

THIRTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

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SENATE

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Introduced by SENATOR EDGARDO J. ANGARA

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#### EXPLANATORY NOTE

Awareness in protecting international as well as territorial waters is and should rightly be an increasing global concern, especially since on our end, Philippines is tagged as one of the countries with the highest incidence of oil spills. Research results are unequivocal: even if oil exposure is not immediately lethal, it can cause long-term harm.

Year 1997, the Philippine Senate ratified the International Convention on Civil Liability for Oil Pollution Damage (or the 1969 Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage which were adopted in Brussels, 29 November 1969 and London, 27 November 1992, respectively. But while these two provide a system of compensation for oil pollution damage and for the cost of recovery measures, whenever taken, to prevent or minimize such damage, an implementing legislation has yet to be enacted by Congress pursuant to the two conventions.


Thus, this measure is introduced. The millions of tons of oil that quietly end up in our waters every year, both from accidental and occupational oil pollution, the immense growth in maritime transport of oil and the size of tankers, the increasing amount of chemicals being carried in the sea and the mounting concern for the world's environment, all these taken together, emphasize the need for the immediate approval of this bill.

  
EDGARDO J. ANGARA  
Senator

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AN ACT ESTABLISHING AN INTERNATIONAL COMPENSATION FUND FOR  
OIL POLLUTION DAMAGE, PROVIDING PENALTIES THEREOF,  
AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the  
Philippines in Congress assembled:*

CHAPTER 1.

GENERAL PROVISIONS

**Section 1. *Short Title.*** - This Act shall be known as the "***Oil Pollution Liability  
and Compensation Act (OPA) of 2005***"

**Section 2. *Declaration of Policy.*** - The State, in the protection of its marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, adopts the internationally accepted principles of international law, which impose strict liability for oil pollution damage and ensure prompt and adequate compensation for persons who suffer such damage. This Act adopts and implements the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

**Section 3. *Definition.*** For purposes of this Act:

- (a) "***Act of God***" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects

of which could not have been prevented or avoided by the exercise of due care or foresight;

(b) **Affiliate Corporation** means a corporation that is owned or subject to common corporate control by another corporation, and operated as part of the latter's business;

(c) **Claim** means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident;

(d) **Contributing Oil** means crude oil and fuel as herein defined:

1. **Crude Oil** means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (which sometimes referred to as "topped crudes" or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes); and

2. **Fuel Oil** means heavy distillates or residues from crude oil or blends of such materials intended for use as fuel for the production of heat or power of quality equivalent to the American Society for Testing and Materials Specification for Number Four Fuel Oil (Designation D 396-69) or heavier

e) **Discharge** means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

f) **Exclusive Economic Zone** refers to the seazone extending 200 nautical miles from the Philippine coast over which has special rights over the exploration and use of marine resources;

g) **Fund** means the International Oil Pollution Compensation Fund;

h) **Incident** means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage;

i) **MARINA** is the Maritime Industry Authority;

j) **"Oil"** means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil, and lubricating oil, whether carried on board a ship as cargo or in bunkers of such a ship;

k) **"Oil Pollution Compensation Board"** or Board means the arbitration panel created and empowered by this Act to any dispute arising between the ship owner and claimants on matter covered by this Act.

l) **"Owner"** means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, owner shall mean such company;

m) **"PCG"** is the Philippine Coast Guard;

n) **"Pollution Damage"** means:

(1) Loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur: *Provided*, That compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(2) The costs of preventive measures and further loss or damage caused by preventive measure.

~~(o)~~ **"Preventive Measures"** means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage;

~~(p)~~ **"Ship"** means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo: *Provided*, That a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil on bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

(g) *"State of the Ship's Registry"* means in relation to registered ships, the State of registration of the ship, and in relation to unregistered ships, the State whose flag the ship is flying; AND

(h) *"Subsidiary Corporation"* means a corporation in which control, in the form of ownership of majority shares, as in another corporation, called the parent corporation.

