

THE ROLE OF THE INTERIOR DEPARTMENT IN THE DEEPWATER HORIZON DISASTER

JOINT HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS AND THE SUBCOMMITTEE ON ENERGY AND ENVIRONMENT OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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THE ROLE OF THE INTERIOR DEPARTMENT IN THE DEEPWATER HORIZON DISASTER

TUESDAY, JULY 20, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION,
JOINT WITH THE
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The Subcommittees met, pursuant to call, at 10:00 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Bart Stupak [Chairman of the Subcommittee on Oversight and Investigations] presiding.

Members present: Representatives Stupak, Markey, Green, DeGette, Capps, Doyle, Harman, Schakowsky, Gonzalez, Inslee, Butterfield, Melancon, Matsui, Christensen, McNerney, Sutton, Braley, Dingell, Waxman (ex officio), Burgess, Upton, Hall, Stearns, Whitfield, Shimkus, Shadegg, Pitts, Sullivan, Blackburn, Gingrey, Scalise, Griffith, Latta, and Barton (ex officio).

Staff present: Phil Barnett, Staff Director; Bruce Wolpe, Senior Advisor; Michal Freedhoff, Counsel; Caitlin Haberman, Special Assistant; Dave Levis, Chief Oversight Counsel; Meredith Fuchs, Chief Investigative Counsel; Alison Cassady, Professional Staff Member; Molly Gaston, Counsel; Scott Schloegel, Investigator; Ali Neubauer, Special Assistant; Karen Lightfoot, Communications Director, Senior Policy Advisor; Elizabeth Letter, Special Assistant; Mary Neumayr, Minority Counsel; Alan Slobodin, Minority Counsel; Peter Spencer, Minority Professional Staff; Kevin Kohl, Minority Professional Staff; Garrett Golding, Minority Legislative Assistant; and Jeanne Neal, Minority Research Analyst.

OPENING STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STUPAK. This meeting will come to order. Today we have a joint hearing titled "The Role of the Interior Department in the Deepwater Horizon Disaster". This is a joint hearing before the Oversight and Investigation Subcommittee and the Energy and Environment Subcommittee. I will chair the first panel, and Chairman Markey will chair the second panel. We will now hear from members for their opening statements. The Chairman and the ranking members will be recognized for five minute openings. All other members will be recognized for two minute openings. I will begin.

Last week, for the first time in 87 days, we heard some encouraging news. Finally the flow of oil that has ravaged much of the Gulf of Mexico is temporarily under control. Despite our relief that the flow of oil has abated, the consequences of this spill continue to mount. 11 men lost their lives on the day the Deepwater Horizon drilling rig exploded. The four states that border the Gulf of Mexico have suffered terrible economic and environmental devastation. That is why we are continuing our investigation. This is the fourth hearing the Oversight and Investigation Subcommittee has held, and the eighth hearing overall in the Energy and Commerce Committee.

Our first hearing exposed serious deficiencies involving the blowout preventer. This supposed failsafe had a dead battery, a leaking hydraulic system, an emergency switch which failed to activate, and dangerous modifications. Our second hearing was a field hearing in New Orleans, where we heard from the widows of two men who died on the Deepwater Horizon explosion, as well as shrimpers and other small business owners who have suffered from the environmental catastrophe that followed. Our third hearing identified five key well design decisions relating to casing and cementing that increased the risk of a blowout. BP made a series of poor judgments before the blowout. The company took one shortcut after another in order to save time and money, and when the blowout occurred, BP was horrifically unprepared to deal with the consequences.

Today the Oversight and Investigation Subcommittee and the Energy and Environment Subcommittee are jointly holding this hearing to examine the conduct of the regulators who oversee—who have overseen oil and gas development in the Gulf of Mexico. There has been a pervasive failure by the regulators to take the actions necessary to protect safety and the environment. These failures to regulate happen at the time as Federal officials offered oil and gas companies new incentives to drill deeper and riskier waters in the Gulf of Mexico. The number of producing deep water wells increased from 65 in 1985 to more than 600 in 2009, but the number of Federal inspectors working for the Minerals Management Service, MMS, has not kept pace with the number and complexity of the wells and the distance inspectors must travel. MMS had 55 inspectors in 1985, and just 58 some 20 years later. Currently MMS has approximately 60 inspectors in the Gulf of Mexico to inspect almost 4,000 facilities. Inspection has not been a priority.

The Department of Interior also backed off when the oil and gas industry objected to proposals to strengthen government regulations. Reports prepared for MMS in 2001, 2002 and 2003 recommended two blind-shear rams on blowout preventers and questioned the reliability of their backup systems. Yet regulations finalized in 2003 during Secretary Gale Norton's tenure did not require a second blind-shear ram, backup systems on BOPs, or even testing of backup systems.

The same rulemaking identified poor cementing practices as one of the main primary causes of sustained casing pressure on producing wells. But an oil and gas industry coalition opposed mandatory requirements, and the Department opted against any prescriptive cementing requirements. Some helpful changes were made by

Secretary Salazar and the Obama Administration. The abuse-prone royalty-in-kind program was phased out. New ethical standards were adopted, and stronger regulations were proposed. But these changes were more cosmetic than substantive. For the Deepwater Horizon and the BP well, it remained business as usual.

I want to thank former Secretaries Norton and Kempthorne for appearing today. I hope they will address what went wrong under their tenure and what lessons can be learned. And I want to thank Secretary Salazar for appearing before the Committee. He has proposed and begun implementing many significant changes to the Minerals Management Service, now called the Bureau of Ocean Energy Management Regulation and Enforcement. I would like to hear more about what he has planned and how he will ensure that these changes make a real difference.

I also want to extend my appreciation to Chairman Markey. Our Subcommittees have worked collaboratively throughout this investigation, and I thank him and Chairman Waxman for their leadership in this area, and with respect to the Blowout Prevention Act that we have reported out of committee last week.

That concludes my opening statement.

[The prepared statement of Mr. Stupak follows:]

Opening Statement
Rep. Bart Stupak, Chairman
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
“The Role of the Interior Department in the Deepwater Horizon Disaster”
July 20, 2010

Last week, for the first time in 87 days, we heard some encouraging news. Finally, the flow of oil that has ravaged much of the Gulf of Mexico is temporarily under control.

Despite our relief that the flow of oil has abated, the consequences of the spill continue to mount. Eleven men lost their lives the day the Deepwater Horizon drilling rig exploded. The four states that border the Gulf of Mexico have suffered terrible economic and environmental devastation.

That is why we are continuing our investigation.

This is the fourth hearing that the Oversight & Investigations Subcommittee has held and the eighth hearing overall in the Energy and Commerce Committee.

Our first hearing exposed serious deficiencies involving the blowout preventer. This supposed failsafe had a dead battery, a leaking hydraulic system, an emergency switch that failed to activate, and dangerous modifications.

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Our third hearing identified five key well design decisions relating to casing and cementing that increased the risk of a blowout. BP made a series of poor judgments before the blowout. The company took one shortcut after another in order to save time and money. And when the blowout occurred, BP was horrifically unprepared to deal with the consequences.

Today, the Oversight and Investigations Subcommittee and the Energy and Environment Subcommittee are jointly holding this hearing to examine the conduct of the regulators who have overseen oil and gas development in the Gulf of Mexico.

There has been a pervasive failure by the regulators to take the actions necessary to protect safety and the environment. These failures to regulate happened at the same time as federal officials offered oil and gas companies new incentives to drill in deeper and riskier waters in the Gulf of Mexico.

The number of producing deepwater wells increased from 65 in the 1985 to more than 600 in 2009. But the number of federal inspectors working for Minerals Management Service (MMS) has not kept pace with the number and complexity of wells and the distance inspectors must travel. MMS had 55 inspectors in 1985 and just 58 some 20 years later. Currently, MMS has approximately 60 inspectors in the Gulf of Mexico region to inspect almost 4,000 facilities. Inspection has not been a priority.

The Department of the Interior also backed off when oil and gas industry objected to proposals to strengthen government regulations. Reports prepared for MMS in 2001, 2002, and 2003 recommended two blind-shear rams on blowout preventers and questioned the reliability of their backup systems. Yet regulations finalized in 2003 during Secretary Gale Norton's tenure did not require a second blind-shear ram, backup systems on BOPs, or even testing of backup systems.

That same rulemaking identified “poor cementing practices” as one of the “main primary causes” of sustained casing pressure on producing wells. But an oil and gas industry coalition opposed mandatory requirements and the Department opted against any prescriptive cementing requirements.

Some helpful changes were made by Secretary Salazar and the Obama Administration. The abuse-prone royalty-in-kind program was phased out, new ethical standards were adopted, and stronger regulations were proposed. But these changes were more cosmetic than substantive. For the Deepwater Horizon and the BP well, it remained business as usual.

I want to thank former Secretaries Norton and Kempthorne for appearing today. I hope they will address what went wrong under their tenure and what lessons can be learned.

And I thank Secretary Salazar for appearing before the Committee. He has proposed – and begun implementing – many significant changes to the Minerals Management Service, now called the Bureau of Ocean Energy Management, Regulation and Enforcement. I would like to hear more about what he has planned and how he will ensure that these changes make a real difference.

I also want to extend my appreciation to Chairman Markey. Our subcommittees have worked collaboratively throughout this investigation and I thank him and Chairman Waxman for their leadership in this area and with respect to the Blowout Prevention Act of 2010.

I next to turn Mr. Burgess, ranking member of the Oversight and Investigation Subcommittee for his opening statement.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. Thank you, Mr. Chairman, and this is a day we have long awaited for. We finally get an opportunity to talk to Secretary Salazar about some of the issues that led up to the events surrounding the loss of the Deepwater Horizon.

You know, early on in the tenure of this, in the month of May, we had the executives from BP, Transocean and Halliburton here at the table in front of us, and, just like you, I was dismayed by all the finger pointing I saw. In fact, it even rose to the level of the national consciousness, where Jay Leno referred to it in his opening monologue, and said, wasn't that a disgrace, all those executives pointing the finger at each other? And he said, President Obama has had enough of it. He said, no more finger pointing, and then he promptly went out and blamed Bush for the whole problem. Well, that is where we are this morning.

Well, this hearing does come at a critical time. I am grateful that we are able to refer to the oil discharging in the Gulf in the past tense. We hope that that stays in the past tense. We have had encouraging news that it seems under control. There are serious environmental and economic impacts to confront in the Gulf. BP caused the spill. Some of the damage relates directly, though, to the administration's decision-making in the aftermath of the Deepwater Horizon explosion.

Most significantly, as we convene this hearing and people continue to struggle mightily to clean up after the BP spill, the Department of Interior has made decision upon decision in recent weeks that we are told may kill upwards of 20,000 jobs in the Gulf Coast energy industry. Some of this new wave of economic destruction is already occurring. This is where we are hitting people when they are down and when they need it the least. The governor of Louisiana this past Saturday wrote a powerful op-ed in the "Washington Post", and Mr. Chairman, I would like to submit that for the record. In this editorial the governor describes what he sees as a determined effort by the Secretary of the Interior, the current Secretary of the Interior, to impose a second economic disaster on the people of Louisiana. This second economic disaster is one of the most pressing issues before us, but there are other questions concerning the Department of Interior's decision-making that we must explore today. And the person most able to answer these questions and provide us the necessary documents is the current Secretary of the Interior, Ken Salazar, so I appreciate very much finally having an opportunity to ask Secretary Salazar about the Department's role in handling of the Deepwater Horizon incident.

I understand the majority wishes to use the rearview mirror as the examining lens to talk about this disaster. Chairman Markey has explained to me before the recess, this is so we might understand the totality of the Department's contribution to the Deepwater Horizon disaster. For this reason we will hear this morning from two former Secretaries of the agency. Both, as it happens, are from the Bush Administration, and, in fact, we are only going to

question former Secretaries from the Bush Administration. We are not going back to question Secretaries from the Clinton Administration. But we do have with us this morning, we are grateful for the participation, the voluntary participation, I might add, of Gale Norton and Dirk Kempthorne. I look forward to their experience perspective, both as former Cabinet Secretaries and former State—elected State officials. But I question whether now, as private citizens, they can really provide the Committee information as full and complete as we could otherwise obtain through agency documents through the current Secretary of the Interior.

Today Secretary Salazar will appear on a second panel. The fact that a sitting Cabinet member responsible for the critical decision-making in a time of crisis follows two Interior—past Interior Secretaries—I don't think he is here. I don't think he is listening to any of our opening statements, unless he is tuned in with rapt attention to C-SPAN, but he should be here. So, Mr. Secretary, Mr. Salazar, if you are watching on C-SPAN, please come to the Committee Room. We need you here. The American people need you here. The people of the Gulf Coast of Louisiana need you here.

Oversight of the Executive Branch means oversight of the administration in power, not past administrations. Yet the fruits of the Committee's Executive Branch oversight relating to Deepwater Horizon, that has been underwhelming, as far as the deliverables to date. Committee requests for documents from the Department of Interior have amounted to some 2,000 pages. A few e-mails, internal memoranda, and other information. I hope we press for more cooperation, Mr. Chairman. By contrast, majority, with minority support, has effectively and aggressively investigated the companies associated with the disaster, some 120,000 pages of documents, all in the middle of one of the largest cleanup operations. This is asymmetric oversight, and it inhibits the Committee's ability to get the full facts and circumstances behind this disaster. It inhibits our ability to understand fully current and ongoing actions by this administration in responding to this oil spill.

The majority tries to trace the Deepwater Horizon back to the Bush Administration, and has technical regulatory issues in his hearing memo to imply that the blowup protector and cementing problems can be traced to that administration. But the majority knows all available evidence suggests the disaster resulted from the failure to follow existing regulations and best industry practices, not that George W. Bush prevented a second set of shear arms. And, in fact, when we heard from the two ladies who lost husbands on the Deepwater Horizon, which you referenced in your opening statement, they said, we don't need more regulations, but we do need someone to oversee and insist that the regulations that are already in place are, in fact, followed.

The fact remains it was under Secretary Salazar that BP's initial exploration plan was reviewed and approved by the Minerals Management Service. It was under this administration that BP's permit to drill the well was granted, and all the inspections of the operation and procedures were approved leading up to the explosion. We now observe the Secretary making decisions to restructure the agency in the middle of an environmental crisis. So we had a single

spinal cord response—a single spinal cord synapse, when really we should have cortical centers representing management evaluation.

Mr. STUPAK. Finish up.

Mr. BURGESS. How have these actions affected the ability of the Department to conduct its ongoing work and respond fully and effectively to the crisis? Do they inhibit the Secretary to ensure safe well drilling operations? We also see the Secretary appears to ignore—

Mr. STUPAK. Mr. Burgess, I am going to have ask you to finish—please.

Mr. BURGESS. —State and local officials. Because of the time it has taken to get the Secretary of the Interior here, Mr. Chairman, I beg your indulgence to let me conclude.

Mr. STUPAK. Well, Mr. Burgess, we have got a large group here. We are not going to let everyone go over time limits now. You are already a minute and a half over. I ask you to finish.

Mr. BURGESS. The question we need to answer is what is going on in the—at the Department of Interior now really based on sound agency safety analysis, given what we know about offshore safety experience? Certainly we should try to gather information on past actions and decisions by the Department and—that have contributed to the current response problems. I would like to understand whether the companies—the oil companies had to rely on faulty government computer models and what the Secretary plans to do about improving those models. But we should not focus on the past—

Mr. STUPAK. Mr. Burgess, I am going to ask you to stop now.

Mr. BURGESS [continuing]. Our most important activities happening right now by this administration during this crisis. Thank you, Mr. Chairman. I will—

[The prepared statement of Mr. Burgess follows:]

Opening Statement of the Honorable Michael Burgess
Ranking Member, Subcommittee on Oversight and Investigations
The Role of the Interior Department in
The Deepwater Horizon Disaster
July 20, 2010

Thank you Mr. Chairman. This hearing comes at a very critical time in the Gulf Coast disaster. While we have good and encouraging news that the gusher at the BP well finally seems under control, we still have serious environmental and economic impacts to confront. BP caused the spill, but some of this damage relates directly to the Administration's decision-making in the aftermath of the Deepwater Horizon explosion.

Most significantly, as we convene this hearing and people continue to struggle mightily to clean up the mess from the BP spill, the Department of the Interior has made decision upon decision in recent weeks that we are told may kill upwards of 20,000 jobs in the Gulf Coast energy industry. Some of this new wave of economic destruction is already occurring. Talk about hitting people when they are down and most in need.

The Governor of Louisiana just this past Saturday wrote a powerful editorial in *The Washington Post*, which I would like to submit for the

record. In this editorial, the Governor describes what he sees as a determined effort by the Secretary of Interior to impose a second economic disaster on the people of Louisiana.

This second economic disaster is one of the most pressing issues before us, but there are other questions concerning the Department of the Interior's decision-making that we must explore today. And the person most able to answer these questions or provide us with the necessary documents is the sitting Secretary of the Interior, the Honorable Ken Salazar. So I appreciate very much finally having an opportunity to ask Secretary Salazar about the Department's role in and handling of the Deepwater Horizon incident.

I understand the Majority wishes to look backward to have a historical perspective. Chairman Markey has explained to me before the recess that this is so we might understand the totality of the Department's contribution to the Deepwater Horizon disaster. For this reason, we will hear this morning from two former Secretaries of the agency, both as it happens from the Bush Administration and only the Bush Administration, the Honorable Gale Norton and the Honorable Dirk Kempthorne.

I look forward to their experienced perspective – both as former Cabinet Secretaries and former elected state officials – but I question whether they, now private citizens, can really provide the Committee information as full and complete as what we could otherwise obtain through agency documents from the current Secretary of the Interior.

Today, Secretary Salazar will appear on a second panel. The fact that a sitting Cabinet member – responsible for critical decision-making in a time of crisis -- has to follow past Interior Secretaries increases my concerns about the seriousness of the Majority's interest in current Administration decision-making. Given this is a joint hearing, by the time we get through statements and questioning of the first panel, we may not have full and fair opportunity to question the current Secretary before he has to leave. He is not even present yet to hear our statements.

Oversight of the Executive Branch means oversight of the Administration in power, not past Administrations. Yet the fruits of the Committee's Executive Branch oversight relating to the Deepwater Horizon disaster has been underwhelming to date. Committee requests for documents

to the Department of Interior have so far amounted to a sum total of 2,036 pages – with few emails, internal memoranda, or any other information essential for effective oversight. I hope we press for more cooperation from agency, Mr. Chairman.

By contrast, the Majority, with Minority support, has been effectively aggressive investigating the companies associated with the disaster—producing something on the order of 120,000 pages of documents, all in the middle of one of the largest oil-spill cleanup operations.

This asymmetrical oversight inhibits the Committee’s ability to get the full facts and circumstances behind the Deepwater Horizon disaster. It also inhibits our ability to understand fully current and ongoing actions by the Administration in responding to the oil spill.

The Majority tries to trace the Deepwater Horizon spill to the Bush Administration, and has raised technical regulatory issues in its hearing memo to imply BOP and cementing problems can be traced to this time-period. But the Majority knows all available evidence suggests the disaster resulted from

the failure to follow existing regulations and industry best practices, not that George W. Bush refused to require two sets of blind shear rams.

The fact remains: it was under Secretary Salazar that BP's Initial Exploration plan was reviewed and approved by the Minerals Management Service. It was under this Administration that BP's permit to drill the well was granted, and all the inspections of the operation and procedures were approved leading up to the explosion.

We now observe the Secretary making decisions to restructure the agency in the middle of an environmental and economic crisis. Are these actions seat-of-the pants decision-making, or do they represent considered management evaluation? How have these actions affected the ability of the department to conduct its on-going work and respond fully and effectively to the crisis? Do they inhibit the ability of the Secretary to ensure safe well drilling operations?

We also see that the Secretary appears to ignore the objections of state and local officials in areas hit the hardest by the spill and impose what he acknowledges is economically damaging moratoria. What is behind the

Secretary's decision? Is it really based on sound agency safety analysis, given what we know about offshore safety experience?

We should certainly try to gather information on past actions and decisions by the Department that contributed to the current response problems. I would like to understand whether the oil companies have had to rely upon faulty government computer models and what the Secretary plans to do about improving those models.

But we should not use a focus on the past to obscure our focus on the most important activities happening right now, by this Administration, during this current oil spill response.

Thank you, Mr. Chairman.

Mr. STUPAK. Mr. Burgess, you asked for understanding. I am going to ask for your understanding. We are going to keep strict time limits today. We have two committees. We have got a full panel here. We are going to observe the time limits, OK? That goes for everybody. Mr. Markey, your opening statement, please.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. All right. Thank you, Mr. Chairman. I thank you for your leadership, and Chairman Waxman's leadership upon this issue. I do believe that President Obama is wise in the maintenance of his moratorium in ultra-deep waters. If we are going to drill in ultra-deep waters, we should ensure that it is ultra-safe, and in the event of an accident, that a response would be ultra-fast. Right now we are not sure that that is the case. That is why the President is wise.

Oil is not the result of spontaneous generation. The conditions for its creation are set millions of years before. Organisms die and decay. Heat, pressure and time do the rest. Just as with the slow creation of fossil fuels, the condition that created the BP disaster in the Gulf were put in motion many years ago. Increasing pressure from the oil industry to relax regulations, and the willingness of regulators to take the heat off companies did the rest. 10 years before BP oil spill, in January of 2000, a directive issued by the Department of Interior under the Clinton Administration stated that the methods used to model spills "are not adequate to predict the behavior of spills in deep water", and that a new model would be required. Unfortunately, this never happened. The Bush Administration never followed through.

Nine years and three months before the BP oil spill, just two weeks after taking office, President Bush created the Cheney Energy Task Force. The task force met in secret, largely with representatives of the oil, gas and other energy industries. A little less than nine years before the spill, on May 16, 2001, the Cheney Energy Task Force submitted its report. The report asserts that exploration and production from the outer continental shelf has an impressive environmental record. The report further states that existing laws and regulations were creating delays and uncertainties that can hinder proper energy exploration and production projects. We are warned that substantial economic risks remain to investment in deep water, and that the Interior Department must therefore be directed to consider economic incentives for environmentally sound offshore oil and gas development. With the Cheney Task Force report, the first condition for this disaster, rewriting the offshore drilling policies to prioritize speed rather than safety, was set in motion.

Eight years before the spill the Interior Department began issuing regulations that would extend and ultimately expand the royalty-free drilling given to oil companies for offshore oil and gas production. But financial incentives weren't enough, so the Bush Administration's Interior Department made the choice to assert that a catastrophic spill could not occur.

Seven years before the spill the Bush Administration exempted most Gulf of Mexico lease holders from having to include blowout scenarios in their oil and gas exploration or production plans. Oil companies were also no longer required to say how long it would take to drill a relief well, and how a blowout could be contained by capping the well. BP therefore included no such information in its plans for the Deepwater Horizon well.

Three years to the month before this spill, in April of 2007, the environmental impact statement approved by the Bush Administration for drilling in the Gulf of Mexico said that since blowouts are “rare events and of short duration”, the potential impacts to marine water quality “are not expected to be significant.” The analysis concluded that the most likely size of a large oil spill would be a total of 4,600 barrels, and that “a sub-surface blowout would have a negligible impact on Gulf of Mexico fish resources or commercial fishing.” A few months later in 2007, in the Bush Administration’s Interior Department, it completed another environmental review and issued “a finding of no new significant impact.” No further environmental review was needed, according to the Bush Administration.

On April 20, 2010 the regulatory house of cards erected over an eight year period by the Bush/Cheney Administration collapsed with the explosion on the BP Deepwater Horizon rig. Today we will hear from the nation’s last three Secretaries of Interior, who have presided over our nation’s leasing of offshore oil and gas since January 2001. I welcome the Secretaries, and we look forward to their testimony.

Mr. STUPAK. Thank you, Mr. Markey. Mr. Upton, opening statement, 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman. What happened on the Deepwater Horizon rig was truly a national tragedy. We all hope that the recently installed well cap will hold and not an ounce of oil will leak from that well ever again. Once this happens, our focus needs to shift to the cleanup and getting folks back to work. Citizens of the Gulf are facing unprecedented hardships. They don’t need to be further burdened by job killing policies being pushed by the Congress or the administration.

Of course, we do want answers. We want all the answers. We must work to ensure a disaster like this never happens again. Since that rig exploded, and as millions of gallons of oil leaked into the Gulf, our economy and our national security posture has been weakened. A joint investigation of the causes of the Deepwater Horizon blowout explosion and spill are currently being conducted by the Coast Guard and MMS. In addition, President Obama announced a presidential commission that will investigate and report. The team of engineers tapped by Secretary Salazar to examine what went wrong on the Horizon rig recently wrote, “We believe the blowout was caused by a complex and highly improbable chain of human errors coupled with several equipment failures and was preventable. The petroleum industry will learn from this it can and will do better. We should not be satisfied until there are no deaths

and no environmental impacts offshore ever. However, we must understand that, as with any human endeavor, there will always be risks.” Secretary Salazar pointed to this team of engineers to rationalize the moratorium. Not only did the engineers disagree, so did the courts. The court has overturned the Salazar drilling moratorium a number of times.

The Gulf accounts for nearly a third of the United States’ oil production. Knee jerk reactions and finger pointing won’t make drilling any safer, and certainly isn’t productive for the citizens of the Gulf. Let us learn from this awful mistake, fix the problem, clean up the Gulf, and move forward to fix our ailing economy and create private sector jobs.

I yield back.

Mr. STUPAK. Thank you, Mr. Upton. Mr. Chairman—Chairman Waxman for an opening statement, please.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Chairman Stupak and Chairman Markey, for holding this joint Subcommittee hearing. I think it is an important hearing. During the last three months since the Deepwater Horizon explosion and blowout this committee, and its subcommittees, has held seven hearings, and those hearings have focused on the actions of BP and other oil and gas companies, and we learned that BP repeatedly made dangerous choices to save time and money. Transocean’s blowout preventer had a dead battery, a leaking hydraulic system, and other serious flaws. And we learned that the entire oil industry was unprepared to deal, and is unprepared to deal, with a significant blowout.

Today we are going to examine the role of the regulators. We will learn that the Department of Interior under both President Bush and President Obama made serious mistakes. The cop on the beat was off duty for nearly a decade, and this gave rise to a dangerous culture of permissiveness. Secretary Salazar has testified before several committees, and we welcome his appearance today. What makes this hearing unique is that we will be hearing from two of his predecessors, former Secretary Gale Norton and former Secretary Dirk Kempthorne, and I welcome both of them to our committee. This will allow us to examine the recent history of Federal drilling regulation and look at it in a broader context.

Mr. Markey pointed out, and he is right, in many ways this history begins with Vice President Cheney’s secretive energy task force. This was initiated during President Bush’s second week in office, and for weeks it met privately with oil and gas executives and other industry officials whose identity the administration steadfastly refused to disclose. Four months later the vice president released a report describing the new energy strategy for the administration. The report directed the Interior Department to “consider economic incentives for environmentally sound offshore oil and gas development”. As recommended in the report, President Bush immediately issued an executive order to expedite projects that will increase the production of energy.

Secretary Norton led the implementation of the Bush strategy for the Department of Interior. She promoted new incentives and royalty programs to encourage drilling. But she failed to act on safety warnings about blowout preventers, and she rejected proposals to strengthen standards for cementing wells. Those decisions sent a clear message. The priority was more drilling first, and safety second.

Secretary Norton left amid the scandals involving Jack Abramoff to work as general counsel for Shell, a major oil company. Her successor, Secretary Kempthorne, oversaw the lease sale to BP of the future Macondo well, and Secretary Kempthorne also oversaw the deeply flawed assessment of potential environmental impacts associated with this lease sale, an assessment that did not anticipate the possibility or impacts of a catastrophic sub-sea blowout. As a result of these environmental assessments, BP did not have to include an oil spill response discussion, a site specific oil spill response plan, or a blowout scenario in its explanation plan. In many ways Congress was complicit in its oversight. The Energy Policy Act of 2005 granted royalty relief and subsidies to the industry, but did not strengthen regulatory requirements.

As a Democrat, I hoped the Obama Administration would do better, and in some ways there have been reforms. The scandal-ridden royalty-in-kind program was cancelled. Secretary Salazar instituted new ethics programs, and in the Department's budget Secretary Salazar requested more inspectors for offshore facilities. But there is little evidence that these reforms changed the laissez-faire approach of MMS in regulating the BP well. MMS approved the drill plan and changes to the well design plan that we have questioned during our investigations.

The April 20 blowout was a wakeup call for this administration, and for Congress. Secretary Salazar's now reorganized MMS issued a 30 day safety report, developed a plan to implement the reorganization, and asked the Department IG to examine culpability and issue suspensions of new high risk activity until there is evidence that blowout preventers are safe enough and the oil industry is capable to respond to another spill.

These actions are long overdue, but they are necessary steps in the effort to revitalize drilling regulation, and I welcome this chance to learn more about them.

Chairman Stupak and Markey, thank you for holding the hearing, and I hope we can learn the extra part of our investigation as to what the regulators were doing during this 10-year period. Yield back my time.

[The prepared statement of Mr. Waxman follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
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Statement of Rep. Henry A. Waxman
Chairman, Committee on Energy and Commerce
“The Role of the Interior Department in the Deepwater Horizon Disaster”
Subcommittee on Oversight and Investigations and the
Subcommittee on Energy and Environment
July 20, 2010

Chairman Stupak and Chairman Markey, I want to thank you for holding today’s hearing.

In the three months since the Deepwater Horizon explosion and blowout, we have held seven hearings. These hearings have focused on the actions of BP and other oil and gas companies.

We learned that BP repeatedly made dangerous choices to save time and money. We learned that Transocean’s blowout preventer had a dead battery, a leaking hydraulic system, and other serious flaws. And we learned that the entire oil industry is unprepared to deal with a significant blowout.

Today, we will be examining the role of the regulator.

We will learn that the Department of Interior under both President Bush and President Obama made serious mistakes. The cop on the beat was off-duty for nearly a decade. And this gave rise to a dangerous culture of permissiveness.

Secretary Salazar has testified before several committees, and we welcome his appearance today. What makes this hearing unique is that we will also be hearing from his two predecessors, former Secretary Gale Norton and former Secretary Dirk Kempthorne. This will allow us to examine the recent history of federal drilling regulation, and we thank them for their cooperation.

In many ways, this history begins with Vice President Cheney’s secretive energy task force. The energy task force was initiated during President Bush’s second week in office, and for weeks it met privately with oil and gas executives and other energy industry officials, whose identity the Administration steadfastly refused to disclose. Four months later, the Vice President released a report describing the Administration’s new energy strategy. The report directed the Interior Department to “consider economic incentives for environmentally sound offshore oil and

gas development.” As recommended in the report, President Bush immediately issued an executive order to “expedite projects that will increase the production ... of energy.”

Secretary Norton led implementation of the Bush energy policies at the Department of the Interior. She promoted new incentives and royalty programs to encourage drilling. But, she failed to act on safety warnings about blowout preventers. And she rejected proposals to strengthen standards for cementing wells. Those decisions sent a clear message: the priority was more drilling first, safety second.

Secretary Norton left amid the scandals involving Jack Abramoff to work as a general counsel for Shell, a major oil company. Her successor, Secretary Kempthorne, oversaw the Lease Sale to BP of the future Macondo well. Secretary Kempthorne also oversaw the deeply flawed assessment of potential environmental impacts associated with this lease sale, an assessment that did not anticipate the possibility or impacts of a catastrophic subsea blowout. As a result of those environmental assessments, BP did not have to include an oil spill response discussion, a site-specific oil spill response plan, or a blowout scenario in its exploration plan.

During the Bush Administration, there were a series of ethical scandals at the Department. It appeared that the Minerals Management Service’s (MMS) mission had become to serve the oil and gas industry by facilitating the expansion of deepwater drilling.

In many ways, Congress was complicit in this lack of oversight. The Energy Policy Act of 2005 granted royalty relief and subsidies to the industry, but did not strengthen regulatory requirements.

As a Democrat, I hoped the Obama Administration would do better and, in some ways, there have been reforms. The scandal ridden royalty-in-kind program was cancelled. Secretary Salazar instituted new ethics programs. And in the Department’s budget, Secretary Salazar requested more inspectors for offshore facilities.

But there is little evidence that these reforms changed the laissez-faire approach of MMS in regulating the BP well. MMS approved the drill plan and changes to the well design that we have questioned during our investigation.

The April 20 blowout was a wake-up call for the Administration. Secretary Salazar has now reorganized MMS, issued a 30-day safety report, developed a plan to implement the reorganization, asked the Department’s IG to examine culpability, and issued suspensions of new high-risk activity until there is evidence that blowout preventers are safe enough and the oil industry is able to respond to another spill.

These actions are long overdue. But they are necessary steps in the effort to revitalize drilling regulation, and I welcome the chance to learn more about them.

Chairman Stupak and Markey, thank you for holding today’s hearing.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Barton for an opening statement, please.

**OPENING STATEMENT OF HON. JOE BARTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Excuse me. Thank you both Chairmans, and Full Committee Chairman Waxman, for this hearing. I welcome our two former Cabinet Secretaries, who are both friends of mine. We appreciate you all voluntarily coming today.

Three months ago today an explosion tore through the Deepwater Horizon drilling ship. It killed 11 men. It has filled great swaths of the Gulf of Mexico with crude oil. As the spreading spill has focused the nation's attention on what we need to do to stop it and prevent it from—in the future, our job here in this committee has been to conduct a bipartisan investigation to identify what went wrong and try to figure out if there is a way that we can help prevent it from the future.

Last Thursday the Full Committee put together some of the results of the fruits of our investigation to pass out the Blowout Prevention Act of 2010. This bill passed this committee 48–0 on a bipartisan basis. It will improve safety, it will protect the environment, and yet it will allow responsible drilling to go forward in the outer continental shelf. Having said that, we still have a lot of work to do. As has been pointed out, right now it appears that the leak has been stopped, but we certainly haven't stopped the economic and environmental harm in the Gulf of Mexico. I believe that this Committee's bipartisan oversight is providing the most powerful searchlight for getting to the truth so that we can address in the very near future what additional steps, in addition to the Blowout Prevention Act that we passed last week, need to be done to prevent this tragedy from ever happening again. We have found and spotlighted a number of disturbing BP decisions, in some cases non-decisions, that were made or not made at critical moments that, if they had been made differently, perhaps this accident may not have occurred.

Having said that, we need to remember that the drilling in the outer continental shelf and Federal waters is a regulated Federal industry. And today, finally, we are going to begin to look at the role of the regulator in this case, the Department of the Interior. We are going to see if perhaps past decisions and current practices have led to the accident that we all wish had not occurred. We want to understand why the Department has allowed BP to do what it did. Was the Department really watching what was going on at the drilling operation? Keep in mind that the blowout preventer that failed on April the 20th passed inspection only two weeks before.

Americans want to understand what the Obama Administration's response to the oil spill was and is, both in terms of what it did not do to stop the spread of oil and what it is doing right now, apparently, to stop energy production. It was the Obama Administration, not the Bush Administration, that didn't waive the Jones Act so that some of our foreign friends could bring in their oil spill equipment. It was the Obama Administration, not the Bush Administration, that wouldn't waive certain environmental impact

studies so that our friends in Louisiana and Mississippi and Alabama could put up some berms that could have prevented the oil from reaching their beaches. It was the Obama Administration, not the Bush Administration, that made the decision not to transfer pre-position equipment in other parts of the country for oil spills to the Gulf of Mexico to help in this spill. It was Secretary Salazar, not Secretary Barton or Secretary Kempthorne, that either made or didn't make those decisions.

What we have right now is a worst case scenario. The folks that depend on their livelihood for tourism on the beaches of the Gulf are not having the tourists come because tourists are afraid that the beaches might be soiled. The people that depend on their livelihood for fishing and recreation in the Gulf are not allowed to fish or recreate in the Gulf, and the people who depend on their livelihoods by drilling and working on these offshore rigs and the service facilities that service them are out of work because they are shut down. So we kind of have a lose-lose-lose situation, Mr. Chairman. We hope in the very near future that we can put it together in a win-win-win situation.

The majority has invited former Cabinet Secretaries Norton and Kempthorne today, and we thank them for voluntarily appearing, for the transparent purpose, in my opinion, of attempting to focus blame on the Bush Administration. But as I have pointed out, the decisions and the non-decisions that are being made and have not been made are not being made by these two individuals. They are being made by Secretary Salazar and President Obama. So I would hope that we will focus most of the attention in today's hearing on the current Cabinet Secretary and not the past Cabinet Secretary.

I see my time has expired, Mr. Chairman. I will put the rest of my statement into the record, but thank you for holding this hearing.

[The prepared statement of Mr. Barton follows:]

**Opening Statement of the Honorable Joe Barton
Ranking Member, Committee on Energy and Commerce
Joint Subcommittee on Oversight and Investigations and
Energy and Environment Hearing
“The Role of the Interior Department in the
Deepwater Horizon Disaster”
July 20, 2010**

Three months ago today, an explosion tore through the Deepwater Horizon drilling ship, killing eleven men and filling great swaths of the Gulf of Mexico with crude oil. As the spreading spill turned urgent and the response sputtered, our job here was to identify what was going wrong and how it could be avoided in the future.

Last Thursday we put our knowledge to work by reporting out of Committee the forward-looking Blowout Prevention Act of 2010.

We still have plenty of work to do. The leak may have stopped, but the economic and environmental harm to the Gulf Coast certainly have not.

I believe bipartisan oversight provides the most powerful searchlight for getting to the truth so we can address problems, and I think that we've done a solid job to date. We have found, analyzed and spotlighted disturbing BP decisions made at critical moments in the days leading up to the disaster.

Yet we should not forget that offshore drilling is a regulated industry, and today we look at the role of the regulator. We look at the Interior Department's contribution to the poor decision-making.

I am sure many Americans want to understand why the Department allowed BP to operate as it did. Was the Department really watching what was going on at BP's drilling operation?

Americans also want to understand the federal government's response to the spill, both in terms of what it did not do to stop the spread of oil and what it is doing right now to stop energy production. We seem to be headed toward a worst-case result in which ruination is visited on both the families who fish the Gulf for a living and on those who man the rigs that extract energy from the seabed, and where every American who drives pays a premium for gasoline that increasingly comes from places like Venezuela and the Middle East. Some say that some day alternative energy will make fossil fuels unnecessary. Yes, but not today or tomorrow or in this decade.

The Majority has invited former Secretaries Norton and Kempthorne here today for the transparent purpose of focusing blame on the Bush Administration instead of the Obama Administration. I'm ready to learn something from past agency Secretaries about past agency actions, but only Secretary Salazar

can explain the actions of his Department during the months immediately before and after the Deepwater Horizon catastrophe. He is the Secretary. The disaster occurred on his watch. His department's decisions are the ones at issue in the present case.

