

Criminal and Civil Penalties Under Federal Law

A. Criminal Penalties Under Federal Law

1. Oil Pollution Act of 1990

The OPA does not contain criminal penalties.

2. Endangered Species Act

Section 11(b) – Any person who knowingly violates any provision of the Act shall be fined not more than \$50,000 and imprisoned not more than 1 year. Killing animals protected by the Act would constitute a violation. This Act is prosecuted by federal authorities. Difficulty for federal prosecutors is proving knowledge.

3. Marine Mammal Protection Act

16 USC § 1375(b) - Any person who knowingly violates any provision of the act relating to the protection of marine mammals is subject to a fine of up to \$20,000 for each violation and up to 1 year in prison. This Act is prosecuted by federal authorities. Difficulty for federal prosecutors is proving knowledge.

4. Water Pollution Prevention and Control - 13 USC §§ 1319 & 1321

The Code contains requirements that facility operators notify the federal government of oil discharges. Failure to comply with notification provisions may result in up to 5 years in prison and fines.

Any person who negligently violates 13 USC 1321 is subject to a fine of \$2,500 - \$25,000 per day of violation and up to 1 year in prison. Fines and penalties increase for subsequent offenses.

Any person who knowingly violates 13 USC 1321 is subject to a fine of \$5,000 - \$50,000 per day of violation and up to 3 years in prison. Fines and penalties increase for subsequent offenses.

Any person who knowingly violates 13 USC 1321 and knows at the time that his actions place another in imminent danger of death or serious bodily injury is subject to a fine of up to \$250,000 and up to 15 years in prison. The Act provides strict knowledge requirements in order to prosecute pursuant to this provision.

False statements - Any person who knowingly makes any false material statement, representation, or certification in any record, report, or other document filed or required to be maintained or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained is subject to a fine up to \$10,000 and up to 2 years in prison. Fines and penalties increase for subsequent offenses.

5. Migratory Bird Treaty Act

The Act provides for criminal prosecution for the unlawful taking of migratory birds.¹ It has generally been held to be a strict liability statute so the federal government does not have to prove knowledge or intent to injure or kill migratory birds. Criminal penalties include fines up to \$15,000 and terms of imprisonment of up to a year.

B. Civil Penalties Under Federal Law

1. Oil Pollution Act of 1990

Section 1002 - A responsible party is liable for removal costs and for specified damages as set forth in the Act.

Removal costs include:

All removal costs incurred by a state

Damages include:

- Damages for injury to, destruction of, loss of, or loss of use of a natural resource. Damages are recoverable by a state;
- Damages for injury to or economic losses resulting from destruction of real or personal property; Damages are recoverable by any claimant;
- Damages for loss of subsistence use of national resources recoverable by any claimant who uses the resources. Damages are recoverable by any claimant;
- Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, loss of, or destruction of real or personal property or natural resources. These damages can be recovered by a state or political subdivision of a state.
- Damages equal to loss of profits or impairment of earning capacity; Recoverable by any claimant;
- Damages for net costs of providing increased or additional public services during or after removal activities; Recoverable by state or political subdivision of the state.

¹ 836 bird species are currently protected by the Migratory Bird Treaty Act. See <http://www.fws.gov/pacific/migratorybirds/mbta.htm>

Section 1004 – Removal costs are not limited but damages are limited to \$75 million.

Section 1018 – Allows states to create additional requirements.

Section 4303 - The Act provides for various financial responsibility requirements. Persons who violated provisions relating to financial responsibility may be fined \$25,000 per day. This provision is enforced by the President and the Department of Justice.

2. Endangered Species Act

Section 11(a) - Any person who knowingly violates any provision of the Act shall be fined not more than \$25,000. Killing animals protected by the Act would constitute a violation. This provision is enforced in a federal administrative proceeding. Difficulty for federal officials will be proving knowledge.

3. Marine Mammal Protection Act

Any person who violates the MMPA is subject to a civil penalty of up to \$10,000 for each violation. Each unlawful taking is a separate offense. Civil violations under the MMPA do not require intent.

4. Water Pollution Prevention and Control - 13 USC § 1321

A person may be assessed a civil penalty of up to \$125,000 for failing to comply with relevant federal regulations applicable after an oil discharge occurs.

In the alternative, a person may be assessed a civil penalty of up to \$25,000 per day or \$1,000 per barrel of oil discharged. In addition, a person may be assessed a civil penalty of up to \$25,000 per day for failing to properly carry out the removal of oil and may be assessed a penalty of \$25,000 per day for failing to comply with relevant federal regulations.

In cases of gross negligence, a minimum penalty of \$100,000 may apply and a maximum of up to \$3,000 per barrel of oil discharged.

5. Migratory Bird Treaty Act

The Migratory Bird Treaty Act provides for criminal penalties and fines but does not provide for civil penalties.