What's happening in Congress since the Deepwater Horizon tragedy and the gusher that followed? There have been a lot of hearings, and a lot of bills introduced. Several are moving ahead. One has become law, one has been passed by the full House, and two have been reported out of Senate committees.

1) Both houses have passed, and the President has signed, Public Law 111-191, allowing the Coast Guard to take up to $100 million from the Oil Spill Liability Trust fund to respond to the spill without additional appropriations.

2) The House has passed H.R. 5503, the "Securing Protections for the Injured from Limitations on Liability Act," which would amend the Death on the High Seas Act to allow the survivors of those who died in the Deepwater Horizon explosion and fire to sue for more than direct economic losses. That the families of these victims should be allowed to recover more seems not to be seriously contested, but the House bill would also expand the liability of cruise ship operators for deaths that occur on their ships. The cruise lines strongly oppose that change.

3) The Senate Committee on Energy and Natural Resources has unanimously reported out the Bingaman-Murkowski bill, S. 3516, formally titled the Outer Continental Shelf Reform Act, which would revise the Outer Continental Shelf Lands Act. University of Florida law professor and Center for Progressive Reform scholar Alyson Fluornoy wrote about an earlier version of the bill at CPRBlog.

As she noted, although the bill has some good provisions, it does not go far enough. It does provide marginally more room for a cautious approach to offshore development. For example, the OCSLA's policy statement currently describes the Outer Continental Shelf as a "vital national resource reserve . . . which should be made available for expeditious and orderly development, subject to environmental safeguards," emphasizing development and de-emphasizing environmental protection. The Bingaman-Murkowski bill would revise that to read that the OCS should be managed in a way that recognizes the need for its resources but also "minimizes the potential impacts of development of those resources on the marine and coastal environment and on human health and safety." And it would add a new provision saying that "exploration, development, and production of energy and minerals on the outer Continental Shelf should be allowed only when those activities can be accomplished in a manner that provides reasonable assurance of adequate protection against harm to life, health, the environment, property, or other users of the waters, seabed, or subsoil." That's definitely progress.

The bill would also endorse Interior Secretary Salazar's plan to split the former Minerals

Management Service into separate pieces to carry out energy planning and leasing; safety and environmental enforcement; and revenue collection. That's not a bad thing, but as Eric Biber and I wrote in the L.A. Times, that proposed split won't solve the environmental review problems. The key environmental decisions are made at the planning and leasing stage, and would therefore presumably remain within the purview of the "energy development" branch of the agency, which is not readily going to adopt an environmental protection mission.

The bill would require more detailed information in exploration plans, including engineering review of the safety systems, and provide 90 days instead of the current 30, for review of those plans. But in an important respect it was watered down in committee. The earlier version would have required that exploration plans consider a blowout scenario "involving the highest *potential* volume of liquid hydrocarbons," in other words a worst-case scenario, and a response plan for controlling and cleaning up such a blow-out. But the reported version would only require that the scenario consider *expected* oil volumes, which could allow industry and the agency to go back to their optimistic forecasting ways. And it still does not permit disapproval of an exploration plan unless the agency can make a finding that because of "exceptional circumstances," allowing the plan to go ahead "would probably cause serious harm." That's an awfully demanding burden of proof. It reinforces that the key environmental protection decisions have to be made at the programmatic and lease sale stage.

The Committee added to the bill a provision intended to address conflicts of interest and close the revolving door that has existed between MMS and the oil industry, to the extent that MMS inspectors were sometimes negotiating for their next job while inspecting facilities operated by their prospective employer. But again it doesn't go far enough. It's a watered-down version of S. 3431, introduced by Senator Menendez (D. NJ) and others, that would bar any MMS employee from working for any mineral extraction interest for 2 years after leaving the agency. The Committee's version only limits the ability of former agency employees to represent industry in dealings with the U.S. Perhaps that's enough in most situations, but given the sordid history of MMS, a truly clean break between agency and industry is needed.

4) The Senate Environment and Public Works Committee has reported out S. 3305, the "Big Oil Bailout Prevention Liability Act of 2010," which would lift the liability cap of the Oil Pollution Act. As introduced, Sen. Menendez's bill would have raised the cap from $75 million to $10 billion. Reportedly, the version approved by the committee lifts the cap entirely. As law professors Jeff Rachlinski (Cornell) and Pat Parenteau (Vermont) pointed out in this NPR story, the liability cap isn't likely to have much impact on claims related to

the Deepwater Horizon. The cap applies only to economic damage claims; it does not limit responsibility for the cleanup. And it does not apply at all in cases of gross negligence or violation of regulations. Still, the Deepwater Horizon incident has made it clear that the $75 million cap is far too low for a large spill. Offshore oil operators should be prepared to accept responsibility for all the harm they might do. At the very least, that would increase the incentives for safe and careful operation.