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BIG OIL BAILOUT PREVENTION LIABILITY ACT OF 2010

AUGUST 5, 2010.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following,

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 3305]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 3305) to amend the Oil Pollution Act of 1990, to require oil polluters to pay the full cost of oil spills, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

BACKGROUND AND NEED FOR THE LEGISLATION

Liability

Following the *Exxon Valdez* oil spill in Alaska, Congress enacted the Oil Pollution Act of 1990 (OPA). Title I of OPA consolidated existing Federal laws governing oil spill liability, expanded the coverage of those laws, strengthened Federal response authorities, and created a trust fund to pay for cleanup costs and damages.[1] OPA also established a framework for liability related to oil discharges into the navigable waters of the United States, adjoining shorelines, and coastal ocean areas known as the exclusive economic zone.

[1] *See* 33 U.S.C. §§ 2701–2720.

89–010

Section 1002(a) of OPA, 33 U.S.C. 2702(a), provides that a responsible party for a vessel or facility from which oil is discharged is strictly liable for (1) *all removal costs* necessary for removing spilled oil from water and shorelines, or for taking other actions as may be necessary to minimize or mitigate damage to the public health or welfare, and (2) *damages* caused by such discharges, including injuries to and losses of natural resources, destruction of property, loss of subsistence use of natural resources, loss of tax revenue, loss of profits or earning capacity, and net increased costs for additional public services.

Section 1004(a) of OPA, 33 U.S.C. 2704(a), establishes monetary limitations on a responsible party's liability for damages under the Act. Different limitation amounts apply to various types of vessels and facilities. Section 1004(a)(3) provides that liability for damages related to a discharge from an offshore facility is limited to $75,000,000 for each incident. This limitation on liability for damages does not apply if the incident was caused by gross negligence, willful misconduct, or violation of an applicable Federal regulation under certain circumstances.[2]

In addition, under OPA, the Oil Spill Liability Trust Fund (Trust Fund) is available to pay claims for removal costs and damages to the extent a responsible party's liability exceeds an applicable liability cap or it is unable to meet its payment obligations.[3] The Trust Fund currently holds approximately $1.6 billion, although OPA states that only $1 billion may be expended per incident. Additionally, there is a limit of $500 million per incident for payments from the Trust Fund to compensate for natural resource damages.[4]

The Deepwater Horizon explosion and ongoing release of oil into the Gulf of Mexico have made it clear that the $75 million per incident liability limit applicable to offshore facilities under OPA is outdated and inappropriate. An analyst at the financial services company Raymond James recently estimated the total cost of the Deepwater Horizon disaster to be $63 billion,[5] and Louisiana's State Treasurer has estimated that environmental and economic damages could reach up to $100 billion.[6] BP reports that it has incurred over $3 billion in response costs thus far.[7] As of July 5, 2010, BP reported that it had already paid over $147,000,000 in claims.[8]

Leaving OPA's current $75 million liability limitation in place would thus create two alterative scenarios: either American taxpayers would be required to pay for damages beyond the amounts available from the OSLTF, or innocent victims would be left uncompensated. Neither of these outcomes would be appropriate. S. 3305, as amended, will ensure that responsible parties are liable for all economic and natural resources damages resulting from covered oil pollution discharges.

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[2] 33 U.S.C. § 2704(c)(1).
[3] *See* 33 U.S.C. § 2712(a).
[4] 26 U.S.C. § 9509(c)(2)(A).
[5] *See BP Oil Spill Costs: $20 billion? Try $63 billion,* Wall Street Journal Blogs, June 16, 2010, http://blogs.wsj.com/deals/2010/06/16/bp-oil-spill-costs-20-billion-try-63-billion/
[6] *See Gulf Spill damages may hit $100 billion: Louisiana Treasurer,* Reuters, June 17, 2010, http://www.reuters.com/article/idUSTRE65G64P20100617
[7] *See BP: Gulf Oil Spill Response Costs, Claims Total $3.12B To Date,* Wall Street Journal, July 5, 2010, http://online.wsj.com/article/BT-CO-20100705-701572.html
[8] *Id.*

As the recent events make clear, the OPA limitation on liability for offshore facilities is contrary to the public interest. Corporations such as BP that profit from oil exploration and production are in the best position to prevent accidents and discharges. Companies undertaking these types of risky activities should bear full responsibility for any damages their actions impose on individuals, businesses, and the environment and have every incentive to avoid damages. In testimony before the Environment and Public Works Committee, Professor Kenneth Murchison from Louisiana State University described the impacts of limitations on liability and the benefits of removing such limitations:

> Increasing the damages for which a responsible party is liable should encourage responsible parties to exercise greater care in offshore drilling activities; eliminating the cap altogether would encourage even greater care. Increasing or eliminating the cap would also reduce or eliminate the unfairness of imposing the burden of the uncovered damages on innocent victims of an oil spill or on the general taxpayers. * * * Given the possibilities of huge economic gains, the cap in the Oil Pollution Act probably does not induce drilling that would be unprofitable without the cap on liability; the drilling would almost certainly occur with or without the cap on liability for damages. The protection from economic loss may, however, have the unconscious effect of discouraging some additional safety and environmental protections.[9]

In testimony before the House of Representatives, MIT economist Michael Greenstone also described how an artificial limit on liability removes incentives for safety.[10] Lifting the limit on liability, which requires companies to bear the liability for drilling activities, will ensure companies have the maximum incentive to avoid events such as the Deepwater Horizon disaster.

The Obama Administration has concurred in the need to lift the OPA liability caps. On May 12, 2010, the White House released a package of legislation that, among other things, would raise the caps on liability for responsible parties under OPA.[11]

Response planning

While Section 311(j)(5) of the Clean Water Act currently requires owners and operators of offshore oil drilling facilities to prepare plans for responding to oil spills and submit them to the President, the Deepwater Horizon oil spill has demonstrated the need for a more detailed response planning process.

