

**Calendar No. 410**111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 3410**

To create a fair and efficient system to resolve claims of victims for economic injury caused by the Deepwater Horizon incident, and to direct the Secretary of the Interior to renegotiate the terms of the lease known as “Mississippi Canyon 252” with respect to claims relating to the Deepwater Horizon explosion and oil spill that exceed existing applicable economic liability limitations.

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**IN THE SENATE OF THE UNITED STATES**

MAY 25, 2010

Mr. VITTER (for himself, Ms. MURKOWSKI, Mr. LEMIEUX, and Mr. ISAKSON)  
introduced the following bill; which was read the first time

MAY 26, 2010

Read the second time and placed on the calendar

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**A BILL**

To create a fair and efficient system to resolve claims of victims for economic injury caused by the Deepwater Horizon incident, and to direct the Secretary of the Interior to renegotiate the terms of the lease known as “Mississippi Canyon 252” with respect to claims relating to the Deepwater Horizon explosion and oil spill that exceed existing applicable economic liability limitations.

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; TABLE OF CONTENTS.**

4        (a) **SHORT TITLE.**—This Act may be cited as the  
 5 “Acceptance of Liability and Expedited Claims at Mis-  
 6 sissippi Canyon 252 Act”.

7        (b) **TABLE OF CONTENTS.**—The table of contents of  
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—DEEPWATER HORIZON CLAIMS RESOLUTION**

Sec. 101. Findings and purpose.

Sec. 102. Definitions.

**Subtitle A—Office of Deepwater Horizon Claims Compensation**

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

Sec. 112. Claimant assistance.

Sec. 113. Compensation program startup.

Sec. 114. Authority of Administrator.

Sec. 115. Advisory Committee on Deepwater Horizon Compensation.

**Subtitle B—Deepwater Horizon Compensation Procedures**

Sec. 121. Essential elements of eligible claim.

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

Sec. 123. Filing of claims.

Sec. 124. Eligibility determinations and claim awards.

**Subtitle C—Awards**

Sec. 131. Amount.

Sec. 132. Payment.

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

Sec. 134. Subrogation.

**Subtitle D—Judicial Review**

Sec. 141. Judicial review of rules and regulations.

Sec. 142. Judicial review of award decisions.

Sec. 143. Other judicial challenges.

**Subtitle E—Effect on Other Laws**

Sec. 151. Effect on other laws.

Sec. 201. Liability for Deepwater Horizon oil spill.

1 **TITLE I—DEEPWATER HORIZON**  
2 **CLAIMS RESOLUTION**

3 **SEC. 101. FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—Congress finds that—

5 (1) the oil spill resulting from the Deepwater  
6 Horizon incident has caused major economic damage  
7 to the residents of the States bordering the Gulf of  
8 Mexico;

9 (2) the limits on strict liability imposed by the  
10 Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.)  
11 will be exceeded by the claims resulting from the  
12 Deepwater Horizon incident; and

13 (3) while the Oil Pollution Act of 1990 (33  
14 U.S.C. 2701 et seq.) places no restrictions on liabil-  
15 ity for damages from the accident under State law,  
16 litigation of such cases may take decades, and con-  
17 sume in litigation expenses funds that could other-  
18 wise be used to quickly and efficiently compensate  
19 the citizens of the Gulf States for damages resulting  
20 from the Deepwater Horizon incident.

21 (b) PURPOSE.—The purpose of this title is to create  
22 a fair and efficient system for the payment of legitimate  
23 present and future claims for damages resulting from the  
24 Deepwater Horizon incident.

1 **SEC. 102. DEFINITIONS.**

2 In this title:

3 (1) ADMINISTRATOR.—The term “Adminis-  
4 trator” means the Administrator of the Office.

5 (2) ADVISORY COMMITTEE.—The term “Advi-  
6 sory Committee” means the Advisory Committee on  
7 Deepwater Horizon Compensation established under  
8 section 115(a).

9 (3) CLAIM.—The term “claim” means any  
10 claim, based on any theory, allegation, or cause of  
11 action, for damages presented in a civil action or  
12 bankruptcy proceeding, directly, indirectly, or deriva-  
13 tively arising out of, based on, or related to, in whole  
14 or in part, the effects of the Deepwater Horizon in-  
15 cident.

16 (4) CLAIMANT.—The term “claimant” means a  
17 person or State who files a claim under section 123.

18 (5) CIVIL ACTION.—

19 (A) IN GENERAL.—The term “civil action”  
20 means a civil action filed in Federal or State  
21 court, whether cognizable as a case at law, in  
22 equity, or in admiralty.

23 (B) EXCLUSION.—The term “civil action”  
24 does not include an action relating to any work-  
25 ers’ compensation law.

1           (6) COLLATERAL SOURCE COMPENSATION.—

2           The term “collateral source compensation” means  
3           the compensation that a claimant received, or is en-  
4           titled to receive, from a responsible party as a result  
5           of a final judgment, settlement, or other payment  
6           for damages that are the source of a claim under  
7           section 123, including payments made under the Oil  
8           Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

9           (7) COMPENSATION PROGRAM.—The term  
10          “compensation program” means the compensation  
11          program established under this title.

12          (8) DAMAGES.—The term “damages” means  
13          damages specified in section 131(b), including the  
14          cost of assessing those damages.

15          (9) DEEPWATER HORIZON INCIDENT.—The  
16          term “Deepwater Horizon incident” means the blow-  
17          out and explosion of the Deepwater Horizon oil rig  
18          that occurred on April 20, 2010, and resulting hy-  
19          drocarbon releases into the environment.

