

1970

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### Recommended Citation

Joseph F. Singleton, Pollution of the Marine Environment From Outer Continental Shelf Oil Operations, 22 S. C. L. Rev. 228 (1970).

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# POLLUTION OF THE MARINE ENVIRONMENT FROM OUTER CONTINENTAL SHELF OIL OPERATIONS

## I. INTRODUCTION

In late January and early February 1969 the Santa Barbara offshore drilling disaster focused international attention and concern on large-scale oil pollution of the coastal environment as a potential by-product of offshore oil operations. In only twelve days 250,000 gallons of oil poured into the ocean, despoiling 50 miles of California coast line.<sup>1</sup> The rapid development of the ocean floor as a source of petroleum and other resources has brought with it the danger of oil pollution in disastrous proportions. The Santa Barbara disaster tragically illustrated the destructive nature of unconfined oil and the inadequacy of current measures for dealing with it. It is the purpose of this note to consider the problem of pollution caused by offshore oil operations, public controls, private remedies, and needed legislation.

## II. BACKGROUND

### *A. Growth of Offshore Oil Drilling: An Increasing Pollution Threat*

With greater exploration and new technological developments in undersea mining and drilling, the seabed of the continental shelf promises to become an important source of world petroleum. In the last decade the United States petroleum industry has invested \$7 billion in domestic and \$3 billion in foreign submarine oil field development; estimates for the next decade reach the \$25 billion mark.<sup>2</sup> The rapid increase in the number of offshore oil drilling facilities is illustrated by the fact that almost 6,000 new submarine oil wells have been drilled in the Gulf of Mexico alone since 1960.<sup>3</sup> Wells are also located off the Southern

1. Schmitz, *Pollution, Law, Science, and Damage Awards*, 18 CLEV. ST. L. REV. 456 (1969).

2. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113 (1969). The United States continental shelf alone may contain 100 billion barrels of petroleum, compared to world on-land reserves that have been estimated at 50 billion barrels. *Id.* at 115.

3. SECRETARIES OF INTERIOR AND TRANSPORTATION, A REPORT ON POLLUTION OF THE NATION'S WATERS BY OIL AND OTHER HAZARDOUS SUBSTANCES 10 (1968) [hereinafter cited as REPORT TO THE PRESIDENT].

California coast, in Cook Inlet in Alaska, and in the North Sea.<sup>4</sup>

The threat of oil pollution is present in several phases of offshore oil operations. The ocean may be polluted from blow-outs of the wells, dumpage of oil-based drilling muds and oil soaked cuttings, and losses of oil in production, storage, and transportation. Pipelines laid on the ocean floor from the offshore platforms to storage facilities are further potential pollution sources since they are particularly vulnerable to severe storms and ships' anchors.<sup>5</sup>

### *B. The Santa Barbara Disaster*

The Santa Barbara Channel is located approximately 30 miles offshore from California. Its oil tracts were leased to oil companies by the federal government for the largest total amount and for the largest per-acre amount ever received for an offshore lease-sale.<sup>6</sup> The Secretary of the Interior made this large sale of petroleum leases despite warnings by local conservationists that the area's unique geological formations, which included a thrust fault, were potential dangers to successful oil extraction operations in the area.<sup>7</sup>

On January 28, 1969, a successful oil well in the Santa Barbara Channel suffered a blowout when a drill bit, that had cut a hole in a high-pressure deposit of oil and gas, was withdrawn to replace a worn part. This blowout of the oil well caused tremendous amount of oil and gas to be forced into the sea. The oil slick that formed covered 400 square miles of the ocean's surface and smeared 40 miles of beaches with a 2-inch layer of crude oil.<sup>8</sup> Thereafter, the California Attorney General's Office announced that it would sue on behalf of all damaged parties. A \$500 million claim against the Federal Government was filed with the Secretary of the Interior, and a \$560 million damage suit was instituted against the Union consortium, the lessee of

4. *Id.* "The offshore exploration activity on the East Coast is in its infancy and promises to expand rapidly." *Id.*

5. *Id.* at 9.

6. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113 (1969).

