

OIL SPILL ACCOUNTABILITY AND ENVIRONMENTAL
PROTECTION ACT OF 2010

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JULY 27, 2010.—Ordered to be printed
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Mr. OBERSTAR, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5629]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5629) to ensure full recovery from responsible parties of damages for physical and economic injuries, adverse effects on the environment, and clean up of oil spill pollution, to improve the safety of vessels and pipelines supporting offshore oil drilling, to ensure that there are adequate response plans to prevent environmental damage from oil spills, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Oil Spill Accountability and Environmental Protection Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Repeal of and adjustments to limitation on liability.
- Sec. 3. Evidence of financial responsibility for offshore facilities.
- Sec. 4. Damages to human health.
- Sec. 5. Clarification of liability for discharges from mobile offshore drilling units.
- Sec. 6. Standard of review for damage assessment.
- Sec. 7. Information on claims.
- Sec. 8. Limitation of Liability Act.
- Sec. 9. Death on the High Seas Act.
- Sec. 10. Jones Act.
- Sec. 11. Americanization of offshore operations in the exclusive economic zone.
- Sec. 12. Safety management systems for mobile offshore drilling units.
- Sec. 13. Safety standards for mobile offshore drilling units.

- Sec. 14. Coast Guard marine safety workforce.
- Sec. 15. Operational control of mobile offshore drilling units.
- Sec. 16. Leave retention authority.
- Sec. 17. Single-hull tankers.
- Sec. 18. Repeal of response plan waiver.
- Sec. 19. National Contingency Plan.
- Sec. 20. Tracking Database.
- Sec. 21. Safety of transportation-related offshore platforms.
- Sec. 22. Evaluation and approval of response plans; maximum penalties.
- Sec. 23. Oil and hazardous substance cleanup technologies.
- Sec. 24. Implementation of oil spill prevention and response authorities.
- Sec. 25. Disaster damage notification and assessment.
- Sec. 26. Impacts to Indian Tribes.
- Sec. 27. National Commission study of Federal management and oversight of offshore drilling.
- Sec. 28. Federal enforcement actions.
- Sec. 29. Time required before electing to proceed with judicial claim or against the Fund.
- Sec. 30. Report on former Coast Guard officials employed by recognized organizations of foreign flag administrations.
- Sec. 31. Authorized level of Coast Guard personnel.
- Sec. 32. Clarification of memorandums of understanding.
- Sec. 33. Study of health effects of oil spill.
- Sec. 34. Offshore energy security.
- Sec. 35. Oil spill response vessel database.
- Sec. 36. Offshore sensing and monitoring systems.
- Sec. 37. Vice commandant; vice admirals.
- Sec. 38. Oil and gas exploration and production.
- Sec. 39. Authorization of appropriations.

SEC. 2. REPEAL OF AND ADJUSTMENTS TO LIMITATION ON LIABILITY.

(a) IN GENERAL.—Section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704) is amended—

- (1) in subsection (a)—
 - (A) in paragraph (2)—
 - (i) by striking “\$800,000,,” and inserting “\$800,000,;” and
 - (ii) by adding “and” after the semicolon at the end;
 - (B) by striking paragraph (3); and
 - (C) by redesignating paragraph (4) as paragraph (3);
- (2) in subsection (b)(2) by striking the second sentence; and
- (3) by striking subsection (d)(4) and inserting the following:

“(4) ADJUSTMENT OF LIMITS ON LIABILITY.—Not later than 3 years after the date of enactment of the Oil Spill Accountability and Environmental Protection Act of 2010, and at least once every 3 years thereafter, the President shall review the limits on liability specified in subsection (a) and shall by regulation revise such limits upward to reflect either the amount of liability that the President determines is commensurate with the risk of discharge of oil presented by a particular category of vessel or any increase in the Consumer Price Index, whichever is greater.”

(b) APPLICATION.—The repeals and amendments made by this section shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including to claims pending on or before the date of enactment of this Act.

SEC. 3. EVIDENCE OF FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES.

(a) MODIFICATION.—Section 1016(c)(1) of the Oil Pollution Act of 1990 (33 U.S.C. 2716(c)(1)) is amended—

- (1) in subparagraph (B) by striking “subparagraph (A) is” and all that follows before the period and inserting “subparagraph (A) is \$1,500,000,000”;
- (2) by striking subparagraph (C) and inserting the following:

“(C) GREATER AMOUNT.—

“(i) SPECIFIC FACILITIES.—If the President determines that an amount of financial responsibility for a responsible party that is greater than the amount required by subparagraph (B) is justified based on the relative operational, environmental, human health, and other risks posed by the quantity, quality, or location of oil that is explored for, drilled for, produced, or transported by the responsible party, the evidence of financial responsibility required shall be for an amount determined by the President.

“(ii) ADJUSTMENT FOR ALL OFFSHORE FACILITIES.—

“(I) IN GENERAL.—Not later than 3 years after the date of enactment of the Oil Spill Accountability and Environmental Protection Act of 2010, and at least once every 3 years thereafter, the President shall review the level of financial responsibility specified in subparagraph (B) and may by regulation revise such level upwards to a level that the President determines is justified based on the relative operational, environmental, human health, and other risks posed by the quantity, quality, or location of oil that is explored for, drilled for, produced, or transported by the responsible party.

“(II) NOTICE TO CONGRESS.—Upon completion of a review specified in subclause (I), the President shall notify Congress as to whether the President will revise the levels of financial responsibility and the factors for making such determination.”; and

(3) by striking subparagraph (E).

(b) APPLICATION; TRANSITION PERIOD.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to any lease for exploration, development, or production of minerals, as defined by the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), that the Secretary of the Interior awards after the date of enactment of this Act.

(2) TRANSITION PERIOD.—Notwithstanding paragraph (1), not later than 6 months after the date of enactment of this Act, the President shall require any person who holds, on the date of enactment of this Act, a lease for exploration, development, or production of minerals, as defined by the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), located in the navigable waters, adjoining shoreline, or the Exclusive Economic Zone of the United States to provide evidence of financial responsibility consistent with the amendments made by this section.

SEC. 4. DAMAGES TO HUMAN HEALTH.

(a) IN GENERAL.—Section 1002(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)) is amended by adding at the end the following:

“(G) HUMAN HEALTH.—

“(i) IN GENERAL.—Damages to human health, including fatal injuries, which shall be recoverable by any claimant who has a demonstrable, adverse impact to human health or, in the case of a fatal injury to an individual, a claimant filing a claim on behalf of such individual.

“(ii) INCLUSION.—For purposes of clause (i), the term ‘human health’ includes mental health.”.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including such claims pending on or before the date of enactment of this Act.

SEC. 5. CLARIFICATION OF LIABILITY FOR DISCHARGES FROM MOBILE OFFSHORE DRILLING UNITS.

(a) IN GENERAL.—Section 1004(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2704(b)(2)) is amended—

(1) by striking “from any incident described in paragraph (1)” and inserting “from any discharge of oil, or substantial threat of a discharge of oil, into or upon the water”; and

(2) by striking “liable” and inserting “liable as described in paragraph (1)”.

(b) APPLICATION.—The amendments made by subsection (a) shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including such claims pending on or before the date of enactment of this Act.

SEC. 6. STANDARD OF REVIEW FOR DAMAGE ASSESSMENT.

Section 1006(e)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(e)(2)) is amended—

(1) in the heading by striking “REBUTTABLE PRESUMPTION” and inserting “JUDICIAL REVIEW OF ASSESSMENTS”; and

(2) by striking “have the force and effect” and all that follows before the period and inserting the following: “be subject to judicial review under subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act), on the basis of the administrative record developed by the lead Federal trustee as provided in such regulations”.

SEC. 7. INFORMATION ON CLAIMS.

(a) IN GENERAL.—Title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) is amended by inserting after section 1013 the following:

“SEC. 1013A. INFORMATION ON CLAIMS.

“In the event of a spill of national significance, the President may require a responsible party or a guarantor of a source designated under section 1014(a) to provide to the President any information on or related to claims, either individually, in the aggregate, or both, that the President requests, including—

“(1) the transaction date or dates of such claims, including processing times; and

“(2) any other data pertaining to such claims necessary to ensure the performance of the responsible party or the guarantor with regard to the processing and adjudication of such claims.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 2 of such Act is amended by inserting after the item relating to section 1013 the following:

“Sec. 1013A. Information on claims.”.

(c) APPLICATION.—The amendments made by this section shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including such claims pending on or before the date of enactment of this Act.

SEC. 8. LIMITATION OF LIABILITY ACT.

(a) REPEAL.—Chapter 305 of title 46, United States Code, is amended—

(1) by repealing sections 30505, 30506, 30507, 30511, and 30512; and

(2) by redesignating sections 30508 through 30510 as sections 30505 through 30507, respectively.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) OIL POLLUTION ACT OF 1990.—Section 1018 of the Oil Pollution Act of 1990 (33 U.S.C. 2718) is amended—

(A) in subsection (a), by striking “or the Act of March 3, 1851”; and

(B) in subsection (c), by striking “, the Act of March 3, 1851 (46 U.S.C. 183 et seq.)”.

(2) TITLE 46.—Section 14305(a) of title 46, United States Code, is amended by striking paragraph (5) and redesignating paragraphs (6) through (15) as paragraphs (5) through (14), respectively.

(3) CLERICAL AMENDMENT.—The analysis at the beginning of chapter 305 of title 46, United States Code, is amended by striking the items relating to sections 30505 through 30512 and inserting the following:

“30505. Provisions requiring notice of claim or limiting time for bringing action.

“30506. Provisions limiting liability for personal injury or death.

“30507. Vicarious liability for medical malpractice with regard to crew.”.

(c) APPLICATION.—The repeals and amendments made by this section shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including to claims pending on or before the date of enactment of this Act.

SEC. 9. DEATH ON THE HIGH SEAS ACT.

(a) IN GENERAL.—The Death on the High Seas Act (chapter 303 of title 46, United States Code), is amended—

(1) in section 30302—

(A) by inserting “or law” after “admiralty”; and

(B) by striking the last sentence and inserting “The action shall be for the exclusive benefit of the survivors, including the decedent’s spouse, parent, child, or dependent relatives.”;

(2) in section 30303—

(A) by inserting “and nonpecuniary loss” after “pecuniary loss”;

(B) by striking “by” and all that follows through the end, and inserting “, plus a fair compensation for the decedent’s pain and suffering.”; and

(C) by adding at the end the following: “In this section, the term ‘nonpecuniary loss’ means losses authorized under general maritime law including loss of care, comfort, and companionship.”;

(3) in section 30305 by inserting “or law” after “admiralty”;

(4) in section 30306, by inserting “or law” after “admiralty”;

(5) by striking section 30307; and

(6) in the analysis at the beginning of such chapter, by striking the item relating to section 30307.

(b) APPLICATION.—The amendments made by subsection (a) shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including such claims pending on or before the date of enactment of this Act.

SEC. 10. JONES ACT.

(a) IN GENERAL.—Section 30104 of title 46, United States Code, is amended—

(1) in the second sentence, by striking “Laws” and inserting “Except as provided in subsection (b), laws”;

(2) by inserting “(a) IN GENERAL.—” before the first sentence; and

(3) by adding at the end the following:

“(b) NONPECUNIARY LOSSES FOR DEATH.—In addition to other amounts authorized by law, the recovery for a seaman who dies may also include nonpecuniary losses that are authorized under general maritime law, such as the loss of care, comfort, and companionship.”.

(b) APPLICATION.—The amendments made by subsection (a) shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including such claims pending on or before the date of enactment of this Act.

SEC. 11. AMERICANIZATION OF OFFSHORE OPERATIONS IN THE EXCLUSIVE ECONOMIC ZONE.**(a) REGISTRY ENDORSEMENT REQUIRED.—**

(1) IN GENERAL.—Section 12111 of title 46, United States Code, is amended by adding at the end the following:

“(e) RESOURCE ACTIVITIES IN THE EEZ.—Except for activities requiring an endorsement under sections 12112 or 12113, only a vessel for which a certificate of documentation with a registry endorsement is issued and that is owned by a citizen of the United States (as determined under section 50501(d)) may engage in support of exploration, development, or production of resources in, on, above, or below the exclusive economic zone or any other activity in the exclusive economic zone to the extent that the regulation of such activity is not prohibited under customary international law.”.

(2) APPLICATION.—The amendment made by paragraph (1) applies only with respect to exploration, development, production, and support activities that commence on or after July 1, 2011.

(b) LEGAL AUTHORITY.—Section 2301 of title 46, United States Code, is amended—

(1) by striking “chapter” and inserting “title”; and

(2) by inserting after “1988” the following: “and the exclusive economic zone to the extent that the regulation of such operation is not prohibited under customary international law”.

(c) TRAINING FOR COAST GUARD PERSONNEL.—Not later than 180 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish a program to provide Coast Guard personnel with the training necessary for the implementation of the amendments made by this section.

SEC. 12. SAFETY MANAGEMENT SYSTEMS FOR MOBILE OFFSHORE DRILLING UNITS.

Section 3203 of title 46, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

“(b) MOBILE OFFSHORE DRILLING UNITS.—The safety management system described in subsection (a) for a mobile offshore drilling unit operating in waters subject to the jurisdiction of the United States (including the exclusive economic zone) shall include processes, procedures, and policies related to the safe operation and maintenance of the machinery and systems on board the unit that are used for the industrial business and functions of the unit, including drilling operations.”.

SEC. 13. SAFETY STANDARDS FOR MOBILE OFFSHORE DRILLING UNITS.

Section 3306 of title 46, United States Code, is amended by adding at the end the following:

“(k) In prescribing regulations for mobile offshore drilling units, the Secretary shall develop standards to address a worst-case event involving a discharge as that term is defined in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).”.

SEC. 14. COAST GUARD MARINE SAFETY WORKFORCE.

(a) IN GENERAL.—Chapter 5 of title 14, United States Code, is amended by adding at the end the following:

“§ 99. Marine safety workforce

“(a) MARINE SAFETY WORKFORCE.—The Secretary, acting through the Commandant—

“(1) shall designate a sufficient number of positions to be in the Coast Guard’s marine safety workforce to perform vessel inspections and marine casualty investigations; and

“(2) shall ensure that a sufficient number of fully qualified officers, members, and civilian employees of the Coast Guard are assigned to those positions.

“(b) CAREER PATHS.—The Secretary, acting through the Commandant, shall ensure that appropriate career paths for an officer, member, or civilian employee of the Coast Guard who wishes to pursue a career in marine safety are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior marine safety positions. The Secretary shall make available published information on such career paths.

“(c) QUALIFICATIONS.—With regard to the marine safety workforce, an officer, member, or civilian employee of the Coast Guard assigned as a—

“(1) marine inspector shall have the training, experience, and qualifications equivalent to that required for a similar position at a classification society recognized by the Secretary under section 3316 of title 46 for the type of vessel, system, or equipment that is inspected;

“(2) marine casualty investigator shall have training, experience, and qualifications in investigation, marine casualty reconstruction, evidence collection

and preservation, human factors, and documentation using best investigation practices by Federal and non-Federal entities;

“(3) marine safety engineer shall have knowledge, skill, and practical experience in—

“(A) the construction and operation of commercial vessels;

“(B) judging the character, strength, stability, and safety qualities of such vessels and their equipment; or

“(C) the qualifications and training of vessel personnel; or

“(4) marine inspector inspecting mobile offshore drilling units shall have knowledge, skill, and practical experience in—

“(A) Federal, State, and international law compliance;

“(B) personnel training;

“(C) drilling operations;

“(D) mobile offshore drilling unit and maritime safety;

“(E) the effect of weather on mobile offshore drilling unit safety and operations;

“(F) ship handling and positioning; and

“(G) emergency procedures.

“(d) APPRENTICESHIP REQUIREMENTS.—

“(1) IN GENERAL.—An officer, member, or civilian employee of the Coast Guard in training to become a marine inspector, marine casualty investigator, or a marine safety engineer shall serve a minimum of one-year apprenticeship, unless otherwise directed by the Commandant, under the guidance of a qualified marine inspector (including an inspector of mobile offshore drilling units), marine casualty investigator, or marine safety engineer. The Commandant may authorize shorter apprenticeship periods for certain qualifications, as appropriate.

“(2) HIGHLY SPECIALIZED VESSELS.—

“(A) IN GENERAL.—In addition to the requirement under paragraph (1), any officer, member, or employee of the Coast Guard assigned as a marine inspector or marine casualty investigator with responsibility for inspecting or responding to casualties involving highly specialized vessels must have served a minimum of 6 months apprenticeship with those vessels.

“(B) HIGHLY SPECIALIZED VESSELS DEFINED.—In this paragraph the term ‘highly specialized vessel’ includes mobile offshore drilling units, tank vessels, and vessels carrying certain dangerous cargoes as defined by the Commandant.”.

(b) CLERICAL AMENDMENT.—The analysis at the beginning of such chapter is amended by adding at the end the following:

“99. Marine safety workforce.”.

(c) SUPPORT FOR MARITIME SAFETY AND SECURITY TEAMS PARTICIPATING IN “DEEP-WATER HORIZON” RESPONSE.—

(1) REVIEW AND REPORT.—The Secretary of the department in which the Coast Guard is operating shall review and report to Congress on the needs of maritime safety and security teams participating in patrols and setup of safety zones for, and management of, the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit DEEPWATER HORIZON.

(2) FUNDING.—There is authorized to be appropriated to such Secretary, to remain available until expended, such sums as are necessary to support the response of the Coast Guard and any Coast Guard maritime safety and security team in such patrols, setup of safety zones, and management.

SEC. 15. OPERATIONAL CONTROL OF MOBILE OFFSHORE DRILLING UNITS.

(a) LICENSES FOR MASTERS OF MOBILE OFFSHORE DRILLING UNITS.—

(1) IN GENERAL.—Chapter 71 of title 46, United States Code, is amended by redesignating sections 7104 through 7114 as sections 7105 through 7115, respectively, and by inserting after section 7103 the following:

“§ 7104. Licenses for masters of mobile offshore drilling units

“A license as master of a mobile offshore drilling unit may be issued only to an applicant who has been issued a license as master under section 7101(c)(1) and has demonstrated the knowledge, understanding, proficiency, and sea service required to be responsible for all industrial business or functions of a mobile offshore drilling unit, including all drilling operations of that type of unit for which the applicant is to be licensed.”.

(2) CONFORMING AMENDMENT.—Section 7109 of such title, as so redesignated, is amended by striking “section 7106 or 7107” and inserting “section 7107 or 7108”.

(3) CLERICAL AMENDMENT.—The analysis at the beginning of such chapter is amended by striking the items relating to sections 7104 through 7114 and inserting the following:

“7104. Licenses for masters of mobile offshore drilling units.
 “7105. Certificates for medical doctors and nurses.
 “7106. Oaths.
 “7107. Duration of licenses.
 “7108. Duration of certificates of registry.
 “7109. Termination of licenses and certificates of registry.
 “7110. Review of criminal records.
 “7111. Exhibiting licenses.
 “7112. Oral examinations for licenses.
 “7113. Licenses of masters or mates as pilots.
 “7114. Exemption from draft.
 “7115. Fees.”.

(b) REQUIREMENT FOR CERTIFICATE OF INSPECTION.—Section 8101(a)(2) of title 46, United States Code, is amended by inserting before the semicolon the following: “and shall at all times be under the command of a master licensed under section 7104”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 6 months after the date of enactment of this Act.

SEC. 16. LEAVE RETENTION AUTHORITY.

(a) IN GENERAL.—Chapter 11 of title 14, United States Code, is amended by inserting after section 425 the following:

“§ 426. Emergency leave retention authority

“(a) IN GENERAL.—A duty assignment for an active duty member of the Coast Guard in support of a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or in response to a spill of national significance shall be treated, for the purpose of section 701(f)(2) of title 10, as a duty assignment in support of a contingency operation.

“(b) DEFINITIONS.—In this section:

“(1) SPILL OF NATIONAL SIGNIFICANCE.—The term ‘spill of national significance’ means a discharge of oil or a hazardous substance that is declared by the Commandant to be a spill of national significance.

“(2) DISCHARGE.—The term ‘discharge’ has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 425 the following:

“426. Emergency leave retention authority.”.

SEC. 17. SINGLE-HULL TANKERS.

(a) APPLICATION OF TANK VESSEL CONSTRUCTION STANDARDS.—Section 3703a(b) of title 46, United States Code, is amended by striking paragraph (3), and redesignating paragraphs (4) through (6) as paragraphs (3) through (5), respectively.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2011.

SEC. 18. REPEAL OF RESPONSE PLAN WAIVER.

Section 311(j)(5)(G) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)(G)) is amended—

(1) by striking “a tank vessel, nontank vessel, offshore facility, or onshore facility” and inserting “a nontank vessel”;

(2) by striking “tank vessel, nontank vessel, or facility” and inserting “nontank vessel”; and

(3) by adding at the end the following: “A mobile offshore drilling unit, as such term is defined in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701), is not eligible to operate without a response plan approved under this section.”.

SEC. 19. NATIONAL CONTINGENCY PLAN.

(a) GUIDELINES FOR CONTAINMENT BOOMS.—Section 311(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)(2)) is amended by adding at the end the following:

“(N) Guidelines regarding the use of containment booms to contain a discharge of oil or a hazardous substance, including identification of quantities of containment booms likely to be needed, available sources of containment booms, and best practices for containment boom placement, monitoring, and maintenance.”.

(b) SCHEDULE FOR USE OF DISPERSANTS, OTHER CHEMICALS, AND OTHER SPILL MITIGATING DEVICES AND SUBSTANCES.—Section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)) is amended by adding at the end the following:

“(5) SCHEDULE FOR USE OF DISPERSANTS, OTHER CHEMICALS, AND OTHER SPILL MITIGATING DEVICES AND SUBSTANCES.—

“(A) RULEMAKING.—Not later than 15 months after the date of enactment of this paragraph, the President, acting through the Administrator, after providing notice and an opportunity for public comment, shall issue a revised regulation for the development of the schedule for the use of dispersants, other chemicals, and other spill mitigating devices and substances developed under paragraph (2)(G) in a manner that is consistent with the requirements of this paragraph and shall modify the existing schedule to take into account the requirements of the revised regulation.

