971).
11. Fla. Stat. Ann. § 376.12 (Supp. 1972).
12. 33 U.S.C. § 1161(f) (1971).
13. Fla. Stat. Ann. § 376.12 (Supp. 1972).
14. American Waterways Operators, Inc. v. Askew, 335 F. Supp. 1241, 1248 (M.D. Fla. 1971).
15. Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970).

legislation contradicts federal law of maritime tort claims, it is invalid.

This holding appears simple, direct and in accordance with precedent. However, there are some subtle distinctions that have emerged throughout the development of maritime law which Judge Tjoflat declined to give consideration. If this holding is affirmed on appeal, it will greatly reduce the power of the states to control pollution within their boundaries.

The grant of jurisdiction to federal courts to administer maritime law derives from constitutional language extending the "judicial Power of the United States" to "all Cases of admiralty and maritime Jurisdiction."[16] This constitutional provision and the grant of "cognizance" by the Judiciary Act of 1789[17] have, by interpretation and inference, been made the basis of extensive federal power. This power extends not only to jurisdiction over maritime cases, but also to passage of substantive law regarding maritime matters.[18] Basically, the admiralty jurisdiction of the United States extends to all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign commerce. This is the case whether or not the particular body of water is wholly within one state, and whether or not the occurrence or transaction that is the subject matter of the suit is confined to one state.[19]

Maritime torts, those occurring on admiralty waters, are subject to admiralty jurisdiction.[20] Admiralty tort jurisdiction has traditionally depended upon the locality where the tort occurred, not upon the nature of the tort or the parties involved.[21] However, in 1948 the Extension of Admiralty Act was passed. In part, it read:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to persons or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consumated on land.[22]

This law was explicitly followed in *Interlake S.S. Co.* v. *Nielsen*,[23]

16. U.S. Const. art. III, § 2.
17. 1 Stat. 76-77 (1789). The provision has been carried over in somewhat altered language into 28 U.S.C. § 1333 (1971).
18. G. Gilmore and C. Black, The Law of Admiralty 18 (1957).
19. *Id.* at 28-29.
20. Davis v. Jacksonville Beach, 251 F. Supp. 327 (M.D. Fla. 1965); United States v. Ross, 74 F. Supp. 6 (E.D. Mo. 1947).
21. Atlantic Transport Co. of W. Va. v. Imbrovek, 234 U.S. 52 (1914).
22. 46 U.S.C. § 740 (1971).
23. 338 F.2d 879 (6th Cir. 1964).

and in *Gebhard* v. *S.S. Hawaiian Legislator*[24] where the court said the Admiralty Extension Act extended jurisdiction to shoreside damage or injury to person or property caused by a vessel and imposed no other requirements.

The crucial problem is to determine when state law can intrude upon the federal admiralty jurisdiction. One of the most influential pronouncements concerning the power of a state to legislate maritime law was made in *Southern Pacific Co.* v. *Jensen.*[25] According to Mr. Justice McReynolds:

> No [state] legislation is valid if it contravenes the essential purpose expressed by an act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations.[26]

This limitation was extended, as pointed out by Judge Tjoflat, in *Knickerbocker Ice Co.* v. *Stewart,*[27] to prohibit Congress from allowing state legislation in areas considered to be under the jurisdiction of federal maritime law.

It is apparent that situations might arise where the maritime law would not have a rule regarding some particular situation which generally would be within the federal admiralty jurisdiction. The problem then becomes one of whether the federal court should proceed to fashion its own rule as part of the general maritime law, which would subsequently be applied uniformly to all similar cases within that court's jurisdiction; or whether it would yield to state law to provide the rule of decision. If the latter procedure is followed, the matter would be subject to variation among the states.[28] Generally, the courts have upheld state legislation which supplements federal law. Some courts, in order to allow state laws in admiralty jurisdiction, have relied on the "gap" theory: If the maritime law provides no rule of decision, the states may provide one.[29] The theory has generally been denounced as artificial, often resulting in conflicting conclusions.[30]

24. 425 F.2d 1303 (9th Cir. 1970).
25. 244 U.S. 205 (1917).
26. *Id.* at 216.
27. 253 U.S. 149 (1920).
28. Sovel, *Determining the Applicable Law in Cases Arising in State Territorial Waters,* 37 Temp. L.Q. 479, 482 (1964).
29. Western Fuel Co. v. Garcia, 257 U.S. 233, 240 (1921); and The Harrisburg, 119 U.S. 199, 213 (1886).
30. Currie, *Federalism and Admiralty,* Sup. Ct. Rev. 158, 167 (1960).