7. *Id.* at 114. Safety standards which normally would have controlled a blowout were not effective because of the unique nature of the Channel seabed. Faults and folds are present in the geology of the Channel, and oil seeps are not uncommon. *Huge Channel Oil Spill Blows Up Storm*, 67 OIL & GAS J., Feb. 10, 1969, at 50.

8. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113, 114-15 (1969).

the tract.<sup>9</sup> One year after the runaway well began to pour huge amounts of oil into the sea, the well in the Santa Barbara Channel remains a source of oil leakage. Senator Edmund S. Muskie, Chairman of the Senate Subcommittee on Air and Water Pollution, recently issued a statement concerned with our environment in which he states:

For over a year the Union Oil Company has shown an inability to cope with the Santa Barbara oil leak. The disaster continues. There is no reason to perpetuate the notion that the investment of the oil [companies] should take precedence over the protection of the rights of the citizens of Santa Barbara.<sup>10</sup>

### *G. Other Sources of Oil Pollution of the Ocean*

The greatest single cause of oil pollution of the oceans is the breakup of the colossal tankers used in the transportation of petroleum around the world. The most spectacular accident of this kind occurred in March 1967 when the tanker *Torrey Canyon*, with 119,000 tons of crude oil in her tanks, ran aground and broke into pieces off the southern coast of England.<sup>11</sup> Discharges of oil from tankers in their cleaning activities and tanker discharge of water used as ballast are also significant contributors to ocean pollution. Oil liberated from sunken World War II tankers and other ships is another suggested source of oil pollution.<sup>12</sup>

Before the Santa Barbara incident, the amount of oil pollution resulting from offshore drilling operations was not too significant, when compared to pollution caused by shipping disasters.<sup>13</sup> Because of rapidly advancing technology, however, the ocean floor has become more easily exploitable. Drilling operations are now possible at depths up to 6,000 feet.<sup>14</sup> The great growth

9. *Id.* at n.13.

10. 116 CONG. REC. No. 5 (daily ed. Jan. 23, 1970) (Statement by Senator Edmund S. Muskie, Chairman of the Senate subcommittee on Air and Water Pollution).

11. See REPORT TO THE PRESIDENT 1; Sweeney, *Oil Pollution of the Oceans*, 37 FORDHAM L. REV. 155 (1968); Comment, *Oil Pollution of the Sea*, 10 HARV. INT'L L.J. 316 (1969).

12. Comment, *Oil Pollution of the Sea*, 10 HARV. INT'L L.J. 316, 320 (1969). A small amount of oil escapes each year from the 428 ships that were sunk off the United States in World War II, but these ships are not an important source of pollution. *Id.*

13. See generally Comment, *Oil Pollution of the Sea*, 10 HARV. INT'L L.J. 316 (1969).

14. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113, 115 (1969).

in the number of new offshore oil wells and the extension of oil operations into submarine oil fields of great depth has substantially increased the pollution risk, especially with regard to the more complicated problems of transportation and storage of the product.

Exploration of the outer continental shelf presents other problems. First, numerous platforms in areas of concentrated shipping create a hazard to safe navigation. Ship collisions with drilling platforms in turn may cause damage to property by pollution through liberation of oil from damaged or sunken vessels.<sup>15</sup> A recent oil platform fire in the Gulf of Mexico illustrates other pollution problems attendant to offshore oil operations. It blazed for over 28 days, polluting the air. Authorities resorted to dynamiting the platform which successfully extinguished the fire but a mile-wide oil slick soon developed, threatening the Louisiana coast. Oil company engineers were considering reigniting the wells.<sup>16</sup>

### III. THE EFFECTS OF OIL POLLUTION

#### *A. Damage to the Coastal Environment*

The pollution of coastal waters with oil has serious consequences. Some of the dangers from oil pollution are:

... the destruction of fish, shellfish, sea birds, fishing gear or beach installations; the creation of fire hazards in ports; the fouling of small boats; and, the loss of natural beauty with resulting financial losses to resort owners and the dependent tourist industry.<sup>17</sup>