President Obama has already accepted responsibility for the slow culture change at the Department of Interior. He said, "I absolutely take responsibility." Period. And we understand now that this Administration's priorities were not focused on the tough work of reforming oil industry oversight.

The first department-wide order issued by Secretary Salazar, on March 11, 2009 – before approval of the Deepwater Horizon permit – was to place "production, development, and delivery of renewable energy" as top priorities of the Department. Where did improving oversight of the safety of offshore oil drilling fit in to the Administration's green energy agenda?

The Secretary then chose a person to head the Minerals Management Service with a priority to “promote clean energy,” Not to improve the regulatory oversight of oil drilling safety.

Now that the Deepwater Horizon has shaken up Administration priorities, we’re seeing a rush in another direction. While Americans, including those on the Gulf Coast, struggle with a recession that produced 9.5 percent unemployment last month, the Administration has decided to threaten the jobs of tens of thousands of people along the Gulf Coast with a blanket moratorium on energy exploration. We’re already hearing reports that since they are barred from exploring for American energy in American territory, drilling rig operators are already entering into long-term contracts in other countries.

We want to figure out how to ensure that America can rely on its own energy supplies instead of oil from overseas, and do it safely and effectively for the good of the entire country. I look

forward to hearing from Secretary Salazar how about his recent decisions and whether he thinks risking short and long-term health of scores of communities is in the nation's interest.

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Mr. STUPAK. Thank you, Mr. Barton. Chairman Dingell, opening statement, please, 5 minutes.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Thank you, Mr. Chairman. I would like to welcome our two witnesses today to the Committee, Secretary Norton and Secretary Kempthorne. It is a pleasure to see two old friends here before the Committee. Thank you for being here.

Chairman Stupak and Chairman Markey, I thank you for holding this hearing today. It is very important, and I think it is extremely important that we continue to hear about the real and serious problems that have come to light as a result of the disaster in the Gulf. As this Committee has heard before, I am author of both the National Environmental Policy Act and the Marine Mammal Protection Act. I view these laws as my children, and while they have grown up, I find I still need to defend them from time to time against failures of proper administration. NEPA is a fairly simple statute. It simply requires agencies to look before their—before they leap.

Now, as a poor Polish lawyer from Detroit, I just don't see how an agency can look before it leaps when it grants broad categorical exclusions. These broad categorical exclusions require very broad statutory response to a situation within the agency. In other words, the agency can't simply go out and just say, well, we are going to give a relief from the statute. It has to make certain findings and do a large number of things, which I do not believe could be said were done in the instances before us. I am pleased that the legislation reported by the House Resources Committee effectively takes these categorical exclusions off the table, although I must repeat I do not believe that it is necessary to do so.

It has become clear that the Minerals Management Services is a dysfunctional agency. It has been that over a goodly period of time, and remained so until this administration came in to commence a change after the disaster in the Gulf. And it is unfortunate that it took a massive calamity and a tragic loss of life to bring this about. An Inspector General report in 2008 implicated a dozen officials of criminal and unethical behavior. I am pleased that the legislation recently reported by the Committee on Natural Resources will codify the changes put in place by Secretary Salazar and does away with the Mineral Management Service. Time will only tell whether the changes have been enough, and I hope that they will, but I would observe that a lot will depend upon administration.

As this Committee knows, BP in particular has a long history of cutting corners, and the testimony before us showed that to be the case. I know that you, Mr. Chairman Stupak, offered an amendment in the markup Blowout Prevention Act consideration last week to address whether or not permits could be granted to habitually bad actors. Regrettably, it was not agreed to. I am pleased that the Natural Resources Committee has adopted a similar amendment in their legislation by unanimous consent, and I hope that it will be included when the legislation reaches the floor.

This is not, and should not, be a partisan issue. I hope that none of my colleagues, and I hope the Congress, again, will not treat it in that fashion. This is simply an issue of where we need to find out what is going on and to commence to address the corrections that need to be made so that we may go forward with a sound energy policy, and also with proper protection for the environment.

I would just like to mention my—to my two good friends, the Secretaries, that the refuge that you saw when you were—came up into Michigan to visit with us on the Detroit River now constitutes something close to 6,000 acres. The Canadians will shortly be coming in, and your good work is appreciated not only by this member of the Committee, but, very frankly, by the citizens in the area, so I hope you feel welcome here this morning.

Mr. Chairman, I thank you for your courtesy.

Mr. STUPAK. Thank you. Mr. Whitfield for an opening statement. Two minutes, please.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Thank you, Mr. Chairman, and thank you, Secretary Norton, Secretary Kempthorne, for joining us today. I want to reiterate my agreement with Mr. Dingell that this should not be a partisan issue. And yet when I read the Democratic memorandum to the Democratic members of this committee, 10 out of 13 pages referred to the Bush Administration and decisions that the Bush Administration had made and didn't make. And there was an insinuation that the Bush Administration was responsible for the BP blowout. I think we do a disservice to the American people when we try to place blame on anyone when we don't know the reason for this blowout. The report is not due for nine more months, and it is being investigated. And at the end of that investigation, hopefully we will know and be able to move constructively forward to solve the problem.

There are many people throughout the United States and the world today that believe it is unsafe to drill offshore, and—on the outer continental shelf. And yet we know that the last major oil spill from a platform occurred in 1969, off the coast of Santa Barbara. There are 7,000 active leases in the Gulf today. There are 1.7 million barrels of oil per day being produced. There are 602 active wells today. So it is not like it is inherently dangerous, but yet the loss of one life is too many. And I will also note that in former documents from the Department of Interior it states—stated that natural cracks in the sea bed causes more oil seepage, 150 times larger in volume, than oil spill due to outer continental shelf oil and gas activities.

So I look forward to the testimony today, and hopefully, with their testimony and the testimony of experts in the report, we will know what actually happened at the BP site. Thank you.

Mr. STUPAK. Thank you, Mr. Whitfield. Ms. DeGette, two minutes, opening statement, please.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you very much, Mr. Chairman, for holding this hearing. The former MMS, which is, as you said, now the Bureau of Ocean Energy Management Regulation and Enforcement, has been involved in all of these issues. They regulate and they oversee drilling activities, and it was their job in this case to monitor offshore drilling, inspect violations, and to collect royalty revenue.

One of the things that really dismays me, having been in Congress now for a while, is how you can take an agency like this, that has been, frankly, having trouble for many years, and make it a partisan issue on both sides of the aisle. Because the truth is the MMS has been dysfunctional for many years. That is why I want to welcome both of the former Secretaries who are here today, in particular my friend Secretary Norton, who I have known for many years in Colorado. And also, why I look forward to listening to the testimony of another Coloradoan on our next panel, Mr. Salazar. Because until we get the full picture, we can't completely revamp this agency. And until we revamp this agency, we can't guarantee that we have appropriate regulatory oversight over this—over drilling. And until we can get appropriate regulatory oversight over drilling, we can't be sure that we should be having safe deep water drilling, and that is the way it is.

At this point the administration is trying to revamp the former MMS. They are eliminating conflicts of interest. They are eliminating the royalty-in-kind program, and they have hired Michael Bromwich to oversee this reorganization. Last we heard from him in the Natural Resources Committee, he was brand new on the job and didn't have anything new to add. So these are all positive steps, but until we get the historical view of what happened with this agency, we won't adequately be able to make it effective, and we won't be adequately able to perform our regulatory functions.

Thank you very much, Mr. Chairman.

Mr. STUPAK. Thank you, Ms. DeGette. Mr. Shimkus, your opening statement, please?

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman, and Secretary Norton, Secretary Kempthorne, welcome. I wish Secretary Salazar would be listening to some of these opening statements. Our colleagues have been real involved with this, as you can imagine. He should be hearing these. I agree with my colleague, Dr. Burgess.

Point one is, remember, the President announced expansion of oil and gas drilling in the OCS a week before the explosion. Point two, in the military there is a clear sign when a change of command occurs. The outgoing commander grabs a flag and hands it over to the incoming commander. And when that occurs, the mission changes from the outgoing commander to the incoming commander, and the incoming commander is responsible for all his unit does or fails to do. I think there is a lesson to be learned here, that there is going to be a time when this administration is going to have to

accept some responsibility. Maybe not all, but at least a smidgen, a little bit. They are going to have to say, yes, this did happen on our watch. Yes, we didn't really reorganize MMS when we first got in. Yes, it took the disaster for us to do that. Yes, maybe we were too slow to deploy assets. I think it would help in a—in, really, a bipartisan manner that they accept a little bit. In the military, it happens day one, and as a Commander-in-Chief, you would think he would learn that.

I will focus on a lot of things today, but in my remaining time, I just want to highlight three things. I am an avid Facebook guy, and I mentioned the moratorium, and the—and rigs being moved, and one of my opponents put on there, I will believe it when I see it. Well, Diamond Offshore Drilling, Incorporated announces relocation of deep water ocean confidence to the Congo. Three deep water drilling rigs to be moved from sites south of Cameron Parish. Brazil sees silver lining in BP spill, more rigs. If we don't move carefully on this, we are going to increase our reliance on imported crude oil.

Thank you, Mr. Chairman. I yield back my time.

Mr. STUPAK. Thank you, Mr. Shimkus. Mr. Inslee for an opening statement, please. Two minutes.

Mr. INSLEE. I will resume my time. Thank you, Mr. Chairman.

Mr. STUPAK. OK. Mr. McNerney, opening statement, two minutes.

OPENING STATEMENT OF HON. JERRY MCNERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCNERNEY. Thank you, Mr. Chairman. I want to thank Secretary Norton, Secretary Kempthorne, for participating. It may not be an easy morning for you, and I appreciate that.

The oil spill is clearly a tragedy, and there are no winners in this situation. But as tempting as it is to use this hearing as an opportunity for partisan finger pointing, our duty and responsibility is to identify the causes of the tragedy and put rules in place to prevent this sort of disaster from happening again in the future.

I hope we can accomplish this here today, but the obvious fact is that once a deep water blowout takes place, a massive spill is inevitable. Of course, once a spill takes place, we need to have an effective plan to quickly stop the spill and clean up the contamination. However, the real challenge is to prevent such occurrences from happening in the first place, and so it is understandable that we should place our emphasis on prevention. What went wrong, and how do we avoid these problems in the future?

So I look forward to working with my colleagues on achieving this goal, and I hand back the balance of my time.

Mr. STUPAK. Thank you, Mr. McNerney. Mr. Griffith for an opening statement, please.

OPENING STATEMENT OF HON. PARKER GRIFFITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. GRIFFITH. I would like to thank the Chairman for calling this important hearing today. Thank you also to these witnesses who have come before our subcommittee to discuss the administration's

role in the recovery response of the Deepwater Horizon drilling disaster that has affected our Gulf States.

It is essential that we continue to investigate why a disaster of this proportion took place, but more importantly we need to look into the agency's response to the explosion and the spill. As the investigation and reviews continue, I think that Congress must question the administration's response to the disaster. Bureaucracy is rarely able to facilitate a quick response. Even the bureaucracy, without leadership, is frozen in place, and this event has been yet another demonstration of government slowing in recovery.

It is time to take a good hard look at the Federal response. It would have been wise for the administration to have called on all possible resources to help in the initial aftermath of this disaster, but this was not done. The American public must gain trust in their government for an appropriate response in times such as these. This means that the Federal government has to get the emergency response right. While the days and weeks tick by after the spill, most of us saw a lack of urgency in the Federal response.

The one reaction we have seen from the government is the administration has shut down oil drilling and enforcing a moratorium in the Gulf. The Gulf of Mexico accounts for 24 percent of our oil production. It affects roughly 170,000 jobs, the economy and our energy security. As Louisiana Governor Jindal stated, the moratorium is a second man-made disaster. If we enact policies that drive drilling out of U.S. waters, we will cease to be able to ensure that crude oil and gas production be done in a safe and environmentally friendly manner. It is the duty of Congress to find out exactly what happened so that we can most effectively craft policy to prevent future incidents like this.

I am glad that we have witnesses here today to explain the questionable response of the administration to the spill. As Congress draws conclusions into how to prevent another spill from ever happening again, I hope that we can gain insight into why the administration's response to the spill was seen by the American public as slow, and at times absent.

Thank you for being here today. We appreciate you volunteering to be here, and I look forward to your testimony. And Mr. Chairman, I yield back the balance of my time.

Mr. STUPAK. Thank you. Next, Mr. Green for an opening statement, please.

**OPENING STATEMENT OF HON. GENE GREEN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Mr. Chairman, for holding the hearing. Again, welcome our former Secretaries, former Senator and Governor to our panel. And I would like my full statement be placed in the record. And clearly there are several decisions made along the way that led to a regulatory environment where an environmental disaster of this magnitude could take place, and I look forward to testimony.

However, I want to take the use of my time today to focus on a separate issue that I will bring up when Secretary Salazar is present. I remain extremely concerned about what the offshore drilling moratorium means to the Gulf Coast and our country's fu-

ture energy supply. The court—recent court decision to lift the—moratorium was an important step to keeping vulnerable oil and gas jobs in the Gulf States and keeping them—our economies viable. However, with the administration’s new reissued moratorium, these job losses are back in play.

I would like to ask unanimous consent to place into the record a letter that Congressman Kevin Brady and I, along with other members of Congress, sent suggesting a solution to the deep water ban that would put people back to work, Mr. Chairman.

Mr. STUPAK. Without objection.

[The information was unavailable at the time of printing.]

Mr. GREEN. It is my strong belief that a moratorium be allowed to continue the full 6 months or longer would significantly damage our already weakened economy along the Coast and cost tens of thousands of jobs, reduce local payrolls by nearly \$2 billion and threaten the survival of many—related small business, mid-size businesses. Additionally, offshore oil and gas production support companies throughout the Gulf of Mexico engaged in shallow water drilling activities continue to be severely affected by the continued de facto moratorium.

And Mr. Chairman, I would like to ask unanimous consent for a letter to be placed in the record—Secretary Salazar that Congressman Boustany and I, plus a number of members of Congress, sent to Secretary Salazar at the end of May.

Mr. STUPAK. Without objection.

[The information was unavailable at the time of printing.]

Mr. GREEN. We have actually issued one shallow water drilling permit last week. And—even though the moratorium was released at the end of May. As a result, 19 jack up rigs, representing over 35 percent of the available shallow water drilling rigs in the Gulf of Mexico, are now without work and idle, putting at risk thousands of jobs in the Gulf of Mexico and orderly production of domestic resources. And I would like to—look forward to hearing from the secretary.

Mr. Chairman, I appreciate your patience, and we want to get to the bottom of what happened, but we also need to have domestic production of oil and natural gas in our country. So I yield back my time.

Mr. STUPAK. Mr. Latta, opening statement, please, 2 minutes.

**OPENING STATEMENT OF HON. ROBERT E. LATTA, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. LATTA. Thank you, Mr. Chairman, Mr. Burgess. Again, thank you for holding this subcommittee hearing on the Interior Department’s role in the Deepwater Horizon disaster, and I also want to thank our witnesses for appearing today.

Last month I had strong words for the BP CEO, Tony Hayward, when he testified in front of our Oversight and Investigation Subcommittee, and since then I have reiterated that BP needs to be held accountable for this disaster of epic proportions. However, I also have been awaiting the opportunity to hear from and question Department of Interior officials regarding their role in the Deepwater Horizon disaster, especially since President Obama has re-

peatedly said that he and his administration are in charge and take responsibility for the response effort, as the law so requires.

Earlier this month I traveled with some of our colleagues to the Gulf to tour the Louisiana coast and meet with community leaders and residents who have been affected by the disastrous BP oil spill. While I was encouraged by the spirit of the hard working local residents, it is clear that they are frustrated by the Federal response and the lack of coordination amongst government agencies. The trip reinforced my belief that it is critical we find out what went wrong and how and why it happened. This includes a through investigation into the current administration's actions leading up to the incident and during the response.

Furthermore, I believe the administration's moratorium on deep water drilling in the Gulf is devastating the region, and I would like to hear about the Interior's role in making this decision. The recent report by a nationally known—renown economist from LSU states that the loss of 8,000 jobs, nearly a half a billion dollars in wages and over 2.1 billion in economic activity will be triggered in just the first six months of this moratorium. The administration would have been better advised that stopping the flow of oil instead of focusing on imposing a drilling moratorium, this in spite of a Federal Judge overturning the first moratorium ban, calling it arbitrary and capricious.

Mr. Chairman, I look forward to hearing the testimony today, and I yield back.

[The prepared statement of Mr. Latta follows:]

Congressman Robert E. Latta
The Committee on Energy & Commerce
Subcommittee on Oversight and Investigations and Energy and Environment
Opening Statement – For the Record
July 20, 2010

MR. CHAIRMAN; MR. BURGESS: Thank you for holding this subcommittee hearing on the Interior Department's role in the Deepwater Horizon Disaster and I thank our witnesses for appearing.

Last month, I had strong words for BP CEO Tony Hayward when he testified in front of the Oversight and Investigations Subcommittee and since then I have reiterated that BP needs to be held accountable for this disaster of epic proportions. However, I have also been awaiting the opportunity to hear from and question Department of Interior officials regarding their role in the Deepwater Horizon disaster, especially since President Obama has repeatedly said that he and his Administration are "in charge" and take responsibility for the response effort, as the law so requires.

Earlier this month, I traveled with some of our colleagues to the Gulf to tour the Louisiana coast and meet with community leaders and residents who have been affected by the disastrous BP oil spill. While I was encouraged by the spirit of the hard-working local residents, it is clear that they are frustrated by the federal response, and the lack of coordination amongst the government agencies. The trip reinforced my belief that it is critical we find out what went wrong and how and why it happened – this includes a thorough investigation into the current Administration's actions leading up to the incident and during the response.

Furthermore, I believe the Administration's moratorium on deepwater drilling in the Gulf is devastating to the region and I would like to hear about the Interior's role in making this decision. A recent report by a nationally-renowned economist from LSU states that the loss of

8,000 jobs, nearly \$1/2 billion in wages, and over \$2.1 billion in economic activity will be triggered in just the first six months of this moratorium. The Administration would have been better advised at stopping the flow of oil instead of focusing on imposing a drilling moratorium, this in spite of a federal judge overturning the first moratorium and calling it “arbitrary” and “capricious”.

Mr. Chairman, I look forward to hearing the testimony today, and I yield back.

Mr. STUPAK. Thank you, Mr. Latta. Mr. Doyle, for an opening statement, please.

OPENING STATEMENT OF HON. MICHAEL F. DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. DOYLE. Thank you, Mr. Chairman, for holding this hearing on the role of the Interior Department in the Deepwater Horizon disaster. I am grateful for the excellent work this committee has done on investigating the causes of the Deepwater Horizon accident and addressing them through legislation.

You know, if there is any silver lining to this tragedy, I hope it is a renewed effort to engage in intelligent regulations of the industries that operate in our waters and our lands. Like most of you, I am frustrated to learn that permits were granted for deep water drilling, and Macondo well specifically, without proper safety requirements or oil spill response plans that included the ability to cap a leak should the infallible blowout preventer fail. It is even more frustrating to learn that required environmental impact statements were waived so that drilling the Macondo well could commence more quickly.

Unfortunately, that seemed to set the tone for drilling operations on the Deepwater Horizon. As this committee's investigation has proven, BP cut corners every step of the way, and the least protective measures were taken to speed up production of the well. It resulted in one of the worst environmental tragedies we have ever seen and further economic hardship in communities along the Gulf.

Mr. Chairman, today I am not interested in assigning blame. I think there is enough to go around. Instead I hope we recognize what a great opportunity we have with the Secretaries of the Interior from the last 10 years before us. I look forward to hearing from Secretary Salazar, and I want to thank Secretaries Norton and Kempthorne for your willingness to be here today.

While the recent reforms at the Mineral Management Service are a good start, there is still much more to do. If we are going to continue accessing the oil and gas resources in the Gulf of Mexico, we need smarter and more sufficient regulations of the industry. This tragedy has proved that blowout preventer is not a failsafe tool of the last resort. We are working in this Congress to bring about better research and development and technologies that can ensure the safety of offshore drilling. In fact, much of this R&D is being done in my hometown of Pittsburgh, at the National Energy Technology Laboratory. I know firsthand that, given the resources of the scientists and engineers at NETL, we are entirely capable of producing technologies that bring us into the 21st century of energy development.

So, Mr. Chairman, I thank you and look forward to the testimony today.

Mr. STUPAK. Thank you, Mr. Doyle. Mr. Gingrey, opening statement.

OPENING STATEMENT OF HON. PHIL GINGREY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. GINGREY. Mr. Chairman, thank you for calling today's hearing. Even though recent efforts have hopefully halted major oil leaks, it is critically important that we get to the bottom of the cause of the Deepwater Horizon accident that has severely devastated the Gulf Coast.

As a member of the O&I Subcommittee, I was present at the hearing in which we had the opportunity to pose questions to BP CEO Tony Hayward. At the outset of that hearing I, along with a number of my Republican colleagues, raised concerns as to why we were not also hearing from the administration to discuss its oversight role to help avoid future accidents of this nature. Mr. Chairman, despite these efforts and the economic and environmental destruction that has resulted from the Deepwater Horizon explosion, I am disappointed that it has taken the Committee three months to the day of the accident to hear from the Secretary of the Interior. There are several important questions that the administration needs to answer to help us find the best way to move forward.

What was the role of Interior leading up to and in the aftermath of the explosion on April 20? Have the reorganization efforts of the Minerals Management Service in any way impeded Interior from being able to properly investigate and respond to the crisis? In fact, what is the purpose of renaming MMS to the Bureau of Ocean Energy Management Regulation and Enforcement, BOEMRAE? Does that only create confusion for the public, media, members of Congress, the agency responding to the crisis? Lastly, what impact will the administration's decision to impose a six month moratorium have on the Gulf Coast's ability to create jobs and make us less dependent on foreign oil?

Mr. Chairman, although I am pleased that we are finally hearing from the administration on the Deepwater Horizon disaster, I hope that we do not use this hearing to simply score political points, as some of my colleagues have said. Today we have the opportunity to move forward with answers and ideas for reform. We owe it to the families who lost loved ones on April the 20th. We owe it to the Gulf Coast region that has continued to struggle economically as a result of this disaster, and finally we owe it to our country, as we continue to compete successfully, hopefully, in an energy dependent global economy.

And I yield back, Mr. Chairman.

Mr. STUPAK. Ms. Capps for an opening statement.

OPENING STATEMENT OF HON. LOIS CAPPS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. CAPPS. Thank you, Mr. Chairman, and welcome to our honorable witnesses. It is painfully clear that BP's oil spill dwarfs any environmental disaster in our nation's history. The first steps, of course, are to stop this leak, contain the spill and attend to its devastating consequences. President Obama and his administration swiftly responded to the BP disaster from day one, mobilizing resources to minimize harm to the health, economy and environment of the Gulf Coast.

The President established an independent commission, modeled on legislation I introduced with Chairman Markey, to investigate the cause, the response and the impact of BP's spill. The President announced tougher safety requirements for offshore drilling and a strong inspection regime, and he took appropriate steps to ban new deep water wells and other exploratory drilling in sensitive areas.

While we need immediate regulatory reform to make existing offshore oil development safer, we must also be bold and forward thinking in our response. The legacy of a safer, cleaner energy policy is the only possible silver lining to be found in this unthinkable catastrophe, and it is from what many of us on this side of the aisle had been pushing for years. The good news is there are lots and lots of ideas and proposals we can draw from.

Unlike its predecessor, the Obama Administration has made immediately—immediate investments in efficiency, renewables and alternatives. The best way to protect the environment is simply to use less energy. Increases in efficiency and renewables can also create jobs and provide a boost to our domestic economy. Most importantly, these advances can be implemented now, with immediate benefits and results. Finally freeing ourselves from our costly oil addiction would be a fitting tribute to the terrible tragedy being borne by the people of the Gulf.

I applaud the Committee's efforts for continuing to shine the spotlight on this tragedy and for laying out the steps that we must take to keep situations from—like this from happening in the first place.

I yield back.

Mr. STUPAK. Thank you, Ms. Capps. Mr. Pitts, your opening statement, please?

OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. PITTS. Thank you, Mr. Chairman. Thank you for holding this hearing on the role of the Department of Interior in the Deepwater Horizon disaster. I would like to welcome Secretary Kempthorne and Secretary Norton.

The oil spill is indeed a tragedy in the history of our country. Not only have lives been lost, but massive amounts of oil have been leaked into the ocean, causing horrific effects, environmental and economic. It is imperative that we thoroughly understand what happened aboard Deepwater Horizon before, during and after the explosion so that it never happens again. Indeed, it is of the utmost importance that due diligence be done by those investigating the root causes of the Deepwater Horizon blowout explosion, and I am anxious to read the reports that have been commissioned, once they are finished.

I do have several questions for our witnesses today which focus on the offshore drilling moratorium and the re-organization of MMS. I would like to know whether the change up in MMS has helped or hindered MMS's ability to investigate and respond to the current crisis.

Regarding the moratorium, I was struck by Governor Jindal's editorial in the "Washington Post" this weekend where he cat-

egorized the moratorium as ill-advised and ill-considered. In addition, he said, "The moratorium will do nothing to clean up the Gulf of Mexico, and it already is doing great harm to many hard working citizens." I am interested to hear the administration's rationale for the original moratorium and their rationale for continuing to pursue this policy, even after it has been struck down in the courts. Louisiana and the coastal States are already facing a horrific disaster, and we should make sure this moratorium does not worsen the blow.

I look forward to hearing from our witnesses today, and I yield back.

Mr. STUPAK. Thank you, Mr. Pitts. Mr. Melancon, opening statement, please. Two minutes.

OPENING STATEMENT OF HON. CHARLIE MELANCON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. MELANCON. Thank you, Mr. Chairman, for holding this hearing today. I want to note that it has been 91 days since this disaster began, and Congress has held many hearings, and in recent weeks we have also started to move several pieces of relevant legislation. It was, and remains, important to ensure that the families of those 11 men have died on this rig have appropriate recourse and means to move on with their lives. It is impossible to say that they can ever be made whole again, and that is why I believe it is important for our work in Congress to focus on making sure an event like this never happens again.

I thank the Chairman for holding this hearing today. We had been drilling in the Gulf of Mexico for decades, and our coastal States are home to the most sophisticated energy exploration and production technologies in the world. But this tragedy has shown us that occasionally our innovation to produce can outpace our innovation to prevent and to respond to blowouts or other such accidents in the Gulf or any other waters.

The Minerals Management Service, MMS, or Bureau of Ocean Energy Management, as is now called, should play an important oversight role in the Gulf and other U.S. waters. It is the Department's responsibility to protect our people and the environment that we all call home. It has become painfully apparent that this function was performed inadequately in the lead-up to the Deepwater Horizon. Those deficiencies in the Department were deep-seated, and I applaud the Secretary and current employees of the agency for recognizing these weaknesses and working hard to correct them. I support the Secretary's request for an increase in the number of inspectors available to ensure that safety requirements are adhered to in the Gulf. These inspectors can work with the leading minds in offshore production to make certain that we still supply the country with a safe stable source of domestic energy.

But in closing, I would like to say that while Louisiana and other states face the ever encroaching tide of oil, I intend to make sure that another wave of economic devastation does not deliver a second strike to my state. The current deep water moratorium and de facto shallow water moratorium have already led to hundreds, if not thousands, of lost jobs, and threaten to decimate the rest of the

economy along coastal Louisiana, at least whatever economy there is left after the oil spill has done its damage.

These moratoriums are ill-advised, and in some cases could even add more risk to the environment than allowing the existing wells to be finished according to plan. Abandoning a well in the middle of the process has its own unique risks, and I believe that we must ask ourselves, does this moratorium make us any safer, and what is the real cost to our economy?

I thank you again for holding this hearing, and I look forward to discussing the issue of the moratorium and the drilling and cleanup in the Gulf of Mexico, and I yield back the balance of my time.

Mr. STUPAK. Thank you. Mr. Sullivan, opening statement, please.

OPENING STATEMENT OF HON. JOHN SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SULLIVAN. Thank you. Chairman Markey and Chairman Stupak, thank you for holding this hearing today to address the Department of Interior's actions regarding the Deepwater Horizon incident. I welcome Secretary Salazar to this hearing, as well as two previous Department of Interior Secretaries, Gale Norton and Dirk Kempthorne.

There is no question that the BP oil spill is a tragedy. In fact, it is the worst environmental disaster in our nation's history. I believe we must do everything in our power to find out what caused to explosion and to ensure nothing like this ever happens again.

Unfortunately, the administration is prematurely acting on this tragedy from a regulatory angle while the investigation to the disaster is not complete, which is why I am furious that the Department of Interior issued a new ill-advised moratorium on responsible offshore drilling after their previous two efforts failed in Federal Court. A Federal Judge even called the Obama Administration's efforts arbitrary and capricious before throwing out their moratorium.

This new moratorium risks killing between 20,000 and 50,000 jobs, and will increase our reliance on foreign oil at a time when our nation's economy can least afford it. During this hearing and the continuing investigation, it is important that we do not lose sight of the fact that 30 percent of the total U.S. production of crude oil comes from offshore. If we were to ban or restrict offshore drilling, we would simply increase our national dependence on foreign oil, which makes our nation less secure, and in the short term and long term it increases the cost of energy.

I am pleased to see Secretary Salazar before us today. Given the integral role of the Federal oversight in offshore drilling operations, it is critically important to get his take on what safety lapses occurred, and if any regulatory breakdowns happened that may have contributed to this terrible accident. I am also interested in hearing Secretary Salazar's justification for the continued moratorium on deep water drilling and permitting.

I look forward to the hearing and testimony of our witnesses, and I yield back the balance of my time.

Mr. STUPAK. Thank you, Mr. Sullivan. Mr. Gonzalez, opening statement.

Mr. GONZALEZ. Waive opening.

Mr. STUPAK. Mrs. Christensen, opening statement.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I too waive my opening statement. I would just like to welcome Secretary Norton and Secretary Kempthorne.

Mr. STUPAK. Ms. Harman, opening statement.

OPENING STATEMENT OF HON. JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. HARMAN. Thank you, Mr. Chairman, and welcome our witnesses.

When then Senator Kempthorne was in the Senate, he served on the Senate Intelligence Committee. I served on the House Intelligence Committee for eight years, and remember well the times we collaborated on bipartisan sensible policy to hopefully add to our intelligence capability in the effort to keep our country safe. I would like to think that if Senator Kempthorne were back in the Senate, or were to do something astonishing and become a House member and sit on this panel, he would want us to work on a bipartisan bicameral basis to solve this problem. And he is nodding his head, so he would. I welcome that, and I am delighted to see you again.

This is not about, or should not be about, the blame game, as many have said on both sides. I don't see it that way. I see this as a clear disaster, both in environmental and human terms, but one that we should come together to fix. This Committee has a long record of fixing tough problems and crafting regulatory schemes that work. And so, Mr. Chairman, I welcome the testimony of our witnesses, and I welcome Senator, Governor, Secretary, private citizen Kempthorne, and our other former Interior Secretary, to help us solve this problem.

Thank you, Mr. Chairman. I yield back.

Mr. STUPAK. Thank you. Mr. Hall for an opening statement, please.

OPENING STATEMENT OF HON. RALPH M. HALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. HALL. Thank you, Mr. Chairman. I am pleased that we are having this hearing today. I would also like to thank Honorable Gale Norton and Honorable Kempthorne. They are—and, of course, Secretary Ken Salazar.

After three full months we are still trying to figure out what the precise causes is of what happened on the Deepwater Horizon on April the 20th. The sun came up on April the 20th, May the 20th, June the 20th and now it is—today it is exactly, time-wise, July the 20th. And I know—I have in my area a friend whose twin brother's boy was one of the 11 that were lost there, so we felt the loss even down into the Northeast part of Texas.

But what really kind of unnerves me and gives me really problems is the President's first statements about this, when he said, have we come to this? An event that he is using to trash all energy thrusts. Not trying to redistribute the wealth, but apparently try-

ing to destroy the wealth if it is involved in the energy business. Not to give light to the situation, but to turn off the lights all over our nation. We need to be producing our own energy through the bill that was passed several years ago that included not just drilling, but all of the above as answers to disasters like the Deepwater Horizon tragedy that we have.

These unanswered questions should serve to advise against the temptations to overreact to the disaster, especially given the importance of the offshore oil and gas industry to the Gulf Coast economy and America's energy dependence goals. I am troubled by the rush to pass legislation on these. These bills will not solve the ongoing problems in the Gulf.

I do believe we need to re-evaluate the safety procedures and drilling procedures we have in place now to fix what went wrong and make sure it doesn't happen again, but that is what I am told these investigations are doing as we speak. And only once we know exactly what happened can we address the problem. We need to re-learn to prevent overreaction and over-regulating the oil industry before we know what went wrong.

It makes sense to continue pursuing improvements to safe and environmentally responsible drilling operations, as well as effective spill response systems, but to impose a drilling moratorium is just a knee jerk reaction that will not solve the problem, will not clean up the spill, and amplifies a lack of employment in the Gulf region. We should lift the moratorium immediately and get these folks back to work.

I thank you, Mr. Chairman, yield back my time.

Mr. STUPAK. Thank you. Mr. Butterfield, opening statement, please.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Thank you, Mr. Chairman, for convening this very important hearing, and I certainly thank the two witnesses for their testimony.

Mr. Chairman, news of the BP well may be improving, and the American people may be feeling better about this. The fact remains that the damage is done. While much of our attention has centered on the environmental impacts, let us not forget that the explosion killed 11 American citizens. As the facts continue to come into clear view, it appears that the company's bottom line—yes, its bottom line, not safety, not concern over its employees or environmental risk—was the primary concern. And so strong bipartisan regulations are necessary to ensure the public's trust, the ocean and everything beneath it, belong to the American people, not private corporations.

The agreement between the people and these corporations to permit offshore drilling is meant to guarantee the safety and security of these irreplaceable resources while furthering commerce. Unfortunately, the technology of deep sea drilling has far outpaced the rulemaking and oversight needed to provide the public with security and certainty. We must use today's hearing to clarify the policy choices made within the Minerals Management Service.

Without proper understanding of the guiding principles that took us to this point, we cannot be expected to write better policy for the future. This is an enormous tragedy that necessitates a thorough review, and, yes, overhaul of our regulatory strategy. Such an overhaul will once again allow the commerce to thrive, and environmental security to be secured for the trust of the American people.

Thank you, Mr. Chairman, and I yield back.

Mr. STUPAK. Thank you, Mr. Butterfield. Mr. Shadegg for opening statement.

OPENING STATEMENT OF HON. JOHN B. SHADEGG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. SHADEGG. Thank you, Mr. Chairman. I want to thank you for holding this important hearing. I want to thank all of our witnesses for appearing today, and especially Secretary Norton and Secretary Kempthorne.

It is critical to the nation, and critical both for environmental reasons and also for energy reasons, that we find out what went wrong. Some want to blame the lack of regulatory structure, the lack of laws, the lack of regulations. Others want to blame the lack of enforcement and concerns in that area. In fact, there may have been blatant violations of the law. Indeed, most of the evidence we have heard so far in this Committee has indicated that BP was a bad actor, that, in the drilling of this well and its construction and its operation, it ignored warnings time and time again and cut corners. We need to find out exactly what happened in this instance, and we need to make sure that no bad actors can ever engage in that kind of conduct again. That is essential not only for the protection of our environment, but also for the protection of our economy.

I think it is very important to point out that this is a process that is necessary for the sake of our future. It is not, and should not be, a blame gaming—or a blame assigning task. I agree with my colleague Mr. Doyle when he says there is plenty of blame to go around. That should not be the purpose of these hearings. We do not need to engage in finger pointing. What we need to do is to find out what went wrong. Unfortunately, some want to view this just as a crisis to be exploited. I believe it is a crisis to be addressed and resolved and to ensure that it never happens again.

I am deeply concerned about the moratorium that has been enacted, and I share the comments of many of my colleagues, Mr. Green, Mr. Melancon, and others on both sides of the aisle who are concerned about the moratorium which the administration has imposed. I believe that that moratorium was ill-advised, and I find it not surprising that it was rejected both by United States District Court and then by United States Circuit Court of Appeals. I am disappointed that the administration acted in enacting that initial moratorium on a report which Secretary Salazar apparently changed after he received recommendations from the scientists who wrote it. Indeed I have here a letter, which I will later put into the record, in which eight of the 15 scientists who work on the report say that it misrepresents their views.

While a moratorium of some sort may indeed have been necessary, it seems to me we should have been looking at a narrow

moratorium, one that only looked at bad actors, one that was not open ended in time, one that was focused on what things we knew then were wrong. And I look forward to the testimony of our witnesses so that we can try to discern what action we need to take to ensure this never happens again.

Mr. STUPAK. Thank you, Mr. Shadegg. Ms. Matsui, opening statement, please.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Mr. Chairman, for calling today's hearing. I would like to thank Secretary Salazar and former Secretaries Kempthorne and Norton for appearing before us as witnesses today.

I think we can all agree that the BP oil spill reminds us of the dangers of offshore drilling, as well as the severe environmental and economic impacts when something goes wrong. As this unprecedented disaster continues to unfold, it has raised significant questions about industry practices and regulatory standards relating to oil and gas drilling. In our ongoing investigations about the causes of this catastrophe, we learned that BP ignored important safety precautions and largely dismissed industry's best practices related to well design and other infrastructure that could have prevented such an accident.

We now know that there were issues with MMS and its oversight of offshore drilling activities. It is for these reasons that I have been pleased to see the Interior Department's recent overhaul of Federal regulations relating to oil drilling and exploration activities. And BP and the government need to ensure that the well is both properly and permanently plugged. Moreover, with the cost of the debacle now approaching \$4 billion, not including lives lost, livelihoods in peril and environmental depredation yet to be measured, we must make sure that nothing like this ever happens again. And within that context, Congress must continue to examine the Interior Department's role now and in the past in regards to the oversight and management of these critical regulatory bodies.

Thank you, Mr. Chairman, for calling today's hearing. I look forward to the testimonies of the witnesses before us, and I yield back the balance of my time.

Mr. STUPAK. Thanks, Ms. Matsui. Ms. Blackburn for opening statement, please.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. You know, as we have another of our hearings on what happened with the Deepwater Horizon, I think it is so important that we all remember and express our sympathies to the families that are in the Gulf region that have been so deeply impacted with this. I grew up in South Mississippi, and every time I call home, or I am talking with friends from college, or friends that I grew up with, or family members, I am again reminded of the very deep and personal impact,

whether it is the loss of life, the loss of jobs, the loss of faith in the institutions that we have, the loss of faith in an employer, the frustration with government agencies, the frustration with the slow response times.

