

29 APRIL 1986

STATEMENT OF SECRETARY OF TRANSPORTATION

ELIZABETH HANFORD DOLE

BEFORE THE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

UNITED STATES SENATE

29 APRIL 1986

GOOD AFTERNOON MR. CHAIRMAN,

IT IS A PLEASURE FOR ME TO BE HERE TODAY TO CONVEY THE ADMINISTRATION'S CONTINUED STRONG SUPPORT FOR OIL SPILL LIABILITY AND COMPENSATION LEGISLATION INCLUDING, IN PARTICULAR, IMPLEMENTATION OF THE 1984 PROTOCOLS WHICH REVISED THE 1969 CIVIL LIABILITY (CLC) AND 1971 FUND (FUND) CONVENTIONS. WITH ME THIS AFTERNOON IS REAR ADMIRAL J. WILLIAM KIME, CHIEF OF THE COAST GUARD'S OFFICE OF MERCHANT MARINE SAFETY.

AS YOU KNOW, MR. CHAIRMAN, THERE IS WIDE AGREEMENT AMONG THE CONGRESS, THE ADMINISTRATION, THE OIL AND SHIPPING INTERESTS AND THE ENVIRONMENTAL COMMUNITY THAT IN ADDITION TO A FIRST CLASS OIL SPILL RESPONSE CAPABILITY, THIS COUNTRY NEEDS AN EQUITABLE, ADEQUATE AND COMPREHENSIVE SYSTEM TO COMPENSATE THOSE DAMAGED BY SPILLS. YET OIL SPILL LIABILITY AND COMPENSATION LEGISLATION HAS ELUDED US NOW FOR TOO MANY YEARS. I AM DETERMINED THAT THE HARD WORK OF THE CONGRESS ON THIS SUBJECT WILL COME TO FRUITION IN THIS SESSION. MY GOAL IS TO WORK WITH YOU TO ENSURE PASSAGE OF THIS IMPORTANT LEGISLATION, CONCLUDING AN EFFORT THAT HAS BEEN UNDERWAY SINCE 1975.

29 APRIL 1986

RECENT SERIOUS SPILL EVENTS IN OUR WATERS HIGHLIGHT THE LONGSTANDING NEED FOR OIL SPILL LEGISLATION.

ON DECEMBER 21, 1985, THE U.S. TANKER ARCO ANCHORAGE RAN AGROUND IN PORT ANGELES HARBOR, WASHINGTON, RESULTING IN THE DISCHARGE OF ABOUT 189,000 GALLONS OF ALASKAN NORTH SLOPE CRUDE OIL. MANY SEA BIRDS WERE AFFECTED, OF WHICH HUNDREDS DIED. THE DISCHARGE HAD A SUBSTANTIAL FINANCIAL IMPACT ON THE LOCAL LUMBER INDUSTRY DUE TO ABOUT SEVEN MILLION BOARD FEET OF MARKETABLE LUMBER BEING CONTAMINATED BY THE OIL. THE TANKER OWNER ASSUMED RESPONSIBILITY FOR THE CLEANUP OF THE SPILL. REMOVAL COSTS AND THIRD-PARTY CLAIMS ARE EXPECTED TO BE SUBSTANTIAL, BUT WILL BE COVERED, FOR THE MOST PART, BY A LIABILITY AND COMPENSATION SYSTEM ESTABLISHED BY THE TRANS ALASKA PIPELINE AUTHORIZATION ACT, WHICH COVERS ONLY OIL PRODUCED ON THE ALASKA NORTH SLOPE.

IN SEPTEMBER 1985, THE PANAMANIAN TANKER GRAND EAGLE RAN AGROUND IN THE DELAWARE RIVER, RELEASING AN ESTIMATED 425,000 GALLONS OF CRUDE OIL. THE REMAINING 1.8 MILLION GALLONS WAS OFFLOADED SAFELY AT THE REFINERY WHICH WAS THE TANKER'S INTENDED DESTINATION. ALTHOUGH THE SHIPOWNERS TOOK RAPID CLEANUP ACTION, THE OIL DAMAGED SHORELINES IN DELAWARE, NEW JERSEY AND PENNSYLVANIA.

IN OCTOBER 1984, THE U.S. TANKER PUERTO RICAN SUFFERED EXPLOSIONS 10 MILES OUT OF SAN FRANCISCO. THE COAST GUARD DIRECTED THAT THE VESSEL BE TOWED SEAWARD. CONSEQUENTLY, WHEN THE VESSEL LATER BROKE IN HALF THREE DAYS LATER, WITH THE STERN SECTION SINKING AND WITH A RELEASE OF ABOUT 400,000 GALLONS OF LUBRICATING OIL, THE IMMEDIATE THREAT TO OUR COASTLINE WAS LESSENED. HOWEVER, SOME OF THE OIL DID REACH THE SENSITIVE FARALLON ISLANDS MARINE SANCTUARY AND CALIFORNIA COASTLINE. THE BOW SECTION, CONTAINING ABOUT TWO AND A HALF

29 APRIL 1986

MILLION GALLONS OF OIL, WAS EVENTUALLY SALVAGED AND BROUGHT BACK INTO SAN FRANCISCO HARBOR.