S. 3305, as amended, includes provisions strengthening contingency plan requirements and procedures to ensure the effectiveness of response capabilities, and requires response plans to directly address and mitigate economic and environmental impacts to the maximum extent practicable.

[9] Statement of Kenneth M. Murchison, Senate Committee on Environment and Public Works, Legislative Hearing: S. 3305, The Big Oil Bailout Prevention Liability Act of 2010, June 9, 2010.

[10] *See* Statement of Michael Greenstone, House Committee on Transportation and Infrastructure Hearing on Liability and Financial Responsibility for Oil Spills Under the Oil Pollution Act of 1990 and Related Statutes, June 9, 2010.

[11] *See* White House Fact Sheet: Deepwater Horizon Oil Spill Legislative Package, May 12, 2010.

Claims process

OPA also sets forth procedures for claims to be presented to the Trust Fund. The current law requires that a claimant must first submit a claim to a responsible party, such as BP, and then wait 90 days to determine whether the claim can be settled with the responsible party, before the claimant may seek payment from the Trust Fund or commence an action in court.[12] Concerns have been raised that the 90-day period is too long and may result in hardship due to delays in claims processing. To minimize such delays, S. 3305, as amended, shortens the 90-day period to 30 days.

With respect to the Deepwater Horizon disaster, at the request of the Obama Administration BP has agreed to establish a separate Gulf Coast Claims Facility, funded by a $20 billion escrow account, to process and make payments for claims against BP as a responsible party under OPA.[13] Given the importance of ensuring fair and timely processing and payment of such claims, Congress should receive detailed periodic reports on the progress and status of payments made by the Facility. The Committee therefore approved an amendment to S. 3305 requiring that the Administrator of the Facility shall provide quarterly reports to Congress regarding the status of, and ongoing payments from, the Facility.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the bill may be cited as the Big Oil Bailout Prevention Liability Act of 2010.

Section 2. Removal of limits on liability for offshore facilities

Summary

As approved by the Committee, Section 2(a) provides that Section 1004(a)(3) of OPA, 33 U.S.C. 2704(a)(3), is amended by striking "plus $75,000,000" and inserting "and the liability of the responsible party under section 1002." This amendment effectively eliminates the monetary limitation on liability in this section and provides for full liability for the costs and damages otherwise specified by OPA.

Section (2)(b) provides that the amendment to OPA made by this section takes effect on April 15, 2010.

Discussion

This amendment to OPA removes the limitation of $75,000,000 on the liability of responsible parties owning or operating offshore facilities other than deepwater ports. In its place, the amendment provides that such responsible parties shall be liable for all costs of removal and all of the categories of other damages described in OPA Section 1002,[14] including damages for injury to natural resources; destruction of real or personal property; loss of subsistence use of natural resources; lost revenues of governmental entities; lost business profits and individuals' earning capacity; and costs of

[12] *See* 33 U.S.C. § 2713(c).
[13] *See* White House Fact Sheet: Claims and Escrow, June 16, 2010, http://www.whitehouse.gov/the-press-office/fact-sheet-claims-and-escrow.
[14] *See* 33 U.S.C. § 2702.

public services. Under S. 3005 as amended, responsible parties operating such facilities shall be subject to the full amount of liability for each of these categories of damages.

This change to OPA is to be effective as of April 15, 2010. BP has already formally agreed that the current OPA limitation of $75,000,000 shall not apply to the Deepwater Horizon disaster. Making the bill effective as of April 15, 2010 serves an important and broad public purpose, ensuring that entities which cause oil spills are responsible for the damages, rather than taxpayers or innocent victims, even in the event such a spill occurs prior to final enactment of this bill.

Section 3. Claims procedure

Summary

Section 3 amends Section 2713(c) of OPA by striking "settled by any person by payment within 90 days" and inserting "settled in whole by any person by payment within 30 days."

Discussion

Section 2713 of OPA sets forth procedures for handling claims for costs and damages resulting from covered oil discharges. It currently requires that claims first be presented to a responsible party or guarantor. Then, unless the responsible party denies all liability for the claim, the claimant must wait 90 days to determine whether the claim will be settled, before submitting a claim to the Trust Fund or commencing an action in court.[15]

This amendment to OPA is intended to reduce delays in claims processing and avoid resulting hardship to claimants. If claims are not settled in whole within 30 days after being submitted to a responsible party, it is appropriate that claimants should be permitted to pursue other mechanisms for recovery.

Section 4. Oil and hazardous substance response planning

Summary

Section 4 provides that Section 311(j)(5) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(j)(5) (Clean Water Act), is amended by requiring that the President shall ensure that the regulations establishing requirements for oil spill response plans are designed to prevent, to the maximum extent practicable, injury to the economy, jobs, and the environment, including:

- loss of, destruction of, or injury to real or personal property;
- loss of subsistence use of natural resources;
- loss of revenue;
- loss of profits or earning capacity;
- an increase in the cost of providing public services to remove a discharge, and
- loss of, or destruction to, natural resources.

Section 4(a) provides that the President shall promulgate regulations governing oil spill response plans prepared by certain vessels and facilities and include the following requirements:

[15] 33 U.S.C. § 2713(c).

- describe the personnel and equipment necessary to respond to a spill, staged and available in the appropriate region to immediately respond and sustain the response effort for as long as necessary;
- demonstrate the financial capability to pay for removal costs and damages;
- describe the environmental effects of the response plan methodologies and equipment;
- describe the process for communications and coordination with relevant agencies;
- identify performance standards for the quantity of oil or hazardous substances that will be removed under the response plan immediately following the discharge and at regular, identified periods, including provisions for reporting the degree to which actual removal meets the required standards;
- in the case of oil production, drilling and workover facilities, describe the specific measures to be used in response to a blowout or other event involving loss of well control; and
- identify potential economic and ecological impacts of a worst-case discharge and response activities to prevent or mitigate, to the maximum extent practicable, those impacts.

