

112TH CONGRESS
1ST SESSION

S. 203

To direct the Administrator of the National Oceanic and Atmospheric Administration to institute research into the special circumstances associated with oil spill prevention and response in Arctic waters, including assessment of impacts on Arctic marine mammals and other wildlife, marine debris research and removal, and risk assessment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2011

Mr. BEGICH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To direct the Administrator of the National Oceanic and Atmospheric Administration to institute research into the special circumstances associated with oil spill prevention and response in Arctic waters, including assessment of impacts on Arctic marine mammals and other wildlife, marine debris research and removal, and risk assessment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Responsible Arctic En-
5 ergy Development Act of 2011”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) Alaska is the only Arctic State in the
4 United States;

5 (2) Alaska contributes 17 percent of the oil pro-
6 duction of the United States, and the Arctic region
7 of the State of Alaska is believed to hold consider-
8 able reserves of oil and natural gas needed for the
9 future energy security of the United States;

10 (3) the marine mammals and other fish and
11 wildlife resources of the Arctic are—

12 (A) critical to meet the subsistence needs
13 of indigenous residents of Alaska;

14 (B) a source of significant nonconsumptive
15 use and nonuse value to the United States; and

16 (C) vulnerable to the impacts of oil and
17 gas exploration and production;

18 (4) the Arctic and the natural resources of the
19 Arctic are particularly vulnerable to the impacts of
20 oil spills due to the uniqueness of and limited access
21 to the region, including—

22 (A) remote location that makes oil spill
23 emergency response capabilities slower and
24 more difficult;

1 (B) cold temperatures and ice cover that
2 slow the natural degradation and dissipation of
3 spilled oil; and

4 (C) increased susceptibility of Arctic wild-
5 life that are highly dependent on insulation,
6 which would be greatly decreased by oil cover;

7 (5) Alaska lacks the essential geospatial frame-
8 work for safe navigation, accident prevention, and oil
9 spill response capabilities that are available to the
10 rest of the United States;

11 (6) existing Federal research and science advi-
12 sory programs focused on the environmental and so-
13 cioeconomic impacts of oil and gas development in
14 the Arctic would benefit from—

15 (A) a more cohesive, coordinated, and inte-
16 grated approach; and

17 (B) better coordination with State, local,
18 and private-sector Arctic research programs;
19 and

20 (7) oil spill from the mobile offshore drilling
21 unit Deepwater Horizon in the Gulf of Mexico has
22 highlighted the need for stronger oil spill prevention
23 and response research and planning for future devel-
24 opment on the outer Continental Shelf of the United
25 States.

1 **SEC. 3. RESEARCH AND ACTION TO CONDUCT OIL SPILL**
2 **PREVENTION.**

3 (a) IN GENERAL.—The Secretary of Commerce, act-
4 ing through the Administrator of the National Oceanic
5 and Atmospheric Administration and in collaboration with
6 the heads of other agencies or departments of the United
7 States with appropriate Arctic science expertise, shall di-
8 rect research and take action to improve the ability of the
9 United States to conduct oil spill prevention, response,
10 and recovery in Arctic waters.

11 (b) INCLUSIONS.—Research and action under this
12 section shall include the prioritization of resources—

13 (1) to address—

14 (A) ecological baselines and environmental
15 sensitivity indexes;

16 (B) identification of ecological important
17 areas, critical habitats, and migratory behav-
18 iors;

19 (C) the development of oil spill trajectory
20 models in Arctic marine conditions;

21 (D) the collection of observational data es-
22 sential for response strategies in the event of an
23 oil spill during both open water and ice-covered
24 seasons, including data relating to oil spill tra-
25 jectory models that include data on—

26 (i) currents;

- 1 (ii) winds;
- 2 (iii) weather;
- 3 (iv) waves; and
- 4 (v) ice forecasting;

5 (E) the development of a robust oper-
6 ational monitoring program during the open
7 water and ice-covered seasons;

8 (F) improvements in technologies and un-
9 derstanding of cold water oil recovery and res-
10 toration; and

11 (G) the integration of local and traditional
12 knowledge into oil recovery research studies;
13 and

14 (2) to establish a robust geospatial framework
15 for safe navigation and oil spill response through in-
16 creased—

17 (A) hydrographic and bathymetric sur-
18 veying, mapping, and navigational charting;

19 (B) geodetic positioning; and

20 (C) monitoring of tides, sea levels, and cur-
21 rents in the Arctic.

