

Policy Brief

# International Priorities in an Oil Pollution Bill

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# INTERNATIONAL PRIORITIES IN AN OIL POLLUTION BILL

The purpose of this note is to provide options for promoting a diverse set of U.S. national interests related to the international dimensions of oil exploration, production, transportation and consumption. These ideas could be adopted in the context of an oil pollution bill. Three concrete ideas are offered:

- A new Comprehensive Oil Pollution and Energy Security Trust Fund
- A modification to the Oil Spill Liability Trust Fund
- Modifications to the authority of the proposed Clean Energy Deployment Administration and other new energy initiatives

## Essential Background

### *U.S. National Interests*

International petroleum exploration, production, transportation and consumption harms critical U.S. national interests related to national security, economic growth, environmental protection and climate change. Impacts include:

- *National security threats:* Oil pollution abroad can be a threat to U.S. national security. The equivalent of one Exxon Valdez per year has spilled over the last 50 years in Nigeria – one of the top five oil suppliers to the United States.<sup>1</sup> Conflicts over oil production and pollution have led to violence and instability in the country that produced the Christmas Day bomber.<sup>2</sup> Oil spills from Mexico, Russia, Canada and other countries can drift into U.S. waters.
- *Economic damage:* Dependence on petroleum hurts the U.S. economy. The U.S. National Renewable Energy Laboratory estimates that moderating global fossil fuel demand through clean energy cooperation could reduce domestic oil use costs \$10-50 billion per year by 2020 and provide \$25 billion per year in benefits from a stronger dollar and improved trade balance.<sup>3</sup>
- *Climate change:* Oil consumption is a major cause of global warming. In 2008 petroleum consumption was responsible for over one third of global energy-related climate change pollution<sup>4</sup>, which is already harming the United States and U.S. national interests abroad.<sup>5</sup>
- *Deforestation:* Oil exploration and use is a major driver of deforestation in some parts of the world. The roads needed to build oil wells, pipelines, refineries and shipment centers often open up intact forests to human settlement, which then leads to deforestation for ranching and farming. Researchers have found that oil and gas exploration is a key driver of deforestation in the Ecuadorian and Peruvian Amazon, home to some of the most biologically rich tropical forests in the world.<sup>6</sup> Some forest resources will also be negatively affected by climate change impacts.<sup>7</sup>

Importantly, oil companies and other polluters are not currently required to pay for these impacts. While U.S. policy makers have proposed mechanisms to make oil companies responsible for the direct impacts of spills on the United States, other mechanisms are needed to address the threats to the United States from international oil exploration, production, transportation and consumption.

## *Status of Congressional Action*

New policies to address U.S. national interests relating to the international dimensions of oil pollution could be introduced within the framework of more domestically-focused oil pollution bills that the Congress is expected to consider this summer. Already, such a bill would include some provisions to make polluters pay and avoid future oil spills, improve energy security and reduce greenhouse gas emissions, and raise the revenues needed to offset new spending.

Ideas being considered to make polluters pay and avoid future spills include a large expansion of the Oil Spill Liability Trust Fund (OSLTF), the creation of a new escrow account with up-front funding from oil companies and the re-organization of agencies that oversee offshore drilling.<sup>8</sup>

Proposed policies to improve energy security and reduce greenhouse gas emissions include a new Clean Energy Deployment Administration, new electric vehicle infrastructure programs, energy efficiency programs and incentives for new nuclear power and carbon capture and sequestration deployment.<sup>9</sup>

Consistent with congressional pay-as-you-go rules, an oil pollution bill will need to include revenue or revenue offsets equal to the cost of these new programs. These new oil pollution and energy/climate initiatives could require upwards of \$100 billion in revenue or revenue offsets (although the OSLTF and escrow fund have built-in revenue mechanisms).<sup>10</sup> If policy makers do not raise revenue by putting a price on carbon, they are likely to turn to a small set of energy-related revenue measures to fund the cost of any new oil pollution and energy/climate programs. Bernie Sanders (I-VT), for example, has introduced a bill that would repeal \$35 billion worth of fossil fuel industry subsidies over 10 years. The Obama Administration has proposed repealing \$45 billion in subsidies over 10 years.<sup>11</sup> In addition, an unemployment benefits bill recently passed by the House would increase the oil spill liability fee per barrel of oil to 34 cents and direct that revenue to the OSLTF. A Senate bill proposes to increase the same fee to 49 cents per barrel and is estimated to raise \$18.3 billion over 10 years.<sup>12</sup> Other revenue mechanisms could include fees on imported oil or payments by electric utilities under a renewable energy standard.