Notice of a proposed response plan is to be published in the Federal Register followed by a public comment period of at least 30 days. Response plans are to be promptly reviewed and amendments shall be required as needed to meet the applicable requirements.

This subsection adds additional requirements that must be met before a response plan may be approved, including:

- has been subject to a field test, with the results being made publicly available;
- includes methods and equipment proposed to be used which are demonstrated to be technologically feasible in the area and under the conditions in which the vessel or facility is proposed to operate;
- is based on available scientific information about the area allowing for identification of potential impacts to and protection of ecological areas and wildlife; and
- that the plan describes the quantity of oil likely to be removed in the event of a worst-case discharge.

Section 4 further requires written concurrence in the response plan by such other agencies as the President determines to be appropriate.

Section 4(b) amends the definition of “worst case discharge” in Section 311(a)(24)(B) of the Federal Water Pollution Control Act [16] by inserting the phrase “, including from an unanticipated and uncontrolled blowout or other loss of well control,” after “foreseeable discharge.”

Discussion

Section 311(j)(5) of the Clean Water Act provides that owners and operators of certain vessels and facilities, including offshore facilities, prepare and submit to the President response plans setting forth actions to be taken in the event of discharges of oil into cov-

[16] 33 U.S.C. § 1321(a)(24)(B).

ered waters. Section 3 of S. 3305 is intended to strengthen the response planning requirements.

Section 4(a) adds a number of new provisions to Section 311(j)(5) of the Clean Water Act to ensure that response plans address the potential impacts of an oil spill and outline appropriate response actions, including requirements that:

- Equipment and personnel shall be available in the quantities and locations necessary to respond and maintain response to worst-case discharges.
- Financial capability to pay for removal costs and damages shall be demonstrated in advance as part of a response plan.
- Environmental effects of response plan methodologies and equipment shall be described.
- Processes for communications with relevant governmental agencies shall be described.
- Performance standards for oil removal shall be identified and complied with.
- For oil production facilities, specific measures addressing blowouts or other loss of control are required.
- Potential economic and ecological impacts of a worst-case scenario are to be identified.

Section 4(a) also adds new procedural requirements, including that response plans will be published in the Federal Register and subject to public comments, and that the President will approve response plans only after determining on the record that the requirements of the response plan regulations are met and that the plan has been demonstrated to be technologically feasible in the area and under the conditions in which the facility is proposed to operate.

Section 4(b) includes a blowout or other loss in well control in the definition of a worst case discharge.

Section 5. Reporting

At the request of the Obama Administration, BP has agreed to establish a separate Gulf Coast Claims Facility, funded by a $20 billion escrow account, to process and make payments for claims against BP arising out of the Deepwater Horizon disaster. To ensure that Congress receives detailed and timely information on claims processing, Section 5 requires that the Administrator of the Gulf Coast Claims Facility shall provide a report to Congress on a quarterly basis, regarding the status and ongoing payments from that Facility.

LEGISLATIVE HISTORY

S. 3305 was introduced by Senator Menendez, with six co-sponsors, on May 5, 2010, and referred to the Committee on Environment and Public Works. Companion legislation was introduced in the House on May 6, 2010 (H.R. 5214).

On June 9, 2010, Senator Menendez, with 22 co-sponsors, introduced S. 3472, the Big Oil Bailout Prevention Unlimited Liability Act of 2010, which was referred to the Committee on Environment and Public Works. S. 3472 would remove the current $75 million liability cap for offshore facilities under OPA, so that polluters would be required to pay the full costs of oil spills.

On June 9, 2010 the Committee held a legislative hearing on S. 3305.

On June 30, 2010, the Committee held a business meeting at which S. 3305 and proposed amendments were considered and the bill as amended was approved.

ROLLCALL VOTES

Substitute amendment adopted

At the business meeting held on June 30, 2010, an amendment in the nature of a substitute (Boxer Amendment #1) was proposed by Chairman Boxer. The substitute amendment would make a responsible party associated with an oil spill at an offshore facility liable for all economic and natural resources damages (as defined in Section 1002 of the Oil Pollution Act). The substitute amendment was adopted by a voice vote with Senator Vitter recorded as voting aye.

Additional amendments adopted

Boxer Amendment #2

Chairman Boxer proposed an amendment (Boxer Amendment #2) to add a new section to S. 3305 to modify certain requirements of Section 311 of the Federal Water Pollution Control Act by adding a new Section 3 to the bill relating to the development of oil spill contingency plans. Boxer Amendment #2 was adopted by a roll call vote, with 12 ayes and 7 nays. The Senators voting "aye" were: Senators Baucus, Boxer, Cardin, Carper, Gillibrand, Klobuchar, Lautenberg, Merkley, Sanders, Specter, Udall and Whitehouse. The Senators voting "nay" were: Senators Alexander, Barrasso, Bond, Crapo, Inhofe, Vitter and Voinovich.

Inhofe Amendment #2

Senator Inhofe proposed an amendment (Inhofe Amendment #2) to shorten the time period after which a claimant may elect to present a claim to the Oil Spill Liability Trust Fund.

Inhofe Amendment #2, as amended by the second degree amendment proposed by Chairman Boxer, was adopted by a voice vote.

Boxer Second Degree to Inhofe Amendment #2

Chairman Boxer proposed a second degree amendment to Inhofe Amendment #2 to clarify the provisions shortening the time period in which a claimant may elect to present a claim to the Oil Spill Liability Trust Fund.