I—there really is many lessons to be learned, and we need to be respectful of that process, so I thank you all for being here with us today as we continue to work through this process. And as you have heard from my colleagues, this is something we want to review. Not place blame, but get it right, and make certain that a steadfast process is in place.

Three questions I am going to have for the Secretary and for the two former Secretaries, whom we welcome. I want to get the—your thoughts on the new moratorium. What do you think this is going to do to save the jobs? How do you think this is going to help business investment? I see that as a bit counterintuitive when I am talking to those in the Gulf, so I want to look at that decision process and the expectations of that.

Secondly, I want to hear from the Secretary on why this Department has failed to comply with numerous requests by members of Congress for documents in response to the spill and the cleanup operations. And I say this because, due to the frustration with BP and with government agencies and with the—this administration, people have come to their member of Congress and have not received—we have not been able to get the information that need.

And third, I want to know, from the Secretary, how they think the new Department of—Bureau of Ocean Energy is going to police waste, fraud and abuse of Federal funds and actually conduct regulatory oversight.

Mr. Chairman, I thank you. I yield back.

Mr. STUPAK. Thank you. Ms. Schakowsky, opening statement, please.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you very much, Mr. Chairman, and I will be brief.

In the face of this unprecedented disaster, every branch of government must be part of the solution, cleaning up the mess, ending the flow, compensating adequately the people, and, of course, preventing this from happening again. And, of course, we have to understand what happened, and that is the focus of this hearing. And I appreciate so much the witnesses that are here today so we can look at the Department of Interior.

But I have to say, I haven't heard much about the responsibility of this Congress and this Committee. After all, we all did hear about the Inspector General's report September 8, 2008 about the staff at the—at MMS and the gifts and the gratuities, et cetera. We knew about that, and hindsight, of course, is 20/20, but the failures at BP were knowable as well. We had hearings about the refinery fire. And we also could have known that between 1985 to today the number of inspectors at MMS has risen only from 55 people in 1985 to 60 today, while the number of wells has increased from 65 to 602. So clearly we are going to have to have more inspectors, our

Committee's going to have to be more involved on an ongoing basis in oversight, and we are going to have to have the proper systems and the proper resources in place to get the job done. So this is clearly part of that investigation, but we have to see ourselves as an integral part of that—of the solution as well. And I thank you, Mr. Chairman, for making sure that that is the case.

I yield back.

Mr. STUPAK. Thank you. Mr. Scalise, opening statement. Two minutes please.

OPENING STATEMENT OF HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. SCALISE. Thank you, Mr. Chairman. No other state has been more affected by the BP disaster than my home state of Louisiana, and we battle the effects of the oil each and every day. But make no mistake. The effect of this disaster is reaching far beyond the Louisiana state line. The offshore jobs being lost right now are American jobs. In the marshlands where the oil continues to infiltrate, those are America's wetlands and our first line of defense against hurricanes and gulf storms.

We know that MMS, the federal regulator responsible for reviewing and approving offshore operations, just weeks before the explosion certified that the rig and the blowout preventer met the safety and environmental requirements and allowed the Deepwater Horizon to continue operating.

I have said for months now if the blowout preventer was intended to be the last line of defense, then President Obama's regulating agency was established as the first line of defense, and we should fully understand the role that they played in this disaster. As the people of Louisiana continue to fight the oil each day, President Obama and his administration are taking what is already a human and environmental tragedy and turning it into an economic tragedy by continuing to pursue a reckless and harmful moratorium on offshore drilling.

This drilling ban will result in the loss of over 40,000 high-paying Louisiana jobs and will leave America more dependent on Middle Eastern oil. Some suggest we have to choose between safety and jobs. This is a false choice. We can and must preserve the jobs while demanding safe energy exploration. The two can and should peacefully coexist.

Make no mistake. This ban has nothing to do with ensuring safety. Instead, it exploits this disaster in an effort to pursue a political agenda. As a matter of fact, a majority of the experts hand-picked by this administration to do an initial 30-day offshore safety report opposed this moratorium and have said that six-month drilling moratorium will actually reduce long-term safety.

While some might claim that a pause on drilling is a reasonable step to take, make no mistake. There is no such thing as hitting some magical pause button on offshore drilling by issuing a reckless moratorium. If this happens, you will reduce safety in the gulf because the most technologically advanced and safest rigs will leave first. And the most experienced crews that work on these rigs who have decades of industry experience will be the first to leave,

seeking work elsewhere. And since our country's demand for oil has not dropped, more oil will be imported on tankers, which account for 70 percent of all oil spills.

In conclusion, instead of exploiting this disaster, the President must work with us to fight the oil, improve the safety of offshore drilling and put a halt to further consideration of a moratorium that will reduce safety, kill jobs, and leave us more dependent on foreign oil. Thank you, and I yield back.

Mr. STUPAK. Ms. Sutton, opening statement please.

**OPENING STATEMENT OF HON. BETTY SUTTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Ms. SUTTON. Thank you, Chairman Stupak and Chairman Markey, for holding this hearing. The explosion on Deepwater Horizon resulted in the deaths of 11 workers and injured many additional workers. And since that time, we have witnessed the worst environmental disaster in our nation's history.

Recent news reports state that BP had the Deepwater Horizon rigs failed blowout preventer was modified in China, and other shortcuts were taken to maximize profits at the expense of safety.

And the costs have been great. BP set aside \$20 billion for compensation, and the federal government has billed BP hundreds of millions of dollars for cleanup costs. And according to the administration, approximately 40,000 personnel are involved in the cleanup and the protection of the shoreline and the wildlife.

Over 6,400 vessels are assisting with the cleanup, and while the cleanup continues, approximately 84,000 square miles of federal waters in the Gulf of Mexico remain closed. Hardworking Americans are out of work and applying for compensation at BP. And three months later, a cap on the oil well is finally in place. Although leaks and seepage have been detected.

The costs have been great indeed and have highlighted the costly need to ensure that offshore drilling operations are safe. We cannot afford an additional oil spill disaster. Significant steps have been taken, including dividing the Mineral Management Service into three separate organizations to prevent conflicts of interest going forward.

But as we have witnessed over the last three months, the costs of the status quo have been far too great, and we must take appropriate action to make sure that this type of tragedy and its aftermath do not happen again. So thank you for being here.

Mr. STUPAK. Thank you, Ms. Sutton. Our last opening statement, Mr. Braley of Iowa please.

Mr. BRALEY. Thank you, Mr. Chairman. I will waive my opening.

Mr. STUPAK. OK, that concludes the opening statement by all members of our Oversight Investigation Subcommittee and the Energy and Environment Subcommittee. We have our first panel of witnesses before us. We thank them for being here. We have the Honorable Gail Norton, who was the Secretary of Interior from 2001 through 2006. And we have the Honorable Dirk Kempthorne, who was Secretary of the Interior from 2006 to 2009. Thank you for being here.

Secretary Norton and Secretary Kempthorne, we appreciate you being here, and you have appeared here voluntarily. And once

again we appreciate that. It is the policy of this subcommittee to take all testimony under oath. Please be advised that you have the right under the rules of the House to be advised by counsel during your testimony. Do either of you wish to be represented by counsel? Secretary Norton? Secretary Kempthorne? OK, both indicate no. Let the record reflect the witnesses replied in the affirmative. You are now under oath. We begin with 5-minute opening statements. And, Secretary, if you don't mind, we will start with you. Secretary Norton, opening statement please.

[Witnesses sworn.]

TESTIMONY OF THE HONORABLE GALE NORTON, SECRETARY OF THE INTERIOR, 2001-2006; AND THE HONORABLE DICK KEMPTHORNE, SECRETARY OF THE INTERIOR, 2006-2009

TESTIMONY OF GALE NORTON

Ms. NORTON. Thank you. Mr. Chairman and members of the committee, I am deeply saddened and appalled by the Deepwater Horizon disaster. It is vitally important that Americans determine the causes of the accident and that we take steps to ensure that offshore production can continue safely. The explosion and the oil spill have been a tragic disaster with unprecedented impact on the affected families, communities, and ecosystems.

It is disturbing to watch the damage unfold, and my thoughts have been with the people of the gulf region. As I consider the Deepwater Horizon disaster, I am constantly reminded of my earliest exposure to accident investigation. My father who devoted his career to aviation was occasionally involved in investigating the causes of crashes of small planes. I learned about the National Transportation Safety Board and its process for unraveling accident causation, then feeding that information back to manufacturers and pilots.

As with the devastating aircraft crash, we need to objectively seek the truth of what happened in the Gulf of Mexico so we can learn lessons that may prevent future tragedies. All those affected deserve an objective systematic analysis of the problems. Emotional and hasty reactions should not form the basis for long-term policy, whether we are talking about flying in airplanes or tapping offshore resources. Getting the balance right between risks and benefits requires knowledge and professional inquiry.

It has been nine years since I took the helm at the Department of the Interior. I am not as conversant about offshore issues as I once was, and I will only mention a few things in my experience at this point in time.

The importance of domestic energy production was brought shockingly into focus by the terrorist attacks of September 11, 2001. Until then, it has been risky to rely on unfriendly nations as the source of so much of our oil supply. But the attacks transformed that risk into a matter of grave national security. Offshore petroleum's role as the source for roughly a third of American production gave it an important focus.

Without question, the most powerful OCS experience for me was the 2005 hurricane season. Over 4,000 offshore platforms were operating in the Gulf of Mexico when Hurricanes Rita and Katrina

pummeled the area. Safety and spill prevention measures were put to a severe test. Amazingly, despite two category-five hurricanes, the amount of oil spilled from wells and platforms was small. The shutoff valves located at the sea floor operated as intended. They prevented oil from leaking into the ocean floor when the platforms were destroyed.

There was one weakness in that industry's strong hurricane performance. The hurricanes dislodged 19 mobile drilling rigs from their moorings. Once cut loose, they drifted for miles, dragging pipelines behind them and endangering other platforms with which they might collide.

The amount of oil released was relatively small, and a significant problem had been revealed. I brought MMS and industry together to figure out a solution. After my departure from Interior, MMS completed this process and strengthened its mooring standards. We found out about the problem, and we solved it.

There has been a great deal of media attention to the ethics of the Minerals Management Service. It pains me to see the vilification of MMS and its employees. I want to speak in defense of the vast majority of hard-working and professional men and women in the Minerals Management Service.

As revealed by inspector general reports after I left the department, a handful of employees blatantly violated conflict of interest requirements. Their actions were wrong and unacceptable, but MMS has over 1,700 employees. The very few misbehaving employees have been blown out of proportion to create a public image of the MMS as a merry band of rogue employees seeking favor from industry. The public servants I encountered were entirely different.

I will never forget a meeting with the MMS employees after Hurricanes Rita and Katrina. They were in temporary headquarters because their New Orleans headquarters was no longer available. They were crammed into a couple of rooms, makeshift desks, working hard to keep up with all of the demands that were coming through at that time, approving pipeline repairs, addressing environmental and safety issues, expediting all of the requests, trying to regulate with common sense in incredibly difficult circumstances.

These employees coped with submerged homes, families who were in limbo and essentially homeless, but they were working out of dedication, serving their country, serving their gulf coast communities. These are the people who represent the Minerals Management Service to me.

Industry and offshore energy supporters were always conscious of the political reaction and industry setbacks occasioned by the 1969 Santa Barbara oil spill and reinforced by the Exxon Valdez. No one wanted to repeat those failures, so industry had an incentive to maintain strong environmental protections. That, coupled with regulation, encouraged careful planning and adequate safety precautions. That formula worked well.

Three months ago and for the many years proceeding, the regulatory and response structure was based on a past history of success. Since 1980, the largest spill from a blowout in federal waters was only 800 barrels. All of the plans in both Republican and

Democratic administrations were adopted against this backdrop of safety.

Unfortunately, now the federal government must establish future policies in the aftermath of a worst-case scenario beyond anything most people contemplated.

I hope Congress will follow the process that has served us so well in the aviation field, study what caused the accident and then adopt new or additional procedures on that basis.

Offshore regulators need to have a good working relationship with industry to understand what they are regulating and to avoid imposing one-size-fits-all rules that ultimately decrease safety. For half a century, the Gulf of Mexico has produced a third of our nation's oil, a huge economic benefit to America with an impressive safety record.

The federal government should not throw out a system that was so successful for so long without understanding where the problems really are. Thank you.

[The prepared statement of Ms. Norton follows:]

**Statement of Gale Norton
Secretary of the Interior 2001-2006
Before the House Energy and Commerce Subcommittees on
Energy and Environment and
Oversight and Investigations
July 20, 2010**

I am deeply saddened and appalled by the Deepwater Horizon disaster. It is vitally important that Americans determine the causes of the accident, and that we take steps to ensure offshore production can continue safely. The explosion and oil spill have been a tragic disaster, with unprecedented impact on the affected families, communities, regional economy, and ecosystems. It is disturbing to watch the damage unfold, and my thoughts have been with the people of the Gulf Coast region.

I served as Secretary of the Interior from January 2001 until March 2006. The following information summarizes some of my experiences and observations regarding offshore energy production¹. Although I have reviewed many publicly available documents in preparation for this hearing, I am not as conversant about offshore issues as I was when I was being regularly briefed by those with expertise and direct responsibility.

As I consider the Deepwater Horizon disaster, I am constantly reminded of my earliest exposure to accident investigation. My father, who devoted his career to aviation, was occasionally involved in investigating the cause of small plane accidents. I remember going with him a few times to see aircraft wreckage and hearing how the subtle details of shattered metal could unveil what happened. The National Transportation Safety Board has a well-established process for unraveling the mysteries of accident causation, then feeding that information back to manufacturers, airlines and pilots to avoid a repeat of the same mistake.

Just as occurs with a devastating aircraft crash, we need to objectively seek the truth of what happened in the Gulf of Mexico so we can learn lessons that may prevent future tragedies. The Deepwater Horizon took 11 lives and has slowly unfolded to impact the lives and livelihoods of many, many more people. All the individuals and families affected deserve an objective, systematic analysis of the problems. Emotional and hasty reactions should not form the basis for long-term policy. Whether we are talking about flying in airplanes or tapping offshore

¹ This testimony represents my own perspective, and does not necessarily reflect the views of any other person or organization. It has been over four years since I left the Department of the Interior. This testimony has been prepared based on my recollections, but without benefit of documents and staff at Interior. It is quite possible that I do not fully recall the details of events or policies, or the exact sequence of events.

resources, getting the balance right between risk and benefits requires knowledgeable, professional inquiry.

Offshore energy issues are emotionally charged. On the one hand, the media coverage of BP's spreading brown muck of oil, coating wildlife and marshes and once-pristine beaches, creates a powerful argument against future drilling. On the other hand, the economy of the Gulf Coast, as well as the rest of our country, and America's energy security all rely on continued development of offshore energy.

The oil industry people involved with offshore production and the government officials involved with offshore regulation have long recognized that a significant accident could threaten human life, challenge the financial future of any company involved, and risk loss of the fragile political consensus allowing offshore energy expansion. This widely understood need for caution led to a decades-long record of safe performance. But even with that understanding, when the dreaded spill finally came, it was a worst case far beyond expectations. It has been a "perfect storm."

During my time at Interior, I observed many challenges for managing offshore production. Some were rare events like hurricanes Rita and Katrina, while others were ongoing aspects of providing meaningful oversight in a time of rapid technological change. The following discussion highlights some of my key experiences.

When the Bush Administration took office, we were faced with "the most serious energy shortage since the oil embargoes of the 1970s" with many families paying energy bills two to three times higher than a year previously.² We recognized the need for a comprehensive energy policy. I was part of the National Energy Policy Development Group, which recommended that America pursue a three-part strategy of enhancing energy conservation, expanding renewable energy opportunities, and developing traditional energy sources. The recommendations of this group formed the backbone of the Energy Policy Act of 2005. The energy task force report included recommendations on Outer Continental Shelf development that included addressing regulatory delays and uncertainties, completing the next 2002-2007 OCS Lands Act five-year plan, and holding lease sales on a predictable basis. The report noted that "exploration and production from the OCS has an impressive environmental record. For example, since 1985, OCS operators have produced over 6.3 billion barrels of oil and have spilled only 0.001 percent of production."³

We did not pursue an uninterrupted expansion of offshore development, however, as exemplified by our actions on Lease Sale 181. The Clinton Administration, in its five-year OCS

² National Energy Policy Development Group, National Energy Policy Report, May 2001, at viii.

³ Id. at 5-7.

plan for 1997-2002, had scheduled Lease Sale 181 as the first lease sale in many years in the eastern Gulf of Mexico. This sale would have allowed drilling within 16 miles of the Florida Panhandle. On July 2, 2001, I announced that the Bush Administration was reducing the area available in that sale, so that all eastern Gulf leasing would remain at least 100 miles from the Florida coastline. President Bush also took formal action to prevent leasing in the Straits of Florida. We incorporated this reduced Gulf acreage into the 2002-2007 OCS five-year plan. The Gulf of Mexico Energy Security Act of 2006 later expanded this area southward, while maintaining the setback from the Florida coast.

Similarly, we addressed the issue of long-standing leases in the Destin Dome OCS region, an area near the Florida coast expected to be rich in natural gas. The state of Florida objected to those federal leases as inconsistent with their Coastal Zone Management Act plan, and the lease-holding companies filed suit in 2000 to force drilling to progress. We resolved the litigation by buying out leases for \$115 million so that exploration and production would not occur in an area where the state was so strongly opposed.

The importance of domestic energy production was brought shockingly into focus by the terrorist attacks of Sept. 11, 2001. Until then, it had been risky to rely on unstable and unfriendly nations as the source of so much our oil supply, but the profound geopolitical implications of the attacks on New York and Washington transformed that risk into a matter of grave national security. Our strategies for improving domestic energy production did not change significantly, but they had a new urgency on all fronts. Over the next several years, we streamlined onshore energy permitting, added staff to handle the increased workload, and issued ten times as many permits for renewable energy development as the previous administration.⁴

As to offshore petroleum, its role as the source for roughly a third of domestic oil production gave it an important focus. The Minerals Management Service⁵ was the agency responsible for offshore leasing and regulation under the Outer Continental Shelf Lands Act, as well as onshore and offshore mineral revenue management. During my term, MMS had slightly over 1700 employees. In preparation for this hearing, I briefly reviewed the annual executive branch budget requests for MMS funding. The funding levels remained relatively steady from 2001 to 2006, with some targeted increases in the Gulf of Mexico regulatory program.

⁴This calculation, done by Interior staff circa 2005, was based on onshore wind, solar and geothermal permits. In addition, the Energy Policy Act of 2005 gave the Minerals Management Service authority to regulate offshore renewable energy projects. I welcomed this opportunity and MMS published an Advanced Notice of Proposed Rulemaking in December 2005.

⁵ Secretary Salazar recently reorganized and renamed the MMS. However, because this testimony focuses on Interior's activities from a historical perspective, for clarity and consistency I will refer to the organization as MMS.

The MMS action most relevant to today's hearing was the adoption of final rules in 2003 addressing, among other things, blowout preventers ("BOPs") and cementing processes. 68 Fed. Reg. 8402 (Feb. 20, 2003).⁶ These rules were proposed in 2000, 65 Fed. Reg. 38453 (June 21, 2000), and several studies were done to provide the scientific and engineering basis to determine whether the rules were adequately protective. Based on the final Federal Register notice, it appears that only 11 entities submitted comments, all from within the energy industry. The final rules differed little from the originally proposed version. MMS rejected several energy industry requests to change the rules from those originally proposed. See 68 Fed. Reg. at 8404-8405. The rule required the BOP system to include at least four remote-controlled devices. The 2003 rule added a provision requiring operators to show that the blind-shear rams must be capable of shearing the drill pipe that would be used. 30 C.F.R. 250.416 (e) and 250.441 (b). A 2004 study specifically addressing performance of shear ram blowout preventers with the heavier pipes used in deepwater situations reinforced the need for the 2003 regulation.⁷ The regulation also included a broad performance based standard that operators must design, install, maintain, test and use the BOP system to ensure well control. 30 C.F.R. 250.440. It is my understanding that these 2003 rules were still in effect at the time of the BP blowout. From media reports, it appears these rules may have been violated in the days leading up to the accident.

Without question, the most powerful OCS experience for me was the 2005 hurricane season. Over 4000 offshore platforms were operating in the Gulf of Mexico when hurricanes Rita and Katrina pummeled the area. Safety and spill prevention measures were put to a severe test. As

⁶ I did not recall the specifics of these regulations before I began preparing for this testimony, and I am certainly not an expert in the technical aspects of petroleum technology, so this paragraph is based on a reading of the Federal Register notices.

⁷ Secretary Salazar's report to President Obama following the Deepwater Horizon incident specifically addressed these regulations and studies:

These studies have examined, among other things, blind shear ram capabilities, back-up BOP systems, and drilling and cementing design and operations, which have informed the setting of Department regulations. For example, the 1999 *Reliability of Subsea BOP systems for Deepwater Applications* (study number 319) recommended modifying testing regulations to ensure that the testing of variable pipe rams appropriately account for the diameters of all the sizes of pipe used in a given drilling project. The Department used this recommendation in revising its 2003 final drilling regulations.

The 2002 *Review of Shear Ram Capabilities* (study number 455) identified issues associated with the cutting power of shear rams The Department adopted the report's recommendation that the BOP must be capable of shearing pipe planned for use in current drilling programs

The 2004 *Evaluation of Shear Ram Capabilities* (study number 463) expanded on the analysis The results of this study confirmed the regulatory decision to require operators to submit documentation that shows the shear rams are capable of shearing the pipe in the hole under maximum anticipated surface pressures.

Increased Safety Measures for Energy Development on the Outer Continental Shelf (May 27, 2010) at 8.

one important precaution, all of the platforms in each storm's path were evacuated in advance, and there was no loss of human life. I remember hearing reports that platforms clocked winds at over 170 miles an hour. Fish were later found lodged in platform structures far above the waterline. A number of mostly older platforms were destroyed by the storm's fury. Amazingly, despite the strength of the hurricane, the amount of oil spilled from wells and platforms was quite small. The shut-off valves located at the sea floor operated as intended. They prevented oil from leaking into the ocean even when the platforms were severely damaged. The spill prevention techniques upon which industry and government relied passed the hurricane test.

There was one weakness in the industry's strong hurricane performance. The hurricanes' forces were enough to dislodge 19 mobile drilling rigs from their moorings.⁸ Once cut loose, they drifted for miles, dragging pipelines behind them and endangering other platforms with which they might collide. The amount of oil released was still relatively small, but a significant problem had been revealed. Shortly thereafter, I convened a conference of industry and agency regulators to discuss how drilling rig moorings could be strengthened. My recollection is that there was agreement on the need for action and the industry participants supported more stringent standards. After my departure from Interior, MMS completed this process and significantly strengthened its mooring standards to avoid future occurrences.

MMS Employees

There has been a great deal of media attention to the ethics of MMS. It pains me to see the vilification of MMS and its employees. I want to speak in defense of the vast majority of hard-working and professional men and women of the Minerals Management Service.⁹ As revealed by Inspector General reports after I left the department, a handful of employees blatantly violated gift limitations and other conflict of interest requirements. Their actions were wrong and unacceptable. These employees were disciplined, and I join in condemning their misconduct. But MMS has over 1700 employees. The very few misbehaving employees have been blown out of proportion to create a public image of the MMS as a merry band of rogue employees seeking favors from industry. The public servants I encountered were entirely different from that impression.

The International Regulators Forum, composed of government offshore regulators from around the world, named its global offshore safety award for Carolita Kallaur, who headed MMS

⁸ This problem occurred on a smaller scale during Hurricane Ivan in 2004, and MMS had already started studying mooring systems of mobile offshore drilling units.

⁹ Whether individual MMS employees made mistakes in approving BP plans or actions is a separate question. My point is to address the broad-brush mischaracterization of MMS conduct.

offshore programs until her death in 2003. This shows the high regard internationally for MMS professionalism and safety leadership.

Even Earl Devaney, the Interior Inspector General who investigated and reported on misconduct in MMS offices, said that "99.9 % of DOI [Department of the Interior] employees are ethical, hard-working and well-intentioned." Devaney Testimony before the House Committee on Natural Resources, September 18, 2008.

I will never forget meeting with MMS employees after hurricanes Rita and Katrina had devastated the Gulf Coast. The New Orleans staff had relocated to a temporary headquarters, with dozens of employees in a few rooms, sharing makeshift desks of folding tables and any other flat surface they could find. They were working around the clock to fulfill their role in hurricane recovery -- compiling damage and repair information, addressing safety issues and environmental concerns, approving pipeline repairs, expediting requests for temporary barging of oil, and applying common sense to regulate appropriately in incredibly difficult circumstances. These employees told me of coping with submerged homes, families in limbo and essentially homeless, friends who were missing, shattered lives. But they were working out of dedication, serving the country, serving their Gulf Coast communities. These are the people who represent the MMS to me.

Future

Based on media reports, it appears that decisions made by BP in the last days and hours before the blowout were the primary cause of the blowout. If regulations on the books and industry best practices had been followed properly, there may not have been a blowout. But that is clearly an open question at this point, and one that deserves to be thoroughly examined.

As someone who was not personally involved in those last few hours, or even those last few years, but who was involved with the regulatory program, perhaps I can provide some longer term perspective. As I noted above, industry and offshore energy supporters were always conscious of the political reaction and industry setback occasioned by the 1969 Santa Barbara oil spill, reinforced by the Exxon Valdez. No one wanted to repeat those failures, so industry had an incentive to maintain strong environmental protections. Santa Barbara's example of the fragility of support for offshore production, coupled with regulation, was expected to be enough incentive to assure careful planning and adequate safety precautions. That formula worked well. Three months ago and for the many years preceding, the regulatory and response structure was based on a past history of success. Since 1980, the largest spill from a blowout in

federal waters was 800 barrels.¹⁰ All of the plans under both Republican and Democratic administrations were adopted against this backdrop of safety.

Unfortunately, human activity is not prone to perfection. Now the federal government must establish future policies in the aftermath of a worst case scenario beyond anything most people contemplated. What we can do is recognize and learn from our mistakes. I hope Congress will follow the process that has served us so well in the aviation field: study what caused the accident and then adopt new or additional procedures, standards, laws and regulations, if needed, on that basis. I urge you to use the National Transportation Safety Board as a model to objectively investigate and learn from this accident. Investigators should be people with true technical expertise and relevant experience.

I urge Congress and regulators to respond in a balanced way: take strong action to ensure safety measures are in place and that industry complies. Devote more resources to research and preparedness for oil spill response. But do not impede America's energy security or destroy processes that have worked well in the past.

Offshore regulators need to have a working relationship with industry to understand what they are regulating and to avoid imposing one-size-fits-all rules that may ultimately decrease safety. Industry is at the technological cutting edge, and it will take a great deal of skill and a good flow of information for regulators to find the right balance. Government regulators must also have the relevant skills and capacity to provide proper oversight and enforcement.

Pollution-control regulation has evolved from an approach of mandating specific equipment to a more flexible performance-based model. Policymakers should be mindful in reevaluating offshore regulation to continue encouraging innovation. The best safety and environmental protection improvements will come with technological development.

Policymakers should make sure standards are clear and predictable so companies can invest the billions of dollars needed for each new offshore platform. Companies must contract many months and even years in advance for the personnel and equipment for a major project. Delays can undermine financing, resulting in lost jobs and higher energy costs. Our country needs action that will solve the problems while recognizing the importance of offshore production to our nation's economy.

America has been at the leading edge of offshore safety and environmental protection. We have suffered a devastating setback. Lives have been lost. Whole communities have been affected. The environment has been seriously impacted. We should strive to learn from the mistakes and make sure they never happen again.

¹⁰ American Petroleum Institute, Analysis of U.S. Oil Spillage, API Publication 356, August 2009, at 25.

Mr. STUPAK. Thank you. Secretary Kempthorne, opening statement please.

TESTIMONY OF DIRK KEMPTHORNE

Mr. KEMPTHORNE. Mr. Chairman, thank you very much to all members of the committee. I am Dirk Kempthorne, and I have testified before Congress as a United States senator, as the governor of Idaho, as a cabinet member. This is my first time testifying that I have been in the elevated position as a private citizen.

My responsibilities as secretary ended at the Department of Interior 449 days ago. Ninety days ago, the BP oil spill exploded into the nation's consciousness. The accident of BP's Deepwater Horizon oil rig caused 11 families to bury their sons, husbands, and fathers. The accident injured 17 workers. It forced fishermen and others to lose their livelihoods. It engulfed the Gulf of Mexico with oil slicks that now are close to beaches and marshes in the bayou.

Out of respect for Congress where I served for six years and out of respect for these two committees, I accepted your request that I talk with you about the tragic oil spill. In light of leaving Interior 18 months ago and without access to Interior staff or briefing documents, I preface all of my remarks with the understandable caveat, as I recall. Until now, I have declined multiple media requests to comment in the belief America was best served by letting those in charge to stay focused on job number one of stopping the oil spill.

As you can appreciate, I cannot provide any insight about the exploration plan and the many dimensions of the application for the permit to drill which culminated in the Deepwater Horizon accident because these were evaluated and approved after I left Interior.

For 40 years prior to this accident, the Interior Department and the industry it regulated had a remarkable record of success in safely developing and producing energy from oil platforms and drilling rigs.

Secretary Norton and I took note of this remarkable safety record and so did our successor, Secretary Salazar. Before the BP oil spill, Secretary Salazar on March 31 of 2010 announced he had revised the 2007/2012 five-year plan. This plan called for developing oil and gas resources in new areas while protecting other areas. On the issue of safety, Secretary Salazar said, and I quote, "Gulf of Mexico oil and gas activities provide an important spur to technological innovation, and industry has proven that it can conduct its activities safely." That statement, Mr. Chairman, is consistent with my own impressions while serving as the secretary of the Interior.

By requesting me to attend, you are asking about the record of the Bush administration on offshore energy development. I offer these perspectives from my experience as secretary. This hearing gives me an opportunity to address an issue about the ethical culture at the Minerals Management Service. Let me address the issue of ethics head on.

Shortly before leaving office, I was summoned to Congress to testify on inspector general reports about unethical conduct within the Minerals Management Service. On September 18, 2008, I unequivocally told Congress that the conduct disgusted me and there would be prompt personnel action. Because that action was underway, I

was advised by lawyers at the Department of Interior that I could not discuss it in detail. Now I can, including the fact that we fired people.

It should be part of this hearing record that Johnny Burton, who had been director of MMS during Secretary Norton's tenure, has publically stated upon hearing about this conduct, that she personally requested the IG to investigate. It should also be part of this hearing record that those involved were fired, retired, demoted, or disciplined to the maximum extent permissible.

The facts are that all of these actions were taken before I left office. I would add a statement that Inspector General Earl Devaney said in a testimony before the House Natural Resources Committee on September 18, 2008, and I quote, "I believe that the environment of MMS today is decidedly different than that described in our reports." And I agree with the IG that 99.9 percent of DOI employees are ethical, hard-working, and well-intentioned.

Mr. Chairman, members of the committee, they are part of your team. There are good people there.

I received another report critical of the MMS Service Royalty program. Again I took action. The current administration puts stock in the Don Carey report reviewing MMS. I would like the record to note that I personally called former senators Jake Garn, a Republican, and Senator Bob Carey, a Democrat, and asked them to conduct a bipartisan, independent and thorough examination of this program with no preconceived outcomes. They did with other talented experts.

They issued a report that recommended 110 actions to improve the program, including, as I recall, 20 recommendations directly from the inspector general's office. We methodically implemented all of the recommendations that could be done while we were still in office, which, as I recall, was about 70.

Mr. Chairman, I would ask that the testimony of Inspector General Earl Devaney and I gave to Congress in September of 2008 be made part of the record as well as the Don Carey report.

Mr. STUPAK. Without objection, it will be.

[The information appears at the conclusion of the hearing.]

Mr. KEMPTHORNE. Also, while I was Secretary of the Interior not once but twice increased royalty rates companies paid for energy produced for deepwater offshore leases. In 2007, we increased the royalty rate from 12.5 percent to 16.67 percent. In 2008, the royalty rate was again increased to 18.75 percent. This is a 50 percent increase in royalty rates paid by oil companies for the right to produce oil and gas from federal waters.

I can report to you that these increases came as a result of a conversation I had with President George Bush. He believed and I agreed that a 12.5 percent royalty rate was too low. I would also note that not once but twice budgets that I submitted called for Congress to repeal sections of the 2005 Energy Policy Act that provided additional price incentives for deepwater oil and gas development.

As secretary, I was required by the Outer Continental Shelf Lands Act to issue a five-year plan covering the years 2007 to 2012 for offshore oil and gas development. Once we finished that plan, it was required by law to be submitted to Congress for a 60-day

review. Congress had the power to reject that plan. Congress did not. In fact, as I recall, I don't think any legislation was introduced calling for the plan to be rejected. The plan is here.

This plan was developed after extensive consultation with members of Congress, state and local official, industry, and environmental organizations. We received comments from more than 100,000 interested citizens. 75 percent of the comments received from the public supported some level of increased access to the domestic energy resources of the outer continental shelf.

My five-year plan, Mr. Chairman, was met with both draft and final environmental impact statements. A relevant fact is that these EISs, along with environmental assessments and oil spill response plans, were based on the probability that a significant oil spill was small. The environmental impact statement used historical information and models. When the 2007 and 2012 five-year plan was written, there had not been a major oil spill in 40 years. One very real consequence of the Deepwater Horizon accident is that these historical assumptions will be forever changed.

An additional significant development was taking steps to implement congressional direction and further the work that Secretary Norton set in motion to development offshore wind, wave, and ocean current strategies.

Mr. Chairman, I would conclude with two thoughts. One, as you appropriately deal with this issue, and I appreciate the tone which has been set by so many of the members of this committee, that this is an opportunity to bring out issues that are before us, to find out what worked, what did not work, and what is the path forward.

But I would encourage all officials working on this to keep in mind the great resources that you have with the states with the governors in those gulf coast states, proven leaders who are pragmatic and want to be partners. They also have solutions to this.

And second, the consequence of the Deepwater Horizon accident is that it will forever change the offshore energy industry. Never again will a cabinet secretary take office and be told that more oil seeps from the seabed than has been spilt from drilling operations in U.S. waters. Never again will decision makers not include planning for events that might be low probability events but which in the unlikely event they occurred, would be catastrophic. Thank you, Mr. Chairman.

[The prepared statement of Mr. Kempthorne follows:]

**Testimony of
Dirk Kempthorne
Former Secretary of the U.S. Department of the Interior**

**The Subcommittees on Oversight and Investigations and
Energy and the Environment
July 20, 2010**

Mr. Chairmen, I am Dirk Kempthorne. I have testified before Congress as a United States Senator, as the Governor of Idaho and as a Cabinet Secretary. This is my first time testifying in the elevated status of a private citizen. I am also the former Secretary of the Department of the Interior. My responsibilities as Secretary ended 449 days ago.

Ninety days ago the BP oil spill exploded into the nation's consciousness. The accident on BP's Deepwater Horizon oil rig caused 11 families to bury their sons, husbands and fathers. The accident injured 17 workers. It forced fishermen and others to lose their livelihoods. It engulfed the Gulf of Mexico with oil slicks that now tar coastal beaches and marshes of the bayou.

Out of respect for Congress where I served for six years, I accepted your request that I talk with you about this tragic oil spill. In light of leaving Interior 18 months ago and without access to Interior staff or briefing documents, I preface all of my remarks with the understandable "as I recall" caveat.

Until now, I have declined multiple media requests to comment in the belief America was best served by letting those now in charge to stay focused on job number one of stopping the oil spill.

As you can appreciate, I cannot provide any insight about the exploration plan and the many dimensions of the application for the permit to drill which culminated in the Deepwater Horizon accident because these were evaluated and approved after I left Interior.

As you know, almost one-third of the Nation's domestic energy production is generated from Interior managed lands and waters. For 40 years prior to this accident, the Interior Department and the industry it regulated had a remarkable record of success in safely developing and producing energy from oil platforms and drilling rigs that fueled American homes, cars, and factories. More than 223 trillion cubic feet of natural gas and 41 billion barrels of oil from 8,200 active mineral leases were produced from America's federal offshore waters during this time.

Before the Deepwater Horizon accident, there was a 40-year record of environmental protection in offshore drilling. The last major oil spill from a platform occurred in 1969 near Santa Barbara, California. As the Interior Department had stated – on various occasions – before the BP accident, “natural cracks in the seabed cause oil seeps 150 times larger in volume than oil spilled due to OCS oil and gas activities.” This record of environmental protection occurred when Republicans and Democrats at controlled the Administration and the Congress.

Secretary Norton and I took note of this remarkable safety record and so did our successor, Secretary Salazar. Before the BP oil spill, Secretary Salazar on March 31, 2010, announced he had revised the 2007-2012 five year plan. This plan called for developing oil and gas resources in new areas while protecting other areas. On the issue of safety, Secretary Salazar said and I quote "Gulf of Mexico oil and gas activities provide an important spur to technological innovation and industry has proven that it can conduct its activities safely."

That statement is consistent with my own impressions while serving as the Secretary of the Interior.

Mr. Chairmen, this raises an important point. At an earlier hearing, Members of Congress and Americans unfortunately watched officers from the three companies involved in the Deepwater Horizon accident point fingers of blame at each other for causing the accident. Let's not repeat that spectacle.

All of us – present and former Administration officials, Governors, Members of Congress and citizens – never contemplated an accident of this magnitude could ever happen. Had we thought so, I am confident that both the Executive and the Legislative Branch would have worked on a bipartisan basis to prevent it.

One indication that an oil spill of this magnitude could never have been imagined was the Gulf of Mexico Energy Security Act of 2006. That law contains no reference to needing to do additional work to prevent oil spills or expand capability to respond to oil spills. I don't ever recall concerns raised at my confirmation hearing or in my subsequent testimonies before Congress, or in reports from the Inspector General or from the news media that an oil spill of this magnitude could occur.

In fact, the opposite occurred. I recall being pointedly asked during Congressional hearings why Interior wasn't doing more to expand offshore energy development, not less. In part this concern was driven by the then soaring \$4 a gallon gasoline prices.

As Secretary, I toured an operating Gulf coast oil rig. I recall being briefed about shut-off valves on the ocean floor that would stop oil spills in an emergency. I was impressed by the pride and professionalism of oil rig workers, as well as the complexity of their task and their commitment to human safety and environmental protection.

Their commitment to safety and environmental protection was vividly reinforced by the fact that 36 major tropical storms and fierce hurricanes interrupted all or part of the Gulf Coast during the eight years of the Bush Administration. These storms carried the force of 200 mile-per-hour winds and 100-foot waves.