A PARTICULARLY ALARMING SPILL OCCURRED IN JUNE 1984, WHEN THE BRITISH TANKER ALVENUS, CARRYING 14 MILLION GALLONS OF CRUDE OIL, GROUNDED AND FRACTURED JUST OFF THE TEXAS/LOUISIANA COAST. ALMOST TWO MILLION GALLONS OF OIL, REPRESENTING ONLY A FRACTION OF THAT WHICH WAS ONBOARD, WAS RELEASED AND MOST OF IT REACHED THE TEXAS COAST. THE REMAINING OIL WAS REMOVED FROM THE TANKER OVER A 14 DAY PERIOD DURING FAVORABLE WEATHER CONDITIONS. BAD OR EVEN MODERATE WEATHER CONDITIONS COULD HAVE RESULTED IN A TRULY CATASTROPHIC OIL SPILL.

TWO OTHER SPILLS, WHILE NOT AS DRAMATIC, WERE EXTREMELY SERIOUS DUE TO THE SENSITIVE INLAND ENVIRONMENT IN WHICH THEY TOOK PLACE. THE MOBIL OIL, A U.S. FLAG TANKER, SPILLED ABOUT 200,000 GALLONS OF HEAVY INDUSTRIAL FUEL OIL FAR UP THE COLUMBIA RIVER IN OREGON, IN MARCH 1984. ALMOST 90 MILES OF RIVER BANK WAS FOULED, AS WELL AS OCEAN BEACHES UP TO 40 MILES NORTH OF THE RIVER'S MOUTH. IN 1983, THE BEOGRAD, A YUGOSLAV FLAG TANKER, WAS INVOLVED IN A SPILL OF HEAVY FUEL OIL IN THE ST. LAWRENCE SEAWAY. INTENSIVE CLEANUP ACTIONS WERE REQUIRED ON BOTH U.S. AND CANADIAN SIDES OF THE WATERWAY.

SO YOU SEE MR. CHAIRMAN, WE HAVE NO REASON AT ALL TO BELIEVE THAT WE ARE IMMUNE FROM OIL SPILLS AND THEIR DAMAGING EFFECTS. EVEN THOUGH WE HAVE ONE OF THE BEST RESPONSE NETWORKS IN THE WORLD, AND WORK HARD TO PREVENT OIL SPILLS, ACCIDENTS WILL CONTINUE TO HAPPEN. IT IS ESSENTIAL THAT OUR CITIZENS AND OUR ENVIRONMENT HAVE THE BEST PROTECTION AND RECOURSE POSSIBLE.

29 APRIL 1986

LET ME TAKE JUST A FEW MOMENTS TO POINT OUT CERTAIN DESIRABLE PROVISIONS AND FEATURES THAT I BELIEVE COMPREHENSIVE OIL SPILL LEGISLATION SHOULD CONTAIN.

FIRST, THE PRESIDENT AND THE CONGRESS ARE STRUGGLING TO FURTHER REDUCE GOVERNMENT SPENDING. WE SHOULD NOT OVERLOOK THIS OPPORTUNITY TO ELIMINATE THE UNNECESSARY COSTS RESULTING FROM THE ADMINISTRATION OF FOUR EXISTING FEDERAL FUNDS. THESE ARE THE FUNDS AUTHORIZED BY SECTION 204(C) OF THE TRANS ALASKA PIPELINE AUTHORIZATION ACT (TAPAA), SECTION 18 OF THE DEEPWATER PORT ACT, TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (OCSLAA) AND SECTION 311(K) OF THE FEDERAL WATER POLLUTION CONTROL ACT. THESE SHOULD BE REPLACED WITH A SINGLE "TRUST FUND".

THE COAST GUARD, IN THE DEPARTMENT OF TRANSPORTATION, PRESENTLY ADMINISTERS THREE OF THESE FUNDS. THE COAST GUARD HAS EXTENSIVE OIL SPILL RESPONSE AND PREVENTION EXPERIENCE AND IS HIGHLY RESPECTED IN THE COMMUNITY OF OIL SPILL EXPERTS AND LIABILITY REGIMES, BOTH NATIONALLY AND INTERNATIONALLY. IT IS WELL QUALIFIED TO MANAGE A NEW SINGLE FUND WITH EFFICIENCY AND PRUDENCE.

WITH RESPECT TO HOW TO FINANCE THE TRUST FUND, WE CONTINUE TO SUPPORT THE "USER FEE" CONCEPT RATHER THAN FINANCING FROM GENERAL REVENUES. A FEE OF NO MORE THAN 1.3 CENTS PER BARREL WOULD BE COLLECTED ON ALL CRUDE OIL "RECEIVED" AT U.S. REFINERIES, CRUDE OIL EXPORTED FROM THE U.S., IMPORTED PETROLEUM PRODUCTS, AND "IMPORTED" CRUDE OIL. THIS IS A VERY MODEST AMOUNT WHICH WOULD GENERATE SUFFICIENT FUNDS, ABOUT \$74 MILLION A YEAR, BASED ON THE 1985 OIL CONSUMPTION LEVEL, TO COVER LONG TERM FUND OBLIGATIONS. WE BELIEVE THAT IT IS IMPORTANT FOR THE TRUST FUND TO BECOME SOLVENT AS SOON AS POSSIBLE. THIS

29 APRIL 1986

COULD BE ACHIEVED BY TRANSFERRING THE MONIES IN THE POLLUTION FUNDS CURRENTLY MANAGED BY THE COAST GUARD, AS WELL AS THOSE IN THE TAPAA FUND, INTO THE NEW TRUST FUND. WE ALSO SUPPORT A \$200 MILLION CAP PER OIL SPILL INCIDENT. THAT AMOUNT WOULD COVER THE COST OF ANY SPILL THAT HAS OCCURRED THUS FAR, WORLDWIDE. IN ADDITION WE WOULD SUPPORT TERMINATING COLLECTIONS WHEN THE FUND'S ASSETS REACHED \$300 MILLION.

