

# **Short Summary of the Clean Energy Jobs and Oil Company Accountability Act**

The Clean Energy Jobs and Oil Accountability Act would ensure that BP pays to clean up its mess. Second, it would invest in Home Star, a bipartisan energy efficiency program that lowers consumers' energy costs and create jobs. Third, it would protect the environment by investing in the Land and Water Conservation Fund. Fourth, it would reduce our dependence on oil by making investments in vehicles that run on electricity and natural gas. Finally, it would increase the amount that oil companies are required to pay into the Oil Spill Liability Trust Fund.

## ***Oil Spill Response and Accountability***

Division A of the Clean Energy Jobs and Oil Accountability Act would ensure that:

- 1) BP pays for the damage they have inflicted;
- 2) Oil companies invest in technologies that help to prevent and respond to domestic oil spills;
- 3) The Federal government address deficiencies in its response to catastrophic oil spills in deepwater;
- 4) Structural reforms are made to the Department of Ocean Energy (known previously as the Minerals Management Service) to address mismanagement and historical corruption issues; and
- 5) Antiquated maritime and admiralty laws are corrected.

## ***Reducing Oil Consumption and Pollution***

Division B of the Clean Energy Jobs and Oil Accountability Act includes provisions that would encourage the retrofit of the nation's heavy vehicle fleet to use natural gas and the electrification of the nation's transportation sector.

## ***Clean Energy Job Creation and Consumer Savings***

Division C of the Clean Energy Jobs and Oil Accountability Act would provide \$5 billion in incentives for the Home Star program which will offer point of sale rebates to encourage homeowners to make energy efficiency upgrades.

## ***Protecting the Environment***

Division D of the Clean Energy Jobs and Oil Accountability Act would provide full funding for Land and Water Conservation Fund over the next five Fiscal Years to ensure land and water is protected long into the future—even from the effects of climate change.

## ***Oil Spill Liability Trust Fund***

Division E of the Clean Energy Jobs and Oil Accountability Act would increase the \$1 billion liability cap of the Oil Spill Liability Trust Fund to \$5 billion and increase the amount that oil companies are required to pay into the Oil Spill Liability Trust Fund to 49 cents per barrel.

# **Section-by-Section of the Clean Energy Jobs and Oil Accountability Act**

The following provides a section-by-section on the Clean Energy Jobs and Oil Accountability Act.

## ***Division A—Oil Spill Response and Accountability***

Section 101 provides the short title, the “Big Oil Bailout Prevention Unlimited Liability Act of 2010.”

Section 102 amends the Oil Pollution Act (OPA) to eliminate the limitation on liability for damages caused by an oil spill at an offshore facility and ensure the parties that cause an oil spill are responsible for the damages, rather than taxpayers or innocent victims. Specifically, this section removes the current \$75,000,000 cap on the liability of responsible parties owning or operating offshore facilities. 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 Section 1002 of the OPA, 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 public services.

This change applies to claims or actions pending on the date of enactment of this Act and any claims arising from events occurring prior to the date of enactment of this Act.

Section 103 makes improvements to the claims processing procedures in OPA. OPA 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. This section would reduce delays in claims processing and avoid resulting hardship to claimants by allowing claimants to be permitted to pursue other mechanisms for recovery if claims are not settled in whole within 30 days after being submitted to a responsible party.

This section also makes the administrative costs of processing claims, including costs of commercial claims processing, expert services, training, and technical services, an eligible use of the Oil Spill Liability Trust Fund during a spill of national significance. This provision ensures that sufficient resources are available to process claims in the event of a nationally significant oil spill.

Section 104 amends Section 311(j)(5) of the Clean Water Act to specify additional requirements for oil spill response plans and to ensure these plans sufficiently describe the response activities necessary to respond to an oil spill. First, this section requires that the President shall promulgate regulations governing oil spill response plans that are designed to prevent, to the maximum extent practicable, injury to the economy, jobs,

and the environment. In addition, this section adds greater specificity to the requirements for oil spill response plans to minimize the damages related to an oil spill. These requirements include:

- demonstrating the financial capability to pay for removal costs and damages;
- describing the environmental effects of the response plan methodologies and equipment;
- describe the process for communications and coordination with relevant agencies;
- identifying the expected quantity of oil or hazardous substances that will be removed under the response plan following the discharge;
- describing the specific measures to be used in response to a blowout or other event involving loss of well control; and
- identifying potential economic and ecological impacts of a worst-case discharge and response activities to prevent or mitigate, to the maximum extent practicable, those impacts.

This section also ensures that the methods and equipment proposed to be used to respond to an oil spill are demonstrated to be technologically feasible in the area and under the conditions in which the vessel or facility is proposed to operate and that adequate assessment of potential impacts to ecologically-sensitive areas has been completed prior to approving a plan.

Section 105 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.

Section 106 provides authority to advance funds from the Oil Spill Liability Trust Fund in \$100 million increments for clean-up activities related to a spill of national significance. This provision ensures adequate resources are available to quickly and effectively respond to a significant oil spill.

Section 201 provides the short title, the “Federal Research and Technologies for Oil Spill Prevention and Response Act of 2010.”

Section 202 states that the purposes of this Act are to maintain and enhance the world-class oil spill prevention and response related research and facilities of the Federal Government and ensure that there are adequate knowledge, practices, and technologies to detect, respond to, contain, and clean up oil spills, whether onshore or on the outer Continental Shelf. This Title amends Sec. 7001 of the Oil Pollution Act of 1990, which established the Interagency Coordinating Committee on Oil Pollution Research. These amendments will improve Federal research efforts and promote the development of new oil spill removal and response technologies.

Section 203 requires that the role of Chairman of the Interagency Committee rotate among the Environmental Protection Agency, Department of the Interior, National Oceanic and Atmospheric Administration and Coast Guard every two years.

Section 204 ensures Federal research efforts are informed by advice and guidance from independent experts. This section requires the National Academy of Sciences, through the establishment of a 'Science and Technology Advisory Board', to provide scientific and technical advice to the interagency oil pollution research program, including:

- the identification of knowledge gaps that the program should address;
- the establishment of scientific and technical priorities; and
- an annual review of the results and effectiveness of the program, including successful technology development.