As Secretary, I personally experienced eight of those tropical storms and hurricanes. I recall receiving reports of the number of drilling rigs being evacuated, the amount of oil production being stopped and rigs being damaged. I don't recall a single instance of reports of loss of life, shut off valves not working, or major oil spills even when fierce hurricanes damaged or destroyed facilities. Secretary Norton will talk more about her experience with 28 of these storms, including the two worst ones, the infamous Hurricanes Katrina and Rita. But, again, our perspectives are not unique. Every Interior Cabinet secretary for 40 years could say the same thing before the Deepwater Horizon accident.

I do not envy my successor. I applauded the decision to name him as Secretary of the Interior. As a private citizen, I am not privy to the information developed and gathered to make these decisions. But I know the pressure of making decisions while under the glaring lights of public scrutiny and 24 hour news cycles. It is easy to second guess and criticize.

By requesting me to attend, you are asking about the record of the Bush Administration on offshore energy development. I mentioned previously that our eight year record – similar to other Cabinet Secretaries' records until the Deepwater Horizon accident – was that natural seepage of oil from the ocean floor exceeded oil spills from drilling operations by 150%.

I state this as a fact, not to claim credit. The real credit belongs to the men and women in industry who were motivated to work safely and to protect the environment and to the regulators who monitored their performance even in the face of category 5 hurricanes. The vast majority of these civil servants served their nation well. Both Secretary Norton and I recall being briefed by MMS employees who had lost their homes during hurricanes yet they left their families and did the work America needed.

I offer six additional perspectives from my experiences as Secretary.

1. Ethical Culture of the Minerals Management Service

This hearing gives me the opportunity to address an issue about the ethical culture at the Minerals Management Service. Let me address the issue of ethics head on. Shortly before leaving office, I was summoned to Congress to testify on Inspector General Reports about unethical conduct within the Minerals Management Service. Those who work with me know that if a problem surfaces I work to fix it. On September 18, 2008, I unequivocally told Congress that the conduct disgusted me and there would be prompt personnel action. Because that action was underway, I was advised by Interior's lawyers that I could not discuss it in detail. Now I can, including the fact that we fired people.

It should be part of this hearing record that Johnnie Burton, who had been director of the Minerals Management Service during Secretary Norton's tenure, has publicly stated, upon hearing about this conduct, that she personally requested the Inspector General to investigate. It should also be part of this hearing record that those involved were fired, retired, demoted or disciplined to the maximum extent permissible. The facts are that all of these actions were taken before we left office.

I would add a statement that Inspector General Earl Devaney said in testimony before the House Natural Resources Committee on September 18, 2008 and I quote: "I believe that the environment of MMS today is decidedly different than that described in our reports. While there is undoubtedly more that needs to be addressed, programmatic improvements must be matched with controls and strong oversight to ensure that this bureau, which is so lucrative to the United States Treasury and the American Public, does not again veer wildly off track."

I received another report critical of the Minerals Management Service royalty program. Again, I took action. The current Administration puts stock in the Garn-Kerrey report reviewing MMS. I would like the record to note that I personally called former Senators Jake Garn, a Republican and Bob Kerrey, a Democrat, and asked them to conduct a bipartisan, independent and thorough examination of this program with no pre-conceived outcome. They did. They issued a report that recommended 110 actions to improve the program, including, as I recall, more than 20 recommendations from the Inspector General's office. We methodically implemented all of the recommendations that could be done while we were still in office, which, as I recall, was about 70 in number.

Mr. Chairmen, I would ask that the testimony that Inspector General Earl Devaney and I gave to Congress in September of 2008 be made part of this hearing record as well as the Garn-Kerrey report.

I took seriously the need to foster an ethical culture at MMS. In fact, we hired an ethics professional to work full time in MMS' Denver office. We sought from Rick Cusick, Director of the Office of Government Ethics, a list of "best practices," which my top ethics officer reviewed for consistency with our own practices. As a result of these efforts, Mr. Cusick asked me to talk to 600 government-wide ethics officers about Interior's program. Inspector General Earl Devaney asked me to talk to all of the government's Inspector Generals about Interior's work at their annual conference.

2. Increased Deepwater Royalty Rates

Second, while I was Secretary, Interior not once, but twice, increased royalty rates that companies paid for energy produced from deepwater offshore leases. In 2007, we increased the royalty rate from 12.5% to 16.67%. In 2008, the royalty rate was again increased to 18.75%.

This is a 50% increase in royalty rates paid by oil companies for the right to produce oil and gas from federal waters. I can report to you that these increases came as a result of a conversation I had with President George Bush. He believed, and I agreed, that a 12.5% royalty rate was too low.

Partly because of these higher royalty rates and increases in energy prices, in 2008 the Interior Department disbursed from both offshore and onshore energy programs a record amount of money – more than \$23 billion as I recall – to federal, state, local and tribal governments. More than \$10 billion came from offshore oil revenues.

I would also note that not once, but twice, budgets that I submitted called for Congress to repeal sections of the 2005 Energy Policy Act that provided additional price incentives for deepwater oil and gas development. With today's energy prices, the Bush Administration believed these incentives were unnecessary. I still believe to this day that these incentives have outlived their usefulness.

3. Development of Five-Year Offshore Energy Plans

Third, as Secretary, I was required by the Outer Continental Shelf Lands Act to issue a 5-year plan covering the years 2007-2012 for offshore oil and gas development. Once we finished that plan it was, as required by law, submitted to Congress for a 60-day review. Congress had the power to reject that plan. Congress did not. In fact, as I recall, I don't think any legislation was even introduced calling for the plan to be rejected.

This plan was developed after extensive consultation with Members of Congress, state, local and tribal officials, industry, and environmental organizations. We received comments from more than 100,000 interested citizens. Seventy-five percent of the comments received from the public supported some level of increased access to the domestic energy resources of the Outer Continental Shelf. We gave great weight to the desires of coastal states regarding oil and gas development near their shores. I point out that this plan excluded oil and gas leasing near environmentally sensitive whale migration areas in Alaska. It also proposed for the first time leasing an area off the Virginia coast but only after I personally talked with the Governor of the Commonwealth of Virginia who requested, and I consented to, the area being no closer than 50 miles to Virginia's shores.

My five-year plan was developed with both draft and final Environmental Impact Statements. I brought these documents with me to show the amount of extensive environmental analysis invested in the 5-year plan. Both of these environmental impact statements were submitted to the public. The final EIS was submitted to Congress for its review as part of the 5-year plan.

A relevant fact is that these EIS's – along with environmental assessments and oil spill response plans – were based on the probability that a significant oil spill was small. The environmental impact statement used historical information and models. When the 2007-2012 five-year plan was written, there had not been a major oil spill in 40 years.

One very real consequence of the Deepwater Horizon accident is that these historical assumptions will be forever changed.

The historic information now includes the fact that the BP oil spill is the worst oil spill in US waters. All future environmental impact statements will have to take this fact into account as well as change the probabilities of such accidents occurring.

It is also my understanding that before I left office, a federal district court affirmed the adequacy of this environmental analysis. After leaving office, the D.C. Court of Appeals invalidated the part of the five-year plan that addressed oil and gas leasing in Alaska. The court said the Minerals Management Service was right to analyze the effects of impacts on the Alaska shoreline but had insufficiently analyzed the effect of drilling operations at well sites. The Salazar Administration went back to the Court of Appeals to insure the court had not invalidated the entire five-year plan. The court clarified its initial decision consistent with Secretary Salazar's understanding.

It is my understanding that development of leases already sold could continue and further non-Alaska leases could be sold while further environmental sensitivity analysis could be done. On March 31, 2010, Secretary Salazar released his preliminary revised program that I mentioned earlier.

It is also a relevant fact that in the five-year plan was the area that BP successfully bid on for its Deepwater Horizon operation. The process that was used to award that lease was the same process used to award thousands of other leases issued by both Democratic and Republican Administrations as established in regulations. The five year plan sets a schedule of lease sales. Energy companies submit sealed bids. The high bidder wins the lease after a process in which each high bid on a tract goes through an evaluation process to ensure the public receives fair market value before a lease is awarded.

It's my understanding that environmental Impact statements are also written for multi-lease sales. In the case of the BP lease sale, a further environmental assessment was approved by our then MMS Director, Randall Luthi. That environmental assessment was, as I understand, never legally challenged.

I mention this in part to show the extensive environmental analysis that was invested in the 5-year plan and lease sales. It is also clear, as I mentioned, that the historical assumptions these plans use will be forever changed to include the historical data of the BP oil spill.

4. Accelerated Development of Next Five-Year Plan to

Give The Next Administration More Lead Time To Develop Their Plan

A fourth policy development was that the Interior Department took action, as allowed by law, to give the next Administration a two-year head start in writing the next five year energy plan. Specifically, we issued a request to all parties that they comment on what the next five-year program should consider. The governors of all 50 states were to be asked for their comments, particularly on issues unique to each state.

I said at the time, and I quote "This initiative could provide a significant advantage for the incoming administration, offering options it would not otherwise have had until at least 2010. Today's action would provide a 2-year head start for the next administration on developing a new five year program."

I made the decision to not exclude any outer continental shelf area from consideration so that the next Administration would have a free hand to write its own plan.

5. Alternative Offshore Energy

A fifth significant development was taking steps to implement Congressional direction and further the work Secretary Norton set in motion to develop offshore wind, wave and ocean current energy. At the time, I believed, and still do, that this is a new energy frontier for the nation. Specifically, we issued the Final Programmatic Environmental Impact Statement for the Outer Continental Shelf Alternative Energy and alternative use program. We also announced an interim policy that would allow new facilities to test and collect data on alternative energy in federal offshore waters. I would also add that we emphasized the development of geothermal energy, and sold a record amount of geothermal leases during my administration.

6. Budgets and Coastal Impact Assistance

Part of my responsibility as Secretary was developing the Departmental Budget that includes the Minerals Management Service. In both budgets, the combined totals of appropriated funds and offsetting receipts were higher than when I took office.

Within the overall Minerals Management Service budget, funds for its regulatory program in the two budgets I submitted were \$2 million and \$1.4 million above levels set by Congress in the previous years, including both appropriations and offsetting receipts. Several increases specifically targeted the Gulf of Mexico and deepwater activities.

We also implemented a Coastal Impact Assistance program that shared more revenue from oil and gas leases with states adjacent to the development of these offshore leases. This provided \$1 billion in additional revenue to six states over a four year period. In my last year in office, the Interior Department disbursed a record amount of onshore and offshore energy revenue –more than \$23 billion as I mentioned earlier – to federal, state, local and tribal governments.

Mr. Chairman, I close with two final thoughts.

First, as a former governor, I urge Congress and this Administration to work closely, hand-in-glove, with the Governors of Mississippi, Alabama, Louisiana, Florida and Texas. These Governors, Haley Barbour, Bob Riley, Bobby Jindal, Charlie Crist, and Rick Perry, are proven leaders, passionate about their states and their citizens, and pragmatic about finding solutions. They and can be essential allies to clean up the oil spill.

As a former Governor, I know what they are experiencing in the wake of this tremendous tragedy. They will be tremendous resources to restore damaged communities and natural resources.

Second, the consequence of the Deepwater Horizon accident is that it will forever change the offshore energy industry. Never again will a Cabinet Secretary take office and be told that more oil seeps from the seabed than has been spilt from drilling operations in U.S. waters. Never again will decision makers not include planning for events that might be low-probability events, but which, in the unlikely event they occurred, would be catastrophic.

With that, I will respond to your questions.

Mr. STUPAK. Let me thank both secretaries for your testimony and thank you again for voluntarily appearing. Caution to members. We have 34 members here, and if we all take five minutes each, that is going to bring us pretty close to the three-hour limit. So I am going to be going to push members to keep your questions within that five-minute range. Otherwise we will have a runaway committee as opposed to a runaway well. And we will try to keep some control of it.

Let us begin with Chairman Waxman for questions please.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I will abide by your admonition on the time. Secretaries Norton and Kempthorne, I have some questions about the goals of the Bush Administration's national energy policy. President Bush and Vice President Cheney's energy task force suggested several ways to boost offshore production of oil and gas.

The Cheney task force recommended that the Interior Department offer new economic incentives to encourage industry to pursue offshore oil and gas development. These incentives included a proposal to reduce the royalties private companies have to pay the American people when they take oil and gas from public land. The task force also recommended that the Interior Department identify and reduce impediments to exploration and production both onshore and offshore.

Secretary Norton, were those components of the Bush energy plan?

Ms. NORTON. To the best of my recollection, Congressman, as to economic incentives, we employed the economic incentives on royalty relief that were put in place by—

Mr. WAXMAN. My question is the general statement of that energy plan was to provide incentives and to reduce impediments in order to develop more energy supplies. Wasn't that what the plan was all about?

Ms. NORTON. We were facing a very serious energy crisis at that point in time.

Mr. WAXMAN. I am not asking for justification. There is nothing wrong with that.

Ms. NORTON. We were looking to increase the energy production.

Mr. WAXMAN. Now, immediately after the task force released its report, the President issued two executive orders. Now, this task force that Vice President Cheney chaired was a subject that I know a lot about because I was trying to just find out who he met with, and we never even got the list of the executives from industry that he met with. I don't know what the secret was all about, but I had to go to the Supreme Court to try to get that information.

So the task force released its report. Then the President issued two executive orders intended to increase energy production. One of these orders required agencies to compile every rule making and analysis of whether the rule would adversely affect energy supply.

The other order directed agencies to expedite a review of energy exploration permit and accelerate the completion of energy-related projects. Secretary Norton, in August of 2001, Stephen Guiles, your deputy secretary, wrote a memo to the Council on Environmental Quality stating that the department "is fully committed to playing a role in this effort." Secretary Norton, during your tenure, did the

Department of the Interior support President Bush's policy of expediting drilling on the Outer Continental Shelf?

Ms. NORTON. We took many actions looking at what could be done to make sure that the permitting in place and so forth was done in—

Mr. WAXMAN. You were trying to—

Ms. NORTON. It really was not—

Mr. WAXMAN [continuing]. Comply with the policy of the administration, weren't you?

Ms. NORTON. There was really not much change as to the OCS. We worked primarily at on-shore areas and the permitting process in those areas.

Mr. WAXMAN. OK, I have a limited time, but the answer is yes. You were trying to do this within your purview.

Secretary Kempthorne, when you lead the department, isn't it true that the Bush Administration plan and the resulting Energy Policy Act of 2005 specifically encouraged deepwater and ultra deepwater drilling in the Outer Continental Shelf.

Mr. KEMPTHORNE. That was so.

Mr. WAXMAN. OK, what concerns me is that in the task force report and the President's executive orders, I have no problems with those reports in themselves. But I don't see any consideration for the importance of improving drilling safety while we encouraged more exploration. Committee staff reviewed your testimony each of you gave to the Congress when you were secretary and found no discussion of strengthening safety standards for blowout preventers, no discussion of best practices for well design, and no discussion of how we assure that industry can respond to a large oil spill.

Both of your testimonies talk about the safety record of offshore drilling, but it seems to me that one of the things we have learned is that deepwater and ultra deepwater drilling might involve different risks than shallow water drilling and it wasn't appropriate to rely on assurances based on shallow water drilling experiences.

I am not trying to lay the Deepwater Horizon disaster at the feet of the Bush Administration. In fact, I look forward to hearing from Secretary Salazar on some of these same questions. But I am trying to understand how we got here today, how Congress and the regulators accepted the industry's promises of safety as we press full steam again into the deepest waters of the Gulf of Mexico without verifying that industry could deliver on its promises.

It is as if we said we are going to raise the speed limit to 100 miles an hour without thinking twice about how to strengthen seatbelts or improve airbags. The American people deserve these answers. They deserve an energy policy that considers the need for better safety rules as industry takes greater risks to find oil and gas.

Thank you, Mr. Chairman.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Barton for questions please.

Mr. BARTON. Thank you, Mr. Chairman. I am going to try to hold it to the five minutes just as Chairman Waxman did. I might point out that if we had followed regular procedure and had the incumbent Cabinet secretary here first where most of the questions are,

we wouldn't take up as much time with two prior Cabinet secretaries who have no official standing, but that is just me kind of saying we ought to use the regular order instead of this unusual order.

But having said that, we are glad you folks are here. As we all know, the Jones Act requires U.S. flag ships with U.S. crews to operate in the Gulf of Mexico, but we do have existing statutory authority that the President can waive that in times of emergency. We had a lot of international equipment that was available to come help us with the oil spill that wasn't allowed to come because the Obama Administration wouldn't waive the Jones Act.

Do either of you have a comment on that?

Ms. NORTON. While this was not anything that I dealt with directly, I do know that the situations that occurred with large oil spills in recent history had been in other countries. And so other countries have learned from those experiences. And it makes sense to me to take advantage of the equipment and the personnel that are available. I do know that President Bush waived the Jones Act as quickly as possible after Hurricanes Rita and Katrina so that we could bring in assistance from other countries.

Mr. BARTON. Secretary Kempthorne.

Mr. KEMPTHORNE. Mr. Barton, the magnitude of this catastrophe would suggest that you should be able to array all assets made available to you, and I do not believe that was what occurred.

Mr. BARTON. OK, we have also given authority to waive certain EPA environmental review requirements in times of emergency. This authority was used in Katrina. Several governors of the gulf coast, the governor of Louisiana, I believe the governor of Mississippi, asked for such a waiver. As of yet, that waiver has not been implemented, and so you had the ironic situation where the Coast Guard was attempting to facilitate the creation of berms to prevent known oil from reaching the beaches, and yet the EPA was refusing to grant a waiver so that—because of some potential impact that was unknown at the time.

Do either of you have a comment on why the Obama Administration wouldn't listen to and work with the affected governors of the states on this issue?

Ms. NORTON. Once again, drawing from the Rita and Katrina experiences, we tried to do everything we could to move ahead as quickly as possible with common sense. And I really cannot comment about all the aspects of the current administration's decision-making. I am not there. I don't know the details.

Mr. KEMPTHORNE. Mr. Barton, if I may add, I referenced in my comments that we need to utilize these governors, very talented people. When I was governor of Idaho and we had Katrina and Rita, I was in continual telephone communication with Governor Barber, Governor Blankill, Governor Perry. On a moment's notice, they would say the needs that they might have, and I could implement the Idaho National Guard. C130 it would leave, a variety of things, a convoy that would go because they would run out of diesel fuel for first line responders.

We moved faster than the federal bureaucracy was moving. We are still the United States of America, and this working together with the states, I think, can yield great results. And so again I just

urge the partnership with those that are down in the gulf coast region.

Mr. BARTON. There is one more question I want to ask in the last one minute. Much is made by some of my friends on the majority of the fact that when we passed the Energy Policy Act, we put in some ultra deep language, and when that language was implemented, the Clinton Administration made the decision not to require a price trigger for royalties, but we did provide a volumetric trigger.

Those were put in place when oil per barrel was below \$30 a barrel. I think it was even below \$20 a barrel. Obviously now it is \$70 or \$80 a barrel. It makes no sense not to have some sort of a price royalty trigger. But it was the Clinton Administration that made that decision initially, not the Bush Administration. Isn't that correct?

Ms. NORTON. Yes, Congressman. We found that the Clinton Administration had omitted price thresholds from some of the leases that were issued. My administration put in place price thresholds on all of the leases that went forward.

Mr. BARTON. The new leases.

Ms. NORTON. On the new leases.

Mr. BARTON. OK.

Ms. NORTON. There has been a lot of litigation about that, and I won't go through the history of—

Mr. BARTON. Well, in hindsight, you know, we should have had a price trigger, but a contract is a contract. So we put them in place for future. But since the Clinton Administration didn't have them in place at the time when prices were so low, those contracts have been honored.

With that, Mr. Chairman, I know my time is expired. And I thank you, and I thank our two witnesses for being here today.

Mr. STUPAK. Thank you, Mr. Barton. Secretary Kempthorne, you were secretary when the lease sale for 206, which included the BP's McCondill well was let. Is that correct?

Mr. KEMPTHORNE. That is correct.

Mr. STUPAK. And I believe you said that it was a big sale record. \$3.7 billion was the lease sale for 206 including \$34 million for the block containing the McCondill well. And you indicated that we had won the championship. We had won the championship, but one of the things we have been struggling with is a bad actor policy. For instance, British Petroleum has 760 violations, egregious willful violations in a five-year period, where the next biggest oil company has only eight.

Was there anything that you could have done as secretary and said thank you for your bid of \$34 million, but we are not going to let you drill in this area based on your past record? Is there any authority for you to do that?

Mr. KEMPTHORNE. Mr. Stupak, I don't believe that that is part of the current matrix.

Mr. STUPAK. If it is not, should it be? Should the secretary be able to say thank you for the bid. Even though we are the highest bidder and we have to give you this lease, we are not going to because of your past history?

Mr. KEMPTHORNE. Mr. Chairman, many of us in our daily lives and decisions we have to make have to do due diligence. If that could be part of the matrix, I think, is certainly a very fair question.

I would also, if I may, Mr. Chairman, with regard to winning the championship, we were there in the big dome of the New Orleans Saints, and it was an atmosphere of New Orleans trying to come back. And so it was in that context.

Mr. STUPAK. Well, they did win the big championship.

Ms. NORTON. Mr. Chairman, if I could just add a quick comment on—

Mr. STUPAK. Sure.

Ms. NORTON [continuing]. The substance of your question. I think it makes sense to have a bad actor set prohibition against participating. I do think there are some problems with entering into subjective aspects of the decision making about who wins the highest bid. I think having a clear high bid and awarding on that basis is something that provides a lot of protection against manipulation of the system.

Mr. STUPAK. Well, right now the law requires you if it is the high bid, you have to accept it, right?

Ms. NORTON. That is right.

Mr. STUPAK. No matter what the history is.

Ms. NORTON. Having a separate bad actor provision makes a lot of sense.

Mr. STUPAK. Let me ask you this, Secretary Norton. Throughout our investigation, we have learned that Deepwater Horizon explosion was caused by a series of shortcuts that BP took in the final hours and days before the explosion. The final step in the disaster was the failure of the blowout preventer to cut the pipe, stop the blowout, and seal the well.

BP's CEO Tony Hayward called this device a failsafe and indicated that he and British BP officials were shocked when it failed. Frankly, I am surprised that anyone would be surprised given the mounting evidence that BOPs weren't failsafe at all.

In 2001, MMS received a report that concluded that all Sub-C BOP stacks should have two blind shear rams to reduce the likelihood of a blowout. Blind shear rams are used to—used as a last resort in emergency to cut through the drill pipe and close an out-of-control well.

So, Secretary Norton, after receiving this report, did the Department of Interior require two blind shear rams on Sub C BOPs?

Ms. NORTON. The Department of the Interior looked at the issue and addressed it with a regulation saying that blind shear rams must be capable of shearing the drill pipe and that they have to be sufficient for the—

Mr. STUPAK. But you didn't require two as was recommended?

Ms. NORTON. We required four types of blowout preventers be present on each of the wells.

Mr. STUPAK. That was above the surface.

Ms. NORTON. We have a quintuple.

Mr. STUPAK. I am talking about subsurface. The ones that you required was surface BOPs, which are easily accessible. We are not

dealing with a mile down. I am talking about Sub C, and the report dealt with Sub C.

Ms. NORTON. In order to—our regulation required that there be a blind shear ram that was sufficient to address the situation.

Mr. STUPAK. But the recommendation was two so we had a backup redundancy so we could have a failsafe system. And do I understand you didn't require the two then?

Ms. NORTON. Regulations do not require two. That is something that can be looked at in the future.

Mr. STUPAK. Right, you issued a regulation in 2003, and you didn't make it part of it.

Ms. NORTON. The experts in MMS looked at that issue and determined that what needed to be addressed was having—

Mr. STUPAK. That they should be able to do it, but they recommended two.

Ms. NORTON. They set in play—

Mr. STUPAK. Let me ask you this though.

Ms. NORTON [continuing]. That said they had to be able to address—

Mr. STUPAK. My time is just about up. MMS received another report that painted, and I quote, "a grim picture of the ability of the BOPs to cut pipe when necessary." In response, MMS took one minor step. The agency began requiring each well operator to provide information showing that the BOP blind shear ram was capable of shearing the drill pipe, as you said. But it is unclear to what extent this information was reviewed.

Frank Patent, the New Orleans district drilling engineer for MMS, testified before the Marine Board of the investigation on this Deepwater Horizon and said that he was never told to look for this information when reviewing drilling applications.

So my question is how do you explain Mr. Patent's testimony? He was the New Orleans drilling engineer, and yet even he seemed to be unaware of requirement that companies demonstrate that blowout preventers could even cut the pipe?

Ms. NORTON. The regulations are there. They are very clear about the need to have blowout prevention devices that are going to function in the circumstances. They have to be maintained. They have to be checked, and I can't address what happened several years after my watch and why he may not have had that information.

Mr. STUPAK. But when you did the final regulation, you had about three reports to your agency and you issued a final rule in 2003. You just had verification that companies were supposed to verify that they had ram shear, not two, just one ram shear, correct?

Ms. NORTON. If you look at Secretary Salazar's 30-day report to the President following the Deepwater Horizon disaster, they looked at those studies and found that those studies reinforced the regulation as it was written.

Mr. STUPAK. I am looking at the federal register which would be your rule that you submitted, and it was absent of all that. You left it to the discretion of the oil companies.

Ms. NORTON. We put in place a requirement that they had to have sufficient blowout prevention devices to maintain control of the well.

Mr. STUPAK. Mr. Burgess, questions?

Mr. BURGESS. Thank you, Mr. Chairman. We have heard some references—and Secretary Kempthorne, I really appreciate you bringing up the role of the states in the response to what has happened in the gulf. And it seemed like what should be all hands on deck all the time isn't exactly what is happening. We have heard it referenced here a couple of times in the Q and A period.

We have taken now—I have taken three trips down to the gulf. Governor Jindal very much publicized recommendation that he be able to build sand berms to the east of the Chandelier Islands to protect those areas. Our last trip down there, we heard about the placement of some rocks, building rock berms in some of the—near some of the barrier islands, near Grand Isle, Louisiana because if the oil enters through the cuts in the barrier island, then getting into that very sensitive area of the interior will—the recovery period could be quite, quite prolonged.

So the mayors and the parish commissioners are desperate to be able to put the rocks in place. They are desperate—BP has provided the rocks. They are sitting on barges in the Mississippi. They can't sit there forever. Sooner or later, they are either going to have to be used or sent back, and it is this type of tension between the folks on the ground, secretary of interior, the Environmental Protection Agency.

Do either of you recall—you have dealt with some pretty big disasters between Rita and Katrina, and, Secretary Kempthorne, I think you had some big forest fires that went on during your tenure. Do you ever recall having this type of tension between the various federal agencies that are responsible for controlling the disaster, the cleanup thereafter, and the overseeing the effects on the environment? Can any of you recall this type of scenario?

Mr. KEMPTHORNE. Congressman Burgess, again it is catastrophic in its sheer magnitude. Yes, it is going to be stressful for everybody involved, but I like your adage of all hands on deck. I think if you can create an atmosphere of collaboration, of utilizing the resources that you have, identifying what is the major hurdle that we have currently facing us? What can we do? What are the assets that could be deployed? Where might we have flexibility? Where might we be able to go and utilize some practices that, based on past practices, we think would have a benefit?

The barrier islands is a project that has been reviewed for some years because you, in essence, have lost the barrier islands. There does need to be the restoration of those. I think the term was to the 1917 topographic area. It is something that the governor has been fully engaged on. I was engaged on as secretary of the interior, and, yes, I do think we should be moving in that direction. And I do think that you can have waivers so that you can do the pragmatic without causing long-term adverse consequences.

Mr. BURGESS. But this is really troubling, and the problem is that everybody sits in a room. Someone at some level says no, and then that's the end of the discussion. And there should be—I think there is under the whole pollution act, one guy who sits at the

other end of Pennsylvania Avenue who is able to cut through all that and get this stuff done, who has that flexibility. And it is the nonengagement of the White House right now in some of these things that is so frustrating.

Mr. KEMPTHORNE. Congressman Burgess, when I was secretary of the interior, we had a water crisis down in southeast part of the country, Alabama, Georgia, and Florida, and it was escalating. And I was told after a cabinet meeting I was going to southeast United States. And I said why am I going? Because the President wants you to step into this and see what we can do to resolve it. By getting all the principals in one room with the assets with the authority, you are able to calm and have a path forward with the proper decisions made.

Mr. BURGESS. Seems in this case, we get everybody in the room, and then someone says no. And then we have got two more weeks to go to get another answer. Let me just ask a question to either one of you. How difficult—Secretary Kempthorne, you referenced that the people were let go from MMS after some of the difficulties.

How difficult is it to fire someone from a federal agency like MMS?

Mr. KEMPTHORNE. There is due process. You have to protect the rights of the individual, of the employee. You can imagine how difficult it was for me in that particular hearing knowing that we were issuing letters to employees that they are going to be dismissed, but there is a 30-day clock that is running to see if they are going to contest it. And then what due process do we have?

So it is the law that has been implemented by this body that we adhere to, and it is proper because you protect the rights of the individuals.

Mr. BURGESS. But let me just ask are these individuals covered by union contracts?

Mr. KEMPTHORNE. I don't know, sir.

Mr. BURGESS. Is MMS part of a federal union, a federal employees' union?

Ms. NORTON. I am not aware that it is, but I really don't know. There may be some employees, but I am not sure how they are affected.

Mr. BURGESS. Mr. Chairman, I will yield back.

Mr. STUPAK. Thank you, Mr. Burgess. Mr. Inslee for seven minutes for questions.

Mr. INSLEE. Thank you. Thank the witnesses for being here. We are going to ask some questions today. I want to make sure you understand the purpose of my questions is to try to figure out how we move forward, not to make you feel uncomfortable. Although this is an uncomfortable situation.

While the Cheney energy task force was going forward, it was secret. Many of us tried to obtain information about it. It was very frustrating that we could not. I think it is unfortunate now that that secret of the secret task force has been revealed, which was that the administration, that administration pursued a policy of a very, very large expansion of offshore drilling with no, as far as I can tell, commitment expansion of safety regulations.

So I want to ask you why that is and how that occurred so we can see that that does not happen in the future. I want to follow

up on some of Mr. Stupak's questions about the blowout preventer. It is really stunning to me that these blowout preventers were apparently considered a failsafe device, but all the information available to the department even then was that they were repeatedly failing.

The study in December 2002 by West and Gerring, given to the department. It showed that 50 percent, at best, of them functioned when tested. And later on, we now know at 2009 that only 45 percent of them worldwide have been shown to work under real-world conditions. And yet, as far as I can tell, there weren't actions taken to improve their performance despite the department's known information about this.

For instance, in 2003, MMS received a report concluding that oil and gas companies should ensure that critical backup systems, such as deadman's switches and remotely controlled operator vehicles, actually worked. This seems like common sense. And we know on this particular rig, the deadman's switch did not work.

So I could ask you, Secretary Norton, after receiving the report requiring or suggesting that we ensure the performance of critical backup systems, did the department require testing of backup systems or ensure that Sub C BOPs had backup systems?

Ms. NORTON. First of all, I have not had access to people in the Minerals Management Service to be able to describe and discuss what those procedures were exactly. I do know that we adopted a regulation that was a strong regulation requiring blowout prevention devices, and that was—some of that was done over the objection of industry. And we went further than industry asked to get regulations in place in 2003.

Studies were done at the request of the department, and we looked at the results of those studies. And as reflected in Secretary Salazar's report to the President, those studies and their results were incorporated in the regulations that were adopted by my department.

Mr. INSLEE. Well, let me—

Ms. NORTON. If I can—

Mr. INSLEE. Go ahead.

Ms. NORTON [continuing]. Point out that, you know, based on what we have seen and what has been reported in the media, it appears that BP violated all of those regulations that were on the books throughout the administrations.

Mr. INSLEE. Thank you, and let me help you. Our research has shown that, in fact, you did not issue a regulation requiring performance standards for critical backup systems. You did not issue such regulation on deep sea subsurface blowout preventers, and this may have been one of the reasons this whole thing happened.

I want to ask you about the cementing failure. One of the failures in this particular instance was in centralizing the pipe. You may have heard that essentially BP decided not to use the recommended number of centralizers, did not do a cement bond lock, did not use a lockup sleeve to keep the casing in place if pressure built up.

So I would like to know during your term, Secretary Norton, were there any specific regulations put in place that would have required BP to adequately centralize the casing?

Ms. NORTON. I have to admit, Congressman, I don't know what centralizing casing means.

Mr. INSLEE. What it means is—

Ms. NORTON. However, I can say that our regulation required that a company used pressure—they had to pressure test the casing shoe, run a temperature survey, run a cement bond log, or use a combination of those techniques if there was any indication of an inadequate cement job.

Mr. INSLEE. Well, let me help you out. I know that in June 2000, MMS proposed a new rule regarding cementing that raised the question whether to require industry best practices be forward. In other words, MMS suggested or at least considered at one time requiring prescriptive cementing practice requirements.

After listening to industry, and as far as we can tell only industry, the agency apparently did not adopt those requirements. Are you aware of any independent studies commissioned by MMS to identify best cementing practices? Or did the department depend just on industry input in that decision?

Ms. NORTON. I believe that the 2000 reference you are referring to was only as to producing wells and so would not have applied to the Deepwater Horizon situation. This is an issue that certainly needs to be looked at and considered based on the information that comes from what went wrong in the Deepwater Horizon situation. Obviously, there has to be a look at, you know, what regulations are necessary going forward.

My general understanding is that we looked at the studies that were done and incorporated those requirements to the best estimate of the Minerals Management Service experts.

Mr. INSLEE. Well, this was a consideration of cementing in the original drilling. That is when you do the cementing, and we have been told—our research has shown in June it was suggested only comments were received from the industry, and, as far as we can tell, you did not take any action regarding requiring specific practices in cementing. I just ask you just specifically. Did you require anything that required cement bond log tests?

Ms. NORTON. Congressman, I am not an expert on cement bonds, and I really would have to get back to you with additional information because I do not know that level of detail. And as secretary, we did not look at that level of detail. We relied on the experts, really the ones who understand.

Mr. INSLEE. Let me ask you a broader question. After the administration following the secret Cheney energy task force decided to greatly expand offshore deep water drilling, did you take actions to, in any significant way, improve the safety of deep water drilling?

Ms. NORTON. We had a very strong safety program that was recognized internationally, and I personally attended a meeting of the International Offshore Safety Regulators, the equivalent of MMS from around the world. And the MMS program was very highly regarded in my discussions with people.

Mr. INSLEE. I must—

Ms. NORTON. And I had—

Mr. INSLEE [continuing]. Regret to say—I am running out of time. I am sorry for the time. I would just like to close by saying

we regret that experience did not prove your observation correct. Thank you.

Mr. STUPAK. Mr. Griffith, for questions please, five minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman. I think sometimes we get, or at least in my opinion, somewhat off the subject. I think we know the military axiom that after the first shot is fired, the battle plan goes to hell.

So we can talk about cement. We can talk about regulations. We can talk about pressure gauges. We can talk about pounds per square inch, but the fact of the matter is that after this disaster occurred, did we recognize it? And after that first shot was fired or after that first blowout occurred, where was the leadership for the crisis? It was not to go back to the book and see who missed a pounds per square inch or who missed a sentence of a regulation. But as it occurred and as we watched it occur and unfold, did leadership recognize the significance of it and provide the leadership to correct it?

That is really what this is all about. There will never be a document 10 feet high on the regulation of offshore drilling that will be foolproof and will protect us from this disaster. The question in my mind is who in the administration, in the executive branch, had the ability to call EPA, the Coast Guard, the governors, put them in a room, say to them this is a national tragedy and a disaster. Fix it. Where was George Patton during this disaster, or was there a George Patton there? I would like to hear that answer from either one of you.

Mr. KEMPTHORNE. Congressman Griffith, I appreciate the analogy. I believe that our examples where that is exactly the type of process that must occur for results to be achieved. Did it or did it not? I am not in a position to comment, nor am I today going to sit here in criticism of my successor who has a very tough job and an unenviable position with the terrible thing that has happened.

So again that is why I decline many media opportunities because I think the team on the field has to have running room. But I will tell you, Congressman, that that is the formula, and I have seen it time and time again. I believe unfortunately that when you have seen comments made that are contradictory of other comments within the same administration, it would suggest they are not in that same room. And that is something that I think is worth noting.

Mr. GRIFFITH. Thank you, and I would like to yield the balance of my time to the ranking member, Congressman Burgess.

Mr. BURGESS. I thank the gentleman for yielding. Mr. Chairman, I want to make a unanimous consent request. I have a report from the Department of the Interior dated May 27, 2010, "Increased Safety Measures for Energy Development on the Outer Continental Shelf." Part three details existing well control studies, and they talk about the technical assessment and research program and list almost 25 studies of the funded well control research from 1990 through 2010. The bottom line reads "The results of this study confirmed that the regulatory decision to require operators to submit documentation that shows the shear rams are capable of shearing the pipe in the hole under maximum anticipated surface pressures." There is no notation as to the number of shear rams that

should be required. This is Secretary Salazar's report, and again I think it answers some of the questions that were put to Secretary Norton during the previous lines of questioning.

And then since I do have a few extra moments, let me just opine that one of the concerns that I have had with the current administration is the lack of transparency, that we keep hearing about the lack of transparency in the — with the Cheney energy task force. That certainly preceded my time, but I hope the chairman will help me when we make requests of the administration. I would like to know who was around the President's table when perhaps he was advised by the energy czar, Carol Browner, when he was advised by Secretary Chu about what the response should be to control this well. The President said he had been assured that there were no real dangers in offshore drilling when he gave his speech earlier in the year. Who was involved in that?

So I hope the chairman will join with me in an effort to gain more transparency from the administration when we request this documentation, and I will yield back the balance of my time.

Mr. STUPAK. Gentleman's time has expired. Mr. McNerney from California. Questions please, five minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman. Secretary Norton, Secretary Kempthorne, I certainly appreciate your thoughtful opening comments, and I appreciate your defense of the employees of the department. I haven't been here that long, but my staff and the staff of all the committees, they work very hard. And they are committed, and they are patriotic. So I certainly appreciate most employees are very commendable.

Now, I have a question. It is a simple question. Was there a philosophy during your tenure that there should be less or minimal oversight of offshore drilling and that the drilling operators were capable of policing themselves? So it is sort of an open-ended, philosophical question. You can go first, Secretary Norton.

Ms. NORTON. Congressman, I believe there was an attitude, and frankly it was not one that we created by something we did, but it was a longstanding attitude of mutual problem solving, of really, you know—while MMS certainly had a regulatory and oversight role and they, in my experience, were diligent about that, they also wanted to work with the expertise that industry had.

