Draining out Oil Pollution: The Oil Pollution Act and the Act to Prevent Pollution from Ships

Ryan B. Vidal*

Oil pollution remains one of the most persistent and environmentally destructive forms of maritime contamination, posing significant risks to coastal ecosystems, economic activity, and public health in the United States and beyond. This Article examines the legal frameworks governing oil pollution in the United States and internationally, focusing on the Oil Pollution Act (OPA) and the Act to Prevent Pollution from Ships (APPS). It provides a comparative analysis of the statutes' historical development, legislative intent, and core regulatory structures.

While both OPA and APPS aim to prevent and remediate oil pollution, significant gaps persist in jurisdiction, enforcement, and policy, often limiting their effectiveness in addressing complex maritime oil incidents. By highlighting these deficiencies, the Article demonstrates how current liability schemes and regulatory mechanisms fail to incentivize compliance, particularly among financially robust corporate actors. The Article concludes by proposing targeted reforms to strengthen enforcement, close jurisdictional loopholes, expand liability standards, and enhance regulatory incentives, thereby improving environmental protection and accountability in the United States' oil pollution regime.

I. INTRODUCTION 174
II. LEGAL CONTEXT 175
  A. *Legislative and Historical Background of OPA and APPS* 175
  B. *Statutory Structure* 176
    1. Liability and Compensation Under OPA 176
    2. Enforcement and Compliance Under APPS 178
III. THE GAPS IN OPA AND APPS 180
  A. *Jurisdictional Gaps* 180
  B. *Enforcement and Accountability Gaps* 182
  C. *Policy Gaps* 184
IV. RECOMMENDED REFORMS 184
  A. *Reforms to OPA* 185

* © 2026 Ryan B. Vidal, J.D. 2026, Florida International University College of Law; B.A. 2022, Florida International University. Thank you to Professor Barbara Ballan of Florida International University College of Law for her helpful guidance on this project and inspiring this research.

B. Reforms to APPS 186
V. CONCLUSION 187

I. INTRODUCTION

In recent years, oil pollution has emerged as a prominent cause of the degradation of marine environments across the globe.[1] Most notably, the *Exxon Valdez* disaster of 1989 and the *Deepwater Horizon* disaster of 2010 made international headlines due to their catastrophic effects on natural marine resources and surrounding shorelines.[2] Although oil pollution has only recently emerged as a mainstream issue, disasters, which affect marine resources, property, food production, and tourism, among others, are not new phenomena.[3] Since humans began exploiting sea-based mineral resources, corporations and governments have greenlit efforts to extract mineral resources such as oil and gas from the seabed to the detriment of the environment.[4] While the *Exxon Valdez* and *Deepwater Horizon* incidents highlight the extent of the potential harm from oil spills, many other oil spills fall under the radar or are simply ignored either due to their smaller scale, or due to the lack of media attention.[5] Unfortunately, in many cases the only way to solve an environmental issue is by experiencing a disaster which triggers elected officials to combat the problem.[6]

This Article analyzes the Oil Pollution Act of 1990 (OPA) and the Act to Prevent Pollution from Ships (APPS) and evaluates their effectiveness to prevent oil pollution and enforce liability.[7] To that end, Part I of this Article explores the historical development, legislative context, and statutory structures of both OPA and APPS. Part II analyzes

1. William H. Rodgers, Jr. et al., *The Exxon Valdez Reopener: Natural Resources Damage Settlements and Roads Not Taken*, 22 ALASKA L. REV. 135 (2005).

2. Gary Shigenaka, *The Oil Pollution Act of 1990: A History of Spills and Legislation,* NAT'L OCEANIC AND ATMOSPHERIC ADMIN. (Aug. 17, 2020), https://blog.response.restoration.noaa.gov/oil-pollution-act-1990-history-spills-and-legislation.

3. Nat'l Ocean Serv., *A Brief History of Pollution*, NAT'L OCEANIC & ATMOSPHERIC ADMIN., https://oceanservice.noaa.gov/education/tutorial_pollution/02history.html (last visited May 5, 2026).

4. David U. Socol de la Osa, *What Norwegian Sustainability Can Teach the U.S.: A Comparative Legal & Policy Roadmap Toward Renewable Energy Independence*, 53 TEX. ENV'T L.J. 103, 126-27 (2023).