**Section 4. Scope.** - This law shall apply exclusively to pollution damage as herein defined occurring within Philippine territory including its territorial sea and its exclusive economic zone, and to preventive measures, wherever taken to prevent or minimize such damage.

## CHAPTER II

### STRICT LIABILITY FOR OIL POLLUTION DAMAGE

**Section 5. Liability on Oil Pollution Damage.** - The owner of a ship at the time of an incident, or where the incident consists of a series of occurrences, at the time of such first occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

Oil pollution damages shall include, but not be limited to the following:

(a) Reasonable expenses actually incurred in clean-up operations at sea or on shore;

(b) Reasonable expenses of preventive measures undertaken and further loss or damage caused thereby;

(c) Loss, or loss of earnings suffered by owners or users of property contaminated or damaged as a direct result of an incident;

(d) Pure economic loss, or loss of earnings sustained by persons whose property has not been polluted as a direct result of an incident;

(e) Damage to human health or loss of life as a direct result of the incident; and

(f) Environmental damages and other reasonable measures of environmental restoration.

**Section 6. Exempting Circumstances.** – No liability, as enumerated in Section 5 hereof, shall accrue to the owner or his insurer if he/ she proves that the damage:

(a) Resulted from an act of God;

(b) Resulted from an act of war, hostilities, civil war, insurrection;

(c) Was wholly caused by an act or omission done with intent to cause damage by a third party; and

(d) Was wholly caused by the negligence or other wrongful act of the government or other agencies responsible for the maintenance of lights or other navigational aids in the exercise of that function.

If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

**Section 7. Persons Exempted from Claims for Compensation for Pollution Damage.** - No claim for compensation on pollution damage under this Act shall be made against the following:

(a) The servants or agents of the owner or members of the crew;

(b) The pilot or any other person who, without being a member of the crew, performs services for the ship;

(c) Any charterer, including a bareboat charterer, manager or operator of the ship;

(d) Any person performing salvage operation with the consent of the owner or on the instructions of a competent public authority;

(e) Any person taking preventive measures; and

(f) All servants or agents of persons mentioned in paragraphs [c], [d] and [e] unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Nothing in this Act shall prejudice any right of recourse of the owner against third parties.

**Section 8. Joint and Several Liability.** - When an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under Section 7, shall be jointly and severally liable for all such damage which is not reasonably separable, without prejudice, however, to the right of recourse of any of such owners to proceed against each other or third parties.

### CHAPTER III

#### BENEFIT OF LIMITATION ON LIABILITY

**Section 9. Limitation of Liability.** - The owner of a ship shall be entitled to limit his liability under this Act with respect to a particular incident to a total amount calculated as follows:

(a) Three Million (3,000,000) units of account for a ship not exceeding five thousand (5,000) units of tonnage; and

(b) For a ship with a tonnage in excess thereof, for each unit of tonnage, four hundred twenty (420) units of account for each unit in addition to the amount mentioned in the immediately preceding paragraph: *Provided, however, That this aggregate amount shall not, in any event, exceeds 59.7 million units of account; Provided, further, That the limit of liability of the owner of a ship as aforementioned shall be subject to adjustment according*

1 to subsequent amendments of the 1992 Civil Liability Convention and  
2 1992 Fund Convention.

3 The limited liability under this Section may not be availed of the owner if it  
4 has been established that such pollution damage resulted from his personal act or  
5 omission, committed with intent to cause such damage, or recklessly and with  
6 knowledge that such damage would probably result.

7 The "unit of account" referred to in this Section is the Special Drawing Right  
8 defined by the International Monetary Fund which shall be converted into national  
9 currency on the basis of the value of the currency by reference to the Special Drawing  
10 Right on the date that the Fund is constituted under Section 11 of this Act.

11  
12 **Section 10. Constitution of a Fund.** – For the purpose of availing the benefit of  
13 limitations on liability as provided in Section 9, the owner of a ship shall constitute a  
14 fund for the total sum representing the limit of his liability with the Board.