Industry was at the cutting edge, coming up with new technologies every day, and you can't just sit back and be distant from that and still be able to have the proper regulatory and oversight law.

Mr. MCNERNEY. Well, I mean the sort of thing I am thinking of is during, partly during your tenure, there was a drastic reduction in the ratio of inspectors to deep water wells, and that sort of reflects on, I think, the philosophy that I am trying to get at here.

Ms. NORTON. I would be happy to provide additional information, but we requested a number of years increases in resources for the Minerals Management Service in order to keep pace with rising workloads.

Mr. MCNERNEY. OK, I would like to follow up and ask a question about the exemption the Department of the Interior gave leasees during the Gulf of Mexico—or in 2003. Before 2003, leasees had to provide a blowout scenario with their exploration, development,

and production plans. The scenario was supposed to estimate what might happen in a blowout at the well site and include the flow rate, overall amount, and the duration of an oil leak from a potential blowout. In addition, leasees were supposed to provide information about their ability to secure rig, drill a relief well, and how long that drilling might take place. That sounds like a good idea. Do you agree that that would be a good thing to have?

Ms. NORTON. We have looked at that particular issue that you raised and tried to determine exactly what some of those documents meant. My best reading of it is that that information was viewed as having been provided in a different set of documents with a broader application. And the document you are referencing is simply saying it did not have to be duplicated in other documents.

Mr. KEMPTHORNE. Congressman, may I respond to your first question—

Mr. MCNERNEY. Sure.

Mr. KEMPTHORNE [continuing]. So that I am on record. The question whether or not there was an effort or philosophy to have less or minimal oversight.

Mr. MCNERNEY. Correct.

Mr. KEMPTHORNE. And I would say absolutely not. Absolutely not. Repeatedly, the atmosphere and the philosophy was that we achieve the highest of environmental standards, that we do protect the environment. We do know that there is a need for the well-being of the families so that we have fuels so that they can have an economy, so that they can have warmth, so that they can produce food. But that you do not do that at the risk of jeopardizing the overall environment.

I would also just note that MMS's civil criminal penalties program pursued from 2001 to 2008 280 cases of noncompliance with MMS regulations, and the last three years was the highest area where that was pursued.

Mr. MCNERNEY. OK, I am not sure that the results of those years, in my mind, line up with what you are saying or align with what you are saying. It appears in my mind that there is more reliance on industry to clean itself up and to police itself. And that is basically what happened with BP. They weren't given enough oversight, and I was going to follow up again with Secretary Norton.

Then in 2003, the Department of Interior created an exemption for the blowout scenario requirement that I mentioned earlier. And in my mind, that exemplifies that philosophy of less oversight and more reliance on industry. It appears that my time is up. So I yield back.

Mr. STUPAK. Thank you. Mr. Shimkus for questions, five minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. Again I appreciate you all coming, and in my opening statement, you know, I talked about command changes and taking responsibility. First question is when you were both sitting secretaries, do you remember a hearing where the previous secretaries going back to the Clinton Administration were asked to testify on the same day that you were testifying? Secretary Norton, did that ever happen?

Ms. NORTON. No, that did not.

Mr. SHIMKUS. Secretary Kempthorne.

Mr. KEMPTHORNE. No, sir.

Mr. SHIMKUS. Thank you. You know my good friend from Illinois, Congressman LaHood, Secretary of Transportation now. And I don't think he has had any testimony coming up here where he has had Secretary Peters or Secretary Minez. So it is just interesting that we are doing in this light, but having said that, what I have been—we know it is a catastrophe. We are hoping the cap holds. We are doing the cleanup. BP should be held responsible. I think we are all in, you know, on that message and focus on helping, you know, the gulf coast states recover.

And the issue is how do we decrease our reliance on imported crude oil. And, I think, Secretary Norton, you kind of talked about the change after September 11, understanding that we have to really get away, and I am an all-of-the-above energy guy. Nuclear, solar, wind, coal-to-liquid, OCS expansion.

In fact, I did mention in my opening statement President Obama talking about a new, green—moving on a carbon bill would include opening up more OCS. I mean that was a week before this disaster happened. So do you think—and I rely a lot on my friend and colleague and roommate, Steve Scalise, on some information on gulf issues. Is a moratorium an appropriate response, stopping operating wells that are, you know, operating in line right now? Is that a proper response? I understand doing research on the disaster, but a moratorium, Secretary Norton?

Ms. NORTON. In my mind, to go back to my aircraft analogy, you don't ground all of the airplanes because there was one problem. You have to look and, as they did, do a complete up-and-down inspection of the existing rigs and make sure that that problem doesn't exist. There might be other steps that should have been taken. Maybe they were, and maybe they weren't. But the important thing is to address the issues, not send the drilling rigs overseas where they may not return for many years and not send the jobs to other countries in order to resolve the issue.

Mr. SHIMKUS. Secretary Kempthorne.

Mr. KEMPTHORNE. Yes, Congressman, I believe that the action was taken which was a safety review immediately after where they look at, in the deep water, some 30 different drill rigs. After that review, I think there was only one area of noncompliance. Everything else was being adhered to with regard to the regulations that are on the books. That was appropriate.

The gulf coast is being devastated, and all of us are for safety. But I believe, Congressman, the result, if a moratorium is put in place, is the only absolute is that you will further cause disruption to the economy of the gulf coast states when really they need to have an opportunity for recovery.

Mr. SHIMKUS. And just let me—and I will end on this. In my opening statement, I talked about the Diamond Offshore announced Friday it is an Ocean Endeavor drilling rig was moving. This was July 9. I have Brazil sees silver lining, more rigs. Three deep water drilling rigs to be moved from sites south of Cameron Parish.

If they are in the process of moving, as some are, do they come back, Secretary Norton?

Ms. NORTON. In my experience, those are long-term contracts, and once they are moved, once you go through the trouble and expense of moving them away, then they tend to stay in those locations. And it is going to be very hard for that industry to be rebuilt.

Mr. SHIMKUS. Secretary Kempthorne.

Mr. KEMPTHORNE. I agree with that statement, Congressman. In the big picture, how far are we away from having another situation that may see us at \$4 a gallon gasoline? We are too reliant upon foreign sources of our energy. We are too reliant, and so if we now pursue a policy that continues to diminish our own development here within our own shores on our own land, I do not think it bodes well for the country.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. STUPAK. Thank you, Mr. Shimkus. Mr. Melancon for questions. Five minutes, sir.

Mr. MELANCON. Thank you, Mr. Chairman. Secretary Kempthorne and Norton, thank you all for being here today. First, let me just say that I agree with the analogy of the rank-and-file MMS employees. I think the morale particularly in Louisiana is very down. The harsh criticism for people that are trying to do the right thing. My concern is that they don't want to do anything for fear of being criticized, and that is going the wrong direction. So I understand, I think I understand human nature.

During your period, Secretary Norton, do you recall how many times that you may have had any oversight hearing that you participated in that dealt with OCS drilling or any of the rules or regulations or legislation that was going forward? Do we have a reauthorization in there anywhere?

Ms. NORTON. We dealt issues usually as one small part of the discussion of the overall especially Energy Policy Act of 2005.

Mr. MELANCON. Was there anything, any legislation that came forward that addressed OCS in '01 or '03?

Ms. NORTON. Ordinarily what we dealt with and what you dealt with were questions about where, you know, what areas should be open for exploration and production as opposed to the specifics. There were also, of course, issues as to incentives and whether those should exist or not. That is my main recollection.

Mr. MELANCON. And where I am—what I am trying to understand, and this goes back to, I guess, the first hearing that we had here since the Deepwater Horizon incident, and Mr. Dingell brought up the subject of the waiver of Neepa, waiver of the Environmental Impact Statement. And my appreciation and understanding is that somewhere along the line the law or rules were changed that provided that you had to be able to do the EIS within 30 days or the department got the option of waiving the EIS.

Ms. NORTON. I think what we see overall, The Outer Continental Shelf Lands Act creates a structure of five-year planning, and there are various stages in that process where extensive environmental analysis is done. And each of the subsequent steps relies on the blotter analysis and the more in-depth analysis. It is done on this regularly scheduled basis.

The categorical exclusion issue that has been discussed is one that really goes back to procedure in place since the 1980s and was not changed, as far as I know, within my administration as to the

offshore activities that we have been talking about. That is the best of my recollection.

Mr. MELANCON. Now, because I guess some of the concern that I have is that, the difficulty I have is understanding how do you waive the law and who gets that authority? After Katrina, I couldn't get people to waive rule, much less an idea that might have been good or bad. And so if there was, you know, a law—and this is one of the things I have not investigated to a large extent. NEEPA was there. EIS was required. Would it had to have been law to change the—give a waiver?

Ms. NORTON. If I can understand the key issue here, there is in NEEPA a provision for what they call categorical exclusions, and we did put some of those in place for everything from fuels treatments for forest fire prevention to some of the energy issues. And when we did that, we did that by looking in depth at, you know, what the analysis had shown in the past, how the process worked, and how that particular issue fit in with our environmental decision making.

And so some of—and we had to go through the Council on Environmental Quality that has to approve the categorical exclusions. And so while I know we did that process on some things, I don't think we changed anything on the offshore issues.

Mr. MELANCON. If I were secretary and I wanted to find out if somebody—if there were a person in the department that I could go and ask the question of can you tell me how this waiver came about, who would I be able to go and ask that, would have the institutional knowledge or would be able to maybe answer that question for me?

Ms. NORTON. We can get back to you with some answers.

Mr. MELANCON. I mean I am not—I am just trying to figure out how we got to that point, and—because I can't seem to get anybody to give me a concise answer of how that waiver came about. And particularly if it is, in fact, so, how several states got no waivers and you had to go through the EIS—and my time has run out—and some, to waive it, it couldn't be done in 30 days. But that is, I think, the time, and thank you for being here and yield back.

Mr. STUPAK. Thank you, Mr. Melancon. Mr. Latta for questions please. Five minutes.

Mr. LATTI. Thank you, Mr. Chairman. And again to our witnesses, thanks very much for appearing before the committee today. Really appreciate your testimony and your time, and lots of questions to ask in five minutes. But we are not going to get to them all.

But, Madame Secretary, I was interested on page four of your testimony, that if I could just repeat a little bit of it. You said “without question the most powerful OCS experience for me was the 2005 hurricane season. Over 4,000 offshore platforms were operating in the Gulf of Mexico when Hurricanes Rita and Katrina pummeled the area. Safety and spill prevention managers were put to a severe test.” Going on, you said “a number of the mostly older platforms were destroyed by the storms fury. Amazingly despite the strength of the hurricane, the amount of oil spilled from the wells and platforms was quite small. The shutoff valves located at the sea floor operated as intended. They prevented oil from leaking

into the ocean even when the platforms were severely damaged. The spill prevention techniques upon which the industry and government relied on passed the hurricane test.”

And this is kind of where you had to look in that giant crystal ball. We had testimony recently from—pardon me—from BP, Mr. Hayward. And listening to the testimony, a lot of us were looking and thinking, you know, was this a lot of human error? Because if, you know, again if we are talking about 4,000 rigs that were out there at the time and they were put to that supreme test, what happened here? If you could just maybe hypothesize about that.

Ms. NORTON. Obviously we really need to have the answers from the scientific inquiry before any of us can say exactly what happened. You know based on the reports that I have read, it certainly looks like there were a number of decisions made in those last few days and hours that need to be called into question and may show us that there were violations of the standards that should have been applied.

Everybody involved with the offshore industry has always understood that this is a very challenging environment, and it is one where there have to be very high performance standards. And the performance that we saw in the hurricanes met those standards and really gave me a great deal of confidence that we had systems in place that worked and could work well.

Mr. LATTA. Please follow up then. As your experience as secretary at the department, you said just now that maybe something was occurring just prior to this accident. How often would someone from MMS or the Department of Interior be seeing what was going on on this rig or any changes that would have occurred that maybe something here on the federal side would say maybe you shouldn't be doing that?

Ms. NORTON. It is my understanding there would be fairly regular communication. Have to have a helicopter to fly out to the rig to actually have an inspector there, and that—the frequency of that depends on a lot of different factors: the weather, the timing of being able to do monthly visits and so forth. But there was very frequent communication by telephone and so forth between people in the MMS and the offshore platforms as I understand it.

Mr. LATTA. Thank you. And, Secretary Kempthorne, first I want to respect you not wanting to second guess the folks who have come after you, but some of us were down at the coast earlier in July, this month. And again we talked to a lot of those local officials, and, you know, we were just confounded as to, you know, the lack of getting back and forth from the local side and back up through the chain of command on the federal side.

And, you know, I also noticed in your testimony that as you read it that, you know, you were talking about the governors down in—always second guessing the folks down there. Now, and I know you just said you don't want to second guess, but, you know, from what you have seen, could the local officials on the ground actually have been right on some of these decisions that they have seen since they were there but they are being again overruled by the federal government?

Mr. KEMPTHORNE. I would be surprised if they are not correct on a number of the issues that they have raised because they live

there. I have a background in local government, state government, and federal. The perspective I have been able to pull upon from local and state, it is pragmatic. It is on-the-ground. It is—you must deal with things hour by hour, and so I really do think they are a tremendous resource of ideas, resources that they can bring to bear with sheer manpower and a variety of innovations. And you want to create that atmosphere so that they feel that they are a part of a partnership in solving this problem.

Mr. LATTI. Well, I thank you for that, and I thank you again for both being before us. And I yield back. Thank you.

Mr. STUPAK. Mr. Green for questions please.

Mr. GREEN. Mr. Gonzalez. I will pass, Mr. Chairman.

Mr. STUPAK. Mr. Gonzalez, and it is up to you for seven minutes. You have seven minutes since you waived your opening. Seven minutes.

Mr. GONZALEZ. I appreciate it. Thank you, Mr. Chairman, and welcome to the witnesses. We really appreciate your presence here today. Secretary Norton, you have indicated the analogy that has been used on the floor and elsewhere is if you have one plane crash you don't suspend all air service and such, but isn't it the truth that we do have recalls and we take everything off the road or out of the air if it is a specific model, for instance, that has maybe a structural defect? So if we were able to identify, let us say, 747's had a structural defect, a couple of crashes or just one, the result would be we would bring them all in and it would be examined and we would remedy the problem so we would have that particular scenario play out, would we not?

Ms. NORTON. And I think that is consistent with the idea of having a safety review and checking and inspecting those aircraft and then getting them back into service as quickly as possible.

Mr. GONZALEZ. But your frame of reference is to existing regulations that basically have failed that didn't stop this particular occurrence from happening. Now what I am saying is I disagree with the Administration on one size fits all moratorium, and I think we are going to get some specificity and such, but the question really comes down to the following. We had all of the major players that are involved in deep water exploration production here. None of them said—now they all disagreed with the way BP conducted itself and the way they were trying to plug the hole and such, but none of them said that if there was a blow out at that depth that they could really guarantee that their blow out preventers would have in fact worked, point one. Point two was none of them, none of them, said that their plan for containment and clean up was any different than BP's.

So are we really at a point right now where we can make these determinations as to the adequacy and sufficiency of what we have out there that would be applied to these rigs? Now I am going to agree with you that different points of production, exploration and such, I think you can have certain rules and continue the activity out there, but how do you guard against a similar situation when everybody from the industry pretty well agrees and maybe my colleagues would disagree with my representation, but that is the way I remember the testimony. No one is saying that the blow out preventer if activated, if property activated, would have remedied the

situation, and no one is disagreeing that the containment policy and plans are any different from one producer to another.

So a moratorium seems the proper thing to do. As I said, one size fits all, I don't agree with that. But wouldn't you agree that is a prudent thing for the Administration to have done?

Ms. NORTON. One concern with a moratorium is—certainly our experience with offshore is they tend to stay in effect and once—we certainly have seen that with the history of moratoria in our country, and things that were put in place for a few years have extended on and on and on for many years. I think given the delicate state of our economy right now, I think given the number of jobs that are at stake, given the devastation of the economy in the Gulf Coast, we really need—

Mr. GONZALEZ. Madam Secretary, I understand the economic consequences, and with the greatest respect and admiration for my colleagues from Louisiana, I am from Texas. I sort of understand the economic impact of these things. However, I think even former Secretary Kempthorne indicated that you need to move forward, have the economic considerations, but not in total denial of the realities of what might be in jeopardy. That is all I am saying, and I think the Administration is going to fine tune and tweak it. Now this Administration is never going to satisfy some of those that believe there should be some sort of ceremony on changing of command and we don't have a General Patton, but you are not going to see President Obama parachute onto an oil rig with a mission accomplished sign. It is not going to happen, and I am grateful that that is not going to happen because it is meaningless.

Now let me ask you, former Secretary Kempthorne. You seem to be indicating that this Administration and the Secretary of Interior is dismissing out of hand any suggestion or recommendation being made by any of the governors or local officials. Is that a fact?

Mr. KEMPTHORNE. Congressman, no, I don't believe I used any of those particular words, and also would reiterate that I did not come today in any way to be a critic of my successor. He is in a tough situation. I applauded his nomination. Mr. Salazar and I are friends. But I do believe, Congressman, you do have to create an atmosphere so that the local officials and the state officials do feel that they are part of this, and all I can do because I am not privy, I am not privy to the information, the data that Secretary Salazar is receiving, but I do see as an observer reports and reactions of the media of local and state officials which would suggest we have not yet reached that crescendo—

Mr. GONZALEZ. But isn't that a product of the frustration that these officials are feeling because of the magnitude of what is happening to their economies, what is happening to their shorelines. I mean I understand the frustration, but I think you just said something that is very important, and that is none of us is privy to what is going on in those rooms when those suggestions and recommendations are being made. Now would you say that any recommendation or suggestion that is being made by either a governor or a local official should be adopted?

Mr. KEMPTHORNE. Not just because they made it but I believe again based on my experience that often it is backed up with pragmatism, with actual realities and results, and they should be very,

very carefully considered with a view towards seeing what is practical and can we, in fact, implement it because just as you said, Congressman, the devastation in the Gulf Coast, they are all feeling it, and they would like to be part of the solution, and I think they do have—

Mr. GONZALEZ. Is there any reason for you to believe that they are not carefully being weighed and analyzed and evaluated because I think that is an assumption that has been made by many, which I don't think is true.

Mr. KEMPTHORNE. Congressman, I don't believe I am in a position to judge that.

Mr. GONZALEZ. Well, I appreciate that. Thank you very much for your testimony today. Yield back, Mr. Chairman.

Mr. STUPAK. Thank you, Mr. Gonzalez. We have a pending motion by Mr. Burgess who wants the May 27, 2010, report, the 30-day safety report, and he read from page 8, to be made part of the record. The 30-day safety report acknowledges existing regulations as it must. It notes that these are the minimum requirements for the safe operation, and it recommends two blind share rams. This is the point of what we have learned. Minimum requirements may not be sufficient. That is why I say when there is no serious enforcement, that is why I am glad this committee reached a bipartisan agreement on the Blowout Prevention Act, which would mandate redundancy that the department failed to put in place way back in 2003. So without objection, the May 27 report of the Department of Interior is made part of the record. Ms. Blackburn, questions?

Mrs. BLACKBURN. Thank you, Mr. Chairman. I thought we were still on the motion there. I do have a couple of questions. Before coming to Energy and Commerce, I was on the Government Oversight and Reform—Government Reform Committee and of course on Government Oversight and Investigations here. And I have sat through hearing after hearing. Those in front of us will talk about how resistant to change the agencies are, and how difficult change and reform comes, so I would like to hear from each of you, when you look at Secretary Salazar's desire to institute some changes, what do you think the institutional resistance is going to be, how much of it is going to be there. I would also like for you to address how you think he best dealt with the ethical problems that are DOI and at MMS, and how you confront that.

And then the third thing, and, Secretary Norton, I think that you are going to be in the best place to address this, if you could just articulate a little bit about how during your tenure you worked in the aftermath of Katrina with your state and local officials to get the information going forward with them. So those are the 3 things that I would love to touch on. And, Madam Secretary, if you will go first and then Secretary Kempthorne, if you would answer after her.

Ms. NORTON. Thank you, Congresswoman, for that question. The issue of ethical changes is one that I think Secretary Kempthorne can go into because he really dealt with that during his time. It was in my administration that I think people became aware of that, the leadership of MMS either right before or right after I left office went to the Inspector General having heard these rumors

and initiated the process that led to the changes that Secretary Kempthorne brought about. I think we need to look at what is the end result we want to achieve because, yes, you certainly want to have employees adhering to ethical standards, but if you let the idea of having a strong separation between industry and employees go too far, you cut off the lines of communication. I think the important issues right now are capabilities, our skills, our expertise, our resources that are available for the oversight process, the regulatory process. I tend to think of this as having been 8 years as an attorney general as a community policing kind of issue.

We used to have police that would ride around in their cop cars and have their windows rolled up and enforce the laws as someone who was imposing and who was us versus them kind of atmosphere with the community. And we learned that it was much more effective to have police who were out in the community working with people who would get tips about what the problems were, who understood the nuances of that neighborhood and what its problems were. And so I think you have to have a happy medium. You have to have very high ethical standards but you can't go so far that you only hire people who have no experience and no real understanding and expertise about what decisions need to be made.

Mrs. BLACKBURN. Thank you. And then could you speak to Katrina, the aftermath of Katrina, and how you worked with the local and state?

Ms. NORTON. My primary role in Katrina was dealing with the offshore energy and so that really was more a state—excuse me, a purely federal program. But we certainly did have interaction throughout the administration with the state and local officials. And I know I was very proud of people in my department who really even as federal agencies lent their efforts to lots of local recovery efforts, at emergency response efforts, at just—

Mrs. BLACKBURN. Let me interject here again. So you responded to the requests you got directly and giving the information needed?

Ms. NORTON. Yes, we did.

Mrs. BLACKBURN. OK.

Ms. NORTON. What we tried to do was empower people to make those decisions and to be cooperative and do that right away.

Mrs. BLACKBURN. Thank you. Yes, sir.

Mr. KEMPTHORNE. Congresswoman Blackburn, my tenure at the Department of Interior, I will tell you was a period in my life that I was very proud to serve with those people, dedicated public servants. It is a large organization, 73,000 people, but I will tell you that I was impressed, day in and day out, with their attitude. Yes, at times they were down in the mouth about certain things.

I remember, too, at my confirmation hearing there were a number of issues that were brought forward, some of which that had been there for years, and I made it a to-do list to try and go down and resolve some of these issues. On one occasion I brought in a group of the employees, including those from the region that was affected. I said you need to tell me about this issue, because I don't understand it yet. They began by saying, well, we have been working on it for 15 years, and I said, all right, I have to stop you because I don't have 15 years. We may not reach perfection but we will reach a decision, so let us discuss it. We did, thorough discus-

sion. That afternoon, I said here is my recommendation. Can you all live by this? We got through it, and the attitude was hallelujah, we have a decision and will go forward.

You referenced about the ethics that is there. I will tell you that I worked closely with Inspector General Bill Devaney on a continual basis, and that is why I wanted his testimony as part of this record. I believe that the seeds for what is bringing about the positive opportunities in MMS were planted by the actions while still in office that we took concerning the royalty in kind program, the calling of Senator Kerrey and Senator Garn and asking them personally if they would head up a talented group of people to do so. That has been pointed to by the current Administration that it is good substance. They are adhering to that. Seventy some suggestions were implemented before we left.

You asked about change. All of us, all of us, have an inclination perhaps to be resistant to change, but I have to say that in the proper atmosphere I was impressed on different occasions how nimble that the Department of Interior could be if given a direction and a purpose. The concern I would raise is simply that in this atmosphere where there have been sharp comments made regarding MMS, I think it can have a demoralizing effect on very good people. And as Inspector General Devaney said, 99.9 percent of people at DOI are good, hard-working, ethical people. I am afraid that with the sharp criticism even coming from their own leaders it doesn't create a team atmosphere and so their concern— and they may not be making decisions that they should be making as part of the responsibility because they are worried about the repercussions. So I think that there needs to be concern given toward the atmosphere of leading a department in the right direction on behalf of the people of the country.

Mrs. BLACKBURN. Thank you. Yield back.

Mr. STUPAK. Mr. Markey for questions, please.

Mr. MARKEY. Thank you. Mr. Chairman. Secretary Norton, in your responses to Chairman Waxman, you denied that changes in OCS drilling policy were undertaken as part of the Interior Department's efforts to implement the Cheney Energy Task Force plan. In 2001, in reality the Department of Interior under your all leadership stopped even considering the possibility of a worst case oil spill when it was evaluating the potential environmental impacts of deep water oil and gas production activities. Secretary Norton, do you agree that it was wrong for you to ignore the potential for a worst case oil spill for deep water oil and gas production activities?

Ms. NORTON. Congressman, I am sorry, I do not know the documents to which you are referring. I don't know exactly what it is that you are referring to in that decision. I apologize. I don't recall.

Mr. MARKEY. Well, it is true that you—and I have the document right here in my hand and I will give it to you so that you can review it later, but I will just summarize it for you that you stopped considering the possibility of a worst case scenario spill in 2001. Your 2001 strategy for post-release ANEBA compliance in deep water areas of the Gulf of Mexico did, in fact, change the manner in which the Interior Department evaluated worst case impacts. Let me read to you what the Interior Department staff informed

our staff about these changes in 2001. These analyses “do not include oil spills as part of the review.” In other words, environmental assessments no longer had to include the worst case spill scenarios that had been used previously by the Clinton Administration.

Madam Secretary, you chose to replace a real world worst case analysis with a paper exercise that was not at all realistic. As the Interior staff had some qualms, my staff, “The belief at the time was that blowouts were such a low probability event that the time and effort being expended on analyzing them for site-specific environmental assessment was not worth the effort.” Do you agree, Madam Secretary, that that decision was a mistake?

Ms. NORTON. I think going forward you are going to have to grapple with the aftermath—

Mr. MARKEY. Do you agree that the decision that you made at that time was a mistake?

Ms. NORTON. You can't stop all drilling in the future—

Mr. MARKEY. I am not asking for any stopping—no one here wants to stop all drilling in the future. No one, so stop putting the red herrings out here. Did you make a mistake in 2001?

Ms. NORTON. I don't know the document you are referring to. I haven't had the chance to look at it. It seems to me that you have to have a reasonable analysis and that is both today—

Mr. MARKEY. Was it reasonable to not do a worst case scenario analysis for a spill? Yes or no.

Ms. NORTON. It was reasonable to take into account what the history had been. The history was—

Mr. MARKEY. So you don't any longer—

Ms. NORTON. There were very few large spills.

Mr. MARKEY. OK. Let me go on to the second question.

Ms. NORTON. I think we now have seen a very different change.

Mr. MARKEY. In 2003, Madam Secretary, the Department of Interior also under your leadership actually exempted most Gulf of Mexico lessees from including blowout scenarios in their oil and gas exploration or production plans. They were also exempted from a requirement to provide information about how long it would take to drill a relief well and how a blowout could be contained by capping the well or by other means. This policy was reiterated in both 2006 and 2008. As a result, BP didn't include any of these blowout scenarios or relief well plans in its plans for the Macondo. In retrospect, do you think, Madam Secretary, that this exemption was a good idea?

Ms. NORTON. My understanding is that under the Outer Continental Shelf Lands Act there is a process of looking at things on a broad scale that really ought to focus on—

Mr. MARKEY. Do you think it was a mistake to create those exemptions in retrospect?

Ms. NORTON. But it is appropriate to deal with those kinds of issues in an offshore situation by looking at those in the big scale basis and then for the individual wells, individual plans of exploration, you focus on those things that apply to that—

Mr. MARKEY. Madam Secretary, again—

Ms. NORTON. And so you have things on a broad scale basis—

Mr. MARKEY. Madam Secretary, there was a D regulatory ticking time bomb that was set while you were Secretary that has now exploded in terms of this blowout preventer and other devices not having been properly regulated. Do you believe in retrospect if was a mistake to create those exemptions?

Ms. NORTON. I haven't seen anything that would indicate that there is a cause and effect relationship between the Deepwater Horizon decisions that were made by BP and what this analysis is that you are talking about.

Mr. MARKEY. A climate, Madam Secretary, of complacency was created by boosterism, which has now led to a catastrophe and that boosterism, that complacency, was this deregulatory environment which was created during that 8-year period. It affected blowout preventers. It affected the spill response plans that needed to be put in place. It, in fact, dealt with all aspects of what it is that we are now dealing with as a consequence of those decisions. Mr. Chairman, thank you.

Mr. STUPAK. Mr. Scalise for questions, please, 5 minutes.

Mr. SCALISE. Thank you. Mr. Chairman. Starting with the moratorium that has been discussed a lot. I want to go back to the 30-day safety report. And the President and Secretary Salazar had put together a commission and they brought in experts, scientists, engineers that were recommended that came together and did a 30-day report. And in it they actually recommended some safety changes that should be made which I think were very reasonable recommendations but afterwards when the moratorium, the 6-month moratorium, was issued it was alluded that the 30-day commission supported the moratorium. They had to come out the next day and correct that and make it clear that they actually were against the moratorium, and they gave some really good safety reasons.

And I want to ask your opinion on this because it hasn't really been discussed a lot nationally when you talk about this moratorium that is going on that potentially has a greater devastating impact on our state long term than the spill itself because of the negative impact on jobs, and some people are trying to make this a choice between jobs and safety. But, in fact, the scientists that the President himself recommended, not our scientists, it is the President's scientists, they said you would reduce safety in four different areas if you have a moratorium because, number one, your most experienced rigs would leave first, the rigs that are the newest and the most technologically superior, your most experienced crew members. They cannot put some kind of mysterious 6-month pause on their life. They are not going to just sit idle and collect unemployment as the President suggested to them. They are going to have to go do something else to earn a living for their families so you lose those most experienced crew members.

There are high risks involved with stopping and starting operations, and then the final point is our country's dependence on oil hasn't decreased, so as you take maybe 20 percent of the oil supply that the nation consumes away that is going to have to come from somewhere else and that is going to be imported by Middle Eastern countries, many of whom don't like us, but it is going to be imported by tankers, and 70 percent of all the spills come from tankers, so you actually increase the likelihood of spills and you reduce

safety by getting rid of that experienced work force and those vital and scarce resources in those rigs.

So with all of that said, I haven't seen a lot of discussion on the other side about the decrease in safety associated with this moratorium that the federal judge said should go forward. I want to get your take on that. Ms. Norton.

Ms. NORTON. I think there is some legitimate concern about losing the most sophisticated of the rigs to other countries and to making sure that we are not losing all the personnel that are most experienced to other places, all of those good jobs. I also think you have raised a very good point with the tanker safety because you are absolutely right that in our past experience before we got to the Deepwater Horizon experience, it had been tankers that were the largest source of oil from the industry overall as opposed to from the platforms.

Mr. SCALISE. Mr. Kempthorne.

Mr. KEMPTHORNE. Yes. Congressman, you raise very valid points, many of which I happen to agree with. And I think included in yours is the fact that this is not mutually exclusive. We can have a safety record and in 40 years we did. There is a question as to what caused this current tragedy of 90 days ago. Was it the regulations that for 40 years or a number of years were on the books and we did not see this catastrophe or was it decisions made, human decisions made, in the implementation after the application for the drilling permit was granted. I cannot comment with regard to the safety group and how a letter may have surfaced where they felt that they were being misrepresented. I cannot do that, and I think—

Mr. SCALISE. And that has been entered into the record.

Mr. KEMPTHORNE. Yes, and that will be something that your next guest will have the opportunity to address, I would imagine. But again it was appropriate to go and look at the safety. Had you found that there were a number of problems that surfaced immediately then you would have consideration of what else to do but you did not. I think there was only one concern that was identified.

Mr. SCALISE. And I think if you go back and you look a lot of the rigs that are operating in deeper waters because this disaster occurred at 35,000 feet. There are people out there in 8,000, 9,000, 10,000 feet that follow a different set of safety standards and don't have these kind of problems because they play by the rules and, in fact, we saw, unfortunately, this was an avoidable tragedy because of the things that weren't followed. But hopefully we can get into more of that later. But I also want to touch on another point and that is this chain of command issue. Clearly, when I talk to leaders on the ground their biggest frustration is that they are spending more time battling the federal government than the oil because you don't have that all hands on deck urgency approach taken by the federal government that needs to start now. Unfortunately, we are 3 months in and we still don't have it. But, finally, Mr. Kempthorne, what were federal revenues for offshore drilling that would come into the federal treasury in your last year as secretary?

Mr. KEMPTHORNE. Approximately \$23 billion.

Mr. SCALISE. Clearly, that would be in jeopardy in a moratorium.

Mr. STUPAK. The gentleman's time.

Mr. SCALISE. Thank you. I yield back.

Mr. STUPAK. You answered the last one, Mr. Secretary, 23 billion, you said?

Mr. KEMPTHORNE. Yes, sir.

Mr. STUPAK. Mr. Braley for questions.

Mr. BRALEY. Thank you, Mr. Chairman. I would like to begin by offering the Congressional Research Service report for Congress titled the 2010 Oil Spill Minerals Management Service and National Environmental Policy Act dated June 1, 2010.

Mr. STUPAK. Yes, we will take a look at it. We will hold it in abeyance for now. Go ahead.

Mr. BRALEY. One of the things that this report identifies is that there are four different stages of the review process that are supposed to take place on every oil lease in the Outer Continental Shelf. The first is the development of a 5-year program, then a plan for a specific lease sale, then approval of the exploration plan, and then approval of a development and production plan. Would both of you agree with that?

Ms. NORTON. Yes.

Mr. BRALEY. And these four stages are based on the Outer Continental Shelf Liability Act. That is your understanding of the statutory basis for those requirements?

Ms. NORTON. The Outer Continental Shelf lands, yes.

Mr. BRALEY. Yes. You have to say yes so that it is part of the—yes. And one of the things that the courts interpreting that act have concluded is that one of the basic premises of this review process is a tiered environmental review assuming that the level of scrutiny increases as a lease moves toward approval of the development and production plan. Would you both agree with that?

Ms. NORTON. Yes.

Mr. KEMPTHORNE. Yes.

Mr. BRALEY. One of the things that disturbs me about this report and about the circumstances that led up to this disaster is that the requirements for blowout scenario differ depending upon which part of the Gulf is affected. Are you both aware of that?

Ms. NORTON. Yes and no because the flow of currents might be different. The terrain that is on the shoreline might be different. But in many ways the impacts are going to be the same. Whether the Deepwater Horizon was 10 miles one way or the other would not have the same impact as it would on shore—

Mr. BRALEY. Madam Secretary, I am not talking about those issues. I am talking about the regulatory framework itself that requires blowout prevention scenarios to be part of this review process. Can you explain to me, for example, when the State of Florida is the affected state, which is the eastern Gulf, there is a mandatory requirement for a blowout scenario, and yet when the State of Texas is the affected state, the western Gulf region or the central Gulf region which is the part most devastated by this disaster there is not a mandatory requirement for a blowout scenario under the regulation?

Ms. NORTON. That is something that I have not been able to trace exactly what the rationale was behind that. I don't have access to the people within the Minerals Management Service to ask

exactly what the thinking was on that. I think it could either have been because those things in areas to which you refer, those are already handled in other documents and through other analyses that are done routinely.

Mr. BRALEY. My review of the regulation makes it clear that there are specific preferences given to individual states, and can you think of any legitimate reason why the residents of the central Gulf would have less interest in extensive environmental review than residents of the State of Florida?

Ms. NORTON. There is something called the Coastal Zone Management Act that has a significant impact on offshore development, and it does require the federal government to take into account the plans of the various states as decisions are being made offshore.

Mr. BRALEY. Do you agree that the impact of devastation is the same regardless of where that blowout would occur?

Ms. NORTON. It certainly has shown to be a different devastation here and a terrific impact.

Mr. BRALEY. Now, Mr. Kempthorne, part of the other information included on page 13 of this report is an indication that while MMS regulations require disclosure of a blowout scenario and exploration plans, MMS provided an exception in a 2008 notice to lessees on this particular lease, which would have been during your tenure, is that correct?

Mr. KEMPTHORNE. That would be during my tenure.

Mr. BRALEY. And the exception exempted OCS actions in the Gulf from blowout scenario requirements under certain conditions, and those are the exact conditions I am referring to which did not require a mandatory blowout scenario for the central Gulf. Were you aware of that?

Mr. KEMPTHORNE. Congressman, there is a longstanding provision that allows a regional director to limit information that needs to be submitted.

Ms. NORTON. I think why we are both struggling—

Mr. BRALEY. Excuse me. I only have 2 minutes left. Here is the problem I am having. BP submitted information to Minerals Management Service at the earlier stages of this lease indicating there was a 99 percent chance of a blowout over the 40-year period of the lease, a 99 percent probability, and that the most likely scenario would be a 10,000 barrel release as part of that blowout, and BP had also discussed a worst case scenario response in its initial exploration plan and it considered a worst case scenario to be a blowout at the exploratory stage leading to a spill of 3857 barrels of crude per day.

And even with that information, MMS approved BP's spill response plan for worst case scenario, and despite all that information that was in the leasing record BP sought and received a categorical exclusion from an environmental impact duty at the later phases of this process. And given what you admitted to me earlier about the intention being a more strict scrutiny of the environmental impact as a lease progresses toward production can either of you explain to me why that happened?

Ms. NORTON. I don't know the specific details you are citing but the categorical exclusion for those kinds of things has been part of the Outer Continental Shelf Lands Management since the 1980s,

and so it is the way in which those things have been handled throughout basically the existence of the program.

Mr. BRALEY. This report raised the disturbing scenario that the approval process of the categorical exclusion eliminating the need for an environmental impact statement later on in the development of this lease turned the expected level of scrutiny on its head so that instead of having a stricter scrutiny of that environmental impact at the later stages moving towards development and production a waiver was granted rather than requiring a more intense level of review, and that makes no sense.

Ms. NORTON. Well, you need to look more into the details of the specific proposal as you move closer to that specific proposal. The concept of the Outer Continental Shelf Lands Act is that you look at those large scale issues on a large scale basis.

Mr. BRALEY. And I understand that, and my time is running out, so let me just close with this. Do you not agree that in light of what we know now that policy of giving categorical exclusions which seems to be the opposite of the intended stricter scrutiny as you get closer to production should be re-evaluated by MMS?

Ms. NORTON. I certainly do think you need to look at these things going forward and look at your overall process, so I do think you need to look at how those things need to relate in the future and especially as you are talking about how something that is a very catastrophic event but has a very small probability of actually happening.

Mr. BRALEY. Well, this had a 99 percent probability of happening in a 40-year lease.

Ms. NORTON. I frankly question that. I think that may not have been a correct reading.

