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STATEMENT OF ASSISTANT SECRETARY OF TRANSPORTATION

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BEFORE THE

COAST GUARD NAVIGATION SUBCOMMITTEE ON

OIL SPILL LIABILITY AND COMPENSATION

HOUSE OF REPRESENTATIVES

27 MARCH 1985

GOOD MORNING MR. CHAIRMAN

IT IS A PLEASURE FOR ME TO BE HERE THIS MORNING TO OFFER THE ADMINISTRATION'S CONTINUED SUPPORT FOR OIL SPILL LIABILITY AND COMPENSATION LEGISLATION, AND TO DISCUSS H.R. 1232 IN PARTICULAR. WITH ME TODAY IS COMMODORE J. WILLIAM KIME, CHIEF, OFFICE OF MARINE ENVIRONMENT AND SYSTEMS, U.S. COAST GUARD. YOU WILL RECALL MR. CHAIRMAN THAT, IN SECRETARY DOLE'S TESTIMONY OF JUNE 13, 1984 BEFORE THIS COMMITTEE, SHE SUPPORTED THE INTEGRATION OF THE AMENDED INTERNATIONAL CIVIL LIABILITY (CLC) AND FUND (FUND) CONVENTIONS INTO DOMESTIC LEGISLATION. WE ARE EXTREMELY PLEASED THAT H.R. 1232 CONTAINS LANGUAGE TO ACCOMPLISH THAT INTEGRATION. BEFORE DISCUSSING THE ADMINISTRATION'S POSITION ON OTHER PROVISIONS OF THE BILL, LET ME JUST MENTION BRIEFLY TWO OIL POLLUTION INCIDENTS OF RECENT MONTHS WHICH ACCENT THE NEED FOR THIS TYPE OF LEGISLATION.

ON JUNE 30, 1984 JUST A FEW DAYS AFTER SECRETARY DOLE CAUTIONED THAT OUR L SPILL PREVENTION PROGRAM COULD NOT BE ONE HUNDRED PERCENT EFFECTIVE IN PREVENTING MAJOR SPILLS, AND PREDICTED THAT OUR GOOD LUCK IN AVOIDING MAJOR SPILLS WOULD NOT HOLD INDEFINITELY, THE BRITISH TANK SHIP ALVENUS GROUNDED AND SUFFERED A FRACTURE ELEVEN MILES OFF THE LOUISIANA COAST. ABOUT ONE MILLION, THREE HUNDRED THOUSAND GALLONS OF CRUDE OIL QUICKLY ESCAPED INTO THE SEA AND MOST OF IT ULTIMATELY REACHED THE TEXAS COASTLINE. A FEW MONTHS LATER, ON OCTOBER 31, THE U.S. TANKER PUERTO RICAN SUFFERED ONE OR MORE EXPLOSIONS ONLY TEN MILES OUT OF SAN FRANCISCO. WHEN THE VESSEL BROKE IN HALF THREE DAYS LATER AFTER BEING TOWED TO SEAWARD, ABOUT TWO HUNDRED AND TEN THOUSAND GALLONS OF LUBRICATING OIL PRODUCTS WERE LOST. DESPITE OUR MITIGATION AND RECOVERY EFFORTS, SOME OF THE OIL REACHED THE FARALLON ISLANDS MARINE SANCTUARY AND THE SENSITIVE CALIFORNIA COASTLINE. THE SUNKEN STERN SECTION CONTINUES TO LEAK PORTIONS OF ITS REMAINING THREE HUNDRED AND FIFTY SEVEN THOUSAND GALLONS OF L, BUT AT A SLOW RATE. IN BOTH INCIDENTS WE WERE BLESSED WITH REASONABLY GOOD WEATHER, WHICH HELPED OIL REMOVAL AND CLEANUP EFFORTS, AND PREVENTED GREATER HARM.