Damage to recreational beaches and shorefront property by oil pollution is wide-spread and substantial. Each year one-half million tons of oil are washed ashore.<sup>18</sup> The effects of a major pollution disaster on a recreation region could be serious. It is estimated, for example, that a major spill in the Los Angeles area during the summer months can result in an immediate economic loss to resort owners of \$51 million.<sup>19</sup>

15. REPORT TO THE PRESIDENT 9.

16. The State, Mar. 12, 1970, § A, at 6, col. 5.

17. Sweeney, *Oil Pollution of the Oceans*, 37 *FORDHAM L. REV.* 155, 157 (1968).

18. Howard, *Let's Save Our Beaches*, *This Week Magazine*, Sept. 8, 1968, at 17, col. 1.

19. REPORT TO THE PRESIDENT 4. It was estimated that the area would lose 34 million visits with the economic loss per visit conservatively estimated at \$1.50.

The damage to the beauty and tourism of the beaches and the costly nuisance of oil-smeared pleasure boats and piers, however, are not as serious as the effects of oil pollution on the coastal water's living resources.<sup>20</sup> The deaths of thousands of water birds tragically accompany major oil spills.

Oil slicks on water seem to have an irresistible attraction for water birds. Once a bird alights on the oil mass its feathers become matted and oil soaked. The almost inevitable result is death by drowning through loss of buoyancy, by toxicosis from ingested oil, or from exposure caused by loss of body heat insulation, or, unable to fly, the birds may slowly starve to death or be eaten by predators.<sup>21</sup>

Attempted treatment of rescued birds has had disappointing results.<sup>22</sup>

Surface feeding fish die when they come into contact with floating oil. Even non-fatal contact may make the fish inedible. Shellfish are also often destroyed or mutated by oil pollution.<sup>23</sup> A more ominous effect of oil pollution on the coastal environment is the destruction of the natural food chain and its consequences to marine life. Tiny organisms that inhabit the shallow coastal waters are killed, removing a vital source of food for larger fish. Minute plants which produce 70% of the world's oxygen supply are also depleted by oil pollution.<sup>24</sup>

### B. Cleanup

Oil cleanup techniques have only recently reached some level of efficiency. However, there is still a great need for cleanup methods which can contain huge oil slicks as well as recover the petroleum. The need is especially great to have cleanup facilities

20. See Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113 (1969).

21. REPORT TO THE PRESIDENT 3.

22. *Id.* Of the 7,000 birds rescued after the *Torrey Canyon* spill, only a few hundred lived. *Id.*

23. Comment, *Oil Pollution of the Sea*, 10 HARV. INT'L L.J. 316, 321 (1969). The loss of living resources of the sea has an enormous economic significance:

For instance, the commercial fishermen of this country caught \$454 million worth of fish and shellfish in 1966. Sports fishermen spend about \$3 billion annually to pursue their hobby, and waterfowl hunters spend over \$85 million each year. This portion of the economy depends upon the priceless American resource in the inland waterways and the continental shelf.

REPORT TO THE PRESIDENT 4.

24. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113, 119 (1969).

available for immediate use in all areas where there is a threat of oil pollution.

Physical cleanup operations include containment, source control, environmental protection, pollutant recovery or neutralization, restoration of damaged resources, and disposal of recovered materials.<sup>25</sup>

Cleanup costs for recent spills have varied from as little as \$4,000.00, where straw was used to absorb a small spill, to as much as \$8 million spent by the British government in dealing with the *Torrey Canyon* disaster.<sup>26</sup> Detergents are probably the most widely used, and perhaps the most effective, oil removal material. Unfortunately, they are up to thirty times more harmful to the aquatic community than the oil itself.<sup>27</sup> The United States Coast Guard has used 1,000 foot booms made of plastic foam with plastic "teeth" extending into the water to "sweep" the oil and contain it.<sup>28</sup> Humble Oil Company has developed, and used in actual incidents, an oil skimmer barge which scoops in the oil at the front, separates it and dumps clean water out the back.<sup>29</sup> The usual procedure for the cleanup of oil that has covered the beaches is to soak it up with polyethylene foam or straw and then to scoop it up.<sup>30</sup>

