

OIL SPILL COMPENSATION ACT OF 2010

TITLE I – DEEPWATER HORIZON CLAIMS RESOLUTION

In the aftermath of the Exxon Valdez spill, Congress enacted the Oil Pollution Act of 1990 (OPA '90) to provide a process for the immediate payment of claims for damages caused by oil spills. OPA '90 was clearly never expected to provide a final resolution of all claims resulting from an environmental disaster of the magnitude of the Deepwater Horizon spill, but was provided as a supplement to other liability statutes and the general tort claims remedies that are available through state and federal courts. However, in light of the subsequent experience of the claimants in the Exxon Valdez case, who led a 20 year odyssey through the Court system before all their claims were paid, it is clear that a new process is needed to provide timely, just compensation to the people of the Gulf.

The claims resolution process provided in this bill would not supplant the OPA '90 process, which would continue to provide immediate financial assistance to claimants, but would provide an expedited process whereby all claims for economic damages from the Deepwater Horizon incident would be adjudicated by an independent Administrator and paid by the responsible parties on a timely basis.

Subtitle A – Office of Deepwater Horizon Claims Compensation

Sec.111.Establishment of Office of Deepwater Horizon Claims Compensation.

Section 111 establishes the Office of Deepwater Claims Compensation within the Department of the Interior, to provide timely, fair compensation, on a no-fault basis, and in a non-adversarial manner, to persons and State and local governments that have incurred economic damages as a result of the Deepwater Horizon incident. The Administrator shall be appointed by the President, subject confirmation by the Senate.

Sec.112.Claimant assistance.

Section 112 requires the establishment of a comprehensive claimant assistance program to provide assistance to claimants in preparing, substantiating, and submitting claims, including translation services. Resource Centers are to be established, with a minimum of one in each affected state. Attorney's fees are limited to 5% of any award made under this Act.

Sec.113.Compensation program startup.

Section 113 provides for interim personnel and authorities for the Office, pending the appointment and confirmation of the Administrator. Upon enactment, claims for damages related to the Deepwater Horizon incident are stayed, pending an election by the plaintiff to either continue the Court proceedings or pursue a claim through the Office of the Administrator. A claimant must choose one or the other

process, and “double recovery” of claims is not permitted. The Act provides for reinstatement of court actions if the Office of the Administrator is not operational on a timely basis.

Sec.114.Authority of Administrator.

Section 114 provides authority for the Administrator to issue subpoenas, administer oaths, require the production of evidence, and request assistance from other government agencies.

Sec.115.Advisory Committee on Deepwater Horizon Compensation.

Section 115 establishes an Advisory Committee that will be composed of members representing claimants, the responsible party, and experts in relevant scientific and technical fields, as well as claims compensation.

Subtitle B—Deepwater Horizon Compensation Procedures

Sec.121.Essential elements of eligible claim.

Section 121 provides that a claim must be filed in a timely manner, and prove, by a preponderance of the evidence, that a claimant has suffered damages as a result of the Deepwater Horizon incident.

Sec.122.General rule concerning no-fault compensation.

Section 122 provides that a claimant shall not be required to prove that the damages to be recovered resulted from the negligence or fault of any person.

Sec.123.Filing of claims.

Section 123 provides for a five-year statute of limitations for the filing of claims from the date on which the claimant first discovers that the claim has occurred. The award of a claim under this act shall not preclude the filing of additional claims for damages arising from the Deepwater Horizon incident that are manifested at a later date.

The section requires that the Administrator return any incomplete claims to the claimant, with an explanation of the information necessary to complete the claim, and inform the claimant of services available through the claimant assistance program.

Sec.124.Eligibility determinations and claim awards.

Section 124 requires the Administrator to determine the eligibility of, and value of awards for, claims. The Administrator is required to provide a proposed decision within 90 days, and provides a review process, with a right to hearing upon review. This section provides that the Administrator shall conduct the hearing in a manner that best determines the rights of the parties, and provides flexibility with regard to rules of evidence and procedure.

Subtitle C—Awards

Sec.131.Amount.

Section 131 provides for awards in the amount equal to damages to real or personal property, subsistence use, revenues, profits and earning capacity, and public services.

Sec.132.Payment.

Section 132 provides for payment of awards by the responsible parties within 30 days. If the responsible parties fail to pay the award, the award shall be paid by the Fund, with authority for the Attorney General to take action in court to recover the amount of the award, plus attorney's fees, expenses and interest from the responsible parties.

Sec.133.Setoffs for collateral source compensation and prior awards.

Section 134 provides that an award otherwise due to a claimant shall be reduced by compensation for that claim already paid by the responsible party.

Sec.134.Subrogation.

Section 134 provides that any person that pays compensation pursuant to this statute shall be subrogated to all rights, claims and causes of action under any other law.

Subtitle D—Judicial Review

Sec.141.Judicial review of rules and regulations.

Section 141 provides for review of rules and regulations under this title.

Sec.142.Judicial review of award decisions.

Section 142 provides for judicial review of awards decisions.

Sec.143.Other judicial challenges.

Section 143 provides for jurisdiction for actions for declaratory or injunctive relief challenging any provision of this title.