Section 204 also requires the Interagency Committee to conduct an assessment of current oil spill response technologies and ongoing government and private research on oil spill response and report back to Congress on its findings.

Section 205 establishes new areas of research focus within the interagency program to address issues related to Deepwater Horizon, including:

- research, development, and demonstration of new or improved technologies and systems to contain, respond to, and clean up a discharge of oil in extreme or harsh conditions on the outer Continental Shelf;
- research to evaluate the relative effectiveness and environmental impacts (including human and environmental toxicity) of dispersants;
- characterization of oil and natural gas in and on soil and water, including plume behavior and chemical and biological degradation; and
- modeling, simulation, and prediction of the trajectories of oil releases on the surface, subsurface, and in the water.

This section specifically authorizes an oil discharge research program within the Department of the Interior (Interior) and directs Interior, in coordination with the Interagency Committee, to support research, development, technology demonstration, and risk assessment to address issues associated with the detection of, response to, and mitigation and cleanup of discharges of oil. Specific areas of focus for the program include technologies, materials, methods, and practices:

- to detect the release of hydrocarbons from leaking exploration or production equipment;
- to characterize the rates of flow from leaking exploration and production equipment in locations that are remote or difficult to access;
- to protect the safety of workers addressing hydrocarbon releases from exploration and production equipment;
- to control or contain the release of hydrocarbons from a blowout or other loss of well control; and
- for environmental assessment, restoration, and long-term monitoring.

Section 205 also directs the Department of Interior in consultation with other agencies to conduct demonstration projects in deepwater, ultra deepwater and other extreme environmental conditions for the purpose of demonstrating new integrated deepwater oil discharge mitigation and response systems. This section also requires Interior and the Department of Commerce to establish, at appropriate higher education institutions, research centers of excellence, which will promote input from independent experts and will leverage the expertise and capacity of non-Federal entities. Section 205 also directs the Environmental Protection Agency, National Oceanic and Atmospheric Administration, Coast Guard, and Department of the Interior to establish grant programs to provide funding to individuals and research institutions to conduct oil spill research.

This section requires the Interagency Committee to develop and publish a research and technology plan for this research program every two years. The plan must identify research needs, propose areas of research focus, establish program priorities, and estimate the funding needed and timetables for completion of research tasks under the program. Research needs are continuously evolving and new events, such as the Deepwater Horizon oil spill, highlight additional areas of focus. However, the current interagency research efforts are guided by a static plan. The development and regular update of a research and technology plan will guide Federal investments in oil spill research and will help ensure the Federal research program continues to adapt and maintain a focus on the highest priority research topics.

This section authorizes spending from the Oil Spill Liability Trust Fund to ensure that critical oil spill mitigation and response research has a source of ongoing and sustainable funding.

Section 301 provides the short title, the “Outer Continental Shelf Reform Act of 2010.”

Section 302 sets forth the purposes of the legislation.

Section 303 sets forth definitions.

Section 304 clarifies U.S. policy to be applied in all management decisions regarding the Outer Continental Shelf. That policy provides that the vital resources of the U.S. Outer Continental Shelf are to be managed in a way that does not elevate energy development over all other values, but recognizes and balances the value of all of the resources, minimizes the impact of development on the environment, and acknowledges the long term economic value of balanced and orderly management. It further provides that it is national policy to allow energy and mineral development activities only when they can be done in a way that provides adequate protection from harm to life, health, the environment, property, or to other users of the waters, seabed, or subsoil.

Section 305 reforms the organizational management of the OCS in several major ways. It requires reorganization of the agency so that the revenue collection functions are kept separate from the other functions; that no more than two other bureaus are to be designated to carry out the leasing, safety, and environmental functions in a way that

minimizes the potential for conflicts of interest; and that the heads of the bureaus or offices created be appointed by the President and confirmed by the Senate. It provides the Secretary with new hiring and compensation authorities for a certain number of employees as necessary to ensure that the agency has the technical expertise required to carry out its safety and environmental functions. Finally, it creates a new Outer Continental Shelf Safety and Environmental Advisory Board made up of a balanced and unbiased group of experts identified through consultation with the National Academies of Science and Engineering to reflect a range of disciplines related to safe and environmentally compliant energy and mineral development activities. This Board is to provide independent peer reviewed scientific and technical advice for use by the agency in carrying out its safety and environmental responsibilities.

Section 306 amends various aspects of the Outer Continental Shelf Lands Act to strengthen the planning, safety, and environmental requirements involved in offshore energy development to prevent future accidents and to create a culture of excellence that governs both the regulators and the industry. In addition to mandating more stringent regulatory activity, it provides the Department of the Interior with the scientific and technical capability and some new resources to help in the exercise of adequate oversight over the industry through development of regulations, inspections, and enforcement.

Section 307 requires a Study on the effect of the moratoria on new deepwater drilling in the Gulf of Mexico on employment and small businesses

- Section 307(a) provides that the Secretary of Energy, acting through the Energy Information Administration, shall publish a monthly study evaluating the effect of the moratoria resulting from the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010.
- Section 307(b) provides that not later than 60 days after the date of enactment of this Act and at the beginning of each month thereafter during the effective period of the moratoria, the Secretary of Energy shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report regarding the results of the study conducted under subsection (a). The subsection further specifies the contents of the report and is self-explanatory.

Section 308 amends section 388(b) of the Energy Policy Act of 2005 (43 U.S.C. 1337 note) to add a new paragraph (4) that requires that with respect to the coordinated mapping initiative provided for by that subsection, any head of a Federal agency is required, on the request of the Secretary of the Interior, to provide data and information that the Secretary determines is necessary to the mapping initiative, except the agency head is not required to provide privileged or confidential information.

Section 309 amends section 999 of the Energy Policy Act of 2005 to ensure that its research is focused on the highest priority needs for safety and environmental protection in offshore oil and gas production; and to redirect a portion of the funding to

the Department of the Interior to assist in carrying out its new research responsibilities as required by this Act.