20          (10) DEPARTMENT.—The term “Department”  
21          means the Department of the Interior.

22          (11) FUND.—The term “Fund” means the Oil  
23          Spill Liability Trust Fund established by section  
24          9509 of the Internal Revenue Code of 1986.

1           (12) LAW.—The term “law” includes all law,  
2           judicial or administrative decisions, rules, regula-  
3           tions, or any other principle or action having the ef-  
4           fect of law.

5           (13) OFFICE.—The term “Office” means the  
6           Office of Deepwater Horizon Claims Compensation  
7           established under section 111.

8           (14) PARTIES.—The term “parties” means,  
9           with respect to an individual claim, the claimant and  
10          the responsible party.

11          (15) PERSON.—

12           (A) IN GENERAL.—The term “person”  
13           means an individual, trust, firm, joint stock  
14           company, partnership, association, insurance  
15           company, reinsurance company, or corporation.

16           (B) EXCLUSIONS.—The term “person”  
17           does not include—

18                   (i) the United States;

19                   (ii) a State; or

20                   (iii) a political subdivision of a State.

21          (16) RESPONSIBLE PARTY.—The term “respon-  
22          sible party” means a responsible party (as defined in  
23          section 1001 of the Oil Pollution Act of 1990 (33  
24          U.S.C. 2701)) for the Deepwater Horizon incident.

1           (17) SECRETARY.—The term “Secretary”  
2 means the Secretary of the Interior.

3           (18) STATE.—The term “State” means

4           (A) each of the several States of the  
5 United States;

6           (B) the District of Columbia;

7           (C) the Commonwealth of Puerto Rico;

8           (D) Guam;

9           (E) American Samoa;

10           (F) the Commonwealth of the Northern  
11 Mariana Islands;

12           (G) the Federated States of Micronesia;

13           (H) the Republic of the Marshall Islands;

14           (I) the Republic of Palau; and

15           (J) the United States Virgin Islands..

16           (19) SUCCESSOR IN INTEREST.—The term  
17 “successor in interest” means any person that ac-  
18 quires assets, and substantially continues the busi-  
19 ness operations, of a responsible party, considering  
20 factors that include—

21           (A) retention of the same facilities or loca-  
22 tion;

23           (B) retention of the same employees;

24           (C) maintaining the same job under the  
25 same working conditions;

1 (D) retention of the same supervisory per-  
 2 sonnel;

3 (E) continuity of assets;

4 (F) production of the same product or  
 5 offer of the same service;

6 (G) retention of the same name;

7 (H) maintenance of the same customer  
 8 base;

9 (I) identity of stocks, stockholders, and di-  
 10 rectors between the asset seller and the pur-  
 11 chaser; or

12 (J) whether the successor holds itself out  
 13 as continuation of previous enterprise, but ex-  
 14 pressly does not include whether the person ac-  
 15 tually knew of the liability of the responsible  
 16 party under this title.

17 **Subtitle A—Office of Deepwater**  
 18 **Horizon Claims Compensation**

19 **SEC. 111. ESTABLISHMENT OF OFFICE OF DEEPWATER HO-**  
 20 **RIZON CLAIMS COMPENSATION.**

21 (a) IN GENERAL.—

22 (1) ESTABLISHMENT.—There is established  
 23 within the Department the Office of Deepwater Ho-  
 24 rizon Claims Compensation, which shall be headed  
 25 by the Administrator.

1           (2) PURPOSE.—The purpose of the Office shall  
2           be to provide timely, fair compensation, under the  
3           terms specified in this title, on a no-fault basis and  
4           in a nonadversarial manner, to persons and State or  
5           local governments that have incurred damages as a  
6           result of the Deepwater Horizon incident.

7           (3) TERMINATION OF THE OFFICE.—The Office  
8           shall terminate effective not later than 1 year fol-  
9           lowing the date of certification by the Administrator  
10          that the Fund has neither paid a claim in the pre-  
11          vious 1-year period nor has debt obligations remain-  
12          ing to pay.

13          (4) EXPENSES.—The Fund shall be available to  
14          the Secretary for expenditure, without further ap-  
15          propriation and without fiscal year limitation, as  
16          necessary for any and all expenses associated with  
17          the Office, including—

18                  (A) personnel salaries and expenses, in-  
19                  cluding retirement and similar benefits; and

20                  (B) all administrative and legal expenses.

21          (b) APPOINTMENT OF ADMINISTRATOR.—

22                  (1) IN GENERAL.—The Administrator of the  
23          Office shall be appointed by the President, by and  
24          with the advice and consent of the Senate.

1           (2) TERM.—The term of the Administrator  
2 shall be 5 years.

3           (3) REPORTING.—The Administrator shall re-  
4 port directly to the Assistant Secretary for Policy,  
5 Management, and Budget of the Department.