Another justification for allowing state legislation in the realm of maritime law, and thus an exception to the uniformity principle, is a strong, local public interest.[31] Problems have arisen from a conflict of state and federal interests and have been resolved by comparing their relative strengths. State laws have been declared valid when they preserve public order,[32] compensate for the use of public property,[33] or promote health or safety.[34] The case in question includes all of these criteria.

From 1940 until approximately 1960 in maritime tort cases mainly involving wrongful death and insurance, the Supreme Court followed the curious policy of accepting state law whenever it inured to the injured plaintiff's benefit and rejected it whenever the law was detrimental.[35] In *Hess* v. *United States*,[36] the Court permitted unprecedented lack of uniformity in order to allow recovery under state law, and in *Kermarec* v. *Compagnie Generale Transatlantique*,[37] the Court manufactured its own rule imposing liability where the state law would have blocked relief. Fortunately, this irrational approach to determining the validity of state legislation was completely abandoned once the Jones Act operated to provide a remedy for injured plaintiffs.[38]

The most recent cases emphatically state that in situations involving specifically maritime torts, rights of the parties must be determined by general maritime principles and not state law. These cases merely reiterate the principle established by the Admiralty Extension Act. As interpreted in *Holland* v. *Steag, Inc.*,[39] state law was inapplicable to maritime torts when it conflicted with the general policy of maritime law, or when acts of Congress had superseded the state laws. This decision was reaffirmed in *Massaro* v. *United States Lines Co.*,[40] and in *Wharton v. T. A. Loving and Co.*[41] In addition, according to Petition of *New Jersey Barging Corp.*,[42] vessel oil pollution of navigable waters resulting in damage to shoreline property has

31. Law of Admiralty, *supra* note 18, at 45.
32. Packet Co. v. Catlettsburg, 105 U.S. 559 (1881).
33. Transportation Co. v. Parkersburg, 107 U.S. 691 (1882).
34. Kelly v. Washington, 302 U.S. 1 (1937).
35. Currie, *supra* note 30, at 218.
36. 361 U.S. 314 (1960).
37. 358 U.S. 625 (1959).
38. 46 U.S.C. § 688 (1971).
39. 143 F. Supp. 203 (D. Mass. 1956).
40. 307 F.2d 299 (3rd Cir. 1962).
41. 344 F.2d 739 (4th Cir. 1965).
42. 168 F. Supp. 925 (S.D.N.Y. 1958).

been held to be a maritime tort, within admiralty jurisdiction. These decisions appear to have somewhat settled the problem of when to allow state legislation in the particular area of maritime torts. They seem to close all channels by which the Florida Oil Spill Prevention and Pollution Control Act could be considered constitutional in the face of the pre-existing WQIA. Unless these precedents are ignored or overruled, Judge Tjoflat's holding appears correct.

The holding in *American Waterways Operators, Inc.* v. *Askew* has some significant ramifications for the state of Florida. Although the WQIA provides for immediate notification of oil spills[43] and authorizes a $35 million revolving fund for emergency oil clean-ups,[44] it has certain rather weak provisions which the Florida Act attempted to supplement. According to the WQIA the owner or operator of a vessel or an onshore or offshore facility is subject to *limited* liability "without fault" for the costs expended by the government in cleaning up an oil spill.[45] Unfortunately, this is not as strict a provision as it may appear. The amount of liability of a vessel is limited to $100 per gross ton or $14 million, whichever is less. The liability of an onshore or offshore facility is limited to just $8 million.[46] Only where the spillage results from willful negligence or willful misconduct is liability unlimited.[47] This limitation appears to be an imminently short-sighted provision. Recent developments have shown that giant oil tankers are no longer a thing of the future but a reality. It becomes imperative that no overall ceiling on liability be adopted. Otherwise, an immense tanker could escape liability for much of its damage.[48] If applied to the *Torrey Canyon* disaster of March 19, 1967, the WQIA would have created a liability of only $6 million ($100 x 60,000 gross tons), while the actual clean-up costs were approximated at $20 million.[49]

