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
4  SECTION 1. SHORT TITLE.
5  This Act may be cited as the “Responsible Arctic Energy Development Act of 2011”.
SEC. 2. FINDINGS.

Congress finds that—

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

(2) Alaska contributes 17 percent of the oil production of the United States, and the Arctic region of the State of Alaska is believed to hold considerable reserves of oil and natural gas needed for the future energy security of the United States;

(3) the marine mammals and other fish and wildlife resources of the Arctic are—
    (A) critical to meet the subsistence needs of indigenous residents of Alaska;
    (B) a source of significant nonconsumptive use and nonuse value to the United States; and
    (C) vulnerable to the impacts of oil and gas exploration and production;

(4) the Arctic and the natural resources of the Arctic are particularly vulnerable to the impacts of oil spills due to the uniqueness of and limited access to the region, including—
    (A) remote location that makes oil spill emergency response capabilities slower and more difficult;
(B) cold temperatures and ice cover that slow the natural degradation and dissipation of spilled oil; and

(C) increased susceptibility of Arctic wildlife that are highly dependent on insulation, which would be greatly decreased by oil cover;

(5) Alaska lacks the essential geospatial framework for safe navigation, accident prevention, and oil spill response capabilities that are available to the rest of the United States;

(6) existing Federal research and science advisory programs focused on the environmental and socioeconomic impacts of oil and gas development in the Arctic would benefit from—

(A) a more cohesive, coordinated, and integrated approach; and

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

(7) oil spill from the mobile offshore drilling unit Deepwater Horizon in the Gulf of Mexico has highlighted the need for stronger oil spill prevention and response research and planning for future development on the outer Continental Shelf of the United States.
SEC. 3. RESEARCH AND ACTION TO CONDUCT OIL SPILL PREVENTION.

(a) IN GENERAL.—The Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration and in collaboration with the heads of other agencies or departments of the United States with appropriate Arctic science expertise, shall direct research and take action to improve the ability of the United States to conduct oil spill prevention, response, and recovery in Arctic waters.

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

(1) to address—

(A) ecological baselines and environmental sensitivity indexes;

(B) identification of ecological important areas, critical habitats, and migratory behaviors;

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

(D) the collection of observational data essential for response strategies in the event of an oil spill during both open water and ice-covered seasons, including data relating to oil spill trajectory models that include data on—

(i) currents;
(ii) winds;
(iii) weather;
(iv) waves; and
(v) ice forecasting;
(E) the development of a robust operational monitoring program during the open water and ice-covered seasons;
(F) improvements in technologies and understanding of cold water oil recovery and restoration; and
(G) the integration of local and traditional knowledge into oil recovery research studies; and
(2) to establish a robust geospatial framework for safe navigation and oil spill response through increased—
(A) hydrographic and bathymetric surveying, mapping, and navigational charting;
(B) geodetic positioning; and
(C) monitoring of tides, sea levels, and currents in the Arctic.

SEC. 4. ARCTIC OIL AND GAS DEVELOPMENT.
(a) In General.—Title VI of the Oil Pollution Act of 1990 is amended by inserting after section 6002 (33 U.S.C. 2752) the following:
“SEC. 6003. ARCTIC OIL AND GAS DEVELOPMENT.

“The Administrator of the National Oceanic and Atmospheric Administration and the Commandant of the Coast Guard, in consultation with the Secretary of the Department of Interior when applicable, shall use amounts made available under the Responsible Arctic Energy Development Act of 2011 to carry out research and related activities in advance of energy exploration and production and related activities in the Arctic, including—

“(1) research into oil spill prevention and response in varying Arctic ice conditions (including pack ice, broken ice, and landfast ice);

“(2) establishment of oil spill response capabilities in the Arctic, including oiled wildlife response capabilities;

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

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

“(B) the impacts of dispersed oil in the water column and benthic habitats and sediments;

“(C) the black carbon impacts of in-situ burning;
“(D) the effects of mechanical oil removal methods on benthic habitats;

“(E) the impacts of spill response strategies on the Arctic food web;

“(F) identification of options for restoration of natural resources in the event of an Arctic oil spill, including development of oiled wildlife response strategies for large mammals;

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

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

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

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

“(5) scientific assessment of and research into Arctic species, such as whales, ice seals, walrus, polar bears, and fishery resources, including the economic and social importance of those resources and
the documentation of local and traditional knowledge about those species;

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

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

“(8) research into Arctic ocean current and wind trajectories, changing ice pack conditions, and ongoing monitoring and observing of ocean conditions;

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

“(10) adherence to data management standards established by the Integrated Ocean Observing System for ocean data variables.”.

(b) CONFORMING AMENDMENT.—The table of contents of the Oil Pollution Act of 1990 (33 U.S.C. prev. 2701) is amended by striking the item relating to section 6003 and inserting the following:

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

SEC. 5. ARCTIC MARITIME READINESS AND OIL SPILL PREVENTION.