6           (c) DUTIES OF ADMINISTRATOR.—

7           (1) IN GENERAL.—The Administrator shall be  
8 responsible for—

9                   (A) processing claims for compensation for  
10 damages to eligible claimants in accordance  
11 with the criteria and procedures established  
12 under subtitle B;

13                   (B) appointing or contracting for the serv-  
14 ices of such personnel, making such expendi-  
15 tures, and taking any other actions as may be  
16 necessary to carry out the responsibilities of the  
17 Office, including entering into cooperative  
18 agreements with other Federal or State agen-  
19 cies and entering into contracts with nongovern-  
20 mental entities;

21                   (C) conducting such audits and additional  
22 oversight as necessary to assure the integrity of  
23 the compensation program;

1 (D) promulgating such rules, regulations,  
2 and procedures as may be necessary to carry  
3 out this title;

4 (E) making such expenditures as may be  
5 necessary in carrying out this title;

6 (F) excluding evidence and disqualifying or  
7 debarring any attorney or other individual or  
8 entity who provide evidence in support of the  
9 application of the claimant for compensation if  
10 the Administrator determines that materially  
11 false, fraudulent, or fictitious statements or  
12 practices have been submitted or engaged in by  
13 the individual or entity; and

14 (G) having all other powers incidental, nec-  
15 essary, or appropriate to carrying out the func-  
16 tions of the Office.

17 (2) CERTAIN ENFORCEMENT.—

18 (A) FALSE STATEMENTS.—For each in-  
19 fraction described in paragraph (1)(F), the Ad-  
20 ministrator may impose a civil penalty not to  
21 exceed \$10,000 on any individual or entity  
22 found to have submitted or engaged in a mate-  
23 rially false, fraudulent, or fictitious statement  
24 or practice under this title.

1 (B) OTHER POWERS.—The Administrator  
2 shall issue appropriate regulations to carry out  
3 paragraph (1)(G).

4 (d) AUDIT AND PERSONNEL REVIEW PROCE-  
5 DURES.—The Administrator shall establish audit and per-  
6 sonnel review procedures for evaluating the accuracy of  
7 eligibility recommendations of agency and contract per-  
8 sonnel.

9 **SEC. 112. CLAIMANT ASSISTANCE.**

10 (a) ESTABLISHMENT.—Not later than 180 days after  
11 the date of enactment of this Act, the Administrator shall  
12 establish a comprehensive claimant assistance program—

13 (1) to publicize and provide information to po-  
14 tential claimants about—

15 (A) the availability of benefits for eligible  
16 claimants under this title; and

17 (B) the procedures for filing claims and for  
18 obtaining assistance in filing claims;

19 (2) to provide assistance to potential claimants  
20 in preparing and submitting claims, including assist-  
21 ance in obtaining the documentation necessary to  
22 support a claim;

23 (3) to respond to inquiries from claimants and  
24 potential claimants;

1 (4) to provide training with respect to the appli-  
2 cable procedures for the preparation and filing of  
3 claims to persons who provide assistance or rep-  
4 resentation to claimants, including nonprofit organi-  
5 zations and State and local government entities; and

6 (5) to provide for the establishment of a website  
7 on which claimants may access all relevant forms  
8 and information.

9 (b) RESOURCE CENTERS.—

10 (1) IN GENERAL.—The claimant assistance pro-  
11 gram shall provide for the establishment of resource  
12 centers in areas in which there are determined to be  
13 large concentrations of potential claimants.

14 (2) LOCATION.—The centers shall be located, to  
15 the maximum extent practicable, in facilities of the  
16 Department or other Federal agencies.

17 (c) ATTORNEY'S FEES.—

18 (1) IN GENERAL.—Notwithstanding any other  
19 provision of law, the representative of an individual  
20 may not receive, for services rendered in connection  
21 with the claim of an individual under this title, more  
22 than 5 percent of a final award made (whether by  
23 the Administrator initially or as a result of adminis-  
24 trative review) on the claim.

1           (2) PENALTY.—Any representative of a claim-  
2           ant who violates this subsection shall be fined not  
3           more than the greater of—

4                   (A) \$5,000; or

5                   (B) twice the amount received by the rep-  
6           resentative for services rendered in connection  
7           with each violation.

8 **SEC. 113. COMPENSATION PROGRAM STARTUP.**

9           (a) INTERIM REGULATIONS.—Not later than 90 days  
10          after the date of enactment of this Act, the Administrator  
11          shall issue interim regulations and procedures for the  
12          processing of claims under this title.

13          (b) INTERIM PERSONNEL.—

14               (1) IN GENERAL.—The Secretary and the As-  
15          sistant Secretary for Policy, Management, and  
16          Budget of the Department may make available to  
17          the Administrator on a temporary basis such per-  
18          sonnel and other resources as may be necessary to  
19          facilitate the expeditious startup of the compensa-  
20          tion program.

21               (2) CONTRACTS.—The Administrator may con-  
22          tract with individuals or entities having relevant ex-  
23          perience to assist in the expeditious startup of the  
24          compensation program.

1           (c) EXTREME FINANCIAL HARDSHIP CLAIMS.—In  
2 the final regulations promulgated under section 111(c),  
3 the Administrator shall designate categories of claims to  
4 be handled on an expedited basis as a result of extreme  
5 financial hardship.

6           (d) INTERIM ADMINISTRATOR.—Until an Adminis-  
7 trator is appointed and confirmed under section 111(b),  
8 the responsibilities of the Administrator under this title  
9 shall be performed by the Assistant Secretary for Policy,  
10 Management, and Budget of the Department, who shall  
11 have all the authority conferred by this title on the Admin-  
12 istrator and who shall be considered to be the Adminis-  
13 trator for purposes of this title.

14           (e) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

15               (1) STAY OF CLAIMS.—

16                   (A) PENDING ACTIONS.—Notwithstanding  
17 any other provision of this title, any claim for  
18 damages pending in any Federal or State court  
19 for monetary damages related to the Deepwater  
20 Horizon incident as of the date of enactment of  
21 this Act shall be subject to a stay.