> [I]t is a fact that if adequate protection is not legislated now when the giant tankers are just beginning to make their appearances, it

43. 33 U.S.C. § 1161(b)(4) (1971).
44. 33 U.S.C. § 1161 (k) (1971).
45. 33 U.S.C. § 1161(f) (1971).
46. *Id.*
47. *Id.*
48. Mendelsohn, *Maritime Liability for Oil Pollution—Domestic and International Law*, 38 Geo. Wash. L. Rev. 1, 26 (1969).
49. *The Control of Pollution by Oil Under the Water Quality Improvement Act of 1970*, 27 Wash. & Lee L. Rev. 278, 297-298 (1970).

> will be infinitely more difficult to so legislate once these tankers are common and industry has grown accustomed to the cost savings they realize with low levels and terms of liability.[50]

Both the 1970 Federal Act and the Florida Act require ship owners of potentially polluting vessels to show proof of financial responsibility before they are authorized to operate. The Florida Act is broader. It covers all vessels of any size, including barges.[51] The WQIA applies only to vessels which are over 300 gross tons.[52] In addition, the Federal Act requires proof of financial responsibility only in regard to liability to the United States. This means the insurers are not liable to any plaintiff but the federal government.[53] According to the standards set by Florida's Department of Natural Resources in January of 1971, adopted pursuant to the Florida Act,[54] owners must prove financial responsibility up to $200 per gross ton or to $19 million whichever is the lesser amount. The Florida Act also requires proof of financial responsibility to cover the damages suffered by any and all claimants.[55]

The WQIA would excuse shippers and owners of onshore and offshore facilities who prove by a preponderance of evidence that spillage was caused by an act of God, an act of war, negligence on the part of the United States Government, or the act or omission of a third party.[56] These four exceptions provide quite a loophole for offenders. The Federal Act opens the door to litigation and the chance that the offender may escape total liability for oil spillage. The Florida Act contains only a provision for discretionary "executive clemency,"[57] which is much more restrictive. It leaves the offender with little chance of formulating a valid defense.

The WQIA forces state, municipal or private land owners to rely on remedies available under traditional maritime law. Recovery of damages in such a case is dependent upon proof of negligence or unseaworthiness. If fault is established, a vessel owner's financial responsibility for property damages is limited to the value of the vessel at the end of the voyage, plus the "freight

50. Mendelsohn, *supra* note 48, at 27.
51. Fla. Stat. Ann. § 376.14 (Supp. 1972).
52. 33 U.S.C. § 1161(p)(1)(1971).
53. *Id.*
54. Fla. Stat. Ann. § 376.14(1) (Supp. 1972).
55. *Id.* at (1)(b).
56. 33 U.S.C. § 1161(f)(1970).
57. Fla. Stat. Ann. § 376.11(6)(b) (Supp. 1972).

then pending," unless the damage was caused with the owner's knowledge.[58]

To effectively adjudicate valid claims against polluting vessels and their owners, plaintiffs must rely on admiralty law jurisdictional provisions. These provisions allow claimants to obtain either *in personam* jurisdiction over the vessel's owner[59] or *in rem* jurisdiction over the vessel itself anywhere within the jurisdiction of a federal district court.[60] If *in personam* jurisdiction has been obtained, the vessel's owner may be held personally liable subject to his right of liability limitation. By means of an *in rem* action, plaintiff may have the polluting vessel arrested, bonded and sold in order to satisfy a successful claim.[61]

Fortunately, the courts have become increasingly aware of the problem of oil pollution of the marine environment. Consequently, the general maritime law is being interpreted more liberally to provide adequate remedies for broad classes of injured plaintiffs.[62] Still, plaintiffs are faced with the duty of proving negligence. This can be extremely difficult, and under such circumstances the average coastal shore owner would probably prefer to accept a significantly smaller settlement rather than face the prospect of protracted litigation and the risk that he may recover nothing at all.