Chairman Boxer's second degree amendment was adopted by a voice vote.

Vitter Amendment #4

Senator Vitter proposed an amendment (Vitter Amendment #4) to require a report twice a year on the status of and payments from the $20 billion compensation fund established by BP. The amendment was modified by consent of Senator Vitter to provide that the Administrator of the BP Gulf Coast Claims Facility shall provide a report to Congress four times a year, on a quarterly basis, regarding the status and ongoing payments from that Claims Facility.

Vitter Amendment #4, as modified by consent, was adopted by a voice vote.

Amendments not adopted

Vitter Amendment #3

Senator Vitter proposed an amendment (Vitter Amendment #3) that would limit attorney's fees to 5% of any claim recovered under the Oil Pollution Act. Vitter Amendment #3 failed by a roll call vote, with 6 ayes and 13 nays. The Senators voting "Aye" were: Senators Alexander, Barrasso, Bond, Inhofe, Vitter and Voinovich. The Senators voting "Nay" were: Senators Baucus, Boxer, Cardin, Carper, Crapo, Gillibrand, Klobuchar, Lautenberg, Merkley, Sanders, Specter, Udall and Whitehouse.

Inhofe Amendment #1

Senator Inhofe proposed an amendment (Inhofe Amendment #1) to the Oil Pollution Act of 1990 that would direct the President to establish a set of liability limits for offshore facilities by taking into account the availability of insurance products and be otherwise based and categorized by eleven other various criteria. Inhofe Amendment #1 failed by a roll call vote, with 6 ayes and 13 nays. The Senators voting "Aye" were: Senators Alexander, Barrasso, Bond, Crapo, Inhofe, and Voinovich. The Senators voting "Nay" were: Senators Baucus, Boxer, Cardin, Carper, Gillibrand, Klobuchar, Lautenberg, Merkley, Sanders, Specter, Udall, Vitter and Whitehouse.

Final approval of S. 3305 as amended

The Committee voted to approve S. 3305, with the adopted amendments as described above, and to report the bill as amended to the full Senate, by a voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee notes, based on the Congressional Budget Office estimate, that the bill would require that owners and operators of facilities and large vessels that could discharge oil or hazardous materials into waters of the United States include additional information in their spill response plans. The cost of the provision would be any additional amounts that the entities would have to spend to prepare plans. In addition, the bill would modify liability limits for oil spills from offshore facilities, affecting facilities that will have or have had an oil spill between April 15, 2010, and the date of enactment of S. 3305. CBO estimates that the mandate would not impose any incremental costs on the owners or operators of offshore facilities because it would not change the amount paid by the responsible parties. The bill will not affect the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee notes that the Congressional Budget Office has concluded the bill will impose intergovernmental and private-sector impacts but that it "estimates that the cost of

the intergovernmental mandates would fall well below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation)."

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

JULY 27, 2010.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3305, the Big Oil Bailout Prevention Unlimited Liability Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sarah Puro and Kathleen Gramp.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 3305—Big Oil Bailout Prevention Unlimited Liability Act of 2010

Summary: S. 3305 would amend the Oil Pollution Act of 1990 (OPA) to eliminate the limit on liability that owners or operators of certain off-shore drilling facilities (such as oil drilling platforms) face when an oil spill occurs. CBO estimates that eliminating the limit would probably result in a net loss of receipts to the government because it would probably lead to a reduction in offsetting receipts (a form of direct spending) from bonus bids that oil and gas operators pay to explore for oil and natural gas on the Outer Continental Shelf (OCS). Enacting the bill also would likely lead to a small reduction in direct spending from the Oil Spill Liability Trust Fund (OSLTF) for compensating those who suffer economic or environmental damages from future oil spills. In total, CBO estimates that enacting S. 3305 would increase direct spending by $50 million over the 2011–2020 period.[7] Because enacting the legislation would affect direct spending, pay-as-you-go procedures apply.

The bill also would require the United States Coast Guard (USCG) to change its regulation of companies' plans for responding to oil spills. CBO estimates that those provisions would cost $45 million over the 2011–2015 period, assuming appropriation of the amounts estimated to be necessary.

S. 3305 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on owners and operators of facilities and large vessels that produce, use, or transport oil and hazardous materials in or near waters of the United States. CBO estimates that the cost of the intergovernmental mandates would fall well below the annual threshold estab-

[7] Different time periods apply in the Senate for its pay-as-you-go rule. CBO estimates that enacting S. 3305 would increase direct spending by $40 million over the 2010–2014 period and by $50 million over the 2010–2019 period.

lished in UMRA ($70 million in 2010, adjusted annually for inflation). CBO cannot determine whether the aggregate cost of private-sector mandates would exceed the annual threshold established in UMRA ($141 million in 2010, adjusted annually for inflation) because those costs would depend on future regulations.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 3305 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 950 (undistributed offsetting receipts).

	By Fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	10	15	10	5	5	5	*	*	*	*	45	50
Estimated Outlays	10	15	10	5	5	5	*	*	*	*	45	50
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	10	10	10	10	10	10	10	10	10	10	50	100
Estimated Outlays	5	10	10	10	10	10	10	10	10	10	45	95

Note: * = between −$500,000 and $500,000.

Basis of estimate: S. 3305 would amend OPA by eliminating the $75 million liability limit for damages caused by certain offshore oil facilities and expanding the responsibilities of the USCG for reviewing and approving companies' plans for responding to oil spills. CBO estimates that implementing this legislation would increase net direct spending by $50 million over the next 10 years and discretionary spending by $45 million over the 2011–2015 period, assuming appropriation of the necessary amounts.

For this estimate, CBO assumes that S. 3305 will be enacted in 2010 and that the authorized amounts will be appropriated each year. Estimates of spending are based on historical spending patterns for similar programs.