22                   (B) FUTURE ACTIONS.—Notwithstanding  
23 any other provision of this title, any claim for  
24 damages filed in any Federal or State court for  
25 monetary damages related to the Deepwater

1 Horizon incident after the date of enactment of  
2 this Act shall be subject to a stay 60 days after  
3 the date of the filing of the claim, unless the  
4 claimant has filed an election to pursue the  
5 claim for damages in the Federal or State court  
6 under paragraph (2).

7 (2) CLAIMS.—To be eligible for a claim, any  
8 person or State that has filed a timely claim seeking  
9 a judgment or order for monetary damages related  
10 to the Deepwater Horizon incident in any Federal or  
11 State court before, on, or after the date of enact-  
12 ment of this Act, shall file with the Administrator  
13 and serve on all defendants in the pending court ac-  
14 tion an election to pursue the claim for damages  
15 under this title or continue to pursue the claim in  
16 the Federal or State court—

17 (A) not later than 60 days after the date  
18 of enactment of this Act, if the claim was filed  
19 in a Federal or State court before the date of  
20 enactment of this Act; and

21 (B) not later than 60 days after the date  
22 of the filing of the claim, if the claim is filed  
23 in a Federal or State court on or after the date  
24 of enactment of this Act.

1           (3) STAY.—Until the claimant files an election  
2 under paragraph (2) to continue to pursue the claim  
3 in the Federal or State court, the stay under para-  
4 graph (1) shall remain in effect.

5           (4) EFFECT OF ELECTION.—

6           (A) IN GENERAL.—Any claimant that has  
7 elected to pursue a claim for damages in Fed-  
8 eral or State court under paragraph (2) shall  
9 not be eligible for an award for those damages  
10 under section 131.

11           (B) STAY OF CLAIM.—Any claim seeking a  
12 judgment or order for monetary damages relat-  
13 ing to the Deepwater Horizon incident in any  
14 Federal or State court filed by a claimant that  
15 has received a judgment for damages under this  
16 title for that claim shall be permanently stayed.

17           (5) EFFECT OF OPERATIONAL OR NON-  
18 OPERATIONAL FUND.—

19           (A) REINSTATEMENT OF CLAIMS.—If,  
20 after 270 days after the date of enactment of  
21 this Act, the Administrator cannot certify to  
22 Congress that the Office is operational and pay-  
23 ing claims at a reasonable rate, each person or  
24 State that has filed a claim stayed under this  
25 subsection may continue the claims of the per-

1 son or State in the court in which the case was  
2 pending prior to the stay.

3 (B) OPERATIONAL OFFICE.—If the Admin-  
4 istrator subsequently certifies to Congress that  
5 the Office has become operational and paying  
6 all valid claims at a reasonable rate, any claim  
7 in a civil action in Federal or State court that  
8 is not actually on trial before a jury that has  
9 been impaneled and presentation of evidence  
10 has commenced, but before deliberation, or be-  
11 fore a judge and is at the presentation of evi-  
12 dence, may, at the option of the claimant, be  
13 considered a reinstated claim before the Admin-  
14 istrator and the civil action before the Federal  
15 or State court shall be null and void.

16 (C) NONOPERATIONAL OFFICE.—Notwith-  
17 standing any other provision of this title, if the  
18 Administrator certifies to Congress that the Of-  
19 fice cannot become operational and paying all  
20 valid claims at a reasonable rate, all claims that  
21 have a stay may be filed or reinstated.

22 **SEC. 114. AUTHORITY OF ADMINISTRATOR.**

23 On any matter within the jurisdiction of the Adminis-  
24 trator under this title, the Administrator may—

- 1 (1) issue subpoenas for and compel the attend-  
2 ance of witnesses within a radius of 200 miles;
- 3 (2) administer oaths;
- 4 (3) examine witnesses;
- 5 (4) require the production of books, papers,  
6 documents, and other potential evidence; and
- 7 (5) request assistance from other Federal agen-  
8 cies with the performance of the duties of the Ad-  
9 ministrator under this title.

10 **SEC. 115. ADVISORY COMMITTEE ON DEEPWATER HORIZON**  
11 **COMPENSATION.**

12 (a) ESTABLISHMENT.—

13 (1) IN GENERAL.—Not later than 120 days  
14 after the date of enactment of this Act, the Adminis-  
15 trator shall establish an Advisory Committee on  
16 Deepwater Horizon Compensation.

17 (2) COMPOSITION AND APPOINTMENT.—

18 (A) IN GENERAL.—The Advisory Com-  
19 mittee shall be composed of 24 members, ap-  
20 pointed in accordance with this paragraph.

21 (B) LEGISLATIVE APPOINTMENTS.—

22 (i) IN GENERAL.—The Majority Lead-  
23 er of the Senate, the Minority Leader of  
24 the Senate, the Speaker of the House of  
25 Representatives, and the Minority Leader

1 of the House of Representatives shall each  
2 appoint 4 members to the Advisory Com-  
3 mittee.

4 (ii) REPRESENTATION.—Of the 4  
5 members appointed by each Member under  
6 clause (i)—

7 (I) 2 members shall represent the  
8 interests of claimants; and

9 (II) 2 members shall represent  
10 the interests of responsible parties.