“(B) SCHEDULE LISTING REQUIREMENTS.—In issuing the regulation under subparagraph (A), the Administrator shall—

“(i) with respect to dispersants, other chemicals, and other spill mitigating substances included or proposed to be included on the schedule under paragraph (2)(G)—

“(I) establish minimum toxicity and efficacy testing criteria, taking into account the results of the study carried out under subparagraph (C);

“(II) provide for testing or other verification (independent from the information provided by an applicant seeking the inclusion of such dispersant, chemical, or substance on the schedule) related to the toxicity and effectiveness of such dispersant, chemical, or substance;

“(III) establish a framework for the application of any such dispersant, chemical, or substance, including—

“(aa) quantity restrictions or application conditions;

“(bb) the quantity thresholds for which consultation with and approval by the Regional Response Team and the Federal On-Scene Coordinator is required;

“(cc) the criteria to be used to develop the appropriate maximum quantity of any such dispersant, chemical, or substance that the Administrator determines may be used, both on a daily and cumulative basis; and

“(dd) a ranking, by geographic area, of any such dispersant, chemical, or substance based on a combination of its effectiveness for each type of oil and its level of toxicity;

“(IV) establish a requirement that the volume of oil or hazardous substance discharged, and the volume and location of any such dispersant, chemical, or substance used, be measured and made publicly available;

“(V) notwithstanding any other provision of law, require the public disclosure of the specific chemical identity, including the chemical and common name of any ingredients contained in, and specific chemical formulas or mixtures of, any such dispersant, chemical, or substance; and

“(VI) in addition to existing authority, expressly provide a mechanism for the delisting of any such dispersant, chemical, or substance based on any information made available to the Administrator that demonstrates that such dispersant, chemical, or substance poses a significant risk to or impact on human health or the environment;

“(ii) with respect to a dispersant, other chemical, and other spill mitigating substance not specifically identified on the schedule, and prior to the use of such dispersant, chemical, or substance in accordance with paragraph (2)(G), establish—

“(I) the minimum toxicity and efficacy levels for such dispersant, chemical, or substance;

“(II) the information, including the specific chemical identity, formula, and mixtures, on such dispersant, other chemical, or other spill mitigating substance that shall be made publicly available; and

“(III) such additional information as the Administrator determines necessary; and

“(iii) with respect to other spill mitigating devices included or proposed to be included on the schedule under paragraph (2)(G)—

“(I) require the manufacturer of such device to carry out a study of the risks and effectiveness of the device according to guidelines developed and published by the Administrator; and

“(II) in addition to existing authority, expressly provide a mechanism for the delisting of any such device based on any information made available to the Administrator that demonstrates that such device poses a significant risk to or impact on human health or the environment.

“(C) STUDY.—

“(i) IN GENERAL.—Not later than 3 months after the date of enactment of this paragraph, the Administrator shall initiate a study of the potential risks and impacts to human health and the environment, including acute and chronic risks, from the use of dispersants, other chemicals, and other spill mitigating substances, if any, that may be used to carry out the National Contingency Plan, including an assessment of such risks and impacts—

“(I) on a representative sample of biota and types of oil from locations where such dispersants, chemicals, or substances may potentially be used;

“(II) on human health, including individuals most likely to come into contact with such dispersants, chemicals, or substances, such as oil spill response action workers; and

“(III) that result from any by-products created from the use of such dispersants, chemicals, or substances.

“(ii) INFORMATION FROM MANUFACTURERS.—

“(I) IN GENERAL.—In conjunction with the study authorized by clause (i), the Administrator shall determine the requirements for manufacturers of dispersants, chemicals, or substances to evaluate the potential risks and impacts to human health and the environment, including acute and chronic risks, associated with the use of the dispersants, chemicals, or substances and any byproducts generated by such use and to provide the details of such evaluation as a condition for listing on the schedule according to guidelines developed and published by the Administrator.

“(II) MINIMUM REQUIREMENTS FOR EVALUATION.—Any evaluation carried out by a manufacturer under this clause shall include—

“(aa) information on the oils and locations where such dispersants, chemicals, or substances may potentially be used;

“(bb) an evaluation of the variety of different dispersants, chemicals, or substances that may be used in a response; and

“(cc) an assessment of application and impacts from subsea use of the dispersant, chemical, or substance, including the potential long term effects of such use.

“(D) PERIODIC REVISIONS.—

“(i) IN GENERAL.—Not later than 5 years after the date of the issuance of the regulation under this paragraph, and at least once every 5 years thereafter, the Administrator shall review the schedule for the use of dispersants, other chemicals, and other spill mitigating devices and substances that may be used to carry out the National Contingency Plan and update or revise the schedule, as necessary, to ensure the protection of human health and the environment.

“(ii) EFFECTIVENESS.—The Administrator shall ensure, to the maximum extent practicable, that each update or revision to the schedule increases the minimum effectiveness value necessary for listing a dispersant, other chemical, or other spill mitigating device or substance on the schedule.

“(E) APPROVAL OF USE AND APPLICATION OF DISPERSANTS.—

“(i) IN GENERAL.—In issuing the regulation under subparagraph (A), the Administrator shall require the approval of the Federal On-Scene Coordinator, in coordination with the Administrator, for all uses of a dispersant, other chemical, or other spill mitigating substance in any removal action, including—

“(I) any such dispersant, chemical, or substance that is included on the schedule developed pursuant to this subsection; or

“(II) any dispersant, chemical, or other substance that is included as part an approved area contingency plan or response plan developed under this section.

“(ii) REPEAL.—Any part of section 300.910 of title 40, Code of Federal Regulations, that is inconsistent with this paragraph is hereby repealed.

“(6) REVIEW OF AND DEVELOPMENT OF CRITERIA FOR EVALUATING RESPONSE PLANS.—

“(A) REVIEW.—Not later than 6 months after the date of enactment of this paragraph, the President shall review the procedures and standards developed under paragraph (2)(J) to determine their sufficiency in ceasing and removing a worst case discharge of oil or hazardous substances, and for mitigating or preventing a substantial threat of such a discharge.

“(B) RULEMAKING.—Not later than 1 year after the date of enactment of this paragraph, the President, after providing notice and an opportunity for public comment, shall undertake a rulemaking to—

“(i) revise the procedures and standards for ceasing and removing a worst case discharge of oil or hazardous substances, and for mitigating or preventing a substantial threat of such a discharge; and

“(ii) develop a metric for evaluating the National Contingency Plan, Area Contingency Plans, and tank vessel, nontank vessel, and facility response plans consistent with the procedures and standards developed pursuant to this paragraph.”.

(c) INCLUSION OF CONTAINMENT BOOMS IN AREA CONTINGENCY PLANS.—Section 311(j)(4)(C)(iv) of such Act (33 U.S.C. 1321(j)(4)(C)(iv)) is amended by striking “(including firefighting equipment)” and inserting “(including firefighting equipment and containment booms)”.

SEC. 20. TRACKING DATABASE.

Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) is amended by adding at the end the following:

“(13) TRACKING DATABASE.—

“(A) IN GENERAL.—The President shall create a database to track all discharges of oil or hazardous substances—

“(i) into the waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone;

“(ii) in connection with activities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

“(iii) which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.)).

“(B) REQUIREMENTS.—The database shall—

“(i) include—

“(I) the name of the vessel or facility;

“(II) the name of the owner, operator, or person in charge of the vessel or facility;

“(III) the date of the discharge;

“(IV) the volume of the discharge;

“(V) the location of the discharge, including an identification of any receiving waters that are or could be affected by the discharge;

“(VI) a record of any determination of a violation of this section or section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702);

“(VII) a record of any administrative or enforcement action taken against the owner, operator, or person in charge; and

“(VIII) any additional information that the President determines necessary;

“(ii) use data provided by the Environmental Protection Agency, the Coast Guard, the Pipeline and Hazardous Materials Safety Administration, and other appropriate Federal agencies;

“(iii) use data protocols developed and managed by the Environmental Protection Agency; and

“(iv) be publicly accessible, including by electronic means.”.

SEC. 21. SAFETY OF TRANSPORTATION-RELATED OFFSHORE PLATFORMS.

(a) IN GENERAL.—Chapter 601 of title 49, United States Code, is amended by adding at the end the following:

“§ 60138. Safety of transportation-related offshore platforms

“(a) IN GENERAL.—The Secretary of Transportation shall conduct an analysis of the adequacy of existing regulations and standards for the safety of transportation-

related offshore platforms and the impact of the integrity of such platforms on pipeline safety.

“(b) CONSULTATION.—In carrying out subsection (a), the Secretary may consult with any agency, organization, or person with expertise in the design, construction, testing, operation, or maintenance of offshore platforms.

“(c) REPORT TO CONGRESS.—Not later than 24 months after the date of enactment of this section, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the results of the analysis conducted under subsection (a). The report shall include any recommendations the Secretary may have for addressing the safety or integrity of transportation-related offshore platforms, including any recommendations for legislative or regulatory action.

“(d) TRANSPORTATION-RELATED OFFSHORE PLATFORM DEFINED.—In this section, the term ‘transportation-related offshore platform’ means any platform—

“(1) located beyond the shoreline of the United States in State or Federal waters;

“(2) used for transporting gas or hazardous liquid; and

“(3) the design, construction, testing, operation, maintenance, and security of which is not regulated by another Federal agency.

“(e) LIMITATION.—Nothing in this section applies to a production facility.”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

“60138. Safety of transportation-related offshore platforms.”.

SEC. 22. EVALUATION AND APPROVAL OF RESPONSE PLANS; MAXIMUM PENALTIES.

(a) AGENCY REVIEW OF RESPONSE PLANS.—

(1) LEAD FEDERAL AGENCY FOR REVIEW OF RESPONSE PLANS.—Section 311(j)(5)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)(A)) is amended by adding at the end the following:

“(iii) In issuing the regulations under this paragraph, the President shall ensure that—

“(I) the owner, operator, or person in charge of a tank vessel, nontank vessel, or offshore facility described in subparagraph (C) will not be considered to have complied with this paragraph until the owner, operator, or person in charge submits a plan under clause (i) or (ii), as appropriate, to the Secretary of the department in which the Coast Guard is operating, or the Administrator, with respect to such offshore facilities as the President may designate, and the Secretary or Administrator, as appropriate, determines and notifies the owner, operator, or person in charge that the plan, if implemented, will provide an adequate response to a worst case discharge of oil or a hazardous substance or a substantial threat of such a discharge; and

“(II) the owner, operator, or person in charge of an onshore facility described in subparagraph (C)(iv) will not be considered to have complied with this paragraph until the owner, operator, or person in charge submits a plan under clause (i) either to the Secretary of Transportation, with respect to transportation-related onshore facilities, or the Administrator, with respect to all other onshore facilities, and the Secretary or Administrator, as appropriate, determines and notifies the owner, operator, or person in charge that the plan, if implemented, will provide an adequate response to a worst-case discharge of oil or a hazardous substance or a substantial threat of such a discharge.

“(iv)(I) The Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, or the Administrator, as appropriate, shall require that a plan submitted to the Secretary or Administrator for a vessel or facility under clause (iii)(I) or (iii)(II) by an owner, operator, or person in charge—

“(aa) contain a probabilistic risk analysis for all critical engineered systems of the vessel or facility; and

“(bb) adequately address all risks identified in the risk analysis.

“(II) The Secretary or Administrator, as appropriate, shall require that a risk analysis developed under subclause (I) include, at a minimum, the following:

“(aa) An analysis of human factors risks, including both organizational and management failure risks.

“(bb) An analysis of technical failure risks, including both component technologies and integrated systems risks.

“(cc) An analysis of interactions between humans and critical engineered systems.

“(dd) Quantification of the likelihood of modes of failure and potential consequences.

“(ee) A description of methods for reducing known risks.

“(III) The Secretary or Administrator, as appropriate, shall require an owner, operator, or person in charge that develops a risk analysis under subclause (I) to make the risk analysis available to the public.”.

(2) REVIEW AND APPROVAL OF RESPONSE PLANS.—Section 311(j)(5)(E) of such Act (33 U.S.C. 1321(j)(5)(E)) is amended to read as follows:

“(E) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall—

“(i) promptly review the response plan;

“(ii) verify that the response plan complies with subparagraph (A)(iv), relating to risk analyses;

“(iii) with respect to a plan for an offshore or onshore facility or a tank vessel that carries liquefied natural gas, provide an opportunity for public notice and comment on the response plan;

“(iv) taking into consideration any public comments received and other appropriate factors, as determined by the President, require revisions to the response plan;

“(v) approve, approve with revisions, or disapprove the response plan;

“(vi) review the response plan periodically thereafter, and if applicable requirements are not met, acting through the head of the appropriate Federal department or agency—

“(I) issue administrative orders directing the owner, operator, or person in charge to comply with the response plan or any regulation issued under this section; or

“(II) assess civil penalties or conduct other appropriate enforcement actions in accordance with subsections (b)(6), (b)(7), and (b)(8) for failure to develop, submit, receive approval of, adhere to, or maintain the capability to implement the response plan, or failure to comply with any other requirement of this section;

“(vii) acting through the head of the appropriate Federal department or agency, require, at a minimum, biennial inspections conducted by such agency of the tank vessel, nontank vessel, or facility to ensure compliance with the response plan or identify deficiencies in such plan;

“(viii) acting through the head of the appropriate Federal department or agency, make the response plan available to the public, including on the Internet; and

“(ix) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on the date of enactment of the Coast Guard and Maritime Transportation Act of 2004 and ensure consistency to the extent practicable.”.

(3) BIENNIAL REPORT.—Section 311(j)(5) of such Act (33 U.S.C. 1321(j)(5)) is amended by adding at the end the following:

“(J) Not later than 2 years after the date of enactment of this subparagraph, and biennially thereafter, the President, acting through the Administrator, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Transportation, shall submit to Congress a report containing the following information for each owner, operator, or person in charge that submitted a response plan for a tank vessel, nontank vessel, or other facility under this paragraph:

“(i) The number of response plans approved, disapproved, or approved with revisions under subparagraph (E) annually for tank vessels, nontank vessels, and facilities of the owner, operator, or person in charge.

“(ii) The number of inspections conducted under subparagraph (E) annually for tank vessels, nontank vessels, and facilities of the owner, operator, or person in charge.

“(iii) A summary of each administrative or enforcement action taken with respect each tank vessel, nontank vessel, and facility of the owner, operator, or person in charge, including a description of the violation, the date of violation, the amount of each penalty proposed, and the final assessment of each penalty and an explanation for any reduction in a penalty.”.

(4) ADMINISTRATIVE PROVISIONS FOR FACILITIES.—Section 311(m)(2) of such Act (33 U.S.C. 1321(m)(2)) is amended in each of subparagraphs (A) and (B) by

inserting “, the Secretary of Transportation,” before “or the Secretary of the department in which the Coast Guard is operating”.

(b) PENALTIES.—

(1) ADMINISTRATIVE PENALTIES.—

(A) AUTHORITY OF SECRETARY OF TRANSPORTATION TO ASSESS PENALTIES.—Section 311(b)(6)(A) of such Act (33 U.S.C. 1321(b)(6)(A)) is amended by inserting “, the Secretary of Transportation,” before “or the Administrator”.

(B) ADMINISTRATIVE PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 311(b)(6)(A) of such Act (33 U.S.C. 1321(b)(6)(A)) is further amended—

(i) in clause (i) by striking “paragraph (3), or” and inserting “paragraph (3),”;

(ii) in clause (ii) by striking “any regulation” and inserting “any order or action required by the President under subsection (c) or (e) or any regulation”;

(iii) by redesignating clause (ii) as clause (iii);

(iv) by inserting after clause (i) the following:

“(ii) who fails to provide notice to the appropriate Federal agency pursuant to paragraph (5), or”; and

(v) by adding at the end the following: “Whenever the President delegates the authority to issue regulations under subsection (j), the agency that issues regulations pursuant to that authority shall have the authority to assess a civil penalty in accordance with this section for violations of such regulations.”.

(C) PENALTY AMOUNTS.—Section 311(b)(6)(B) of such Act (33 U.S.C. 1321(b)(6)(B)) is amended—

(i) in clause (i)—

(I) by striking “\$10,000” and inserting “\$100,000”; and

(II) by striking “\$25,000” and inserting “\$250,000”; and

(ii) in clause (ii)—

(I) by striking “\$10,000” and inserting “\$100,000”; and

(II) by striking “\$125,000” and inserting “\$1,000,000”.

(2) CIVIL PENALTIES.—Section 311(b)(7) of such Act (33 U.S.C. 1321(b)(7)) is amended—

(A) in subparagraph (A)—

(i) by striking “\$25,000” and inserting “\$100,000”; and

(ii) by striking “\$1,000” and inserting “\$2,500”;

(B) in subparagraph (B)—

(i) by striking “described in subparagraph (A)”;

(ii) in clause (i) by striking “carry out removal of the discharge under an order of the President pursuant to subsection (c); or” and inserting “comply with any action required by the President pursuant to subsection (c),”;

(iii) in clause (ii) by striking “(1)(B)”;

(iv) by redesignating clause (ii) as clause (iii);

(v) by inserting after clause (i) the following:

“(ii) fails to provide notice to the appropriate Federal agency pursuant to paragraph (5), or”; and

(vi) by striking “\$25,000” and inserting “\$100,000”;

(C) in subparagraph (C)—

(i) by striking “\$25,000” and inserting “\$100,000”; and

(ii) by adding at the end the following: “Whenever the President delegates the authority to issue regulations under subsection (j), the agency that issues regulations pursuant to that authority shall have the authority to order injunctive relief or assess a civil penalty in accordance with this section for violations of such regulations and the authority to refer the matter to the Attorney General for action under subparagraph (E).”;

(D) in subparagraph (D)—

(i) by striking “\$100,000” and inserting “\$1,000,000”; and

(ii) by striking “\$3,000” and inserting “\$7,500”; and

(E) in subparagraph (E) by adding at the end the following: “The court may award appropriate relief, including a temporary or permanent injunction, civil penalties, compliance requirements, and punitive damages.”.

(3) APPLICATION.—The amendments made by this subsection shall apply to violations occurring on or after April 19, 2010.

(c) CLARIFICATION OF FEDERAL REMOVAL AUTHORITY.—Section 311(c)(1)(B)(ii) of such Act (33 U.S.C. 1321(c)(1)(B)(ii)) is amended by striking the term “monitor all” and inserting “monitor, including through the use of an administrative order, all”.

SEC. 23. OIL AND HAZARDOUS SUBSTANCE CLEANUP TECHNOLOGIES.

Section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) is amended by adding at the end the following:

“(9) OIL AND HAZARDOUS SUBSTANCE CLEANUP TECHNOLOGIES.—The President, acting through the Secretary of the department in which the Coast Guard is operating, shall—

“(A) in coordination with the heads of other appropriate Federal agencies, establish a process for—

“(i) quickly and effectively soliciting, assessing, and deploying offshore oil and hazardous substance cleanup technologies in the event of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters; and

“(ii) effectively coordinating with other appropriate agencies, industry, academia, small businesses, and others to ensure the best technology available is implemented in the event of such a discharge or threat; and

“(B) in coordination with the heads of other appropriate Federal agencies, maintain a database on best available oil and hazardous substance cleanup technologies in the event of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters.”.

SEC. 24. IMPLEMENTATION OF OIL SPILL PREVENTION AND RESPONSE AUTHORITIES.

Section 311(l) of the Federal Water Pollution Control Act (33 U.S.C. 1321(l)) is amended—

(1) by striking “(l) The President” and inserting the following:

“(l) DELEGATION AND IMPLEMENTATION.—

“(1) DELEGATION.—The President”; and

(2) by adding at the end the following:

“(2) ENVIRONMENTAL PROTECTION AGENCY.—

“(A) IN GENERAL.—The President shall delegate the responsibilities under subparagraph (B) to the Administrator.

“(B) RESPONSIBILITIES.—The Administrator shall ensure that Environmental Protection Agency personnel develop and maintain operational capability—

“(i) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance;

“(ii) to protect human health and safety from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance;

“(iii) to review and approve of, disapprove of, or require revisions (if necessary) to onshore facility response plans and to carry out all other responsibilities under subsection (j)(5)(E); and

“(iv) to protect the environment and natural resources from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance.

“(3) COAST GUARD.—

“(A) IN GENERAL.—The President shall delegate the responsibilities under subparagraph (B) to the Secretary of the department in which the Coast Guard is operating.

“(B) RESPONSIBILITIES.—The Secretary shall ensure that Coast Guard personnel develop and maintain operational capability—

“(i) to establish and enforce regulations and standards for procedures, methods, equipment, and other requirements to prevent and to contain a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility;

“(ii) to establish and enforce regulations, and to carry out all other responsibilities, under subsection (j)(5)(A);

“(iii) to review and approve of, disapprove of, or require revisions (if necessary) to tank vessel, nontank vessel, and offshore facility response plans and to carry out all other responsibilities under subsection (j)(5)(E);

“(iv) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility;

“(v) to protect the public from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters; and

“(vi) to protect the environment and natural resources from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters.

“(C) ROLE AS FIRST RESPONDER.—

“(i) IN GENERAL.—The responsibilities delegated to the Secretary under subparagraph (B) shall be sufficient to allow the Coast Guard to act as a first responder to a discharge or substantial threat of a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility.

“(ii) CAPABILITIES.—The President shall ensure that the Coast Guard has sufficient personnel and resources to act as a first responder as described in clause (i), including the resources necessary for on-going training of personnel, acquisition of equipment (including containment booms, dispersants, and skimmers), and prepositioning of equipment.

“(D) CONTRACTS.—The Secretary may enter into contracts with private and nonprofit organizations for personnel and equipment in carrying out the responsibilities delegated to the Secretary under subparagraph (B).

“(4) DEPARTMENT OF TRANSPORTATION.—

“(A) IN GENERAL.—The President shall delegate the responsibilities under subparagraph (B) to the Secretary of Transportation.

“(B) RESPONSIBILITIES.—The Secretary of Transportation shall—

“(i) establish and enforce regulations and standards for procedures, methods, equipment, and other requirements to prevent and to contain discharges of oil and hazardous substances from transportation-related onshore facilities;

“(ii) have the authority to review and approve of, disapprove of, or require revisions (if necessary) to transportation-related onshore facility response plans and to carry out all other responsibilities under subsection (j)(5)(E); and

“(iii) ensure that Department of Transportation personnel develop and maintain operational capability—

“(I) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility;

“(II) to protect the public from the impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility; and

“(III) to protect the environment and natural resources from the impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility.”.

SEC. 25. DISASTER DAMAGE NOTIFICATION AND ASSESSMENT.