5. *Id.*

6. Daniel Farber, *Navigating the Intersection of Environmental Law and Disaster Law*, 2011 BYU L. REV. 1783 (2011).

7. Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2762; Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1915.

the jurisdictional, enforcement, and policy gaps that emerge within each statutory regime. Part III examines potential remedies to close these legal gaps and enhance the effectiveness of the statutory framework. Part IV concludes by summarizing the shortcomings of OPA and APPS and situating those shortcomings within the historical development of environmental legislation to underscore the need for timely regulatory reform.

II. LEGAL CONTEXT

The need to strengthen liability and enforcement of oil pollution prompted the development of comprehensive oil pollution legislation. OPA and APPS aim to combat the evolving issues and consequences of oil pollution both domestically and internationally. This section first examines the legislative and historical background that preceded each statute, highlighting real-world events that allowed for their creation. Second, this section will detail the overview of each statute's structure, focusing on key provisions of liability, compensation, enforcement, and compliance. This context will set the foundation for the in-depth critique of each statute that follows.

A. Legislative and Historical Background of OPA and APPS

Following the 1989 *Exxon Valdez* oil spill off the coast of Alaska, Congress created the Oil Pollution Act of 1990 in response to the significant amount of public scrutiny received from the disaster.[8] The *Exxon Valdez* disaster released over 11 million gallons of crude oil into the waters and caused severe harm to marine life and property in the surrounding area.[9] Prior to this disaster, there were minimal regulations addressing oil pollution, and overall, those regulations were narrow in scope and failed to address disasters of this magnitude.[10] Congress responded to the public scrutiny by passing the Oil Pollution Act of 1990, the most comprehensive legislation to address oil spill liability, prevention, and cleanup efforts.[11]

8. See Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990); see also In re Exxon Valdez, 270 F.3d 1215, 1252 (9th Cir. 2001) (noting that Congress enacted OPA "in the wake of the Exxon Valdez oil spill").

9. The *Exxon Valdez* spill released over eleven million gallons of oil, and weak federal and state preparedness—along with harsh weather—delayed cleanup, fueling public outrage and exposing major gaps in the nation's oil-spill response system.

10. Nat'l Ocean Serv., *supra* note 3.

11. 33 U.S.C. §§ 2701-2762.

Marine pollution, and specifically oil pollution, has long been an issue that affects marine environments and terrestrial environments alike and does not discriminate against human-made boundaries.[12] Additionally, with the creation of jurisdictional zones in the ocean, there were no uniform regulations that address oil pollution.[13] Thus, the International Convention for the Prevention of Pollution from Ships (MARPOL) in 1973 set forth an international framework to provide comprehensive preventative and enforcement measures to bridge the differences between the oil pollution policies of several nations and allow for a clear set of rules on the high seas.[14] The United States codified MARPOL 73/78 in 1980 with APPS to join the international community on uniform pollution protocols.[15]

B. Statutory Structure

The statutory framework for oil pollution in the United States is defined primarily through OPA and APPS. Together, these laws establish mechanisms for assigning liability, providing compensation, and enforcing compliance both domestically and internationally. The following discussion first examines OPA's strict liability and compensation scheme, including its liability limits, defenses, and the Oil Spill Liability Trust Fund. It then examines APPS, which implements the international MARPOL 73/78 protocol, focusing on equipment standards, recordkeeping, self-reporting requirements, and enforcement authority over U.S. and foreign-flagged vessels. This structure highlights the roles of domestic and international law in regulating oil pollution while identifying areas where gaps in liability and enforcement may impact their efficacy.

1. Liability and Compensation Under OPA

OPA provides for a comprehensive strict liability scheme.[16] Thus, the scope of OPA is broad and is interpreted to include state waters and

12. Nat'l Ocean Serv, *supra* note 3.

13. *Id.*

14. International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, 1340 U.N.T.S. 184, as modified by the Protocol of 1978, Feb. 17, 1978, 1340 U.N.T.S. 61 [hereinafter MARPOL].

15. *Id.*; Act to Prevent Pollution from Ships (APPS), 33 U.S.C. §§ 1901-1915.

