
James L. Oberstar

H.R. _____, THE OIL SPILL ACCOUNTABILITY AND ENVIRONMENTAL PROTECTION ACT OF 2010

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

June 29, 2010

Madam Speaker, I rise today to introduce H.R. _____, the “Oil Spill Accountability and Environmental Protection Act of 2010”, legislation to respond to the ongoing *Deepwater Horizon* oil spill disaster and to address several shortcomings in the law to ensure that a similar tragedy cannot happen again.

To understand the intent of this legislation, it is important to understand the historical context in which H.R. _____, the “Oil Spill Accountability and Environmental Protection Act”, is being introduced.

On April 20, 2010, a blowout from the mobile offshore drilling unit (MODU), the *Deepwater Horizon*, led to an explosion in the Gulf of Mexico that left 11 crew members missing and presumed dead. The *Deepwater Horizon* was owned by Transocean Ltd., and leased, at the time of the explosion, to BP p.l.c. (BP), which owns a majority stake in the Mississippi Canyon Block 252 (MC 252) site and had contracted the rig to drill a prospect well.

Following the explosion, the *Deepwater Horizon* sank on April 22. Since the explosion, oil has been spilling from the well into the Gulf of Mexico. In response to the *Deepwater Horizon* disaster, BP has made numerous attempts to stop or contain the flow of oil into the Gulf. U.S. Government and independent scientists estimate that the most likely flow rate of oil today is between 35,000 and 60,000 barrels per day.

In light of the April 20 explosion and the ongoing release of oil into the Gulf of Mexico, the Committee on Transportation and Infrastructure has held three hearings investigating the potential causes of this disaster, and exploring potential changes to the laws and agencies under the Committee's jurisdiction to ensure that a similar event cannot happen in the future.

While the causes of the explosion aboard the *Deepwater Horizon*, and its eventual sinking, remain under investigation, the hearings before the Committee on Transportation and Infrastructure have uncovered several shortcomings in current law that may have allowed the causes of this disaster to be set in motion.

For example, through the Committee hearings, our Members received testimony on how the MODU, *Deepwater Horizon*, was registered in the Marshall Islands and, therefore, was not subjected to as rigorous of a vessel safety inspection by the Coast Guard as a similar U.S.-flag vessel.

The Committee also learned that, because of the unique nature of offshore drilling, Federal oversight of the *Deepwater Horizon* drilling operation was divided between the Department of the

Interior's Minerals Management Service and the Coast Guard, with no clear final say of Federal authority over the operations onboard the drilling rig.

The Committee also learned that apparent shortcuts were taken in the development, approval, and implementation of oil spill response plans for the *Deepwater Horizon* drilling operation, and, in hindsight, these response plans were wholly inadequate to address a worst-case scenario involving a blowout from the well head.

The *Deepwater Horizon* disaster has also demonstrated that the current limits of liability, including the levels of financial responsibility for responsible parties, are insufficient to address a potential worst-case scenario on the release of oil for offshore facilities, and have called into question the current limits of liability for other vessels as well. With the expected costs of the *Deepwater Horizon* disaster expected to be in the tens of billions, and the agreement by BP to set aside \$20 billion in escrow to cover potential costs related to the spill, it is clear that the \$75 million liability cap for offshore facilities needs to be significantly increased or removed. As noted in testimony before the Committee on Transportation and Infrastructure, it is plausible that any limitation on liability, no matter how large, actually encourages risky behavior by externalizing the true cost of an oil spill response or damages over and above the cap. In addition, the Committee received testimony from the U.S. Coast Guard that suggests that the current limits of liability for certain classes of vessels do not adequately reflect the potential risks or impacts of a release of oil.

Finally, the Committee investigated the unprecedented use of more than 1.5 million gallons of chemical dispersants in relation to the *Deepwater Horizon* disaster, and has called into question the

potential short- and long-term impacts that increased use of these dispersants may have on the Gulf of Mexico and the natural resources that utilize this area.

Today, my Committee colleagues and I introduce H.R. _____, the “Oil Spill Accountability and Environmental Protection Act of 2010”, to address these and other shortcomings that may have allowed the *Deepwater Horizon* disaster to occur, and to help ensure that similar events cannot happen in the future.