11 (C) APPOINTMENTS BY ADMINISTRATOR.—

12 The Administrator shall appoint 8 members to  
13 the Advisory Committee, who shall be individ-  
14 uals with qualifications and expertise relevant  
15 to the compensation program, including experi-  
16 ence or expertise in marine or coastal ecology,  
17 oil spill remediation, fisheries management, ad-  
18 ministering compensation programs, or audits.

19 (b) DUTIES.—The Advisory Committee shall advise  
20 the Administrator on—

21 (1) claims filing and claims processing proce-  
22 dures;

23 (2) claimant assistance programs;

1           (3) audit procedures and programs to ensure  
2           the quality and integrity of the compensation pro-  
3           gram;

4           (4) analyses or research that should be con-  
5           ducted to evaluate past claims and to project future  
6           claims under the compensation program; and

7           (5) such other matters related to the implemen-  
8           tation of this title as the Administrator considers ap-  
9           propriate.

10       (c) OPERATION OF COMMITTEE.—

11           (1) TERM.—The term of a member of the Advi-  
12           sory Committee shall be 3 years.

13           (2) CHAIRPERSON AND VICE CHAIRPERSON.—  
14           The Administrator shall designate a Chairperson  
15           and Vice Chairperson of the Advisory Committee  
16           from among the members appointed under sub-  
17           section (a)(2)(C).

18           (3) MEETINGS.—The Advisory Committee shall  
19           meet—

20                   (A) at the call of the Chairperson or a ma-  
21                   jority of the members of the Advisory Com-  
22                   mittee; and

23                   (B) at least—

24                           (i) 4 times per year during the first 3  
25                           years of the compensation program; and

1 (ii) 2 times per year thereafter.

2 (4) INFORMATION.—

3 (A) IN GENERAL.—The Administrator  
4 shall provide to the Advisory Committee such  
5 information as is necessary and appropriate for  
6 the Advisory Committee to carry out this sec-  
7 tion.

8 (B) OTHER AGENCIES.—

9 (i) IN GENERAL.—On request of the  
10 Advisory Committee, the Administrator  
11 may secure directly from any Federal,  
12 State, or local department or agency such  
13 information as may be necessary to enable  
14 the Advisory Committee to carry out this  
15 section.

16 (ii) PROVISION OF INFORMATION.—  
17 On request of the Administrator, the head  
18 of the department or agency described in  
19 clause (i) shall furnish such information to  
20 the Advisory Committee.

21 (5) ADMINISTRATIVE SUPPORT.—The Adminis-  
22 trator shall provide the Advisory Committee with  
23 such administrative support as is reasonably nec-  
24 essary to enable the Advisory Committee to carry  
25 out this section.

1 (d) EXPENSES.—A member of the Advisory Com-  
 2 mittee, other than a full-time Federal employee, while at-  
 3 tending a meeting of the Advisory Committee or while oth-  
 4 erwise serving at the request of the Administrator, and  
 5 while serving away from the home or regular place of busi-  
 6 ness of the member, shall be allowed travel and meal ex-  
 7 penses, including per diem in lieu of subsistence, as au-  
 8 thorized by section 5703 of title 5, United States Code,  
 9 for individuals in the Federal Government serving without  
 10 pay.

## 11 **Subtitle B—Deepwater Horizon**

### 12 **Compensation Procedures**

#### 13 **SEC. 121. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.**

14 To be eligible for an award under this title for dam-  
 15 ages, a claimant shall—

16 (1) file a claim in a timely manner in accord-  
 17 ance with section 123; and

18 (2) prove, by a preponderance of the evidence,  
 19 that the claimant has suffered damages as a result  
 20 of the Deepwater Horizon incident.

#### 21 **SEC. 122. GENERAL RULE CONCERNING NO-FAULT COM-** 22 **PENSATION.**

23 To be eligible for an award under this title for dam-  
 24 ages, a claimant shall not be required to demonstrate that

1 the damages for which the claim is being made resulted  
2 from the negligence or other fault of any other person.

3 **SEC. 123. FILING OF CLAIMS.**

4 (a) ELIGIBLE CLAIMANTS.—

5 (1) IN GENERAL.—Any person or State that  
6 has suffered damage as a result of the Deepwater  
7 Horizon incident may file a claim with the Office for  
8 an award with respect to the damage.

9 (2) LIMITATION.—A claim may not be filed by  
10 any person or State under this title for contribution  
11 or indemnity.

12 (b) STATUTE OF LIMITATIONS.—Except as otherwise  
13 provided in this subsection, if a person or State fails to  
14 file a claim with the Office under this section during the  
15 5-year period beginning on the date on which the person  
16 or State first discovered facts that would have led a rea-  
17 sonable person to conclude that damage had occurred, any  
18 claim relating to the damage, and any other claim related  
19 to that damage, shall be extinguished, and any recovery  
20 on the damage shall be prohibited.

21 (c) FUTURE CLAIMS NOT PRECLUDED.—Filing of a  
22 claim under subsection (a) shall not preclude the filing of  
23 additional claims for damages arising from the Deepwater  
24 Horizon incident that are manifest at a later date.

1 (d) REQUIRED INFORMATION.—A claim filed under  
2 subsection (a) shall be in such form, and contain such in-  
3 formation in such detail, as the Administrator shall by  
4 regulation prescribe.

5 (e) DATE OF FILING.—A claim shall be considered  
6 to be filed on the date that the claimant mails the claim  
7 to the Office, as determined by postmark, or on the date  
8 that the claim is received by the Office, whichever is the  
9 earliest determinable date.