(a) IN GENERAL.—Section 60108 of title 49, United States Code, is amended by adding at the end the following:

“(e) DISASTER DAMAGE NOTIFICATION AND ASSESSMENT.—

“(1) NOTIFICATION REQUIRED.—In the event of a manmade or natural disaster, the operator of a pipeline facility in an affected location shall notify the Secretary not later than 12 hours after the cessation of the disaster, as determined by the Secretary, or an earlier time determined appropriate by the Secretary, of any changes to the operational status of the pipeline facility, including information concerning physical damages, releases of highly volatile liquid, other hazardous liquid, or gas, disruptions in service, and projected dates for return to service.

“(2) PREPARATION OF DAMAGE ASSESSMENTS.—Not later than 30 days after the cessation of a manmade or natural disaster, as determined by the Secretary, the operator of a pipeline facility in an affected location shall develop and transmit to the Secretary a written damage assessment. The damage assessment, at a minimum, shall—

“(A) identify any physical damage to the pipeline facility and any other credible threat or hazard to the pipeline facility;

“(B) assess the extent of any physical damage to the pipeline facility and any other credible threat or hazard to the pipeline facility;

“(C) evaluate the integrity of the pipeline facility;

“(D) if necessary, provide a schedule for repairing or abandoning the pipeline facility; and

“(E) meet any other requirements the Secretary determines are appropriate by regulation.

“(3) ABANDONMENT.—An operator of a pipeline facility shall notify the Secretary promptly if the operator determines that the pipeline facility must be abandoned as a result of a manmade or natural disaster.

“(4) OTHER.—An operator of a pipeline facility shall retain, and make available to the Secretary on request, a copy of any report prepared under this subsection for at least 5 years.

“(5) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) ABANDON.—The term ‘abandon’ means permanently remove from service.

“(B) AFFECTED LOCATION.—The term ‘affected location’ means any area directly or substantially affected by a manmade or natural disaster, as determined by the Secretary.

“(C) MANMADE OR NATURAL DISASTER.—The term ‘manmade or natural disaster’ means any hurricane, tornado, tidal wave, tsunami, earthquake, volcanic eruption, or, regardless of cause, any fire, flood, or explosion, or any similar catastrophe in the United States that causes, or may cause, substantial damage or injury to persons, property, or the environment, as determined by the Secretary.”.

(b) REGULATIONS.—

(1) FINAL RULE.—The Secretary of Transportation shall issue a final rule establishing procedures to carry out section 60108(e) of title 49, United States Code, not later than 1 year after the date of enactment of this Act.

(2) INTERIM GUIDANCE.—For the period beginning on the date of enactment of this Act and ending on the date of issuance of a rule under paragraph (1), or the date that is 45 days after such date of enactment, whichever is earlier, the Secretary shall issue interim guidance to the operator of a pipeline facility requiring notification of the Secretary and an assessment of pipeline facilities located in an affected area in the case of a manmade or natural disaster.

SEC. 26. IMPACTS TO INDIAN TRIBES.

Section 1002(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)) is amended—

(1) in subparagraph (D) by striking “or a political subdivision thereof” and inserting “a political subdivision of a State, or an Indian tribe”; and

(2) in subparagraph (F) by striking “or a political subdivision of a State” and inserting “a political subdivision of a State, or an Indian tribe”.

SEC. 27. NATIONAL COMMISSION STUDY OF FEDERAL MANAGEMENT AND OVERSIGHT OF OFFSHORE DRILLING.

(a) IN GENERAL.—The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling established by Executive Order No. 13543 dated May 21, 2010 (in this section referred to as the “Commission”), shall develop recommendations for—

(1) improvements to Federal laws, regulations, and industry practices applicable to offshore drilling that would—

(A) ensure the effective oversight, inspection, monitoring, and response capabilities; and

(B) protect human health and safety, occupational health and safety, and the environment and natural resources; and

(2) organizational or other reforms of Federal agencies or processes, including the creation of new agencies, as necessary, to ensure that the improvements described in paragraph (1) are implemented and maintained.

(b) PURPOSES.—In developing recommendations under subsection (a), the Commission shall ensure that the following goals are met:

(1) Ensuring the safe operation and maintenance of offshore drilling platforms or vessels.

(2) Protecting the health and safety of workers on offshore drilling platforms or vessels.

(3) Protecting the overall environment and natural resources surrounding ongoing and potential offshore drilling sites.

(4) Protecting the health and safety of workers that service offshore drilling platforms or vessels.

(5) Developing and maintaining Federal agency expertise on the safe and effective use of offshore drilling technologies, including technologies to minimize the risk of release of oil from offshore drilling platforms or vessels.

(6) Encouraging the development and implementation of efficient and effective oil spill response techniques and technologies that minimize or eliminate any adverse effects on natural resources or the environment that result from response activities.

(7) Protecting the health and safety of first responders against releases of oil from offshore drilling platforms or vessels.

(8) Ensuring that the Federal agencies regulating offshore drilling are staffed with, and managed by, career professionals, who are—

(A) permitted to exercise independent professional judgments and make safety the highest priority in carrying out their responsibilities;

(B) not subject to undue influence from regulated interests or political appointees; and

(C) subject to strict regulation to prevent improper relationships with regulated interests and to eliminate real or perceived conflicts of interests.

(c) REPORT TO CONGRESS.—In coordination with the final public report to the President, the Commission shall submit to Congress a report containing the recommendations developed under subsection (a).

SEC. 28. FEDERAL ENFORCEMENT ACTIONS.

Section 309(g)(6)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1319(g)(6)(A)) is amended by striking “or section 311(b)”.

SEC. 29. TIME REQUIRED BEFORE ELECTING TO PROCEED WITH JUDICIAL CLAIM OR AGAINST THE FUND.

Paragraph (2) of section 1013(c) of the Oil Pollution Act of 1990 (33 U.S.C. 2713(c)) is amended by striking “90” and inserting “45”.

SEC. 30. REPORT ON FORMER COAST GUARD OFFICIALS EMPLOYED BY RECOGNIZED ORGANIZATIONS OF FOREIGN FLAG ADMINISTRATIONS.

(a) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the employment during the preceding year of individuals who were Coast Guard officials in the previous 5-year period, by recognized organizations contracted to administer maritime programs for foreign flag administrations.

(b) OBJECTIVES OF REPORT.—At a minimum, the report required by this section shall assess the extent to which former Coast Guard officials who received compensation from recognized organizations were assigned to work on matters over which the former Coast Guard officials had oversight, inspection responsibility, or decision-making authority when the officials served in or worked for the Coast Guard. The report shall assess the extent to which former Coast Guard officials were provided compensation by recognized organizations and the positions held by former Coast Guard officials in the preceding calendar year.

(c) CONFIDENTIALITY REQUIREMENT.—The report required by this subsection shall not include the names of the former Coast Guard officials who received compensation from recognized organizations.

(d) ACCESS TO INFORMATION.—The Comptroller General may seek agreements with recognized organizations to obtain access to information for the purpose of preparing reports required by this section.

(e) DEFINITIONS.—In this section:

(1) FOREIGN FLAG ADMINISTRATION.—The term “foreign flag administration” means the maritime administration, maritime agency, or similar governmental organization of a country other than the United States that maintains a register of vessels and performs some or all of the following statutory functions with respect to maritime programs:

(A) Issues certificates of registry and manning certificates.

(B) Conducts or contracts with recognized organizations to conduct safety inspections.

(C) Issues radio station licenses.

(D) Certifies maritime officers and unlicensed seamen and conducts inquiries into charges of incompetence or misconduct.

(E) Regulates the construction, equipment, and operation of vessels under its flag.

(F) Monitors vessels’ compliance with international and national standards for marine safety, pollution prevention, and security.

(G) Investigates marine casualties.

(2) RECOGNIZED ORGANIZATION.—The term “recognized organization” means an organization, such as a classification society or a corporation, to which a foreign flag administration has delegated some or all of its statutory functions with respect to maritime programs.

(3) COAST GUARD OFFICIAL.—The term “Coast Guard official” includes former Coast Guard officers, enlisted personnel, or civilian employees who had responsibilities for—

- (A) issuing certificates of registry and manning certificates;
- (B) safety inspections;
- (C) certification of maritime officers and unlicensed seamen;
- (D) conducting inquiries into charges of incompetence or misconduct of maritime officers and unlicensed seamen;
- (E) regulation of the construction, equipment, and operation of vessels;
- (F) monitoring vessels' compliance with international and national standards for marine safety, pollution prevention, and security; or
- (G) investigating marine casualties.

SEC. 31. AUTHORIZED LEVEL OF COAST GUARD PERSONNEL.

The Coast Guard is authorized an end-of-year strength for active duty personnel of 47,300 for fiscal year 2011, of which at least 300 personnel shall be assigned to implement the activities of the Coast Guard under this Act, including the amendments made by this Act.

SEC. 32. CLARIFICATION OF MEMORANDUMS OF UNDERSTANDING.

Not later than September 30, 2011, the President (acting through the head of the appropriate Federal department or agency) shall implement or revise, as appropriate, memorandums of understanding to clarify the roles and jurisdictional responsibilities of the Environmental Protection Agency, the Coast Guard, the Department of Transportation, and other Federal agencies relating to the prevention of oil discharges from tank vessels, nontank vessels, and facilities subject to the Oil Pollution Act of 1990.

SEC. 33. STUDY OF HEALTH EFFECTS OF OIL SPILL.

(a) STUDY.—The Director of the Agency for Toxic Substances and Disease Registry and the Director of the Centers for Disease Control and Prevention shall jointly—

(1) conduct a comprehensive study of—

- (A) the effects on human health of exposure to petroleum and other substances released in the oil spill or used or produced in response to the oil spill, including chemicals used to disperse the oil;
- (B) the effects on human health of secondary exposure to such substances in an aerosolized form;
- (C) whether such substances include or produce airborne carcinogens, and the effects of any such carcinogens; and
- (D) the effects of exposure described in subparagraphs (A) and (B) on a child of an individual born after the individual has been subject to such exposure; and

(2) beginning as soon as practicable after the date of enactment of this Act, complete a baseline assessment to determine the health status of individuals exposed as described in subparagraph (A) or (B) of paragraph (1) in order to gather data that may be compared with data gathered later under paragraph (1) to determine any change in health status from continued exposure.

(b) PUBLIC HEALTH ASSESSMENT.—The Director of the Agency for Toxic Substances and Disease Registry shall conduct a public health assessment of persons who are thought to have an epidemiological link to the substances described in subsection (a)(1)(A).

(c) REPORT.—The Directors shall submit to Congress a report on the results of the study and baseline assessment under subsection (a) and the assessment under subsection (b). The report shall be submitted not later than two years after the date of enactment of this Act and shall include the findings of the Directors on the matters covered by the report. The Directors shall include in the report a list of diseases or conditions that are found to exist within the populations specified in subsection (a)(1) and their rate of occurrence compared to the general population.

(d) OIL SPILL DEFINED.—For purposes of this section, the term “oil spill” means the oil spill resulting from the explosion and collapse of the mobile offshore drilling unit DEEPWATER HORIZON.

SEC. 34. OFFSHORE ENERGY SECURITY.

(a) Offshore facilities constructed after the date of enactment of this Act for operation in the United States Exclusive Economic Zone for purposes of any form of energy production shall be built in the United States.

(b) Foreign-built offshore facilities not operating in the United States Exclusive Economic Zone for purposes of any form of energy production on the date of enactment of this Act shall not operate in the United States Exclusive Economic Zone for such purposes after the date of enactment of this Act.

SEC. 35. OIL SPILL RESPONSE VESSEL DATABASE.

(a) REQUIREMENT.—Not later than 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall complete an inventory of all vessels oper-

ating in the waters of the United States that are capable of meeting oil spill response needs designated in the National Contingency Plan authorized by section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)).

(b) CATEGORIZATION.—The inventory required under subsection (a) shall categorize such vessels by capabilities, type, function, and location.

(c) MAINTENANCE OF DATABASE.—The Commandant shall maintain a database containing the results of the inventory required under subsection (a) and update the information in the database on no less than a quarterly basis.

(d) AVAILABILITY.—The Commandant may make information regarding the location and capabilities of oil spill response vessels available to a Federal On-Scene Coordinator designated under section 311 of such Act (33 U.S.C. 1321) to assist in the response to an oil spill or other incident in the waters of the United States.

SEC. 36. OFFSHORE SENSING AND MONITORING SYSTEMS.

(a) REQUIREMENT.—Subtitle A of title IV of the Oil Pollution Act of 1990 is amended by adding at the end the following new section:

“SEC. 4119. OFFSHORE SENSING AND MONITORING SYSTEMS.

“(a) IN GENERAL.—The equipment required to be available under section 311(j)(5)(D)(iii) of the Federal Water Pollution Control Act for facilities listed in section 311(j)(5)(C)(iii) of such Act and located in more than 500 feet of water includes sensing and monitoring systems that meet the requirements of this section.

“(b) SYSTEMS REQUIREMENTS.—Sensing and monitoring systems required under subsection (a) shall—

“(1) use an integrated, modular, expandable, multi-sensor, open-architecture design and technology with interoperable capability;

“(2) be capable of—

“(A) operating for at least 25 years;

“(B) real-time physical, biological, geological, and environmental monitoring;

“(C) providing alerts in the event of anomalous circumstances;

“(D) providing docking bases to accommodate spatial sensors for remote inspection and monitoring; and

“(E) collecting chemical boundary condition data for drift and flow modeling; and

“(3) include—

“(A) an uninterruptible power source;

“(B) a spatial sensor; and

“(C) secure Internet access to real-time physical, biological, geological, and environmental monitoring data gathered by the system sensors.”.

(b) REQUEST FOR INFORMATION.—Within 60 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall issue a request for information to determine the most capable and efficient domestic systems that meet the requirements under section 4119 of the Oil Pollution Act of 1990, as amended by this section.

(c) IMPLEMENTING REGULATIONS.—Within 180 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall issue regulations to implement section 4119 of the Oil Pollution Act of 1990 as amended by this section.

(d) CLERICAL AMENDMENT.—The table of contents in section 2 of the Oil Pollution Act of 1990 is amended by adding at the end of the items relating to such subtitle the following new item:

“Sec. 4119. Offshore sensing and monitoring systems.”.

SEC. 37. VICE COMMANDANT; VICE ADMIRALS.

(a) VICE COMMANDANT.—

(1) Section 41 of title 14, United States Code, is amended by striking “an admiral,” and inserting “admirals,”.

(2) The fourth sentence of section 47 of such title is amended by striking “vice admiral” and inserting “admiral”.

(b) VICE ADMIRALS.—Section 50 of such title is amended to read as follows:

“§ 50. Vice admirals

“(a)(1) The President may designate no more than 4 positions of importance and responsibility that shall be held by officers who—

“(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and

“(B) shall perform such duties as the Commandant may prescribe.

“(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such posi-

tion an officer of the Coast Guard who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.

“(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provided in paragraph (2) of this subsection or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.

“(2) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—

“(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;

“(B) while hospitalized, beginning on the day of the hospitalization and ending on the day the officer is discharged from the hospital, but not for more than 180 days; and

“(C) while awaiting retirement, beginning on the date the officer is detached from duty and ending on the day before the officer’s retirement, but not for more than 60 days.

“(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

“(2) An officer serving in a grade above rear admiral who holds the permanent grade of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer’s permanent grade.

“(d) Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.”.

(c) REPEAL.—Section 50a of such title is repealed.

(d) CONFORMING AMENDMENTS.—Section 51 of such title is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

“(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.

“(b) An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.

“(c) An officer, other than the Commandant, who, after serving less than 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.”; and

(2) by striking “Area Commander, or Chief of Staff” in subsection (d)(2) and inserting “or Vice Admiral”.

(e) CONTINUITY OF GRADE.—Section 52 of such title is amended by inserting “or admiral” after “vice admiral” the first place it appears.

(f) CONTINUATION ON ACTIVE DUTY.—The second sentence of section 290(a) of such title is amended to read as follows: “Officers, other than the Commandant, serving for the time being or who have served in the grade of vice admiral or admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued at the grade of rear admiral.”

(g) CLERICAL AMENDMENTS.—

(1) The section caption for section 47 of such title is amended to read as follows:

“§ 47. Vice Commandant; appointment”.

(2) The section caption for section 52 of such title is amended to read as follows:

“§ 52. Vice admirals and admiral, continuity of grade”.

(3) The analysis for chapter 3 of such title is amended—

(A) by striking the item relating to section 47 and inserting the following:

“47. Vice Commandant; appointment.”;

(B) by striking the item relating to section 50a;

(C) by striking the item relating to section 50 and inserting the following:

“50. Vice admirals.”; and

(D) by striking the item relating to section 52 and inserting the following:

“52. Vice admirals and admiral, continuity of grade.”.

(h) TECHNICAL CORRECTION.—Section 47 of such title is further amended by striking “subsection” in the fifth sentence and inserting “section”.

(i) TREATMENT OF INCUMBENTS; TRANSITION.—

(1) Notwithstanding any other provision of law, the officer who, on the date of enactment of this Act, is serving as Vice Commandant—

(A) shall continue to serve as Vice Commandant;

(B) shall have the grade of admiral with pay and allowances of that grade; and

(C) shall not be required to be reappointed by reason of the enactment of that Act.

(2) Notwithstanding any other provision of law, an officer who, on the date of enactment of this Act, is serving as Chief of Staff, Commander, Atlantic Area, or Commander, Pacific Area—

(A) shall continue to have the grade of vice admiral with pay and allowance of that grade until such time that the officer is relieved of his duties and appointed and confirmed to another position as a vice admiral or admiral; or

(B) for the purposes of transition, may continue at the grade of vice admiral with pay and allowance of that grade, for not more than 1 year after the date of enactment of this Act, to perform the duties of the officer's former position and any other such duties that the Commandant prescribes.

SEC. 38. OIL AND GAS EXPLORATION AND PRODUCTION.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended—

(1) by striking paragraph (24); and

(2) by redesignating paragraph (25) as paragraph (24).

SEC. 39. AUTHORIZATION OF APPROPRIATIONS.

(a) COAST GUARD.—In addition to amounts made available pursuant to section 1012(a)(5)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)(A)), there is authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating from the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509) the following:

(1) For fiscal year 2011, \$15,000,000.

(2) For each of fiscal years 2012 through 2015, \$16,000,000.

(b) ENVIRONMENTAL PROTECTION AGENCY.—There is authorized to be appropriated to the Administrator of the Environmental Protection Agency from the Oil Spill Liability Trust Fund to implement this Act and the amendments made by this Act \$10,000,000 for each of fiscal years 2011 through 2015.

(c) DEPARTMENT OF TRANSPORTATION.—There is authorized to be appropriated to the Secretary of Transportation from the Oil Spill Liability Trust Fund to carry out the purposes of this Act and the amendments made by this Act the following:

(1) For each of fiscal years 2011 through 2013, \$7,000,000.

(2) For each of fiscal years 2014 and 2015, \$6,000,000.

PURPOSE OF THE LEGISLATION

H.R. 5629, as amended, the “Oil Spill Accountability and Environmental Protection Act of 2010” (Act), amends the Oil Pollution Act of 1990 (OPA), the Federal Water Pollution Control Act (Clean Water Act), the Death on the High Seas Act, the Jones Act, and various sections of titles 14, 46, and 49 of the United States Code to ensure full recovery from responsible parties of damages for physical and economic injuries, adverse effects on the environment, and clean up of oil spill pollution, to improve the safety of vessels and pipelines supporting offshore oil drilling, to ensure that there are adequate response plans to prevent environmental damage from oil spills, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The *Deepwater Horizon* is a mobile offshore drilling unit (MODU); it is owned by Transocean Ltd. Due to causes and under

circumstances currently under investigation, the *Deepwater Horizon* suffered an explosion on April 20, 2010, resulting from a blow-out in the well it was drilling at the Macondo exploration site in an area of the Gulf of Mexico known as the Mississippi Canyon Block 252 (MC 252). At the time of the explosion, the *Deepwater Horizon* was leased by BP p.l.c. (BP), which owns a majority stake in the MC 252 site and had contracted the rig to drill a prospect well. Following the explosion, the MODU sank on April 22. Eleven individuals who had been working on the *Deepwater Horizon* were killed in this accident. Since the explosion, oil has been spilling from the well into the Gulf of Mexico. U.S. Government and independent scientists estimate that the most likely flow rate of oil is between 35,000 and 60,000 barrels per day. In response to the *Deepwater Horizon* disaster, BP has made numerous attempts to stop or contain the flow of oil into the Gulf. The *Deepwater Horizon* disaster has demonstrated that the current limits of liability are insufficient to address a potential worst-case scenario on the release of oil for offshore facilities, has called into question the current limits of liability for other vessels, and has highlighted the need to strengthen response efforts and environmental protections associated with oil spills.

SUMMARY OF THE LEGISLATION

Section 1. Short title; table of contents

This section designates the title of the bill as the “Oil Spill Accountability and Environmental Protection Act of 2010”, and provides a table of contents.

Sec. 2. Repeal of and adjustment to limitations on liability

This section amends section 1004 of OPA to remove the existing statutory limitation on liability for damages of a responsible party for an offshore facility, and directs the President to review, and revise as necessary, other limitations on liability provided in section 1004(a).

Subsection (a)(1)(A) and (C) make technical changes to section 1004(a)(2) and redesignate paragraphs.

Subsection (a)(1)(B) strikes existing section 1004(a)(3) of OPA, which established a limitation on liability for damages of a responsible party for an offshore facility of the total of all removal costs (as described in section 1002(b)(1)) plus \$75 million for damages (as described in section 1002(b)(2)). As a result, under the bill, any responsible party for an offshore facility is liable for all removal costs plus all damages related to a discharge, or a substantial threat of discharge, of oil.

Subsection (a)(2) deletes the second sentence of existing section 1004(b)(2), which is rendered moot by the deletion of section 1004(a)(3) of OPA.

Subsection (a)(3) replaces existing section 1004(d)(4) of OPA. Existing section 1004(d)(4) requires the President to periodically revise the current limits on liability for vessels, offshore facilities (including deepwater ports), and onshore facilities based on significant increases in the Consumer Price Index. Subsection (a)(3) amends section 1004(d)(4) to direct the President, at least once every three years, to review limits on liability for vessels, deepwater ports, and

onshore facilities, and by regulation revise such limits upward to reflect either the amount of liability that the President determines is commensurate with the risk of discharge of oil presented by a particular category of vessel, or any increase in the Consumer Price Index, whichever is greater.

Subsection (b) provides that any repeals and amendments made by this section shall apply to all claims arising from events or activities occurring, on or after April 19, 2010, including any claims pending on or before the date of enactment of the Act.