#### IV. REGULATION OF EXPLOITATION OF THE CONTINENTAL SHELF

##### A. *International Law Aspects*

The continental shelf is "the under-sea extension of the continental territory, normally up to a depth of one hundred fathoms, at which point the sea-bed begins to fall steeply off towards the oceanic basin."<sup>31</sup> The discovery of submarine oil-bearing strata throughout the continental shelf has raised the question of the legal status of the seabed in international law because the continental shelf extends well beyond the three-mile limit of territorial waters.<sup>32</sup> The 1958 Geneva Convention on the Continental Shelf delimited the rights of the coastal states in the exploration and exploitation of the natural resources of the

25. REPORT TO THE PRESIDENT 20-21.

26. *Id.* at 19.

27. Comment, *Oil Pollution of the Sea*, 10 HARV. INT'L L.J. 316, 355 (1969).

28. The State, Feb. 17, 1970, § A, at 1, col. 3.

29. The State, Feb. 15, 1970, § D, at 2, col. 1.

30. *Id.*

31. J. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA § 84 (6th ed. 1967).

32. *Id.*

continental shelf.<sup>33</sup> The Convention has presently been ratified by 39 nations, including the United States and the Soviet Union. The Convention gives to the coastal states natural resources in the seabed

to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources . . . .<sup>34</sup>

Although the coastal states have exclusive rights to explore and exploit the continental shelf, the superjacent waters and the airspace above those waters are open to the common use of all nations. The exploration and exploitation of the shelf must not unreasonably interfere with free navigation or fishing rights.<sup>35</sup> The 1958 Convention on the High Seas required every state to draft regulations to prevent pollution of the seas by the discharge of oil from the exploration or exploitation of the seabed.<sup>36</sup>

The extent to which a coastal state can exploit the seabed is unsettled. The Geneva Convention on the Continental Shelf defined the continental shelf in the alternative: the shelf exists to a depth of 200 meters or to where the depth of the waters admits of the exploitation. The "exploitability test" is no longer adequate to define the extent of a state's rights in the seabed because of advanced technology.<sup>37</sup> "There is probably today no portion of the world's continental shelves or continental slopes for which exploitive capability is not in existence or under development."<sup>38</sup> The "exploitability test" also presents the danger of the technologically advanced states making extensive claims to the seabed at the expense of their lesser developed neighbors.<sup>39</sup>

33. Convention on the Continental Shelf, *done at Geneva*, April 29, 1958, [1964] 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311. For the historical background that led to the enactment of the Geneva Convention on the Continental Shelf, see Note, *The Continental Shelf and the United States*, 22 S.C.L. Rev. 34 (1970).

34. Convention on the Continental Shelf, *done at Geneva*, April 29, 1958, [1964] 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311.

35. See J. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* § 90 (6th ed. 1967).

36. Convention on the High Seas, *done at Geneva* April 29, 1958, [1962] 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82. See nn.50 et seq. *infra*.

37. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113, 123 (1969).

38. Address by Robert B. Krueger, College of Engineering, University of South Carolina, Jan. 14, 1970. The advanced nature of present technology is illustrated by the fact that last year the GloMar Challenger, working under a National Science Foundation Grant, drilled core holes in water depths in excess of 20,000 feet. *Id.*

39. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113, 124 (1969).



The removal of definitional problems concerning national control over offshore oil operations does not solve the pollution problem. Effective pollution control depends upon the willingness of the licensing state to protect the environment. A state may be willing to subordinate anti-pollution precautions to revenue and balance of payments considerations.<sup>40</sup>

### *B. United States Legislation*

Two closely interrelated federal statutes laid the basis for federal control of exploitation of the resources of the continental shelf: the Submerged Lands Act of May 22, 1953<sup>41</sup> and the Outer Continental Shelf Lands Act of August 7, 1953.<sup>42</sup> The two acts disposed of a long-standing controversy over the respective rights of the federal government and the states in offshore submarine areas. They provided authorization, previously lacking, for oil and gas leasing of areas of the United States continental shelf to both state and federal governments. The Submerged Lands Act of 1953 vested ownership of all lands lying in the territorial sea (the so-called "three mile limit") in the states but permitted the states to retain historical boundaries in the Gulf of Mexico to the extent of three marine leagues or nine miles.<sup>43</sup> Leasing of submarine lands vested in the states was authorized; outside that area the federal government was given exclusive leasing authority.<sup>44</sup>