WITH RESPECT TO LIABILITY, WE BELIEVE THAT THE NEW REGIME SHOULD COVER VESSELS AND OUTER CONTINENTAL SHELF AND DEEPWATER PORT FACILITIES, LEAVING ONSHORE FACILITIES AND FACILITIES IN STATE WATERS TO STATE LAWS. THIS, WE FEEL, WOULD REPRESENT AN APPROPRIATE ALLOCATION OF RESPONSIBILITY BETWEEN FEDERAL AND STATE LAW. HOWEVER, IF IT IS THE SENSE OF THE CONGRESS THAT EXTENSION OF THE NEW SYSTEM TO CERTAIN ONSHORE FACILITIES AND FACILITIES LOCATED IN THE NAVIGABLE WATERS OF THE U.S. WOULD BE IN THE BEST NATIONAL INTEREST, WE COULD CONSIDER SUPPORTING THAT OPTION.

WE ALSO BELIEVE THAT, WHERE FEDERAL LEGISLATION PROVIDES A REMEDY FOR OIL POLLUTION LOSS AND COSTS, STATE LEGISLATION ESTABLISHING LIABILITY AND FINANCIAL RESPONSIBILITY REQUIREMENTS FOR THE SAME LOSS AND COSTS SHOULD BE MERGED INTO THE FEDERAL SYSTEM. SIMILARLY, WHILE CONSIDERATION SHOULD BE GIVEN TO STATES WHICH HAVE IN THE PAST INVESTED IN OIL POLLUTION PROTECTION FOR THEIR CITIZENS, WE BELIEVE THAT STATES SHOULD NOT REQUIRE CONTRIBUTIONS TO FUNDS WHICH WOULD IN EFFECT DUPLICATE COMPENSATION FOR OIL POLLUTION LOSS AND COSTS COVERED BY THE FEDERAL TRUST FUND. THIS APPROACH PROVIDES FOR UNIFORMLY HIGH LIMITS OF LIABILITY, BACKED WITH ENFORCEABLE FINANCIAL RESPONSIBILITY REQUIREMENTS AND A SUBSTANTIAL FUND WITH AN ASSURED SOURCE OF REVENUE, WHILE PREVENTING A PATCHWORK OF OVERLAPPING AND CONFLICTING SYSTEMS.

29 APRIL 1986

STATES WITH EXISTING OIL SPILL FUNDS SHOULD HAVE A REASONABLE TIME TO ADJUST TO THE NEW REGIME. THREE YEARS, AS PROPOSED BY THE HOUSE, SHOULD PROVIDE THOSE STATES SUFFICIENT TIME TO ADJUST THEIR SYSTEMS WITHOUT PENALIZING INNOCENT PARTIES OR UNDULY BURDENING THE CONTRIBUTORS TO THE SYSTEM'S FUNDS. SIGNIFICANTLY, HOWEVER, THERE SHOULD BE NO PROHIBITION OF STATES' COLLECTING FUNDS WHICH FINANCE THE PURCHASE OR PREPOSITIONING OF CLEANUP AND REMOVAL EQUIPMENT AND OTHER PREPARATIONS FOR REMOVAL OF OIL SPILLS. IN ADDITION, STATES WOULD NOT BE PREVENTED FROM USING GENERAL REVENUES OR OTHER REVENUE SOURCES NOT BASED ON A FEE ON OIL TO MAINTAIN THEIR OWN CLEANUP, RESPONSE AND DAMAGE FUNDS. WHERE STATES INITIATE EMERGENCY CLEANUP EFFORTS, MONIES FROM THE FEDERAL TRUST FUND CAN BE, AND SHOULD BE MADE IMMEDIATELY AVAILABLE TO COVER THE COSTS OF SUCH REMOVAL EFFORTS. THE COMPROMISES WHICH HAVE BEEN WORKED OUT ON THIS ISSUE ARE DELICATE ONES AND I WOULD URGE THAT THEY NOT BE RE-OPENED. ON THE OTHER HAND, WE CERTAINLY STAND READY TO DISCUSS THIS ISSUE IF BROADLY ACCEPTABLE SOLUTIONS CAN BE THE RESULT.

A MAJOR CONCERN OF OURS IS THAT THE TRUST FUND MUST BE LIABLE ONLY FOR OIL SPILL REMOVAL COSTS AND FOR CERTAIN CLEARLY IDENTIFIABLE DAMAGES. THE FUND SHOULD NOT BE OPEN TO THEORETICAL OR SPECULATIVE CLAIMS. ITS LIABILITY SHOULD NOT INCLUDE LOST PROFITS OR TAXES OR THE VALUE OF NATURAL RESOURCES WHICH ARE DESTROYED BUT CANNOT BE RESTORED. THE FUND SHOULD BE LIABLE FOR COSTS TO REPLACE OR RESTORE PERSONAL OR REAL PROPERTY AND THE COSTS TO A STATE OR THE FEDERAL GOVERNMENT FOR THE ACTUAL REPLACEMENT OR RESTORATION OF NATURAL RESOURCES, ONCE CLAIMANTS HAVE EXHAUSTED ALL REASONABLE REMEDIES AGAINST RESPONSIBLE PARTIES.