16. The Oil Pollution Act imposes strict liability on responsible parties for removal costs and enumerated damages. *See* 33 U.S.C. § 2702(a) ("Notwithstanding any other provision or rule of law . . . each responsible party . . . is liable for the removal costs and damages specified in subsection (b) that result from such incident.").

waters inside its exclusive economic zone (EEZ). With the language "notwithstanding any other provision or rule of law," the act replaces fault-based liability with strict liability that attaches automatically for responsible parties that discharge oil.[17] However, OPA provides that nothing in the Act shall be construed to preempt state law, allowing states to impose additional liability or requirements for oil polluters within their waters under its savings clause.[18] Essentially, the requirements of OPA provide a federal benchmark. States may impose additional sanctions or penalties on top of this benchmark if the oil reaches their waters. Similarly, OPA preserves some of the principles of the maritime law that preceded it such as admiralty jurisdiction and rights of contribution and indemnity, as long as they do not conflict with OPA.[19] OPA explicitly states that the legislation does not affect maritime or admiralty law.[20] In effect, in areas not covered by OPA, maritime law still governs as it has since it was established in the U.S. Constitution, with OPA preempting it in cases where it has authority. [21]

While OPA does prescribe strict liability to responsible parties of oil pollution, it limits the liability for responsible parties based on vessel or facility size.[22] Thus, the parties responsible would only be responsible for paying the maximum costs prescribed by the liability limits which may not cover the total cost of damage or cleanup. A notable exception to this limitation of liability scheme involves incidents caused by gross negligence or willful misconduct of the responsible party.[23] In those instances, the liability limits are disregarded, and the responsible party is assigned total liability for the costs of damages. However, liability limits open the door for the externalization of environmental harm, where polluters do not bear the full economic cost of that harm, but it is instead shifted to society, taxpayers, local communities, etc.[24]

17. *Id.*

18. 33 U.S.C. § 2718(a)(1).

19. *See* 33 U.S.C. § 2751(e) (preserving admiralty and maritime law to the extent that it does not conflict with OPA); Gabarick v. Laurin Mar. (Am.) Inc., 623 F. Supp. 2d 741, 745-50 (E.D. La. 2009).

20. *Id.*

21. *See* U.S. CONST. art. III, § 2 (establishing federal judicial power over admiralty and maritime cases).

22. *See* 33 U.S.C. § 2702(a) (imposing liability on responsible parties "notwithstanding any other provision of law"); *see also id.* § 2704(a) (establishing liability limits by vessel or facility type).

23. 33 U.S.C. § 2702(c); *see id.*

24. Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968).

Furthermore, OPA utilizes an additional mechanism, the Oil Spill Liability Trust Fund ("Trust Fund").[25] The Trust Fund acts by responding to oil pollution in cases where the responsible party cannot or will not pay or the responsible party fulfills its obligations under the limitation of liability scheme, and the remaining costs exceeds the amount paid.[26] The Trust Fund is generated by taxpayers who pay taxes on oil and was created to compensate victims of oil pollution and cover cleanup costs more efficiently.[27] OPA authorizes the president to utilize the Trust Fund in certain circumstances which include federal removal actions, natural resource damage restoration, and uncompensated claims.[28] It is not available in instances where the responsible party engaged in gross negligence or willful misconduct.[29]

OPA does provide for complete defenses for responsible parties which include (1) an act of God, (2) an act of war, and (3) an act or omission by a third party whose act or omission occurs in connection with any contractual relationship with the responsible party.[30] These defenses place the burden on the responsible party to meet the preponderance of the evidence standard.[31]

2. Enforcement and Compliance Under APPS

APPS implements the international framework for oil pollution regulation from MARPOL 73/78.[32] APPS applies to U.S. flagged ships worldwide, regardless of where the ship is situated, and foreign ships in U.S. waters or ports (inside the U.S. EEZ).[33] A notable exception is that U.S. military vessels are excluded from APPS regulation.[34] While APPS defers to the substantive requirements of the MARPOL protocol, it

25. *See* George M. Chalos, *A Practical Guide to the Oil Spill Liability Trust Fund Claim Submission Procedures*, 3 U. DENV. WATER L. REV. 80 (1999).