Under these conditions, it would seem much more logical to extend strict liability beyond the federal government clean-up costs to include damage to the state and private land owners. If strict liability is appropriate in any transportation context, it is certainly appropriate here. The vessel owner and the oil industry are in a far superior position to bear and distribute the risk than the coastal shore owner whose property is inundated by oil.[63]

The force of Judge Tjoflat's ruling will not be limited to Florida. It appears that Maine's Oil Handling Law[64] may face a similar fate. This legislation was passed in February, 1970, because of the proposed offshore Machiasport oil refinery. Subsequently, this legislation has been challenged in the Superior

58. Limitation of Liability Act, 46 U.S.C. § 183 *et seq.* (1971).

59. Plaintiff who has an *in personam* claim may also bring suit in the "common law" court. *See* the "Saving Clause," 28 U.S.C. § 1333 (1971).

60. Comment, *Admiralty Remedies for Vessel Oil Pollution of Navigable Waters*, 7 Tex. Int'l L. J. 121, 150 (1971).

61. *Id.*

62. *Id.*

63. 38 Geo. Wash. L. Rev., *supra* note 48, at 25.

64. Me. Rev. Stat. Ann. tit. 38, § 541-57 (Supp. 1972).

Court of Kennebec County, Maine by Amoco, Chevron, Citgo, Getty, Gulf, Humble, Mobil, Shell, Sunoco, and Texaco, and separately by the Portland Pipeland Corporation. Prior to this act, Maine state law included only one prohibitory sentence against oil pollution, with no provisions for damages, enforcement, or insurance.[65]

According to the 1970 act, oil tankers are taxed on the basis of one-half cent per barrel of oil or petroleum products.[66] The resulting revenue constitutes the Maine Coastal Protection Fund with a maximum of $4 million. The proceeds of the fund are to be used for a variety of oil spill prevention and control activities, or for payment of damage claims on an arbitration basis to both state and individual claimants.[67] If recovery against the tanker, its owner, its charterer, or its operator are for some reason impossible, the state may proceed against the terminal operator of the facility to which the tanker was bound. This measure overcomes the possible inability of the state to reach a tanker which has polluted and escaped the jurisdiction. In effect, it compels terminal operators to obtain indemnification from carriers, thereby permitting the state to benefit from the "personal contract" exemption of the Limitation of Liability Act.[68]

As in the Florida Act, the Maine Act requires no proof of negligence:

> In any suit to enforce claims of the State under this section, it shall not be necessary for the State to plead or prove negligence . . . the State need only plead and prove the fact of the prohibited discharge . . . and that it occurred at facilities under the control of the licensee. . . .[69]

These provisions would apparently fall within the prohibition established in the *American Waterways Operators* case. This act, or at least parts of it, will probably be declared an unconstitutional intrusion into federal maritime law.

The Miller Anti-Pollution Act[70] passed in 1971 in California is another example of attempted state legislation in the area of oil pollution control. This act, though rather vague, imposes absolute liability for oil pollution upon "any owner or operator of any

65. Bradford, *Maine's Oil Spill Legislation*, 7 Tex. Int'l L. J. 29, 30 (1971).
66. Me. Rev. Stat. Ann. tit. 38, § 551(4a) (Supp. 1972).
67. Me. Rev. Stat. Ann. tit. 38, § 551(2), (3) (Supp. 1972).
68. Bradford, *supra* note 65, at 32. *See* Law of Admiralty, *supra* note 18, at 26-28.
69. Me. Rev. Stat. Ann. tit. 38, § 552(2) (Supp. 1972).
70. Miller Anti-Pollution Act, Cal. Harb. and Nav. Code, § 293 (West Supp. 1972).

vessel engaged in the commercial transportation of petroleum or fuel oil" where there is no unforeseeable intervening cause.[71] Liability includes damages incurred by the state or any county, city, district, or person within the state and for any damage to the natural resources of the state caused by the discharge or leakage of petroleum or fuel oil from vessels into or upon the navigable waters of the state. These provisions for the disposition of tort claims extend beyond the WQIA, thus placing the act in peril of being declared unconstitutional. However, the act has yet to be challenged.