Section 310 establishes in the Legislative branch the National Commission on Outer Continental Shelf Oil Spill Prevention.

Section 311 includes savings provisions.

- Section 311 (a) provides that all regulations, rules, standards, determinations, contracts and agreements, memoranda of understanding, certifications, or any other actions issued, made or taken by or pursuant to the authority of any law that resulted in the assignment of functions to the Secretary, the Director of the Minerals Management Service or the Department, that were in effect on the date of enactment of this Act, remain in full force and effect after the date of enactment of this Act unless previously scheduled to expire or until otherwise modified or rescinded by this Act or any other Act.
- Section 311(b) provides that this Act does not amend or alter the provisions of other applicable laws, unless otherwise noted.

Section 312 adds a new section to the Outer Continental Shelf Lands Act that directs the Secretary of the Interior to require companies holding oil and gas leases on the Outer Continental Shelf to have financial protection to cover legal liability arising out of an oil discharge resulting from their operations on the Outer Continental Shelf (OCS).

Section 401 provides the short title, the “Environmental Crimes Enforcement Act of 2010.”

Section 402 directs the United States Sentencing Commission to review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses under the Federal Water Pollution Control Act to reflect the intent of Congress that penalties for such offenses be increased to appropriately account for the actual harm to the public and the environment from such offenses.

Section 501 provides the short title, the “Fairness in Admiralty and Maritime Law Act.”

Section 502 amends the Limitation of Shipowners’ Liability Act of 1851 (LOLA). Under LOLA, an owner of a vessel can limit liability for all claims arising from an incident involving the vessel to its post-voyage value and that of its cargo. The owner creates a fund equal to this post-accident value, from which all claimants, including personal injury and wrongful death claimants, are paid in proportion to the value of their claims in a single federal court proceeding. Importantly, a court will only grant this limitation if the damage done occurred without the owner’s “privity or knowledge.” The courts have determined that privity and knowledge exist where the owner has actual knowledge, or could have and should have obtained the necessary information by reasonable inquiry or inspection. With the advent of modern ship-to-shore communications technology, it is difficult for a shipowner to show a lack of privity or

knowledge, and thus very rare for a shipowner's liability to be limited under LOLA. Section 2 would amend the relevant sections in chapter 305 of title 46, United States Code, which comprise this law, to clarify that claims for personal injury or death may not be limited under LOLA, nor may claims for a discharge of oil from a vessel or offshore facility, as those terms are defined in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

Section 503 provides that the amount of punitive damages awarded in a maritime civil action need not be limited to the amount of compensatory damages awarded in that action. Punitive damages are monetary damages imposed by courts for reckless, malicious, or deceitful conduct. They serve as a policy tool that allows a court to make an example of a defendant in order to discourage similar conduct in the future. In most American courts today, the amount of punitive damages awarded is determined by a jury, and that determination is then subject to review by the courts to make certain the award is reasonable. In 2008, the U.S. Supreme Court departed from this longstanding practice. In the case of *Exxon Shipping Co. v. Baker*, the Court imposed a new, entirely judge-made limitation in punitive damages. Specifically, a five-justice majority on the Court held that punitive damages in the case of a maritime tort claim cannot exceed the amount of compensatory damages awarded. S. 3600 would restore the law of punitive damages in maritime cases to its state before the Court's decision in *Exxon v. Baker*. It would add a new section to the general maritime liability chapter (chapter 301) of title 46, United States Code, providing that in a civil action for damages arising out of a maritime tort, punitive damages may be assessed without regard to the amount of compensatory damages awarded in the action.

Section 504 amends the Death on the High Seas Act (DOHSA) to enhance remedies for wrongful death on the high seas. This section would allow wrongful death cases under DOHSA to be brought in admiralty as well as in law. The section would also harmonize the treatment of aviation under DOHSA by providing access to pecuniary and non-pecuniary damages for victims of aviation accidents—both commercial and general aviation. However, punitive damages would not be available in the claims stemming from aviation accidents, and claims must be brought in a court of admiralty. Finally, claims arising from deaths involving a commercial fishing vessels and charter fishing vessels would be exempted for the changes made in this section.

Section 505 eliminates artificial barriers that prevent recovery of damages for personal injury or death for non-citizens engaged in offshore mineral or energy development. Currently, non-citizen workers are precluded from such recovery if they were employed at the time of the incident by a person engaged in the exploration, development, or production of offshore mineral or energy resources, including drilling, mapping, surveying, diving, pipe laying, maintaining, repairing, constructing, or transporting supplies, equipment, or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces.

Section 506 makes the changes in law effective to causes of action and claims arising after April 19, 2010, as well as actions commenced before the date of enactment that have not been finally adjudicated.



Section 601 provides the short title, the “Securing Health for Ocean Resources and Environment Act” or the “SHORE Act”

Section 611 improves the National Oceanic and Atmospheric Administration Oil Spill Response, Containment, and Prevention by:

- Directing the Under Secretary of Commerce for Oceans and Atmosphere review of the status of NOAA’s ability to respond to oil spills not later than one year after the date of enactment (Subsection (a));
- Requiring the Under Secretary to develop and maintain oil spill trajectory modeling capabilities (Subsection (b));
- Directing NOAA to update the agency’s Environmental Sensitivity Index maps and database products (Subsection (c));
- Requiring NOAA to develop a program to better model and track subsea hydrocarbons and dispersants (Subsection (d));
- Requiring the Under Secretary of Commerce for Oceans and Atmosphere to establish a national center for scientific information on oil spills (Subsection (e));
- Requiring the Under Secretary to establish an Initiative on Oil Spills from Aging and Abandoned Oil Infrastructure that would assess the significance, response, frequency, size, potential fate, and potential effects of spills that originate from aging or abandoned oil infrastructure (Subsection (f));
- Requiring NOAA to inventory offshore abandoned or sunken vessels in US waters and identify any priorities to preemptively remove oil from vessels to mitigate spill risk (Subsection (g));
- Directing the Under Secretary to submit to Congress a report that characterizes ecological baselines and identifies potential risks posed by hydrocarbon development to these resources (Subsection (h));

Section 612 amends Section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)) to make available not more than \$5 million in each fiscal year to NOAA and the Fish and Wildlife Service for preparedness, response, restoration, and damage assessment capabilities of the National Oceanic and Atmospheric Administration, the US Fish and Wildlife Service, and other relevant agencies. This section would also provide not more than \$25 million to Federal trustees designated by the President, pursuant to Section 1006 (b)(2), in a fiscal year in which an oil spill of national significance occurs.