Sec. 3. Evidence of financial responsibility for offshore facilities

This section amends section 1016 of OPA to increase the minimum amount of evidence of financial responsibility that a responsible party for an offshore facility must demonstrate to comply with OPA.

Subsection (a)(1) amends existing subsection (c)(1)(B) to remove the current, two-tiered system for establishing the minimum amount of evidence of financial responsibility for an offshore facility based on the location of the facility, and to establish the minimum amount of evidence of financial responsibility for an offshore facility of \$1.5 billion.

Subsection (a)(2) replaces existing subsection (c)(1)(C) of OPA. Existing subsection (c)(1)(C) provides the President with discretionary authority to increase the amount of evidence of financial responsibility for a responsible party of an offshore facility based on a series of factors, not to exceed \$150 million. Subsection (a)(2) amends subsection (c)(1)(C) to provide the President with similar discretionary authority to increase the amount of evidence of financial responsibility for a responsible party of an individual offshore facility, based on the relative operational, environmental, human health, and other risks posed by the quantity, quality, or location of oil that is explored for, drilled for, produced, or transported by the responsible party. Under new subsection (c)(1)(C)(i), there is no statutory limit to the amount of evidence of financial responsibility that the President may require, on a case-by-case basis, for a responsible party of an individual offshore facility, provided that such amount is justified based on the factors identified in clause (i).

Subsection (a)(2) also directs the President, at least once every three years, to review the level of financial responsibility established in subsection (c)(1)(B) (initially set at \$1.5 billion) and by regulation revise such level upwards to a level that the President determines is justified based on the relative operational, environmental, human health, and other risks posed by the quantity, quality, or location of the oil that is explored for, drilled for, produced, or transported by the responsible party. This subsection requires the President, upon completion of such review, to notify Congress as to whether the President will revise the levels of financial responsibility and the factors for making such determination. This report shall be submitted to the Committee on Transportation and Infrastructure of the House of Representatives and to the Committee on Environment and Public Works of the Senate.

Subsection (a)(3) strikes a definition for the seaward boundary of a State that is rendered moot by the amendments to subsection (c)(1)(B) of OPA.

Subsection (b)(1) provides that any amendments made by this section shall take effect on the date of enactment of the Act and shall apply to any lease for exploration, development, or production of minerals (including oil), as defined by the Outer Continental Shelf Lands Act, that the Secretary of the Interior awards after the date of enactment of the Act.

Subsection (b)(2) requires the President, within six months of the date of enactment of the Act, to require any person who holds an existing lease for exploration, development, or production of minerals (including oil), as defined by the Outer Continental Shelf Lands Act, located in the navigable waters, adjoining shoreline, or the Exclusive Economic Zone (EEZ) of the United States to provide such additional evidence of financial responsibility, as necessary, to meet the levels of financial responsibility required by OPA, as amended by the Act.

Sec. 4. Damages to human health

Subsection (a) amends section 1002(b)(2) of OPA to authorize an individual to seek compensation from a responsible party under the Act for damages to human health resulting from a discharge (or substantial threat of discharge) of oil. This subsection authorizes a claimant to seek damages from a responsible party for demonstrable, adverse impacts to human health, including fatal injuries and mental health impacts, resulting from the discharge or threatened discharge of oil.

Subsection (b) provides that any amendments made by subsection (a) shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including any claims pending on or before the date of enactment of the Act.

Sec. 5. Clarification of liability for discharges from mobile offshore drilling units

Subsection (a) amends section 1004(b)(2) of OPA to clarify that MODUs are liable for a discharge (or substantial threat of discharge) of oil into or upon the navigable waters or adjoining shoreline or the EEZ. The Committee notes that section 1002(a) of OPA explicitly states that a responsible party for a vessel or facility (including an offshore facility) from which oil is discharged, or that poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shoreline or the EEZ is liable for the removal cost and damages that result from such incident.

The Committee received comments expressing concern that section 1004(b)(2) of OPA could be misinterpreted as limiting the liability for MODUs to only those discharges (or substantial threat of discharges) “on or above the surface of the water.” The Committee believes that such an interpretation is inconsistent with the explicit language on liability contained in section 1002(a) of OPA. Accordingly, the amendments made by this section are intended to clarify that a responsible party for a MODU is liable for all discharges from such unit, consistent with section 1002(a) of OPA.

Subsection (b) provides that any amendments made by subsection (a) shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including any claims pending on or before the date of enactment of the Act.

Sec. 6. Standard of review for damage assessment

This section amends section 1006(e)(2) of OPA regarding the standard of judicial review for any determination or assessment of damages to natural resources pursuant to OPA. Existing section 1006(e)(2) of OPA provides that any determination or assessment of damages by a Federal, State, or Indian trustee shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under OPA. This section amends existing section 1006(e)(2) to ensure that the standard of judicial review for such an assessment of damages is consistent with that established in the Administrative Procedures Act (APA), which is the general standard of review for final agency actions.

Sec. 7. Information on claims

Subsection (a) amends Title I of OPA by adding a new section 1013A that authorizes the President, in the event of a spill of national significance, to require a responsible party or guarantor to provide information on or related to claims, either individually, in the aggregate, or both, that the President requests.

Subsection (b) makes a conforming amendment to the table of contents of OPA.

Subsection (c) provides that any amendments made by this section shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including any claims pending on or before the date of enactment of the Act.

Sec. 8. Limitation of Liability Act

This section repeals the Limitation of Liability Act of 1851, which limits the liability of a ship owner to the value of the vessel and freight.

Subsection (a)(1) repeals 46 U.S.C. §§ 30505, 30506, 30507, 30511, and 30512.

Subsection (a)(2) re-designates sections 30508 through 30510 as sections 30505 through 30507, respectively.

Subsection (b) amends section 1018(a) and (c) of OPA and 46 U.S.C. § 14305(a) to remove references to the Limitation of Liability Act of 1851.

Subsection (c) provides that any repeals and amendments made by this section shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including any claims pending on or before the date of enactment of the Act.

Sec. 9. Death on the High Seas Act

This section expands the damages recoverable under the Death on the High Seas Act (46 U.S.C. chapter 303). The Death on the High Seas Act applies when the death of an individual is caused by a wrongful act, neglect, or default occurring on the high seas.

Subsection (a) amends 46 U.S.C. §§ 30302 and 30303 to allow the recovery of pecuniary losses and nonpecuniary losses authorized under general maritime law, including the loss of care, comfort, and companionship, plus fair compensation for the decedent's pain and suffering.

Subsection (b) provides that the amendments made by this section shall apply to all claims arising from events or activities occur-

ring on or after April 19, 2010, including any claims pending on or before the date of enactment of the Act.

Sec. 10. Jones Act

This section expands the damages recoverable under 46 U.S.C. § 30104 (commonly called the Jones Act) regarding the personal injury to or death of seamen.

Subsection (a) amends section 30104 to allow the recovery of non-pecuniary losses that are authorized under general maritime law, including the loss of care, comfort, and companionship.

Subsection (b) provides that the amendments made by this section shall apply to all claims arising from events or activities occurring on or after April 19, 2010, including any claims pending on or before the date of enactment of the Act.

Sec. 11. Americanization of offshore operations in the exclusive economic zone

This section amends 46 U.S.C. § 12111 to require vessels engaged in support of exploration, development, or production of resources in, on, above, or below the EEZ or any other activity in the EEZ (as defined in section 46 U.S.C. § 107) be U.S.-flag vessels owned by U.S. citizens. This section ensures that these vessels are subject to U.S. safety regulations, employ U.S. citizens on board the vessel, and that U.S. taxes are paid on the operations of the vessel and by the personnel engaged on the vessel.

Subsection (a)(2) states that this section applies only with respect to exploration, development, production, and support activities that commence on or after July 1, 2011.

Subsection (b) extends the application of this title to the EEZ to the extent that regulation of such operation is not prohibited under customary international law.

Subsection (c) requires the Secretary of the department in which the U.S. Coast Guard is operating (e.g., Secretary of Homeland Security), not later than 180 days after the date of enactment of this Act, to establish a program to provide Coast Guard personnel with the training necessary to implement this section.

Sec. 12. Safety management systems for mobile offshore drilling units

This section amends 46 U.S.C. § 3203 to require the safety management plan for a MODU operating in waters subject to the jurisdiction of the United States to include processes, procedures, and policies related to the safe operation and maintenance of the machinery and systems on board the unit that are used for the industrial business and functions of the unit, including drilling operations.

Sec. 13. Safety standards for mobile offshore drilling units

This section requires the Secretary of Homeland Security, in prescribing regulations for MODUs, to develop standards to address a worst-case event involving a discharge of gas or oil.

Sec. 14. Coast Guard marine safety workforce

This section amends 14 U.S.C. chapter 5 by requiring the Secretary of Homeland Security to designate a sufficient number of

Coast Guard positions—including marine inspectors, marine casualty investigators, and marine safety engineers—to be in the service’s marine safety workforce and to ensure that a sufficient number of fully-qualified officers, members, and civilian employees are assigned to these positions.

This section also requires the Secretary of Homeland Security to ensure that appropriate career paths are available for officers, members, and civilian employees of the Coast Guard who want to pursue careers in marine safety and specifies training, experience, and qualification requirements for marine inspectors, marine casualty investigators, and marine safety engineers, as well as for those marine inspectors assigned to inspect MODUs.

Further, this section requires that those personnel assigned as marine inspectors, marine casualty investigators, and marine safety engineers shall serve a minimum one-year apprenticeship under a qualified marine inspector, marine casualty investigator, or marine safety engineer unless the Commandant authorizes a shorter apprenticeship period for certain qualifications. Those personnel serving as marine inspectors or marine casualty investigators responsible for inspecting highly specialized vessels—including MODUs, tank vessels, and vessels carrying certain dangerous cargoes—are required to serve a minimum of a six-month apprenticeship with those vessels.

Subsection (c) requires the Secretary to review and report to Congress on the needs of maritime safety and security teams participating in patrols and setup of safety zones for, and management of, the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the MODU *Deepwater Horizon*. This subsection also authorizes appropriations to remain available until expended sums that are necessary to support the response of the Coast Guard and any Coast Guard maritime safety and security team in such patrols, setup of safety zones, and management.

Sec. 15. Operational control of mobile offshore drilling units

Current law requires that U.S.-flag vessels are under the command of a U.S. citizen that is operating under the authority of a license issued by the Coast Guard. This section adds additional requirements for an individual to obtain a license as master of a MODU. This section requires that the individual demonstrate the knowledge, understanding, proficiency, and sea service required to be responsible for all industrial business or functions of a MODU, including all drilling operations of that type of unit for which the applicant is to be licensed. These requirements are intended to ensure that a single person is responsible for ensuring the safe operation of a MODU at all times by exercising sole oversight over all activities conducted by a MODU. The amendments made by this section shall take effect six months after the date of enactment of this Act.

Sec. 16. Leave retention authority

This section adds 14 U.S.C. § 426 to provide that any Coast Guard personnel who work in support of a major disaster or emergency, as declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or in support of the response to a spill of national significance, as declared by the Com-

mandant, can retain up to 90 days of accrued leave at the end of the fiscal year.

Sec. 17. Single-hull tankers

This section prohibits single-hull tankers from offloading at the Louisiana Offshore Oil Platform (LOOP) or U.S. lightering areas beginning on January 1, 2011, instead of the current law deadline of January 1, 2015.

Sec. 18. Repeal of response plan waiver

This section amends section 311(j)(5)(G) of the Clean Water Act to prohibit an onshore facility, offshore facility, or tank vessel from operating without an approved plan for responding to a worst-case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance. Section 18(3) specifically prohibits a MODU, as defined in section 1001 of OPA, from operating without a response plan approved under section 311 of the Clean Water Act.

Sec. 19. National Contingency Plan

This section amends section 311(d) of the Clean Water Act to require: (1) the President to develop guidelines for the use of oil spill containment booms; (2) the Administrator of the Environmental Protection Agency (EPA) to update the regulations for use of chemical dispersants; and (3) the President to develop criteria, as part of the National Contingency Plan, for ceasing and removing a worst-case discharge of oil or hazardous substances, or for mitigating and preventing a substantial threat of such a discharge.

Subsection (a) amends section 311(d)(2) of the Clean Water Act to require that the National Contingency Plan for the removal of oil and hazardous substances include guidelines for the use of containment booms to contain a discharge of oil or a hazardous substance, including identification of quantities of containment booms likely to be needed, available sources of containment booms, and best practices for containment boom placement, monitoring, and maintenance.

Subsection (b) amends section 311(d) of the Clean Water Act by adding a new paragraph (5) related to the use of dispersants, other chemicals, and other spill mitigating devices and substances to respond to the discharge or substantial threat of discharge of oil or a hazardous substance.

New subsection (d)(5)(A) requires the President, acting through the Administrator of EPA, and within 15 months of the date of enactment of the Act, to issue a revised regulation for the development of the schedule for the use of dispersants, other chemicals, and other spill mitigating devices and substances, consistent with the requirements of new paragraph (5).

New subsection (d)(5)(B) establishes minimum criteria for the regulation required under subparagraph (A). For dispersants, other chemicals, and other spill mitigating substances included or proposed for inclusion on the schedule under section 311(d)(2)(G), the Administrator is required to: (1) establish minimum toxicity and efficacy criteria, taking into account the results of the EPA-led study carried out under new subsection (d)(5)(C); (2) provide for independent testing or other verification of information provided by an

applicant seeking inclusion of such dispersant, chemical, or substance on the schedule related to the toxicity or effectiveness of the product; (3) establish a framework for the use of any dispersant, chemical, or substance, including potential restrictions on the quantity, location, or method of use of the product, the quantity thresholds where additional consultation (on risk and potential impacts) with and approval (of specific quantities of product use) by the Regional Response Team and the Federal On-Scene Coordinator is required (over the baseline approval required new subsection 311(d)(5)(E)), criteria for developing the appropriate maximum quantity of a product that may be used, and a ranking of various products based on effectiveness and toxicity; (4) establish a requirement that the volume of oil or hazardous substances discharged, and the volume and location of any use of dispersant, chemical, or other substance, be measured and made publicly available; (5) notwithstanding any other provision of law, to require the public disclosure of the specific chemical identity, including the chemical and common name of any ingredients contained in, and specific chemical formulas or mixtures of, any dispersant, chemical, or substance; and (6) provide a mechanism for delisting any dispersant, chemical, or substance because it poses a significant risk to or impact on human health or the environment.

With respect to the requirements of new subsection (d)(5)(B)(i)(II), the Committee received information questioning the accuracy of toxicity and effectiveness data submitted to EPA in relation to the listing of a dispersant, chemical, or other substance on the National Contingency Plan Product Schedule. The Committee also received testimony that called into question whether dispersants, chemicals, or other substances are sufficiently tested, and their potential impacts evaluated, before they are used in response to a release of oil or hazardous substance. The Committee intends the provisions of new subsection (d)(5)(B)(i)(II) to require the Administrator, prior to the listing (or extension of listing) of any dispersant, chemical, or other substance, to verify the accuracy of toxicity, effectiveness, and other data received from a manufacturer, including, where applicable, the independent testing of the dispersant, chemical, or other substance to verify such data.

For a dispersant, chemical, or substance not specifically identified on the schedule, and prior to the use of such products in accordance with section 311(d)(2)(G), the Administrator is required to establish: (1) the minimum toxicity and efficacy criteria for such dispersant, chemical, or substance; (2) the information, including the specific chemical identity, formula, and mixtures, on such dispersant, chemical, or substance that shall be made publicly available; and (3) such additional information as the Administrator determines necessary. The Committee intends to harmonize the minimum toxicity and effectiveness criteria and public disclosure requirements for dispersants, chemicals, and other substances, regardless of whether they are listed on the schedule or not specifically identified on the schedule. The Committee intends that neither the Federal On-Scene Coordinator nor the Administrator will approve the use of any dispersant, chemical, or other substance under this section that does not meet the minimum requirements for toxicity, effectiveness, and public disclosure established by clauses (i) and (ii).

For other spill mitigating devices included or proposed to be included on the schedule under section 311(d)(2)(G), the Administrator shall require the manufacturer of such device to carry out a study of the risks and effectiveness of the device, and provide a mechanism for delisting any such device because it poses a significant risk to or impact on human health or the environment.

New subsection (d)(5)(C) requires the Administrator, within three months of the date of enactment of the Act, to initiate a study on the potential risks and impacts to human health and the environment, including acute and chronic risks, from the use of dispersants, chemicals, and other mitigating substances, in any, that may be used to carry out the National Contingency Plan. In carrying out this study, the Administrator shall assess the potential risks and impacts: (1) on a representative sample of biota and types of oil from locations where such products may be used; (2) on human health, including individuals most likely to come into contact with such products, such as oil spill response action workers; and (3) that result from any byproducts created from the use of such products, including chemically-dispersed oil and weathered dispersants, chemicals, and other substances. In carrying out the study, the Administrator shall determine what information may be required from manufacturers of dispersants, chemicals, or other substances to evaluate the potential risks and impacts to human health and the environment. New subsection (d)(5)(C)(ii)(I) provides that any manufacturer who is required to provide information to the Administrator must comply as a condition of listing on the schedule. The Committee intends that failure to provide such information be a factor to be considered in determining whether the use of a dispersant, chemical, or other mitigating substance should be approved by the Federal On-Scene Coordinator under new subsection (d)(5)(E).

New subsection (d)(5)(D) requires the Administrator, not later than five years after the date of enactment of the Act, and at least once every five years thereafter, to review the schedule for the use of dispersants, chemicals, and other spill mitigating devices and substances that may be used to carry out the National Contingency Plan, and update or revise the schedule, as necessary, to ensure the protection of human health and the environment. Subparagraph (D) also directs the Administrator to ensure, to the maximum extent practicable, that each update or revision to the schedule increases the minimum effectiveness value necessary for listing a dispersant, other chemical, or other spill mitigating device or substance on the schedule. The Committee understands that, pursuant to 40 C.F.R. § 300.915, the current minimum effectiveness for a dispersant on the National Contingency Plan product schedule is 45 percent. The Committee is concerned that, without a gradual increase in the minimum effectiveness, there may be little incentive to develop more effective (and potentially less toxic) dispersants for use in relation to the release of oil or hazardous substances. The Committee believes that the mandatory five-year review period and the gradual increase in the minimum effectiveness value will spur the development of the next generation of dispersants, chemicals, and other spill mitigating devices and substances to be used in the event of a discharge of oil or a hazardous substance.

New subsection (d)(5)(E) directs the Administrator, in issuing regulations under subsection (d)(5)(A), to require the approval of the Federal On-Scene Coordinator, in coordination with the Administrator, for all uses of a dispersant, other chemical, or other spill mitigating substance in any removal action, including any product listed on the schedule developed pursuant to such regulation, and any product included as part of an approved area contingency plan or response plan developed under section 311.

New subsection (d)(6) requires the President, within six months of the date of enactment of the Act, to review the procedures and standards developed under the National Contingency Plan (section 311(d)(2)(J)) for removing a worst-case discharge of oil or hazardous substances and for mitigating or preventing a substantial threat of such a discharge, to determine their sufficiency in ceasing and removing a worst-case discharge, and for mitigating or preventing a substantial threat of such a discharge. Not later than one year after the date of enactment of the Act, the President is required to undertake a rulemaking to revise such procedures and standards, consistent with the findings of the review, and develop a metric for evaluating the National Contingency Plan, Area Contingency Plans, and tank vessel, nontank vessel, and facility response plans consistent with the revised procedures and standards. The Committee received testimony during its hearings on the *Deepwater Horizon* spill that called into question the adequacy of the contingency and response plans for addressing a worst-case discharge of oil from the facility. The Committee intends the amendments to the National Contingency Plan to require the President to re-evaluate the overall effectiveness and sufficiency of contingency and response plans to address a worst-case discharge of oil from a site similar to that experienced by the *Deepwater Horizon* spill, and to develop a metric for review of future response plans to ensure their effectiveness and sufficiency in addressing future discharges (or substantial threats of discharge) of oil or hazardous substances.

Subsection (c) amends section 311(j)(4)(C)(iv) to require Area Contingency Plans to identify, among the list of equipment available to the owner or operator of a vessel or facility and Federal, State, and local agencies, the amount of oil spill containment boom that is available.

Sec. 20. Tracking database

This section amends section 311(b) of the Clean Water Act to require the President to create a comprehensive national database to track all discharges of oil or hazardous substances: (1) released into the waters of the United States, adjoining shoreline, or into or upon the waters of the contiguous zone; (2) released in connection with activities under the Outer Continental Shelf Lands Act or Deepwater Port Act of 1974; or (3) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976). New subsection 311(b)(13)(B) includes specific data that must be included as part of the national discharge database, directs the President to utilize data provided by each of the Federal agencies with regu-

latory authority over oil exploration, production, transportation, and storage, and requires that the database be publicly accessible.

Sec. 21. Safety of transportation-related offshore platforms

This section adds 49 U.S.C. §60138 to require the Secretary of Transportation to conduct an analysis of the adequacy of existing regulations and standards for the safety of transportation-related offshore platforms and the impact of the integrity of such platforms on pipeline safety. Not later than two years after the date of enactment of this Act, the Secretary of Transportation shall submit a report on the results of such analysis to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The report shall include any recommendations that the Secretary of Transportation may have for addressing the safety or integrity of transportation-related offshore platforms, including any recommendations for legislative or regulatory action.

Sec. 22. Evaluation and approval of response plans; maximum penalties

This section amends section 311 of the Clean Water Act to clarify and strengthen Federal oversight of oil spill response plans, and to update the level of administrative and civil penalties for failure to develop or implement an oil spill response plan.

Subsection (a)(1) amends subsection (j)(5)(A) to clarify the respective roles of Federal agencies with respect to review and approval of oil spill response plans.