Mr. BRALEY. Well, I am reading from the report, and I yield back.

Mr. STUPAK. And, Mr. Braley, would you provide a copy of that report so the minority can look at it?

Mr. BRALEY. Absolutely.

Mr. STUPAK. So your motion is still pending on whether or not it will be accepted. Secretaries, can you go 20, 25 more minutes?

Mr. KEMPTHORNE. You are anxious for your next guest to join you.

Mr. STUPAK. We are anxious to have him too. A few more questions, if you may. Let us start myself, Mr. Burgess, and whoever else will go and attempt to cut it off. OK. How is that? Fair enough? Let me ask this. It seems like we have the energy task force in 2001 saying let us get our energy going, and we have a couple executive orders to expand offshore drilling, get things rolling. It seems like throughout all of our hearings we developed a technology to drill deeper and in more sensitive areas, and hopefully we do it in a safe manner, but we never developed the technology to have a clean up. Is that fair to say? We are using the same technologies from the 1920's, booms and trying to skim it and burn it off. Fair to say?

So let me ask this question. In the government models, we always talk about worst case scenarios, government models, the last time they were updated was 2004, and they dealt with surface spills, nothing deep water. In 2005, MMS modeling team rec-

ommended that the spill plans need to be upgraded to deal with deep water releases. Any reason why that was not done? Madam Secretary, it was 2005, you were still there. Do you remember their report recommending doing some deep water modeling because that is what we based everything upon.

Ms. NORTON. Congressman, I do not recollect that report.

Mr. STUPAK. I will ask Secretary Salazar the same thing. Mr. Kempthorne, any idea that we had that request there that was never done?

Mr. KEMPTHORNE. No, Mr. Chairman, I do not.

Mr. STUPAK. OK. Let me ask this. You both mentioned the history of no spills and internationally, I think, Secretary Norton, you mentioned we were looked at favorably. I am looking at a report here, SINTEF. It is dated July 24, 2001, and SINTEF is actually out of Norway, and they were asked to do a report from Minerals Management Service. And in there they are talking about the study of the BOPs, blowout preventers, and what goes wrong and kicks in the wells. And I thought it was very interesting of the 83 wells drilled in deep waters ranging from 1,300 feet to 6,500 feet there were a total of on these 83 wells 117 BOP failures and 48 well kicks. This is off 26 different rigs. So if you take a look at that, we have 117 BOP failures, 48 well kicks. That would be two incidents per well or 6 incidents per rig, and this report goes on and says an alternative BOP configuration and a BOP test procedure that will improve safety availability and save costly rig time has been proposed. Do you know whatever happened to this report, Madam Secretary?

Ms. NORTON. I don't recall ever seeing it.

Mr. STUPAK. OK. And when you did the 2003 rulemaking, you didn't take this into consideration then because you don't remember seeing it?

Ms. NORTON. I would imagine that someone in the Minerals Management Service who had responsibility and who had the technical expertise to evaluate that did so but I as secretary did not see that.

Mr. STUPAK. It was interesting that we hired a Norwegian—MMS hired a Norwegian company to do it and they relied—you know, Gulf of Mexico versus Norway because they are up in the North Sea and they found that we had more kick backs, we had more problems with pressure, which actually were the issues that led to the problems with Deepwater Horizon. I will conclude my questions right there. I will turn to Mr. Burgess for 5 minutes for questions.

Mr. BURGESS. Mr. Chairman, if Secretary Salazar is here, I am perfectly prepared for him to come and ask to begin the second panel.

Mr. STUPAK. Are you waiving?

Mr. BURGESS. If the Secretary is here. Are you ready to start the second panel?

Mr. STUPAK. No. We will be starting at 2:00.

Mr. BURGESS. At 2:00. Is the Secretary here?

Mr. STUPAK. No.

Mr. BURGESS. OK. Has he been—

Mr. STUPAK. So have you waived?

Mr. BURGESS. No, I am not going to waive. Has he been watching this on C-SPAN as you said he might be?

Mr. STUPAK. That is a good question. You should ask him.

Mr. BURGESS. I mean I am offended that we have been here all day. People have been asking good questions and making reasonable statements and—

Mr. STUPAK. Mr. Burgess, you know darn well that the Secretary has his staff here and he may very well be watching it but I haven't had—

Mr. BURGESS. The Secretary has so little interest that he wouldn't even notice that we were winding down and that the committee had dwindled to a less than critical mass. Let us do—

Mr. STUPAK. Well, if you have no further questions.

Mr. BURGESS. I do have some questions.

Mr. STUPAK. OK.

Mr. BURGESS. Let us visit for just a minute some of the questions that Mr. Markey was asking and not really allowing for a response. Secretary Norton, when you became secretary and you inherited the agency from Secretary Babbitt, were there specific regulations relating to deep water drilling that had been proposed by the previous administration?

Ms. NORTON. Yes, there were some regulations as to blowout preventers and cementing and so forth that had been proposed in 2000.

Mr. BURGESS. And what was the result of that? Did you proceed with the implementation of those regulations or did you shut them off because it was a new administration?

Ms. NORTON. They were proposed in the previous administration in 2000. They were finalized in my administration. There were very few changes that took place between the proposed and the final. The one key thing that we added in to that was a requirement that the companies look at the deep water technology and how they were using stronger pipes and needed to have stronger shear rams in order to deal with those kinds of more hardened pipes. And so we put in place a new requirement that had not been in the previous proposal that required industry to do that. We put in place several requirements in those regulations over the objection of industry.

Mr. BURGESS. So if that is a deregulatory ticking time bomb that was set in motion that really doesn't compute then, does it?

Ms. NORTON. No.

Mr. BURGESS. Was the deregulatory ticking time bomb then started during the Clinton Administration or is in fact the deregulatory ticking time bomb simply a straw dog or a red herring as the chairman put it to you? He said it is just a red herring that he is throwing out. There is no question. I got a list here. I referenced earlier some 23 or 25 studies that were done by the Technology and Assessment Research Program. Someone has been kind enough to provide me what must be 100 or 150 such studies—600. I beg your pardon, 600 studies that have been done. Not every one of these studies will lead to a new regulation but the studies are done for good reason to address problems that are out there, but then they become part of the investigatory process that leads to the rulemaking that eventually then governs the rules. It would be

very difficult to run any industry—my background is in medicine but if somebody came and sat down 600 new regulations, oh, wait, we may do that.

But, nevertheless, it becomes very, very difficult to run anything with having this level of regulation but at the same time your agency, both of you, was charged with looking at these things putting what you thought was out for reasonable proposed rulemaking and then setting the regulations and setting the rules, is that not correct?

Ms. NORTON. Yes, and there is also behind that a whole set of industry standards, some of which were adopted by MMS and some of which remained industry best practices. And that also took into account—those things were changed much more frequently than the regulations to take into account advances in learning from all these various studies.

Mr. BURGESS. You know, we had one hearing here where we had 5 or 6 executives from the big oil exploration companies, and one of the things that really struck me that morning, of course, 5 to 1 said they wouldn't have done what BP did as far as the drilling practices. But from the individuals who were here that actually worked had worked their way up in their companies and started on the offshore rigs, a lot of sensitivity to the fact that you sometimes would have to shut down a well. You sometimes would not be able to bring a well in because it was simply too dangerous. And one of the executives even made the comment in response to one of the Democrat's questions that if you start going too fast you are going to get someone killed.

It is important to have people who worked in the industry as part of the process so the fact that it could be done in some sort of vacuum without taking into account the people who actually know how to run the business on the face of it is preposterous. Mr. Chairman, you have been kind. I will yield back the balance of my time, and we have others who want to fill the void that Secretary Salazar has left.

Mr. STUPAK. It should be noted that you are over your time, but that is all right. Mr. Markey, questions, please.

Mr. MARKEY. Thank you, Mr. Chairman, very much. Secretary Kempthorne, you heard me question Secretary Norton earlier on the 2003 decision by the Interior Department to exempt Gulf of Mexico lessees from actually including a blowout scenario in their oil and gas exploration plans, but this policy was also continued in both 2006 and 2008 when decisions about the BP Macondo well were being made on your watch. In retrospect, Mr. Secretary, wasn't your decision wrong? Shouldn't there have been, in fact, planning for a blowout scenario?

Mr. KEMPTHORNE. Congressman Markey, I have a great deal of faith in the professionals there at MMS that deal with this, the different levels, the regional directors, et cetera. And, again, based upon what had been a 40-year record—

Mr. MARKEY. In retrospect, do you believe that decision was wrong informed by what has happened?

Mr. KEMPTHORNE. Again, based on what had been a 40-year history, I believe they took the appropriate action—

Mr. MARKEY. Was the advice they gave you wrong?

Mr. KEMPTHORNE. They gave me the best advice—

Mr. MARKEY. Was the advice wrong?

Mr. KEMPTHORNE. I will just repeat my answer.

Mr. MARKEY. You are not willing to say the advice you got was wrong?

Mr. KEMPTHORNE. Again, based on the 40 years—

Mr. MARKEY. And I am asking you in retrospect now was the advice wrong?

Mr. KEMPTHORNE. The advice that I was given based on a 40-year—

Mr. MARKEY. The advice you were given with regard to whether or not there should in fact be a closer inspection of a potential for a blowout scenario, was it right or wrong, the advice you got?

Mr. KEMPTHORNE. At the time with the knowledge that they had—

Mr. MARKEY. No, today. Today was it—as you look back, are you willing to say the advice you received was wrong and the policy should have been changed back in 2006 or 2008?

Mr. KEMPTHORNE. Mr. Markey, I don't think we have that hindsight.

Mr. MARKEY. You have the hindsight. We are looking for wisdom. We are trying to pass legislation. Should that decision have been made given what you know today?

Mr. KEMPTHORNE. I think it is something that can be evaluated.

Mr. MARKEY. I think that honestly that is a completely unacceptable answer. The American people want to know that the people who are making the decisions at the time understand that it was wrong, that a blowout could occur, that a spill could occur that would be catastrophic, and until you are willing to say it was a mistake then I think it is going to be very hard for the American people to accept that we are going to be able to move forward without the likelihood that we will ever see this kind of an accident again if there is a Republican administration that comes back into office again.

Mr. KEMPTHORNE. Well, Mr. Chairman and Mr. Chairman, I think in the atmosphere that this committee was called, the fact that we came here voluntarily, that this assignment of blame is not something that—

Mr. MARKEY. I am not asking you to blame—I am asking you if in retrospect you still believe that it was the right decision or the wrong decision. I am absolutely not asking for you to say anything other than that. Was the decision wrong?

Mr. KEMPTHORNE. And, Congressman, all I will say is based upon a record and based upon the expertise of the professionals at the time that is the reality.

Mr. MARKEY. I know it is the reality but it would be helpful if you could say we were wrong, we made a mistake. And I understand you don't want to do that, but it is obvious that that was the case. Secretary Kempthorne, the environmental impact statement for drilling in the Gulf of Mexico that was prepared by the Interior Department in April of 2007 under your leadership concluded that since blowouts are rare events and are of short duration the potential impacts to marine water quality are not expected to be significant, and the most likely size of a spill would be a total of 4,600

barrels total. In retrospect, don't you think that the department's analysis of the impacts of a blowout were inadequate? Wouldn't you agree that that conclusion was wrong?

Mr. KEMPTHORNE. Congressman, I would reference back what I said in my opening comments, and that is that even though we had a 40-year track record that because of the catastrophe that happened 90 days ago it has re-evaluated everything. I will also note that in the current Administration's preliminary revised program for OCS 2007–2012, it also uses those same assumptions.

Mr. MARKEY. Secretary Norton, back in 2004 in terms of spill response your assumption was in the model you used that there would only be 1,000 barrels of oil that would be spilled. It assumes that the spill will happen on the surface of the ocean and doesn't include any deep water analysis and it doesn't include the use of dispersants and doesn't even contemplate a blowout that takes days, let alone months, to stop. Do you agree now that such a plan was completely inadequate?

Ms. NORTON. That statement was based on information available at the time. We don't have access to go back to the people who made those recommendations, did that modeling, did all of that—

Mr. MARKEY. In retrospect, were the recommendations wrong?

Ms. NORTON. I have no idea of the context in which that was made. I have no idea what it applied to. I have no idea what was the decision that you are talking about so I can't say whether—I don't have any information which—

Mr. STUPAK. Point of order. Time has expired. Mr. Gingrey for questions, please.

Mr. GINGREY. Mr. Chairman, thank you. Secretary Norton and Secretary Kempthorne, I didn't do this in my opening statement but I would certainly like to take a brief moment to thank both of you. You are here today at the request of the subcommittee to discuss your time at the helm of the Department of Interior during the Bush Administration. You are here as private citizens and you are doing it voluntarily, and I am deeply appreciate of that, and I think most members of the committee feel the same way. Both of you had interest and experience with MMS during your tenure. Secretary Norton, you witnessed firsthand the devastation that was caused by Katrina and Rita in 2005 and you had the opportunity to see up close and personal how MMS was able to respond to what could have been an ecological disaster. And, Secretary Kempthorne, in your testimony I think you mentioned the issues that arose with some individuals who were summarily dismissed from their position at MMS due to unethical conduct, I think was what you said.

Therefore, both of you had very unique experiences with MMS and that leads me to finally have a question. Based on the structures that you had in place at MMS during your tenure, I would like to ask both of you to respond to this, if you will, had this accident occurred on your watch, this Deepwater Horizon tragedy, would you have used that as a means to reorganized MMS like it was done here recently?

Ms. NORTON. The new structure doesn't differ that much from the previous structures because previously the revenue aspects of it and the regulatory aspects have always been in separate divisions of MMS. And, no, I don't think I would have used it as an

opportunity or as an occasion for reorganization. That is something that is within the purview of an existing secretary.

Mr. GINGREY. Certainly. And, Secretary Kempthorne.

Mr. KEMPTHORNE. Congressman, first of all, I want to thank you for your comments concerning our being here today. It is the purview of the incumbent secretary to organize as deemed appropriate. I think you are raising the question of timing and in that catastrophe when those are your human resources, when you need everybody pulling together, I think you want to have as much of an atmosphere that you will work together cohesively instead of having concerns about who may be singled out next, and so it is a question of timing and the creation of a proper atmosphere.

Mr. GINGREY. And I appreciate both former secretaries, Mr. Chairman, in their response and I certainly feel the same way. I mean, you know, you go through all this dancing around changing the—rearranging as the old expression goes the deck chairs on the Titanic, and you come up with a new name which sounds like—reminds me of vegetarian vegetables soup that I remembered as a kid and you got a whole new name but have you really done anything. And, more importantly than that though is the distraction of trying to do that when the focus really needs to be on the clean up and the response and it just doesn't—I think there is a lot of posturing in my humble opinion, and I think really your response sort of reinforces my suspicion in regard to that.

I got a little bit more time left so as a follow-up for both of you, can you please comment on the nature of how long—on the nature of how a long-term moratorium on offshore energy exploration would negatively impact the economy of the Gulf Coast and based on your experience how it would make us more dependent on foreign sources of energy. I realize that may have already been asked but I wasn't here and I would love to hear your response to that. First you, Secretary Norton, and then Secretary Kempthorne.

Ms. NORTON. One thing I don't think we have said before is that when companies make decisions for offshore oil wells, a platform is a multi-billion dollar decision. You need to have some long-term predictability. There are years of planning that go into that kind of thing. And so to have all the drilling rigs be off in other countries because of the moratorium is going to have repercussions far beyond the 6 months. It is not that you reach the end of 6 months and then everything goes right back into gear. There are many, many, many years of delay of impact of moving jobs away that are potentially involved.

Mr. STUPAK. Yes. Secretary Kempthorne has a right to respond to that question.

Mr. KEMPTHORNE. Mr. Chairman, thank you very much. Congressman Gingrey, I would preface it by saying I felt it was an extremely appropriate step to do a safety review. They did so. And with regard to—as I recall, it is approximately some 30 drill rigs in the deep water. Of those that were reviewed it was found that perhaps it was only one situation where there was a noncompliance of some element but the vast majority of all of the specifics of adherence to the regulations were in place. It was good to pause. It was good to take a look at that. But we also need to consider the big picture which is the energy security of the country. I believe we

are too reliant upon foreign source of energy. I also believe that this devastation, which has been horrible by every imagination including the 11 families that grieve and what it has done to the environment there, but a moratorium will compound the devastation by the economic devastation that will continue by the loss of jobs. And the Gulf Coast region needs an opportunity to recover and not have further devastation.

Mr. GINGREY. Thank you. And, Mr. Chairman, thank you for your indulgence.

Mr. STUPAK. Before we go to Mr. Scalise, Mr. Braley, we have a matter pending with Mr. Braley. He asked for the 2010 Oil Spill Minerals Management Service and the National Environment Policy Act June 4 CRS report be entered in the record. Without objection, that will be done. Also, myself, Mr. Waxman and Chairman Markey, we all referred to different studies, the shear ram capability study September, 2004, by West Engineering, another report by West Engineering, evaluation of secondary invention methods and well control, again March, 2003, a mini shear study again by West Engineering, December, 2002, and the SINTEF report of July 24, 2001. Without objection, those will all be made part of the record.

Mr. BURGESS. Mr. Chairman.

Mr. STUPAK. Yes, Mr. Burgess.

Mr. BURGESS. Also, I would ask that Governor Jindal's op ed from the Washington Post from last Saturday be made part of the record.

Mr. STUPAK. Without objection, it will be made part of the record.

[The information appears at the conclusion of the hearing.]

Mr. STUPAK. Mr. Scalise, I think we have about 3 minutes left if you want to ask questions for 3 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I will ask both of you, did either of you issue the permit for the Macondo well, for BP to drill the Macondo well? Ms. Norton.

Ms. NORTON. Definitely not.

Mr. KEMPThorNE. No, sir, we did not.

Mr. SCALISE. I am just saying that to point something out. I mean there are a lot of people in this Administration that seem to want to run around and blame other people for things. They issued it. There is no doubt in the time line. It is even submitted in the committee report. It was issued on May 22, 2009, and neither of you were there. I think what is really amazing to me is that it seems like every time there is a problem this Administration wants to try to find somebody else to blame instead of trying to just roll up their sleeves and do their job and help solve the problem. And I think we wouldn't have so many of these issues that we are dealing with, especially the issues that my local leaders are facing today, 3 months later, if the Administration was just willing to say let us do our job. Let everybody get in a room, and when there is a problem whether it is sand berm which took over 3 weeks to issue—Governor Jindal could have protected 10 miles of our marsh in the period of time it took to get that permit issued and still to this day they are waiting to get an answer back on a rock barrier plan to provide protection to some of these other real fragile ecosystems where you got pelican nests and other very vital resources.

And instead of getting everybody in the room the approach would be sit in that room and nobody leaves until you figure out a way to get it done, and if this plan on the table is not the way to do it, and there is no perfect plan right now, but whoever's plan is better, let us do it, but your answer can't just be we are denying your plan and everybody leaves and nothing gets done and more oil gets into marshes that didn't have oil the day before. And that is the problem we are facing. So maybe they don't want to own up to the fact that they issued the permit and they are trying to blame other people, but the bottom line is we just want to get these problems solved and we want the attention of this Administration focused on doing their job under the law. The Oil Pollution Act says it is the President's job to protect the coast. Unfortunately, he is not doing that. Our local leaders are trying to do it and they are being blocked by the federal government. There is no excuse for that.

Getting back to the moratorium. While there is a moratorium that even though the federal courts have said is arbitrary and capricious and the Administration doesn't have the legal authority to issue a moratorium they are saying that there is not a shallow water moratorium but, in fact, there are over 40 permits pending for new drilling in shallow waters which haven't been issued so there is a de facto moratorium on shallow water drilling. Can you talk about the differences between shallow and deep water drilling and the consequences of having the shallow water moratorium, which is causing even more job losses that even though this Administration says there is no moratorium they are not allowing any people being laid off.

Ms. NORTON. There are often different drilling rigs that are involved in different areas but whether the moratorium is in shallow water de facto or in deep water if you are actually going to have projects moving ahead and actually going to have the jobs that come from those projects, you need to have predictability and so there needs to be overall predictability, a focus on safety but also a focus on solving the real problems and letting the things that are dependable move ahead.

Mr. SCALISE. Mr. Kempthorne.

Mr. KEMPTHORNE. I really can't add anything to that, Congressman. I appreciate that.

Mr. SCALISE. OK. And I know you both touched on it a little bit, but I want to get back to this concept of a 6-month pause. When Secretary Salazar says I just want to hold my finger on the pause button for 6 months and then at the end of 6 months maybe let it go and start things up again as if magically everybody just sits around waiting for 6 months and you start it up again. We are already seeing that some of those deep water rigs are leaving. Some have already signed contracts to leave the country and take those good jobs with it and the energy producing capabilities with it, and many others are already in negotiations, and at some point soon they are going to be signing their contracts too. But if you waited for 6 months—I just want to address that because I do think it is disingenuous for people to go around and say there is just a 6-month pause and then we will start everything up again.

If you really do want to halt drilling for a long period of time, that is a policy decision and we can debate that, but I don't think

it is fair to the American people to insinuate that you can just stop everything for 6 months and then start it back up again magically and everything will work just fine. If you could both address this. At what point down the road do you severely limit the ability for an industry to come back in a short period of time and, in fact, maybe years?

Ms. NORTON. I know from our hurricane experience with Rita and Katrina that, yes, there was a lot of damage that had to be repaired but it took far—

Mr. SCALISE. I commend you on your work in getting those issues addressed quickly.

Mr. STUPAK. Your time has quickly evaporated, Steve.

Ms. NORTON. We just found it took a whole lot longer for the industry to recover, for the energy production to recover than we would have expected.

Mr. STUPAK. Secretary Kempthorne, did you want to add something?

Mr. KEMPTHORNE. Very brief, if I may. Businesses need to have business plans. They need to have predictability as long as you put this question as to whether or not and when they might be able to come back. Also, we need to put it into human terms. The employees that draw their livelihood from the drill rigs and that entire industry, what do they do for 6 months during the pause? How do they derive their income for their families?

Mr. SCALISE. Thank you, Mr. Chairman.

Mr. STUPAK. Well, that concludes all time for this panel. I want to once again thank Secretary Kempthorne and Secretary Norton who voluntarily came here and gave of their time to help us with this problem, this disaster that our country is facing, and we thank you for your insight and the answers to all of our questions. With that, this hearing will be in recess until 2:05. We will take a 10-minute break. We will be right back with the next panel. We are in recess.

[Recess.]

Mr. MARKEY [presiding]. We welcome everyone back. Again, this is a joint subcommittee hearing of the Oversight and Investigations Subcommittee of the Energy and Commerce Committee, and the Energy and Environment Subcommittee. We have been conducting this investigation jointly for 90 days, and we will continue to do so today. Our sole witness on our second panel is the Secretary of Interior, Ken Salazar, who was confirmed as Secretary of Interior on January 20, 2009. Prior to that service, he served in the United States Senate, representing the State of Colorado and before that he served Colorado as its Attorney General. So we welcome you, Mr. Secretary. It is the policy of this committee to take all testimony under oath and please be advised that you have the right under the rules of the House to be advised by counsel during your testimony. Do you wish to be represented by counsel?

Secretary SALAZAR. No.

Mr. MARKEY. Then would you please rise and raise your right hand to take the oath?

[Witness sworn.]

Mr. MARKEY. Let the record reflect that the witness replied in the affirmative. You are now under oath. So now we will welcome

you again, Mr. Secretary. Whenever you feel comfortable, we ask you to please begin your testimony.

**TESTIMONY OF THE HONORABLE KEN SALAZAR, SECRETARY
OF THE INTERIOR**

Secretary SALAZAR. Thank you very much, Chairman Markey and Chairman Stupak, and Ranking Members Upton and Burgess for this opportunity to come and testify in front of this committee concerning the Deepwater Horizon tragedy and what it has meant for this country and for this government and for the Department of Interior. Let me at the outset say that from April 20 until today, including this morning, we have continued a nonstop and relentless effort to kill the well to stop the oil from leaking from the well, and to do everything we can to keep the oil from coming on shore. It has been a coordinated effort on the part and at the direction of President Obama that has included the whole of government and putting every resource that we have and that the President has directed. We will not rest until we have this problem fully under control.

The status of the well today, since I thought it might be of interest to the committee, is that it continues under shut in having pressure of approximately 6800 psi. There is an intensive monitoring program which we have directed BP to implement so that we can monitor seeps and any other kind of changes as the well integrity test continues. The essence of the regime that we are under right now is a 24-hour license that BP is given every 24 hours and based on the review of the seismic, acoustic, sonar and other information that we are getting then we make a decision about whether they can move forward for another 24 hours. The rationale for that intensive surveillance program is that it is important for us that this well maintained well integrity so that we don't have a catastrophe with the well bore essentially blowing out and then having all the contents of the reservoir blowing out into the sea.

So we continue to spend a great amount of time. In fact, this morning as this hearing was going on, that is what I was working on. I did listen to parts of the testimony, including parts of the testimony from my predecessor, Secretary Kempthorne and Secretary Norton. Let me at the outset say that this is a tragedy because 11 people have been killed, and there has been environmental devastation in the Gulf of Mexico which we are dealing with now. And will continue to deal with into the future. There is a tendency to blame everybody who is involved and in my point of view there is a shared responsibility, a collective responsibility, for how we respond to this issue. I would suggest to all of you that based on your investigations and based on preliminary investigations from BP as well as preliminary investigations that I have seen that indicate that there were corners that were cut by BP as it moved forward with respect to this well construction.

You are as a committee very aware of what some of those are and you have reported on some of your findings. I would also say that prior administrations and this Administration have not done as much as we could have done relative to making sure that there was safer production in the Outer Continental Shelf. I believe that after drilling some 40,000 wells in the Gulf of Mexico that all of the nation, including the institutions of government, the Congress, as well as executive branch and multiple administrations were lulled into a sense of safety. And what the Deepwater Horizon perhaps drives home more than anything else is that we need to revisit that basic assumption with respect to safety.

Let me say that since I came in as Secretary of the Interior the President and I discussed the reform agenda of the department and made the reform agenda a high priority of mine from day one. Specifically with respect to the former Minerals Management Service we moved forward with an ethics reform program in the Department of Interior to do away with the sex and drug scandals that we had seen in Lakewood and other places, and most of the activity that has been uncovered by the Inspector General is activity that has either been referred over to prosecution or appropriate actions have been taken with respect to the firing, suspensions or other disciplines of those employees who were involved. I will also say on that note that most of the employees at the Minerals Management Service continue to do their work every day. They are working very, very long hours now as we try to bring, for example, the Macondo well under control.

We also moved forward with the reform agenda by terminating the Royalty-in-Kind program because the Royalty-in-Kind program had become essentially a magnet for the kind of corruption and ethics lapses that we had seen over the last 8 years, and so the termination of the Royalty-in-Kind program was a decision that I made early on to try to bring an end to the prior corruption. Thirdly, the Outer Continental Shelf and the plans that are put into place, many of you will recall that on the last day of the prior administration there was a new plan that was put forth for the OCS that essentially covered the entire OCS with respect to future development. We changed the OCS plan. There were some very extensive set of hearings and we were dealing with two different sets of plans, one from 2007–2012, and the new plan that was proposed from 2010–2015, and we narrowed it down so that we are protecting special places in the Arctic, the Chukchi and Bristol Bay where we cancelled 5 leases in that area. We took the Pacific off from drilling activity and proposed that we move forward in a thoughtful way with respect to areas in the Atlantic as well as with respect to the Gulf.

Our intention was to stay away at least 125 miles from the shores of Florida. And, finally, as you, Mr. Chairman, with your advocacy, we have followed on your direction that we do everything that we can to stand up renewable energy in the offshore especially in the Atlantic. We see great hope in that possibility. We believe that huge amount of electricity can be generated from wind and that is an effort that is well underway. Finally, just in terms of how we have moved forward since April 20 and before. We had been working on moving forward with additional safety require-

ments and additional training for employees. We also raised the bar on industry, the 30-day safety report, which I prepared at the direction of the President, set forth a number of recommendations with respect to blowout preventers, venting, casing, and a whole host of other things that should make drilling more safely.

We have moved forward with a safety notice to lessees which essentially is a recall of the blowout prevention mechanisms and requirement responder casing and well design requirements. That notice to lessees has been sent and we also have sent a notice to lessees with respect to blowout prevention. We are moving forward with the reorganization of what was formerly the Minerals Management Service and created the Bureau of Ocean Energy Management, Regulation, and Enforcement. That effort is led by the Assistant Secretary of Land and Minerals, Wilma Lewis, who was a former United States Attorney and Inspector General with the Department of Interior, and the agency itself will be led by Mike Bromwich, who also was an Inspector General for a very long time in the Department of Justice and who has been involved in the organization matters within the private sector.

The reorganization of the new MMS, the new Bureau of Ocean Energy, essentially will have 3 units. There will be an Office of Natural Resource Revenue, and that is to separate the revenue collection function from the other functions related to leasing the resource. A second unit will be one of Bureau of Ocean Energy Management unit, which will essentially make the decisions about where it is that we will be leasing the OCS resources for development. And the third unit will be one that will be focused exclusively on safety and environmental enforcement. This will not come cheap. When one looks at what has happened in the 1990's and through the first decade of this century the staffing levels at MMS have essentially remained static. We have made requests for additional staff in the last few years. The proposal that we have before the Congress and before OMB contemplates an additional 445 inspectors to help us in carrying out this very important duty for the American people.

I will comment just briefly on the moratorium because I know many of the members of this committee are interested in that. It is a moratorium that I have reissued that will stay in place until November 30 until I am satisfied that we have received appropriate and adequate answers to 3 essential questions. First, whether or not drilling can continue in a safe manner. Second of all, whether or not there is an adequate strategy to deal with blowout containment, issues like the one that we are facing, and, thirdly, that there is an adequate oil spill response capability that is out there. In conclusion, Mr. Chairman, I am hopeful that working with the members of this committee and members of the Congress that the legacy of this crisis will be four fold. First, that we will move forward to an era of safer production of oil and gas in the Outer Continental Shelf. Secondly, that we will embrace a Gulf Coast restoration program which Secretary Mabus and the Administration are leading in a way that finally restores the Gulf Coast after a century of degradation. Third, that we can embrace a conservation agenda for the 21st Century across America. And, finally, that it will open up the great possibility to a new energy future

that broadens the portfolio of energy which this country had been so dependent on with respect to fossil fuels to now include the power of the sun, the power of the sun, the power of geothermal, and the other parts of the energy portfolio, which the President has as part of his comprehensive energy plan.

[The prepared statement of Mr. Salazar follows:]

**STATEMENT OF KEN SALAZAR
SECRETARY OF THE INTERIOR
BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES
ON THE CONTINUING REFORM OF THE
OUTER CONTINENTAL SHELF PROGRAM**

JULY 20, 2010

Chairman Waxman, Ranking Member Barton, and Members of the Committee, thank you for holding this hearing today as we continue to address the issues and challenges associated with reform of the Department of the Interior's offshore energy program.

Offshore Energy Reforms Completed

The reforms we have embarked on over the last year and a half are substantive and systematic, and we will continue to build on them. The fundamental changes we are making do not come easily, and many of the changes we have already made have raised the ire of industry. Our efforts at reform have been characterized by some as impediments and roadblocks to the development of domestic oil and gas resources. But this unprecedented disaster at the Deepwater Horizon has only strengthened our resolve. We believe that our reform efforts are crucial to ensuring that we carry out our responsibilities effectively, without compromise, and in a manner that facilitates the balanced, responsible, and sustainable development of the resources entrusted to us.

I want to review reforms we have already undertaken:

First, we focused our efforts on ethics and other concerns that had been raised in the revenue collection side of the MMS. We:

- upgraded and strengthened ethics standards and enforcement throughout MMS and for all political and career employees;
- terminated the Royalty-in-Kind program to reduce the likelihood of fraud or collusion with industry in connection with the collection of royalties; and
- aggressively pursued continued implementation of the recommendations to improve the royalty collection program that came from the Department's Inspector General, the Government Accountability Office, and a committee chaired by former Senators Bob Kerrey and Jake Garn.

Second, we reformed the offshore oil and gas regulatory program, and:

- initiated, in the Fall of 2009, an independent study by an arm of the National Academy of Engineering to examine how we could upgrade our inspection and safety program for offshore rigs;
- procured necessary increases in the MMS budget for FY 2010 and FY 2011, including a 10 percent increase in the number of inspectors for offshore facilities; and
- developed a new approach to ongoing oil and gas activities on the Outer Continental Shelf (OCS) aimed at promoting the responsible, environmentally-sound, and scientifically-grounded development of oil and gas resources on the OCS.

In reversing the plans of the previous administration, and charting a new course for oil and gas development on the OCS, we cancelled the upcoming Beaufort and Chukchi lease sales in the Arctic, removed Bristol Bay altogether from leasing in both the current five-year plan and the next five-year plan, and removed the Pacific Coast and the Northeast entirely from any drilling under a new five-year plan. We made clear that we will require full environmental analysis

through an Environmental Impact Statement prior to any decision to lease in any additional areas, such as the mid- or south-Atlantic, and launched a scientific evaluation, led by the Director of the United States Geological Survey (USGS), to analyze issues associated with drilling in the Arctic.

Third, we laid the groundwork for expanding the mission of MMS beyond conventional oil and gas development by devoting significant attention and infusing new resources into the renewable energy program, thereby providing for a more balanced energy portfolio that reflects the President's priorities for clean energy. Toward that end, we:

- finalized long-stalled regulations for off-shore wind – cutting through jurisdictional disputes -- and approved the Cape Wind project;
- announced the establishment of a regional renewable energy office to coordinate and expedite the development of wind and other renewable energy resources on the Atlantic Outer Continental Shelf; and
- entered into an MOU with governors of East Coast states, which formally established an Atlantic Offshore Wind Energy Consortium to promote the efficient, orderly, and responsible development of wind resources on the Outer Continental Shelf through increased Federal-State cooperation.

Reorganization of the Minerals Management Service

I appointed Michael Bromwich as BOEM Director on June 15th. Michael, a former Inspector General of the Department of Justice and, more recently, an attorney in private practice, will lead us through the reorganization, which will lay the foundation for the reforms we have underway. He will lead the changes in how the agency does business, implement the reforms that will raise

the bar for safe and environmentally-sound offshore oil and gas operations, and help our Nation transition to a clean energy future.

For the same reasons I chose Michael Bromwich for this position, I chose Wilma Lewis who oversees the Department's energy bureaus as the Assistant Secretary for Land and Minerals Management. A former U.S. Attorney for the District of Columbia and Inspector General at the Department, Wilma has played a central leadership role in some of the most significant reforms during my tenure as Secretary. She has helped shape reforms ranging from our new approach to offshore oil and gas leasing and a new emphasis on renewable energy development on the Outer Continental Shelf, to ethics reform, to the enhancement of leasing programs and the development of renewable energy programs onshore, to support for our study of policies designed to ensure fair return to American taxpayers for the development of public oil and gas resources. I have also appointed her to chair the Safety Oversight Board in the aftermath of the Deepwater Horizon oil spill, and to help spearhead the reorganization of MMS toward a new future.

In a May 19 Secretarial Order, I restructured the MMS, separating the bureau's resource management, safety, environmental oversight, enforcement, and revenue collection responsibilities, and reassigned those functions to three new entities within the Department: the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue. I also tasked Rhea Suh, the Assistant Secretary for Policy, Management and Budget, Wilma Lewis, the Assistant Secretary for Land and Minerals Management, and Chris Henderson, one of my senior advisors, to develop an implementation plan for the reorganization of the Department's offshore energy program.

The plan is based on the premise that the activities formerly carried out by the Minerals Management Service must be clearly defined and distinct from one another in order to eliminate both real and perceived conflicts within the organization. Another key objective of the restructuring was to establish necessary checks and balances in the relationship of the three new entities, but to also ensure that critical linkages among the three organizations were maintained to provide a predictably administered program. The plan balances the imperative to move quickly with the analysis and planning required to effectively achieve the identified objectives.

The Deepwater Horizon tragedy and the massive spill have made the importance and urgency of a reorganization of this nature ever more clear, particularly the creation of a separate and independent safety and environmental enforcement entity. We will responsibly and thoughtfully move to establish independence and separation for this critical mission so that the American people know they have a strong and independent organization ensuring that energy companies comply with their safety and environmental protection obligations.

The restructuring will also address any concerns about the incentives related to revenue collections. The OCS currently provides nearly 30 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production, and is one of the largest sources of non-tax and non-trust revenue for the Treasury. The MMS collected an average of more than \$13 billion annually for the past five years.

Offshore Energy Reforms and Related Activities Underway

Since the Deepwater Horizon explosion and oil spill, the reforms and associated efforts have continued with urgency, with particular focus on lessons learned from the event. We are taking aggressive action on multiple fronts, including:

- inspecting all deepwater oil and gas drilling operations in the Gulf of Mexico;
- issuing a safety notice to all rig operators in the Gulf;
- implementing the 30-day safety report to the President, including issuing notices to lessees on new safety requirements, developing new rules for safety and environmental protection, and issuing suspensions of deepwater drilling on the OCS to ensure that oil and gas companies implement adequate safety measures to reduce the risks associated with deepwater drilling operations; and
- requiring operators to submit information in their exploration plans regarding blowout scenarios— reversing a long standing exemption that resulted from too much reliance on industry to self-regulate.

Additional reforms will be influenced by several ongoing investigations and reviews, including the Deepwater Horizon Joint Investigation currently underway by the Bureau of Ocean Energy Management, Regulation and Enforcement, and the United States Coast Guard. In addition, at my request, a separate investigation is being undertaken by the National Academy of Engineering to conduct an independent, science-based analysis of the root causes of the oil spill. I also requested that the Inspector General's Office undertake an investigation to determine whether there was a failure of MMS personnel to adequately enforce standards or inspect the Deepwater Horizon.

Further, on April 30th I announced the formation of the Outer Continental Shelf Safety Oversight Board to identify, evaluate, and implement new safety requirements. The Board, which consists of Assistant Secretary for Land and Minerals Management Wilma A. Lewis, who serves as Chair; Assistant Secretary for Policy, Management and Budget Rhea Suh; and Acting Inspector

General Mary Kendall, will develop recommendations designed to enhance safety and environmental protection and improve overall management, regulation, and oversight of operations on the Outer Continental Shelf.

The Council on Environmental Quality (CEQ), working with the Department of the Interior, is conducting a review of National Environmental Policy Act (NEPA) policies, practices, and procedures for the Department of the Interior's Minerals Management Service (MMS) decisions for Outer Continental Shelf (OCS) oil and gas exploration and development. We anticipate that additional reforms will be informed by this review.