29 APRIL 1986

THE TRUST FUND SHOULD COVER THE COST OF ADMINISTERING THE ACT WHICH ESTABLISHES IT. THESE WOULD INCLUDE THE FUND'S OWN CLAIMS SETTLEMENT AND LITIGATION COSTS, AND ALSO COSTS OF ADMINISTERING THE COMPULSORY FINANCIAL RESPONSIBILITY SYSTEM. FEDERAL ON-SCENE COORDINATORS SHOULD BE ABLE TO DRAW DIRECTLY ON THE FUND TO SUPPORT THEIR OIL SPILL RESPONSE EFFORTS. IF THERE IS NO RESPONSIBLE PARTY (EITHER BECAUSE NO RESPONSIBLE PARTY HAS BEEN IDENTIFIED OR THAT PARTY IS ENTITLED TO A LEGAL DEFENSE), ANYBODY SHOULD BE ABLE TO FILE CLAIMS AND COLLECT FROM THE FUND FOR THOSE CLEANUP COSTS WHICH THEY INCUR. FURTHER, 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 THOSE COSTS, OR A PORTION THEREOF, WHEN THEY ARE ENTITLED TO LIMIT THEIR LIABILITY. THIS WILL ENCOURAGE RESPONSIBLE PARTIES TO INITIATE IMMEDIATE REMOVAL AND CLEANUP.

AS TO THE LIMITS OF LIABILITY, THOSE PRESENTLY RECOMMENDED BY THE HOUSE OF REPRESENTATIVES (TITLE IV OF H.R. 2005), EXCEPT IN ONE AREA OF CONCERN, HAVE OUR FULL SUPPORT. THESE LIMITS ARE, FOR A VESSEL OTHER THAN A TANKER \$500,000 OR \$300 PER GROSS TON WHICHEVER IS GREATER, FOR A TANKER \$3,000,000 OR \$420 PER GROSS TON, WHICHEVER IS GREATER (BUT NOT TO EXCEED \$60,000,000), AND FOR A FACILITY \$50,000,000. HOWEVER WE HAVE NOT YET RATIONALIZED WHY THE LIMITS OF LIABILITY FOR AN INLAND OIL BARGE (WHICH ARE ONLY \$150,000 IN THE HOUSE BILL) SHOULD BE LESS THAN THAT FOR TANKERS OR, WHY THOSE LIMITS SHOULD NOT BE AT THE VERY LEAST EQUIVALENT TO THAT OF VESSELS OTHER THAN TANKERS. WE ALSO STRONGLY BELIEVE THAT ADEQUATE LIMITS OF LIABILITY AND FINANCIAL RESPONSIBILITY, BACKED BY A VIABLE FUND, ARE PREFERABLE TO UNLIMITED LIMITS OF LIABILITY WITH ATTENDANT UNCERTAINTY OF RESOLUTION.

29 APRIL 1986

TWO ADDITIONAL POINTS, MR. CHAIRMAN ON THE DOMESTIC PROVISIONS.

FIRST, A SINGLE FEDERAL OIL POLLUTION DAMAGE LIABILITY SYSTEM SHOULD BE BACKED WITH FINANCIAL RESPONSIBILITY REGIMES FOR VESSELS AND FOR OUTER CONTINENTAL SHELF AND DEEPWATER PORT FACILITIES. THE OUTER CONTINENTAL SHELF FACILITY REGIME SHOULD BE AN IMPROVEMENT UPON THAT WHICH CURRENTLY EXISTS. PROVISIONS RELATING TO THE IDENTITY OF THE RESPONSIBLE PARTY SUCH AS THOSE FOUND IN THE HOUSE BILL WOULD ACCOMPLISH THIS. IN ADDITION, MORE EFFECTIVE SANCTIONS (INCLUDING AUTHORITY TO TERMINATE OPERATIONS) ARE REQUIRED FOR THE FAILURE TO COMPLY WITH FINANCIAL RESPONSIBILITY REQUIREMENTS.

AND SECOND, WE WOULD STRONGLY OPPOSE ANY BILL USED AS A VEHICLE FOR SUBSTANTIVE AMENDMENTS TO TAPAA OR OCSLAA WHICH ARE NOT PURELY WITHIN THE SPHERE OF OIL SPILL LIABILITY AND COMPENSATION.

THIS BRINGS ME TO A POINT IN MY TESTIMONY WHICH IS OF CRITICAL IMPORTANCE TO US. WE STRONGLY SUPPORT THE 1984 PROTOCOLS TO THE 1969 CIVIL LIABILITY AND 1971 FUND CONVENTIONS (CLC AND FUND) RELATING TO SEAGOING TANKER OIL POLLUTION DAMAGE LIABILITY. THESE PROTOCOLS WERE ADOPTED AT THE 1984 INTERNATIONAL MARITIME ORGANIZATION (I.M.O.) DIPLOMATIC CONFERENCE CONVENED TO UPDATE THE CONVENTIONS.

OUR VIEW IS THAT ANY COMPREHENSIVE OIL SPILL REGIME MUST INCLUDE IMPLEMENTATION OF THE INTERNATIONAL REGIMES ESTABLISHED BY THE PROTOCOLS. BOTH SECRETARY OF STATE SHULTZ AND I AGREE THAT THEIR RATIFICATION SHOULD PROCEED WITHOUT DELAY. PRESIDENT REAGAN FORWARDED THE PROTOCOLS TO THE SENATE FOR ADVICE AND CONSENT ON NOVEMBER 5, 1985, AND I WILL BE TESTIFYING BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON THE PROTOCOLS ON MAY 15, 1986.

29 APRIL 1986

INCLUDED WITH THE PRESIDENT'S RECOMMENDATION IS A DETAILED REPORT BY THE DEPARTMENT OF STATE FOR THE SENATE'S CONSIDERATION. I RECOMMEND THIS REPORT TO THE MEMBERS OF THIS COMMITTEE. IN THE MEANTIME, LET ME JUST BRIEFLY SUMMARIZE THE CIVIL LIABILITY AND FUND REGIME WHICH IS ESTABLISHED BY THE PROTOCOLS.