The Outer Continental Shelf Lands Act of 1953 sets up machinery for leasing oil and gas rights, for the payment of royalties, and the regulation of offshore operations by the Secretary of the Interior.<sup>45</sup> The term "outer continental shelf" was defined by the Act as all submerged lands lying seaward and outside those lands granted to the states by the Submerged Lands Act "and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control[.]"<sup>46</sup> In

40. *Id.* at 125.

41. 43 U.S.C. §§ 1301-15 (1964).

42. 43 U.S.C. §§ 1331-43 (1964).

43. See J. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* § 87 (6th ed. 1967); Rickey, *A Comparison of Oil and Gas Leasing Authorities in the Gulf of Mexico (States of Alabama, Mississippi, and Louisiana, and the Federal Government), and the Jurisdictional Conflict over the Boundary between State and Federal Authority in the Gulf of Mexico*, 40 MISS. L.J. 351 (1969).

44. Address by Robert B. Krueger, College of Engineering, University of South Carolina, Jan. 14, 1970.

45. See generally Note, *The Continental Shelf and the United States*, 22 S.C.L. REV. 34 (1970); Stone, *United States Legislation Relating to the Continental Shelf*, 17 INT'L AND COMP. L.Q. 103 (1968).

46. 43 U.S.C. § 1331(a) (1964).

addition, the Act made federal law applicable to structures erected on the seabed of the outer continental shelf in connection with exploiting its resources.<sup>47</sup> The United States district courts were given original jurisdiction over all cases and controversies arising in connection with resource removal from the outer continental shelf.<sup>48</sup> The Act adopted, where not inconsistent with the Act and other federal laws and regulations, the civil and criminal laws of each adjacent state as of August 7, 1953, as the body of federal law applicable to the seabed of the outer continental shelf and the fixed structures erected thereon.<sup>49</sup>

The Outer Continental Shelf Lands Act authorizes the Secretary of the Interior to provide for pollution control by regulating offshore oil and mining operations.<sup>50</sup> The regulations promulgated by the Secretary provide that:

The lessee shall not pollute the water of the high seas or damage the aquatic life of the sea or allow extraneous matter to enter and damage any mineral or water-bearing formation. The lessee shall dispose of all useless liquid products of wells in a manner acceptable to the supervisor.<sup>51</sup>

Immediately following the Santa Barbara disaster, the regulations were amended to place the responsibility for control and removal of pollution on the oil company lessee without requiring any proof that the lessee is at fault. Failure of the lessee to

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47. 43 U.S.C. § 1333(a) (1) provides:

The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State; *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

48. 43 U.S.C. § 1333(b) (1964). Proceedings may be brought "in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose." *Id.*

49. 43 U.S.C. § 1333(a) (2) (1964). State taxation laws are inapplicable, and the adoption of state law is not to be interpreted as giving any state basis for claiming an interest in any part of the outer continental shelf. *Id.* at (a) (2) and (a) (3).

50. REPORT TO THE PRESIDENT 16. An additional statute which would allow federal agencies to take action against polluting oil discharges, if the President feels circumstances are severe enough to warrant "federal disaster assistance", is the Federal Disaster Assistance Act of 1950, 42 U.S.C. § 1855 (1964). This contemplates, however, a situation of catastrophic scope. REPORT TO THE PRESIDENT 24.