Section 613 allows funds placed into the Damage Assessment and Restoration Revolving Fund to earn interest.

Section 614 authorizes grants to be made to eligible states participating in the Coastal Zone Management Act to revise management programs to ensure sufficient response

capabilities at the state level to address the environmental, economic and social impacts of oil spills resulting from offshore exploration.

Section 615 directs NOAA to develop a long term monitoring and research program for the Gulf to ensure that the federal government has independent scientific information to assess impacts on marine wildlife and trust resources located in the Gulf and Southeast region resulting from the Deepwater Horizon oil spill.

Section 616 directs the Secretary of Commerce to direct research to improve the ability of the United States to conduct oil spill prevention, response, and recovery in Arctic waters.

Section 621 defines “Secretary” as the Secretary of the Department in which the Coast Guard is operating.

Section 622 directs the Commandant to assess and take action to reduce the risk and improve the capability of the United States to respond to a maritime disaster in the United States Beaufort and Chukchi Seas.

Section 623 amends existing oil spill area contingency plan requirements to require issuance of guidance for advanced planning and decision making by area committees with respect to fisheries closures and re-openings.

Section 624 requires the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, and the Administrator of the EPA to establish a program and process for the formal submission, evaluation, and validation of oil spill containment and removal methods and technologies. Once a technology or method receives validation, the Secretaries and the Administrator must consider whether the technology or method meets a performance capability warranting the designation of a new standard for ‘best available technology’. All technologies and methods validated under this section shall be included in the comprehensive list of spill removal resources maintained by the Coast Guard through the National Response Unit.

Section 625 mandates improvements in the frequency and comprehensiveness of Coast Guard safety inspections for all US and foreign flag tank vessels.

Section 626 requires that, in order for a vessel capable of being used for the exploration for or production of oil or gas to receive a certificate of inspection from the Coast Guard, the vessel must carry a certificate of classification for all systems onboard that may impact safety of life and property at sea.

Section 627 requires the Commandant of the Coast Guard, in consultation with the Under Secretary, to establish routing or other navigational measures, where warranted, in order to reduce the risk of oil spills.

Section 628 makes clear that a coastal State possesses the authority to require notice of 24 hours or more to the State and to the United States Coast Guard before engaging in a transfer of oil of 250 barrels or more to, from, or within a vessel in State waters.

Section 629 facilitates the establishment of a Gulf of Mexico Regional Citizens' Advisory Council (RCAC), similar to the Prince William Sound RCAC established by Congress in response to the Exxon Valdez disaster. The purpose of the RCAC would be to help correct the problems leading to oil spills before they occur through monitoring of industry activity.

Section 630 consistent with Coast Guard recommendations, significantly increases the liability limits that apply to different categories of tank vessels and other vessels under the Oil Pollution Act of 1990.

Section 631 requires the Coast Guard, within one hour of receiving a report of a marine casualty, including one involving significant harm to the environment, to notify impacted state, tribal, and local governments.

Section 632 requires that all Unified Command Incident Action Plans in response to an oil spill be posted on a publicly accessible website promptly after issuance, and that all past incident action plans for the spill be left available to the public on that website.

Section 633 designates an assignment for an active duty member of the Coast Guard in support of a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or in response to a spill of national significance as a duty assignment in support of a contingency operation.

Section 634 expands advance authority to any spill of national significance. This section also expands the payment of claims to administrative and personnel costs to process claims, including the costs of commercial claims processing, expert services, training and technical services, in the event of a spill of national significance.

Section 701 directs the President to establish a catastrophic planning initiative to ensure that federal agencies identify risk and develop appropriate plans for preventing and responding to catastrophic events before they occur, and establishes an office within the Department of Homeland Security to support that initiative.

Section 702 requires DHS, EPA and other to work together to align the National Response Framework and the National Contingency Plan to the extent possible. Ensure Coast Guard reviews and comments on oil spill response plans submitted by offshore facilities.

Section 801 gives the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling subpoena power to examine the root causes of the spill. A subpoena would be issued only by agreement of the Co-Chairs of the Oil Spill Commission or the affirmative vote of a majority of its members

The Oil Spill Commission would also be required to notify the Attorney General of the Commission's intent to issue a subpoena under this section, the identity of the witness, and the nature of the testimony sought before issuing such a subpoena. The Attorney General can block the issuance of a subpoena if he objects to the issuance of the

subpoena on the basis that the taking of the testimony is likely to interfere with any Federal or State criminal investigation or prosecution or pending investigation under the Civil False Claims Act') or other Federal statute providing for civil remedies, or any civil litigation to which the United States or any of its agencies is or is likely to be a party.

Section 901 provides the short title, the “Coral Reef Conservation Amendments of 2010.”

Section 902 provides that the amendments to this title would amend the Coral Reef Conservation Act.

Section 903 redesignates sections in the underlying legislation.

Section 904 provides emergency assistance to any State, local or territorial government agency with jurisdiction over coral reef ecosystems to address unforeseen or disaster related circumstances pertaining to coral reef ecosystems.

Section 905 establishes an account in the Damage Assessment Restoration Revolving Fund to keep funds generated by the collection of penalties from this Title.

Section 906 prohibits anyone from destroying, taking, or injuring a coral reef, except in certain circumstances. These circumstances include, for example, where the destruction occurred as a result of activity expressly permitted by federal or state law, or where the destruction was the necessary result of marine scientific research approved by law, or was caused by a federal government agency in responding to an emergency. It would also prohibit anyone from interfering with enforcement of this title. Finally, it would prohibit the possession or shipment of any coral taken in violation of the title.