THAT REGIME ESTABLISHES A CLEAR, INTERNATIONALLY RECOGNIZED STANDARD OF LIABILITY FOR TANKER OWNERS. JURISDICTION IS CLEARLY ESTABLISHED IN THE COURTS OF THE COUNTRY WHERE DAMAGE OCCURS AND THE SHIPOWNER'S LIABILITY IS BACKED BY AN INTERNATIONALLY ENFORCED COMPULSORY INSURANCE SYSTEM. JUDGMENTS RENDERED IN COURTS HAVING JURISDICTION UNDER THE CIVIL LIABILITY CONVENTION MUST BE RECOGNIZED IN COURTS OF OTHER COUNTRIES WHICH ARE PARTIES TO THE CONVENTION.

AS REVISED BY THE 84 PROTOCOLS THE CONVENTIONS WILL COVER OIL POLLUTION CLEANUP COSTS AND DAMAGE:

- SUSTAINED BY GOVERNMENTS AND PRIVATE PARTIES, INCLUDING REASONABLE MEASURES ACTUALLY UNDERTAKEN OR TO BE UNDERTAKEN TO REINSTATE THE ENVIRONMENT,
- FROM SEAGOING TANKERS, LADEN OR UNLADEN, AND COMBINATION CARRIERS WHEN CARRYING PERSISTENT OIL IN BULK AS CARGO,
- SEAWARD TO THE OUTER EDGE OF THE EXCLUSIVE ECONOMIC ZONE (200 MILES),

29 APRIL 1986

- INCLUDING PRE-SPILL PREVENTIVE MEASURES, WHEREVER TAKEN, AS A RESULT OF GRAVE AND IMMINENT THREATS OF DAMAGE.

AT THE CURRENT EXCHANGE RATES THE REVISED CLC PROVIDES A MINIMUM VESSEL LIABILITY OF 3.5 MILLION DOLLARS FOR VESSELS OF 5,000 GROSS TONS AND BELOW. FOR LARGER VESSELS LIABILITY WOULD BE 3.5 MILLION DOLLARS PLUS 434 DOLLARS PER GROSS TON GREATER THAN 5,000 TO A MAXIMUM OF 69 MILLION DOLLARS.

THE REVISED FUND CONVENTION PROVIDES A TOTAL INCIDENT COVERAGE OF 156 MILLION DOLLARS. THE COVERAGE CAN BE EXPANDED TO 231 MILLION DOLLARS WHEN 3 PARTY COUNTRIES WHOSE COMBINED TOTAL OIL RECEIPTS REACH 600 MILLION TONS PER YEAR. SINCE U.S. CONTRIBUTING OIL APPROXIMATES 450 MILLION TONS PER YEAR, U.S. RATIFICATION WOULD VIRTUALLY ASSURE EXPANDED COVERAGE.

NOTE: AMOUNTS IN DOLLARS ARE BASED ON SPECIAL DRAWING RIGHTS (SDRs).

SDRs ARE CONVERTED INTO NATIONAL CURRENCIES ON THE BASIS OF THE DAILY QUOTATIONS OF THE SDR BY THE INTERNATIONAL MONETARY FUND.

I BELIEVE THAT THE PROTOCOLS OFFER EXCELLENT INSURANCE TO THE UNITED STATES WITH RESPECT TO OIL POLLUTION FROM FOREIGN FLAG TANKERS. FOR EXAMPLE, A JUDGMENT RENDERED IN A U.S. COURT AGAINST A FOREIGN VESSEL OWNER WOULD BE ENFORCEABLE, NOT ONLY IN THE FLAG STATE OF THE VESSEL IF THAT STATE WERE A PARTY, BUT IN THE STATE OF THE VESSELS' INSURER (MOST OFTEN ENGLAND) IF THAT STATE WERE A PARTY. AS I POINTED OUT EARLIER, OUR RESPONSE AND PREVENTION EFFORTS ARE AMONG THE BEST IN THE WORLD. HOWEVER, AS OUR RECENT SPILL HISTORY INDICATES, WE CAN EXPECT OCCASIONAL SPILLS OF OIL FROM BOTH U.S. AND FOREIGN FLAG VESSELS, EVEN THOUGH BOTH CATEGORIES OF VESSELS GENERALLY ADHERE TO THE

29 APRIL 1986

SAME FINE INTERNATIONAL SAFETY AND ENVIRONMENTAL STANDARDS DEVELOPED AT I.M.O. WHEN FULLY IMPLEMENTED THE PROTOCOLS WOULD GIVE US THE LEVEL OF PROTECTION NEEDED IN THE EVENT OF A SPILL LIKE THE "AMOCO CADIZ" (THE LARGEST TANKER SPILL IN HISTORY), WHERE THE LEGITIMATE CLAIMS MAY REACH 190 MILLION DOLLARS.

BUT WHAT DOES THIS COST US? A RECENT INDEPENDENT STUDY COMMISSIONED BY THE COAST GUARD SHOWS THAT THE PERCENTAGE OF THE TOTAL OPERATING COSTS TO TANKERS FOR INSURANCE WOULD BE SMALL, .069% AND .14% RESPECTIVELY FOR 20,000 AND 60,000 GROSS REGISTERED TON TANKERS.