51. 30 C.F.R. § 250.42 (1968).

remove any oil pollution will result in cleanup action by the federal government at the expense of the lessee.<sup>52</sup> In addition to those regulations promulgated by the Secretary of the Interior, the Regional Oil and Gas Supervisors have issued orders for more specific anti-pollution precautions.<sup>53</sup> The Supervisors inspect and regulate operations and issue orders and rules necessary to prevent damage, waste, or injury. They are also authorized to make tests or surveys to determine the amount of deviation of a well from the vertical, the presence of pressures, and the quantity and quality of oil deposits.<sup>54</sup>

The current form of oil and gas leases of outer continental shelf lands does not contain a specific prohibition against pollution, but the right to conduct geological exploration must be in accordance with approved practices under the regulations and not "unduly harmful to aquatic life".<sup>55</sup> The United States Geological Survey has asserted primary jurisdiction over the outer continental shelf for purposes of preventing pollution of the sea from mineral operations. Other governmental agencies assisting in the enforcement of pollution regulations are the Coast Guard and the Federal Water Pollution Control Administration.<sup>56</sup>

#### V. PRIVATE REMEDIES

The law is not well settled in the area of recovery for oil pollution damage by private persons. Beach-front owners, farmers of the seabed, pier owners, resort owners, and small boat owners are frequently damaged by oil pollution.<sup>57</sup> In *Arizona*

52. Comment, *Oil Pollution of the Sea*, 10 HARV. INT'L L.J. 316 n.124 (1969). The amended portion of the regulations states:

If the waters of the high seas are polluted by the drilling or production operations of the lessee, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and removal of the pollutant and the reparation of any damage, to whomsoever occurring, proximately resulting therefrom shall be at the expense of the lessee, and on failure of the lessee to control and remove the pollutant the Supervisor, in cooperation with other appropriate agencies of the Federal, State, and local governments, or in cooperation with the lessee, or both, shall have the right to accomplish the control and removal of the pollutant at the cost of the lessee, but such action shall not relieve the lessee of responsibility for reparation of damages as provided herein.

34 Fed. Reg. 2503 (1969).

53. See 1 PUBLIC LAND LAW REVIEW COMM'N STUDY OF OUTER CONTINENTAL SHELF LANDS OF THE U.S. 270 (1968).

54. *Id.* at 220.

55. *Id.* at 270.

56. *Id.* at 273-74.

57. Sweeney, *Oil Pollution of the Oceans*, 37 FORDHAM L. REV. 155, 164 (1968).

*Copper Co. v. Gillespie*<sup>58</sup> the United States Supreme Court recognized that there is a remedy for injury from pollution, regardless of the importance of the operation to either the public or the operator. "Liability for environmental pollution has been based on a variety of forms of action, including negligence, nuisance and trespass."<sup>59</sup> Although ocean pollution claimants have recovered on a trespass or nuisance theory,<sup>60</sup> a negligence action is the principal remedy available to private persons.<sup>61</sup>

Consequential damages are often recoverable. In *Kirwin v. Mexican Petroleum Co.*,<sup>62</sup> the owner of a beach bathing facility was allowed to recover consequential damages for oil pollution of public land (the state owns lands below the high water mark in Rhode Island) adjoining the plaintiff's land. However, innkeepers and restaurant owners will likely have difficulty recovering for loss of profits due to cancellations and avoidance by tourists who chose not to vacation at polluted beaches. This difficulty arises from the general rule denying liability for negligent interference with contract rights. But a hotelkeeper who also owns beach property may be able to successfully argue that the damages are consequential to trespass.<sup>63</sup>

Relief for pollution has been given to private persons in terms of the tort of nuisance.<sup>64</sup> In *In re New Jersey Barging Corp.*,<sup>65</sup> the court, referring to nuisance principles, held that homeowners along navigable waters who had suffered loss of the use of the beach and shore because of an oil spill from a barge were entitled to compensation for such annoyance, inconvenience and discomfort.

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58. 230 U.S. 46 (1913).

59. Schmitz, *Pollution, Law, Science, and Damage Awards*, 18 CLEV. ST. L. REV. 456, 458 (1969).

60. Sweeney, *Oil Pollution of the Oceans*, 37 FORDHAM L. REV. 155, 171 (1968).

61. *Id.* See, e.g., *Magnolia Petroleum Co. v. Williams*, 222 Miss. 538, 76 So. 2d 365 (1954); *Rose v. Socony-Vacuum Corp.*, 54 R.I. 411, 173 A. 627 (1934); *General Crude Oil Co. v. Aiken*, 162 Tex. 104, 344 S.W.2d 668 (1961).