## **New Ideas**

Following are three new ideas to protect U.S. national interests relating to the international dimensions of oil exploration, production, transportation and consumption.

### *New Comprehensive Oil Pollution and Energy Security Trust Fund (COPE)*

Polluters are currently required to fund oil spill cleanup efforts through a per barrel fee on oil that is channeled to the Oil Spill Liability Trust Fund. However, oil companies are not required to pay for the full impacts of the United States' reliance on petroleum. These impacts include national security threats, economic damage from oil price shocks, domestic and international climate change adaptation needs, and deforestation at home and abroad caused by oil exploration and use. Current funding to address these impacts is limited and comes through annual appropriations of general taxpayer revenues.

To make polluters pay for the full range of damages to the United States, U.S. policy makers should create a new "Comprehensive Oil Pollution and Energy Security Trust Fund" that would provide dedicated, predictable and scaled-up funding to address these critical threats. Similar in structure to "Superfund" or the domestic Oil Spill Liability Trust Fund, COPE's primary components would be a dedicated source of revenue, revenue offsets, fees and penalties and a list of permissible uses. Each



year revenues would automatically be channeled to the Fund through these mechanisms, and monies raised would be allocated to government programs through the appropriations process. Unappropriated monies would remain in the Trust Fund and be invested in interest bearing assets.

Monies for should be raised entirely from polluters through a combination of revenue measures. Options include per-barrel liability fee increases on all oil produced or consumed in the United States (each 1 cent increase would raise about \$70 million per year), per-barrel fees on imported oil (which could raise up to \$9.5 billion per year), revenues from an excise or income tax on windfall profits to oil companies (up to \$10 billion per year), redirecting harmful subsidies for fossil fuel industries (about \$45 billion over 10 years) or a new price on carbon pollution (which would raise tens of billions annually).<sup>13</sup> See Appendix I for a proposed funding mix and legislative framework.

Funding should go towards programs that address the national security threats of reliance on foreign oil, reduce deforestation caused by fossil fuel exploration and use, improve resilience to climate change impacts, and promote technology deployment and energy efficiency. In order to be most effective in addressing this wide range of impacts, the Fund should allow contributions to domestic, bilateral and multilateral programs. Based on estimates of the revenue-raising potential of different mechanisms and annual needs in these areas, the Fund should aim to mobilize \$4 billion per year from 2011-2020.<sup>14</sup>

#### *Modification to the Oil Spill Liability Trust Fund*

Currently, the existing OSLTF raises funding primarily through an eight cents per barrel fee on all oil produced or imported into the United States, and distributes that funding to address natural resource and monetary damages caused by oil spills. Since the 2010 Gulf of Mexico spill began several proposals have come forward to modify the OSLTF, including fee increases and raising the cap on 'per incident' payout rates. The most recent proposal in the Senate would increase the fee to 49 cents per barrel and raise \$18.3 billion over ten years.

This proposal was based on the cost of the 2010 oil spill cleanup, which has been estimated at \$20 billion. Because of existing limitations on oil company liability, low total revenues currently in the OSLTF and 'per incident' caps on payments from the Fund, sponsors of proposals to increase the per-barrel fee have argued that these new revenues are needed to cover costs of oil spill cleanup and damages which would otherwise fall on taxpayers.

However, this fee increase could create a \$20 billion fund that may not be needed any time soon. BP has stated that it will cover all cleanup costs, and the Obama Administration secured the creation of a \$20 billion escrow fund for cleanup costs, financed directly by BP. In addition, Senator Begich (D-AK) and others have proposed legislation to create similar escrow funds for potential future oil spills, paid for upfront with profits from all oil companies.<sup>15</sup> Thus, even if the OSLTF fee is increased, it is uncertain that new funding would be needed for the purposes of compensating those impacted by domestic oil spills.

Even though the new revenue may not be needed for its intended purposes, an increase in the per barrel fee may prove attractive to policy makers because it could offset new spending (under Congressional Budget Office "scoring") and demonstrate political will in Washington to make polluters pay. This creates the possibility that new revenues directed to the OSLTF from an increase in the per-barrel fee could be used to mitigate other domestic and international impacts of oil exploration, production, transportation and consumption.

Directing new revenues from increases in the per-barrel fee toward programs that mitigate the damages from petroleum currently not being paid for by oil companies could be accomplished by adding the following to the list of permissible uses for the OSLTF (U.S. Code Title 26, Section 9509 (c)(1)):

- (g) to carry out subsections (x), (y) and (z) of the [insert name of the oil pollution bill] relating to U.S. national interests harmed by international oil exploration, production, transportation and consumption.