WITH RESPECT TO THE FUND PROTECTION, BASED ON WORLDWIDE SPILL HISTORY BETWEEN 1970 AND 1982, OUR AVERAGE ANNUAL CONTRIBUTION WOULD BE LESS THAN SEVEN MILLION DOLLARS (ABOUT TEN PER CENT OF THE ANNUAL TRUST FUND COLLECTION) OR LESS THAN TWO TENTHS OF ONE CENT PER BARREL OF OIL. WE WOULD EXPECT TO RECOVER ABOUT 2.5 MILLION DOLLARS EACH YEAR LEAVING A NET COST OF ONLY 4.5 MILLION DOLLARS PER YEAR, OR ABOUT ONE TENTH OF ONE CENT PER BARREL.

HOWEVER, THE NET BENEFIT TO THE UNITED STATES IF WE EXPERIENCE ONLY ONE ALVENUS INCIDENT ONCE IN A 13 YEAR PERIOD, WHERE CLAIMS HAVE BEEN ASSERTED IN THE 100 MILLION DOLLAR RANGE, WOULD BE 0.6 MILLION DOLLARS PER YEAR. YOU WILL RECALL THAT THE ALVENUS SPILLED ONLY A SMALL PORTION OF ITS CARGO.

BY RAISING BOTH CLC AND FUND LIMITS SUBSTANTIALLY, THE 1984 PROTOCOLS WILL HAVE THE EFFECT OF SHIFTING OTHERWISE UNCOMPENSATED COSTS ONTO THE FUND BUT WILL ALSO SHIFT A PORTION OF FUND COSTS ONTO THE SHIPOWNERS. THE NET RESULT IS LIKELY TO BE A DOUBLING OF THE PROPORTION OF MAJOR SPILL COSTS FALLING TO THE SHIPOWNER'S ACCOUNT, VIRTUALLY NO CHANGE IN THE BURDEN PLACED ON THE FUND, AND NO CASES IN WHICH DAMAGED PARTIES WOULD GO UNCOMPENSATED.

29 APRIL 1986

THE NEW LIMITS EXTEND SHIPOWNERS' LIABILITY SHARPLY UPWARDS, PLACING THE INSURANCE BURDEN FOR ALMOST ALL SPILLS ON THE PARTY RESPONSIBLE FOR SAFE VESSEL OPERATIONS. THE FUND WOULD ONLY BE INVOLVED IN CATASTROPHIC INCIDENTS, WHERE TIMING AND LOCATION CANNOT BE ACCURATELY FORECAST.

OUR PARTICIPATION AT THE DIPLOMATIC CONFERENCE WHICH REVISED THE CONVENTIONS FOCUSED ON ACHIEVING REVISIONS TO MAKE BOTH CONVENTIONS ACCEPTABLE TO THE UNITED STATES. MR. CHAIRMAN, YOU WILL RECALL THE APRIL 20, 1984 LETTER FROM THE LEADERSHIP OF THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS PROVIDED VIEWS ON SEVERAL OUTSTANDING ISSUES TO BE CONSIDERED AT THE CONFERENCE. I AM PLEASED TO NOTE THAT WE HAVE ACHIEVED SUBSTANTIALLY ALL OF THESE SUGGESTIONS CONTAINED IN THAT LETTER. I WAS PLEASED TO VISIT I.M.O. HEADQUARTERS DURING THE DIPLOMATIC CONFERENCE TO PLACE EMPHASIS ON THE IMPROVEMENTS YOU DESIRED.

THE COMMITTEE SUGGESTED A FUND UPPER LIMIT OF \$250 MILLION, A MINIMUM CLC LIMIT OF \$7 TO \$10 MILLION, AND A CLC UPPER LIMIT OF \$100 MILLION. THE COMMITTEE ALSO CITED THE NEED FOR ASSURANCE THAT ALL LEGITIMATE DAMAGE CLAIMS (CITING THE AMOCO CADIZ OIL SPILL) SHOULD BE COMPENSATED, AND FOR A BALANCE BETWEEN SHIPOWNER AND FUND EXPOSURE. THE "PACKAGE" AGREED ON, THE UPPER LEVELS OF WHICH WERE HEAVILY INFLUENCED BY THE U.S. DELEGATION, IS WIDELY HELD TO BE THE BEST POSSIBLE UNDER THE CIRCUMSTANCES AND REFLECTS THE DESIRED BALANCE BETWEEN SHIPOWNER AND CARGO INTERESTS.

FURTHER, THE COMMITTEE SUGGESTED AN UPDATING MECHANISM STRUCTURED TO ALLOW A REVIEW OF THE ADEQUACY OF LIMITS IMMEDIATELY ON ENTERING INTO FORCE. THIS

29 APRIL 1986

TOO, WE SUBSTANTIALLY ACHIEVED. SIMPLY STATED, AFTER DECEMBER 1989 AND ENTRY INTO FORCE, A PROPOSAL BY ONE FOURTH OF THE CONTRACTING STATES TO UPDATE THE LIMITS MAY BE REVIEWED BY THE I.M.O. LEGAL COMMITTEE AND ADOPTED BY A TACIT AMENDMENT PROCEDURE.