WE BELIEVE THAT THE GOVERNMENT'S AND OWNERS' RESPONSE TO BOTH OF THESE INCIDENTS WAS EFFECTIVE IN MINIMIZING ADVERSE EFFECTS ON THE PUBLIC HEALTH AND WELFARE AND TO THE ENVIRONMENT, PARTICULARLY SO WITH RESPECT TO SALVAGE OF THE OIL CARGOES WHICH REMAINED IN THE REASONABLY SOUND PORTIONS OF THE VESSELS. FOR YOU SEE, MR. CHAIRMAN, SOME FOURTEEN MILLION GALLONS OF OIL IN THESE TWO

VESSELS WAS PREVENTED FROM BEING DISCHARGED DUE TO TIMELY AND EFFECTIVE ACTION THE OWNERS AND THE RESPONSE COMMUNITY. IN THIS RESPECT OUR LUCK HELD AGAIN, BUT IT STILL TROUBLES US DEEPLY THAT WEATHER OR OTHER CIRCUMSTANCES COULD HAVE REVERSED THE OUTCOME, RESULTING IN TEXAS, LOUISIANA OR CALIFORNIA SUFFERING OIL SPILL DAMAGE OF TRULY MAJOR PROPORTIONS.

H.R. 1232, IF MODIFIED TO MEET OUR CONCERNS, OFFERS THE POTENTIAL FOR SHARPLY REDUCING THE LOSSES THAT OUR CITIZENS MIGHT OTHERWISE SUFFER AS A RESULT OF OIL SPILLS, AND A MECHANISM FOR FINANCING THE ACTUAL RESTORATION OF OUR DAMAGED NATURAL RESOURCES.

TURNING TO THE INTERNATIONAL REGIME FIRST, LET ME SAY AGAIN HOW PLEASED WE ARE TO SEE THAT H.R. 1232 WOULD IMPLEMENT THE CLC AND FUND AS AMENDED BY THE 1984 PROTOCOLS, ONCE THE PRESIDENT HAS PROPOSED RATIFICATION AND THE SENATE S APPROVED. AS YOU KNOW MR. CHAIRMAN, THE PROTOCOLS ARE CURRENTLY BEFORE THE PRESIDENT AND ALL INTERESTED AGENCIES ARE FORMULATING THEIR VIEWS AS PART OF THE ADMINISTRATION'S REVIEW PROCESS. WHEN THOSE PROTOCOLS ENTER INTO FORCE FOR THE UNITED STATES THEY WILL PROVIDE OUR CITIZENS WITH THE PROTECTION OF A HIGHLY RESPECTED INTERNATIONALLY ENFORCEABLE REGIME. THE REGIME ESTABLISHES LIABILITY AND PROVIDES COMPENSATION FOR OIL POLLUTION DAMAGE CAUSED BY SEAGOING SHIPS WHICH CARRY OIL IN BULK AS CARGO.

THE LEVELS OF LIABILITY AND COMPENSATION PROVIDED UNDER THE PROTOCOLS WERE THE SUBJECT OF INTENSIVE NEGOTIATION DURING THE 1934 DIPLOMATIC CONFERENCE. THE U.S. PARTICIPANTS HAD THREE GOALS IN THOSE NEGOTIATIONS. FIRST, OUR REPRESENTATIVES SOUGHT TO OBTAIN A REGIME WHICH WOULD PLACE THE BURDEN OF COMPENSATION FOR MOST CLAIMS UPON THE SHIPOWNERS. THIS WAS ACHIEVED BY THE ESTABLISHMENT OF A MINIMUM SHIPOWNER LIABILITY OF 3 MILLION SPECIAL DRAWING RIGHTS (SDR) (APPROXIMATELY 3 MILLION DOLLARS) FOR SHIPS NOT EXCEEDING 5 THOUSAND GROSS TONS. FOR SHIPS LARGER THAN 5 THOUSAND GROSS TONS THE LIABILITY LIMIT IS INCREASED BY 420 SDR (APPROXIMATELY 420 DOLLARS) PER GROSS TON UP TO A MAXIMUM OF 59.7 MILLION SDR (APPROXIMATELY 59.7 MILLION DOLLARS). WE EXPECT THAT DAMAGES RESULTING FROM MOST INCIDENTS COVERED BY THE REGIME WILL FALL WITHIN THESE LIMITS. SHOULD IT BECOME NECESSARY TO MODIFY THESE LIMITS IN THE FUTURE, THE PROTOCOL PROVIDES AN EXPEDITED MECHANISM FOR DOING SO.