Background

OPA is one of several federal and state laws that determine civil liability for the adverse effects of oil spills. S. 3305 would modify the liability limits in that law for offshore facilities other than deepwater ports, retroactive to April 15, 2010.

Under OPA, the party responsible for discharging oil or other hazardous materials into navigable waters of the United States is liable for all of the cleanup costs associated with the spill, including mitigation of the impacts on natural resources. In addition, the responsible party is liable for some or all of the economic and natural resource damages stemming from the spill, subject to certain conditions specified in OPA.

The amount of a firm's liability for economic and natural resources damages under OPA is unlimited if the spill was caused by a violation of any applicable federal regulations or by gross negligence or willful misconduct. If no such violation occurred, OPA

limits the responsible party's liability for economic and natural resources damages, depending on the type and size of vessel or facility that caused the spill. The current liability limit for offshore facilities (such as oil and gas platforms) is $75 million per incident. OPA also requires responsible parties to demonstrate their ability to pay potential cleanup costs and damage claims before receiving permits or other approvals to operate in affected areas. It includes statutory guidelines for determining the amount of those financial assurances and sets a $150 million limit on the amount of assurance required for offshore oil and gas facilities. Financial assurances can take different forms, including self-insurance, indemnification by another party, insurance policies, and other similar commitments.

Above the liability limits for private firms specified in OPA, the OSLTF is available to pay up to $1 billion per incident for any additional economic and natural resources damages caused by an oil spill. The OSLTF is funded by an 8-cent tax on each barrel of oil produced in or imported to the United States. Such spending is not subject to appropriation. The OSLTF is also available for emergency response to oil spills or when the responsible party cannot be determined. In 2009, payments for damages from the OSLTF totaled $71 million.

According to the USCG, prior to 2010, there have been a few oil spills that exceeded the liability limits specified in OPA. None of those spills has been from an offshore facility. Most have been from vessels transporting oil. The Deepwater Horizon spill in the Gulf of Mexico, which began on April 20, 2010, is the first offshore oil spill since OPA was enacted that will involve damage claims exceeding $75 million.

Direct spending

Enacting S. 3305 would affect direct spending because removing the liability limit would probably reduce offsetting receipts (a form of direct spending) from bonus bids that oil and gas operators pay to explore leases on the OCS, particularly in the next few years as the industry adapts to the consequences of the change in law. Also, the legislation would probably reduce outlays slightly from the OSLTF for claims that otherwise would have been paid by the federal government because they exceeded the $75 million limit on economic and natural resource damage claims contained in current law. On balance, CBO estimates that those changes would increase net direct spending by about $50 million over the 2011–2020 period.

Offsetting Receipts from OCS Leases. The federal government leases the rights to develop the oil and gas resources on the OCS in exchange for payments of a bonus bid when the lease is awarded, annual rental fees on nonproducing leases, and annual royalties based on the value of any production. Based on the production and price assumptions used in CBO's March baseline, offsetting receipts from oil and gas leases on the OCS are projected to total more than $100 billion over the next 10 years. CBO estimates that enacting S. 3305 would reduce offsetting receipts from OCS leases by about $50 million over the 2011–2020 period because companies bidding on leases would likely reduce their bids because of the concern that they would face an increase in their potential liability for

offshore operations. The size (but not the direction) of that budgetary impact is uncertain, and the cost could be smaller or significantly larger than our estimate.

CBO estimates that removing the $75 million liability limit would not significantly change assessments of the economic value of most OCS leases. The legislation would not affect some of the largest sources of liability—those stemming from cleanup costs or from spills caused by noncompliance with federal regulations or by gross negligence. Similarly, some industry analysts have suggested that the Deepwater Horizon spill has become the de facto standard for liability, suggesting that many firms—particularly those that self-insure—would anticipate needing to cover all damages even in the absence of this legislation. Thus, CBO anticipates that removing the limit on liability for damages would primarily affect smaller firms that purchase insurance for such costs, which could reduce the economic profitability of certain leases. Based on historical trends in leasing activities, CBO estimates that such effects would reduce proceeds from bonus bids by less than 1 percent and that most of that impact would occur in the next five years as firms adjust to the new policy.

Federal Spending from the OSLTF. Because the occurrence of significant oil spills is subject to a great deal of uncertainty, CBO has estimated the budgetary impact of this legislation on the OSLTF on a probability basis. Industry experts and studies suggest that, in any one year, the chance of a large spill from an offshore facility involving more than 100,000 barrels of oil is very small. Experience also suggests that spills are likely to be caused by actions that would preclude the applicability of the liability limit (such as noncompliance with regulations or negligence).

In the case of the Deepwater Horizon spill in the Gulf of Mexico, the responsible party has provided assurances that it will pay for all legitimate claims of damages over and above the $75 million limit and has pledged at least $20 billion for such damage claims. Thus, CBO estimates that making the provisions in S. 3305 retroactive to April 15, 2010, would not change the amount paid for damage claims by either the responsible party or the federal government. In the future, we expect that this provision would have a small impact on spending from the OSLTF.

Spending subject to appropriation

S. 3305 would require the USCG to evaluate companies' plans for responding to oil spills and certify that such plans are both technologically feasible and have been tested in a field situation. The USCG would require significant additional personnel with specific technological expertise to perform that work. Based on information from the USCG and historical spending for similar programs, CBO estimates that implementing the new requirements would cost $45 million over the 2011–2015 period, assuming appropriation of the necessary amounts.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 3305 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS ON JUNE 30, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
	NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	10	15	10	5	5	5	0	0	0	0	45	50

Intergovernmental and Private-Sector Impact: S. 3305 would impose intergovernmental and private-sector mandates as defined in UMRA on owners and operators of facilities and large vessels that produce, use, or transport oil and hazardous materials in or near waters of the United States. CBO estimates that the cost of the intergovernmental mandates would fall well below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). CBO cannot determine whether the aggregate cost of private-sector mandates would exceed the annual threshold established in UMRA ($141 million in 2010, adjusted annually for inflation) because it would depend on future regulations.