THE COMMITTEE ALSO SOUGHT A DEFINITION OF POLLUTION DAMAGE WHICH WOULD COMPENSATE ACTIONS TAKEN TO RESTORE OUR MARINE ENVIRONMENT AND ITS RESOURCES, OR TO PROVIDE FOR EQUIVALENT RESOURCES. THE DEFINITION AGREED ON AT THE CONFERENCE PROVIDES COMPENSATION FOR (1) LOSS OF PROFIT FROM ENVIRONMENTAL IMPAIRMENT, AND (2) REASONABLE MEASURES OF REINSTATEMENT (ACTUALLY TAKEN OR TO BE UNDERTAKEN) OF AN IMPAIRED ENVIRONMENT, INCLUDING NATURAL RESOURCES. HOWEVER, IT DOES NOT INCLUDE PROVISIONS FOR "EQUIVALENT RESOURCES" SUCH AS PROVIDING A SUBSTITUTE FOR A NATURAL REEF IRREPARABLY DAMAGED. WE INTEND TO PROVIDE AN "UNDERSTANDING" WITH OUR INSTRUMENT OF RATIFICATION THAT WOULD TEND TO LIMIT THE FUND'S (THEREFORE, U.S. CONTRIBUTIONS') EXPOSURE TO SPECULATIVE CLAIMS. THIS, COUPLED WITH OUR SEAT ON THE FUND ASSEMBLY AND SPECIAL AD HOC COMMITTEES TO CONSIDER CLAIMS WILL ENSURE THE PRUDENT ADMINISTRATION OF THE MONIES IN THE FUND.

THE COMMITTEE'S HOPE THAT THE PROTOCOLS' SCOPE INCLUDE THE "200 MILE EEZ" WAS ATTAINED, AS I MENTIONED EARLIER.

THE COMMITTEE EXPRESSED A PREFERENCE THAT OWNER AND OPERATOR LIABILITY BE STRICT, JOINT AND SEVERAL, AND THAT RECOURSE AGAINST ANY POTENTIALLY RESPONSIBLE PERSON BE RETAINED, OR ALTERNATIVELY, LOOSENING THE ESSENTIALLY UNBREAKABLE LIABILITY LIMITATION. THE PROTOCOLS ESTABLISH A STRICT LIABILITY STANDARD EXCLUSIVELY FOR THE SHIPOWNER. IT IS, HOWEVER, BACKED UP BY AN

29 APRIL 1986

INTERNATIONALLY ENFORCED COMPULSORY FINANCIAL SECURITY (INSURANCE) REQUIREMENT. FINALLY, THE CLC PROTOCOL CONTAINS A NEARLY UNBREAKABLE STANDARD CONTROLLING THE OWNER'S ENTITLEMENT TO LIMIT LIABILITY.

AS A GENERAL PRINCIPLE, THE COMMITTEE FELT THAT WITH RESPECT TO TRANSITION FROM THE EXISTING CLC/FUND REGIME TO THE REVISED REGIME, BOTH 84 PROTOCOLS SHOULD COME INTO FORCE FOR THE UNITED STATES AT THE SAME TIME. THE PROTOCOLS INCLUDE A MECHANISM WHICH WILL BE USED BY THE UNITED STATES TO EFFECT THAT RESULT. THIS MECHANISM ALSO WILL ENSURE THAT WE DO NOT PARTICIPATE IN THE COMPLEX TRANSITIONAL PERIOD BETWEEN CURRENT EXCLUSIVE CLC/FUND APPLICATION AND EXCLUSIVE PROTOCOL APPLICATION, AND EVEN MORE IMPORTANTLY, THAT WE DO NOT PARTICIPATE IN THE 1984 FUND REGIME UNTIL THERE ARE AT LEAST 750 MILLION TONS OF CONTRIBUTING OIL INCLUDED WITHIN THE SCHEME. THIS WILL PROVIDE A BETTER DISTRIBUTION OF COSTS TO THE PARTIES.

FINALLY, THE COMMITTEE EXPRESSED A DESIRE TO ASSURE THAT LIABILITY AND COMPENSATION LEVELS UNDER THE NEW REGIME MEET OR EXCEED THOSE AVAILABLE UNDER STATE OR FEDERAL LAW AND DO NOT PRECLUDE ADDITIONAL MEASURES THAT MIGHT BE MERITED UNDER DOMESTIC LAW. THE LIABILITY REGIME UNDER THE CLC PROTOCOL (WHEN IT ENTERS INTO FORCE) WILL REQUIRE PREEMPTION OF DOMESTIC LAW ON THE SUBJECT OF SEAGOING TANKER OWNER LIABILITY. HOWEVER, THE OWNERS' LIABILITY LEVELS UNDER THE PROTOCOL REGIME (\$69 MILLION, BASED ON CURRENT DOLLAR SDR) CURRENTLY EXCEED THOSE CONTAINED IN THE RELATED DOMESTIC PROPOSAL (\$60 MILLION, BASED ON TITLE IV OF H.R. 2005) PRESENTLY UNDER CONGRESS' CONSIDERATION.

WE RECOGNIZE THE NEED FOR THE INTERIM VOLUNTARY REGIMES FOR OIL SPILL LIABILITY AND COMPENSATION PROVIDED BY TANKER OWNERS AND OIL INTERESTS,