OUR SECOND GOAL TOOK ACCOUNT OF THE FACT THAT, FROM TIME TO TIME, INCIDENTS WILL OCCUR IN WHICH THE TOTAL DAMAGES WILL EXCEED THE SHIPOWNERS' LIABILITY. THIS GOAL WAS TO ASSURE THAT WHEN SUCH SITUATIONS ARISE, COMPENSATION WOULD BE AVAILABLE TO COVER THE PROPERLY COMPENSABLE CLAIMS OVER

AND ABOVE THE SHIPOWNERS' LIABILITY. THE 1984 PROTOCOL REGIME ACCOMPLISHES IS BY ESTABLISHING AN OVERALL (SHIPOWNER PLUS INTERNATIONAL FUND) PER INCIDENT COMPENSATION LIMIT AT 135 MILLION SDRS OR 200 MILLION SDRS (DEPENDING UPON THE NUMBER OF MAJOR CONTRIBUTORS IN THE REGIME). AS WITH THE SHIPOWNERS' LIABILITY, A MECHANISM IS ALSO PROVIDED UNDER THE PROTOCOL REGIME TO EXPEDITE MODIFICATION OF THE LIMIT AS NECESSARY.

IT MAY BE SEEN THAT, IN EXTRAORDINARY INCIDENTS, THE INTERNATIONAL FUND MIGHT BEAR A SUBSTANTIAL PROPORTION OF THE OVERALL COMPENSATION BURDEN, DEPENDING IN PART UPON THE SIZE OF THE SHIP INVOLVED. HOWEVER, WE EXPECT THAT INCIDENTS WHICH WILL RESULT IN SUCH HIGH DAMAGES WILL BE RARE. FURTHER, UNLIKE UNDER THE CURRENT INTERNATIONAL REGIME WHERE THE INTERNATIONAL FUND INDEMNIFIES SHIPOWNERS FOR PART OF THEIR LIABILITY, THE INTERNATIONAL FUND UNDER THE 1984 REGIME WILL NOT FIND ITSELF INVOLVED IN THE LARGE NUMBER OF ALL INCIDENTS.

OUR THIRD GOAL WAS TO ACHIEVE A REGIME WHICH HAD THE CHANCE OF BEING BROADLY ACCEPTABLE. FROM THE VERY BEGINNING OF THE EFFORT TO DEVELOP THE 1984 REGIME THERE HAS BEEN NO CONSENSUS BETWEEN THE TWO INDUSTRIES INVOLVED, SHIPOWNER AND CARGO INTERESTS. FRANKLY, NO ONE IS COMPLETELY HAPPY WITH THE RESULT OF THE CONFERENCE. SOME VIEW THE SHIPOWNERS' LIMITS TO BE TOO HIGH.

OTHERS CONTINUE TO VIEW THEM TO BE TOO LOW. HOWEVER, THE REGIME WHICH WAS ADOPTED AT THE 1984 CONFERENCE IS ONE WHICH WE BELIEVE CAN BE ACCEPTED ULTIMATELY BY A BROAD SECTOR OF THE INTERESTED INTERNATIONAL COMMUNITY. IT WAS, IN OUR VIEW AN EFFECTIVE COMPROMISE WHICH TOOK INTO ACCOUNT THE DIVERGENT INTERESTS OF THE TWO INDUSTRIES.

THERE IS NO DOUBT IN ANYONE'S MIND THAT THE UNITED STATES PLAYED A LEADING ROLE IN THE FORMULATION OF THE PROTOCOLS. ON FEBRUARY 12TH OUR AMBASSADOR TO THE UNITED KINGDOM SIGNED THE TWO PROTOCOLS FOR THE UNITED STATES. WE WERE THE SECOND COUNTRY TO SIGN. WE NOTE THAT H.R. 1232 WOULD PROVIDE FOR U.S. IMPLEMENTATION OF THE PROTOCOLS IF THE PRESIDENT PROPOSES RATIFICATION, AND THE SENATE APPROVES.

MR. CHAIRMAN, WE ARE EXTREMELY PLEASED TO NOTE THAT H.R. 1232 WOULD RAISE THE LIMITS OF LIABILITY FOR TANK SHIPS SUBSTANTIALLY HIGHER THAN THAT PROPOSED BY THE EARLIER BILL, H.R. 3278. THESE NEW LIMITS ARE COMPATIBLE WITH THE REVISED INTERNATIONAL REGIME AND REPRESENT A VERY REAL EFFORT BY MEMBERS OF YOUR COMMITTEE TO ACCOMMODATE ONE OF THE ADMINISTRATION'S MAJOR CONCERNS.