While funds for domestic and international petroleum pollution programs would still need to be appropriated each year, adding them to the OSLTF-approved list would provide a dedicated source of funding outside of general revenues.

#### *Modification to the Clean Energy Deployment Administration and Other Energy Initiatives*

As proposed in energy bills before Congress, the Clean Energy Deployment Administration (CEDA) would be an independent administration within the Department of Energy that would provide loans, loan guarantees, other credit enhancements and other financial products with the goal of encouraging, "...deployment of [clean energy] technologies considered too risky by the private sector".<sup>16</sup> CEDA was included at the level of \$7.5 billion in Waxman-Markey (H.R. 2454, 111<sup>th</sup> Congress), and \$10 billion in the Senate Energy and Natural Resources committee's American Clean Energy Leadership Act of 2009 ("ACELA", S. 1462, 111<sup>th</sup> Congress), although it is intended to eventually become self-supporting through its lending. Legislation stipulates that the Secretary of Energy, in consultation with a newly-created Advisory Council, develop and publish a list of objectives that CEDA should account for in policy and funding decisions.

Given bipartisan support from the Senate Energy and Natural Resources Committee, CEDA has a strong chance of being created and funded. Depending on how CEDA is structured, hundreds of millions to billions of dollars annually could be provided for clean energy deployment. Congress could encourage the CEDA Administrator to direct some of these funds towards international purposes, providing opportunities to leverage funds from other countries through joint research and creating export markets for U.S. technologies.

This could be implemented by adding the following provisions to ACELA:

- Section 104(a)(12), "development and deployment of clean energy technologies that would expand export promotion opportunities for U.S. companies";
- Section 104(a)(13), "reduced U.S. vulnerability to oil price shocks and high global oil demand";
- Section 104(a)(14), "improvements in the efficiency of manufacturing and production processes in ways that reduce the cost of goods for U.S. consumers";
- Insert immediately after Section 106(a)1(B), "In carrying out this paragraph and awarding credit support to projects, the Administrator is authorized to support bilateral and multilateral partnerships, ventures and organizations when doing so would advance the goals established under section 104".

A variety of other energy initiatives are likely to be created by an oil pollution bill, all of which could be modified to allow funding for addressing the impacts on U.S. national interests of oil exploration, production, transportation and consumption. The Electric Vehicle Deployment Act of 2010 (S. 3442, 111<sup>th</sup> Congress), sponsored by Senators Dorgan (D-ND), Alexander (R-TN) and Merkley (D-OR), establishes a \$1.5 billion electric vehicles research and development program. In the bill's list of research and development funding uses (Section 11(a)(2)) policy makers could add, "bilateral or multilateral research cooperation programs."

The Practical Energy and Climate Plan (S. 3464, 111<sup>th</sup> Congress), sponsored by Senators Lugar (R-IN), Graham (R-SC) and Murkowski (R-AK), establishes a \$1.5 billion building energy efficiency standard program and a \$2.5 billion industrial energy efficiency program. Within the building energy efficiency standards program section on "Availability of Implementation Funding" (Section 304(f)), policy makers could add an additional line stating, "International cooperation – The Secretary



may provide contributions to bilateral or multilateral cooperation initiatives targeted at improving implementation of building energy efficiency standards.” In the list of eligible projects for the bill’s industrial energy efficiency loan program (Section 241(h)(5)), policy makers could add, “achieve energy efficiency improvements or greenhouse gas emissions reductions through bilateral or multilateral cooperation programs.”

## Appendix 1: Potential Funding Mix and Legislative Framework for the Proposed Comprehensive Oil Pollution and Energy Security Trust Fund (COPE)

Sources	Revenue <sup>17</sup>
New 50 cent per barrel petroleum fee	\$20 billion over 10 years
Authorize appropriations of \$1 billion per year, offset by removing some fossil fuel subsidies	\$10 billion over 10 years
1% of auction revenues from a new carbon pricing mechanism	\$10 billion over 10 years
<b>Total</b>	<b>\$40 billion over 10 years</b>

The legislative framework for COPE would be simple, and include three main sections.