29 APRIL 1986

TOVALOP AND CRISTAL. PENDING THE COMING INTO FORCE OF THE PROTOCOLS, WE WOULD WELCOME A SIMILAR REGIME WHICH OFFERS EQUITABLE DISTRIBUTION OF COSTS AND CONTAINS, AS NEARLY AS POSSIBLE, PROVISIONS COMPATIBLE WITH, AND BENEFITS TO U.S. CITIZENS THE SAME AS, THOSE OFFERED BY THE PROTOCOLS. HOWEVER, WE DO NOT SEE A VOLUNTARY REGIME AS A SOLUTION TO THE LONG TERM PROBLEM; BECAUSE THEY ARE VOLUNTARY, SUBJECT TO TERMINATION AT ANY TIME, AND THE U.S. DOES NOT HAVE A SAY IN THE SETTLEMENT PROCESS UNDER THESE REGIMES. IN FACT RECENT DEVELOPMENTS HAVE PLACED THE FUTURE OF TOVALOP AND CRISTAL IN QUESTION. THE INTENDED REPLACEMENT HAS FAILED TO ATTRACT THE NECESSARY PARTICIPATION TO BRING IT INTO FORCE AND MAY CAUSE DISSOLUTION OF THE PRESENT SYSTEM, DEPENDING ON THE REACTION OF CRISTAL CONTRIBUTORS. THIS SHARPENS THE FOCUS ON WHY WE NEED A GOVERNMENTAL REGIME VERSUS A VOLUNTARY ONE. APPARENTLY THE EFFORTS TOWARD AN INTENDED REPLACEMENT REGIME HAVE FAILED AND IT IS UNSURE AT THIS TIME IF TOVALOP AND CRISTAL WILL CONTINUE.

LAST DECEMBER, THE HOUSE OF REPRESENTATIVES PASSED COMPREHENSIVE OIL SPILL LIABILITY AND COMPENSATION LEGISLATION THAT INCLUDES THE KEY FEATURES JUST DISCUSSED, AS TITLE IV OF H.R. 2005. SPECIFICALLY, TITLE IV WOULD IMPLEMENT THE 1984 PROTOCOLS TO CLC AND FUND, FINANCE THE DOMESTIC OIL SPILL FUND THROUGH USER FEES, SET HIGH YET FAIR LIABILITY LIMITS (EXCEPT FOR INLAND OIL BARGES), MERGING DUPLICATIVE STATE REGIMES INTO THE FEDERAL SYSTEM, AFTER AN APPROPRIATE TRANSITION PERIOD. THE ADMINISTRATION SUPPORTS THE APPROACH TAKEN IN THIS LEGISLATION, ALTHOUGH IT OPPOSES FEDERAL FUND COMPENSATION OF ECONOMIC DAMAGES SUCH AS LOST WAGES OR TAXES, THE REBATE OF MONIES IN THE TRANS ALASKA PIPELINE FUND AND THE LOW LIABILITY LIMITS FOR INLAND OIL BARGES.

NOW I WOULD LIKE TO TURN TO THE COMMITTEE'S OIL POLLUTION LIABILITY AND COMPENSATION LEGISLATION, S. 2340. WHILE IT DOES CONSOLIDATE THE EXISTING PATCHWORK OF FEDERAL OIL SPILL LEGISLATION AND ESTABLISH A FEDERAL FUND TO COMPENSATE THE VICTIMS OF OIL POLLUTION, IT DOES NOT CONTAIN THE FOUR KEY ELEMENTS I CONSIDER ESSENTIAL.

- IMPLEMENTATION OF THE 1984 PROTOCOLS TO THE CLC AND FUND CONVENTIONS;
- CREATION OF A FINANCING MECHANISM;
- COMPENSATION FOR THE VICTIMS OF POLLUTION DAMAGE ONLY FOR REMOVAL AND CLEANUP, PROPERTY DAMAGE, NATURAL RESOURCE RESTORATION OR REPLACEMENT AND ADMINISTRATION COSTS; AND
- MERGING DUPLICATIVE STATE REGIMES INTO THE FEDERAL SYSTEM, AFTER AN APPROPRIATE TRANSITION PERIOD.

MAJOR CHANGES TO THIS LEGISLATION WOULD BE NECESSARY BEFORE THE ADMINISTRATION COULD GIVE IT ITS SUPPORT.

THE ADMINISTRATION STRONGLY BELIEVES THAT DOMESTIC LEGISLATION MUST PROCEED IN TANDEM WITH RATIFICATION OF THE 1984 PROTOCOLS TO CLC AND FUND AND SHOULD THEREFORE INCLUDE IMPLEMENTING LANGUAGE FOR THE PROTOCOLS AND MUST ALSO INCLUDE THE MAJOR ELEMENTS JUST NOTED ABOVE.

IN CONCLUSION, I WOULD LIKE TO STRESS THE NEED FOR MAINTAINING THE BROAD SUPPORT AMONG AFFECTED INTERESTS. ONLY WITH THE COMBINED SUPPORT OF THE OIL AND SHIPPING INDUSTRIES, THE STATES AND ENVIRONMENTAL INTERESTS CAN WE HOPE TO ACHIEVE A VIABLE AND COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION REGIME WHICH TRULY SERVES THE OVERALL PUBLIC INTERESTS.

29 APRIL 1986

ONE LAST POINT MR. CHAIRMAN, AS YOU ARE PROBABLY AWARE, THE ADMINISTRATION BELIEVES THAT OIL SPILL LIABILITY AND COMPENSATION LEGISLATION SHOULD PROCEED ON ITS OWN TRACK AND NOT AS PART OF THE SUPERFUND REAUTHORIZATION.

MR. CHAIRMAN, THIS CONCLUDES MY OBSERVATIONS ON THE GENERAL SUBJECT OF OIL SPILL LIABILITY AND COMPENSATION LEGISLATION. I THINK IT IS HIGH TIME THAT OUR PUBLIC IS AFFORDED THE BENEFITS OF A COMPREHENSIVE OIL SPILL LIABILITY AND COMPENSATION SYSTEM THAT INCLUDES THE 1984 PROTOCOLS TO CLC AND FUND. I AM LOOKING FORWARD TO WORKING TOGETHER TO RESOLVE PROMPTLY ANY REMAINING DETAILS. I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.