New subsection (j)(5)(A)(iii)(I) clarifies that, with respect to a response plan for a tank vessel, nontank vessel, or offshore facility, the lead Federal agency is the Secretary of Homeland Security or the Administrator. Subclause (I) preserves EPA's existing authority with respect to an offshore facility located landward of the coast line (e.g., on inland lakes, rivers, streams, bays, and any other inland waters), as described in the 1993 Memorandum of Understanding (40 C.F.R. §112, Appendix B); preserves the Coast Guard's existing authority with respect to vessels; and provides additional authority to the Coast Guard with respect to other offshore facilities. Subclause (I) requires the Secretary of Homeland Security to concur with any response plan for an offshore facility not subject to the authority of the Administrator. The Committee believes that the events of the *Deepwater Horizon* spill highlighted a concern with joint oversight and review by the Coast Guard and the Minerals Management Service (MMS) of the Department of Interior over certain offshore facilities, such as MODUs. Because of a MODU's unique status as a vessel and an offshore facility, under current law, oversight of a MODU response plan was bifurcated between the Coast Guard (with respect to the vessel) and the MMS (with respect to the drilling unit and wellhead). The Coast Guard is the Federal On Scene Coordinator for an offshore oil spill. Therefore, the Committee believes that the Coast Guard should review and concur in any response plan that it will be responsible for implementing. Subclause (I) directs the Secretary of Homeland Security to provide the final review of both the vessel response plan, and the drilling unit/wellhead response plan, to ensure that the latter does not adversely impact the safety of the vessel.

New subsection (j)(5)(A)(iii)(II) preserves the existing authority of the Administrator and the Secretary of Transportation with respect to an onshore facility, as described in the Memorandum of Understanding between the Secretary of Transportation and the Administrator (40 C.F.R. § 112, Appendix A).

New subsection (j)(5)(A)(iv) requires the Secretary of Homeland Security or the Administrator, as appropriate, to require that a response plan for a vessel or facility submitted for review contain a probabilistic risk analysis for all critically engineered systems of the vessel or facility, and adequately address all risks identified in the risk analysis. The Secretary or Administrator shall require an owner, operator, or person that develops such analysis to make the risk analysis available to the public.

Subsection (a)(2) replaces existing subsection (j)(5)(E) to strengthen Federal oversight and approval or disapproval of any oil spill response plan. Subsection (j)(5)(E) requires the appropriate Federal department or agency (i.e., Department of Homeland Security, EPA, Department of Transportation (DOT), MMS) to establish a more transparent and rigorous oil spill response plan review and approval process. This subparagraph requires the President to provide an opportunity for public notice and comment on an oil spill response plan for an offshore or onshore facility or tank vessel that carries liquefied natural gas (LNG) and, acting through the appropriate Federal department or agency, make the response plan available to the public, including on the Internet.

In addition, subsection (j)(5)(E) includes specific authority for the President to approve, approve with revisions, or disapprove the response plan. The Committee expects the appropriate Federal department or agency to assess the adequacy of a submitted response plan to prevent and address a potential discharge of oil or hazardous substances, including a potential worst-case discharge of oil, such as that experienced in the *Deepwater Horizon* spill. The Committee also expects that the appropriate Federal department or agency will either disapprove or approve with revisions any oil spill response plan that such department or agency believes is inadequate.

Subparagraph (E) also requires the appropriate Federal department or agency to conduct, at a minimum, biennial inspections of the vessel or facility to ensure compliance with the response plan or identify deficiencies in the plan. The Committee intends that Federal agency personnel will conduct the biennial inspections required by this provision in-person; the practice of self-certification by the owner, operator, or other person in charge of the vessel or facility, even with Federal agency review, will not achieve compliance with this statutory requirement.

Finally, subparagraph (E) provides authority for the head of the appropriate Federal department or agency to issue administrative orders directing the owner, operator, or person in charge of a vessel or facility to comply with an approved response plan or any regulation issued under section 311, and to assess civil penalties or conduct other appropriate enforcement actions, including issuance of administrative and civil penalties, for failure to develop, submit, receive approval of, adhere to, or maintain the capability to implement the response plan, or failure to comply with any other requirement of section 311.

Subsection (a)(3) amends subsection (j)(5) to add new subparagraph (J) that requires the President, acting through the Secretary of Homeland Security, the Secretary of Transportation, and Administrator to submit a biennial report to Congress on the process of review, approval, approval with revisions, disapproval, inspection, and enforcement of oil spill response plans.

Subsection (a)(4) amends subsection (m)(2) to clarify that the Secretary of Transportation has authority to conduct oversight and inspect a transportation-related facility.

Subsection (b)(1)(A) amends subsection (b)(6)(A) to clarify that the Secretary of Transportation has authority to assess administrative penalties against an owner, operator, or person in charge of a transportation-related facility.

Subsection (b)(1)(B) amends subsection (b)(6)(A) to: (1) provide the appropriate Federal department or agency with authority to issue administrative penalties for any person who fails to provide notice to such agency of a discharge of oil or hazardous substance in violation of section 311(b)(3); (2) clarify that the appropriate Federal agencies can assess administrative penalties for failure to comply with any order or action required by the President under subsections 311(c) (Federal Removal Authority) or (e) (Orders Protecting Public Health), or any regulation issued under subsection 311(j) (National Response System); and (3) clarify the respective roles of the appropriate Federal agencies.

Subsection (b)(1)(C) amends various provisions of subsection (b)(6)(B) to increase the maximum amount of administrative penalties.

Subsection (b)(2)(A) amends various provisions of subsection (b)(7) to increase the maximum amount of civil penalties.

Subsection (b)(2)(B) amends subsection (b)(7)(B) to: (1) clarify that a civil penalty may be assessed for both a discharge of oil or hazardous substance or the substantial threat of discharge of oil or a hazardous substance; (2) to clarify that a civil penalty may be assessed for violation of any action required by the President under subsection 311(c) (Federal Removal Authority) or any order under subsection 311(e) (Orders Protecting Public Health); and (3) provide the appropriate Federal agency with authority to assess a civil penalty against any person who fails to provide notice to such agency of a discharge of oil or hazardous substance in violation of section 311(b)(3).

Subsection (b)(2)(C) amends subsection (b)(7)(C), (D), and (E) to: (1) clarify that the appropriate Federal agency has the authority to order injunctive relief for violations of regulations issued under section 311(j) (National Response System) or to refer such matters to the Attorney General; (2) clarify that a Federal district court may award appropriate relief, including injunctive relief, civil penalties, compliance and punitive damages for a violation of section 311; and (3) increase the maximum amount of civil penalties for failure to comply with regulations issued under section 311(j) (National Response System) or in the event of gross negligence.

Subsection (b)(3) provides that any amendments made by this subsection shall apply to all violations occurring on or after April 19, 2010.

Subsection (c) amends subsection (c)(1)(B)(ii) to clarify that the appropriate Federal agency has authority to issue an administra-

tive order to compel Federal, State, or private action to remove a discharge of oil or hazardous substance.

Sec. 23. Oil and hazardous substance cleanup technologies

This section amends section 311(j) of the Clean Water Act to require the Secretary of Homeland Security, in coordination with the heads of other appropriate Federal agencies, to establish a process for quickly and effectively soliciting, assessing, and deploying offshore oil and hazardous substance cleanup technologies in the event of a discharge or substantial threat of a discharge of oil or a hazardous substance in U.S. waters. This section also requires the Secretary of Homeland Security to maintain a database on best available oil and hazardous substance cleanup technologies. In addition, this section requires the Secretary to effectively coordinate with other appropriate agencies, industry, academia, small businesses, and others to ensure that the best technology available is implemented in the event of a discharge or threat of a discharge of oil of hazardous substance in U.S. waters.

Sec. 24. Implementation of oil spill prevention and response authorities

This section amends section 311(l) of the Clean Water Act to more explicitly describe the authorities of various Federal agencies with respect to section 311 of the Clean Water Act.

This section requires EPA to develop and maintain the operational capability: (1) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance; (2) to protect human health and safety from impacts of a discharge or substantial threat of a discharge; (3) to review and approve of, disapprove of, or require revisions (if necessary) to on-shore facility response plans and to carry out all other responsibilities under section 311(j)(5)(E); and (4) to protect the environment and natural resources from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance.

This section also requires the Coast Guard to develop and maintain operational capability: (1) to establish and enforce regulations and standards for procedures, methods, equipment, and other requirements to prevent and to contain a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility; (2) to establish and enforce regulations, and to carry out all other responsibilities, under subsection 311(j)(5)(A); (3) to review and approve of, disapprove of, or require revisions (if necessary) to tank vessel, nontank vessel, and offshore facility response plans and to carry out all other responsibilities under section 311(j)(5)(E); (4) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility; (5) to protect the public from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance in U.S. waters; and (6) to protect the environment and natural resources from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance in U.S. waters.

In addition, the President shall ensure that the Coast Guard has sufficient personnel and resources to act as a first responder to a discharge or substantial threat of a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility, including the resources necessary for on-going training of personnel, acquisition of equipment (including containment booms, dispersants, and skimmers), and repositioning of equipment. The Secretary of Homeland Security may enter into contracts with private and nonprofit organizations for personnel and equipment in carrying out these responsibilities.

This section requires DOT to: (1) establish and enforce regulations and standards for procedures, methods, equipment, and other requirements to prevent and to contain a discharge of oil or a hazardous substance from a transportation-related onshore facility; (2) review and approve of, disapprove of, or require revisions (if necessary) to transportation-related onshore facility response plans; and (3) ensure that DOT personnel develop and maintain operational capability for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility; protect the public from the impacts of a discharge or substantial threat of a discharge; and protect the environment and natural resources from the impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility.

Sec. 25. Disaster damage notification and assessment

This section amends 49 U.S.C. §60108 to require the operator of a pipeline facility in an area affected by a manmade or natural disaster to notify the Secretary of Transportation not later than 12 hours after the cessation of the disaster, or an earlier time determined appropriate by the Secretary, of any changes to the operational status of the pipeline facility, including information concerning physical damages, releases of highly volatile liquid, other hazardous liquid, or gas, disruptions in service, and projected dates for return to service.

Subsection (a) requires such operator, not later than 30 days after the cessation of a manmade or natural disaster, to develop and transmit to the Secretary of Transportation a written damage assessment, which, at a minimum: (1) identifies any physical damage to the pipeline facility and any other credible threat or hazard to the pipeline facility; (2) assesses the extent of any physical damage to the pipeline facility and any other credible threat or hazard to the pipeline facility; (3) evaluates the integrity of the pipeline facility; (4) if necessary, provides a schedule for repairing or abandoning the pipeline facility; and (5) meets any other requirements that the Secretary determines are appropriate by regulation.

Subsection (b) requires the Secretary of Transportation to issue a final rule establishing procedures to carry out this section no later than one year after the date of enactment of the Act, and requires the Secretary, no later than 45 days after the date of enactment, to issue interim guidance to pipeline operators on such procedures.

Sec. 26. Impacts to Indian tribes

This section amends section 1002(b)(2) of OPA to clarify that Indian tribes are eligible claimants for damages resulting from a discharge, or substantial threat of a discharge, of oil.

Sec. 27. National Commission study of Federal management and oversight of offshore drilling

On May 21, 2010, President Barack Obama issued an Executive Order (Ex. Order No. 13543) creating the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling to investigate the causes of the Deepwater Horizon disaster, and make recommendations for changes to Federal agencies, laws, or programs to ensure that similar incidents cannot happen in the future.

This section directs the National Commission to specifically review and make recommendations on improvements to Federal laws, regulations, and industry practices applicable to offshore drilling that would ensure the effective oversight, inspection, monitoring, and response capabilities of Federal agencies, and to protect human health and safety, occupational health and safety, and the environment and natural resources.

Specifically, this section requires the National Commission on the BP Deepwater Horizon Spill and Offshore Drilling to investigate the causes of the disaster, and make recommendations for changes to Federal agencies, laws, or programs to ensure that similar incidents cannot happen in the future. The Commission is directed to evaluate the current division of responsibility among different Federal agencies, and to submit recommendations of whether there should be changes in the responsibilities of the agencies now charged with regulation, and/or the creation of new agencies. The Commission shall ensure that Federal agencies regulating offshore drilling are staffed with, and managed by, career professionals who make safety the highest priority, and are not improperly influenced by political appointees or the regulated industry. In coordination with the final report to the President, the Commission is required to submit a report to Congress containing these recommendations.

Sec. 28. Federal enforcement actions

This section amends section 309(g)(6)(A) of the Clean Water Act to allow independent Federal and State actions, including the assessment of penalties, in relation to the discharge of oil or hazardous substances under section 311 of the Clean Water Act. This amendment would have no effect on the ability of a State to file a separate claim under State law.

Sec. 29. Time required before electing to proceed with judicial claim or against the fund

This section amends section 1013(c) of OPA to decrease the time from 90 days to 45 days in which a claimant can elect to commence an action in court against the responsible party or to present the claim to the Oil Spill Liability Trust Fund (Trust Fund) if unpaid.

Sec. 30. Report on former Coast Guard officials employed by recognized organizations

This section requires the Comptroller General to submit an annual report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Technology of the Senate on the employment of individuals who were Coast Guard officials in the previous five-year period by recognized organizations contracted to administer maritime programs for foreign flag administrations. At a minimum, the report shall assess the extent to which former Coast Guard officials who received compensation from recognized organizations were assigned to work on matters over which the former Coast Guard officials had oversight, inspection responsibility, or decision-making authority when the officials served in or worked for the Coast Guard. In addition, the report shall assess the extent to which former Coast Guard officials were provided compensation by recognized organizations and the positions held by former Coast Guard officials in the preceding calendar year.

This section provides confidentiality to the former Coast Guard members by ensuring that their names are not included in the report.

Sec. 31. Authorized level of Coast Guard personnel

This section authorizes an end-of-year strength for active-duty Coast Guard personnel of 47,300 for fiscal year 2011, of which not less than 300 personnel shall be assigned to implement the activities required of the Coast Guard by this Act.

Sec. 32. Clarification of memorandums of understanding

This section requires the President (acting through the head of the appropriate Federal department or agency) to implement or revise, as appropriate, memorandums of understanding to clarify the roles and jurisdictional responsibilities of EPA, the Coast Guard, DOT, and other Federal agencies relating to the prevention of oil discharges from tank vessels, nontank vessels, and facilities subject to OPA. The section shall be implemented no later than September 30, 2011.

Sec. 33. Study of health effects of oil spill

This section directs the Director of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Director of the Centers for Disease Control and Prevention (CDC) to jointly conduct a comprehensive study of the effects on human health of exposure to petroleum and other substances released in relation to the *Deep-water Horizon* oil spill or used or produced in response to the oil spill, including chemicals used to disperse the oil. The section also requires the Directors of ATSDR and CDC to jointly complete a baseline assessment to determine the health status of individuals exposed to petroleum or other substances released in connection with the oil spill to gather data to determine any change in health status from continued exposure.

This section also requires the Directors of ATSDR and CDC, not later than two years after the date of enactment of this Act, to submit a report to Congress on the results of the study and baseline assessment.

Sec. 34. Offshore energy security

This section requires that for all offshore facilities constructed after the date of enactment of this Act for operation in the U.S. EEZ for purposes of any form of energy production shall be built in the United States. All foreign-built offshore facilities are prohibited from operating in the EEZ for such purposes after the date of enactment of the Act.

Sec. 35. Oil spill response vessel database

This section requires the Commandant of the Coast Guard, not later than 90 days after the date of enactment of this Act, to complete an inventory of all vessels operating in the waters of the United States that are capable of meeting oil spill response needs designated in the National Contingency Plan authorized by section 311(d) of the Clean Water Act. The inventory shall categorize such vessels by capabilities, type, function, and location and be stored in a database that is updated no less frequently than on a quarterly basis. The Commandant may make information regarding the location and capabilities of oil spill response vessels available to a Federal On-Scene Coordinator to assist in the response to an oil spill or other incident in the waters of the United States.

Sec. 36. Offshore sensing and monitoring systems

This section adds section 4119 to OPA. This section requires that offshore facilities located in more than 500 feet of water to be equipped with sensing and monitoring systems that meet minimum requirements established under this section. These requirements include being able to operate for at least 25 years, providing real-time physical, biological, geological, and environmental monitoring, and providing alerts in the event of anomalous circumstances. Within 180 days of the date of enactment of this Act, the Secretary of Homeland Security shall issue regulations to implement this section.

Sec. 37. Vice commandant; vice admirals

This section authorizes the President to designate no more than four positions of importance and responsibility that shall be held by vice admirals, with the pay and allowances of that grade.

Sec. 38. Oil and gas exploration and production

This section strikes the definition for “oil and gas exploration and production” found at section 502(24) of the Clean Water Act to restore the authority to address stormwater runoff associated with construction-related activities at oil and gas exploration, production, processing, and treatment operations or transmission facilities.

Polluted runoff from impervious surfaces, such as construction sites, roadways, parking lots, and buildings, is the fastest growing source of water pollution in America. According to EPA, runoff from impervious surfaces is a central cause of pollution for the nation’s waters. Although impervious surfaces cover only three percent of the land mass of the country, EPA estimates that such surfaces are the primary source of impairment for 13 percent of rivers, 18 percent of lakes, and 32 percent of estuaries in the United States.

According to EPA, uncontrolled runoff from construction sites is a water quality concern because of the devastating effects that sedimentation can have on local waterbodies, particularly small streams. Numerous studies have shown the amount of sediment transported by stormwater runoff from construction sites with no controls is significantly greater than from sites with controls. In addition to sediment, construction activities yield pollutants, such as pesticides, petroleum products, construction chemicals, solvents, asphalts, and acids that can contaminate stormwater runoff. During storms, construction sites may be the source of sediment-laden runoff, which can overwhelm a small channel's capacity, resulting in streambed scour, streambank erosion, and destruction of near-stream vegetative cover. Where left uncontrolled, sediment-laden runoff has been shown to result in the loss of in-stream habitats for fish and other aquatic species, an increased difficulty in filtering drinking water, the loss of drinking water reservoir storage capacity, and negative impacts on the navigational capacity of waterways.

In December 2007, an EPA-funded study concluded that construction-related activities at drilling sites have an adverse impact on water quality, and recommended that regulations be developed to reduce or eliminate stormwater runoff (and associated pollutants). According to the EPA-funded study, well sites have the potential to produce sediment loads comparable to other construction-related activities, as well as facilitate the introduction of other harmful pollutants, including dissolved solids, metals, and acidity, to local streams.

In 1972, Congress authorized significant Federal and state authority to control water pollution from point sources, including conveyances of stormwater. In 1987, Congress amended the Clean Water Act to explicitly require the regulation of stormwater discharges, including stormwater from municipal, industrial, and construction sources. EPA established the National Pollutant Discharge Elimination System (NPDES) Storm Water Program, which required certain municipal, industrial, and construction sources to obtain Clean Water Act permit coverage for stormwater discharges. The stormwater program was implemented in two phases. Phase I, adopted in 1990, applied to medium and large municipal separate storm sewer systems and 11 categories of industrial activities (including large construction-related activities disturbing more than five acres of land). Phase II, adopted in 1999, applied to small municipal separate sewer systems and small construction-related activities disturbing between one and five acres of land.

For oil and gas construction-related activities, sites greater than five acres (Phase I) were generally required to obtain NPDES coverage by October 1, 1992 (See 55 Fed. Reg. 47990, November 16, 1990). For oil and gas construction-related activities disturbing between one and five acres (Phase II), EPA proposed NPDES coverage by March 10, 2003 (See 64 Fed. Reg. 68722, December 8, 1999). However, the compliance deadline for oil and gas construction-related activities at Phase II sites was extended by agency rulemaking on two separate occasions. In 2003, the deadline was extended to March 10, 2005 (68 Fed. Reg. 11325, March 10, 2003) and, in 2005, the deadline was extended to June 12, 2006 (70 Fed. Reg. 11560, March 9, 2005).

Prior to the implementation of the application of NPDES to construction-related activities at Phase II oil and gas sites, Congress enacted the Energy Policy Act of 2005 (Pub. L. 109–58) that amended section 502 of the Clean Water Act to add the definition for “oil and gas exploration and production”. Although this issue is squarely within the jurisdiction of the Committee on Transportation and Infrastructure, this amendment to the Clean Water Act was not considered by the Committee on Transportation and Infrastructure, and the Committee held no hearings on the water quality impacts of the amendment. The amendment to the Clean Water Act was included in the Energy Policy Acts reported by the Committee on Energy and Commerce, which does not have jurisdiction over the regulatory aspects of the Clean Water Act. See H.R. 1644, §2403 (108th Congress) and H.R. 6, §328 (109th Congress). This provision was included over the express objections of then-Ranking Member of the Committee on Transportation and Infrastructure, James L. Oberstar. See *Dissenting Views: Oil and Gas Provisions*, H. Rept. No. 108–65 (Pt. 1), at 345 (2003). When the House considered H.R. 1644 in the 108th Congress, then-Ranking Member Oberstar filed an amendment with the Committee on Rules to strike this provision from the bill. The Committee on Rules did not make the amendment in order and Members were not provided any opportunity to strike the provision from the bill.

The current definition of “oil and gas exploration and production” provides a permanent exemption from the Clean Water Act NPDES permitting requirements for construction-related activities associated with oil and gas exploration—both Phase I and Phase II sites. Under current law, construction-related activities for oil and gas exploration are the only industrial construction-related activities not subject to Clean Water Act permitting requirements, despite their demonstrated impact on water quality.

This section restores Clean Water Act NPDES authority over construction-related activities at oil and gas exploration, production, processing, and treatment operations or transmission facilities to that which existed prior to the enactment of Pub. L. 109–58. This section does not impact the statutory exemption for discharges of stormwater runoff for non-construction related activities at oil and gas exploration, production, processing, or treatment operations or transmission facilities found at section 402(l)(2) of the Clean Water Act.

Sec. 39. Authorization of appropriations

This section authorizes appropriations from the Trust Fund for the Coast Guard, EPA, and DOT to carry out this Act.

The Coast Guard is authorized to be appropriated from the Trust Fund the following amounts: (1) for fiscal year 2011, \$15 million; and (2) for each of fiscal years 2012 through 2015, \$16 million.

EPA is authorized to be appropriated from the Trust Fund \$10 million for each of the fiscal years 2011 to 2015.

DOT is authorized to be appropriated from the Trust Fund the following amounts: (1) for each of fiscal years 2011 through 2013, \$7 million; and (2) for each of fiscal years 2014 and 2015, \$6 million.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On May 19, 2010, the Committee on Transportation and Infrastructure held a hearing on "Deepwater Horizon: Oil Spill Prevention and Response Measures and Natural Resources Impacts". The Committee received testimony from representatives of BP, p.l.c., Transocean, Ltd., EPA, the National Oceanic and Atmospheric Administration, MMS, the Coast Guard, experts in toxicology and oceanography, an impacted Gulf fisherman, and representatives of non-governmental organizations.