In many ways, the events leading up to the introduction of this legislation are similar to those that compelled Congress to enact the original Oil Pollution Act of 1990. Up until this year, the events surrounding the release of approximately 750,000 barrels of oil from the *Exxon Valdez* in the Prince William Sound, Alaska, defined our understanding of the likely impacts from a domestic oil spill.

Yet, the events of the past three months have forced us to realize that the protections included in the original Oil Pollution Act of 1990 are inadequate to address the current state of oil development technologies.

What has become evident is the potential adverse impacts of a “worst-case scenario” from modern exploration sites, such as that being explored by the *Deepwater Horizon*, are very different from those created by the release of oil from a tanker. This disaster has compelled us to reexamine the framework for Federal oversight and regulation of potentially-limitless sources of oil, deep beneath the surface of the ocean, and the difficulty in controlling and remediating potentially massive releases of oil beyond the reach of direct human control.

This disaster also requires that we reassess the potential scope of impacted lives and livelihoods and the natural resources related to a massive oil release, and the capability of Federal, state, local, and private resources to prevent or address such a release.

In addition, this disaster requires that we reexamine the wisdom of oil exploration policies that push the envelope on drilling technologies without any assurance that these underwater resources can be shut down or adequately controlled and cleaned up if something goes wrong.

Finally, this disaster has forced us to reexamine the safety standards for offshore oil exploration and production activities to minimize the potential for future losses of life.

In short, this legislation amends or repeals several laws within the jurisdiction of the Committee on Transportation and Infrastructure to address the following areas: (1) Liability and Financial Responsibility; (2) Improvements in Safety; (3) Increased Oversight of Oil Spill Responses; (4) Improvements in Environmental Protection; and (5) Funding for Agency Response Activities.

A summary of the bill follows:

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
H.R. ____, THE “OIL SPILL ACCOUNTABILITY AND
ENVIRONMENTAL PROTECTION ACT OF 2010”

June 29, 2010

LIABILITY AND FINANCIAL RESPONSIBILITY

- **Repeal of and Adjustments to Limitations on Liability:** H.R. ____ removes the existing statutory limitation on liability for offshore facilities (such as the *Deepwater Horizon* rig) to apply to all spills on or after April 19, 2010, to ensure that the responsible party or parties will be responsible for 100 percent of oil pollution cleanup costs and damages to third parties. Directs the President to review the existing limitations on liability for vessels and onshore facilities, and authorizes the President to revise the liability limitations upward to an amount commensurate with the risk of discharge or any increase in the Consumer Price Index, whichever is greater.
- **Evidence of Financial Responsibility for Offshore Facilities:** H.R. ____ increases the minimum level of financial responsibility for an offshore facility (such as the *Deepwater Horizon* rig) to \$1.5 billion. Directs the President to review the minimum level of financial responsibility for an offshore facility every three years, and to revise the level upward to reflect the potential risk of a release to human health and the environment. Authorizes the President to require, on a case-by-case basis, additional levels of financial responsibility based on risk. Requires existing offshore leaseholders to demonstrate the new levels of financial responsibility within six months of the date of enactment of this Act.
- **Damages to Human Health:** Under current law, impacts to human health are not recognized as a valid claim under the Oil Pollution Act. H.R. ____ authorizes individuals to seek compensation from responsible parties for damages to human health resulting from a release of oil.
- **Modernize Federal Maritime Laws:** H.R. ____ amends the Death on the High Seas Act (enacted in 1920) and the Jones Act (enacted in 1920) to authorize the recovery of non-pecuniary damages currently allowed under general maritime law. Repeals the Limitation of Liability Act of 1851, which limits the liability of a ship owner to the value of the vessel and freight.

IMPROVEMENTS IN MARITIME SAFETY

- **Americanization of the U.S. Exclusive Economic Zone:** H.R. ____ requires all vessels (including Mobile Offshore Drilling Units (MODUs) such as the *Deepwater Horizon*) engaged in oil drilling activities in the U.S. Exclusive Economic Zone (200-mile zone) to be U.S.-flag vessels owned by U.S. citizens. Americanization ensures that the vessels are subject to U.S. safety regulations and that all of these vessels employ U.S. citizens (who, thus, pay U.S. taxes).