Section 907 establishes joint and several liability for anyone engaging in prohibited activity pursuant to the title, and establish liability in rem for any vessel used in an activity prohibited by this Title. The provision would also authorize the Secretary of Commerce to undertake all response actions to prevent or minimize the destruction, loss or injury to coral reefs; assess damages; and commence civil actions against violators.

Section 908 establishes enforcement provisions for the Title, providing search and seizure authority, civil penalties, criminal forfeiture, permit sanctions and injunctive relief.

Section 909 amends the regulations provision of the underlying statute to ensure conformity with international law.

Section 910 provides for judicial review, and allows the cost of litigation to be awarded to the prevailing party at the discretion of the court.

## ***Division B—Reducing Oil Consumption and Improving Energy Security***

Section 2001 establishes definitions

Section 2002 establishes within the Department of Energy a Natural Gas Vehicle and Infrastructure Development Program.

Section 2003 directs the Secretary of Energy to promulgate an interim final rule no later than 60 days after the date of enactment to administer the rebates required under this section. Further sets that the maximum value of a rebate under this section provided to a qualified owner who places a qualified alternative fuel vehicle into service by 2013 shall be—

- \$10,000 for each qualified alternative fuel vehicle with a gross vehicle weight rating of not more than 8,500 pounds;
- \$16,000 for each qualified alternative fuel vehicle with a gross vehicle weight rating of more than 8,500 but not more than 14,000 pounds;
- \$40,000 for each qualified alternative fuel vehicle with a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds; and
- \$64,000 for each qualified alternative fuel vehicle with a gross vehicle weight rating of more than 26,000 pounds.
- 7,500 per vehicle to a qualified owner who places a qualified alternative fuel vehicle that is a light-duty mixed-fuel vehicle into service by 2013. The maximum value of a rebate under this section provided to a qualified owner of a vehicle shall be 50 percent of the amount provided for rebates under this section for vehicles that are only capable of operating on natural gas.

Finally, section 2003 provides \$3.8 billion for this program.

Section 2004 requires the Secretary of Energy to promulgate an interim final rule establishing an infrastructure deployment program and a manufacturing development program. The Secretary of Energy is required to provide:

- Grants of up to \$50,000 per unit to qualified refuelers for the installation of natural gas refueling property placed in service between 2011 and 2015; and
- Grants in amounts determined to be appropriate by the Secretary to qualified manufacturers for research, development, and demonstration projects on engines with reduced emissions, improved performance, and lower cost.

Section 2005 requires the Secretary of Energy to promulgate an interim final rule establishing a direct loan program to provide loans to qualified manufacturers to pay not more than 80 percent of the cost of reequipping, expanding, or establishing a facility in the United States that will be used for the purpose of producing any new qualified alternative fuel motor vehicle or any eligible component. \$200 million would be

provided for these loans which would allow for direct loan commitments not to exceed \$2 billion.

Section 2101 provides the short title, the “Promoting Electric Vehicles Act of 2010.”

Section 2102 establishes definitions.

Section 2111 establishes a program in the Department of Energy that will develop a national plan for supporting the deployment of electric drive vehicles, and will provide technical assistance to aid communities to get nationwide deployment of electric drive vehicles.

Section 2112 requires the Secretary to perform a national assessment on opportunities to deploy plug-in electric vehicles in the country and create a national plan for deployment. This plan will include an assessment of the maximum number of plug-in electric drive vehicles that will be deployed by 2020 and 2030, as well as national goals for market penetration of plug-in electric vehicles by 2020 and 2030. The plan created in this section would also integrate the successes and barriers that are identified by the deployment communities program, which is established under section 106.

Section 2113 requires the Secretary of Energy to provide technical assistance to State, local and tribal governments to assist with the national deployment of plug-in electric drive vehicles. The technical assistance to be provided will include: training codes and standards for building and safety inspectors; ideas on how to expedite permits and inspections; and education and outreach on the various types of plug-in electric drive vehicles and the associated technology.

Section 2114 provides grants for training first responders, electricians, contractors, and engineers who will be installing infrastructure, code inspection officials, dealers, mechanics, and others. Provides grants for programs in designing plug-in electric drive motor vehicles and associated components and infrastructure.

Section 2115 directs the federal government to count electricity used to refuel a plug-in electric drive motor vehicle as an alternative fuel. Also, directs the Federal Energy Management Program and the General Services Administration to compile a report on how many plug-in electric drive vehicles could be deployed in federal fleets based on needed functionality and costs. Federal agencies are to request funding for these vehicles in their annual budget requests. Finally, directs the Administrator of the General Services Administration to acquire and deploy plug-in electric drive vehicles to be used in a pilot program in federal fleets and authorizes funds to cover incremental costs.

Section 2116 creates the target Electric Drive Vehicle Deployment Communities Program. This section specifically sets forth that:

- State, tribal, or local governments may apply to become a deployment community. The application will describe the community’s plan to encourage the

deployment of electric vehicles and related infrastructure, and it should demonstrate buy-in from relevant stakeholders such as public and private utilities, government agencies, and providers of electric drive motor vehicles and charging infrastructure. The Secretary of Energy will choose at least 5 and not more than 15 deployment communities that reflect diverse populations, geography, and a model for deploying electric drive motor vehicles. At least one deployment community will have population of less than 125,000.

- Communities can apply for grants to help achieve the plan put forward in their application. Communities must provide at least 20 percent of the funding for their proposed electric vehicle deployment program from non-federal sources.
- Phase 1 of the Program will last for 5 years from the date that deployment communities receive their grants. The Secretary of Energy will report to Congress on Phase 1 of the Program and will assess whether the Program should be extended and/or modified, and make suggestions for Phase 2.

Section 2117 provides \$400 million for the program.

Section 2121 establishes an R&D program in DOE to work on all aspects of the development, production, and deployment of electric vehicles. This section also establishes a research, development, and demonstration program in the Department of Energy to identify and assess possible uses for vehicle batteries at the end of their useful life in a vehicle. Provides grants for selected demonstration projects and directs the Secretary of Energy to carry out a study on recycling materials from electric vehicles and batteries.