If the precedent established by Judge Tjoflat is affirmed, individual states may have an extremely difficult task in providing more stringent measures for coastal pollution prevention and clean-up than the WQIA provides. The most effective means for establishing control, absolute liability and harsh penalties, have been effectively declared off-limits. Thus, states whose livelihood is largely dependent on unpolluted coastal areas, such as Florida, Maine and California, are completely dependent on federal legislation which is pock-marked by loopholes, insufficient remedies, and inefficient procedures.

Judge Tjoflat's holding would not necessarily be limited in its application. Since it concerned maritime torts, the holding could easily be extended to all navigable waters. According to *The Daniel Ball:*

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce. . . . And they constitute navigable waters of the United States within the meaning of the acts of Congress . . . when they form in their ordinary condition by themselves or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries. . . .[72]

Thus, the rule of the *American Waterways Operators* case could apply to all waters under federal admiralty jurisdiction, lakes, rivers, and streams in addition to coastal waters. This would seemingly be in direct contradiction to a basic policy of the FWPCA—to recognize, preserve and protect the primary responsibilities and rights of the states in preventing and controlling

71. *Id.*
72. 77 U.S. 557, 563 (1870).

water pollution. By 1948, every state had assumed responsibility for water pollution and most states had placed the administration of the program in the state health department.[73] Until the passage of the 1956 Water Pollution Control Act, almost all of the water pollution control work remained at the state level.[74] In 1965, the Federal Water Quality Act[75] placed responsibility on each of the fifty states for formulating water quality standards for interstate waters and for drawing-up a comprehensive plan indicating how these standards were to be met. Presently, the standards cover most of the major rivers and streams in the country.[76] It seems that the state power to formulate standards of pollution and to decide how these standards are to be met could very likely fall within the scope of Judge Tjoflat's ruling in regard to maritime torts. The grant of state power by the FWPCA seems even more likely to conflict with the *Knickerbocker* ruling, reiterated by Judge Tjoflat, which holds that Congress does not have the authority to grant to the states power to legislate within the federal maritime field. In any case, it appears that the holding of Judge Tjoflat may have some far-reaching effects in the area of water pollution.

On a more fundamental level of federal versus state power, the placing of control over coastal water pollution in the hands of the federal government has some definite advantages. Theoretically, each individual state could draft legislation which would treat its own particular water pollution problems most effectively. But the ability to enforce pollution standards is another matter. It is generally agreed that the states have performed inadequately in controlling water pollution. The federal government is initially superior to the states, in that it possesses more resources in terms of money, knowledge, and effective power.[77] Only the federal government has the scientific and technical personnel needed to develop the body of knowledge necessary to set water quality standards. It is also more likely to have the personnel needed to put the pollution progams into operation and enforce the standards. Federal control is also superior because it is not subject to jurisdictional limits. In addition, Washington has generally proven less vulnerable to the pressures and lobbying of

73. J. Davies, Politics Of Pollution 109 (1970).
74. *Id.*
75. 33 U.S.C.§§1152 and 1156 (1965).
76. J. Brecher, Environmental Law Handbook 221 (1971).
77. Politics Of Pollution, *supra* note 73, at 203. A. Reitze, Environmental Law 1-57 (1972).

industrial polluters or other economic blocs.[78] Such industries are of more immediate importance to the economy of the state and thus possess a great deal of bargaining power at that level.[79] The state governments are generally less sophisticated and have fewer political resources to draw on than does the federal government.[80] Thus, from a structural standpoint, the federal government would appear to be the logical choice for the locus for control of water pollution. For these reasons, the ruling in the *American Waterways Operators* case could be beneficial to pollution control efforts. However, in actual practice, the federal effort has been characterized by inefficiency and procrastination as exemplified by the FWPCA. Therefore, states such as Florida and possibly Maine and California may be forced to suffer, in spite of their own efforts, until federal control is perfected. More stringent measures, as set forth in the Florida Act, would greatly enhance the effort to control the coastal oil pollution which so greatly threatens the Atlantic and Pacific Coastal United States.

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78. Politics Of Pollution, *supra* note 73, at 203. Environmental Law, *supra* note 77.
79. Environmental Law Handbook, *supra* note 76, at 24.
80. Politics Of Pollution, *supra* note 73, at 96.