15 The fund can be constituted by depositing the sum or by producing a bank  
16 guarantee or other financial guarantee acceptable under existing laws considered  
17 adequate by the Board.

18  
19 **Section 11. Issuance of a Certificate.** - A certificate attesting that insurance or  
20 other financial security is in force in accordance with the provisions of this Act shall  
21 be issued to each ship carrying more than 2,000 tons of oil in bulk as cargo by the  
22 MARINA after a determination that the requirements of the preceding section have  
23 been complied with.

24 With respect to a ship not registered in a convention-member state, such  
25 certificate may be issued or certified by the MARINA. This certificate shall be in the  
26 form established by the 1992 Liability Convention and shall contain the following  
27 particulars.

- 28 a. Name of ship and port of registration;  
29 b. Name and principal place of business of the owner;  
30 c. Type of security;



1 d. Name and principal place of business of the insurer or other person giving  
2 security and, where appropriate, place of business where the insurance or  
3 security is established; and

4 e. Validity period of the certificate which shall not be longer than the period  
5 of validity of the insurance or other financial security.  
6

7 **Section 12. Enforcement.** - Any ship carrying more than two thousand (2,000)  
8 tons of oil in bulk as cargo shall not be allowed entry into Philippine territory or its  
9 exclusive economic zone (EEZ) without a valid certificate of insurance or financial  
10 security for oil pollution damage required under this Act. For this purpose, the PPA  
11 shall deny port services to said ship absent such certificate.

12 If any ship is found within the said territory or zone without such certificate,  
13 said ship shall be prevented from loading or unloading its cargo until it is able to  
14 produce the appropriate insurance or financial security duly certified by the State of  
15 its registry if such country is a convention-member State, otherwise, issued or certified  
16 by the MARINA or any convention-member State.

17 The owner and master of the ship shall be jointly and severally liable for the  
18 fines set forth in this Act. Such ship shall be prevented from leaving unless the  
19 appropriate fines shall have been paid to the full satisfaction of the Protection and  
20 Indemnity Club.

21 The PCG shall conduct inspections of certificates of ships entering the territory  
22 of the Philippines, or in the case of ships registered in the Philippines, voyaging  
23 within the said territory: *Provided*, That such inspections shall not cause undue delay  
24 to ships.

## 25 26 CHAPTER IV

### 27 CONTRIBUTION TO THE INTERNATIONAL 28 OIL POLLUTION COMPENSATION FUND

29 **Section 13. Payment of Contributions to the International Oil Pollution**  
30 **Compensation Fund.** - Any person who has received more than one hundred fifty  
31 thousand (150,000) tons of contributing oil in a calendar year in all ports or terminal  
32 installations in the Philippines through carriage by sea, shall pay contributions to the

1 International Oil Pollution Compensation Fund (IOPC) in accordance with the  
2 provisions of the 1992 Fund Convention.

3 A person shall be deemed to have received contributing oil, for contribution  
4 purposes, if he received the same:

5 (a) From another country; or

6 (b) From another port or terminal installation within the Philippines,  
7 notwithstanding that it had been previously received by him.

8 Where the quantity of contributing oil received by any person in the  
9 Philippines in a calendar year, when aggregated with the quantity of contributing oil  
10 received in the Philippines in that year by its subsidiary or affiliate corporation,  
11 exceeds one hundred fifty thousand (150,000) tons, said person, including its  
12 subsidiaries, shall pay contributions in respect of the actual quantity received by each  
13 notwithstanding that the actual quantity received by each did not exceed one  
14 hundred fifty thousand (150,000) tons.

15

16 **Section 14. Report of Contributing Oil.** - Any person who, in a calendar year,  
17 has received in the territory of the Philippines contributing oil, as defined in this Act,  
18 shall, not later than 1 February of the following year, report to the PCG the quantity of  
19 such oil received. Likewise the PCG, through the Department of Foreign Affairs, shall  
20 communicate the data at a time and in the manner prescribed by the 1992 Fund  
21 Convention.

