

The question of liability is better left to the penalty provisions of the legislation. (P. 22).

The crime of "discharge."

Section 19(b) of S. 2760 defines the crime of "discharge" as follows:

Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary under this section, it is unlawful to discharge or permit the discharge of oil by any method, means, or manner into or upon the navigable waters of the United States or adjoining shorelines of the United States.

The 1924 act, section 3(a), provides:

Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary as hereinafter authorized, it is unlawful for any person to discharge or permit the discharge from any boat or vessel of oil by any method, means, or manner into or upon the navigable waters of the United States, and adjoining shorelines of the United States.

The only substantial difference between the two provisions is that the 1924 act makes it unlawful "for any person" to discharge, whereas S. 2760 eliminates the words "for any person." However, the elimination by S. 2760 of the terms "grossly negligent, or willful" from the definition of the word "discharge" would necessarily mean that under section 19(b) it is unlawful to discharge oil (except in case of emergency, imperiling life or property, or unavoidable accident, collision, or stranding) even where the conduct is neither grossly negligent or willful.

The Senate committee report on S. 2760 makes it perfectly clear that the intention of section 19(b) is to make the discharge of oil unlawful "regardless of fault." The report states as to 19(b):

The bill would make it unlawful for anyone to discharge oil into the waters . . . regardless of fault. The amended 1924 Act now prohibits only grossly negligent and willful discharges of oil. The bill, like the 1924 act, recognizes that there are exceptions to this general prohibition which should be recognized in applying a criminal statute. These are cases of emergency where life or property are involved, other than the property of the vessel or shore installation, or cases of unavoidable accident, collision, or stranding. Thus, the test under the bill is whether the vessel or shore installation discharged the oil and, if it did, whether the discharge was excusable under one of those exceptions. If the discharge did not come under one of the exceptions, then the discharge is unlawful.

#### REVOCATION OR SUSPENSION OF OFFICERS' LICENSES BY THE COAST GUARD FOR "DISCHARGE"

Not only would it be unlawful under S. 2760 for licensed officers or other seamen to "discharge" oil regardless of fault or negligence but the U.S. Coast Guard under section 19(g) may—

suspend or revoke a license issued to the master or other licensed officer of any vessel found violating the provisions of subsection (b) in this section.

The 1924 act authorizes the revocation or suspension of the licenses of ships' officers whose conduct in discharging or permitting the discharge of oil was either grossly negligent or willful. The effect of S. 2760 is not only to make unlawful the nonnegligent and nonwillful discharge of oil by a licensed officer or other seaman, but also to impose the additional penalty of revocation or suspension of licenses for such nonnegligent or nonwillful conduct.