Subtitle E—Effect on Other Laws

Sec.151.Effect on other laws.

Section 151 provides that this title supersedes all federal or state law related to claims for damages compensated under this title.

TITLE II—NATIONAL COMMISSION ON OUTER CONTINENTAL SHELF OIL SPILL PREVENTION

Title II establishes a Commission to examine and report on the causes of the Deepwater Horizon incident, and make findings, conclusions and recommendations for corrective measures that may be taken to prevent similar incidents.

TITLE III—OIL SPILL LIABILITY

Subtitle A—Oil Pollution Act of 1990

Sec.301.Liability limits.

Section 301 amends the Oil Pollution Act of 1990 to provide authority to the President to conduct a rulemaking to establish strict liability limits for incidents occurring from offshore facilities after the date of enactment of this Act. This section provides factors that shall be taken into account with regard to the determination, including the availability of payments from the oil industry under this section.

Strict liability factors:

- (A) the availability of insurance products for offshore facilities; and
- (B) are otherwise based on—
 - (i) the water depth of the lease;
 - (ii) the minimum projected well depth of the lease;
 - (iii) the proximity of the lease to oil and gas emergency response equipment and infrastructure;
 - (iv) the likelihood of the offshore facility covered by the lease to encounter broken sea ice;
 - (v) the record and historical number of regulatory violations of the leaseholder under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (or the absence of such a record or violations);
 - (vi) the estimated hydrocarbon reserves of the lease;
 - (vii) the estimated well pressure, expressed in pounds per square inch, of the reservoir associated with the lease;
 - (viii) the availability and projected availability of funds in the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986;
 - (ix) other available remedies under law;

(x) the estimated economic value of nonenergy coastal resources that may be impacted by a spill of national significance involving the offshore facility covered by the lease;

(xi) whether the offshore facility covered by the lease employs a subsea or surface blowout preventer stack; and

(xii) the availability of industry payments for damages in excess of any individual liability as established by this Act.

This section provides that an incident that results in claims above the limits for individual liability set by the President in this section shall be paid by all other entities operating offshore facilities on the Outer Continental Shelf on the date of the incident.

Sec.302.Advance payment.

Section 302 amends the Oil Pollution Act of 1990 to authorize the President to make advance payments to from the Oil Spill Liability Trust Fund to state and local subdivisions for actions taken to prepare for and mitigate substantial threats from the discharge of oil.

Subtitle B—Oil Spill Liability Trust Fund

Sec.311.Rate of tax for Oil Spill Liability Trust Fund.

Section 311 raises the tax for the Oil Spill Liability Trust Fund to 21 cents per barrel of oil, as necessary to maintain the trust fund at a \$10 billion level.

Sec.312.Limitations on expenditures and borrowing authority.

Section 312 eliminates the caps on expenditures from the Oil Spill Liability Trust Fund and provides authority for the Fund to borrow up to \$10 billion from the Treasury. Any amounts borrowed will be repaid from the proceeds of the per barrel tax.

TITLE IV—FEDERAL OIL SPILL RESEARCH

Sec.401.Federal oil spill research.

Section 401 reauthorizes, updates, and expands the existing Interagency Coordinating Committee on Oil Pollution Research, providing additional funding for both the Committee and Regional Research Programs.

Sec.402.National Academy of Science participation.

Section 402 provides authority for the Chairman of the Coordinating Committee on Oil Pollution Research to work with the National Academy of Sciences to assess the status of oil pollution research and evaluate the recommendations and plan of the Committee.

Sec.403.Technical and conforming amendments.

Section 403 provides technical and conforming amendments, and increases the authorization for appropriations for the United States Coast Guard to \$50,000,000 for expenses for oil spill response under the Oil Pollution Act of 1990.

Sec. 404. Oil spill response authority.

Section 404 provides authority for the Coast Guard to authorize the use of dispersants for response to oil spills.

TITLE V—OIL AND GAS LEASING

Sec.501. Revenue sharing from outer Continental Shelf areas in certain coastal States.

Sec. 501 acknowledges the clear and present risks and impacts to coastal states which elect to participate in oil and gas development off of their shores by directing 37.5% of outer Continental Shelf oil and gas revenues to states and affected communities. Of this amount, 20% is directed to affected coastal political subdivisions in accordance with the Gulf of Mexico Energy Security Act of 2006. Additionally, 12.5% of all revenues are directed to the chronically underfunded Land and Water Conservation Fund. All revenues to the Federal Treasury under the Act would be devoted to deficit reduction.

Sec.502. Revenue sharing from areas in Alaska Adjacent zone.

Sec. 502 extends coastal revenue sharing for oil and gas development to the State of Alaska, directly accounting for Alaska's affected Native communities.

Sec.503.Accelerated Revenue Sharing to Promote Coastal Resiliency Among Gulf Producing States

Sec. 503 accelerates revenue sharing for producing states in the Gulf of Mexico under the Gulf of Mexico Energy Security Act of 1996. Revenue sharing will begin in 2010 instead of 2017.

Sec.504. Production of oil from certain Arctic offshore leases.

Sec. 504 restricts the transport of oil produced in Alaska's OCS planning areas to pipelines rather than tankers.