Section 2122 directs the Secretary of Energy to establish a competition for the development of a 500-mile vehicle battery.

Section 2123 directs the Secretary of the Interior to conduct a study identifying the raw materials needed to manufacture plug-in electric vehicles, batteries, and other components, to describe the known sources of these materials and the risk associated with their supply, and to identify ways to secure the supply chain of critical raw materials.

Section 2124 directs the Secretary of Energy to enter into an agreement with the National Academy of Sciences to conduct a study to identify what data that may be collected from electric vehicles, such as location, charging patterns and usage of electric vehicles. This study will be used to provide recommendations on procedures, technologies, and rules relating to the collection, storage and use of this data.

Section 2131 requires electric utilities to consider the potential levels of plug-in penetration that they might expect to see on their systems in the near term, investigate the potential impacts on their transmission and distribution infrastructure, and plan for the deployment of electric vehicles in their service area. Any utility that does not anticipate meaningful electric vehicle penetration on their system can request that this

requirement be waived. The bill also asks State Utility Commissions to participate in any local plan for deploying charging infrastructure, require infrastructure interoperability, consider how it interacts with smart grid, and start to consider rate recovery for utility plans. The Secretary and the Technical Advisory Committee are also directed to convene a group of stakeholders from utilities, charging infrastructure companies and others to investigate potential models for billing, smart grid integration and future vehicle to grid opportunities.

Section 2132 provides loan guarantees for eligible entities that purchase more than 200 qualified automotive batteries in a calendar year for use in nonautomotive applications. This program will help attract battery manufacturing facilities to the U.S. while plug-in electric drive vehicle production is still ramping up.

Section 2133 prohibits batteries from plug-in electric drive motor vehicles must be disposed of in accordance with the Mercury-Containing and Rechargeable Battery Management Act.

Section 2134 establishes a technical advisory committee to advise the Secretary of Energy on matters relating to plug-in electric drive vehicles. The committee is to coordinate with the Hydrogen and Fuel Cells Technical Advisory Committee and the Biomass Research and Development Technical Advisory Committee.

Section 2135 establishes an Interagency Task Force, chaired by the Secretary of Energy, to coordinate federal actions related to plug-in electric drive vehicles and infrastructure.

### ***Division C—Clean Energy Jobs and Consumer Savings***

Section 3001 provides the short title, the “Home Star Retrofit Act of 2010.”

Section 3002 includes definitions used in Division C.

Section 3003 establishes the HOME STAR Retrofit Rebate program under the authority of the Secretary of Energy. Further directs, establishes, or maintains that:

- The Secretary of Energy, in consultation with the Secretary of the Treasury and the Administrator of the Environmental Protection Agency (EPA), to create a Federal Rebate Processing System with a database and information technology system for submitting reimbursement claims by rebate aggregators (RAs).
- A national website with information on rebate programs to improve home efficiency – such as which efficiency measures are eligible, and how to participate. The website will be updated weekly, publishing the number of approved claims and the total amount of funds disbursed for rebates. These figures inform the Secretary’s decision to announce a termination date and consequently, to reserve the necessary funding to process applications already in the System before the termination date.



- The availability of model forms and data protocols for the qualified contractors', quality assurance providers' (QAPs), and WaterSense product or service purchasers' use. The Secretary shall consider the model forms developed by the National Home Performance Council.
- Not later than 10 days after receiving a bundle of rebate applications from an RA, the Secretary shall distribute funds to the RA for approved claims.
- Administrative and technical support to RAs and States who need it, not later than 30 days after the date of enactment of the Act.
- Implementation of a public education campaign on the benefits of home energy retrofits; rebate availability; and requirements for qualified contractors and accredited contractors.
- Limits that the same home can only receive both Silver Star and Gold Star rebates if the Silver Star rebates are awarded prior to Gold Star rebates; the energy savings from Silver Star do not count toward the energy savings needed to qualify for Gold Star rebates; and the combined rebates to the homeowner do not exceed \$8,000.
- The availability of rebates to all homeowners not later than 90 days after the date of enactment, to the maximum extent practicable.

Section 3004 defines qualifications for participating contractors in the Silver Star rebate and Gold Star rebate programs.

- Participating contractors in the Silver Star rebate program – applicable State licensing requirements (or Secretary-defined, if no State requirements exist); \$1,000,000 insurance coverage for general liability; guarantee that completed work is defect-free, installed according to manufacturer's specifications, and properly performs for at least a year; agree to provide the full economic value of the rebates through a discount to the homeowner; agree to notice the homeowner of the rebate amount and how the rebate will be passed through as a discount.
- Contractors who participate in the Gold Star rebate program or performance-based tax credit program – must meet the requirements of the Silver Star program and also be accredited by the BPI or other standards approved by the Secretary, in consultation with the Administrator; employ a certified workforce; and meet the requirements of an applicable State quality assurance framework. Some exceptions apply to allow for training of newly qualified contractors for Home Star projects.
- All related Federal, State, and local health and safety code requirements apply.

Section 3005 grants Secretarial authority to develop a network of rebate aggregators (RAs), who facilitate delivering rebates to contractors. Further defines or requires:

- The RAs' responsibilities and eligibility requirements – review proposed rebate applications; review measures under Silver Star for eligibility; review energy and water savings under Gold Star for eligibility; provide data to the Federal Data Processing Center; and distribute funds from DOE to contractors, vendors, or others.
- That an RA shall submit a rebate application to the Federal Rebate Processing Center (not later than 14 days after receipt from a contractor), and distribute the funds to the contractor not later than 6 days after the date of receipt from the Federal Rebate Processing System.
- That to be an RA, an entity shall either be a Home Performance with Energy Star partner, a State-approved residential energy efficiency retrofit program administrator, a Federal Power Marketing Administration, an electric utility, or a natural gas utility that has an approved residential efficiency retrofit program and an established QAP network; or an entity that can perform the functions of an RA without disrupting existing retrofits.
- The Secretary of Energy to develop guidelines for States allowing utilities to serve as RAs to count the savings toward State-level savings targets. The Secretary also helps the States with the guidelines' adoption.