22

## CHAPTER V

23

### COMPENSATION FOR OIL POLLUTION DAMAGE

24

25 **Section 15. Action for Compensation.** - An action for compensation on  
26 account of pollution damage resulting from the incident which occurred in the  
27 territory may be brought against the following persons:

28 (a) Owner of the polluting ship;

29 (b) Insurer or other person providing financial security of the said owner's  
30 liability for pollution.

1 (c) Foreign corporations, partnerships, associations and individuals whether  
2 licensed or not to transact business in the Philippines.

3 Such action shall be filed within three (3) years from the date on which the  
4 damage occurred, but not later than six (6) years from the date of the incident.

5  
6 **Section 16. *Adjudication and Settlement of Claims.*** - Any action for  
7 compensation shall be brought directly against the owner of the ship pursuant to the  
8 principle of strict liability for pollution damage. Should a dispute arise with respect to  
9 amount of the claim, the parties shall be required to arbitrate before the Board.

10  
11 **Section 17. *Creation and Composition of the Board.*** - There is hereby created  
12 an Oil Pollution Compensation Board which shall be composed of (1) representative  
13 from the insurance industry, one (1) from the Office of the Secretary of the  
14 Department of Transportation and Communications and one (1) from the PCG who  
15 shall act as chairman.

16 The Board shall have the power to promulgate its rules and regulations for the  
17 speedy, efficient, inexpensive, and just compensation of claims consistent with the  
18 principle of strict liability for pollution damage. The parties shall be bound by the  
19 decision of the Board which shall be final and executory unless appealed to the Court  
20 of Appeals within fifteen (15) days from receipt thereof. The decision shall be  
21 immediately executory pending appeal.

22  
23 **Section 18. *Presentation of Claim with the International Oil Pollution***  
24 ***Compensation Club ( IOPC) Fund.*** - Claims in excess of the liability of the ship  
25 owner shall be brought before the IOPC Fund.

26 The 1992 Fund may intervene as party to any legal proceedings instituted  
27 against the owner of a ship or his guarantor under Article IX of the 1992 Civil  
28 Liability Convention.

1 CHAPTER VI.

2 PENALTY PROVISIONS

3 **Section 19. Violations of the Act.** - The following shall constitute as violations  
4 of this Act and the persons responsible shall suffer the corresponding fines:

5 (i) Any person who fails to institute or maintain insurance of other financial  
6 security required under Section 13 of this Act:

7 a) Ships of 500 gross tons (GT) and below — Two Hundred  
8 Thousand Pesos (P200,000.00);

9 b) Ships of 501 to 1,000 GT — Five Hundred Thousand Pesos (P500,000);

10 c) Ships of 1,001 to 5,000 GT — One Million Pesos (P 1,000,000);

11 d) Ships of 5,001 to 10,000 GT — Five Million Pesos (P 5,000,000);

12 e) Ships of 10,001 to 20,000 GT — Ten Million Pesos (P 10,000,000);

13 f) Ships of 20,001 GT and above — Five Million Pesos (P 5,000,000).  
14

15 (ii) The owner and the master of a ship who operate a ship without maintaining on  
16 board a certificate of insurance required under Section '13 of this Act:

17 a) 1<sup>st</sup> Violation — Five Hundred Thousand Pesos (P500,000);

18 b) 2<sup>nd</sup> Violation— One Million Pesos (P1,000,000); and

19 c) 3<sup>rd</sup> Violation — One Million and Five Hundred Thousand Pesos  
20 (P1,500,000).