WE ALSO SUPPORT THE APPROACH IN H.R. 1232 FOR DEALING WITH FACILITY LIMITS OF LIABILITY. THE RESPONSIBLE PARTY CONCEPT AND A CLEARLY STATED LIABILITY MAXIMUM AMOUNT OF FIFTY MILLION DOLLARS FOR BOTH DAMAGES AND CLEANUP, SHOULD RESOLVE THE ADMINISTRATIVE PROBLEMS WE HAVE HAD WITH FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES UNDER THE REGIME IN TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS.

ON THE OTHER HAND MR. CHAIRMAN, WE MUST EXPRESS DISAPPOINTMENT THAT THE LIMITS OF LIABILITY FOR INLAND OIL BARGES HAVE NOT BEEN INCREASED. AS SECRETARY DOLE POINTED OUT LAST YEAR, "THE DISTINCTION BETWEEN LIABILITY LIMITS FOR INLAND OIL BARGES AND LIMITS FOR SHIPS HAS NOT BEEN RATIONALIZED AND SHOULD BE ELIMINATED". WE SIMPLY BELIEVE THE RISKS ARE EQUIVALENT AND THE LIABILITY LIMITS SHOULD REFLECT THE RISKS.

WE AGREE WITH THE PENALTY PROVISIONS OF SECTION 111, WHICH IN PART ELIMINATES A TECHNICAL PROBLEM CURRENTLY UNDER SECTION 312(A)(2) OF TITLE III OCSLAA, LACK OF AUTHORITY TO ASSESS A CIVIL PENALTY WHEN AN OCS VESSEL FAILS TO COMPLY WITH A DENIAL OR DETENTION ORDER. HOWEVER, WE BELIEVE SECTION 111 CAN BE IMPROVED FURTHER BY MAKING THE CIVIL PENALTY OF \$10,000 APPLY FOR EACH DAY A VIOLATION CONTINUES. FURTHERMORE, AUTHORITY SHOULD BE PROVIDED TO SHUT DOWN A FACILITY WHICH FAILS TO COMPLY WITH THE FINANCIAL RESPONSIBILITY REQUIREMENTS. THIS WILL IMPROVE ENFORCEMENT OF THE FINANCIAL RESPONSIBILITY PROVISIONS, AND DISCOURAGE ACCEPTANCE OF A ONE TIME LOW PENALTY (BY FINANCIALLY UNSOUND OPERATORS) AS A COST OF DOING BUSINESS ON THE OCS.

MOREOVER, MR. CHAIRMAN, THE ADMINISTRATION WOULD STRONGLY OPPOSE THIS BILL IF USED AS A VEHICLE FOR OTHER SUBSTANTIVE AMENDMENTS TO OCSLAA OR TAPAA.

THE ADMINISTRATION IS ALSO PLEASED TO NOTE THAT H.R. 1232 PROVIDES AN OPPORTUNITY FOR SUPPORTING ONE OF PRESIDENT REAGAN'S MOST IMPORTANT GOALS, THAT OF REDUCED GOVERNMENT SPENDING THROUGH ELIMINATION OF DUPLICATION. IN THIS RESPECT H.R. 1232 WOULD COMBINE THE LIABILITY SYSTEMS AND SUPPLEMENTARY COMPENSATION OR CLEANUP FUNDS ESTABLISHED BY FOUR EXISTING STATUTES. IT WOULD MERGE THE COAST GUARD'S CURRENT SEPARATE VESSEL FINANCIAL RESPONSIBILITY PROGRAMS UNDER THOSE STATUTES INTO A SINGLE CERTIFICATION PROGRAM COVERING DOMESTIC OIL SPILL LIABILITY.

