

After months of study, Plymouth Laboratory Director J. E. Smith and his colleagues calculated that thousands of sea birds, died from being coated with oil or from swallowing it. But except for the rosy-footed summer tourist, few other shore or sea creatures were seriously bothered by the oil. The detergents, however, killed a significant amount of sea life and seriously upset the ecology in many coastal areas. * * *²

This study bears our Senator Muskie's remark during the 1967 Water Pollution Hearings, when he said:

"* * * the committee must give cognizance to the need for research into methods of removal of oil * * * while at the same time not using techniques which secure the malady but kill the patient."

Oil Pollution Act of 1924

The point was made in the Senate Hearings "that the Oil Pollution Act was made enforceable by a word change in the Senate passed definition of the word "discharge". Therefore, S. 2760 is also "designed to correct that fault". This Committee should scrutinize the proposed revisions before abolishing the Oil Pollution Act of 1924, as amended [33 U.S.C. § 432-434].

The Secretary of Interior's Report to the President, February 1968, states that the omission of shore-based facilities from the 1966 Amendment to the Oil Pollution Act is "critically significant". If this is so, the omission can be easily cured by amending the Act to add "shore installations" as defined by S. 2760.

However, the Secretary of Interior's recommendation to delete the "grossly negligent or willful" criterion of the Act is a much graver matter. The argument made is that the present statute is difficult to enforce. This may or may not be the case. But, the fact is that the Department of Justice, based on testimony set forth in the Senate Hearings on Water Pollution (1967), has not attempted to prosecute any cases under the 1966 Amendment to the Act. Thus, there have been no court cases on this question. Obviously any prosecutor would like to have his job made as easy as possible. But, here we are dealing with a federal penal statute that is no longer confined to "any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements", as provided for in the original Oil Pollution Act of 1924 [33 U.S.C. 433]. The 1966 Amendment changed the Act to apply to "any boat or vessel" upon the navigable waters of the United States.

If the "grossly negligent or willful" criteria is deleted any owner or operator, for example, of an outboard motor boat using the navigable waters of the United States would be subject, upon entering into such water, to an automatic conviction for committing a federal felony under Subsection 19(c), or at the very least face being convicted of a federal misdemeanor under Subsection 19(d) of S. 2760. This bill provides a means for wholesale convictions of all citizens or business entities using the waterways regardless of criminal culpability. The stated penalties are exceedingly harsh [up to a year in prison]. To impose such penalties as provided for in Subsection 19, without the "grossly negligent or willful", criteria would be unconscionable.

With respect to the alleged difficulty of enforcing the existing legislation, it is interesting to note that the Secretary of Interior has still not promulgated or issued regulations under the 1966 Amendment [33 U.S.C. 433(c)] relative to permissible quantities of discharge of oil from boats or vessels, or relating to the removal or cost of removal of oil from the navigable waters or the adjoining shorelines of the United States. This may explain the reason for the alleged difficulties encountered by the Government in enforcing the 1966 Amendment to the Oil Pollution Act of 1924.

S. 2760 as presently written, when considered together with the Refuse Act of 1899 [33 U.S.C. 407] as judicially interpreted, will make it unlawful to drop anything but "pure water" into a river or lake which are part of the navigable waterways of the United States. This would be true even though the discharge was harmless or had no deleterious effect on the waterways.

Refuse Act of 1899

This Act made it unlawful for any ship, barge, or other floating craft of any kind, or any shore installation to discharge into the navigable water of the

² *Torrey Canyon Pollution and Marine Life*, a report by the Plymouth Laboratory of the Marine Biological Association of the United Kingdom, edited by J. E. Smith, Cambridge University Press [1968].