22 **SEC. 4. ARCTIC OIL AND GAS DEVELOPMENT.**

23 (a) IN GENERAL.—Title VI of the Oil Pollution Act
24 of 1990 is amended by inserting after section 6002 (33
25 U.S.C. 2752) the following:

1 **“SEC. 6003. ARCTIC OIL AND GAS DEVELOPMENT.**

2 “The Administrator of the National Oceanic and At-
3 mospheric Administration and the Commandant of the
4 Coast Guard, in consultation with the Secretary of the De-
5 partment of Interior when applicable, shall use amounts
6 made available under the Responsible Arctic Energy De-
7 velopment Act of 2011 to carry out research and related
8 activities in advance of energy exploration and production
9 and related activities in the Arctic, including—

10 “(1) research into oil spill prevention and re-
11 sponse in varying Arctic ice conditions (including
12 pack ice, broken ice, and landfast ice);

13 “(2) establishment of oil spill response capabili-
14 ties in the Arctic, including oiled wildlife response
15 capabilities;

16 “(3) research into the effectiveness of oil spill
17 response strategies, such as—

18 “(A) the use and application of dispersants
19 (including research on toxicity of dispersants)
20 in Arctic conditions;

21 “(B) the impacts of dispersed oil in the
22 water column and benthic habitats and sedi-
23 ments;

24 “(C) the black carbon impacts of in-situ
25 burning;

1 “(D) the effects of mechanical oil removal
2 methods on benthic habitats;

3 “(E) the impacts of spill response strate-
4 gies on the Arctic food web;

5 “(F) identification of options for restora-
6 tion of natural resources in the event of an Arc-
7 tic oil spill, including development of oiled wild-
8 life response strategies for large mammals;

9 “(G) scientific assessment of and research
10 into effects of oil on biota that depend on ice
11 habitats;

12 “(H) the locating and tracking of oil on
13 the surface and in the water column, under
14 Arctic conditions, using acoustic and remote
15 sensing technology; and

16 “(I) the weathering and persistence of
17 spilled oil in the Arctic environment;

18 “(4) a comprehensive scientific gap analysis to
19 determine future research and ocean observation
20 needs for the safe and responsible development of
21 Arctic energy;

22 “(5) scientific assessment of and research into
23 Arctic species, such as whales, ice seals, walrus,
24 polar bears, and fishery resources, including the eco-
25 nomic and social importance of those resources and

1 the documentation of local and traditional knowledge
2 about those species;

3 “(6) monitoring and research authorized under
4 existing Alaska Native organization marine mammal
5 comanagement agreements;

6 “(7) Environmental Sensitivity Index or digital
7 database mapping of the Arctic coast and Bering
8 Strait regions;

9 “(8) research into Arctic ocean current and
10 wind trajectories, changing ice pack conditions, and
11 ongoing monitoring and observing of ocean condi-
12 tions;

13 “(9) marine debris research and removal
14 projects and activities; and

15 “(10) adherence to data management standards
16 established by the Integrated Ocean Observing Sys-
17 tem for ocean data variables.”.

18 (b) CONFORMING AMENDMENT.—The table of con-
19 tents of the Oil Pollution Act of 1990 (33 U.S.C. prec.
20 2701) is amended by striking the item relating to section
21 6003 and inserting the following:

“Sec. 6003. Arctic oil and gas development.”.

22 **SEC. 5. ARCTIC MARITIME READINESS AND OIL SPILL PRE-**
23 **VENTION.**

24 (a) IN GENERAL.—The Commandant of the Coast
25 Guard shall assess and take action to reduce the risk and

1 improve the capability of the United States to respond to
2 a maritime disaster in the United States Beaufort and
3 Chukchi Seas.