HOWEVER, WE BELIEVE IT IS APPROPRIATE THAT FUNDS FROM ALL OF THESE SOURCES BE TRANSFERRED INTO THE NEW FUND ESTABLISHED BY H.R. 1232, INCLUDING THOSE FROM THE TAPAA LIABILITY FUND AND THE 311(K) CLEANUP FUND. BY PLACING ALL OF THESE MONIES INTO THE NEW FUND, THE 1.3 CENT PER BARREL FEE WOULD NOT HAVE TO BE LEVIED AT THE OUTSET, AND THE NEED FOR FEES IN THE FUTURE WOULD BE MINISHED. AS SECRETARY DOLE POINTED OUT LAST YEAR, THE TAPAA MONIES WERE COLLECTED FOR THE PUBLIC PURPOSE OF COMPENSATION FOR OIL POLLUTION DAMAGES AND CLEANUP COSTS. THE NEED TO PROVIDE COMPENSATION ABOVE THAT OF RESPONSIBLE PARTIES, INCLUDING OWNERS AND OPERATORS OF VESSELS CARRYING TAPAA OIL, WILL CONTINUE UNDER H.R. 1232.

* THE FEDERAL WATER POLLUTION CONTROL ACT (FWPCA), THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT (TAPAA), THE DEEPWATER PORT ACT (DPA) AND THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS (OCSLAA).

WE SUPPORT THE BILL'S COVERAGE OF OIL POLLUTION DAMAGE LIABILITY FOR ALL VESSELS AND FOR OUTER CONTINENTAL SHELF AND DEEPWATER PORT FACILITIES. THE LIABILITY OF ONSHORE FACILITIES AND FACILITIES IN STATE WATERS WOULD BE, AND APPROPRIATELY SO, SUBJECT TO STATE LAWS. WE CONSIDER THE ONLY FEDERAL INTEREST IN ONSHORE FACILITIES AND FACILITIES IN STATE WATERS TO BE THE LIABILITY FOR FUNDING FEDERAL OIL SPILL REMOVAL COSTS. THIS LIABILITY WOULD CONTINUE TO BE PROVIDED UNDER SECTION 311 OF THE FWPCA WHILE THE FUNDING FOR FEDERAL REMOVAL COSTS WOULD BE SHIFTED TO THE FUND TO BE ESTABLISHED BY THIS BILL.

THE ADMINISTRATION ALSO FIRMLY SUPPORTS PUBLIC ADMINISTRATION OF THE NEW FUND AND I APPRECIATE THE ATTENTION GIVEN BY THE BILL'S SPONSORS TO SECRETARY DOLE'S JUNE 1984 COMMENTS ON THIS POINT. WE MAINTAIN OUR BELIEF THAT A GOVERNMENTAL ENTITY MUST EXERCISE DISCRETIONARY AUTHORITY OVER MONIES DERIVED FROM FEES ASSESSED AND COLLECTED BY THE FEDERAL GOVERNMENT.

HOWEVER, WE DO NOT SUPPORT THE CREATION OF A WHOLLY OWNED FEDERAL GOVERNMENT CORPORATION TO ADMINISTER THE NEW FUND CALLED FOR IN H.R. 1232. WE BELIEVE THAT ESTABLISHMENT OF A NEW FEDERAL ENTITY IS INAPPROPRIATE AND UNNECESSARY, ESPECIALLY AT A TIME WHEN WE ARE TRYING TO SHRINK THE SIZE OF THE FEDERAL GOVERNMENT THROUGH THE CONSOLIDATION AND CENTRALIZATION OF FUNCTIONS. WE CAN ACCOMPLISH THE NECESSARY TASKS IN A MORE EFFICIENT MANNER BY USING OUR EXISTING ORGANIZATION. THE COAST GUARD HAS A LONG HISTORY OF OIL POLLUTION FUND EXPERTISE AND, AUGMENTED BY CONTRACTUAL ARRANGEMENTS, WILL DO A FINE JOB OF FUND ADMINISTRATION.

USE OF OUR EXISTING ORGANIZATIONAL STRUCTURE ALSO ENSURES THE APPLICATION EXISTING MANAGEMENT OVERSIGHTS TO CONTROL THE COSTS OF ADMINISTERING THE FUND. ADVANTAGES OF THE CHECKS AND BALANCES INHERENT IN BUDGET AND APPROPRIATION PROCESSES SHOULD NOT BE OVERLOOKED.