26. *See* 26 U.S.C. § 9509 (2024) (establishing the Oil Spill Liability Trust Fund); *see also* 33 U.S.C. § 2712 (2024) (authorizing use of the Fund to pay removal costs and damages under the Oil Pollution Act).

27. *Id.*

28. *Id.*

29. 33 U.S.C. § 2712(b)(1).

30. *See* 33 U.S.C. § 2703(a) (2024) (listing complete defenses to liability for responsible parties, including acts of God, war, and certain third-party acts).

31. *See id.* § 2703(a) (placing the burden of proof on the responsible party to establish the applicability of a defense by a preponderance of the evidence).

32. *See* 33 U.S.C. § 1901(a).

33. *See id.* §§ 1902(a)(1)-(3).

34. *See id.* § 1902(b)(1).

authorizes the secretary to investigate possible violations from U.S. ships or foreign ships in U.S. ports for unlawful discharges.[35]

MARPOL protocol specifically prohibits oil discharge unless the ship is en route, the oil content does not exceed fifteen parts per million, the ship has approved oil content monitors, and the discharge does not originate from cargo areas of oil tankers.[36] However, there is an absolute ban on oil discharge within twelve nautical miles from land or the discharge produces a visible sludge.[37] Thus, APPS enforces this protocol which essentially prohibits oil discharge unless it has been treated and measured under a certain standard.[38]

Another important aspect of APPS is its implementation of the MARPOL protocol on equipment standards. MARPOL requires ships to carry oil content meters, oily water separators, oil discharge monitoring systems, and pollution prevention manuals.[39] These controls aim to uphold the capability of ships to prevent unlawful discharges. Alongside these requirements is the MARPOL provision that requires every applicable ship to maintain a recordkeeping book of every transfer or discharge of oil for three years, with false or missing entries constituting a violation.[40] APPS implements these provisions to hold parties responsible for discharges and monitor oil discharges through an advanced recordkeeping system.[41] APPS also implements self-reporting measures, requiring a ship's master or the respective person in charge to report any incidents, a process that relies heavily on the parties' trustworthy and honest behavior.[42]

Enforcement of MARPOL is reliant on flag states' enforcement of the protocol with its own ships.[43] However, MARPOL also allows states to prosecute foreign ships for violations in their waters or send evidence to the ship's flag state for prosecution within its own laws.[44] APPS, being domestic law, reserves enforcement authority for all U.S. ships anywhere

35. *See id.* § 1907(a).
36. MARPOL, *supra* note 14 Annex I, reg. 15(1)-(2).
37. *Id.* Annex I, reg. 15(3).
38. 33 U.S.C. § 2702(c).
39. MARPOL, *supra* note 14, Annex I, reg. 10 & 16.
40. *Id.* Annex I, reg. 17.
41. 33 U.S.C. § 2702(c).
42. 33 U.S.C. § 1907(c).
43. MARPOL art. 4(1) ("Any violation of the requirements of the present Convention shall be prohibited and sanctions shall be established therefor under the law of the Administration of the ship concerned wherever the violation occurs.").
44. *Id.* art. 4(2).

in the world and foreign vessels where a violation occurred within U.S. navigable waters or ports.[45]

APPS implements both criminal and civil penalties for violations.[46] To be subject to criminal liability, an individual must *knowingly* violate the MARPOL protocol.[47] This requires the person to have the satisfactory mens rea to be convicted criminally.[48] Civil penalties under APPS are violation-based which is a lower threshold because there is no need to prove knowledge or intent, but this threshold does not rise to the standard of strict liability because there must be proof of a violation.[49]

III. THE GAPS IN OPA AND APPS

The regulatory framework of both OPA and APPS contain prominent gaps that undermine effective and efficient enforcement. These shortcomings fall logically into three categories: (1) jurisdiction, (2) enforcement and accountability, and (3) policy. To that end, Part III examines the jurisdictional restrictions that constrain each statute's reach and create opportunities for pollution to occur outside this reach. Second, this part analyzes the enforcement mechanisms of OPA and APPS and how they expose loopholes that allow polluters to escape full accountability, focusing on how liability limits and weak penalties fail to encourage safe practices. Lastly, this part explores the broader policy directives embedded in each statute that limit its effectiveness to prevent oil pollution and incentivize compliance, linking the origin of each statute to its inherent shortcomings.