On June 9, 2010, the Committee on Transportation and Infrastructure held a hearing on "Liability and Financial Responsibility for Oil Spills under the Oil Pollution Act of 1990 and Related Statutes". The Committee received testimony from Members of Congress, the Department of Justice, MMS, and the National Pollution Funds Center, and representatives of the oil industry, the insurance industry, the shipping industry, and the public advocacy and academic community.

On June 29, 2010, Chairman James L. Oberstar introduced H.R. 5629, the "Oil Spill Accountability and Environmental Protection Act of 2010".

On July 1, 2010, the Committee on Transportation and Infrastructure met in open session to consider H.R. 5629. The Committee adopted two amendments by voice vote. The Committee adopted a manager's amendment that made the numerous changes to the bill, including: (1) requiring EPA to rank dispersants on the National Contingency Plan list by efficacy and toxicity; (2) requiring a study of the human health impacts of the *Deepwater Horizon* oil spill; (3) requiring public notice and comment for response plans for LNG tank vessels; (4) addressing deficiencies associated with oil spill boom technologies and use; (5) strengthening the Coast Guard's role in responding to oil spills; (6) requiring a risk assessment analysis be included in response plans; (7) requiring the establishment of a national database of oil spill response vessels; (8) requiring offshore sensing and monitoring systems; (9) requiring construction of offshore oil rigs in the United States; (10) regarding Coast Guard deployment of best technologies available to address offshore release of oil; (11) authorizing the reorganization of the leadership of the Coast Guard; (12) regarding the payment of damages for mental health impacts; and (13) requiring a report on Marine Safety and Security Team needs in responding to the *Deepwater Horizon* oil spill. The Committee also adopted an amendment reestablishing a requirement that construction-related activities for oil and gas exploration and production comply with the stormwater requirements of the Clean Water Act. The Committee ordered H.R. 5629, as amended, reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 5629,

or ordering the bill reported. A motion to order H.R. 5629, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is satisfied when a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. To date, the Committee has not received a cost estimate for H.R. 5629 from the Director of the Congressional Budget Office. The Committee references the Committee Cost Estimate, included below.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the Committee Cost Estimate, included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to ensure full recovery from responsible parties of damages for physical and economic injuries, adverse effects on the environment, and clean up of oil spill pollution, to improve the safety of vessels and pipelines supporting offshore oil drilling, to ensure that there are adequate response plans to prevent environmental damage from oil spills, and for other purposes.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, a cost estimate from the Director of the Congressional Budget Office is not available.

COMMITTEE COST ESTIMATE

H.R. 5629 authorizes the appropriation of the following amounts from the Oil Spill Liability Trust Fund for the Coast Guard, EPA, and DOT to implement the activities of these agencies under H.R. 5629:

AUTHORIZATIONS OF APPROPRIATIONS

[In millions of dollars]

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Coast Guard	15	16	16	16	16
Environmental Protection Agency	10	10	10	10	10
Department of Transportation	7	7	7	6	6
Total	32	33	33	32	32

In addition to these increases in discretionary appropriations that would be required to implement H.R. 5629, the Committee estimates that two provisions of H.R. 5629 could significantly impact revenues and direct spending. First, section 3, Evidence of Financial Responsibility for Offshore Facilities, increases the minimum amount of evidence of financial responsibility that a responsible party for an offshore facility must demonstrate to \$1.5 billion. This provision is likely to result in lower bonus bids on new leases for exploration, development, or production of minerals (including oil) in the Outer Continental Shelf and reduced future royalties to the Federal Government from lower Outer Continental Shelf production. Although the impact of this provision is highly uncertain, the Committee estimates that it could reduce revenues and/or increase direct spending by approximately \$4 billion over the ten-year period from FY 2011–FY 2020.

Second, section 34, Offshore Energy Security, requires that all offshore facilities constructed after the date of enactment of this Act for operation in the U.S. Exclusive Economic Zone (EEZ) for purposes of any form of energy production shall be built in the United States. U.S. shipyards are facing declining orders for ships from the U.S. Navy and Coast Guard. The Committee believes that U.S. shipyards have the capacity and the skilled workforce necessary to meet the increased demand for the construction of offshore drilling platforms that would result from section 34, and would quickly do so. Therefore, the Committee estimates that, although this provision could reduce future Outer Continental Shelf bonus bids and royalties in the near-term, U.S. shipyards and workers will be able to meet increased demand.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits, as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. H.R. 5629, as amended, does not contain any earmarks, limited tax benefits, or limited tariff benefits under clause 9(e), 9(f), or 9(g) of rule XXI.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee has not received an estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (UMRA) (P.L. 104–4). The Committee estimates that H.R. 5629 contains private-sector mandates as defined in UMRA because it

would impose new safety standards and financial responsibility requirements on vessels, offshore facilities, and onshore facilities supporting offshore oil drilling. The Committee estimates that the aggregate cost of complying with the private-sector mandates in the bill would be significant, and would exceed the annual threshold established in UMRA (\$141 million, adjusted annually for inflation).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 5629, as amended, does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104-1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OIL POLLUTION ACT OF 1990

* * * * *

SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

* * * * *

Sec. 1013A. Information on claims.

* * * * *

TITLE IV—PREVENTION AND REMOVAL

SUBTITLE A—PREVENTION

* * * * *

Sec. 4119. Offshore sensing and monitoring systems.

* * * * *

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

* * * * *

SEC. 1002. ELEMENTS OF LIABILITY.

(a) * * *

(b) COVERED REMOVAL COSTS AND DAMAGES.—

(1) * * *

(2) DAMAGES.—The damages referred to in subsection (a) are the following:

(A) * * *

* * * * *

(D) REVENUES.—Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof *a political subdivision of a State, or an Indian tribe.*

* * * * *

(F) PUBLIC SERVICES.—Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State *a political subdivision of a State, or an Indian tribe.*

(G) HUMAN HEALTH.—

(i) *IN GENERAL.*—Damages to human health, including fatal injuries, which shall be recoverable by any claimant who has a demonstrable, adverse impact to human health or, in the case of a fatal injury to an individual, a claimant filing a claim on behalf of such individual.

(ii) *INCLUSION.*—For purposes of clause (i), the term “human health” includes mental health.

* * * * *

SEC. 1004. LIMITS ON LIABILITY.

(a) GENERAL RULE.—Except as otherwise provided in this section, the total of the liability of a responsible party under section 1002 and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed—

(1) * * *

(2) for any other vessel, \$950 per gross ton or ζ \$800,000,, \$800,000, whichever is greater; and

ζ (3) for an offshore facility except a deepwater port, the total of all removal costs plus \$75,000,000; and

ζ (4) (3) for any onshore facility and a deepwater port, \$350,000,000.

(b) DIVISION OF LIABILITY FOR MOBILE OFFSHORE DRILLING UNITS.—

(1) * * *

(2) TREATED AS FACILITY FOR EXCESS LIABILITY.—To the extent that removal costs and damages from any incident described in paragraph (1) *from any discharge of oil, or substantial threat of a discharge of oil, into or upon the water* exceed the amount for which a responsible party is liable *liable as described in paragraph (1)* (as that amount may be limited under subsection (a)(1)), the mobile offshore drilling unit is deemed to be an offshore facility. For purposes of applying subsection (a)(3), the amount specified in that subsection shall be reduced by the amount for which the responsible party is liable under paragraph (1).

* * * * *

(d) ADJUSTING LIMITS OF LIABILITY.—

(1) * * *

* * * * *

(4) ADJUSTMENT TO REFLECT CONSUMER PRICE INDEX.—The President, by regulations issued not later than 3 years after the date of enactment of the Delaware River Protection Act of 2006 and not less than every 3 years thereafter, shall adjust the limits on liability specified in subsection (a) to reflect significant increases in the Consumer Price Index.

(4) ADJUSTMENT OF LIMITS ON LIABILITY.—*Not later than 3 years after the date of enactment of the Oil Spill Accountability and Environmental Protection Act of 2010, and at least once every 3 years thereafter, the President shall review the limits on liability specified in subsection (a) and shall by regulation revise such limits upward to reflect either the amount of liability that the President determines is commensurate with the risk of discharge of oil presented by a particular category of vessel or any increase in the Consumer Price Index, whichever is greater.*

* * * * *

SEC. 1006. NATURAL RESOURCES.

(a) * * *

* * * * *

(e) DAMAGE ASSESSMENT REGULATIONS.—

(1) * * *

(2) REBUTTABLE PRESUMPTION *JUDICIAL REVIEW OF ASSESSMENTS*.—Any determination or assessment of damages to natural resources for the purposes of this Act made under subsection (d) by a Federal, State, or Indian trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act *be subject to judicial review under subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act), on the basis of the administrative record developed by the lead Federal trustee as provided in such regulations.*

* * * * *

SEC. 1013. CLAIMS PROCEDURE.

(a) * * *

* * * * *

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) * * *

(2) the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 1014(b), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

SEC. 1013A. INFORMATION ON CLAIMS.

In the event of a spill of national significance, the President may require a responsible party or a guarantor of a source designated under section 1014(a) to provide to the President any information on or related to claims, either individually, in the aggregate, or both, that the President requests, including—

(1) the transaction date or dates of such claims, including processing times; and

(2) any other data pertaining to such claims necessary to ensure the performance of the responsible party or the guarantor with regard to the processing and adjudication of such claims.

* * * * *

SEC. 1016. FINANCIAL RESPONSIBILITY.

(a) * * *

* * * * *

(c) OFFSHORE FACILITIES.—

(1) IN GENERAL.—

(A) * * *

(B) AMOUNT REQUIRED GENERALLY.—Except as provided in subparagraph (C), the amount of financial responsibility for offshore facilities that meet the criteria of subparagraph (A) is—

(i) \$35,000,000 for an offshore facility located seaward of the seaward boundary of a State; or

(ii) \$10,000,000 for an offshore facility located landward of the seaward boundary of a State *subparagraph (A) is \$1,500,000,000.*

(C) GREATER AMOUNT.—If the President determines that an amount of financial responsibility for a responsible party greater than the amount required by subparagraph (B) is justified based on the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, or transported by the responsible party, the evidence of financial responsibility required shall be for an amount determined by the President not exceeding \$150,000,000.

(C) GREATER AMOUNT.—

(i) SPECIFIC FACILITIES.—If the President determines that an amount of financial responsibility for a responsible party that is greater than the amount required by

subparagraph (B) is justified based on the relative operational, environmental, human health, and other risks posed by the quantity, quality, or location of oil that is explored for, drilled for, produced, or transported by the responsible party, the evidence of financial responsibility required shall be for an amount determined by the President.

(ii) ADJUSTMENT FOR ALL OFFSHORE FACILITIES.—

(I) IN GENERAL.—Not later than 3 years after the date of enactment of the Oil Spill Accountability and Environmental Protection Act of 2010, and at least once every 3 years thereafter, the President shall review the level of financial responsibility specified in subparagraph (B) and may by regulation revise such level upwards to a level that the President determines is justified based on the relative operational, environmental, human health, and other risks posed by the quantity, quality, or location of oil that is explored for, drilled for, produced, or transported by the responsible party.

(II) NOTICE TO CONGRESS.—Upon completion of a review specified in subclause (I), the President shall notify Congress as to whether the President will revise the levels of financial responsibility and the factors for making such determination.

* * * * *

ç(E) DEFINITION.—For the purpose of this paragraph, the seaward boundary of a State shall be determined in accordance with section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)).

* * * * *

SEC. 1018. RELATIONSHIP TO OTHER LAW.

(a) PRESERVATION OF STATE AUTHORITIES; SOLID WASTE DISPOSAL ACT.—Nothing in this Act çor the Act of March 3, 1851 shall—

(1) * * *

* * * * *

(c) ADDITIONAL REQUIREMENTS AND LIABILITIES; PENALTIES.—Nothing in this Actç, the Act of March 3, 1851 (46 U.S.C. 183 et seq.), çor section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) * * *

* * * * *

TITLE IV—PREVENTION AND REMOVAL

Subtitle A—Prevention

* * * * *

SEC. 4119. OFFSHORE SENSING AND MONITORING SYSTEMS.

(a) *IN GENERAL.*—The equipment required to be available under section 311(j)(5)(D)(iii) of the Federal Water Pollution Control Act for facilities listed in section 311(j)(5)(C)(iii) of such Act and located in more than 500 feet of water includes sensing and monitoring systems that meet the requirements of this section.

(b) *SYSTEMS REQUIREMENTS.*—Sensing and monitoring systems required under subsection (a) shall—

(1) use an integrated, modular, expandable, multi-sensor, open-architecture design and technology with interoperable capability;

(2) be capable of—

(A) operating for at least 25 years;

(B) real-time physical, biological, geological, and environmental monitoring;

(C) providing alerts in the event of anomalous circumstances;

(D) providing docking bases to accommodate spatial sensors for remote inspection and monitoring; and

(E) collecting chemical boundary condition data for drift and flow modeling; and

(3) include—

(A) an uninterruptible power source;

(B) a spatial sensor; and

(C) secure Internet access to real-time physical, biological, geological, and environmental monitoring data gathered by the system sensors.

* * * * *

TITLE 46, UNITED STATES CODE

Subtitle II—Vessels and Seamen

* * * * *

PART A—GENERAL PROVISIONS

* * * * *

CHAPTER 23—OPERATION OF VESSELS GENERALLY

* * * * *

§ 2301. Application

Except as provided in sections 2304 and 2306 of this title, this chapter title applies to a vessel operated on waters subject to the jurisdiction of the United States (including the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988 and the exclusive economic zone to the extent that the regulation of such operation is not prohibited under customary international law) and, for a vessel owned in the United States, on the high seas.

* * * * *

PART B—INSPECTION AND REGULATIONS OF VESSELS

* * * * *

CHAPTER 32—MANAGEMENT OF VESSELS

* * * * *

§ 3203. Safety management system

(a) * * *

(b) MOBILE OFFSHORE DRILLING UNITS.—The safety management system described in subsection (a) for a mobile offshore drilling unit operating in waters subject to the jurisdiction of the United States (including the exclusive economic zone) shall include processes, procedures, and policies related to the safe operation and maintenance of the machinery and systems on board the unit that are used for the industrial business and functions of the unit, including drilling operations.

(c) COMPLIANCE WITH CODE.—Regulations prescribed under this section shall be consistent with the International Safety Management Code with respect to vessels to which this chapter applies under section 3202(a) of this title.

CHAPTER 33—INSPECTION GENERALLY

* * * * *

§ 3306. Regulations

(a) * * *

* * * * *

(k) In prescribing regulations for mobile offshore drilling units, the Secretary shall develop standards to address a worst-case event involving a discharge as that term is defined in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

* * * * *

CHAPTER 37—CARRIAGE OF LIQUID BULK DANGEROUS CARGOES

* * * * *

§ 3703a. Tank vessel construction standards

(a) * * *

(b) This section does not apply to—

(1) * * *

* * * * *

(3) before January 1, 2015—

(A) a vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

(B) a delivering vessel that is offloading in lightering activities—

(i) within a lightering zone established under section 3715(b)(5) of this title; and

- (ii) more than 60 miles from the baseline from which the territorial sea of the United States is measured;
- (3) a vessel documented under chapter 121 of this title that was equipped with a double hull before August 12, 1992;
- (4) a barge of less than 1,500 gross tons (as measured under chapter 145 of this title) carrying refined petroleum product in bulk as cargo in or adjacent to waters of the Bering Sea, Chukchi Sea, and Arctic Ocean and waters tributary thereto and in the waters of the Aleutian Islands and the Alaskan Peninsula west of 155 degrees west longitude; or
- (5) a vessel in the National Defense Reserve Fleet pursuant to section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).

* * * * *

PART E—MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

* * * * *

CHAPTER 71—LICENSES AND CERTIFICATES OF REGISTRY

Sec.

7101. Issuing and classifying licenses and certificates of registry.

* * * * *

- 7104. Certificates for medical doctors and nurses.
- 7105. Oaths.
- 7106. Duration of licenses.
- 7107. Duration of certificates of registry.
- 7108. Termination of licenses and certificates of registry.
- 7109. Review of criminal records.
- 7110. Exhibiting licenses.
- 7111. Oral examinations for licenses.
- 7112. Licenses of masters or mates as pilots.
- 7113. Exemption from draft.
- 7114. Fees.
- 7104. Licenses for masters of mobile offshore drilling units.
- 7105. Certificates for medical doctors and nurses.
- 7106. Oaths.
- 7107. Duration of licenses.
- 7108. Duration of certificates of registry.
- 7109. Termination of licenses and certificates of registry.
- 7110. Review of criminal records.
- 7111. Exhibiting licenses.
- 7112. Oral examinations for licenses.
- 7113. Licenses of masters or mates as pilots.
- 7114. Exemption from draft.
- 7115. Fees.

* * * * *

§ 7104. Licenses for masters of mobile offshore drilling units

A license as master of a mobile offshore drilling unit may be issued only to an applicant who has been issued a license as master under section 7101(c)(1) and has demonstrated the knowledge, understanding, proficiency, and sea service required to be responsible for all industrial business or functions of a mobile offshore drilling unit, including all drilling operations of that type of unit for which the applicant is to be licensed.

§ 7104. 7105. Certificates for medical doctors and nurses

A certificate of registry as a medical doctor or professional nurse may be issued only to an applicant who has a license as a medical doctor or registered nurse, respectively, issued by a State.

§ 7105. 7106. Oaths

An applicant for a license or certificate of registry shall take, before the issuance of the license or certificate, an oath before a designated official, without concealment or reservation, that the applicant will perform faithfully and honestly, according to the best skill and judgment of the applicant, all the duties required by law.

§ 7106. 7107. Duration of licenses

A license issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

§ 7107. 7108. Duration of certificates of registry

A certificate of registry issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.

§ 7108. 7109. Termination of licenses and certificates of registry

When the holder of a license or certificate of registry, the duration of which is conditioned under *section 7106 or 7107 or section 7107 or 7108* of this title, fails to hold the license required as a condition, the license or certificate of registry issued under this part is terminated.

§ 7109. 7110. Review of criminal records

The Secretary may review the criminal record of each holder of a license or certificate of registry issued under this part who applies for renewal of that license or certificate of registry.

§ 7110. 7111. Exhibiting licenses

Each holder of a license issued under this part shall display, within 48 hours after employment on a vessel for which that license is required, the license in a conspicuous place on the vessel.

§ 7111. 7112. Oral examinations for licenses

An individual may take an oral examination for a license to serve on a fishing, fish processing, or fish tender vessel not required to be inspected under part B of this subtitle.

§ 7112. 7113. Licenses of masters or mates as pilots

A master or mate licensed under this part who also qualifies as a pilot is not required to hold 2 licenses. Instead, the qualification

of the master or mate as pilot shall be endorsed on the master's or mate's license.

§ 7113. 7114. Exemption from draft

A licensed master, mate, pilot, or engineer of a vessel inspected under part B of this subtitle, propelled by machinery or carrying hazardous liquid cargoes in bulk, is not liable to draft in time of war, except for performing duties authorized by the license. When performing those duties in the service of the United States Government, the master, mate, pilot, or engineer is entitled to the highest rate of wages paid in the merchant marine of the United States for similar services. If killed or wounded when performing those duties, the master, mate, pilot, or engineer, or the heirs or legal representatives of the master, mate, pilot, or engineer, are entitled to all the privileges under the pension laws of the United States provided to members of the Armed Forces.

§ 7114. 7115. Fees

The Secretary may prescribe by regulation reasonable fees for the inspection of and the issuance of a certificate, license, or permit related to small passenger vessels and sailing school vessels.

* * * * *

PART F—MANNING OF VESSELS

* * * * *

CHAPTER 81—GENERAL

* * * * *

§ 8101. Complement of inspected vessels

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on—

(1) * * *

(2) a mobile offshore drilling unit shall consider the specialized nature of the unit *and shall at all times be under the command of a master licensed under section 7104*; and

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PART H—IDENTIFICATION OF VESSELS

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CHAPTER 121—DOCUMENTATION OF VESSELS

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SUBCHAPTER II—ENDORSEMENTS AND SPECIAL DOCUMENTATION

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§ 12111. Registry endorsement

(a) * * *

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(e) RESOURCE ACTIVITIES IN THE EEZ.—Except for activities requiring an endorsement under sections 12112 or 12113, only a vessel for which a certificate of documentation with a registry endorsement is issued and that is owned by a citizen of the United States (as determined under section 50501(d)) may engage in support of exploration, development, or production of resources in, on, above, or below the exclusive economic zone or any other activity in the exclusive economic zone to the extent that the regulation of such activity is not prohibited under customary international law.

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PART J—MEASUREMENT OF VESSELS

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CHAPTER 143—CONVENTION MEASUREMENT

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§ 14305. Optional regulatory measurement

(a) On request of the owner of a documented vessel measured under this chapter, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

(1) * * *

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- ⊃(5) section 30506 of this title;
- ⊃(6) (5) sections 12118 and 12132 of this title;
- ⊃(7) (6) section 12139(b) of this title;
- ⊃(8) (7) sections 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a);
- ⊃(9) (8) section 403 of the Commercial Fishing Industry Vessel Act (46 U.S.C. 3302 note);
- ⊃(10) (9) the Officers' Competency Certificates Convention, 1936, and sections 8303 and 8304 of this title;
- ⊃(11) (10) the International Convention for the Safety of Life at Sea as provided by IMCO Resolution A.494 (XII) of November 19, 1981;
- ⊃(12) (11) the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as provided by IMO Resolution A.540 (XIII) of November 17, 1983;
- ⊃(13) (12) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as provided by IMO Resolution A.541 (XIII) of November 17, 1983;
- ⊃(14) (13) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated; or

§(15) (14) unless otherwise provided by law, any other law of the United States in effect before July 19, 1994, and not listed by the Secretary under section 14302(c) of this title.

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Subtitle III—Maritime Liability

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CHAPTER 301—GENERAL LIABILITY PROVISIONS

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§ 30104. Personal injury to or death of seamen

(a) *IN GENERAL.*—A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws Except as provided in subsection (b), laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

(b) *NONPECUNIARY LOSSES FOR DEATH.*—In addition to other amounts authorized by law, the recovery for a seaman who dies may also include nonpecuniary losses that are authorized under general maritime law, such as the loss of care, comfort, and companionship.

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CHAPTER 303—DEATH ON THE HIGH SEAS

Sec.

30301. Short title.

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§30307. Commercial aviation accidents.

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§ 30301. Short title

This chapter may be cited as the “Death on the High Seas Act”.

§ 30302. Cause of action

When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty or law against the person or vessel responsible. The action shall be for the exclusive benefit of the decedent’s spouse, parent, child, or dependent relative. The action shall be for the exclusive benefit of the survivors, including the decedent’s spouse, parent, child, or dependent relatives.