62. 267 F. 460 (D.R.I. 1920).

63. Sweeney, *Oil Pollution of the Oceans*, 37 FORDHAM L. REV. 155, 174 (1968).

64. E.g., *Kirwin v. Mexican Petroleum Co.*, 267 F. 460 (D.R.I. 1920); *West Munice Strawboard Co. v. Slack*, 164, Ind. 21, 72 N.E. 879 (1904). See generally W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 592-633 (3d ed. 1964).

65. 168 F.Supp. 925 (S.D.N.Y. 1958). Both public and private nuisance, however, require a substantial interference and not merely an offense to aesthetic senses. Schmitz, *Pollution, Law, Science, and Damage Awards*, 18 CLEV. ST. L. REV. 456, 458 (1969).

"Environmental pollution constituting a nuisance may be remedied by awarding damages; or, when damages at law are inadequate or irreparable harm is threatened, equitable relief or injunction are available."<sup>66</sup> An injunction, however, would probably only be appropriate for continuing offenders. *Res ipsa loquitur* is another theory which has been used by private pollution claimants.<sup>67</sup>

## VI. CONCLUSION

Pollution of the coastal environment by outer continental shelf oil operations is a problem that must be fully recognized and dealt with on a national and international level. New legislation must be enacted that will enable us not only to insure effective control and cleanup of major oil spills but also to use all available means and technology to prevent any avoidable discharge of oil into the sea. Legislation should be proposed creating federal civil remedies for pollution caused by outer continental shelf mineral lease activity.<sup>68</sup> This proposal should establish the right of any state or person who has been damaged by pollution to enjoin further damaging activities by the offending lessees, and to require the lessees to remove the polluting substance or pay the costs of removal. This legislation should provide a greater incentive to self-policing by offshore operators.<sup>69</sup> The Water Quality Improvement Bill of 1969,<sup>70</sup> which was introduced in the 1969 Congressional session, takes a great step toward providing the comprehensive legislation necessary to protect our environment from pollution caused by offshore oil activities. Major features of the proposed legislation are providing stiffer penalties for offenders, making the origination of oil around an offshore installation a *prima facie* case against the owner, requiring the offender to remove the pollutant or pay the cost of removal, and creating a revolving fund for cleanup costs.<sup>71</sup>

66. Schmitz, *Pollution, Law, Science, and Damage Awards*, 18 CLEV. ST. L. REV. 456, 458 (1969).

67. See, e.g., *American Barge Line Co. v. Stoll Oil Refining Co.*, 22 F. Supp. 894 (W.D.Ky. 1938); *Roskey v. Gulf Oil Corp.*, 387 S.W.2d 915 (Tex. Civ. App. 1965).

68. See 1 PUBLIC LAND LAW REVIEW COMM'N, STUDY OF OUTER CONTINENTAL SHELF LANDS OF THE U.S. 295 (1968).

69. *Id.* at 696.

70. H.R. 4148, 91st Cong., 1st Sess. (1969). The proposed Act could possibly serve as a model for future international agreements. See Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113, 127 (1969).

71. Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113, 127 (1969).

The existing system of national regulation of continental shelf exploitation is inadequate international protection against pollution because it vests control in the state whose interest in anti-pollution is easily obscured by short-range monetary benefits.<sup>72</sup> International agreements should be reached which will set minimum standards of operation for exploration and exploitation of the seabed in order to safeguard the marine environment and its living resources.

The greatest need both nationally and internationally is to establish a comprehensive program aimed at using the vast resources of the sea with the greatest possible efficiency and which will afford the least disturbance of the marine environment.<sup>73</sup> The various levels of government which are responsible for pollution control must be coordinated and authorized to take whatever measures are necessary to safeguard our environment.

JOSEPH F. SINGLETON

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72. *Id.* at 126.

73. Senator Muskie expressed the need for a positive program of ocean resources development:

We must apply our conservative ethic to the sea as well as the land. A hap-hazard policy of laissez-faire ocean resource development will only lead to the forfeit of the sea as we have forfeited so much of our land. We must not repeat our mistakes.

116 CONG. REC. No. 5 (daily ed. Jan. 23, 1970).