A. Jurisdictional Gaps

Although OPA provides the most comprehensive legislation on oil pollution to date, there are notable gaps in the statutory scheme that limit its jurisdictional reach. As mentioned, OPA covers oil discharges "into or upon the navigable waters or adjoining shorelines or the exclusive economic zone."[50] This language presents a glaring hole in the application of the act outside of the U.S. EEZ. Although this provision includes both U.S. and foreign vessels, it does not apply to U.S. or foreign vessels outside of the EEZ unless the oil discharge somehow enters U.S. waters.[51]

45. 33 U.S.C. § 1902(a)(1)-(2).
46. 33 U.S.C. § 1908(a)-(b).
47. *Id.*
48. *Id.*
49. *Id.*
50. 33 U.S.C. § 2702(a).
51. *Id.*

This gap is consequential because it may incentivize potential polluters to strategically discharge oil outside the EEZ where OPA does not apply.[52]

Additionally, OPA jurisdictional issues are also seen in inland waters of the U.S. due to a narrow interpretation of "navigable waters."53 In *Rice v. Harken Exploration Co.*, the Fifth Circuit held that discharges of oil into groundwater that only indirectly reach navigable waters fall outside the authority of OPA.[54] In *Rice*, landowners in Texas sued an oil and gas lessee for discharging oil into the groundwater and a nearby creek that connects loosely to the Mississippi River, which empties into the Gulf of Mexico.[55] The Court held that OPA does not apply to these types of discharges because groundwater is not included in "waters of the United States" by any interpretation.[56] Thus, by not applying OPA, the Court exposes a clear gap in OPA construction regarding inland waters loosely connected to, but capable of affecting, navigable waters. As a result, these inland waters are not bound by the same protections as traditional navigable waters covered by OPA.

Similarly, APPS has limits in its jurisdictional reach (the geographic and substantive scope of the statutes enforcement) that weaken its effectiveness. One of the major differences between the reach of OPA and APPS is that APPS covers U.S.-flagged vessels outside of the EEZ.[57] This is a positive aspect because it enforces the regulations of APPS beyond U.S. waters for U.S. vessels. However, the same cannot be said for foreign vessels outside of U.S. waters or ports. In *U.S. v. Abrogar*, the Court held that "Congress . . . created criminal liability for foreign vessels and personnel only for those substantive violations of MARPOL that occur in U.S. ports or waters."[58] In effect, foreign vessels outside the EEZ are not bound by the APPS regulations, and, more generally, foreign vessels on the high seas are only held accountable if their flag state chooses to prosecute. This leaves APPS, and MARPOL, powerless without flag state accountability on the high seas. This gap mirrors that of OPA, as both statutes permit the possibility that oil discharges on the high seas may go unpunished due to the limits of their jurisdictional reach.[59]

52. 33 U.S.C. § 2702(a) (limiting OPA liability to incidents within "navigable waters," "adjoining shorelines," or the "exclusive economic zone").

53. Rice v. Harken Expl. Co., 250 F.3d 264, 267 (5th Cir. 2001).

54. *Id.* at 272.

55. *Id.* at 265.

56. *Id.* at 267-68.

57. 33 U.S.C. § 1902(a)(1) (applying APPS to all U.S.-flagged vessels wherever they are located).

58. United States v. Abrogar, 459 F.3d 430, 435 (3d Cir. 2006).

59. 33 U.S.C. § 2702(a).

B. Enforcement and Accountability Gaps

Both these statutes, while well intentioned, allow for oil polluters to escape full accountability on the premise of enforcement and accountability of loopholes. For example, OPA includes a provision that limits the total liability of a responsible party regarding the costs from damages of a spill unless "the incident was proximately caused by—gross negligence or willful misconduct of, or the violation of an applicable Federal safety, construction, or operating regulation."[60] While these liability limits are intended to "grade" incidents based on the level of negligence, it leaves the door wide open for large corporations to escape total liability.