IT IS ALSO IMPORTANT TO CENTRALIZE THE ADMINISTRATION OF THE GOVERNMENT'S OIL POLLUTION RESPONSE SYSTEM (REMOVAL, LIABILITY AND COMPENSATION) FOR THE CONVENIENCE OF THE PUBLIC. CREATING A SEPARATE GOVERNMENT CORPORATION TO ADMINISTER THE FUND WOULD REQUIRE THE PARTIES TO AN OIL POLLUTION INCIDENT (THE DISCHARGER, PERSONS DAMAGED, CLEANUP CONTRACTORS, INSURANCE COMPANIES, AND OTHERS) TO DEAL WITH TWO FEDERAL AGENCIES, THE COAST GUARD FOR RESPONSE, CLEANUP AND CERTIFICATION AND THE CORPORATION FOR COMPENSATION.

WE ARE ASKING, THEREFORE, THAT ADMINISTRATION OF THE NEW FUND BE VESTED WITH THE SECRETARY OF THE DEPARTMENT IN WHICH THE COAST GUARD IS OPERATING, WITH PROVISION FOR THE SECRETARY TO HAVE ACCESS TO THE FUND TO COVER COSTS OF ADMINISTRATION AND THE AUTHORITY TO CONTRACT FOR NEEDED SERVICES.

PERHAPS THE AREA OF GREATEST DIFFERENCE REMAINING BETWEEN THE ADMINISTRATION'S POSITION AND THAT EXPRESSED IN H.R. 1232 CONCERNS THE ROLE WHICH THE NEW FUND SHOULD PLAY IN THE OVERALL REGIME. WE START WITH TWO BASIC PREMISES. FIRST, WE BELIEVE THAT AS WE TESTIFIED LAST YEAR THE FUND SHOULD NOT BE A DEEP POCKET FOR DAMAGES AND COSTS WHICH MAY BE SPECULATIVE IN NATURE. UNLESS THE BILL IS AMENDED TO LIMIT THE TRUST FUND'S LIABILITY TO REMOVAL COSTS AND A NARROW CLASS OF DAMAGES, THE ADMINISTRATION CANNOT OFFER ITS FULL SUPPORT. SECOND, IT SHOULD NOT BE REGULARLY PLACED IN THE POSITION OF MAKING PAYMENT ON THE FRONT END OF THE CLAIMS SETTLEMENT PROCESS, THEREBY CONSTANTLY BEARING THE RISKS AND COSTS ASSOCIATED WITH RECOVERING THOSE PAYMENTS FROM LIABLE RESPONSIBLE PARTIES.

CERTAIN ELEMENTS OF OUR POSITION ON THIS POINT ARE IN ACCORD WITH THE H.R. 52 APPROACH. THE FUND SHOULD COVER THE COSTS OF ADMINISTERING THE ACT. THIS INCLUDES, AMONG OTHER THINGS, NOT ONLY THE FUND'S OWN CLAIMS SETTLEMENT AND LITIGATION COSTS, BUT ALSO COSTS OF ADMINISTERING THE COMPULSORY FINANCIAL RESPONSIBILITY SYSTEM. THIS SYSTEM IS AN IMPORTANT PART OF THE OVERALL REGIME, FOR IT SERVES TO ASSURE THAT MONEY IS AVAILABLE FOR CLAIMANTS SEEKING TO RECOVER THEIR COMPENSABLE DAMAGES FROM RESPONSIBLE PARTIES.

FURTHER, TO ENCOURAGE ACTION TO MINIMIZE DAMAGE, THE FUND SHOULD PAY COSTS OF REMOVING AND CLEANING UP OIL. FEDERAL ON-SCENE COORDINATORS SHOULD BE ABLE TO DRAW DIRECTLY UPON THE FUND TO SUPPORT THEIR RESPONSE EFFORTS. IF THERE IS NO RESPONSIBLE PARTY (EITHER BECAUSE NO RESPONSIBLE PARTY HAS BEEN IDENTIFIED OR THE ONLY RESPONSIBLE PARTY IS ENTITLED TO A LEGAL DEFENSE), OTHER PERSONS, INCLUDING STATE AGENCIES, SHOULD BE ABLE TO FILE CLAIMS AND COLLECT FROM THE FUND THOSE CLEANUP COSTS WHICH THEY INCUR IN RESPONDING TO DISCHARGES FROM VESSELS AND FACILITIES COVERED BY THE FEDERAL REGIME. FINALLY, RESPONSIBLE PARTIES SHOULD BE ENCOURAGED TO RESPOND TO THEIR OWN DISCHARGES, BY ALLOWING THEM TO RECOVER THEIR COSTS FROM THE FUND WHEN THEY HAVE A DEFENSE TO THEIR LIABILITY, AND TO RECOVER A PORTION OF THOSE COSTS WHEN THEY ARE ENTITLED TO LIMIT THEIR LIABILITY.