10 (f) INCOMPLETE CLAIMS.—

11 (1) IN GENERAL.—If a claim filed under sub-  
12 section (a) is incomplete, the Administrator shall no-  
13 tify the claimant of the information necessary to  
14 complete the claim and inform the claimant of such  
15 services as may be available through the claimant  
16 assistance program established under section 112 to  
17 assist the claimant in completing the claim.

18 (2) TIME PERIODS.—

19 (A) IN GENERAL.—Except as provided in  
20 subparagraph (B), any time period for the proc-  
21 essing of the claim shall be suspended until  
22 such time as the claimant submits the informa-  
23 tion necessary to complete the claim.

24 (B) DEADLINE.—If the information de-  
25 scribed in subparagraph (A) is not received dur-

1           ing the 1-year period beginning on the date of  
2           the notification, the claim shall be dismissed.

3 **SEC. 124. ELIGIBILITY DETERMINATIONS AND CLAIM**  
4           **AWARDS.**

5           (a) IN GENERAL.—

6           (1) REVIEW OF CLAIMS.—The Administrator  
7           shall, in accordance with this section, determine  
8           whether each claim filed satisfies the requirements  
9           for eligibility for an award under this title and, if so,  
10          the value of the award.

11          (2) FACTORS.—In making a determination  
12          under paragraph (1), the Administrator shall con-  
13          sider—

14                (A) the claim presented by the claimant;

15                (B) the factual evidence submitted by the  
16                claimant in support of the claim; and

17                (C) the results of such investigation as the  
18                Administrator may consider necessary to deter-  
19                mine whether the claim satisfies the criteria for  
20                eligibility established by this title.

21          (3) ADDITIONAL EVIDENCE.—

22                (A) IN GENERAL.—The Administrator may  
23                request the submission of evidence in addition  
24                to the minimum requirements of section 123 if

1 necessary to make a determination of eligibility  
2 for an award.

3 (B) COST.—If the Administrator requests  
4 additional evidence under subparagraph (A),  
5 the cost of obtaining the additional evidence  
6 shall be borne by the Office.

7 (b) PROPOSED DECISIONS.—

8 (1) IN GENERAL.—Not later than 90 days after  
9 the date of the filing of a claim, the Administrator  
10 shall provide to the parties a proposed decision—

11 (A) accepting or rejecting the claim in  
12 whole or in part; and

13 (B) specifying the amount of any proposed  
14 award.

15 (2) FORM.—The proposed decision shall—

16 (A) be in writing;

17 (B) contain findings of fact and conclu-  
18 sions of law; and

19 (C) contain an explanation of the proce-  
20 dure for obtaining review of the proposed deci-  
21 sion.

22 (c) REVIEW OF PROPOSED DECISIONS.—

23 (1) RIGHT TO HEARING.—

24 (A) IN GENERAL.—Any party not satisfied  
25 with a proposed decision of the Administrator

1 under subsection (b) shall be entitled, on writ-  
2 ten request made not later than 90 days after  
3 the date of the issuance of the decision, to a  
4 hearing on the claim of the claimant before a  
5 representative of the Administrator.

6 (B) TESTIMONY.—At the hearing, the  
7 party shall be entitled to present oral evidence  
8 and written testimony in further support of the  
9 claim.

10 (C) CONDUCT OF HEARING.—

11 (i) IN GENERAL.—The hearing shall,  
12 to the maximum extent practicable, be con-  
13 ducted at a time and place convenient for  
14 the claimant.

15 (ii) ADMINISTRATION.—Except as  
16 otherwise provided in this title, in con-  
17 ducting the hearing, the representative of  
18 the Administrator shall conduct the hear-  
19 ing in a manner that best determines the  
20 rights of the parties and shall not be  
21 bound by—

22 (I) common law or statutory  
23 rules of evidence;

24 (II) technical or formal rules of  
25 procedure; or

1 (III) section 554 of title 5,  
2 United States Code.

3 (iii) EVIDENCE.—For purposes of  
4 clause (ii), the representative of the Ad-  
5 ministrator shall receive such relevant evi-  
6 dence as the claimant adduces and such  
7 other evidence as the representative deter-  
8 mines necessary or useful in evaluating the  
9 claim.

10 (D) REQUEST FOR SUBPOENAS.—

11 (i) IN GENERAL.—Subject to clause  
12 (iv), a party may request a representative  
13 of the Administrator to issue a subpoena  
14 but the decision to grant or deny the re-  
15 quest is within the discretion of the rep-  
16 resentative.

17 (ii) SUBPOENAS.—Subject to clause  
18 (iii), the representative may issue sub-  
19 poenas for—

20 (I) the attendance and testimony  
21 of witnesses; and

22 (II) the production of books,  
23 records, correspondence, papers, or  
24 other relevant documents.

1 (iii) PREREQUISITES.—Subpoenas  
2 may be issued for documents under this  
3 subparagraph only if —

4 (I) in the case of documents, the  
5 documents are relevant and cannot be  
6 obtained by other means; and

7 (II) in the case of witnesses, oral  
8 testimony is the best way to ascertain  
9 the facts.

10 (iv) REQUEST.—

11 (I) HEARING PROCESS.—A party  
12 may request a subpoena under this  
13 subparagraph only as part of the  
14 hearing process.