4 (b) MATTERS TO BE ADDRESSED.—The assessment
5 and actions referred to in subsection (a) shall include the
6 prioritization of resources to address—

7 (1) oil spill prevention and response capabilities
8 and infrastructure;

9 (2) the coordination of contingency plans and
10 agreements with other agencies and departments of
11 the United States, industry, and foreign govern-
12 ments to respond to an Arctic oil spill;

13 (3) the expansion of search and rescue capabili-
14 ties, infrastructure, and logistics, including improve-
15 ments of the Search and Rescue Optimal Planning
16 System;

17 (4) the provisional designation of places of ref-
18 uge;

19 (5) the evaluation and enhancement of naviga-
20 tional infrastructure;

21 (6) the evaluation and enhancement of vessel
22 monitoring, tracking, and automated identification
23 systems and navigational aids and communications
24 infrastructure for safe navigation and marine acci-
25 dent prevention in the Arctic;

1 (7) shipping traffic risk assessments for the
2 Bering Strait and the Chukchi and Beaufort Seas;
3 and

4 (8) the integration of local and traditional
5 knowledge and concerns into prevention and re-
6 sponse strategies.

7 **SEC. 6. FEDERAL OIL POLLUTION RESEARCH AND DEVEL-**
8 **OPMENT PROGRAM.**

9 (a) INTERAGENCY COORDINATING COMMITTEE ON
10 OIL POLLUTION RESEARCH.—Section 7001 of the Oil
11 Pollution Act of 1990 (33 U.S.C. 2761) is amended—

12 (1) in subsection (a), by adding at the end the
13 following:

14 “(5) VICE CHAIRMEN.—

15 “(A) IN GENERAL.—There shall be 2 Vice
16 Chairmen of the Interagency Committee, of
17 whom—

18 “(i) the Administrator of the National
19 Oceanic and Atmospheric Administration
20 shall serve as the Vice Chairman for Ma-
21 rine Science Research; and

22 “(ii) the Administrator of the Envi-
23 ronmental Protection Agency shall serve as
24 the Vice Chairman for Environmental
25 Science Research.

1 “(B) DUTIES.—Each Vice Chairman shall
2 coordinate Federal oil pollution research carried
3 out by the agency overseen by the Vice Chair-
4 man.

5 “(6) FUNCTIONS.—The Interagency Committee
6 shall—

7 “(A) coordinate Federal oil pollution re-
8 search, technology development, and demonstra-
9 tion among the Federal agencies;

10 “(B) complete a research assessment on
11 the status of Federal oil pollution prevention
12 and response capabilities;

13 “(C) develop a Federal oil pollution re-
14 search and technology plan, pursuant to sub-
15 section (b); and

16 “(D) with regard to Arctic waters—

17 “(i) prioritize resources to address—

18 “(I) ecological baselines and En-
19 vironmental Sensitivity Indexes;

20 “(II) identification of ecologically
21 important areas, critical habitats, and
22 migratory behaviors;

23 “(III) improvements in oil tech-
24 nologies for collecting observational
25 data essential for safe navigation and

1 response strategies in the event of an
2 oil spill in both open water and ice-
3 covered seasons, including data relat-
4 ing to—

5 “(aa) currents;

6 “(bb) winds;

7 “(cc) weather;

8 “(dd) waves;

9 “(ee) oil spill monitoring;

10 and

11 “(ff) ice forecasting;

12 “(IV) development of a robust
13 operational monitoring program dur-
14 ing the open water and ice-covered
15 seasons;

16 “(V) improvements in tech-
17 nologies and understanding of cold
18 water oil recovery and restoration;
19 and

20 “(VI) the integration of local and
21 traditional knowledge into oil recovery
22 research studies; and

23 “(ii) conduct hydrographic and bathy-
24 metric surveys and improve navigational
25 charting of Arctic waters.”; and

1 (2) in subsection (b)—

2 (A) in paragraph (1), by striking “Within
3 180 days after the date of enactment of this
4 Act” and inserting “Not later than January 1,
5 2010, and biennially thereafter”; and

6 (B) in paragraph (2), by striking “Depart-
7 ment of Transportation” and inserting “De-
8 partment of Homeland Security”.

9 **SEC. 7. RISK ASSESSMENT.**

10 (a) REQUIREMENT FOR RISK ASSESSMENT.—

11 (1) IN GENERAL.—Not later than 120 days
12 after the date of the enactment of this Act, the
13 Interagency Coordinating Committee on Oil Pollu-
14 tion Research shall request the National Research
15 Council to conduct a risk assessment—

16 (A) to identify and evaluate spill preven-
17 tion and response standards in effect as of that
18 date; and

19 (B) to develop recommendations that will
20 enhance safety and lessen the potential adverse
21 environmental impacts of industrial activities in
22 Arctic waters.