Finally, the President established the independent bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, which has been tasked with providing options on how we can prevent and mitigate the impact of any future spills that result from offshore drilling.

The Administration will make sure that BP and other responsible parties are held accountable, that they will pay for the costs of the government's response to the spill, and compensate individuals, families, and business for losses and damages that arise from the spill. We will do everything in our power to make the affected communities whole. As part of this effort, last Thursday BOEM Director Michael Bromwich notified BP in writing that it is required to pay royalties on all oil captured from the leaking well and that it may also be responsible for royalties on any oil lost or wasted from the well if it is determined that such loss or wasted oil was due to negligence or regulatory violations that contributed to the tragedy.

Supplemental Legislation

As part of our reforms, we are also building on the efforts we undertook in the last seventeen months to strengthen the OCS budget. As I already mentioned, the President's 2011 budget includes a 10 percent increase in the number of inspectors. Our restructuring of the OCS program will require additional resources to implement the aggressive reforms we are pursuing. We are currently hiring an additional 12 inspectors and taking other actions that are outlined in the 30-day report to the President. Our restructuring of a more robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff.

The President's supplemental request of May 12, 2010, includes \$29 million to fund near term resources for these activities. These funds are critically needed to bolster inspections of offshore oil and gas platforms, draft health, safety, and environmental protection regulations, develop the required enforcement measures for these new regulations and carry out environmental and engineering studies. The President's request included a proposal to extend the time allowed by statute for review and approval of oil and gas exploration plans from 30 days to up to 90 days. This is also necessary, and I urge Congress to include it in the final version of the supplemental.

Sustained Response Efforts in the Gulf

My staff and I have worked virtually non-stop to address the Deepwater Horizon incident since April 20th. I personally have worked in Houston, Louisiana, Mississippi, Alabama, and Florida many days since then to help with efforts to both stop the oil spill and to protect the coasts, wetlands, marine environments, and wildlife threatened by this spill. We have deployed over 1,000 employees to the Gulf, and they have been directing actions to contain the spill; cleaning up affected coastal and marine areas under our jurisdiction; and assisting Gulf Coast residents with information related to the claims process, health and safety information, volunteer opportunities, and general information on the efforts being carried out in the region.

Under the direction of Admiral Thad Allen, we remain hopeful that the well will soon be killed and the planned cementing operations will ultimately seal the well. And good progress is being made on drilling the relief wells. Oil spill containment and clean up of the Gulf remains of utmost importance to us.

The Department's senior staff continues to offer coordination and guidance to the effort. Deputy Secretary David J. Hayes is devoting his time to coordinating the many Gulf-related response activities we are undertaking. Assistant Secretary for Fish, Wildlife and Parks Tom Strickland has been leading the Department's efforts for onshore and near shore protection. National Park Service Director Jon Jarvis and Acting Director of the Fish and Wildlife Service Rowan Gould continue to supervise incident management personnel and activities that their bureaus are taking to respond to the spill and clean up oil impacts. The NPS and FWS have dispatched approximately 600 employees to protect the eight national parks and 36 wildlife refuges and the numerous wildlife, birds, and historic structures they are responsible for in the Gulf of Mexico. And Dr. Marcia McNutt, my science advisor and the Director of the United States Geological Survey, has been at the Unified Command Center in Houston almost continuously since May 2010, providing science-based and technical expertise, coordination, and oversight to BP's efforts to contain the leak and kill the well.

Representatives from the FWS also participated with the U.S. Coast Guard, the Environmental Protection Agency, National Oceanic and Atmospheric Administration and state and local governments in a series of public meetings with local residents to answer questions and offer information on a variety of topics related to the spill and response activities.

Finally, there are many people in the Department devoting significant time and energy to various investigations and inquiries that are being carried out and to the ongoing reorganization and reform. I want to acknowledge their work and let them know their efforts are appreciated and are not going unnoticed.

Over the last several months, we have seen what the employees in the Bureau of Ocean Energy Management, Regulation and Enforcement are capable of -- their professionalism, dedication to the Department, and enthusiasm for the reforms underway. With Michael's help we will be able to cast aside the shadow that was left by an errant few, as well as the old policies that prioritized production over ethics, safety, and the environment.

Conclusion

Much of my time as Secretary of the Interior has been spent working to reform old practices of the MMS and advance the President's vision of a new energy future that will help us to move away from spending hundreds of billions of dollars each year on imported oil. A balanced program of safe and environmentally-responsible offshore energy development is a necessary part of that future. Our efforts to develop a robust OCS renewable energy program are a major part of the effort to find that balance and help move our Nation toward a clean energy future. However, we also recognize that, for now, conventional oil and gas continues to play a significant role in our economy. As we evaluate new areas for potential oil and gas exploration and development on the OCS, we will work with other federal agencies to conduct thorough environmental analysis and scientific study, gather public input and comment, and carefully examine the potential safety and spill risks.

The findings of the Joint Investigation and the independent National Academy of Engineering will provide us with the facts and help us understand what happened on the Deepwater Horizon. Those findings, the work of the Outer Continental Shelf Safety Oversight Board, the OIG investigation and review, and the findings of the Presidential Commission will help inform the implementation of the Administration's comprehensive energy strategy for the OCS.

We are taking responsible action to address the safety of other offshore oil and gas operations, further tightening our oversight of industry's practices through a package of reforms, and taking a careful look at the questions this disaster is raising.

This Administration will continue its relentless response to the Deepwater Horizon tragedy. Our team is committed to help the people and communities of the Gulf Coast region persevere through this disaster, protect our important places and resources, and take actions based on valuable lessons learned that will help prevent similar spills in the future.

Mr. MARKEY. Thank you, Mr. Secretary, very much. The chair will recognize the chairman of the Oversight and Investigations Subcommittee, the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Markey. Thank the chairman. Mr. Secretary, thank you for being here and thank you for all your work. This has not been an easy issue for any of us and especially your position as Secretary of Interior. You have been putting in a lot of hours and long days in working this, and we thank you for your efforts. Let me ask you this question. I asked both Secretary Norton and Secretary Kempthorne this question. The modeling we have for if an oil spill would work our only models deal with surface spills, not deep water spills. In 2005 MMS modeling team asked the secretary that the spill response plans need to be updated to deal with deep water releases. It has never been done. Were you aware when you took over that there was never a modeling program to show what would happen with a deep water spill in the Gulf of Mexico? Were you aware that nothing has been done?

Secretary SALAZAR. The answer to that is no, I was not aware of that.

Mr. STUPAK. And my follow-up question then, should we update the model before we go back to drilling? I know we have this moratorium on right now but shouldn't we have some idea—maybe we can learn something from Deepwater Horizon how catastrophic spills would go in the Gulf. Is that enough reliance or should we do modeling before we resume exploration and drilling in the Gulf of Mexico?

Secretary SALAZAR. Chairman Stupak, I think what we need to do is make sure that we have adequate plans to response to the 3 key issues that I just spoke about, and at the end of the day if you think about the containment program that has been underway since the Macondo well blew out, I think there is ample evidence that you have seen which I have reviewed every single day since April 20 and the efforts to close down the well that tells us that the containment efforts are simply not enough, and so it is an opportunity to really address all of the multitude of shortcomings that have become evident since April 20.

Mr. STUPAK. Since our investigation, I have been focusing a lot on the blowout preventer requirements, and as far back as 1997 MMS cut back on testing requirements for the BOPs by reducing required testing frequency from every 7 days to every 14 days because testing caused down time on the rigs. But a series of reports conducted between 2001 and 2004 pointed to even bigger problems. Over and over again these reports indicated that in many cases blowout preventers would not be able to shed drill pipe in an emergency. If the BOP cannot shed a pipe then it cannot seal the well to control a blowout. A 2001 report concluded that sub-sea blowout preventers should be equipped with redundant shear rams to increase the chances of success in an emergency. A 2002 report cited, and I quote, "a grim picture of the success when using BOPs in an emergency." A 2003 report identified problems with emergency activation systems and the need for remote undersea vehicles to operate all BOP functions in an emergency. The warnings from 2001 through 2004 seem to have anticipated the very problems that have come to pass in the Deepwater Horizon blowout.

Mr. Secretary, my understanding is that MMS established new rules for blowout preventers with rulemaking in 2003, but they did not require dual shear rams or other key improvements that the studies indicated were necessary. Is that correct?

Secretary SALAZAR. That is correct. Those requirements were not required.

Mr. STUPAK. On the rule that was made by Secretary Norton, I asked her about that, and I realize it was not your decision, but in retrospect do you think that the 2003 federal rule based on these studies should have had the dual rams shearing capabilities in case of a blowout prevention—in case of a blowout of a well?

Secretary SALAZAR. My own view, Chairman Stupak, is that there has been a lot learned with respect to these blowout preventers including the need to make sure that you have the shearing capability, and indeed some of the blowout preventers that are now being manufactured will require the dual capacity with the shear rams in case they end up closing in on a place where you have a pipe that they cannot get through.

Mr. STUPAK. Well, let me ask you because your 30-day report on the Deepwater Horizon contained a number of new recommendations for BOPs including the dual rams shearing as you indicated. Can you tell me some of the other recommendations and actions that the Department of Interior will be taking to implement safer BOPs?

Secretary SALAZAR. The recommendations are many, and they are outlined extensively in that 30-day report as well as in the notice to lessees that we have issued additional rules that we will be making. Some of the blowout prevention enhancements that you will be seeing will deal with the shearing capability of rams but other improvements that have to be in my mind put into place as well include assurance that the backup actuation programs do, in fact, work. And we will be making those requirements and have made some of those requirements with respect to the 30-day report.

Mr. STUPAK. Well, you talked about the need to hire 445 more inspectors. Will this enhance the certification and testing of these blowout preventers and other aspects that you have recommended in your 30-day report?

Secretary SALAZAR. Absolutely, Chairman Stupak. And let me say that as much criticism as may be laid in terms of what has happened in the last 90 or 91 days since April 20, it also has been a great laboratory of learning. There was a conclusion that essentially was a conclusion that most people had that you could not test the blowout prevents sub-sea. We now know that that is not the case and so there will be additional testing requirements that will also be imposed with respect to blowout preventers.

Mr. STUPAK. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The chair recognizes the ranking member of the Energy and Environment Subcommittee, the gentleman from Michigan, Mr. Upton.

Mr. UPTON. Thank you. Welcome, Mr. Salazar. Go blue, right?

Secretary SALAZAR. Go blue.

Mr. UPTON. Michigan Law School, you didn't say that. I don't know if you have had a chance to look at the bill that the Full

Committee reported out last week, 48 to nothing, H.R. 5626, the Blowout Prevention Act. I know that as a number of us were trying to seek comments from the Department, I don't know if there was a clearance problem at OMB, but we really didn't get any comments from the Administration as it related to the progress of this bill.

I don't know if you had a chance to look at it, and now that it has been reported out, I wondered if you might want to comment on certain provisions that still may be constructive as we look at this bill before it gets to the House Floor.

Secretary SALAZAR. Congressman Upton, I first of all agree that this committee put its focus on one of the very key issues that needs to be addressed and that is blowout preventers. And so I appreciate the work from this committee, and the fact that you had that kind of a bipartisan support for that legislation shows that it was a well thought-out piece of legislation. We are currently in the process of reviewing that legislation along with a host of other pieces of legislation that are making their way through Congress, and I look forward to working with all of you because I do think that it is a bill that we can work with. And so there may be some modifications or changes that we will request, but we have not yet had the opportunity to dig into it in detail but we will.

Mr. UPTON. You indicated in your testimony that you are doing in essence a 24-hour license every single day with BP. What would happen if you actually denied them a 24-hour bill? Would you all take over? What would happen?

Secretary SALAZAR. Essentially what would happen is they would have to go back into a containment mode and that is to essentially minimize the amount of oil that ultimately gets spilled out into the Gulf. And so prior to the time that the shut-in occurred, they were capturing on the average of about 24,000 to 25,000 barrels of oil a day so that there would be a resumption of some of that oil containment capacity as well as a program which we required. We ordered BP to develop a program that put in different scenarios with different oil containment capacity, leading up to as much as 80,000 barrels a day of containment capacity.

What would happen as you would transition though from a shut-in of the well over to a leak containment program is that during that interim period, there would be some flow of oil out into the Gulf.

Mr. UPTON. Former Secretary Kempthorne who was here earlier this morning in his testimony voiced the frustration to the degree that they had sought more money for inspectors, in essence about \$2 million more than what Congress provided. You indicated just now that you are looking for about 445 more inspectors. I am just wondering if the ideas fostered within the Administration to perhaps go about like a user fee on the industry itself, like we have an escrow account now to pay, I hope, every dime of—or an escrow account for every dime for the losses—et cetera, for folks along the Gulf. Should you not be able to get money from the Appropriations Committee, do you have the authority, would you seek authority to in fact impose a user fee to then provide for these additional inspectors that you are calling for?

Secretary SALAZAR. We are working closely with OMB and work closely with the Appropriations Committee relative to the additional resources that are needed and how we fund them. And I know everybody here agrees that we need to find ways for paying for some of these things, and so that is part of the conversation that is taking place.

The number that I gave to you in terms of 445 inspectors is what we believe we would need over about a 3-year timeframe to be able to do an adequate job of inspecting the oil and gas activities in the outer Continental Shelf. As I think I heard some of you say this morning, it would be almost impossible, frankly, for 60 inspectors to be expected to go out and do the job when we are talking about 4,000 very complicated facilities that they have to inspect in the Gulf of Mexico.

Mr. UPTON. What role do you expect that the President's Oil Spill Commission will play in the decisions about the moratorium? Do you expect that commission to offer advice as it relates to the moratorium and how would you use it?

Secretary SALAZAR. You know, we will consult with them relative to whether or not it is time for us to remove our hand from the pause button, but right now, given the dynamic situation in the Gulf of Mexico and the issues that I outlined earlier, from our point of view, it would be irresponsible to take off, to take our hand off the pause button, as many have suggested.

And so we will be developing information in the weeks and months ahead, including information that is developed by the President's Deep Water Commission. If we are to make an adjustment with respect to the moratorium, it will be dependent on, be answering to the three fundamental questions which relate to drilling safety, oil containment and adequacy of oil spill response. And if we were to find a way of doing that before 6 months, then there would be a possibility of doing something different with the moratorium. But for right now, our view is that it will take until about November 30 for us to get that done.

Mr. MARKEY. The gentleman's time has expired. The Chair will recognize himself for a round of questions.

Mr. Secretary, in recent days, BP's Kent Wells said that the company is considering an additional technique known as a static kill, a bull-heading, now that the well has been capped. This procedure has been described as similar to the top-kill in which mud is introduced at the blowout preventer but may benefit from the current stop-flow and lower than expected pressure at the well. What can you tell us about this bull-head kill? What are the risks and the challenges of the procedure that is now being considered?

Secretary SALAZAR. The static kill would be a decision essentially to try to kill the well from the top. Some have described it in layman's terms as a sandwich kill because ultimately, everyone has known that ultimately killing this well is going to require the relief well to kill it from the bottom. But in the interim, what BP has been talking about is a possibility of coming in from the top and essentially putting in mud and then cementing the well from the top. Their view is that it can be done easier now that you basically have a shut-in pressure and you don't have a flowing well.

But I think Chairman Markey exemplifies a key role that we in the United States have been playing with respect to these kinds of issues. We will not allow BP to move forward with the static kill option if we think that it is going to create greater jeopardy and compromise the integrity of the well.

And so there is a science team which is headed by Secretary Chu and includes the directors of all the national labs as well as Director Marcia McNutt from the U.S. Geological Survey, and they are reviewing these plans and assessing the benefits and risks. And it is on their advice—we will allow the science to lead us to the appropriate conclusion before we stop BP or we green light BP on anything.

Mr. MARKEY. Thank you, Mr. Secretary. If the well is permanently shut in or killed through a static kill, then a definitive determination of flow rates may be precluded, and that would be a success for BP in its continued attempt to obscure the true flow rate of the well. If, however, we do move to a collection strategy, then it would be possible at some point to collect 100 percent of the hydrocarbons from the well for a period of time. Why is that important? Because BP will be fined \$4,300 per barrel for gross negligence. Each 10,000 barrels that spill out per day for 80 days or so would be the equivalent of a \$3.5 billion fine, 20,000 barrels per day, \$7 billion, et cetera. If it was 60,000 barrels per day, then the fine would be about \$18 billion.

So Mr. Secretary, can you tell us what is the likelihood that we can get as precise a number attached to how much oil has been spilled out in the Gulf of Mexico because of the negligence of BP? We know that BP is trying to lower their liability. They want the maximum amount of ambiguity in terms of what that number is so that the ultimate settlement will be lower in terms of what BP has to pay to the American taxpayers and to the people in the Gulf of Mexico. So can you just give us some sense of how precise ultimately the goal is for the Obama Administration to establish how much oil did go into the Gulf of Mexico?

Secretary SALAZAR. Chairman Markey, I agree with your conclusion that it is absolutely imperative that we have the flow rate determined in a way that is absolute, and we have the best of scientists in the world that have been involved in terms of looking at these flow rates.

The current flow rate of the U.S. Government which came about as a result of very extensive scientific work is between 35,000 and 60,000. There is additional data that has come in relative to pressure as the well was shut in, and that will provide an additional opportunity in the days ahead to try to come up with a definitive number that will give us the rate of flow at the time of the shut-in. But there are other complicated questions, Chairman Markey, that our scientists will have to look at, including whether or not the amount of flow has changed over time from April 20 until the time of shut-in. But I can assure you that the premise here that BP be held accountable for everything that it owes to the United States of America relative to penalties and other kinds of assessments against BP is essentially imperative for us, requires us to make sure that we have accurate flow numbers.

Mr. MARKEY. Well, again, I would just say that we know that BP will litigate this issue in terms of how large their fine is, as Exxon did after the Valdez incident. If it takes 10 years, they will take 10 years. They will take as much time as they want. I think it is critical for us to establish the most precise number right now because ultimately the American taxpayers should be fully compensated for what BP did to America's ocean.

We thank you, Mr. Secretary, for being here and for your service to our country.

Let me turn now and recognize the gentleman from Texas, the Ranking Member of the Full Committee, Mr. Barton.

Mr. BARTON. Thank you. I thought you were going to go to Burgess, but I am ready to go.

Mr. MARKEY. Mr. Burgess pointed toward you.

Mr. BARTON. Oh, he did?

Mr. MARKEY. Approvingly.

Mr. BARTON. All right. He has passed the buck.

Mr. MARKEY. With recognition.

Mr. BARTON. All right. Well, thank you, Dr. Burgess, and welcome Mr. Secretary.

The blowout preventer that failed on April the 20th was supposed to be inspected every 2 weeks, and we have been told that this particular blowout preventer was inspected approximately I believe 10 days before the accident and passed the test. Is that correct? And can you share with the committee any of the results of that particular test?

Secretary SALAZAR. My recollection, Representative Barton, is there was an inspection that did occur in early April of the blowout preventer and that there were multiple tests that were conducted after that. The inspection would have occurred, and then following that, there were I think tests on the blowout preventer April 10th, perhaps April 17th, but other days during that time of April.

Mr. BARTON. So is it correct that this particular blowout preventer that failed on April the 20th when you had the accident did pass the inspection earlier?

Secretary SALAZAR. It did pass the last inspection that was conducted.

Mr. BARTON. When that inspection or any inspection of these ultra deep oil rigs are conducted, is there an MMS inspector onsite while the test is being conducted?

Secretary SALAZAR. The answer to that is no. The answer to that is that the tests are conducted by the companies when they are testing the blowout preventer. When the inspections occur, you don't have the capacity frankly when the inspector is out there to get down and see and conduct the test itself while you are on there.

And so you take the information that is provided, and you review that information as an inspector, and that is what you base your findings on. And that is part of the change that I believe needs to be made. It ought not to be a circumstance where essentially an inspector is taking the word of the company relative to the adequacy of the blowout preventer.

Mr. BARTON. So current practice has been a self-administered test using approved protocol, and then the results of that test are forwarded to the appropriate official at MMS, is that correct?

Secretary SALAZAR. As I understand it, Chairman Barton, or Ranking Member Barton—

Mr. BARTON. I like Chairman. That is OK.

Secretary SALAZAR. Ranking Member Barton. My understanding is that is how the process works.

Mr. BARTON. Has your department had a chance to compare the test results of this particular blowout preventer to what happened on the accident day and the inspections that have occurred electronically and visually through the remote monitors of this blowout preventer? In other words, can you indicate what the anomaly was in the accident that caused the blowout preventer not to operate when apparently very soon before that, it had operated correctly? We have had 90 days as has been pointed out rightfully so by my friends on the majority. The failsafe plan was that the blowout preventers would never fail. Well, the blowout preventer did fail. So I would think a key component of the investigation would be compare the test results most recently tested with what actually happened and see what the anomaly is. Has that been done and if it has, can you share that information with the committee?

Secretary SALAZAR. Congressman Barton, there are many pieces of evidence that need to be collected, including the blowout preventer. The blowout preventer is essentially the black box that has to be taken up from the floor of the sea, and none of these investigations will be able to be fully completed until that happens.

The blowout preventer is now necessary in order to keep the integrity of the well and the well shut-in—

Mr. BARTON. I understand that.

Secretary SALAZAR. So when that blowout preventer comes out, there will be a very extensive forensics protocol that will examine all of those issues and determine what went wrong. But it is a critical aspect of the Marine Board investigation. It is a critical aspect that everybody involved in any of the investigations is focused on, and I am sure your committee will be very interested in those findings as well.

Mr. BARTON. My last question, and I know I have just expired my time, why was the Jones Act not waived so that some of these international partners could send their equipment to assist in the skimming and the clean up immediately? Because I know there was a petition to do that. Why was that not granted?

Secretary SALAZAR. Congressman Barton, I can only say that I have worked with the National Incident Commander Thad Allen and our entire group from day one, and the Jones Act has never been in the way of getting any vessel on board to deal with the oil spill response.

Mr. BARTON. So the international community that wanted to send their equipment, the fact that they wanted to send it and couldn't because of the Jones Act, that is just not true, they just didn't send it?

Secretary SALAZAR. It is not true that the Jones Act was any barrier to bring in any of those vessels—

Mr. BARTON. Then why were they not allowed in? I was told it was because the Jones Act prevented it. If that is not true, why were they not allowed in?

Secretary SALAZAR. My understanding, and I can get the National Incident Commander's verification on this for you, but the Jones Act has not been at all a reason for any of these vessels from coming in.

Mr. BARTON. OK. You didn't answer my last—you have answered the first question. You said the Jones Act was not the reason. What was the reason?

Secretary SALAZAR. Again, it is the National Incident Commander Thad Allen that can respond to that. My understanding is that there are multiple reasons, including some of them are the distance that they were and a host of other reasons. But we can get that for you.

Mr. BARTON. Will you state that the reason is not because somebody in the Obama Administration said they couldn't, they were turned down?

Secretary SALAZAR. I will—

Mr. BARTON. Can you declaratively state that they were turned down?

Secretary SALAZAR. Congressman Barton what I will say this, is that no stone has been left unturned in terms of any offer of help that could be used, OK? And that certainly has been the direction that the President has given to us and that the National Incident Commander have been working on from day one.

Mr. BARTON. I thank the Chair's discretion.

Mr. STUPAK. Chairman Waxman for questions, please.

Mr. WAXMAN. Thank you, Mr. Chairman. Secretary Salazar, good to see you. Our committee investigation revealed that BP made a series of risky decisions. When they were drilling the Macondo well, they used a single string of casing that provided only one cement barrier preventing flow of dangerous gases to the well head. They did not use enough centralizers during the cementing process. They failed to fully circulate drilling fluids. They failed to install a key casing lock-down sleeve. And they failed to conduct a cement bond log test to determine if the cement job had failed. Many of these decisions did not conform to industry best practices, but BP went ahead with them anyway.

Secretary Salazar, why was BP able to design such a risky well? Can you describe for us the regulations on well design and cementing and why they failed here?

Secretary SALAZAR. Chairman Waxman, the issues you have raised with respect to cementing, centralizing, drilling fluid, and the rest of the issues that you raised are I know very much a subject of what this committee has looked at. They are very much the subject of which the Marine Board is looking at right now. And we will have some answers with respect to what happened on each of those apparent deficiencies.

In terms of the regulations of the Department, there are regulations of the Department with respect to each of those issues that you raise. Part of the investigation will determine whether or not those regulations were followed or whether they were simply broken. But that is part of what the investigation will look at, and with respect to MMS employees that were involved in the oversight of the regulations and the inspections, I have also asked the Inspector General to take a look at what exactly it was that the MMS

employees were involved in the Deepwater Horizon knew or didn't know.

So we are looking at all those issues, and they are all part of the ongoing investigation.

Mr. WAXMAN. As I understand it, current regulations are performance-based. They essentially tell operators to make sure the design is safe but require no specifics on how to do so. In the wake of the BP disaster, you called at least for new regulations regarding the well design and cementing. Can you describe your recommendations and how you intend to implement them?

Secretary SALAZAR. The regulations are first in terms of drilling safety and cementing and casing. Chairman Waxman, many of them are spelled out in the 30-day report that we submitted to the President, and those regulations in many ways are then reflected in the legislation which this committee acted on.

We are implementing those recommendations through notice to lessees, two of them that have already gone out to cover a number of those recommendations and are in the process of moving forward with additional regulations, including a new set of rule-making. In addition to that, the new Director of the Bureau of Ocean Energy is hosting a number of public outreach meetings to make determinations as to whether or not additional changes are needed.

So it is a dynamic situation, but we are not waiting around until November 30 or January 1 in terms of making changes that need to be made. There are many changes that are being made as we speak.

Mr. WAXMAN. A number of the recommendations that I believe was the commission that you set up proposed were embodied in legislation that was passed by this committee called the Blowout Prevention Act of 2010. The legislation would not let BP or any other company take the same shortcuts that were taken on the Macondo well. This legislation requires multiple barriers to prevent gas flows in the well. It requires circulation of the fluids and adequate centralization of the casing. It would mandate the use of a lockdown sleeve. It would require cement bond log testing of key cement jobs. It would also require third-party certification that the well design is safe, making the regulator's job easier. I believe this proposal that came out of our committee will help you in your effort to improve safety of deep water drilling. The requirements in this legislation will go a long way toward preventing blowouts and making sure that regulators have the tools they need to keep well operators from taking dangerous shortcuts.

That was the intent of our legislation. It was based on some of the recommendations your people had proposed, and it would not prevent you from revising those regulations and updating them as you saw necessary. But the emphasis, the shift in emphasis, would be that there would be things that would be required to be done before the drilling permit would be agreed to, not just simply that that company is going to say that they will live up to a performance standard and then when they failed, then we are looking after the fact as we now are dealing in the BP case.

We want to work with you. We want to make sure this never happens again. And we hope when we pass this legislation and you

are finished with your job, we can assure the American people of safety in the drilling of these wells.

I yield back my time.

Secretary SALAZAR. I agree with you very much, Chairman Waxman. And let me say, I appreciate the leadership of this committee and focusing in on what was supposed to be the failsafe. That failsafe essentially was what lulled the American public, this Congress, multiple executive branches and secretaries and presidents to say that this was safe. And so your focus on that particular issue is one that I very much appreciate, and we are reviewing your bill and I expect that we will work things out with your staff relative maybe to some technical issues. But the thrust of it is absolutely correct.

Mr. WAXMAN. Thank you very much.

Mr. STUPAK. Mr. Burgess for questions.

Mr. BURGESS. Thank you, Mr. Chairman. Mr. Secretary, welcome to our committee. Who is going to be responsible for—fast forward when the well is shut in, the blowout protector will be removed by someone and examined by someone. Can you tell us the process you intend to follow? Who will be charged with removal and who will be charged with the forensics on the blowout protector? And this is essentially a crime scene, as I understand it. Is that not correct?

Secretary SALAZAR. Yes, interestingly, Congressman Burgess, we have put together an effort which I have asked Deputy Secretary Dave Hayes to work with the Department of Justice and the National Incident Commander Thad Allen to assure that the appropriate protocols are followed because this is Exhibit A, if you will, in a whole host of matters that will unfold before the country in the year ahead. It is the black box, and so we need to make sure that the right protocols are followed, and those are being developed.

Mr. BURGESS. Well, there is a lot of course to determine who is at fault and was there negligence. But then of course, from our perspective, we wrote a law that you just referenced dealing with preventing the problem from ever happening again. But we don't know what happened that caused the problem that we are dealing with now.

So obviously it needs to proceed on two tracks, but they are both extremely important. One is important from settling criminal issues and liability issues in regards to this accident and one is important to settling the issues as to how we do proceed in the future with this type of activity. Now you—

Secretary SALAZAR. I agree with you, and if we could we would be doing the forensics on it right now. The problem and reality is that—

Mr. BURGESS. You can't move it.

Secretary SALAZAR [continuing]. It is needed to keep the well in control for right now.

Mr. BURGESS. Sure.

Secretary SALAZAR. But as soon as it is over, I guarantee you, the protocol will take over. The United States is in charge. The United States will be in charge of the blowout preventer and will be in charge of the forensics and the evidence.

Mr. BURGESS. Will BP be the one that removes it from the ocean floor?

Secretary SALAZAR. That will be part of the protocol, and it will probably be with oversight from the United States Government. But that will be part of the protocol that we are working on.

Mr. BURGESS. Let me just ask you this very briefly. You referenced to an answer to a question I think of Mr. Stupak, or maybe it was Mr. Markey's, that Secretary Chu was having some input into monitoring the condition of the well as it currently exists as to whether or not the pressures are acceptable, neither too high nor too low. I know Dr. Chu is a brilliant man, but does he have experience with well design?

Secretary SALAZAR. What I will say is he is a Nobel laureate and my extensive work with him in the last 90 days, he is probably the most brilliant man on the planet. And having him in a position—

Mr. BURGESS. With all respect, the President is a Nobel laureate, but I don't know that he would be the best person for that job.

Secretary SALAZAR. But if I may, what Secretary Chu has done with my assistance and my working with him is we have assembled the best team. You would be proud of them, Congressman, of scientists from around the country, from the Federal Department of Energy labs, Sandia Labs, Tom Hunter, Marcia McNutt from the United States Geological Survey. And they have collective petroleum—

Mr. BURGESS. But they don't design wells, with all due respect. All I am concerned about here is you referenced the fact that BP may want to do something different from what the Department of Interior wants. At some point, if there is a divergence of opinion, does BP lose any of their liability if the Department wants them to go in a direction that they are uncomfortable in going or if they said, we really just want to go ahead and shut this thing in with whatever you called it, the bull hammer approach now. Who ultimately gets to make those decisions and then what release of liability is there for the party of the first part, BP, if the wrong decision is made?

Secretary SALAZAR. The United States is in charge. The United States working through the National Incident Commander will give the approvals and authority on the way forward. Those decisions, Representative Burgess, will be guided by the best of what the science community tells us, and we have the best of the science world involved in this issue.

Mr. BURGESS. I wish we could all be so sure. We don't even know about the presence of—down there or the ultimate of the potential for collapse of the well head. I mean, that has been a concern since it was raised in this committee some six weeks ago. So I wish I could share your certitude about that.

I have got a number of questions related to the moratorium. I hope we will have the opportunity to submit questions in writing because I think this is important. But have you done a risk analysis on the likelihood of other wells failing in the Gulf?

Secretary SALAZAR. The moratorium decision which we issued in a 20-plus page document laid out the factors related to my decision. My decision essentially was based around three key factors which there is tremendous evidence in the record to support and tremen-

dous evidence which I know this committee has seen uphold before its very eyes. And those issues relate to drilling safety, oil containment and oil spill response. Today, if there was another oil spill response requirement in the Gulf of Mexico or somewhere else, we would not have the capacity to respond to it because all of the resources essentially are focused in on dealing with the blowout at the Macondo well.

Mr. BURGESS. Before I am gavelled down, would you supply that risk analysis for the committee for the record?

Secretary SALAZAR. We will supply you a copy of my decision which essentially includes reference to a very extensive record.

Mr. BURGESS. Actually, the paper supporting the decision would be what the committee would benefit from.

Secretary SALAZAR. We will work with your staff to figure out exactly what it is that you want, but we do—the decision that was made last week and communicated last week was a very well-thought-out decision which—

Mr. BURGESS. But based upon some set of facts, and if the set of facts could be—

Mr. STUPAK. The gentleman's time—

Mr. BURGESS. —provided to the committee, that is what we would appreciate.

Mr. STUPAK. Mr. Dingell for questions, please.

Mr. DINGELL. Mr. Chairman, thank you. Mr. Secretary, a pleasure to see you before the committee. Thank you for being here.

Mr. Secretary, I am troubled. Where in the statute does NEPA allow for categorical exclusions? What is the citation in the statute which permits that?

Secretary SALAZAR. Congressman Dingell, I think you get to the broader question with respect to the environmental review of oil and gas leasing in the outer Continental Shelf.

Mr. DINGELL. No, Mr. Secretary, this is a very specific question. I say this with the great affection and respect. But NEPA says that every single action which has a significant impact upon the human environment shall be accompanied by an environment impact statement. Nowhere in that statute—and by the way, Scoop Jackson and I wrote this in the late '60s and early '70s. Nowhere in the statute is there authority given for a categorical exclusion. Is it the interpretation of your agency that there is a categorical exclusion in this or is it the interpretation of the Council on Environmental Quality that such be so?

Secretary SALAZAR. It is founded in law and it has to do with this. Chairman Dingell, if you, with all due respect, there was an environmental impact statement that was conducted with respect to the 2007 to 2012 plan. There was another environmental impact statement with respect to this particular—

Mr. DINGELL. Here is the way it worked, Mr. Secretary, and let us refresh our collective recollections. There was essentially a generic environmental impact statement issued for the entire block in which the lease existed as opposed to a specific lease, and I am trying to figure out what transpired here. I hear talk that there is some kind of a device for a categorical exclusion. I want to make sure that your department is not misinterpreting the statute or

that the statute has not been improperly amended at any time since Scoop Jackson and I got it into law.

Secretary SALAZAR. Let me say that the fix here is what the President and I have proposed to the Congress and that is there is a requirement in the law under—an expiration plan to be approved within 30-days of its submission. And so what we have asked is that that timeframe be extended from 30 days to 90 days in order to be able to do the appropriate environmental review. So that is one of the areas that we hope to work with the Congress on to make sure that the way in which categorical exclusions have been used in the past is not the way they are used in the future.

Mr. DINGELL. I think, Mr. Secretary, in the interest of time, I would like to submit this and ask that you respond for the purpose of the record. Have there been any categorical exclusions, and if so how many granted where oil and gas companies got licenses to drill? If so, how many? I will permit that to be inserted into the record. So would you submit that for us, please?

Now, Mr. Secretary, tell us about this cement bond log. No such test was performed on the Macondo well, is that correct?

Secretary SALAZAR. Chairman Dingell, the answers to those questions are still a part of the investigation.

Mr. DINGELL. OK.

Secretary SALAZAR. Your committee has found that—

Mr. DINGELL. Would you submit that, please, Mr. Secretary, for the record?

Secretary SALAZAR. But Chairman Dingell—

Mr. DINGELL. But I would like you to tell me if Interior does not insist that such a test is performed, then how is the department to know that that is, rather that the law has been complied with and that in fact the lease is being safely and properly executed by the oil company?

Secretary SALAZAR. Chairman Dingell, we have conducted and are conducting a comprehensive review of the whole regulatory regime relative to the drilling—

Mr. DINGELL. Mr. Secretary—

Secretary SALAZAR [continuing]. On the Continental Shelf.

Mr. DINGELL [continuing]. With respect and affection again, I will submit this for the record and ask you to respond.

Now, Mr. Secretary, it is my understanding the lessees are required to submit a blowout scenario. In 2003, all leases in the Gulf were exempted from this requirement unless they fell into four specific categories. In 2006, this was expanded to five. Is this correct?

Secretary SALAZAR. It is correct that that is the way it was, as I understand it—

Mr. DINGELL. OK.

Secretary SALAZAR [continuing]. Chairman Dingell, but it is also correct that those are some of the changes that we have already made as we have moved forward with the 30-day—

Mr. DINGELL. I don't want you to feel uncomfortable—

Secretary SALAZAR [continuing]. Report to the President of the implementation—

Mr. DINGELL [continuing]. About this, Mr. Secretary.

Secretary SALAZAR [continuing]. Of the regulations.

Mr. DINGELL. I just want to gather the facts. Now, did the Macondo well require a blowout scenario or was it exempted from the blowout scenario?

Secretary SALAZAR. The Macondo well had a requirement with respect to a blowout preventer under the regulations.

Mr. DINGELL. Again, I would like to submit that in a written inquiry. I thank you, Mr. Secretary.

I ask, Mr. Chairman, that the record remain open for both my letter and the response of the Secretary, if you please.

Mr. STUPAK. As Chairman Dingell knows and other members know, the record would stay open for 10 days for additional questions. So we will make sure that is done.

Mr. DINGELL. Thank you, Mr. Chairman, and thank you, Mr. Secretary. It is a pleasure to have you before the committee.

Mr. STUPAK. Thank you, Mr. Dingell. Mr. Shimkus for questions, please.

Mr. SHIMKUS. Thank you, Mr. Chairman, and I, too, would like to submit for the record for you, Mr. Secretary, if you would supply the committee's staff with all risk analysis of another blowout that was used in determining the first moratorium and then obviously the second. There has got to be some risk analysis that was conducted, and we would like for you to submit that for the record.

First of all, I want to thank you for being here, and I appreciate your candor to say, hey, there is enough blame to go around for all of us. I think the deep-sea modeling issue is just another one that a lot of us let slip by, things that we could have done. And so I think that is important that we look at the problem, try to resolve the problem, make BP pay and move forward.

This is historical in my 14 years having a sitting Secretary and two previous Secretaries in one day, and as I noted earlier, I have not seen that ever done. I have not seen a Secretary of Energy brought before and then the previous Secretaries of Energy brought on the same day. So it is what it is. So we welcome you here.

First of all, for electricity generation in this country, are we independent? Are we as a Nation for the most part independent on our energy needs for electricity generation? I can help you. I know you are not in the energy—the answer is yes. So when we talk about energy needs of this country, I like to break it up into electricity generation and liquid fuels for transportation needs and the like.

You made a comment in your opening statement about the huge amounts of energy that will be able to be recovered by wind in the Atlantic coast. Can you define huge for me? This has got to be electricity generation because we don't make transportation fuel out of wind. I am just trying to figure out what huge is.

Secretary SALAZAR. The formal evaluation as I recall from the National Renewable Energy Lab is that there is about 1,000 megawatts of power available. Now, there is a—

Mr. SHIMKUS. But that is intermittent, right? You can't totally rely on that for base-load generation.