15 (II) FORM.—To request a sub-  
16 poena, the requester shall—

17 (aa) submit the request in  
18 writing and send the to the rep-  
19 resentative as early as prac-  
20 ticable, but not later than 30  
21 days, after the date of the origi-  
22 nal hearing request; and

23 (bb) explain why the testi-  
24 mony or evidence is directly rel-  
25 evant to the issues at hand, and

1 a subpoena is the best method or  
2 opportunity to obtain the evi-  
3 dence because there are no other  
4 means by which the documents  
5 or testimony could have been ob-  
6 tained.

7 (v) FEES AND MILEAGE.—

8 (I) IN GENERAL.—Any person re-  
9 quired by a subpoena to attend as a  
10 witness shall be allowed and paid the  
11 same fees and mileage as are paid  
12 witnesses in the district courts of the  
13 United States.

14 (II) FUND.—The fees and mile-  
15 age shall be paid from the Fund.

16 (2) REVIEW OF WRITTEN RECORD.—

17 (A) IN GENERAL.—Instead of a hearing  
18 under paragraph (1), any party not satisfied  
19 with a proposed decision of the Administrator  
20 shall have the option, on written request made  
21 not later than 90 days after the date of the  
22 issuance of the decision, of obtaining a review  
23 of the written record by a representative of the  
24 Administrator.

1 (B) OPPORTUNITY TO BE HEARD.—If a re-  
2 view is requested under subparagraph (A), the  
3 parties shall be afforded an opportunity to sub-  
4 mit any written evidence or argument that the  
5 claimant believes relevant.

6 (d) FINAL DECISIONS.—

7 (1) IN GENERAL.—If the period of time for re-  
8 questing review of the proposed decision expires and  
9 no request has been filed, or if the parties waive any  
10 objections to the proposed decision, the Adminis-  
11 trator shall issue a final decision.

12 (2) VARIANCE FROM PROPOSED DECISION.—If  
13 the decision materially differs from the proposed de-  
14 cision, the parties shall be entitled to review of the  
15 decision under subsection (c).

16 (3) TIMING.—If the parties request review of  
17 all or part of the proposed decision the Adminis-  
18 trator shall issue a final decision on the claim not  
19 later than—

20 (A) 180 days after the date the request for  
21 review is received, if a party requests a hearing;  
22 or

23 (B) 90 days after the date the request for  
24 review is received, if the claimant requests re-  
25 view of the written record.

1           (4) CONTENT.—The decision shall be in writing  
2           and contain findings of fact and conclusions of law.

3           (e) REPRESENTATION.—A party may authorize an  
4 attorney or other individual to represent the party in any  
5 proceeding under this title.

## 6                                   **Subtitle C—Awards**

### 7   **SEC. 131. AMOUNT.**

8           (a) IN GENERAL.—A claimant that meets the re-  
9 quirements of section 121 shall be entitled to an award  
10 in an amount equal to the damages specified in subsection  
11 (b) sustained as a result of Deepwater Horizon incident.

12           (b) COVERED DAMAGES.—For purposes of subsection  
13 (a), covered damages shall be 1 or more of the following  
14 types of damages (if applicable):

15                   (1) REAL OR PERSONAL PROPERTY.—Damages  
16 for injury to, or economic losses resulting from de-  
17 struction of, real or personal property, which shall  
18 be recoverable by a claimant who owns or leases that  
19 property.

20                   (2) SUBSISTENCE USE.—Damages for loss of  
21 subsistence use of natural resources, which shall be  
22 recoverable by any claimant who so uses natural re-  
23 sources that have been injured, destroyed, or lost,  
24 without regard to the ownership or management of  
25 the resources.

1           (3) REVENUES.—Damages equal to the net loss  
2 of taxes, royalties, rents, fees, or net profit shares  
3 due to the injury, destruction, or loss of real prop-  
4 erty, personal property, or natural resources, which  
5 shall be recoverable by a State or a political subdivi-  
6 sion of a State.

7           (4) PROFITS AND EARNING CAPACITY.—Dam-  
8 ages equal to the loss of profits or impairment of  
9 earning capacity due to the injury, destruction, or  
10 loss of real property, personal property, or natural  
11 resources, which shall be recoverable by any claim-  
12 ant.

13           (5) PUBLIC SERVICES.—Damages for net costs  
14 of providing increased or additional public services  
15 during or after removal activities, including protec-  
16 tion from fire, safety, or health hazards, caused by  
17 a discharge of oil, which shall be recoverable by a  
18 State or a political subdivision of a State.

19 **SEC. 132. PAYMENT.**

20           (a) PAYMENTS.—Not later than 30 days after a final  
21 determination of an award under this title, a claimant that  
22 is entitled to an award under this title shall receive the  
23 amount of the award through payments from the respon-  
24 sible parties.

1 (b) LIMITATION ON TRANSFERABILITY.—A claim  
2 filed under this title shall not be assignable or otherwise  
3 transferable under this title.

4 **SEC. 133. SETOFFS FOR COLLATERAL SOURCE COMPENSA-**  
5 **TION AND PRIOR AWARDS.**

6 The amount of an award otherwise available to a  
7 claimant under this title shall be reduced by the amount  
8 of collateral source compensation.

9 **SEC. 134. SUBROGATION.**

10 Any person that pays compensation pursuant to this  
11 title to any claimant for damages shall be subrogated to  
12 all rights, claims, and causes of action the claimant has  
13 under any other law.

14 **Subtitle D—Judicial Review**

15 **SEC. 141. JUDICIAL REVIEW OF RULES AND REGULATIONS.**

16 (a) EXCLUSIVE JURISDICTION.—The United States  
17 Court of Appeals for the District of Columbia Circuit shall  
18 have exclusive jurisdiction over any action to review rules  
19 or regulations promulgated by the Administrator under  
20 this title.