23 (2) INCLUSIONS.—The assessment under sub-
24 section (a) shall include the recommendations of the
25 National Research Council to identify a comprehen-

1 sive suite of measures, based on the best available
2 technology, designed to prevent and respond to oil
3 spills in the Arctic.

4 (b) SUBMISSION TO COMMITTEE, CONGRESS.—The
5 National Research Council shall concurrently submit the
6 risk assessment described in subsection (a) to—

7 (1) the Interagency Coordinating Committee on
8 Oil Pollution Research;

9 (2) the Committee on Commerce, Science, and
10 Transportation of the Senate; and

11 (3) the Committee on Transportation and In-
12 frastructure of the House of Representatives.

13 **SEC. 8. EXEMPTION OF OIL POLLUTION RESEARCH AND**
14 **DEVELOPMENT PROJECTS FROM ENVIRON-**
15 **MENTAL IMPACT STATEMENT REQUIREMENT.**

16 (a) IN GENERAL.—Notwithstanding any other provi-
17 sion of law, testing of oil spill prevention, response, or
18 mitigation technology for use in Arctic waters shall not
19 constitute a major Federal action for the purposes of sec-
20 tion 102(2)(C) of the National Environmental Policy Act
21 of 1969 (42 U.S.C. 4332(2)(C)), on the condition that the
22 Secretary of Homeland Security, the Administrator of the
23 Environmental Protection Agency, and the Secretary of
24 Commerce unanimously find that—

1 (1) the testing is necessary to advance that
2 technology;

3 (2) no reasonable alternative to the testing is
4 available; and

5 (3) the testing does not represent a serious
6 threat to the environment.

7 (b) JUDICIAL REVIEW.—Any action of Federal offi-
8 cers pursuant to this section, or any action relating to
9 such an action, shall not be subject to judicial review.

10 **SEC. 9. PROCUREMENT OF RESPONSE MATERIALS.**

11 (a) IN GENERAL.—The procurement of an item for
12 the purpose of oil pollution prevention, mitigation, re-
13 sponse, or cleanup, or for the research, testing, or develop-
14 ment of such capacity, shall be considered, regardless of
15 the origin of the item, to be consistent with the public
16 interest.

17 (b) INAPPLICABILITY OF CERTAIN PROVISIONS.—
18 Any provision of law that would otherwise prohibit or re-
19 strict the procurement of, or the expenditure of funds for
20 the procurement of, an item under subsection (a) shall not
21 apply to the procurement of the item.

22 **SEC. 10. WAIVER OF RESTRICTIONS ON WATER TESTING OF**
23 **OIL SPILL RESPONSE CAPABILITIES.**

24 Notwithstanding any other provision of law, the Ad-
25 ministrators of the Environmental Protection Agency, in

1 consultation with the Administrator of the National Oce-
2 anic and Atmospheric Administration, the Secretary of the
3 Interior, and other appropriate Federal, State, and local
4 authorities, may waive any restriction under this Act, an
5 amendment made by this Act, or any other provision of
6 law that prevents or restricts the testing, in the navigable
7 waters or in any other area under the jurisdiction of the
8 United States, of oil spill response capabilities of the
9 United States.

10 **SEC. 11. FUNDING FOR RESCUE, REHABILITATION, AND RE-**
11 **COVERY OF MARINE SPECIES.**

12 Section 5006 of the Oil Pollution Act of 1990 (33
13 U.S.C. 2736) is amended by adding at the end the fol-
14 lowing:

15 “(e) RESCUE, REHABILITATION, AND RECOVERY OF
16 MARINE SPECIES.—Amounts in the Fund shall be avail-
17 able to the Administrator of the National Oceanic and At-
18 mospheric Administration, without further appropriation
19 or fiscal year limitation, to sustain nationwide rescue, re-
20 habilitation, and recovery capabilities for marine mam-
21 mals, marine birds, and sea turtles injured by oil pollution,
22 in an amount not to exceed \$20,000,000 annually.”.

1 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to carry out
3 this Act and the amendments made by this Act such sums
4 as are necessary.

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