Mandates that apply to both public and private entities

The bill would require that owners and operators of facilities and large vessels that could discharge oil or hazardous materials into waters of the United States include additional information in their spill response plans. Affected entities would include oil refineries, tugboats, oil tankers, and ferries. According to information from the USCG, Environmental Protection Agency, and Pipeline and Hazardous Materials Safety Administration, owners and operators of about 30,000 onshore facilities and vessels currently submit response plans. The cost of the mandate would be any additional amounts that the mandated entities would have to spend to prepare plans. Because the costs of the requirement would depend on future regulations, CBO cannot determine the cost of the mandate on private-sector entities. Because of the relatively small number of public vessels affected, however, CBO estimates the cost to state and local governments would be small.

Mandates that apply to private entities only

By retroactively eliminating the liability limit for oil spills from offshore facilities, the bill would place a mandate on owners and operators of any such facilities that will have or have had an oil spill between April 15, 2010, and the date of enactment of S. 3305. Because the chances of another large spill occurring before enactment are very small, CBO assumes that the only affected spill would be the Deepwater Horizon spill. Based on information from industry testimony, CBO estimates that the mandate would not impose any incremental costs on the owners or operators of offshore facilities because it would not change the amount paid by the responsible parties.

Estimate prepared by: Federal costs: Kathleen Gramp (for Outer Continental Shelf); Sarah Puro (for Oil Spill Liability Trust Fund); Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATOR INHOFE

The Minority strongly believes that effective legislation to address the BP oil spill disaster must accomplish the following: ensure that victims of the spill are fully compensated under the Oil Pollution Act of 1990 (OPA), minimize the risk of future spills from occurring, and maintain access to America's domestic offshore energy resources. S. 3305, as amended, fails to achieve this balance, as it could render offshore drilling in the Gulf of Mexico a proposition that only the largest oil companies, as well state-owned firms such as China's National Offshore Oil Corporation, could afford. This outcome would undermine America's energy security, cost thousands of good-paying jobs, and threaten the economic recovery of Gulf coast communities.

These are just some of the broader ramifications associated with S. 3305, as amended, and they have not been fully examined by this Committee or Congress. While the Minority wholly agrees that increases to the OPA liability limits are necessary, it's critical to fully consider the negative repercussions associated with no limits on OPA's strict liability regime, as well as other provisions of this act. For these reasons, S. 3305 should be opposed and returned to the Committee on Environment and Public Works by the full Senate.

As we learned from expert testimony in the June 9th hearing, the various liability mechanisms in the OPA and other relevant statutes are complex and interrelated in subtle ways, as is the relationship of liability limits to the viability of offshore drilling. The submitted testimony of Rawle King, a Congressional Research Service (CRS) analyst in financial economics and risk assessment, succinctly described the dilemma of enacting prohibitively high liability limits:

> A key oil spill liability and insurance public policy challenge stemming from the Deepwater Horizon catastrophe involves reconciling two points of contention: (1) the desire to increase the limitations of liability for operators of offshore energy facilities from $75 million to $10 billion or more for economic losses caused by oil pollution damage and raise the criteria for demonstrating oil spill financial responsibility (OSFR); and (2) the limited capacity of offshore energy insurance and reinsurance to cover loss of well control, cost to redrill a blowout well and liability facing operators of offshore energy facilities.

The financial consequences of unlimited strict liability could overwhelm the financial wherewithal of small- and medium-sized independent operators in the Gulf. In a letter submitted for the hearing record, Alliant Insurance, which insures offshore oil and gas operations, stated that:

> If the liability cap is increased to the levels we understand are under consideration . . . in our view only major oil companies and NOC's (National Oil Companies) will be financially strong enough to continue current exploration and development efforts.

Another letter submitted for the record from Lockton Companies, LLC stated:

> Given the limited capacity in the energy insurance market, a material increase in the cap will eliminate insurance as an option for many exploration and production companies. Without insurance, many of the active exploration and production companies would be unable to operate in the Gulf of Mexico.

And on May 18th, even Interior Secretary Ken Salazar testified before the Senate Energy and Natural Resources Committee about the critical importance of calibrating the precise level of the liability cap to the need for a competitive offshore oil and natural gas industry:

> [I]t is important that we be thoughtful relative to that, what that cap will be, because you don't want only the BP's of the world essentially be the ones that are involved in these efforts, that there are companies of lesser economic robustness.

Along with S. 3305's unlimited strict liability regime, the bill as amended includes potential changes to existing financial responsibility requirements. If these requirements are ultimately promulgated through regulation at unreasonable levels, S. 3305 could further restrict domestic production in the Gulf, and possibly end it altogether.

S. 3305, as amended, states that the "President shall promulgate regulations that clarify the requirements of a response plan" to include, among other requirements, that a company's spill response plan shall "demonstrate the financial capability to pay for removal costs and damages" of an oil spill. This language is vague and open-ended; theoretically, the agency responsible for defining this language (most likely the Environmental Protection Agency, as the bill amends the Clean Water Act) could do so in a manner that makes "demonstrating financial capability" so onerous that drilling for many firms would be financially impossible.

For instance, if an operator other than one the size of BP or CNOOC were required to demonstrate financial capability of $10 billion to pay for "removal costs and damages," such operator would be unable to secure insurance. In a letter for the June 9th hearing on S. 3305, INDECS insurance consultancy stated:

> . . . if the intention is to increase the limit required under OPA90 to US$10 billion and also required evidence of financial responsibility to something similar, then quite simply the energy insurance market will no longer be an option. . . . The cost of these methods or ability to self insure these risks will far exceed their capabilities, preventing their management from fulfilling their fiduciary li-

ability and presenting a barrier to acquiring new or even servicing existing permits in the future.