§ 30303. Amount and apportionment of recovery

The recovery in an action under this chapter shall be a fair compensation for the pecuniary loss and nonpecuniary loss sustained by the individuals for whose benefit the action is brought. The court shall apportion the recovery among those individuals in proportion to the loss each has sustained. , plus a fair compensation for the decedent’s pain and suffering. In this section, the term “non-

pecuniary loss” means losses authorized under general maritime law including loss of care, comfort, and companionship.

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§ 30305. Death of plaintiff in pending action

If a civil action in admiralty *or law* is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter.

§ 30306. Foreign cause of action

When a cause of action exists under the law of a foreign country for death by wrongful act, neglect, or default on the high seas, a civil action in admiralty *or law* may be brought in a court of the United States based on the foreign cause of action, without abatement of the amount for which recovery is authorized.

§ 30307. Commercial aviation accidents

⚭(a) DEFINITION.—In this section, the term “nonpecuniary damages” means damages for loss of care, comfort, and companionship.

⚭(b) BEYOND 12 NAUTICAL MILES.—In an action under this chapter, if the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of the United States, additional compensation is recoverable for nonpecuniary damages, but punitive damages are not recoverable.

⚭(c) WITHIN 12 NAUTICAL MILES.—This chapter does not apply if the death resulted from a commercial aviation accident occurring on the high seas 12 nautical miles or less from the shore of the United States.

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CHAPTER 305—EXONERATION AND LIMITATION OF LIABILITY

Sec.

30501. Definition.

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⚭30505. General limit of liability.

⚭30506. Limit of liability for personal injury or death.

⚭30507. Apportionment of losses.

⚭30508. Provisions requiring notice of claim or limiting time for bringing action.

⚭30509. Provisions limiting liability for personal injury or death.

⚭30510. Vicarious liability for medical malpractice with regard to crew.

⚭30511. Action by owner for limitation.

⚭30512. Liability as master, officer, or seaman not affected.

30505. *Provisions requiring notice of claim or limiting time for bringing action.*

30506. *Provisions limiting liability for personal injury or death.*

30507. *Vicarious liability for medical malpractice with regard to crew.*

* * * * *

⚭§ 30505. General limit of liability

⚭(a) IN GENERAL.—Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or

liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight.

¿(b) CLAIMS SUBJECT TO LIMITATION.—Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

¿(c) WAGES.—Subsection (a) does not apply to a claim for wages.

¿§ 30506. **Limit of liability for personal injury or death**

¿(a) APPLICATION.—This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or nondescript vessels.

¿(b) MINIMUM LIABILITY.—If the amount of the vessel owner's liability determined under section 30505 of this title is insufficient to pay all losses in full, and the portion available to pay claims for personal injury or death is less than \$420 times the tonnage of the vessel, that portion shall be increased to \$420 times the tonnage of the vessel. That portion may be used only to pay claims for personal injury or death.

¿(c) CALCULATION OF TONNAGE.—Under subsection (b), the tonnage of a self-propelled vessel is the gross tonnage without deduction for engine room, and the tonnage of a sailing vessel is the tonnage for documentation. However, space for the use of seamen is excluded.

¿(d) CLAIMS ARISING ON DISTINCT OCCASIONS.—Separate limits of liability apply to claims for personal injury or death arising on distinct occasions.

¿(e) PRIVILEGE OR KNOWLEDGE.—In a claim for personal injury or death, the privity or knowledge of the master or the owner's superintendent or managing agent, at or before the beginning of each voyage, is imputed to the owner.

¿§ 30507. **Apportionment of losses**

¿If the amounts determined under sections 30505 and 30506 of this title are insufficient to pay all claims—

¿(1) all claimants shall be paid in proportion to their respective losses out of the amount determined under section 30505 of this title; and

¿(2) personal injury and death claimants, if any, shall be paid an additional amount in proportion to their respective losses out of the additional amount determined under section 30506(b) of this title.

§ ¿30508. **30505. Provisions requiring notice of claim or limiting time for bringing action**

(a) * * *

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§ 30509. 30506. Provisions limiting liability for personal injury or death

(a) * * *

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§ 30510. 30507. Vicarious liability for medical malpractice with regard to crew

In a civil action by any person in which the owner or operator of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, the owner, operator, or employer is entitled to rely on any statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of the United States in which the shoreside medical care was provided.

§ 30511. Action by owner for limitation

(a) IN GENERAL.—The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter. The action must be brought within 6 months after a claimant gives the owner written notice of a claim.

(b) CREATION OF FUND.—When the action is brought, the owner (at the owner's option) shall—

(1) deposit with the court, for the benefit of claimants—

(A) an amount equal to the value of the owner's interest in the vessel and pending freight, or approved security; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter; or

(2) transfer to a trustee appointed by the court, for the benefit of claimants—

(A) the owner's interest in the vessel and pending freight; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter.

(c) CESSATION OF OTHER ACTIONS.—When an action has been brought under this section and the owner has complied with subsection (b), all claims and proceedings against the owner related to the matter in question shall cease.

§ 30512. Liability as master, officer, or seaman not affected

This chapter does not affect the liability of an individual as a master, officer, or seaman, even though the individual is also an owner of the vessel.

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PART I—REGULAR COAST GUARD

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CHAPTER 3—COMPOSITION AND ORGANIZATION

Sec.

41. Grades and ratings.

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§47. Vice Commandant; assignment.

§50. Area Commanders.

§50a. Chief of Staff.

47. Vice Commandant; appointment.

50. Vice admirals.

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§52. Vice admirals, continuity of grade.

52. Vice admirals and admiral, continuity of grade.

* * * * *

§41. Grades and ratings

In the Coast Guard there shall be an admiral, *admirals*, vice admirals; rear admirals; rear admirals (lower half); captains; commanders; lieutenant commanders; lieutenants; lieutenants (junior grade); ensigns; chief warrant officers; cadets; warrant officers; and enlisted members. Enlisted members shall be distributed in ratings established by the Secretary.

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§47. Vice Commandant; assignment

§47. Vice Commandant; appointment

The President may appoint, by and with the advice and consent of the Senate, one Vice Commandant who shall rank next after the Commandant, shall perform such duties as the Commandant may prescribe and shall act as Commandant during the absence or disability of the Commandant or in the event that there is a vacancy in the office of Commandant. The Vice Commandant shall be selected from the officers on the active duty promotion list serving above the grade of captain. The Commandant shall make recommendation for such appointment. The Vice Commandant shall, while so serving, have the grade of vice admiral *admiral* with pay and allowances of that grade. The appointment and grade of a Vice Commandant shall be effective on the date the officer assumes that duty, and shall terminate on the date the officer is detached from that duty, except as provided in subsection *section* 51(d) of this title.

§50. Area commanders

(a) The President may appoint, by and with the advice and consent of the Senate, a Commander, Atlantic Area, and a Commander, Pacific Area, each of whom shall be an intermediate commander between the Commandant and the district commanders in his respective area and shall perform such duties as the Commandant may prescribe. The area commanders shall be appointed from officers on the active duty promotion list serving above the

grade of captain. The Commandant shall make recommendations for such appointments.

ε(b) An area commander shall, while so serving, have the grade of vice admiral with pay and allowances of that grade. The appointment and grade of an area commander shall be effective on the date the officer assumes that duty, and shall terminate on the date the officer is detached from that duty, except as provided in subsection 51(d) of this title.

ε§ 50a. **Chief of Staff**

ε(a) The President may appoint, by and with the advice and consent of the Senate, a Chief of Staff of the Coast Guard who shall rank next after the area commanders and who shall perform duties as prescribed by the Commandant. The Chief of Staff shall be appointed from the officers on the active duty promotion list serving above the grade of captain. The Commandant shall make recommendations for the appointment.

ε(b) The Chief of Staff shall have the grade of vice admiral with the pay and allowances of that grade. The appointment and grade of the Chief of Staff shall be effective on the date the officer assumes that duty, and shall terminate on the date the officer is detached from that duty, except as provided in section 51(d) of this title.

§ 50. Vice admirals

(a)(1) The President may designate no more than 4 positions of importance and responsibility that shall be held by officers who—

(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and

(B) shall perform such duties as the Commandant may prescribe.

(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such position an officer of the Coast Guard who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.

(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provided in paragraph (2) of this subsection or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.

(2) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—

(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;

(B) while hospitalized, beginning on the day of the hospitalization and ending on the day the officer is discharged from the hospital, but not for more than 180 days; and

(C) while awaiting retirement, beginning on the date the officer is detached from duty and ending on the day before the officer's retirement, but not for more than 60 days.

(c)(1) *An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.*

(2) *An officer serving in a grade above rear admiral who holds the permanent grade of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer's permanent grade.*

(d) *Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.*

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§ 51. Retirement

¿(a) *An officer who, while serving in the grade of vice admiral, is retired for physical disability shall be placed on the retired list with the grade of vice admiral.*

¿(b) *An officer who is retired while serving in the grade of vice admiral, or who, after serving at least two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the grade of vice admiral.*

¿(c) *An officer who, after serving less than two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.*

(a) *An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.*

(b) *An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.*

(c) *An officer, other than the Commandant, who, after serving less than 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.*

(d) *An officer serving in the grade of admiral or vice admiral shall continue to hold that grade—*

(1) * * *

(2) *while awaiting retirement, beginning on the day that officer is relieved from the position of Commandant, Vice Commandant, ¿Area Commander, or Chief of Staff or Vice Admiral and ending on the day before the officer's retirement, but not for more than 60 days.*

¿§ 52. Vice admirals, continuity of grade

§ 52. Vice admirals and admiral, continuity of grade

The continuity of an officer's precedence on the active duty promotion list, date of rank, grade, pay, and allowances as a vice admiral or admiral shall not be interrupted by the termination of an

appointment for the purpose of reappointment to another position as a vice admiral or admiral.

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CHAPTER 5—FUNCTIONS AND POWERS

Sec.

81. Aids to navigation authorized.

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99. Marine safety workforce.

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§ 99. Marine safety workforce

(a) **MARINE SAFETY WORKFORCE.**—*The Secretary, acting through the Commandant—*

(1) shall designate a sufficient number of positions to be in the Coast Guard's marine safety workforce to perform vessel inspections and marine casualty investigations; and

(2) shall ensure that a sufficient number of fully qualified officers, members, and civilian employees of the Coast Guard are assigned to those positions.

(b) **CAREER PATHS.**—*The Secretary, acting through the Commandant, shall ensure that appropriate career paths for an officer, member, or civilian employee of the Coast Guard who wishes to pursue a career in marine safety are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior marine safety positions. The Secretary shall make available published information on such career paths.*

(c) **QUALIFICATIONS.**—*With regard to the marine safety workforce, an officer, member, or civilian employee of the Coast Guard assigned as a—*

(1) marine inspector shall have the training, experience, and qualifications equivalent to that required for a similar position at a classification society recognized by the Secretary under section 3316 of title 46 for the type of vessel, system, or equipment that is inspected;

(2) marine casualty investigator shall have training, experience, and qualifications in investigation, marine casualty reconstruction, evidence collection and preservation, human factors, and documentation using best investigation practices by Federal and non-Federal entities;

(3) marine safety engineer shall have knowledge, skill, and practical experience in—

(A) the construction and operation of commercial vessels;

(B) judging the character, strength, stability, and safety qualities of such vessels and their equipment; or

(C) the qualifications and training of vessel personnel; or

(4) marine inspector inspecting mobile offshore drilling units shall have knowledge, skill, and practical experience in—

(A) Federal, State, and international law compliance;

(B) personnel training;

(C) drilling operations;

(D) mobile offshore drilling unit and maritime safety;

(E) the effect of weather on mobile offshore drilling unit safety and operations;

(F) ship handling and positioning; and

(G) emergency procedures.

(d) APPRENTICESHIP REQUIREMENTS.—

(1) IN GENERAL.—An officer, member, or civilian employee of the Coast Guard in training to become a marine inspector, marine casualty investigator, or a marine safety engineer shall serve a minimum of one-year apprenticeship, unless otherwise directed by the Commandant, under the guidance of a qualified marine inspector (including an inspector of mobile offshore drilling units), marine casualty investigator, or marine safety engineer. The Commandant may authorize shorter apprenticeship periods for certain qualifications, as appropriate.

(2) HIGHLY SPECIALIZED VESSELS.—

(A) IN GENERAL.—In addition to the requirement under paragraph (1), any officer, member, or employee of the Coast Guard assigned as a marine inspector or marine casualty investigator with responsibility for inspecting or responding to casualties involving highly specialized vessels must have served a minimum of 6 months apprenticeship with those vessels.

(B) HIGHLY SPECIALIZED VESSELS DEFINED.—In this paragraph the term “highly specialized vessel” includes mobile offshore drilling units, tank vessels, and vessels carrying certain dangerous cargoes as defined by the Commandant.

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CHAPTER 11—PERSONNEL

OFFICERS

A. APPOINTMENTS

Sec.

211. Original appointment of permanent commissioned officers.

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GENERAL PROVISIONS

426. *Emergency leave retention authority.*

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OFFICERS

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D. DISCHARGES; RETIREMENTS; REVOCATION OF COMMISSIONS

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§ 290. Rear admirals and rear admirals (lower half); continuation on active duty; involuntary retirement

(a) The Secretary shall from time to time convene boards to recommend for continuation on active duty the most senior officers on the active duty promotion list serving in the grade of rear admiral (lower half) or rear admiral who have not previously been consid-

ered for continuation in that grade. Officers serving for the time being or who have served in the grade of vice admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued in the grade of rear admiral. *Officers, other than the Commandant, serving for the time being or who have served in the grade of vice admiral or admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued at the grade of rear admiral.* A board shall consist of at least five officers serving in the grade of vice admiral or as rear admirals previously continued. Boards shall be convened frequently enough to assure that each officer serving in the grade of rear admiral (lower half) or rear admiral is subject to consideration for continuation during a promotion year in which that officer completes not less than four or more than five years combined service in the grades of rear admiral (lower half) and rear admiral.

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GENERAL PROVISIONS

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§ 426. Emergency leave retention authority

(a) *IN GENERAL.*—A duty assignment for an active duty member of the Coast Guard in support of a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or in response to a spill of national significance shall be treated, for the purpose of section 701(f)(2) of title 10, as a duty assignment in support of a contingency operation.

(b) *DEFINITIONS.*—In this section:

(1) *SPILL OF NATIONAL SIGNIFICANCE.*—The term “spill of national significance” means a discharge of oil or a hazardous substance that is declared by the Commandant to be a spill of national significance.

(2) *DISCHARGE.*—The term “discharge” has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

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FEDERAL WATER POLLUTION CONTROL ACT

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TITLE III—STANDARDS AND ENFORCEMENT

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FEDERAL ENFORCEMENT

SEC. 309. (a) * * *

* * * * *

(g) ADMINISTRATIVE PENALTIES.—

(1) * * *

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(6) EFFECT OF ORDER.—

(A) LIMITATION ON ACTIONS UNDER OTHER SECTIONS.—
Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act; except that any violation—

(i) * * *

* * * * *

shall not be the subject of a civil penalty action under subsection (d) of this section or section 311(b) or section 505 of this Act.

* * * * *

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) * * *

(b)(1) * * *

* * * * *

(6) ADMINISTRATIVE PENALTIES.—

(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

(i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or paragraph (3),

(ii) who fails to provide notice to the appropriate Federal agency pursuant to paragraph (5), or

(iii) who fails or refuses to comply with any regulation any order or action required by the President under subsection (c) or (e) or any regulation issued under subsection (j) to which that owner, operator, or person in charge is subject,

may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, or the Administrator. Whenever the President delegates the authority to issue regulations under subsection (j), the agency that issues regulations pursuant to that authority shall have the authority to assess a civil penalty in accordance with this section for violations of such regulations.

(B) CLASSES OF PENALTIES.—

(i) CLASS I.—The amount of a class I civil penalty under subparagraph (A) may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Administrator or Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title

5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) CLASS II.—The amount of a class II civil penalty under subparagraph (A) may not exceed ζ \$10,000 $\$100,000$ per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed ζ \$125,000 $\$1,000,000$. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Administrator and Secretary may issue rules for discovery procedures for hearings under this paragraph.

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(7) CIVIL PENALTY ACTION.—

(A) DISCHARGE, GENERALLY.—Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to ζ \$25,000 $\$100,000$ per day of violation or an amount up to ζ \$1,000 $\$2,500$ per barrel of oil or unit of reportable quantity of hazardous substances discharged.

(B) FAILURE TO REMOVE OR COMPLY.—Any person ζ described in subparagraph (A) who, without sufficient cause—

(i) fails to properly ζ carry out removal of the discharge under an order of the President pursuant to subsection (c); or *comply with any action required by the President pursuant to subsection (c),*

(ii) *fails to provide notice to the appropriate Federal agency pursuant to paragraph (5), or*

ζ (ii) *(iii) fails to comply with an order pursuant to subsection (e) ζ (1)(B) ;*

shall be subject to a civil penalty in an amount up to ζ \$25,000 $\$100,000$ per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

(C) FAILURE TO COMPLY WITH REGULATION.—Any person who fails or refuses to comply with any regulation issued under subsection (j) shall be subject to a civil penalty in an amount up to ζ \$25,000 $\$100,000$ per day of violation. *Whenever the President delegates the authority to issue regulations under subsection (j), the agency that issues regulations pursuant to that authority shall have the authority to order injunctive relief or assess a civil penalty in accordance with this section for violations of such regulations and the authority to refer the matter to the Attorney General for action under subparagraph (E).*

(D) GROSS NEGLIGENCE.—In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than ζ \$100,000 $\$1,000,000$, and not more than ζ \$3,000 $\$7,500$ per barrel of

oil or unit of reportable quantity of hazardous substance discharged.

(E) JURISDICTION.—An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty. *The court may award appropriate relief, including a temporary or permanent injunction, civil penalties, compliance requirements, and punitive damages.*

* * * * *

(13) TRACKING DATABASE.—

(A) IN GENERAL.—*The President shall create a database to track all discharges of oil or hazardous substances—*

- (i) into the waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone;*
- (ii) in connection with activities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or*
- (iii) which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.)).*

(B) REQUIREMENTS.—*The database shall—*

(i) include—

- (I) the name of the vessel or facility;*
- (II) the name of the owner, operator, or person in charge of the vessel or facility;*
- (III) the date of the discharge;*
- (IV) the volume of the discharge;*
- (V) the location of the discharge, including an identification of any receiving waters that are or could be affected by the discharge;*
- (VI) a record of any determination of a violation of this section or section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702);*
- (VII) a record of any administrative or enforcement action taken against the owner, operator, or person in charge; and*
- (VIII) any additional information that the President determines necessary;*

(ii) use data provided by the Environmental Protection Agency, the Coast Guard, the Pipeline and Hazardous Materials Safety Administration, and other appropriate Federal agencies;

(iii) use data protocols developed and managed by the Environmental Protection Agency; and

(iv) be publicly accessible, including by electronic means.

(c) FEDERAL REMOVAL AUTHORITY.—

(1) GENERAL REMOVAL REQUIREMENT.—(A) * * *

(B) In carrying out this paragraph, the President may—

(i) * * *

(ii) direct or ~~ε~~ monitor all *monitor, including through the use of an administrative order, all Federal, State, and private actions to remove a discharge; and*

* * * * *

(d) NATIONAL CONTINGENCY PLAN.—

(1) * * *

(2) CONTENTS.—The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

(A) * * *

* * * * *

(N) Guidelines regarding the use of containment booms to contain a discharge of oil or a hazardous substance, including identification of quantities of containment booms likely to be needed, available sources of containment booms, and best practices for containment boom placement, monitoring, and maintenance.

* * * * *

(5) SCHEDULE FOR USE OF DISPERSANTS, OTHER CHEMICALS, AND OTHER SPILL MITIGATING DEVICES AND SUBSTANCES.—

(A) RULEMAKING.—Not later than 15 months after the date of enactment of this paragraph, the President, acting through the Administrator, after providing notice and an opportunity for public comment, shall issue a revised regulation for the development of the schedule for the use of dispersants, other chemicals, and other spill mitigating devices and substances developed under paragraph (2)(G) in a manner that is consistent with the requirements of this paragraph and shall modify the existing schedule to take into account the requirements of the revised regulation.

(B) SCHEDULE LISTING REQUIREMENTS.—In issuing the regulation under subparagraph (A), the Administrator shall—

(i) with respect to dispersants, other chemicals, and other spill mitigating substances included or proposed to be included on the schedule under paragraph (2)(G)—

(I) establish minimum toxicity and efficacy testing criteria, taking into account the results of the study carried out under subparagraph (C);

(II) provide for testing or other verification (independent from the information provided by an applicant seeking the inclusion of such dispersant, chemical, or substance on the schedule) related to the toxicity and effectiveness of such dispersant, chemical, or substance;

(III) establish a framework for the application of any such dispersant, chemical, or substance, including—

(aa) quantity restrictions or application conditions;

(bb) the quantity thresholds for which consultation with and approval by the Regional Response Team and the Federal On-Scene Coordinator is required;

(cc) the criteria to be used to develop the appropriate maximum quantity of any such dispersant, chemical, or substance that the Administrator determines may be used, both on a daily and cumulative basis; and

(dd) a ranking, by geographic area, of any such dispersant, chemical, or substance based on a combination of its effectiveness for each type of oil and its level of toxicity;

(IV) establish a requirement that the volume of oil or hazardous substance discharged, and the volume and location of any such dispersant, chemical, or substance used, be measured and made publicly available;

(V) notwithstanding any other provision of law, require the public disclosure of the specific chemical identity, including the chemical and common name of any ingredients contained in, and specific chemical formulas or mixtures of, any such dispersant, chemical, or substance; and

(VI) in addition to existing authority, expressly provide a mechanism for the delisting of any such dispersant, chemical, or substance based on any information made available to the Administrator that demonstrates that such dispersant, chemical, or substance poses a significant risk to or impact on human health or the environment;

(ii) with respect to a dispersant, other chemical, and other spill mitigating substance not specifically identified on the schedule, and prior to the use of such dispersant, chemical, or substance in accordance with paragraph (2)(G), establish—

(I) the minimum toxicity and efficacy levels for such dispersant, chemical, or substance;

(II) the information, including the specific chemical identity, formula, and mixtures, on such dispersant, other chemical, or other spill mitigating substance that shall be made publicly available; and

(III) such additional information as the Administrator determines necessary; and

(iii) with respect to other spill mitigating devices included or proposed to be included on the schedule under paragraph (2)(G)—

(I) require the manufacturer of such device to carry out a study of the risks and effectiveness of the device according to guidelines developed and published by the Administrator; and

(II) in addition to existing authority, expressly provide a mechanism for the delisting of any such device based on any information made available to

the Administrator that demonstrates that such device poses a significant risk to or impact on human health or the environment.