Section 3006 defines quality assurance providers (QAPs) as entities independent of the contractor who confirm contractors' and installers' qualifications; confirm compliance; and perform field inspections. QAPs include entities qualified through the International Code Council; the BPI; the RESNET; a State; a State-approved residential efficiency retrofit program; or any other entity designated by the Secretary, in consultation with the Administrator.

Section 3007 establishes the Silver Star program, awarding rebates for home energy and water retrofits: if the energy or water retrofit is selected from a provided list of eligible efficiency measures, if installed by a qualified contractor not later than 1 year after the date of enactment, if in compliance with this section, and if in accordance with maximum amount limitations. Further lists, allows, requires, or defines:

- Eligible efficiency measures that shall be awarded a rebate, provided they meet technical standards, including: whole house air-sealing measures, attic insulation measures, duct seal or replacement, wall insulation, crawl space insulation or basement wall and rim joist insulation, window or skylight replacements, door replacements, heating system replacements, furnace or boiler replacements (oil, natural gas, wood pellet), water temperature controllers, air-conditioner or heat-pump replacements, storm windows, water heater replacements, roof replacements, window films, and WaterSense products like toilets, showerheads, faucets, and outdoor irrigation systems.

- The inclusion of labor costs when submitting for a rebate (including onsite preparation, assembly, or installation).
- Rebate amounts for each measure, ranging from \$50-1500 per measure. A maximum rebate amount is established in subsection (d)(4).
- Attic, wall, or crawl space insulation or air sealing product is eligible for a rebate without installation services if it were to qualify for a 25C tax credit, is used for a specific home, is not for Gold Star or for any Silver Star measures that require contracting services, and comes with educational material on proper installation. The rebate amount is 50% of the total product cost, not to exceed \$250 per home.
- Retrofit measures must be of the eligible measures described in subsection (b), installed according to applicable technical standards and by a qualified contractor (unless it's a DIY retrofit), and meet necessary compliance standards in order to qualify for a rebate. The amount of the rebate cannot exceed the maximum amount described in subsection (d)(4).
- That not less than 20% of Silver Star program retrofits are randomly subject to a third-party field verification of all retrofit work by a QAP. In the case of a qualified contractor that uses a certified workforce, 10% of retrofits are subject to field inspection.
- Homeowners to file complaints during a 1-year warranty period (after job completion) for lack of compliance, prompting a field verification by an independent QAP. If corrective work is deemed necessary after the field verification, the installed measures will be brought to compliance at no cost to the homeowner.
- The review by the Secretary of Energy of rebate requests to ensure program requirements were met. If an incorrect payment was made, the Secretary may recoup the incorrect amount or withhold the amount of the incorrect payment from the next payment to the party pursuant to a subsequent request.

Section 3008 establishes the Gold Star rebate program for retrofits that achieve whole home energy or water savings, and defines the qualifications for reimbursement. Further defines, allows, requires, or directs:

- A rebate of \$3,000 to a homeowner for a 20% reduction in whole home energy consumption, and an additional \$1,000 for each 5% reduction up to the lower of \$8,000 or 50% of the total retrofit cost. Provides a rebate of \$500 to a homeowner for a 20% reduction in whole home water consumption, and an additional \$100 for each 5% reduction up to \$1200.

- The reductions in whole home energy and water consumption as a comparison of similar energy or water consumption before and after the home's retrofit(s).
- Documentation of these consumption savings through the use of software programs and/or State rating networks.
- The Secretary of Energy to continuously monitor the software packages and, if needed, to disallow the use of software programs that improperly assess energy or water savings. Allows the Secretary to establish simulation tool assumptions, and requires compliance for several energy or water systems within the home.
- That retrofits are eligible for reimbursement if the retrofit is performed by an accredited contractor, the reimbursement does not exceed the maximum rebate amount, the necessary documentation is transmitted, the home is subject to a third-party field verification, the installed measures are in compliance of the established standards, and all necessary QA is conducted and notified.
- Random third-party field verification of all retrofit work by a QAP at a rate of 15%; 10% in the case of work performed by an accredited contractor using a certified workforce. Verification is not required in the situations listed in subsection (e)(2).
- Homeowners may file a complaint during the 1-year warranty period for lack of compliance. Verification is then required.
- The review by the Secretary of Energy of rebate requests to ensure program requirements were met. If an incorrect payment was made, the Secretary may recoup the incorrect amount or withhold the amount of the incorrect payment from the next payment to the party pursuant to a subsequent request.

Section 3009 authorizes grants to the States and Indian tribes for administrative costs, oversight of QA plans, development of ongoing QA framework, establishment and delivery of financing pilots, coordination with existing programs and infrastructure, assisting in rental units' participation, and all costs related to the Silver Star and Gold Star retrofit programs.

Section 3010 requires that Not later than 180 days after the Secretary provides funding to a State, that State shall submit an implementation plan for a QA program. The State shall consult industry stakeholders when developing such framework, and implement the framework not later than 1 year after the date of enactment of this Act.

Section 3011 requires the Secretary to submit a report to the relevant Congressional Committees not later than 1 year after the date of enactment of this Act that will provide information on savings, employment numbers, specific participating entities,

beneficiaries who received improvements, how funds were expended, financing, verification results, and any other information the Secretary deems appropriate.

Section 3012 directs the Secretary to provide administrative and technical support when necessary to RAs, States, and Indian tribes, not later than 30 days after the date of enactment of this Act.

Section 3013 treats rebates received for eligible measures do not count as taxable income to a homeowner nor shall they prohibit the consumer from applying for a tax credit allowed under section 25C or 25D of that Code for the same eligible measures performed in the home, and shall be considered a credit allowed under section 25C or 25D.

Section 3014 makes it unlawful to violate this title and its related regulations, unless as a result of a clerical error. Any person who commits a violation owes a civil penalty of not more than the higher of \$15,000 for each violation, or 3 times the value of any associated rebate. The Secretary of Energy may assess and compromise a penalty, as well as require records and inspections necessary to enforce this Act. Any person who commits a fraudulent violation of this Act shall be subject to criminal prosecution.