In *Deepwater Horizon*, BPXP (a U.S. subsidiary of the multibillion-dollar British oil giant BP), was deemed a responsible party for the Deepwater Horizon disaster.[61] The Court ultimately held that OPA liability limits do not apply to BPXP because their violation of a federal regulation was the proximate cause of the incident.[62] While in this case the oil company was responsible for full removal costs and damages, litigation is costly and lengthy, which may dissuade plaintiffs from litigating against the massive burden set by the "gross negligence or willful misconduct" standard for future disasters.[63] Additionally, depending on the financial strength of the responsible party, corporations may be able to "run dry" the government or plaintiffs to achieve favorable outcomes by dragging on litigation and increasing their chances at avoiding full liability.[64]

In cases where the party responsible is short of gross negligence or willful misconduct or does not violate a federal regulation, it may shift the significant financial burden onto taxpayers to cover those damages exceeding the caps.[65] The liability limitation provisions are outdated and fail to address and account for the significant financial impact of modern, large-scale oil disasters. Furthermore, the high standard needed to remove liability limits means that the Trust Fund would need to be used more sparingly to address cost differences. Because large oil companies usually act from a position of financial strength, liability limits act as a weak

60. 33 U.S.C. § 2704(c)(1).

61. *In re* Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010, 21 F. Supp. 3d 657 (E.D. La. 2014).

62. *Id.* at 754-55.

63. *Id.*

64. Yotam Kaplan & Ittai Paldor, *Social Justice and the Structure of the Litigation System*, 101 N.C. L. REV. 469, 470-77 (2023).

65. 33 U.S.C. §§ 2701-2762; 33 U.S.C. §§ 1901-1915.

mechanism to encourage compliance for companies who deem the liability cap to be insignificant, which does little to change their behavior and practices.[66]

Similarly, APPS has limited financial deterrence to oil pollution because of its weak civil penalties. APPS limits civil penalties for MARPOL violations to $25,000 per violation, and each day of continuing violation would constitute another $25,000 penalty.[67] There is also a $5,000 penalty for each false or fraudulent statement.[68] In effect, ships who unlawfully discharge oil face a very small civil penalty which does little to deter unlawful discharges. Although the significance of the penalty is subjective to responsible parties' financial strength, many shipmasters and polluters are either part of, or work for, corporations that are wealthy enough to afford stacking up these penalties.[69] For those who can afford to rack up these penalties, there is little incentive to adhere to APPS because of the cost-benefit analysis that weighs compliance and financial risk.[70]

Additionally, APPS relies heavily on a self-reporting system that requires shipmasters to report incidents.[71] The effectiveness of this provision is reliant on honest and trustworthy shipmasters. It allows for dishonest shipmasters to omit incidents from reports in an attempt to avoid accountability. However, one strength of APPS that is absent from OPA is the standalone provision of criminal penalty.[72] APPS applies a Class D felony to those who knowingly commit a MARPOL violation.[73] The risk of imprisonment is a stronger deterrent to unlawful discharges, but it requires a higher standard of mens rea, with acting "knowingly" being more difficult to prove.

66. PRESIDENT'S NAT'L COMM'N ON THE BP DEEPWATER HORIZON OIL SPILL & OFFSHORE DRILLING, *Final Report of the President's National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling* 19-20 (2011), CHRG-112hhrg63876.pdf.

67. 33 U.S.C. § 1908(b)(1).

68. 33 U.S.C. § 1908(b)(2).

69. U.S. DEP'T OF JUSTICE, *Shipping Company Fined $2M for Maritime Pollution Offense* (Aug. 27, 2025), https://www.justice.gov/opa/pr/shipping-company-fined-2m-maritime-pollution-offense (detailing a 2025 case in which a shipping company received a $2 million dollar fine that is insignificant when compared to the typical profits of large companies such as the one in question).

70. *Id.*

71. 33 U.S.C. § 1906(a).

72. 33 U.S.C. §§ 1902(a)(1)-(3).