### Establish the Trust Fund

- List of taxes, fees or penalties appropriated to the Trust Fund (i.e. the taxes received under section x, y, z)
- List of permissible uses (i.e. to carry out the purposes of section x, y, z of the Senate oil pollution bill)
- Other authorities (i.e. borrowing, lending)

### Revenue raising mechanisms

- Modify Title 26, Section 4611 of the U.S. Code to include a new 50 cent per barrel financing rate for the Trust Fund
- Authorize general fund appropriations and remove specific fossil fuel subsidies to provide a revenue offset
- Other mechanisms, including carbon pricing, windfall profits taxes or fees on imported oil

### List of permissible uses

- Existing or new energy efficiency and clean energy programs, including international cooperation programs
- Existing or new programs to prevent deforestation and improve resilience to climate impacts, including international cooperation programs
- Existing or new clean energy export promotion programs
- New programs to address national security threats of overseas oil exploration, production, transportation and consumption
- Bilateral or multilateral funds addressing any of these issues

## Notes

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<sup>1</sup> Ejikeme, E. (2010) *The Oil Spills We Don't Hear About*, New York, NY: The International Herald Tribune. <http://www.nytimes.com/2010/06/05/opinion/05iht-edejikeme.html>

<sup>2</sup> BBC (2010) *Nigeria's oil pipeline sabotaged - Royal Dutch Shell*, London, UK. <http://news.bbc.co.uk/2/hi/africa/8490494.stm>

<sup>3</sup> National Renewable Energy Laboratory (2008) *Strengthening U.S. Leadership of International Clean Energy Cooperation: Proceedings of Stakeholder Consultations*, Golden, CO.

<sup>4</sup> U.S. Energy Information Administration (2010) *International Energy Statistics*, Washington, DC.

<sup>5</sup> United States Global Change Research Program (2009) *Global Climate Change Impacts in the United States*, New York, NY: Cambridge University Press.

<sup>6</sup> Finer M, Jenkins CN, Pimm SL, Keane B, Ross C. (2008) *Oil and Gas Projects in the Western Amazon: Threats to Wilderness, Biodiversity, and Indigenous Peoples*. PLoS ONE 3(8): e2932. doi:10.1371/journal.pone.0002932

<sup>7</sup> Sedjo, R. (2010) *Adaptation of Forests to Climate Change: Some Estimates*, Washington, DC: Resources for the Future.

<sup>9</sup> See H.R. 4213 (111<sup>th</sup> Congress) and Office of Senator Mark Begich (2010) *Begich Introduces Oil Spill Escrow Legislation*, Washington, DC.

<sup>9</sup> See S. 1462 (111<sup>th</sup> Congress), H.R. 2454 (111<sup>th</sup> Congress), S. 3464 (111<sup>th</sup> Congress) and Merkley, J. (2010) *America Over a Barrel*, Washington, DC.

<sup>10</sup> Weiss, D.J. (2010) *The "Energy-Only Bill" Mirage*, Washington, DC: Center for American Progress.

<sup>11</sup> Heflin, J. (2010) *Sanders seeks extenders as vehicle to repeal tax breaks for big oil*, Washington, DC: The Hill. Gandhi, S. (2010) *Eliminating Tax Subsidies for Oil Companies*, Washington, DC: Center for American Progress.

<sup>12</sup> See H.R. 4213 (111<sup>th</sup> Congress) and Senate Committee on Finance (2010) *Summary of Modifications and Additions to the Baucus Substitute Amendment*, Washington, DC.

<sup>13</sup> Based on Climate Advisers analysis and Weiss, D.J., and Lyon, S. (2010) *Powering an Oil Reform Agenda*, Washington, DC: Center for American Progress.

See also S. 3309 (111<sup>th</sup> Congress) introduced by Senators Mark Begich (D-AK) and Lisa Murkowski (R-AK).

<sup>14</sup> Estimates of funding needs for addressing the impacts of oil exploration, production, transportation and consumption vary widely, and are almost certainly greater than revenues that could be made available through an energy or oil pollution bill. The incremental cost of investing in clean as opposed to polluting technologies is estimated at \$180 billion per year by 2030, with about half in developed nations. Reducing global deforestation 50% is estimated to cost \$20-30 billion per year by 2020. Based on deforestation rates in countries where oil and gas exploration is a primary driver, at least 3% of this total funding is needed to address deforestation caused by these activities. Building resilience to climate impacts is estimated to cost tens of billions per year by 2020, divided equally between developed and developing countries.

Project Catalyst (2009) *Scaling Up Climate Finance*, San Francisco, CA: ClimateWorks Foundation.

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<sup>15</sup> Office of Senator Mark Begich (2010)

<sup>16</sup> United States Committee on Energy and Natural Resources (2009) *Full Summary: American Clean Energy Leadership Act of 2009*, Washington, DC.

<sup>17</sup> See Senate Finance Committee (2010) and U.S. Environmental Protection Agency (2010) *EPA Analysis of the American Power Act of 2010*, Washington, DC.