Section 3015 establishes the HOME STAR Efficiency Loan Program, under which the Secretary of Energy makes grants to States to support financial assistance provided by qualified program delivery entities. Further defines or directs:

- The Secretary of Energy to use the allocation formula of the State energy conservation plans as established under part D of title III of the Energy Policy and Conservation Act.
- That before the Secretary of Energy provides grants that he receive a letter of assurance from the Governor that the State has 1 or more qualified financing entities and has established a qualified loan program mechanism that meets a series of requirements.
- That funds made available to States may be used by providing interest rate reductions, credit enhancements, revolving loan funds, or other debt instruments or financial products to maximize leverage and to support widespread deployment of energy efficiency and water efficiency finance programs.
- That qualified program delivery entities may use funds repaid by eligible participants in a revolving loan fund for additional eligible participants to make improvements.
- The Secretary of Energy to submit a program evaluation to Congress not later than 1 year after the date of enactment of this Act that describes the number of eligible participants, jobs created, quantity of energy and water savings and deployment, how to further promote energy and water retrofits, and program performance.

- The amending of the loan guarantee section of the Energy Policy Act of 2005 is amended to add energy and water efficiency projects, including retrofits, to the end of subsection (a) of section 1705, and adding credit support for financing programs after subsection (d).
- The termination of financing authority expires on the date that is two years after the date of enactment of this Act.

Section 3016 provides \$5,000,000,000 to carry out this title for the period of fiscal years 2010 through 2012, which shall supplement and not supplant any Federal or State funding provided to carry out existing energy or water efficiency programs.

### ***Division D—Protecting the Environment***

Section 4001 provides the short title, the “Land and Water Conservation Authorization and Funding Act of 2010.”

Section 4002(a) states that the purposes of the amendments to the Land and Water Conservation Fund Act of 1965 (LWCF Act) made by subsection (b) are to provide consistent and reliable funding for the Land and Water Conservation Fund and to maximize the effectiveness of the fund for future generations.

- Subsection (b)(1) amends section 2 of the LWCF Act (16 U.S.C. 460l-5) to permanently authorize the Land and Water Conservation Fund at \$900 million annually.
- Paragraph (2) amends section 3 of the LWCF Act (16 U.S.C. 460l-6) to read as follows:
- Section 3(a) of the LWCF Act (as amended by section 4002) makes \$900 million available for expenditure from the Land and Water Conservation Fund (LWCF), without further appropriation, for each of fiscal years 2011, 2012, 2013, 2014, and 2015.
- In FY 2016, \$500 million will be made available from the LWCF, without further appropriation, with additional amounts available if appropriated. All funding from the LWCF in fiscal years 2017, 2018, 2019, and 2020 would subject to appropriations.
- Beginning in FY 2021, and each year thereafter, \$500 million will be made available for expenditure from the LWCF without further appropriation, with additional amounts available if appropriated.

- Section 3(b) of the LWCF Act (as amended by section 4002) provides that amounts made available from the LWCF may be obligated or expended only as provided in the LWCF Act.
- Subsection (c) amends section 5 of the LWCF Act (16 U.S.C. 4601-7) to clarify that when submitting the annual budget of the United States, the President shall specify the amounts to be allocated from the LWCF for Federal and State purposes. The subsection also makes other clarifying and conforming amendments to section 5.
- Subsection (d) amends section 6(b) of the LWCF Act (16 U.S.C. 4601-8(b)) to make clarifying amendments to reflect that funds may be made available from the LWCF either directly, under this Act, or by appropriation.
- Subsection (e) amends section 7(a) of the LWCF Act (16 U.S.C. 4601-9(a)) to add a new paragraph (1).
- Subparagraph (A) directs the President to transmit, as part of the annual budget proposal, a priority list for Federal land acquisition projects.
- Subparagraph (B) provides that amounts shall be made available from the LWCF, without further appropriation, for the projects on the priority on the date that is 15 days after the date Congress adjourns for the year unless, prior to that date, legislation is enacted establishing an alternate priority list. If an alternate list is enacted, amounts from the LWCF shall be made available, without further appropriation, for expenditure on the projects on the alternate priority list. If the alternate priority list provides for less than the amount made available in that fiscal year, then the remaining amount shall be available for expenditure in accordance with the priority list.
- Subparagraph (C) states that the President shall direct the Secretary of the Interior and the Secretary of Agriculture to develop land acquisition priority lists for lands under the jurisdiction of each Secretary. The Secretaries are directed to prepare their priority lists in consultation with the head of each affected Federal agency (the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management for the Department of the Interior, and the Forest Service for the Department of Agriculture).
- Clause (C)(iii) directs each Secretary, in preparing their priority list, to ensure that not less than 1.5 percent of the annual authorized funding amount is made available each year for projects that secure recreational public access to existing Federal land for hunting, fishing, or other recreational purposes. Such access is to be acquired only from willing sellers.
- Subsection (f) makes a conforming amendment to section 9 of the LWCF Act (16 U.S.C. 4601-10a).

Sections 4101 to Sections 4016 provide authority similar to the Fish and Wildlife Service (FWS) to ensure damages to refuges and national fish hatcheries can be recovered. The FWS would be authorized to use funds recovered for damages to reimburse costs incurred for the damages and to replace or restore the damaged resources. This section also allows the FWS to accept donations for the restoration of damages to FWS resources.

Today, when FWS resources are injured or destroyed, the costs for repair and restoration fall upon the appropriated budget and taxpayers, and dollars spent on restoration of damages at one refuge or facility are often at the expense of other refuge programs. Under the Park System Resource Protection Act (PSRPA - 16 USC 19jj), the National Park Service enjoys explicit statutory authority to seek compensation from responsible parties for resources that are injured or destroyed and to spend resources on repairing these damages.

### ***Division E—Fiscal Responsibility***

Section 5001 increases the \$1 billion liability cap of the Oil Spill Liability Trust Fund to \$5 billion and increase the amount that oil companies are required to pay into the Oil Spill Liability Trust Fund to 49 cents per barrel to ensure the continued solvency of this fund.

### ***Division F—Miscellaneous***

Section 6001 states that the budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act.