73. *Id.*

C. Policy Gaps

Both OPA and APPS have general policy motives that inherently limit the effectiveness of preventing oil pollution. OPA, for example, is often viewed as a reactive framework because its powerful strict liability scheme and access to the Trust Fund are only triggered once a discharge has occurred.[74]

Thus, OPA prioritizes efficient cleanup over the prevention of pollution at its source. However, OPA does include some measures that incentivize prevention. The financial responsibility provision requires operators to show proof that they can pay cleanup costs and damages up to the liability limit, which indirectly incentivizes prevention because operators are motivated by lower premiums and insurability.[75]

Nevertheless, even these indirect incentives pose significant challenges. By effectively delegating proactive oversight to third-party insurers, OPA creates a fragmented and inconsistent regulatory regime.[76] Additionally, this provision fails to promote modern technological or operational safety standards, allowing operators to meet the financial responsibility requirements without meaningful prevention practices.[77] Overall, OPA framework is largely triggered post-discharge, and many of the preventative measures are insufficient in incentivizing or rewarding prevention.[78]

On the other hand, APPS is much more engaged in preventing oil pollution through its compliance requirements. The law requires ships to maintain oil record books and equipment standards which effectively work to prevent oil pollution.[79] However, enforcement of the regulations relies on catching violations rather than incentivizing avoidance. Thus, the preventative goals of APPS are heavily reliant on detection, which may be weak given the jurisdictional and enforcement gaps already mentioned.

IV. RECOMMENDED REFORMS

The gaps highlighted in both OPA and APPS reveal the need for targeted statutory and regulatory reforms that better adapt to modern oil

74. *See* 33 U.S.C. §§ 2701-2762; 33 U.S.C. §§ 1901-1915.

75. 33 U.S.C. § 2716; Jacob D. Unger, *Regulating the Arctic Gold Rush: Recommended Regulatory Reforms to Protect Alaska's Arctic Environment from Offshore Oil Drilling Pollution*, 31 ALASKA L. REV. 263, 287-90 (2014).

76. *Id.*

77. *Id.*

78. *Id.*

79. 33 U.S.C. § 1903(c).

pollution disasters and the evolving behavior of polluters. OPA remains heavily reactive, triggering only once oil has discharged into protected waters, while APPS reveals a fragmented enforcement structure with weak civil penalties that fail to deter unlawful oil pollution. The following reforms aim to strengthen prevention, expand jurisdictional reach, and close enforcement and policy gaps so that both statutory structures can properly address deterrence, prevention, and modernized operating standards.

A. Reforms to the Oil Pollution Act (OPA)

Although OPA provides a more comprehensive structure for oil pollution liability than the regime that predated it, there are still several glaring holes that can be patched to improve its capabilities. Several reforms could address these gaps and improve OPA's effectiveness.

First, the possibility of applying OPA regulations to U.S. vessels outside of the EEZ would work to expand federal authority and result in more incidents being enforced on the high seas. Congress could amend OPA to apply to vessels outside the EEZ by disaffirming the judicial presumption of extraterritoriality.[80] The impact of broadening the jurisdiction would prevent U.S. vessels from bypassing OPA outside U.S. waters.

Second, broadening the definition of "navigable waters" to include inland waters would prove effective in applying OPA liability to responsible parties that discharge oil that indirectly affects navigable streams that are primarily inside the continental U.S.[81]

Third, increasing or removing the liability limits would be a feasible solution to hold responsible parties fully accountable. Many wealthy polluters rely on the Trust Fund to cover removal costs past the liability limit.[82] Increasing or removing these caps would prevent taxpayers from funding a Trust Fund that bails out large oil companies from costs.

Lastly, including criminal penalties that mirror the enforcement structure of APPS would also become a powerful deterrent. OPA does not have a standalone provision for criminal penalties, instead enforcing criminal provisions through the existing Clean Water Act (CWA) framework.[83] The lack of a robust criminal penalty provision in OPA is

80. William S. Dodge, *The New Presumption Against Extraterritoriality*, 133 HARV. L. REV. 1582 (2020).

81. *Rice*, 250 F.3d at 267-268 (emphasizing that OPA's definition of "navigable waters" mirrors CWA's and that groundwater is not a part of the definition).

82. 33 U.S.C. §§ 2701-2762; 33 U.S.C. §§ 1901-1915.