BEYOND THIS POINT, HOWEVER, AS WE GET INTO THE AREA OF DAMAGES, OUR RESPECTIVE POSITIONS DIVERGE. WE BELIEVE THAT THE FUND SHOULD BE LIABLE FOR PROPERTY DAMAGES AND INCURRED NATURAL RESOURCE RESTORATION COSTS ONLY WHEN CLAIMANTS, HAVING EXHAUSTED THEIR REMEDIES AGAINST RESPONSIBLE PARTIES, HAVE

NOT RECOVERED THE FULL AMOUNT OF THEIR COMPENSABLE CLAIMS. WE HAVE NO OBJECTIONS TO THE SCOPE OF DAMAGES SET FORTH IN THE BILL INSOFAR AS THE RESPONSIBLE PARTIES' LIABILITY IS CONCERNED. THE FUND'S LIABILITY HOWEVER, SHOULD NOT INCLUDE LOST PROFITS OR TAXES OF THE VALUE OF NATURAL RESOURCES THAT ARE DESTROYED BUT CANNOT BE REPLACED. IN THE CASE OF A MYSTERY SPILL OR WHEN THE SPILLER HAS A LEGAL DEFENSE TO LIABILITY, THE FUND SHOULD BE LIABLE ONLY FOR REMOVAL COSTS.

OUR APPROACH TO THIS MATTER WILL RESULT IN A MUCH SIMPLER AND MORE WORKABLE CLAIMS SETTLEMENT MECHANISM. WHILE H.R. 1232 PROVIDES A MORE REASONABLE TIME PERIOD IN WHICH TO SETTLE CLAIMS WITH A RESPONSIBLE PARTY OR ITS GUARANTOR THAN EARLIER BILLS ON THIS SUBJECT, IT DOES NOT GO FAR ENOUGH. EXCEPT IN THE CASE OF CLEANUP COST CLAIMS FOR WHICH THERE IS NO LIABLE RESPONSIBLE PARTY, THERE IS NO NEED FOR THE FUND TO BECOME INVOLVED PRIOR TO THE TIME CLAIMANTS HAVE SETTLED OR ADJUDICATED THEIR CLAIMS WITH RESPONSIBLE PARTIES OR THEIR GUARANTORS. INVOLVING THE FUND PRIOR TO THIS TIME SIMPLY OVERBURDENS AND ADDS TRANSACTIONAL COSTS TO THE SYSTEM.

THE RELATIONSHIP BETWEEN FEDERAL AND STATE LIABILITY REGIMES RESPECTING OIL POLLUTION COSTS AND DAMAGES HAS FOR SOME TIME BEEN ONE OF THE TOUGHEST, IF NOT THE TOUGHEST, PROBLEM ASSOCIATED WITH LEGISLATIVE PROPOSALS ON THIS SUBJECT. I BELIEVE THAT THE APPROACH TAKEN IN H.R. 1232 IS A GOOD ONE, RECOGNIZING THE DIVERSITY OF THE INTERESTS WHICH WILL BE AFFECTED BY THIS PROPOSAL.

AS I MENTIONED BEFORE, THE BILL ESTABLISHES A FEDERAL LIABILITY AND FINANCIAL RESPONSIBILITY REGIME APPLICABLE ONLY TO FACILITIES WHICH ARE SUBJECT TO THE OUTER CONTINENTAL SHELF LANDS ACT AND THE DEEPWATER PORT ACT, AND TO ALL VESSELS. THIS IS A TRADITIONAL AND APPROPRIATE AREA FOR FEDERAL REGULATION. THE SCOPE OF DAMAGES RECOVERABLE FROM THE RESPECTIVE RESPONSIBLE PARTIES IS BROAD ENOUGH TO COVER ALL DAMAGES WHICH WOULD NORMALLY BE RECOVERABLE. THIS LIABILITY AND FINANCIAL RESPONSIBILITY REGIME IS PREEMPTIVE OF PARALLEL STATE REGIMES, AS IT SHOULD BE. SINCE THE FEDERAL REGIME WOULD PROVIDE ADEQUATE LIABILITY COVERAGE, THERE IS NO NEED FOR DUPLICATIVE STATE SYSTEMS WHICH DO NO MORE THAN INCREASE COSTS FOR THE AFFECTED INDUSTRIES.