Another provision in S. 3305, as amended, would “require notice of the proposed response plan to be published in the Federal Register and provide for a public comment period for the plan of at least 30 days”. This requirement would not only extend to offshore facilities, but to every tank and non-tank vessel required to submit a plan under OPA. In a July 22nd letter to the Chairman and Ranking Member, the American Waterways Operators (AWO) noted that as many as 20,000 vessels would be affected by this requirement. As AWO contends that:

> At minimum, this amounts to an extreme administrative burden that is not justified by the benefit it provides: the Coast Guard has a rigorous process for review and approval of vessel response plans, and it is difficult to see what added benefit would accrue if the response plans for thousands of vessels—ranging from a tank barge carrying 20,000 barrels of oil to a towboat carrying 60,000 *gallons* of fuel—were subjected to public notice and comment.
>
> At worst, however, such a requirement could prove not only unnecessary and administratively cumbersome, but disruptive to critical maritime transportation. Under current regulations, vessel owners are required to notify the Coast Guard when a component of their response plan changes—for example, a response contractor merges with another company, or a person listed in the plan gets a new cell phone number. Requiring notice of such changes to be published in the Federal Register could stymie the just-in-time delivery of economically essential cargoes.

The AWO also expressed serious concern with potentially disruptive “performance standards” language required under S. 3305’s response plans:

> In a spill response planning context, the term “performance standards” implies that a response plan holder will be in violation of the regulations if an element of the response plan fails to perform as planned. In the 20 years since the Oil Pollution Act of 1990 (OPA 90) was enacted, the Coast Guard has repeatedly reiterated that its response plan regulations establish *planning* standards, not performance standards. In other words, a vessel owner must ensure, by contract or other approved means, the availability of response resources in identified quantities that are capable of being on scene within designated time frames. However, the plan holder does not violate the regulations if, on the day of a spill, the response resources cannot perform as planned (for example, because weather conditions prevented aircraft from flying or boom from being deployed).
>
> Given the many variables at play in the event of a vessel incident, AWO knows of no response resource provider who can guarantee that it will meet *performance* (as opposed to *planning*) standards.

AWO explains further that mandating performance standards in response plans raises civil and criminal liabilities for "resource providers" that can cripple vessel owners' ability to operate:

> Faced with the prospect of civil and criminal liability for failure to meet the response planning regulations, resource providers may decline to enter into contracts with vessel owners, leaving vessel owners unable to operate and disrupting the transportation of vital petroleum products and other critical cargoes.

Finally, the "impact of this change," AWO stated, "will extend far beyond oil transportation, since non-tank vessels over 400 gross tons that carry oil as fuel are also subject to response plan requirements under OPA 90." This could "stymie the operations of vessels ranging from tugboats providing tanker escort services in San Francisco Bay to towboats pushing cement barges on the Arkansas River."

The new contingency plan requirements potentially invite endless streams of litigation to each and every proposed contingency plan, including challenges to the interpretation of what is the "available scientific information" or what is "technologically feasible" to assess conditions in which a well would operate and its potential impacts to ecological areas and wildlife. Moreover, the requirement for written concurrences of other Agencies as to the adequacy of response plans could very well introduce significant delays into the approval process.

If the intent of S. 3305, as amended, is to restrict offshore drilling to the very largest operators, such as BP, or to perhaps even serve as a de jure ban on all offshore drilling in American waters, then the enactment of this bill could potentially satisfy one or both of those objectives. However, if the intent of S. 3305 is to ensure that victims of future spills are made whole through restitution, and not at the expense of the American taxpayer, as its proponents claim, then more predictable, effective, and less harmful alternatives are available.

For instance, proponents of S. 3305 assert that without unlimited strict liability, those suffering injury from a spill, along with the American taxpayer, would pay the price for damages in excess of a company's strict liability limit. However, this allegation disregards one of the main purposes of the creation of the oil and gas industry-funded Oil Spill Liability Trust Fund (OSLTF), which serves as the primary backstop to OPA's prescribed liability limits. As an additional assurance, Congress should consider integrating a "Price-Anderson"-like mechanism, as utilized in the nuclear energy industry, as a complimentary backstop to the OSLTF's role, so that all other oil and gas entities operating offshore would then intercede to compensate for any additional liabilities.

It is critical to note that small and midsize independents produce 63 percent of the Gulf's natural gas and 36 percent of its oil; 30 percent of US oil production comes from the Gulf of Mexico. The offshore areas of the United States are estimated to contain significant quantities of resources in yet-to-be-discovered fields. MMS estimates of oil and gas resources in undiscovered fields on the Outer Continental Shelf total 86 billion barrels of oil and 420 trillion

cubic feet of gas. These volumes represent about 60 percent of the oil and 40 percent of the natural gas resources estimated to be contained in remaining undiscovered fields in the United States. A July 22nd study released by IHS Global Insight forecasts that by 2020 "an exclusion of the independents from the Gulf of Mexico would eliminate 300,000 jobs and result in a loss, over 10 years, of $147 billion in federal, state, and local taxes from the Gulf region. If the independents are excluded just from the deepwater, the job loss would be 265,000 jobs by 2020, and $106 billion in tax revenues over the 10-year period."

Based on the available information, S. 3305, as amended, could drastically decrease the number of operators in the Gulf of Mexico, which would destroy thousands of American jobs and jeopardize America's energy security.

JIM INHOFE.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, 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. 1001. DEFINITIONS.