- **Safety Management Plans and Safety Standards for Mobile Offshore Drilling Units:** H.R. ____ requires that all MODUs develop and implement a safety management plan to address all activities on the vessel that may threaten the safety of the vessel or its crew. Requires the U.S. Coast Guard to develop standards to address a worst-case event involving a discharge of oil and gas.
- **Approval of Oil Spill Response Plans:** H.R. ____ requires the Coast Guard to concur in the oil spill response plan for an offshore facility (the well). Clarifies the respective authorities of the Environmental Protection Agency (EPA) and the U.S. Department of Transportation (DOT) with respect to onshore facilities.
- **Coast Guard Maritime Safety Workforce:** H.R. ____ requires the Coast Guard to increase the number of qualified marine inspectors, marine casualty investigators, and marine safety engineers.
- **Licensing Requirements for MODU Captains:** H.R. ____ requires that a MODU (such as the *Deepwater Horizon*) is, at all times, under the command of a licensed and proficient master who is responsible for the safety of both the navigational and industrial functions (e.g., drilling operations) on the MODU.

INCREASED OVERSIGHT OF OIL SPILL RESPONSES

- **Evaluation, Approval, and Public Availability of Oil Spill Response Plans:** H.R. ____ ensures that EPA, the Coast Guard, and DOT have the authority to require owners and operators of vessels and facilities engaged in oil-related activities to submit their oil response plans for approval, and make the plans publicly available. Clarifies that the agencies with jurisdiction must review, and, where necessary, revise, inspect, and enforce the provisions of a vessel or facility oil spill response plan.
- **Repeal of Response Plan Waivers:** H.R. ____ repeals the authority for the agencies with jurisdiction to allow any tank vessel or onshore or offshore facility to operate without an approved oil spill response plan. The bill preserves waiver authority for nontank vessels.
- **Oversight of Oil Spill Claims; Acceleration of Claims to the Oil Spill Liability Trust Fund:** H.R. ____ authorizes the President, in the event of a spill of national significance, to require a responsible party (or guarantor) to provide the United States with information on claims for damages made against the responsible party or the Trust Fund. Amends the Oil Pollution Act of 1990 to allow claimants to pursue compensation from the Oil Spill Liability Trust Fund within 45 days of a denial of a claim by the responsible party.

IMPROVEMENTS IN ENVIRONMENTAL PROTECTION

- **Use of Dispersants and Other Chemicals:** H.R. ____ directs the EPA to undertake a rulemaking to revise the list of approved dispersants and other chemicals that can be used in relation to an oil spill. Directs the Administrator to establish minimum toxicity and efficacy criteria for dispersants, provide for independent verification of industry-provided data, require public disclosure of the formula for listed dispersants, and provide a mechanism for delisting a dispersant based on potential impacts to human health or the environment. Requires specific approval of the Federal On-Scene Coordinator, in coordination with EPA, before use of a dispersant or other chemical in relation to a future oil spill.
- **National Oil Spill Database:** H.R. ____ requires the President, acting through EPA, the Coast Guard, DOT, and other Federal agencies to develop a publicly-available, national database to track all discharges of oil or hazardous substances into the waters of the United States, adjoining shorelines, or the waters of the contiguous zone.
- **Reforms of Federal Agencies, Laws, or Programs to Ensure Effective Oversight, Inspection, Monitoring, and Response Capabilities to an Oil Spill:** H.R. ____ directs the National Commission on the BP *Deepwater Horizon* Spill and Offshore Drilling, established by Executive Order, to evaluate the current division of responsibility among the different Federal agencies, and to submit recommendations to Congress on changes to the current responsibilities of Federal agencies, including the creation of new agencies to regulate offshore drilling operations. Requires the Commission to develop recommendations to ensure that offshore drilling is overseen by career professionals who will give safety the highest priority, and not be improperly influenced by political appointees or the regulated industry.

FUNDING FOR AGENCY RESPONSE ACTIVITIES

- **Authorized Level of Coast Guard Personnel:** H.R. ____ 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.
- **Authorization of Appropriations from the Oil Spill Liability Trust Fund:** H.R. ____ specifically authorizes appropriations from the Oil Spill Liability Trust Fund for the Coast Guard, EPA, and DOT to carry out this Act.