ON THE OTHER HAND, THE BILL'S REGIME DOES NOT APPLY TO FACILITIES FALLING WITHIN THE JURISDICTION OF STATES. THIS IS AN APPROPRIATE LIMITATION. EXCEPT FOR FEDERAL REMOVAL COST LIABILITY, MATTERS ASSOCIATED WITH LIABILITIES ARISING FROM THE USE OF STATIONARY FACILITIES, AND ESPECIALLY THE RELATED INSURANCE MATTERS, ARE SUBJECTS WHICH TRADITIONALLY HAVE BEEN APPROPRIATELY WITHIN THE STATES' AREA OF REGULATION. SINCE COMPENSATION FOR OIL POLLUTION DAMAGES CAUSED BY DISCHARGES FROM SUCH FACILITIES WOULD NOT BE AVAILABLE UNDER THE BILL, THERE IS NO PREEMPTION OF STATES' LIABILITY OR FINANCIAL RESPONSIBILITY REGIMES COVERING SUCH DAMAGES.

THE BILL QUITE OBVIOUSLY SEEKS A COMPROMISE IN ADDRESSING STATE OIL FUNDS WHOSE PURPOSES PARALLELS THOSE OF THE FUND IT ESTABLISHES. IT PROPERLY DOES NOT PREEMPT STATES FROM MAINTAINING INDUSTRY FINANCED FUNDS WHOSE PURPOSES ARE NOT DUPLICATIVE OF THE FUND, INCLUDING SPECIFICALLY THE PURCHASE AND

PRE-POSITIONING OF RESPONSE EQUIPMENT. NOR DOES IT PREEMPT STATES' FUNDS
FINANCED THROUGH GENERAL REVENUES, CIVIL PENALTIES, ETC., EVEN THOUGH SOME OF
THEIR PURPOSES MAY BE DUPLICATIVE OF THE FUND'S FUNCTIONS.

HOWEVER, WITH RESPECT TO THOSE EXISTING STATE FUNDS HAVING DUPLICATIVE
FUNCTIONS AND WHICH ARE SUPPORTED DIRECTLY BY INDUSTRY CONTRIBUTIONS, TAXES,
FEES, ETC., THE BILL PROVIDES FOR A THREE YEAR PHASING-OUT PROCESS. IN THE
BEST OF ALL POSSIBLE WORLDS IT WOULD BE PREFERABLE TO TERMINATE STATE FUNDS OF
THIS SORT FROM THE OUTSET, FOR THEY IMPOSE UNNECESSARY DUPLICATIVE COSTS ON
THE AFFECTED INDUSTRY. NEVERTHELESS, WE RECOGNIZE THAT IT MAY BE NECESSARY TO
PROVIDE A LIMITED PERIOD TO DEMONSTRATE THAT THE FEDERAL REGIME IS FULLY
CAPABLE OF PROVIDING THE PROTECTION WHICH THESE EXISTING STATE FUNDING REGIMES
CURRENTLY PROVIDE. THEREFORE, WHILE WE WOULD OPPOSE ANY GREATER DEGREE OF
DUPLICATIVE BURDEN UPON THE INDUSTRY, WE WILL NOT OBJECT TO THIS RELATIVELY
SHORT TERM OVERLAPPING OF REGIMES SO LONG AS ITS TERMINATION DATE IS CERTAIN.

MR. CHAIRMAN, THAT CONCLUDES MY TESTIMONY TODAY. I WILL BE PLEASED TO
RESPOND, EITHER HERE OR LATER FOR THE RECORD, TO ANY QUESTIONS YOU OR MEMBERS
OF THE COMMITTEE MIGHT HAVE. THANK YOU.