(a) IN GENERAL.—The Commandant of the Coast Guard shall 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.

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

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

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

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

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

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

(6) the evaluation and enhancement of vessel
monitoring, tracking, and automated identification
systems and navigational aids and communications
infrastructure for safe navigation and marine acci-
dent prevention in the Arctic;
(7) shipping traffic risk assessments for the Bering Strait and the Chukchi and Beaufort Seas;
and
(8) the integration of local and traditional knowledge and concerns into prevention and re-
response strategies.

SEC. 6. FEDERAL OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM.

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

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

“(5) VICE CHAIRMEN.—

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

“(i) the Administrator of the National Oceanic and Atmospheric Administration shall serve as the Vice Chairman for Marine Science Research; and

“(ii) the Administrator of the Environmental Protection Agency shall serve as the Vice Chairman for Environmental Science Research.
“(B) Duties.—Each Vice Chairman shall coordinate Federal oil pollution research carried out by the agency overseen by the Vice Chairman.

“(6) Functions.—The Interagency Committee shall—

“(A) coordinate Federal oil pollution research, technology development, and demonstration among the Federal agencies;

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

“(C) develop a Federal oil pollution research and technology plan, pursuant to subsection (b); and

“(D) with regard to Arctic waters—

“(i) prioritize resources to address—

“(I) ecological baselines and Environmental Sensitivity Indexes;

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

“(III) improvements in oil technologies for collecting observational data essential for safe navigation and
response strategies in the event of an oil spill in both open water and ice-covered seasons, including data relating to—

“(aa) currents;
“(bb) winds;
“(cc) weather;
“(dd) waves;
“(ee) oil spill monitoring;

and

“(ff) ice forecasting;
“(IV) development of a robust operational monitoring program during the open water and ice-covered seasons;
“(V) improvements in technologies and understanding of cold water oil recovery and restoration; and
“(VI) the integration of local and traditional knowledge into oil recovery research studies; and
“(ii) conduct hydrographic and bathymetric surveys and improve navigational charting of Arctic waters.”; and
(2) in subsection (b)—

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

(B) in paragraph (2), by striking “Department of Transportation” and inserting “Department of Homeland Security”.

SEC. 7. RISK ASSESSMENT.

(a) REQUIREMENT FOR RISK ASSESSMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Interagency Coordinating Committee on Oil Pollution Research shall request the National Research Council to conduct a risk assessment—

(A) to identify and evaluate spill prevention and response standards in effect as of that date; and

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

(2) INCLUSIONS.—The assessment under subsection (a) shall include the recommendations of the National Research Council to identify a comprehen-
sive suite of measures, based on the best available
technology, designed to prevent and respond to oil
spills in the Arctic.

(b) Submission to Committee, Congress.—The
National Research Council shall concurrently submit the
risk assessment described in subsection (a) to—

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

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

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

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

(a) In General.—Notwithstanding any other provi-
sion of law, testing of oil spill prevention, response, or
mitigation technology for use in Arctic waters shall not
constitute a major Federal action for the purposes of sec-
tion 102(2)(C) of the National Environmental Policy Act
of 1969 (42 U.S.C. 4332(2)(C)), on the condition that the
Secretary of Homeland Security, the Administrator of the
Environmental Protection Agency, and the Secretary of
Commerce unanimously find that—
(1) the testing is necessary to advance that technology;
(2) no reasonable alternative to the testing is available; and
(3) the testing does not represent a serious threat to the environment.

(b) JUDICIAL REVIEW.—Any action of Federal officers pursuant to this section, or any action relating to such an action, shall not be subject to judicial review.

SEC. 9. PROCUREMENT OF RESPONSE MATERIALS.

(a) IN GENERAL.—The procurement of an item for the purpose of oil pollution prevention, mitigation, response, or cleanup, or for the research, testing, or development of such capacity, shall be considered, regardless of the origin of the item, to be consistent with the public interest.

(b) INAPPLICABILITY OF CERTAIN PROVISIONS.—Any provision of law that would otherwise prohibit or restrict the procurement of, or the expenditure of funds for the procurement of, an item under subsection (a) shall not apply to the procurement of the item.

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

Notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency, in
consultation with the Administrator of the National Oce-
anic and Atmospheric Administration, the Secretary of the
Interior, and other appropriate Federal, State, and local
authorities, may waive any restriction under this Act, an
amendment made by this Act, or any other provision of
law that prevents or restricts the testing, in the navigable
waters or in any other area under the jurisdiction of the
United States, of oil spill response capabilities of the
United States.

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

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

“(e) Rescue, Rehabilitation, and Recovery of
Marine Species.—Amounts in the Fund shall be avail-
able to the Administrator of the National Oceanic and At-
mospheric Administration, without further appropriation
or fiscal year limitation, to sustain nationwide rescue, re-
habilitation, and recovery capabilities for marine mam-
mals, marine birds, and sea turtles injured by oil pollution,
in an amount not to exceed $20,000,000 annually.”.
SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

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