For the purposes of this Act, the term——

(1) * * *

* * * * * * *

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) for a tank vessel, the greater of——

(A) $1,200 per gross ton; or

(B)(i) in the case of a vessel greater than 3,000 gross tons, $10,000,000; or

(ii) in the case of a vessel of 3,000 gross tons or less, $2,000,000;

(2) for any other vessel, $600 per gross ton or $500,000, whichever is greater;

(3) for an offshore facility except a deepwater port, the total of all removal costs [plus $75,000,000] *and the liability of the responsible party under section 1002*; and

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

* * * * * * *

SEC. 1013. CLAIMS PROCEDURE.

(a) PRESENTATION.—Except as provided in subsection (b), all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 1014(a).

(b) PRESENTATION TO FUND.——

(1) IN GENERAL.—Claims for removal costs or damages may be presented first to the Fund——

(A) if the President has advertised or otherwise notified claimants in accordance with section 1014(c);

(B) by a responsible party who may assert a claim under section 1008;

(C) by the Governor of a State for removal costs incurred by that State; or

(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a).

(2) LIMITATION ON PRESENTING CLAIM.—No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

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

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not ⟦settled by any person by payment within 90⟧ *settled in whole by any person by payment within 30 days* 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.

* * * * * * *

FEDERAL WATER POLLUTION CONTROL ACT

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) * * *

* * * * * * *

SEC. 311. (a) For the purpose of this section, the term—

(1) *"oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;*

(2) * * *

* * * * * * *

(24) "worst case discharge" means—

(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge*, including from an unanticipated and uncontrolled blowout or other loss of well control,* in adverse weather conditions;

* * * * * * *

(j) NATIONAL RESPONSE SYSTEM.—

(1) IN GENERAL.—* * *

* * * * * * *

(5) TANK VESSEL, NONTANK VESSEL, AND FACILITY RESPONSE PLANS.—(A)(i) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (C) to prepare and submit to the President a

plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

(ii) The President shall also issue regulations which require an owner or operator of a nontank vessel to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.

(iii) The President shall ensure that the regulations promulgated pursuant to this paragraph are designed to prevent, to the maximum extent practicable, injury to the economy, jobs, and the environment, including to prevent—

(I) loss of, destruction of, or injury to, real or personal property;

(II) loss of subsistence use of natural resources;

(III) loss of revenue;

(IV) loss of profits or earning capacity;

(V) an increase in the cost of providing public services to remove a discharge; and

(VI) loss of, destruction of, or injury to, natural resources.

(iv) The President shall promulgate regulations that clarify the requirements of a response plan in accordance with subparagraph (D).

(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a nontank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of a noxious liquid substance that is not designated as a hazardous substance or regulated as oil in any other law or regulation. For purposes of this paragraph, the term *noxious liquid substance" has the same meaning when that term is used in the MARPOL Protocol described in section 2(a)(3) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)(3)).*

(C) The tank vessels, nontank vessels, and facilities referred to in subparagraphs (A) and (B) are the following:

(i) A tank vessel, as defined under section 2101 of title 46, United States Code.

(ii) A nontank vessel.

(iii) An offshore facility.

(iv) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

[(D) A response plan required under this paragraph shall—

[(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

⟦(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

⟦(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

⟦(iv) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

⟦(v) be updated periodically; and

⟦(vi) be resubmitted for approval of each significant change.⟧

(D) A response plan required under this paragraph shall—

(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment in the quantities necessary, staged and available in the appropriate region to respond immediately to and sustain the response effort for as long as necessary—

(I) to remove, to the maximum extent practicable, a worst-case discharge (including a discharge resulting from fire or an explosion);

(II) to mitigate damage from a discharge; and

(III) to prevent or reduce a substantial threat of such a discharge;

(iv) demonstrate the financial capability to pay for removal costs and damages;

(v) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to meet the requirements of this subparagraph;

(vi) describe the environmental effects of the response plan methodologies and equipment;

(vii) describe the process for communication and coordination with Federal, State, and local agencies before, during, and after a response to a discharge;

(viii) identify performance standards for the quantity of oil or hazardous substance that will be removed under the response plan immediately following the discharge and at regular, identified periods, including provisions for reporting the degree to which actual removal meets the required performance standards;

(ix) in the case of oil production, drilling, and workover facilities, describe the specific measures to be used in response to a blowout or other event involving loss of well control;

(x) identify potential economic and ecological impacts of a worst-case discharge and response activities to prevent or mitigate, to the maximum extent practicable, those impacts in the event of a discharge;

(xi) be updated periodically; and

(xii) be resubmitted for approval of each significant change.

(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.**]**

(i) require notice of the proposed response plan to be published in the Federal Register and provide for a public comment period for the plan of at least 30 days;

(ii) promptly review the response plan;

(iii) require amendments to any plan that does not meet the requirements of this paragraph;

(iv) approve any plan only after finding, based on evidence in the record, that—

(I) the response plan meets the requirements of subparagraph (D);

(II) there have been 1 or more field tests of the plan in the area in which the tank vessel, nontank vessel, or facility is proposed to operate, and the results of that field testing are publicly available;

(III) the methods and equipment proposed to be used under the response plan are demonstrated to be technologically feasible in the area and under the conditions (including the depth of a well, in the

case of an offshore facility) in which the tank vessel, nontank vessel, or facility is proposed to operate;

(IV) the available scientific information about the area allows for identification of potential impacts to ecological areas and protection of those areas in the event of a discharge, including adequate surveys of wildlife; and

(V) the response plan describes the quantity of oil likely to be removed in the event of a worst-case discharge;

(v) obtain the written concurrence of such other agencies as the President determines to be appropriate;

(vi) review each plan periodically thereafter; and

(vii) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on August 9, 2004, and ensure consistency to the maximum extent practicable.

* * * * * * *