21 (iii) Any person required under Section 15 of this Act to contribute to the  
22 International Oil Pollution Compensation Fund but nevertheless fails to  
23 comply therewith after due notice by the PCG:

24 a) 1<sup>st</sup> Violation — Three Million Pesos (P3,000,000);

25 b) 2<sup>nd</sup> Violation — Four Million Pesos (P4,000,000);

26 c) 3<sup>rd</sup> Violation — Five Million Pesos (P5,000,000)

(iv) Failure to Submit Report of Contributing Oil.- Any person required under Section 15 of this Act to submit report of contributing oil but notwithstanding 10-day notice thereto, fails to comply therewith:

(a) 1<sup>st</sup> Violation — Five Hundred Thousand Pesos (P500,000);

(b) 2<sup>nd</sup> Violation — One Million Pesos (P1,000,000);

(c) 3<sup>rd</sup> Violation — One Million and Five Hundred Thousand Pesos (P1,500,000).

(v) Any person who knowingly provides false information to the Authority, or PCG or PPA and any other port authority on any matters required under this Act shall be punished by a fine of not less than One Million Pesos (P1,000,000.00) but not exceeding Three Million Pesos (P3,000,000.00).

In addition to the penalties above prescribed, the implementing rules and regulations of this Act shall provide such reasonable administrative penalties as may be necessary for the effective implementation of this Act.

The fines prescribed in this section and other sections of this Chapter shall be increased by at least ten percent (10%) every three (3) years to compensate for inflation and to maintain the deterrent function of such fines.

**Section 20. Institutional Mechanism.** - The PCG, in consultation/ coordination with the appropriate government agency/ office, shall perform the following functions, to wit:

(a) Scientific and Technical Aspects

1. Provide technical expertise to assess / verify damages;
2. Provide baseline/ pre-spill information;
3. Monitor coastal areas affected;
4. Provide methods for assessing damaged resources; and
5. Provide methods for restoring damaged resources.

1 (b) Administrative Aspect. To properly administer the Fund, the PCG shall:

- 2 1. Represent the Philippines' claims to both 1992 Civil Liability  
3 Convention and 1992 Fund Convention;
- 4 2. Perform the task of a lead coordinator in matters relating to oil spill  
5 response;
- 6 3. Coordinate with claimants and the Secretariat of both Conventions; and
- 7 4. Document costs incurred as a result of the response operations.

8 (c) Economic Aspect:

- 9 1. Make available valuation of coastal resources and direct and indirect  
10 services;
- 11 2. Provide appropriate methods for estimating damages; and
- 12 3. Provide accurate methods for estimating restoration cost and benefits.

13  
14 (d) Legal Aspect

- 15 1. Provide scope of damage for which compensation can be assessed;
- 16 2. Provide allowable methods for estimating damages.

## 17 18 CHAPTER VII.

### 19 FINAL PROVISIONS

20 **Section 21. Appropriations.** The heads of the concerned agencies shall  
21 immediately include in their programs the implementation of this Act, the funding of  
22 which shall be included in the Annual General Appropriations Act.

23  
24 **Section 22. Implementing Rules and Regulations.** The PCG, in coordination  
25 with other concerned government agencies and relevant sectors, shall, within six (6)  
26 months after the effectivity of this Act, promulgate the rules and regulations for the  
27 effective implementation of this Act.

1 A claim manual providing for the procedure concerning the presentation of  
2 claims after this Act shall likewise be made and distributed.  
3 The said rules and regulations and manual shall be published in a newspaper of  
4 general circulation within the said period.

5  
6 **Section 23. Separability Clause.** If any provision of this Act or an application  
7 thereof to any person or circumstance is held to be invalid, the other provisions of this  
8 Act, and the application of such provision to other persons or circumstances, shall not be  
9 affected thereby.

10  
11 **Section 24.. Repealing Clause.** - All laws, executive orders, rules and  
12 regulations contrary to or inconsistent with this Act are hereby repealed or modified  
13 accordingly.

14  
15 **Section 25. Effectivity Clause.** - This Act shall take effect within fifteen (15)  
16 days following the completion of its full publication in the Official Gazette or in at  
17 least two (2) newspapers of general circulation, whichever comes first.

18  
19 *Approved,*