(C) STUDY.—

(i) IN GENERAL.—Not later than 3 months after the date of enactment of this paragraph, the Administrator shall initiate a study of the potential risks and impacts to human health and the environment, including acute and chronic risks, from the use of dispersants, other chemicals, and other spill mitigating substances, if any, that may be used to carry out the National Contingency Plan, including an assessment of such risks and impacts—

(I) on a representative sample of biota and types of oil from locations where such dispersants, chemicals, or substances may potentially be used;

(II) on human health, including individuals most likely to come into contact with such dispersants, chemicals, or substances, such as oil spill response action workers; and

(III) that result from any by-products created from the use of such dispersants, chemicals, or substances.

(ii) INFORMATION FROM MANUFACTURERS.—

(I) IN GENERAL.—In conjunction with the study authorized by clause (i), the Administrator shall determine the requirements for manufacturers of dispersants, chemicals, or substances to evaluate the potential risks and impacts to human health and the environment, including acute and chronic risks, associated with the use of the dispersants, chemicals, or substances and any byproducts generated by such use and to provide the details of such evaluation as a condition for listing on the schedule according to guidelines developed and published by the Administrator.

(II) MINIMUM REQUIREMENTS FOR EVALUATION.—Any evaluation carried out by a manufacturer under this clause shall include—

(aa) information on the oils and locations where such dispersants, chemicals, or substances may potentially be used;

(bb) an evaluation of the variety of different dispersants, chemicals, or substances that may be used in a response; and

(cc) an assessment of application and impacts from subsea use of the dispersant, chemical, or substance, including the potential long term effects of such use.

(D) PERIODIC REVISIONS.—

(i) IN GENERAL.—Not later than 5 years after the date of the issuance of the regulation under this paragraph, and at least once every 5 years thereafter, the Administrator shall review the schedule for the use of dispersants, other chemicals, and other spill mitigating

devices and substances that may be used to carry out the National Contingency Plan and update or revise the schedule, as necessary, to ensure the protection of human health and the environment.

(ii) EFFECTIVENESS.—The Administrator shall ensure, to the maximum extent practicable, that each update or revision to the schedule increases the minimum effectiveness value necessary for listing a dispersant, other chemical, or other spill mitigating device or substance on the schedule.

(E) APPROVAL OF USE AND APPLICATION OF DISPERSANTS.—

(i) IN GENERAL.—In issuing the regulation under subparagraph (A), the Administrator shall require the approval of the Federal On-Scene Coordinator, in coordination with the Administrator, for all uses of a dispersant, other chemical, or other spill mitigating substance in any removal action, including—

(I) any such dispersant, chemical, or substance that is included on the schedule developed pursuant to this subsection; or

(II) any dispersant, chemical, or other substance that is included as part an approved area contingency plan or response plan developed under this section.

(ii) REPEAL.—Any part of section 300.910 of title 40, Code of Federal Regulations, that is inconsistent with this paragraph is hereby repealed.

(6) REVIEW OF AND DEVELOPMENT OF CRITERIA FOR EVALUATING RESPONSE PLANS.—

(A) REVIEW.—Not later than 6 months after the date of enactment of this paragraph, the President shall review the procedures and standards developed under paragraph (2)(J) to determine their sufficiency in ceasing and removing a worst case discharge of oil or hazardous substances, and for mitigating or preventing a substantial threat of such a discharge.

(B) RULEMAKING.—Not later than 1 year after the date of enactment of this paragraph, the President, after providing notice and an opportunity for public comment, shall undertake a rulemaking to—

(i) revise the procedures and standards for ceasing and removing a worst case discharge of oil or hazardous substances, and for mitigating or preventing a substantial threat of such a discharge; and

(ii) develop a metric for evaluating the National Contingency Plan, Area Contingency Plans, and tank vessel, nontank vessel, and facility response plans consistent with the procedures and standards developed pursuant to this paragraph.

(j) NATIONAL RESPONSE SYSTEM.—
(1) * * *
* * * * *

(4) AREA COMMITTEES AND AREA CONTINGENCY PLANS.—(A)
* * *

* * * * *
(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

(i) * * *

* * * * *
(iv) list the equipment (including firefighting equipment) (including firefighting equipment and containment booms), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

* * * * *
(5) TANK VESSEL, NONTANK VESSEL, AND FACILITY RESPONSE PLANS.—(A)(i) * * *

* * * * *
(iii) In issuing the regulations under this paragraph, the President shall ensure that—

(I) the owner, operator, or person in charge of a tank vessel, nontank vessel, or offshore facility described in subparagraph (C) will not be considered to have complied with this paragraph until the owner, operator, or person in charge submits a plan under clause (i) or (ii), as appropriate, to the Secretary of the department in which the Coast Guard is operating, or the Administrator, with respect to such offshore facilities as the President may designate, and the Secretary or Administrator, as appropriate, determines and notifies the owner, operator, or person in charge that the plan, if implemented, will provide an adequate response to a worst case discharge of oil or a hazardous substance or a substantial threat of such a discharge; and

(II) the owner, operator, or person in charge of an onshore facility described in subparagraph (C)(iv) will not be considered to have complied with this paragraph until the owner, operator, or person in charge submits a plan under clause (i) either to the Secretary of Transportation, with respect to transportation-related onshore facilities, or the Administrator, with respect to all other onshore facilities, and the Secretary or Administrator, as appropriate, determines and notifies the owner, operator, or person in charge that the plan, if implemented, will provide an adequate response to a worst-case discharge of oil or a hazardous substance or a substantial threat of such a discharge.

(iv)(I) The Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, or the Administrator, as appropriate, shall require that a plan submitted to the Secretary or Administrator for a vessel or facility under clause (iii)(I) or (iii)(II) by an owner, operator, or person in charge—

(aa) contain a probabilistic risk analysis for all critical engineered systems of the vessel or facility; and
 (bb) adequately address all risks identified in the risk analysis.

(II) The Secretary or Administrator, as appropriate, shall require that a risk analysis developed under subclause (I) include, at a minimum, the following:

(aa) An analysis of human factors risks, including both organizational and management failure risks.

(bb) An analysis of technical failure risks, including both component technologies and integrated systems risks.

(cc) An analysis of interactions between humans and critical engineered systems.

(dd) Quantification of the likelihood of modes of failure and potential consequences.

(ee) A description of methods for reducing known risks.

(III) The Secretary or Administrator, as appropriate, shall require an owner, operator, or person in charge that develops a risk analysis under subclause (I) to make the risk analysis available to the public.

* * * * *

⌋(E) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall—

⌋(i) promptly review such response plan;

⌋(ii) require amendments to any plan that does not meet the requirements of this paragraph;

⌋(iii) approve any plan that meets the requirements of this paragraph;

⌋(iv) review each plan periodically thereafter; and

⌋(v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on the date of the enactment of the Coast Guard and Maritime Transportation Act of 2004 and ensure consistency to the extent practicable.

(E) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall—

(i) promptly review the response plan;

(ii) verify that the response plan complies with subparagraph (A)(iv), relating to risk analyses;

(iii) with respect to a plan for an offshore or onshore facility or a tank vessel that carries liquefied natural gas, provide an opportunity for public notice and comment on the response plan;

(iv) taking into consideration any public comments received and other appropriate factors, as determined by the President, require revisions to the response plan;

(v) approve, approve with revisions, or disapprove the response plan;

(vi) review the response plan periodically thereafter, and if applicable requirements are not met, acting through the head of the appropriate Federal department or agency—

(I) issue administrative orders directing the owner, operator, or person in charge to comply with the response plan or any regulation issued under this section; or

(II) assess civil penalties or conduct other appropriate enforcement actions in accordance with subsections (b)(6), (b)(7), and (b)(8) for failure to develop, submit, receive approval of, adhere to, or maintain the capability to implement the response plan, or failure to comply with any other requirement of this section;

(vii) acting through the head of the appropriate Federal department or agency, require, at a minimum, biennial inspections conducted by such agency of the tank vessel, nontank vessel, or facility to ensure compliance with the response plan or identify deficiencies in such plan;

(viii) acting through the head of the appropriate Federal department or agency, make the response plan available to the public, including on the Internet; and

(ix) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on the date of enactment of the Coast Guard and Maritime Transportation Act of 2004 and ensure consistency to the extent practicable.

* * * * *

(G) Notwithstanding subparagraph (E), the President may authorize a tank vessel, nontank vessel, offshore facility, or onshore facility a nontank vessel to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, nontank vessel, or facility nontank vessel, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge. A mobile offshore drilling unit, as such term is defined in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701), is not eligible to operate without a response plan approved under this section.

* * * * *

(J) Not later than 2 years after the date of enactment of this subparagraph, and biennially thereafter, the President, acting through the Administrator, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Transportation, shall submit to Congress a report containing the following information for each owner, operator, or person in

charge that submitted a response plan for a tank vessel, nontank vessel, or other facility under this paragraph:

(i) The number of response plans approved, disapproved, or approved with revisions under subparagraph (E) annually for tank vessels, nontank vessels, and facilities of the owner, operator, or person in charge.

(ii) The number of inspections conducted under subparagraph (E) annually for tank vessels, nontank vessels, and facilities of the owner, operator, or person in charge.

(iii) A summary of each administrative or enforcement action taken with respect to each tank vessel, nontank vessel, and facility of the owner, operator, or person in charge, including a description of the violation, the date of violation, the amount of each penalty proposed, and the final assessment of each penalty and an explanation for any reduction in a penalty.

* * * * *

(9) OIL AND HAZARDOUS SUBSTANCE CLEANUP TECHNOLOGIES.—The President, acting through the Secretary of the department in which the Coast Guard is operating, shall—

(A) in coordination with the heads of other appropriate Federal agencies, establish a process for—

(i) quickly and effectively soliciting, assessing, and deploying offshore oil and hazardous substance cleanup technologies in the event of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters; and

(ii) effectively coordinating with other appropriate agencies, industry, academia, small businesses, and others to ensure the best technology available is implemented in the event of such a discharge or threat; and

(B) in coordination with the heads of other appropriate Federal agencies, maintain a database on best available oil and hazardous substance cleanup technologies in the event of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters.

⊃ (1) The President

(1) DELEGATION AND IMPLEMENTATION.—

(1) DELEGATION.—The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(2) ENVIRONMENTAL PROTECTION AGENCY.—

(A) IN GENERAL.—The President shall delegate the responsibilities under subparagraph (B) to the Administrator.

(B) RESPONSIBILITIES.—The Administrator shall ensure that Environmental Protection Agency personnel develop and maintain operational capability—

(i) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the

discharge or substantial threat of a discharge of oil or a hazardous substance;

(ii) to protect human health and safety from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance;

(iii) to review and approve of, disapprove of, or require revisions (if necessary) to onshore facility response plans and to carry out all other responsibilities under subsection (j)(5)(E); and

(iv) to protect the environment and natural resources from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance.

(3) COAST GUARD.—

(A) IN GENERAL.—The President shall delegate the responsibilities under subparagraph (B) to the Secretary of the department in which the Coast Guard is operating.

(B) RESPONSIBILITIES.—The Secretary shall ensure that Coast Guard personnel develop and maintain operational capability—

(i) to establish and enforce regulations and standards for procedures, methods, equipment, and other requirements to prevent and to contain a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility;

(ii) to establish and enforce regulations, and to carry out all other responsibilities, under subsection (j)(5)(A);

(iii) to review and approve of, disapprove of, or require revisions (if necessary) to tank vessel, nontank vessel, and offshore facility response plans and to carry out all other responsibilities under subsection (j)(5)(E);

(iv) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility;

(v) to protect the public from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters; and

(vi) to protect the environment and natural resources from impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance in United States waters.

(C) ROLE AS FIRST RESPONDER.—

(i) IN GENERAL.—The responsibilities delegated to the Secretary under subparagraph (B) shall be sufficient to allow the Coast Guard to act as a first responder to a discharge or substantial threat of a discharge of oil or a hazardous substance from a tank vessel, nontank vessel, or offshore facility.

(ii) CAPABILITIES.—The President shall ensure that the Coast Guard has sufficient personnel and resources to act as a first responder as described in clause (i), including the resources necessary for on-going training of personnel, acquisition of equipment (including contain-

ment booms, dispersants, and skimmers), and repositioning of equipment.

(D) *CONTRACTS.*—The Secretary may enter into contracts with private and nonprofit organizations for personnel and equipment in carrying out the responsibilities delegated to the Secretary under subparagraph (B).

(4) *DEPARTMENT OF TRANSPORTATION.*—

(A) *IN GENERAL.*—The President shall delegate the responsibilities under subparagraph (B) to the Secretary of Transportation.

(B) *RESPONSIBILITIES.*—The Secretary of Transportation shall—

(i) establish and enforce regulations and standards for procedures, methods, equipment, and other requirements to prevent and to contain discharges of oil and hazardous substances from transportation-related onshore facilities;

(ii) have the authority to review and approve of, disapprove of, or require revisions (if necessary) to transportation-related onshore facility response plans and to carry out all other responsibilities under subsection (j)(5)(E); and

(iii) ensure that Department of Transportation personnel develop and maintain operational capability—

(I) for effective inspection, monitoring, prevention, preparedness, and response authorities related to the discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility;

(II) to protect the public from the impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility; and

(III) to protect the environment and natural resources from the impacts of a discharge or substantial threat of a discharge of oil or a hazardous substance from a transportation-related onshore facility.

(m) *ADMINISTRATIVE PROVISIONS.*—

(1) * * *

(2) *FOR FACILITIES.*—

(A) *RECORDKEEPING.*—Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.

(B) *ENTRY AND INSPECTION.*—Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating or an au-

thorized representative of the Administrator or Secretary, upon presentation of appropriate credentials, may—

(i) * * *

* * * * *

TITLE V—GENERAL PROVISIONS

* * * * *

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

* * * * *

⌋(24) OIL AND GAS EXPLORATION AND PRODUCTION.—The term “oil and gas exploration, production, processing, or treatment operations or transmission facilities” means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.

⌋(25) (24) RECREATIONAL VESSEL.—

(A) * * *

* * * * *

TITLE 49, UNITED STATES CODE

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Subtitle VIII—Pipelines

* * * * *

CHAPTER 601—SAFETY

Sec. 60101. Definitions.

* * * * *

60138. Safety of transportation-related offshore platforms.

* * * * *

§ 60108. Inspection and maintenance

(a) * * *

* * * * *

(e) DISASTER DAMAGE NOTIFICATION AND ASSESSMENT.—

(1) NOTIFICATION REQUIRED.—In the event of a manmade or natural disaster, the operator of a pipeline facility in an affected location shall notify the Secretary not later than 12 hours after the cessation of the disaster, as determined by the Secretary, or an earlier time determined appropriate by the Secretary, of any changes to the operational status of the pipeline

facility, including information concerning physical damages, releases of highly volatile liquid, other hazardous liquid, or gas, disruptions in service, and projected dates for return to service.

(2) PREPARATION OF DAMAGE ASSESSMENTS.—Not later than 30 days after the cessation of a manmade or natural disaster, as determined by the Secretary, the operator of a pipeline facility in an affected location shall develop and transmit to the Secretary a written damage assessment. The damage assessment, at a minimum, shall—

(A) identify any physical damage to the pipeline facility and any other credible threat or hazard to the pipeline facility;

(B) assess the extent of any physical damage to the pipeline facility and any other credible threat or hazard to the pipeline facility;

(C) evaluate the integrity of the pipeline facility;

(D) if necessary, provide a schedule for repairing or abandoning the pipeline facility; and

(E) meet any other requirements the Secretary determines are appropriate by regulation.

(3) ABANDONMENT.—An operator of a pipeline facility shall notify the Secretary promptly if the operator determines that the pipeline facility must be abandoned as a result of a manmade or natural disaster.

(4) OTHER.—An operator of a pipeline facility shall retain, and make available to the Secretary on request, a copy of any report prepared under this subsection for at least 5 years.

(5) DEFINITIONS.—In this subsection, the following definitions apply:

(A) ABANDON.—The term “abandon” means permanently remove from service.

(B) AFFECTED LOCATION.—The term “affected location” means any area directly or substantially affected by a manmade or natural disaster, as determined by the Secretary.

(C) MANMADE OR NATURAL DISASTER.—The term “manmade or natural disaster” means any hurricane, tornado, tidal wave, tsunami, earthquake, volcanic eruption, or, regardless of cause, any fire, flood, or explosion, or any similar catastrophe in the United States that causes, or may cause, substantial damage or injury to persons, property, or the environment, as determined by the Secretary.

* * * * *

§ 60138. Safety of transportation-related offshore platforms

(a) IN GENERAL.—The Secretary of Transportation shall conduct an analysis of the adequacy of existing regulations and standards for the safety of transportation-related offshore platforms and the impact of the integrity of such platforms on pipeline safety.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary may consult with any agency, organization, or person with expertise in the design, construction, testing, operation, or maintenance of offshore platforms.

(c) REPORT TO CONGRESS.—Not later than 24 months after the date of enactment of this section, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of

Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the results of the analysis conducted under subsection (a). The report shall include any recommendations the Secretary may have for addressing the safety or integrity of transportation-related offshore platforms, including any recommendations for legislative or regulatory action.

(d) TRANSPORTATION-RELATED OFFSHORE PLATFORM DEFINED.—In this section, the term “transportation-related offshore platform” means any platform—

(1) located beyond the shoreline of the United States in State or Federal waters;

(2) used for transporting gas or hazardous liquid; and

(3) the design, construction, testing, operation, maintenance, and security of which is not regulated by another Federal agency.

(e) LIMITATION.—Nothing in this section applies to a production facility.

* * * * *

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, July 26, 2010.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security, Ford House Office Building, Washington, DC.

DEAR CHAIRMAN THOMPSON: I write to you regarding H.R. 5629, the “Oil Spill Accountability and Environmental Protection Act of 2010”.

I agree that provisions in H.R. 5629 are of jurisdictional interest to the Committee on Homeland Security. I acknowledge that by forgoing a sequential referral, your Committee is not relinquishing its jurisdiction and I will fully support your request to be represented in a House-Senate conference on those provisions over which the Committee on Homeland Security has jurisdiction in H.R. 5629.

This exchange of letters will be inserted in the Committee Report on H.R. 5629 and in the Congressional Record as part of the consideration of this legislation in the House.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

JAMES L. OBERSTAR,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, July 26, 2010.

Hon. JAMES L. OBERSTAR,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN OBERSTAR: I write to you regarding H.R. 5629, the "Oil Spill Accountability and Environmental Protection Act of 2010".

H.R. 5629 contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, agreeing to waive consideration of this bill should not be construed as the Committee on Homeland Security waiving, alerting, or otherwise affecting its jurisdiction over subject matters contained in the bill which fall within its Rule X jurisdiction.

Further, I request your support for the appointment of an appropriate number of Members of the Committee on Homeland Security to be named as conferees during any House-Senate conference convened on H.R. 5629 or similar legislation. I also ask that a copy of this letter and your response be included in the legislative report for H.R. 5629 and in the Congressional Record during floor consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

BENNIE G. THOMPSON,
Chairman.

MINORITY VIEWS

The Committee on Transportation and Infrastructure Minority supports many of the provisions in H.R. 5629 including eliminating the \$75 million cap on damage payments by responsible parties at offshore facilities. The Minority believes that offshore drilling should be based on sound science, adequate and specific environmental review, and sufficient capability to quickly and effectively respond to any oil spills.

However, the Minority is concerned that the tenfold increase in the amounts required for Certificates of Financial Responsibility, and the application of that new requirement to all offshore facilities may have an unnecessary negative impact on U.S. jobs, and energy independence. The provision may also severely limit the ability of American-owned small and medium oil companies to participate in the Gulf of Mexico market. In essence, the bill restricts that market to only a small number of huge multinational oil producers, like BP.

Small and medium companies should be allowed to acquire joint certificates of liability, and that distinctions should be made between the amount required of different wells based on the risk posed by those wells rather than the hypothetical maximum amounts of coverage very large companies may be able to purchase. Smaller increases in the required certificates of financial responsibility coupled with planned increases in the industry-funded Oil Spill Liability Trust Fund can provide adequate protection for Americans living and working on our coasts without unnecessarily restricting the growth of U.S. jobs or further damaging our energy independence.

We are concerned the provision requires public disclosure of chemical identity, formulas, or mixtures of dispersants and other chemicals used during an oil spill. This raises intellectual property considerations not fully investigated. It could also slow Research and Development of better dispersants if chemical producers believe that their new products could not be legally protected. An amendment was offered during the Transportation and Infrastructure Committee markup that would have allowed the EPA to collect such information but to keep it confidential if the producer asked for such protection. That amendment was withdrawn after the Chairman promised to address this concern as the bill moves forward.

Aviation interests have expressed strong concern with the unintended consequences of expanding liability for recoverable damages for all accidents over the high seas. Currently, the Death on the High Seas Act (DOHSA) limits general aviation and commercial aviation manufacturers to recovery for pecuniary damages only with the understanding that insurance coverage is not guaranteed and that flight over the high seas is inherently risky.

General aviation operators and commercial and general aviation manufacturers point out expanding recoverable losses to include both pecuniary and non-pecuniary damages, and possibly even punitive damages, will have far-reaching and potentially negative consequences. Additional changes to DOHSA in H.R. 5629 allow for jury trials which have been traditionally prohibited. Allowing jury trials raises concerns with the amount of damages that might be awarded for unquantifiable injuries. Expanding liability and legal process for all accidents over the high seas without the benefit of vetting the issues during even a single hearing, will lead to potential unintended consequences, including increased insurance rates and lawsuits, less availability of insurance, and negative impacts on aviation manufacturing and jobs in the United States. The aviation interests also point out that the change will impact not only the States of Alaska, Hawaii and flights to the Caribbean, but it could also impact humanitarian relief efforts like those undertaken in Haiti.

The Minority Members, along with the aviation industry, rightly question if the intent of H.R. 5629 is to provide additional redress for victims of oil rig or vessel accidents, why is Congress making such wide-sweeping changes to DOHSA without carefully considering all potential consequences of the changes, particularly during a very weak economic recovery.

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