83. 33 U.S.C. § 1321(b)(5) (Clean Water Act provision introducing criminal penalties).

troubling because it defers criminal consequences for unlawful discharges to CWA.[84] However, OPA and CWA have different goals; OPA is primarily focused on funding cleanup and compensating victims while CWA focuses on preventing water pollution generally.[85] The liability structure of the OPA civil penalty provision operates under a strict liability regime. The Supreme Court has historically upheld statutes that impose strict liability criminal offenses in public welfare cases.[86] Here, an extension of the OPA strict liability structure into a standalone OPA criminal provision would increase the possibility of criminal consequences and compliance tailored to OPA's goals.[87] Alternatively, by creating personal criminal risk for key decision-makers through a more moderate mens rea approach, such as adding a "knowingly" or "negligent" violation standard, operators would also be more risk-averse, knowing that there is a possibility of imprisonment.

B. Reforms to the Act to Prevent Pollution from Ships (APPS)

Similarly, the current APPS construction leaves room for stronger enforcement and compliance. Some possible reforms include increasing the civil penalties for MARPOL violations which are staggeringly low in comparison to the financial damage of modern oil pollution.[88] Increasing these fines would aim to deter polluters by increasing the financial consequences of violations.

Second, expanding port state authority and authority on the high seas would possibly curb many lapses in MARPOL enforcement. Currently, a MARPOL violation inside a state's waters can be either prosecuted by the port state or sent to the ship's flag state for prosecution, expanding port states' authority to enforce regardless of flag state action would increase

84. *Id.*; Stephen Smith & Allyn Stern, *Oil Pollution Act: Tips for Spill Response, Compliance, and Enforcement* 2-3, BEVERIDGE & DIAMOND (Feb. 13, 2024), https://www.bdlaw.com/content/uploads/2024/02/2024-02-13-Oil-Pollution-Act-Tips-for-Spill-Response-Compliance-and-Enforcement.pdf.

85. Smith & Stern, *supra* note 84.

86. *See* United States v. Balint, 258 U.S. 250 (1922) (upholding a statute that omitted a mens rea requirement because Congress may impose criminal liability without proof of intent for "public welfare" offenses); United States v. Dotterweich, 320 U.S. 277 (1943) (holding that corporate officers can be criminally liable under the Federal Food, Drug, and Cosmetic Act even without personal knowledge of the violation, emphasizing protection of the public over traditional mens rea).

87. *Id.*

88. PRESIDENT'S NAT'L COMM'N ON THE BP DEEPWATER HORIZON OIL SPILL & OFFSHORE DRILLING, *supra* note 66; *see supra* note 9.

the enforcement mechanism of APPS/MARPOL.[89] Also, on the high seas, since there is no port state, only flag states can prosecute a violation. Allowing any state who catches a violation on the high seas to prosecute under APPS/MARPOL would lead to increased accountability for violators who otherwise would have gone unprosecuted.

Lastly, incentivizing advanced pollution control technology is a possible policy objective that could enhance compliance with standards and lead to more efficient monitoring. For example, tax incentives for ships who maintain the latest technology for oil pollution control and monitoring would likely lead to more ships adopting and innovating new technologies that can lead to less discharges.

V. CONCLUSION

The Oil Pollution Act of 1990 and the Act to Prevent Pollution from Ships form the foundation of oil pollution legislation in the U.S. However, both statutes remain vulnerable to jurisdiction, enforcement, and policy gaps which prevent their goal: preventing environmental harm before it occurs.

First, OPA inherently highlights policy gaps as it is mainly a reactive statute which imposes liability and cleanup measures after an incident has occurred. The weaknesses in enforcement are largely due to the high standard required to remove liability caps and the absence of standalone criminal penalties. Additionally, jurisdictional limitations prevent enforcement of the legislation outside of the EEZ, even for U.S. ships.

Second, APPS applies compliance measures that present its own shortcomings. The statute imposes weak civil penalties, relies only on flag state enforcement on the high seas, and requires self-reporting to remain effective. On the bright side, both these statutes can be modified to adapt to the current scale of oil pollution and consider modern financial, environmental, and behavioral trends that could strengthen the system.

Closing these gaps requires a shift in the policy objectives that brought forth these statutes. Both statutes were enacted in the aftermath of oil pollution disasters and, thus, are largely reactive. Unfortunately, most major environmental legislation is the result of environmental harm that attracts public attention. Learning from history, now is the time to adapt, rather than waiting for the next disaster to provoke reform. Marine environments, coastal communities, and the economic prosperity of our nation depend on stronger ocean governance.

89. MARPOL art. 4(2).