21 (b) PERIOD FOR FILING PETITION.—A petition for  
22 review under this section shall be filed not later than 60  
23 days after the date notice of the promulgation of the rules  
24 or regulations appears in the Federal Register.

1 (c) EXPEDITED PROCEDURES.—The United States  
2 Court of Appeals for the District of Columbia shall provide  
3 for expedited procedures for reviews under this section.

4 **SEC. 142. JUDICIAL REVIEW OF AWARD DECISIONS.**

5 (a) IN GENERAL.—Any claimant or responsible party  
6 adversely affected or aggrieved by a final decision of the  
7 Administrator awarding or denying compensation under  
8 this title may petition for judicial review of the decision.

9 (b) PERIOD FOR FILING PETITION.—Any petition for  
10 review under this section shall be filed not later than 90  
11 days after the date of issuance of a final decision of the  
12 Administrator.

13 (c) EXCLUSIVE JURISDICTION.—A petition for review  
14 may only be filed in the United States Court of Appeals  
15 for the circuit in which the claimant resides at the time  
16 of the issuance of the final order.

17 (d) STANDARD OF REVIEW.—The court shall uphold  
18 the decision of the Administrator unless the court deter-  
19 mines, on review of the record as a whole, that the decision  
20 is not supported by substantial evidence, is contrary to  
21 law, or is not in accordance with procedure required by  
22 law.

23 (e) EXPEDITED PROCEDURES.—The United States  
24 Court of Appeals shall provide for expedited procedures  
25 for reviews under this section.

1 **SEC. 143. OTHER JUDICIAL CHALLENGES.**

2 (a) **EXCLUSIVE JURISDICTION.**—The United States  
3 District Court for the District of Columbia shall have ex-  
4 clusive jurisdiction over any action for declaratory or in-  
5 junctive relief challenging any provision of this title.

6 (b) **PERIOD FOR FILING PETITIONS.**—An action  
7 under this section shall be filed not later than the later  
8 of—

9 (1) the date that is 60 days after the date of  
10 enactment of this Act; or

11 (2) the date that is 60 days after the final ac-  
12 tion by the Administrator or the Office giving rise  
13 to the action.

14 (c) **DIRECT APPEAL.**—

15 (1) **IN GENERAL.**—A final decision in the action  
16 shall be reviewable on appeal directly to the Su-  
17 preme Court.

18 (2) **ADMINISTRATION.**—The appeal shall be  
19 taken by the filing of a notice of appeal not later  
20 than 30 days, and the filing of a jurisdictional state-  
21 ment not later than 60 days, after the date of the  
22 entry of the final decision.

23 (d) **EXPEDITED PROCEDURES.**—It is the sense of  
24 Congress that the Supreme Court and the United States  
25 District Court for the District of Columbia are urged to  
26 advance on the docket and otherwise expedite, to the max-

1 imum extent practicable, the disposition of an action cov-  
2 ered by this section.

### 3 **Subtitle E—Effect on Other Laws**

#### 4 **SEC. 151. EFFECT ON OTHER LAWS.**

5 This title shall supersede any Federal or State law  
6 to the extent that the law relates to any claim for damages  
7 compensated under this title.

## 8 **TITLE II—LIABILITY**

#### 9 **SEC. 201. LIABILITY FOR DEEPWATER HORIZON OIL SPILL.**

10 (a) IN GENERAL.—Congress finds that—

11 (1) executives of British Petroleum Exploration  
12 & Production, Incorporated (referred to in this sec-  
13 tion as “BP”) testified before Congress in May 2010  
14 that BP would pay all legitimate claims relating to  
15 the Deepwater Horizon explosion and oil spill that  
16 exceed existing applicable economic liability limita-  
17 tions;

18 (2) a letter from the Group Chief Executive of  
19 BP to the Secretaries of Homeland Security and the  
20 Interior dated May 16, 2010, states in part that BP  
21 is “prepared to pay above \$75 million” on “all legiti-  
22 mate claims” relating to that explosion and oil spill;  
23 and

24 (3) all documented legitimate claims pursuant  
25 to the Oil Pollution Act of 1990 (33 U.S.C. 2701 et

1       seq.) for economic damages relating to the Deep-  
2       water Horizon explosion and oil spill should be paid  
3       by BP without limit on liability.

4       (b) DIRECTIVE TO SECRETARY OF THE INTERIOR.—

5           (1) IN GENERAL.—Notwithstanding any other  
6       provision of law, the Secretary of the Interior (re-  
7       ferred to in this section as the “Secretary”) shall re-  
8       negotiate the terms of the lease known as “Mis-  
9       sissippi Canyon 252” to reflect statements made by  
10      BP in the letter described in subsection (a)(2).

11          (2) PAYMENT OF CLAIMS.—As a condition of  
12      the renegotiated lease described in paragraph (1),  
13      BP shall pay all damages awarded pursuant to title  
14      I.

**Calendar No. 410**

11<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION  
**S. 3410**

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**A BILL**

To create a fair and efficient system to resolve claims of victims for economic injury caused by the Deepwater Horizon incident, and to direct the Secretary of the Interior to renegotiate the terms of the lease known as “Mississippi Canyon 252” with respect to claims relating to the Deepwater Horizon explosion and oil spill that exceed existing applicable economic liability limitations.

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MAY 26, 2010

Read the second time and placed on the calendar