Secretary SALAZAR. Let me, Congressman, answer your question. There is a connect between how we use electricity and how we consume oil, and this President has been working for a long time—

Mr. SHIMKUS. OK, reclaiming my time. I really am short, and I want to stay true to the 5 minutes.

Secretary SALAZAR. Let me make my point. I want to make my point.

Mr. SHIMKUS. Let me just say that—

Secretary SALAZAR. Chairman, I would just like to make my point, to answer my—

Mr. STUPAK. Would you let him answer and then we will—

Mr. SHIMKUS. No, I have like three more questions I need to go to, so I get the point. My point is there is electricity and liquid fuel. It is my time—

Secretary SALAZAR. I can answer my question in two words, electricity and transportation are tied together.

Mr. SHIMKUS. Maybe in the new world, but it isn't today. I will tell you what real power is, 1600 megawatts by a coal-fired power plant being built. That is the equivalent of 624 wind generators. The 624 wind generators would take 30,000 acres of land to place. We just got to keep this—there is not huge. Huge is nuclear. Huge is coal. Renewable is helpful, but to sell the story that it is the salvation of our energy need is really doing a great disservice to this country.

Let me move onto the moratorium. There are 33 rigs idle right now. If I said that that is 45,000 jobs and equivalent jobs, would that be close?

Secretary SALAZAR. There have been different numbers that I have seen from experts.

Mr. SHIMKUS. 30,000?

Secretary SALAZAR. There are thousands of jobs.

Mr. SHIMKUS. If I said a loss of \$330 million in payroll, would that be close?

Secretary SALAZAR. I haven't seen the number in dollars.

Mr. SHIMKUS. Two billion dollars in royalties to the Federal Treasury is lost. Would that be close?

Secretary SALAZAR. There is no doubt the moratorium has an economic impact.

Mr. SHIMKUS. OK, the last question. I do—but this moratorium is killing me and it is killing jobs in a place that needs jobs. When you put your hand on the pause button, is business planning and decision making pausing? I will give you an example. In my opening statement, I talked about a release yesterday. First rig sails away over drilling ban. Diamond Offshore announced Friday that its Ocean Endeavor drilling rig will leave the Gulf of Mexico and move to Egyptian waters immediately, making it the first to abandon the United States in the wake of BP oil spill and a ban on deep-water drilling. That is in the time when we need jobs and the economy and energy is important, we pray that you have some concern about the jobs of this country and of Louisiana.

Thank you, Mr. Chairman. I yield back.

Secretary SALAZAR. Congressman, if I may? Mr. Chairman, I would like to just respond very briefly—

Mr. STUPAK. Yes.

Secretary SALAZAR [continuing]. In this sense. First, we are aware of the economic impacts of the moratorium. We also believe that it would be irresponsible to take our hand off the pause button given the current circumstances. Second of all, with respect to electricity, we do believe that the future of it is huge and it is going

to be part of the future energy portfolio of the United States. So I respectfully disagree with you, Congressman.

Mr. STUPAK. Mr. Green for questions.

Mr. GREEN. Thank you, Mr. Chairman. Thank you, Mr. Secretary for being here, and I am going to ask my staff—I talked with you earlier about a letter the Congressman Kevin Brady and I sent in on June 24 that a number of our colleagues signed onto outlining hopefully an interim solution to lift the deep-water drilling ban on a small scale, and like my colleagues, I represent a very urban district in Houston. It has refineries, chemical plants. We do everything energy including—I have constituents who work offshore and historically families who have worked offshore. So the moratorium is a very big issue.

The letter we are asking about that several of my colleagues propose lying low-risk development and appraisal wells to be drilled while the Department of Interior continues the assessment on deep-water exploratory wells. These type of wells offer the reassurance of smaller, minimal risk because of delineation and sidetrack drilling that accompanies these wells merely just serves to define the parameters of then-known reservoir. If your department agreed to this modification—hopefully it is under consideration for almost the last month. If it addressed the Administration's call for safe and secure drilling and protect estimated about 75 percent of those jobs you heard earlier that would be lost under the moratorium if we go forward with the full 6 months. And it would also help prevent future energy supply shortages in 2011 and 2012 because these wells don't come in immediately, particular deep water. It takes a long effort to get there.

Now, the new moratorium focuses on drilling configurations and technology rather than drilling depth, and since the whole basis of my proposal stems from the specific drilling configurations and assuming we quickly get the blowout preventer and rig equipment inspected by Interior and third-party certifier, would that prevent you from exempting these wells from the moratorium? And again, these are not actually production wells, these are actually just delineating the reservoir and are much less riskier than the Horizon. So I know you have a copy of the letter now, and we sent it like I said on June the 24th, but I appreciate you seriously and the Interior seeing if we can moderate that 6 months where we can get 75 percent of these folks actually back working. That way we wouldn't have these rigs sailing off to somewhere else.

And I would just appreciate it if you would just say you will consider it. That is fine with me, and we will be back in touch because you have been real great with your time with a lot of us over the last 2 months trying to work with you and Interior.

Secretary SALAZAR. If I may, Congressman, the key issues that we are looking at that we need to have some satisfaction with are drilling safety, blowout containment and oil spill response. And Michael Bromwich, the Director of the Bureau of Ocean Energy, has already publicized the schedule of meetings that he is going to have, especially in the Gulf Coast states, developing additional information. And then maybe the moratorium could be adjusted based on zones of risk. We already have said that it is OK to move forward with drilling in the shallow waters, OK? We have said that

there may be a possibility of doing something that distinguishes between wells that are being built off production platforms versus wells that are being drilled as exploration wells. We don't know anything at all about those formations or insufficient information.

So that is part of the analysis that we currently have under way, and we would be and will keep you informed as we move forward with that analysis.

Mr. GREEN. And that is what our letter asks for, those less riskier wells where we could get those folks back to work and delineate the reservoirs. Again, the taxpayers would benefit, obviously my constituents and people who work there.

My second question is, and you mentioned shallow well drilling, I appreciated the first production well was actually, a permit was given last week. And you know, my concern, there has been a de facto moratorium on shallow well drilling. There have been reworking and things like that, permits given on shallow well drilling, but like I said, the first actual production well was issued last week. And from what I understand from today's Wall Street Journal, that company actually started drilling Sunday because there was such a demand in shallow water.

We have also sent an earlier letter to you at the end of May from Congressman Boustany and I that we appreciate the lifting of the shallow water but like I said, the first new well permit was issued last week. In fact, I was told yesterday, several of our shallow water producers met with Mr. Bromwich's staff yesterday, and they are close in agreement on some of the guidance in NTL06 because that is some of the concern. We are having—field offices don't know what NTL06 and they are not issuing those permits, and as soon as possible if we could get the rules there because these are shallow water wells. All the equipment is up on top. If you have a question about the blowout preventer, it is not 5,000 feet below sea level. And there are a great deal of natural gas that is produced and jobs created from those shallow water wells.

So I appreciate. Hopefully that one permit that was issued last week for production will see more issued in the next few days. So that will show that there is not a de facto moratorium on shallow well-drilling.

Mr. Chairman, I appreciate your patience.

Mr. STUPAK. Thank you, Mr. Green. Mr. Griffith for questions.

Mr. GRIFFITH. Thank you, Mr. Chairman. I am listening intently to the testimony, and it is obvious that we all crave certainty in our lives, and therefore we want to measure and measure everything.

I think that in my particular case, I am not so much interested in the technical aspects of the well head of what have you, but I do know that the capping of the well was low tech. I do know that this was not a difficult concept of putting a cap on top of where the oil was coming out of, but I do know that it took a good long while. And I do know that we will fool ourselves into some degree of confidence that we are doing the job when we measure and continue to measure. And I know we will generate a huge booklet of regulations, but I will remind all of us that if I step on the bathroom scales and it looks at 200 pounds, I get off of that bathroom scale and I put a cotton ball on, the needle doesn't move. Whatever we

are measuring has a finite amount of confidence to it. So what I am concerned about is that we are going to have a blowout again, as diligent as we are today and as many of the things that we would like to measure, but we do know that the thermal dynamics and the external variables, the internal variables almost make deep-water drilling a biologic system. And we know that a human can die with a normal blood work and a normal EKG and a normal MRI and a normal CT scan, so we are going to have this event once again in front of us, regardless of our intentions.

And so my concern is from the time that well blew out to the time we put a cork in the bottle, so to speak, what happened? And my other question is this. Should that have happened when your position was empty, should that have happened in between administrations or in between Secretary of the Interior, who takes charge? It reminds me of the story of the nurse that goes down to the nurse's station and says, Mr. Jones is blue. The nurse takes the chart out and says, what room is he in, and she duly charts it and then says what do you think we should do? Let us call his doctor. It looks like he might need some oxygen. We can't give it to him without an order. His doctor is not on call. Do you think it is his heart or is this a lung doctor we should call? Well, by the time we get there, well, he is not blue anymore, he has got a tag on his toe, and he is on the way downstairs.

So what we saw here was a cost guard, an EPA, Environmental Protection Agency. We saw the mayors and governors all weighing in, and it appeared that there was no central control immediately of the situation. So after we create the documents, and this happens again. Who can you point to, and not you but generic who says this is the guy that takes care of the oil well problem? This is the guy that takes care of the earthquake problem. This is the guy that takes care of the tsunami problem. This is the guy that takes care of the hurricane problem, because we have done this before in America, whether it be Katrina, the Colombia accident or what have you. We are having trouble going from a tremendous amount of knowledge to executing it in the field, and I think that should be part of our response and solution. I would like to hear your thought on that.

Secretary SALAZAR. Well, Congressman Griffith, Admiral Thad Allen was appointed as the National Incident Commander. All of the United States Government goes through him as he coordinates the overall response. Secretary Chu and I have been focused in two areas, one is on the source control on the kill of the well, and I have been focused as well in terms of protecting the 44 wildlife refuges and national parks and the ecological resources of the Gulf Coast.

Secretary Napolitano obviously overseeing the Coast Guard and being under the Presidential directives, the personal role and charge of the oil spill response.

So the Federal Government from day one has been very—

Mr. GRIFFITH. Well, my question is simply this, can we make that more efficient? Could we say this is a catastrophe and we are on it from day one or two or three? In other words, can we reduce that timeline because capping that well was probably not a novel

light bulb going on in some engineer's brain. It probably, had they put their——

Mr. STUPAK. The gentleman's time is——

Mr. GRIFFITH [continuing]. They may have been able to not have done it quicker.

Mr. STUPAK. If you can answer, Mr. Secretary?

Secretary SALAZAR. I will say that I think from day one—I sent my deputy without overnight clothes on April 21st to New Orleans along with Kendra Barkhoff who was here who began to monitor the situation, and quickly we were in communication with Secretary Napolitano and the White House and everybody else. We have been on it since day one.

I do believe, Congressman Griffith, that when one looks back as one should in any post-mortem, there will be an opportunity to see how things might have been improved. That is just the nature of how these things go. We are dealing with what is an unprecedented and largest oil spill response in the history of this country, and the resources that have been spent have been enormous, and the mobilization of the United States Government has been at the direction of the President relentless and with his specific direction that we will not rest until we get this problem solved.

Mr. GRIFFITH. I appreciate you and your staff—I don't like the moratorium a bit, but I am sure if I could——

Mr. STUPAK. OK, Mr. Griffith, your time is up, please.

Mr. GRIFFITH. Thank you.

Mr. STUPAK. Let us go to the next questioner, Ms. Capps, for questions, please.

Mrs. CAPPS. Thank you, Mr. Secretary, for being here with us.

During the previous testimony today by your predecessors, strong comparisons were made between the Deepwater Horizon oil spill and Hurricane Katrina. It was striking to me that what was not mentioned was one very striking difference. The hurricane which occurred 5 years ago was watched by the entire country as it approached land and wreaked havoc, you know, for 2 full days and then it was gone. But with the exception of the initial deadly explosion, the extent of the oil spill was unknown. It occurred a mile below the surface of this gulf, and the perpetrator of the blow-out, BP, withheld so much information, videos, and reports for days and weeks.

We in the government, and more importantly, the American people, were lied to. Precious response time was wasted, let alone any requirement to have response equipment already in place and ready to go on day 1. Now it is day 90, and you and your team have been in full response mode, but you also have been learning a great deal. I want to let you talk or ask you to talk, please, and respond for a minute or so, fairly briefly. I want to follow it up with another similar kind of question to look where we have come from, but also on your watch, where we should go from here.

Secretary SALAZAR. Well, it seems to me and I appreciate the question, Congresswoman Capps, I think when you look at it back from a global perspective that we are looking at what the President has been pushing, and many of you have been supportive, which is a comprehensive energy program for this Nation, and in that comprehensive energy many of you are supportive of the renewable

part of the portfolio. Some of you are more supportive of the oil and gas part of the portfolio, but we all recognize and the President recognizes that oil and gas will be part of that portfolio during this transition time.

The question then for all of us as the United States becomes how can we make sure that oil and gas as it is produced is being produced in a way that is safe and protects the environment. And to me, Congresswoman Capps, the central questions come down to these three.

First, can we assure the American public that drilling can continue in a safe way? Your prevention bill that you passed is part of that answer.

Secondly, if you do have a blowout, what are the oil containment programs in place to be able to deal with a blowout. They obviously were not in place to deal with this issue that now is in its 90th day.

And then thirdly, what are the adequate oil spill response capacities that are needed to be able to deal with an oil spill response if one should ever occur again. When we have answers to those questions, it seems to me then we are able to move forward.

Mrs. CAPPs. Thank you. I have to say in your position as Secretary from my perspective as a coastal representative I very much appreciate your decision to shelve the Bush Plan to open up much of the California coast to oil and gas leasing—leasing.

It was referenced, though, today already that the development of the previous Administration's offshore energy program plan appeared to be driven more by energy companies than by public input or the best available science. In contrast to this kind of closed-door process employed by the previous Administration, it appears to me that your decisions are being informed by public input and incorporating the best available science.

I salute the listening sessions that you held right as soon as you were sworn into office, long before this event ever occurred, and I was fortunate to be part of one of them, and I noticed that Director Bromwich announced yesterday that there will be additional public hearings coming up in the next few months to inform the leasing decisions that you will then be making. This accompanied with some of the science.

So this is what I would like you to spend the rest of the time on if you would, how do you intend to use this decision, this gathering of information in your decision-making process?

Secretary SALAZAR. Congresswoman Capps, the—we will use the information that we collect from the Bromwich set of hearings to move forward in consideration of the three central questions that I outlined previously, all of which related to the moratorium and to the ultimate goal here, which is to develop a safe and protective oil and gas production program.

You are correct that when I took office on January the 21st I had in front of me a new 5-year plan that was to go into effect in 60 days that essentially opened up all of the waters of the United States. I decided 60 days was insufficient for public comment and extended it to 180 days and had the hearings which you participated in in California, Alaska, and other places.

And it is our view, it is the President's strong view that the decisions are best made when they are transparent and when we are maximizing public input.

Mrs. CAPPS. Thank you, Mr. Chairman.

Mr. STUPAK. Thank you. Mr. Latta for questions, please. Five minutes.

Mr. LATTA. Well, thank you very much, Mr. Chairman, and Mr. Secretary, thank you for joining us today. Really appreciate your time here.

I read with interest in your conclusion that you have talked about a little bit already, but I would like to also just read. It says, "Much of my time as Secretary of the Interior has been spent working to reform old practices of the MMS and advance the President's vision of a new energy future that will help us to move away from spending hundreds of billions of dollars each year on imported oil. A balanced program of safe and environmentally-responsible offshore energy development is a necessary part of the future. Our efforts to develop a robust OCS renewable energy program are a major part of the effort to find that balance and help us move our Nation toward a clean energy future."

Then you also go on to state that, you know, for now we have to look at conventional oil and gas.

You know, it is interesting that we are here today because I am not sure, you probably did see the front page of the "Wall Street Journal" today. "China Tops U.S. in Energy," and I would just like to read just a little bit from this.

"China has passed the U.S. to become the world's biggest energy consumer according to the new data from the International Energy Agency, a milestone that reflects both China's decades-long burst of economic growth and its rapidly-expanding clout as an investment giant. China's ascent marks a new age," it says here, "in the history of energy."

Then it goes on—I think it is also interesting a little bit farther in the article it says, "China overtook it," meaning the United States, it says here a little earlier that the United States was the largest energy user since the early 1900s in the world. "China overtook it at break-neck pace. China's total of the energy consumption was just half that of the U.S. 10 years ago, but in many of those years since China has—China saw annual double-digit growth rates. It has been expected to pass the U.S. about 5 years from now but took that to position today."

The reason I read that is because I represent the largest manufacturing district in the State of Ohio, and I also represent the largest ag district in the State of Ohio. My district, if we are going to survive and according to the National Manufacturers, I, 2 years ago, represented the ninth largest manufacturing district in the Nation, and because of where we are with the economy, we are 20th now.

But, you know, my main concern is what Mr. Shimkus brought up. We have to have base-load capacity in this country, and I am all for an all-invoked strategy, and that all-invoked strategy has always been we need nuclear gas, oil, clean coal, wind, solar, ethanol, biodiesel, hydrogen, and right down the line.

But for the factories in my district to operate, we have got to have power that turns on immediately, or we are not going to have people working, and the biggest problem in our area, we are just talking about one thing, jobs, jobs, jobs, and when folks look around and they ask me, how come the jobs are leaving the United States, well, and then I am looking at this article and I can point to one more thing that is killing is that, you know, the energy needs in this country might be—are being shipped someplace else means they are going to be—their manufacturing is topping ours. The Chinese want to be, you know, atop us in manufacturing. In 10 years if they are able to do in energy, they might do to us in manufacturing. This is getting scary.

And it is also, it is kind of odd right on top of this there is another story in the “Journal” today. It says, “Personal Journal, How to Tame your Nightmares.” Well, this is my nightmare right here, and you know, I am really concerned that as we—as the Administration goes forward and that we get—30 percent of our U.S. oil comes from the Gulf, that as you said in your statement on page 10 here that, you know, you—that you will continue to look at this conventional oil and gas playing a significant role in our economy and not selling it short because we have got to have it to survive as a manufacturing country.

And I will leave the rest of my time for an answer. Thank you.

Secretary SALAZAR. Thank you, Congressman Latta. As I have said in previous testimony, we—the President from day 1 has said we need to have a comprehensive energy plan, and our view is part of the reason the United States will fall into second place is if we are not able to get a comprehensive energy plan adopted for the United States of America, and hopefully there is still time in this Congress to be able to do that because once the right signals are sent to the market, essentially what you are going to have is a different kind of headline than the one that you were showing me from the “Wall Street Journal.”

And that is that we as a United States are not playing for second place. We are playing for first place as the President has said, but in order to do that we need to have the long-range policies in place to bring up as many of you support nuclear, as many of you support clean coal, as many of you support wind and solar and geothermal, but we need to have a framework that isn't the start and stop of energy policy which we in this country have now had for the last 30 years.

Mr. LATTA. Well, thank you very much, Mr. Chairman. I yield back.

Mr. STUPAK. Thanks, Mr. Latta.

Mr. MELANCON, questions, please.

Mr. MELANCON. Thank you, Mr. Chairman. I appreciate it.

Secretary Salazar, I would like to kind of follow up on something that Mr. Dingell was inquiring about. It is my understanding that there is a requirement of a 30-day EIS completion for these deep-water well, and if it can't be completed in 30 days, then, in fact, they can waive—the department, MMS, can waive that requirement. Is that—

Secretary SALAZAR. The issue on the categorical exclusions is that you cannot do, frankly, an environmental impact statement in

the 30 days, and so what has happened is that categorical exclusions have been given in the past under Republican and Democratic Administrations with respect to exploration plans as happened here in the—

Mr. MELANCON. Do you have or does your staff know when that categorical exemption was put into effect either by law, or was it put in effect by rule within the Department?

Secretary SALAZAR. I can get that information for you, Congressman Melancon. I don't have that at the top of my head right now.

Mr. MELANCON. Is this same waiver applicable in all of the Gulf Coast States, or is it only applicable in certain States?

Secretary SALAZAR. My understanding, Congressman, is that there have been several hundred of them that actually had been given and probably it would not be done on a jurisdictional basis off any one of the States. And so the reality is that the categorical exclusions are driven in large part because under the current law relating to OXA there is a 30-day requirement to approve an expiration plan once it is filed with the Department. And so that is not sufficient time to do the right kind of environmental review and is—it is the reason why in the President's submission of a legislative package to Congress he said that requirement of the law should be changed to 90 days.

Mr. MELANCON. If you would and if you would just—this could be responded to, the reason I asked that question is I have been told, and I don't know that this is valid or not, that Louisiana, Texas—I mean, Louisiana, Mississippi, and Alabama, the 30-day requirement with the waiver, if it can't be done in 30 days, was applicable, but the other two Gulf States they had to do the IS regardless. Don't know that for a fact, but if your Department can verify.

Secretary SALAZAR. We will check on that and get back to you on that.

Mr. MELANCON. We have had as you know and you and I have gone back and forth, and I appreciate your efforts to stay in contact with me. You have been better than me at returning calls back to you, but the moratorium is more concern and I guess the concern I have got is, one, is the Commission that was set up, they have any charge whatsoever about making recommendations as to whether the Administration stays with the moratorium, or if they have some findings, or are they charged with looking for findings to bring back to the Administration and to you to say this moratorium maybe isn't good, the economic hardship or impact would be worse than trying to find some method or way of doing the rolling inspections as we have talked about in the past.

Secretary SALAZAR. Congressman, the President's Deepwater Horizon Commission has as its mission to get to the bottom of the story as to what happened with respect to the blot at the Macondo Well and the Deepwater Horizon, and they will undertake that effort as they have already started. We will be informed by their proceedings and information as they develop and recommendations that they make. So we will be in contact with them as we develop our own information and move forward with our process on addressing the issue of the moratorium.

Mr. MELANCON. Can you give me, if it is possible, what was the thought processing, I mean, was it just strictly the concern with another blowout as opposed to a moratorium, or was there any discussions about finding something as I have described that would work for inspections and safety that was somewhere between drill, baby, drill and shutting it completely down?

Was there any discussion there, or did it just go straight to we have got to shut this down and try and find out—make sure that we don't have another blowout and let us not worry about the economy? What transpired in those conversations? Do you recall?

Secretary SALAZAR. Congressman, those issues were, in fact, looked at and considered, and they are part of the record and part of our decision on the moratorium. I will say this, that as I am here in front of this committee today, we are still in a very dynamic and a very dangerous situation. We are not out of the woods even though this well has been temporarily shut in because until we get to the ultimate kill of the well, the situation is still a very dangerous one. And it is our view and I have worked on this from April 20 forward, that until we have the answers to the fundamental questions that I outlined to the committee earlier on, that it would be imprudent for us and irresponsible to move forward and lift the moratorium.

Now, as information develops and as we move forward with our review and as Director Bromwich holds his hearings, too, which I think are scheduled for Louisiana, that we will have an additional set of information that might allow us to adjust the moratorium at some point, but right now looking at the timeframe, our view is that November 30 is a reasonable timeframe when we can expect to be able to make some decisions on the moratorium.

Mr. MELANCON. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Mr. STUPAK. Thank you, Mr. Melancon.

Mr. SHADEGG for questions, please.

Mr. SHADEGG. Thank you, Mr. Chairman, and Mr. Secretary, I want to commend you as did my colleague, Mr. Shimkus. I listened very carefully to your opening statement, and it is not often that in this town anybody comes forward and acknowledges, look, we could have done things better. In your opening statement you said that past Administrations and this Administration had not done as much as they could have done to ensure the safety of this industry or to ensure the safety and ecological protection necessary for this kind of activity, and I appreciate the candor of that statement.

You also went on to say, and I appreciated it, that with 40 years of drilling history and there being no incidents, I believe your words were, this Administration and prior Administrations had been lulled into a sense of complacency, and I think that is a fair assessment. I don't know how much of this hearing you have been able to watch, but in the appearance of your two predecessors during the early hours of this hearing, that was not the kind of testimony that was going on. Rather there was a blame game being played very aggressively by some members of the committee trying to assign blame and trying to point fingers. I don't really think that solves the problem. I think it is more important to look at what

went wrong but more important to live our lives looking forward at what we can do correctly in the future.

In that regard, I believe the report that you received on May 27 contained language to the effect that the industry had had over 50,000 wells in the U.S. outer-continental shelf, of which more than 2,000 were in waters 1,000 feet deep or more, 700 were in waters 5,000 deep, that we had been using sub-sea below preventers since the mid 1960s and that the only major prior event from offshore drilling had been 41 years ago, and that, in fact, had been from the—in the Santa Barbara Channel, and it had been from a shallow water platform where the blowout preventer was on the surface.

I assume that is what you were referring to when you were talking about the history of this industry led us to using the procedures we were using prior to this incident. Is that correct?

Secretary SALAZAR. Congressman, what I would say is that 41 years of a relatively good record essentially led the United States Congress and many Administrations to essentially assume that there was safety with respect to this kind of drilling.

Mr. SHADEGG. Mr. Kempthorne said just about, and he also noted that we would never do it again because we have learned from this incident.

Secretary SALAZAR. But the fact is that that assumption was made, and we do have an ongoing disaster in the Gulf of Mexico, and I think from our point of view would be imprudent for us to simply move on as if nothing had happened.

Mr. SHADEGG. I couldn't agree—

Secretary SALAZAR. At the end of the day where you were is where the President and I have been from day 1 on this. We have a problem, and we have to fix it, and we have to fix it right.

Mr. SHADEGG. I couldn't agree more. My time is short, so I want to get to all these questions.

Mr. Waxman in his questioning talked about several issues. He mentioned that there are regulations on—you mentioned in response to his question that there are regulations on casing and cementing and mud and all of those issues and that a part of your study now is to find out were those regulations filed, followed, or were they broken, and that is a part of the forensic activity.

Wouldn't you agree that it would be prudent before this Congress enacts permanent legislation, at least legislation specifying details in that nature as opposed to granting new regulatory authority, that we get the answers to those questions before we enact legislation?

Secretary SALAZAR. I think we have already learned a great deal from this ongoing disaster in the Gulf that provides a basis for which to act. Now, that does not mean that as we go forward and the President's Deepwater Horizon—

Mr. SHADEGG. We don't—by your own testimony we don't know the answer to those details. Correct? We don't know exactly what went wrong here. You said earlier we can't get to those things because we are too busy trying to cap the wells, stop the flow. We haven't been able to do the forensics yet. Correct?

Secretary SALAZAR. We know a lot. We don't know everything yet.

Mr. SHADEGG. Great. You said in response to Mr. Shimkus's question that huge was 1,000 megawatts. Then he cut you off. Did you really mean huge means 1,000 megawatts, or is that huge compared to what we thought wind could do prior to this?

Secretary SALAZAR. It was 1,000 gigawatts.

Mr. SHADEGG. Oh. You said megawatts, and that is quite a bit of difference. OK.

Secretary SALAZAR. If I said that, I apologize. I meant to say the National Renewable Energy Labs calculation of the potential for offshore wind is at about 1,000 megawatts, but the states along the Atlantic—

Mr. SHADEGG. I don't want to be rude. I want to get into this last question, and my time is extremely short. Gigawatts is very different than megawatts. You may have—you just misspoke, and it just stunned some of us back here.

You are aware of the e-mail that was sent by the eight scientists who disagreed with your characterization of their report and were quite angry that it had been changed after they signed off on it and before they submitted it. The original report said that the moratorium should last for a sufficient—and I am quoting here. "For a sufficient length of time to perform additional," and then they talk about blowout preventer testing, pressure testing, and water barrier testing. It then is changed by your Department to say a 6-month period.

Is it routine for the Department to change reports after the fact, and I note that today, and I am going to run out of time here, I note that today you said—

Mr. STUPAK. You are out of time.

Mr. SHADEGG. I am out of time? I note that today that you said that the recurrent moratorium will remain in effect until November 30 or until those three questions you posed are answered. I am a little confused as to what the line of the—the length of the current moratorium is, and I would concur with some of the members here who hope that you will release that moratorium as soon as it is safe to do and that you would focus on bad actors as opposed to punishing anybody that is out there doing a good job.

Secretary SALAZAR. If I may, Mr. Chairman.

Mr. STUPAK. Yes.

Secretary SALAZAR. Just responding to the two questions.

In terms of the engineering reports, the fact is that the report to the President was my report, and I appreciated the input from the engineers and any others who were involved in helping us write the report, but the decision on the moratorium essentially was my decision as Secretary of the Interior. It wasn't the decision of engineers or anybody else.

I think I have covered it.

Mr. SHADEGG. Thank you.

Mr. STUPAK. Mr. Gonzalez for questions, please.

Mr. GONZALEZ. Thank you, Mr. Chairman. Welcome, Mr. Secretary.

On the moratorium, I share some of the same concerns as others, and when we have the other witnesses, Mr. Secretary, I also expressed that I wasn't in total agreement with what—the policies

that have instituted this place, and I think Mr. Green probably articulated many of my own concerns.

Until we find out, and I think Mr. Shadegg has a good point, until we find out what went wrong at Deepwater Horizon, how are you going to proceed with remedying that situation if we really don't know? Now, some people say it may have just been a deviation from what is accepted industry standards, and I don't know all of the terms, all—we are not going to be experts in this, but the casings and the cement and so on, in capping the well.

And let us just for the sake of argument say that is what we find out. We find out whoever was responsible for that didn't do that particular process correctly, and according to everybody else in the industry they would have never done it in the manner in which it was done. That is the assumption that they are making when we have had them here as witnesses.

How does that play into what you are going to do with the moratorium, because this could be an open-ended question for 4 months, 5 months, 6 months. I mean, I am not sure when we finally arrive at answers.

Secretary SALAZAR. Let me say there are many questions, and one of them has to do with drilling safety, but there are many others that are obvious such as the oil spill response plans and the capability.

I think it is fair to say that the oil spill response plans that have been in place are inadequate, and so how we deal with that issue is something that we can start working right away, and waiting until we have the reports from the Commissions and the other investigations isn't the way that we want to do business.

We want to move forward as quickly as we can for respective blowout containment measures, which is another set of issues, what you probably have here at the Macondo Well is the greatest laboratory in the history of the world relative to what you do on containment, because it has been a learning process. Many failures but many lessons that have been learned, and so creating this kind of containment capacity in the Gulf of Mexico may be one of those outcomes that we want to latch onto and not wait around for another 6 months before we start developing that kind of an effort.

So I think for those of you who are concerned about the moratorium and its length, you should be supportive of the kind of effort that we are undertaking to try to move forward to create the goal of safety and protection for the environment with respect to oil and gas drilling.

Mr. GONZALEZ. And I think we all share the same goals. We just believe one on expediency, of course, being thorough, and the fact that you can treat different wells that are in different phases or stages of development differently so that there is not so much catch up when you finally lift it in part or in whole.

Now, you had a Federal District Court basically join you. Is that correct?

Secretary SALAZAR. That is correct.

Mr. GONZALEZ. And then you issued a new moratorium that would be—obviously have something different for the Court to consider the next go round. Is that correct?

Secretary SALAZAR. It is a new decision with significant additional information and we believe a very good record. We believe the first one was a very good decision as well and is legally defensible. Much happened between the first decision and the second decision in terms of additional information.

Mr. GONZALEZ. So you were responsive to some of the Judge's concerns?

Secretary SALAZAR. Yes.

Mr. GONZALEZ. Thank you. I have got about a minute, but I want to give you a chance to respond to what was stated earlier by former Secretary Kempthorne. He made a general statement that in his opinion and what he read, even though he has not been privy to any meetings by any of the stakeholders or participants, that he sensed, one, this Administration didn't make use of all assets that were available. Number two, that he did not see that the Administration was truly engaged and maybe there was non-engagement, and thirdly, that he didn't see the Administration creating an environment which was conducive to cooperation among all of the different individuals at the local and state level.

Twenty-seven seconds if you can give me the Administration's response.

Secretary SALAZAR. Thank you, Congressman Gonzalez. Let me—I have great respect for Secretary Kempthorne, but let me say that I very much disagree with those conclusions. Within days after this disaster started unfolding, I was actually in a meeting in Louisiana with Secretary Napolitano, Director Browner, and others with Secretary Gates on the phone, authorizing these States to move forward with the National Guard and yet very few of the States has really brought up the National Guard to the level that they could have brought it up.

But that was done within days of the onset of this disaster. I will tell you knowing and working with my colleagues on this Cabinet and the White House every day, including sometimes at eleven o'clock at night like we were last night and sometimes at 2:00 in the morning, that we have not rested, and we have been relentless in terms of our effort to deal with this problem, and we are confident that we are going to deal with this problem, and we are going to have some fixes here that are good for the United States of America.

Mr. GONZALEZ. Thank you very much, Mr. Secretary.

Mr. MARKEY [presiding]. The gentleman's time has expired.

The Chair recognizes the gentleman from Louisiana, Mr. Scalise.

Mr. SCALISE. Thank you, Mr. Chairman.

Mr. Secretary, on the Commission that the President put together that is currently conducting hearings, I know I testified before them last Monday along with Senator Landrieu, and one of the points we were bringing up was about the moratorium, and pretty quickly into that conversation, this was our first day meeting, they said that they were not tasked with addressing the moratorium, and Senator Landrieu had presented some letter that you had written where you had indicated that their recommendations on the moratorium were going to be one of the factors that you did consider.

So I am trying to find out what is the—is there a gap? Were they not aware that this was a role they were supposed to play? Is that a role that they are supposed to play?

Secretary SALAZAR. Our position—the moratorium is my decision as Secretary of Interior. We will be informed relative to the central issues of that moratorium based on the findings from multiple investigations, including—

Mr. SCALISE. Will that Commission be part of that decision-making process when you—

Secretary SALAZAR. We will consult with them.

Mr. SCALISE. So—

Secretary SALAZAR. We will consult with them.

Mr. SCALISE [continuing]. They will in essence be tasked as part of their task with addressing the moratorium or at least making recommendations to you?

Secretary SALAZAR. Congressman Scalise, their mission is to get to the bottom of what happened with the Macondo Well in the Deepwater Horizon and make sure that there is no stone left unturned.

Mr. SCALISE. Right, but would the moratorium be part of that—

Secretary SALAZAR. No.

Mr. SCALISE [continuing]. Broad issue?

Secretary SALAZAR. No, it won't. My decision and my authority as Secretary of Interior is to move forward with the OCS plan and production in the outer-continental shelf and the—

Mr. SCALISE. So they will not be making any recommendations to you on the moratorium, or you will not be seeking recommendations from them on the moratorium?

Secretary SALAZAR. We will be working with the Commission and certainly with Chairman Reilly and Graham. We have the greatest respect for them and certainly we will seek out their thoughts and their ideas and whatever information the Commission—

Mr. SCALISE. OK. The reason I am asking is this is important back home to people that are trying to figure out which way to proceed in trying to put the facts on the table and get people that are making decisions to incorporate all of the facts. And so many people went and testified before that Commission with the understanding they would be addressing or at least in some way be working with you or talking with you about moratorium decisions, and if they are not, then please say so so that people aren't wasting their time back home, but if they are, then that is important to know, too, but I don't see why—

Secretary SALAZAR. Congressman Scalise, let me just give you where I think the best thing for your constituents and for you as well to communicate with, and that is Director Bromwich is holding hearings on these very issues, the three issues that I have outlined before in my testimony, and it will be very useful to hear the points of view of people with expertise on drilling safety, on oil blowout containment strategies, as well as—

Mr. SCALISE. So will Director Bromwich be advising you in any way on the moratorium as well?

Secretary SALAZAR. Yes indeed.

Mr. SCALISE. OK. Now, getting specifically to some of the details of the moratorium, the 30-day commission that you had put together right after the explosion of the Deepwater Horizon, they did come back with some safety recommendations, and then this confusion about the moratorium came about when I think initially you had said that they recommended the moratorium, they came back and said that is not what they said. In fact, the members of the Safety Commission, a majority of them opposed to moratorium and laid out some I think important specific points about why the moratorium that you issued would decrease safety in the Gulf, and I want to ask you if you have seen their recommendations about that and what your thoughts are because when I spoke to some of those—and these are people that you picked, scientists, engineers, experts in the field.

They said four basic things. One is a 6-month pause, as it has been described, by the end of the 6 months your most experienced, your most newest and most technologically advanced rigs will go. They will be the first to leave and the last to return, and in some cases it would be years because they operate on 3 to 5-year contracts.

Also, the crew base, the most experienced crew members, people who have worked 10, 15, 20 years in the industry, they are not going to sit idle for 6 months while their families still have needs. They are going to go on and do something else, so you lose them, and then in the interim if you are going to be stopping operations, there is a higher level of risk with stopping a production so that you are bringing in a fact of risk there, and the country's demand for oil hasn't reduced, so you would then—we will be importing more oil and 70 percent of the spills come from importing oil in tankers.

And so with those factors laid out first, do you—have you seen those safety concerns that they expressed about your moratorium, and do you disagree with them?

Secretary SALAZAR. Congressman Scalise, let me say that I very much appreciate the work of the engineers that gave us input on the safety recommendations that went into the 30-day report. At the end of the day that was my report, but I understood as well that the engineers disagreed with my policy decision, not theirs, on the 30-day moratorium.

I specifically asked them to come into my office, and they did come into the Secretary of Interior's office and gave me a complete briefing on their point of view before I issued my new decision. And so their point of view was thoughtfully considered, and I look forward to working with them and with others as we move forward on the issue.

I would say this for you, Congressman Scalise, because I know how you care so much about the Gulf and the oil industry there, and that is that if you look at the President's position and my position with respect to the Gulf of Mexico and drilling there, we have said that oil and gas is part of our energy portfolio.

So we would ask this Congress to join with us as we move forward to address this issues relating to drilling safety, oil spill response, and blowout containment because the sooner that we can

address those issues the easier it is going to be for us to move our hand off the pause button.

Mr. ENGEL [presiding]. The gentleman's time has expired.

Mr. SCALISE. Thank you. I yield back.

Mr. ENGEL. I yield myself 5 minutes.

Mr. Secretary, welcome back to the Hill. I want you to know that we are taking good care of your brother, so you have nothing to worry about.

Secretary SALAZAR. Thank you.

Mr. ENGEL. You have a very difficult job obviously, but I believe you are the right man for the job, and I think that we are all with you on every move you make, because this is something that nobody could have expected.

I have sat through all the hearings that we have had in this committee, and one of the hearings we had the chief executives from all the other major oil companies, not BP but Chevron, ExxonMobil, ConocoPhillips, and Shell, and it seems that we have made great progress in the methods of drilling, you know, getting the oil out but very little progress in a response plan and preventing a disaster.

The other oil executives were all quick to say that what happened with BP wouldn't have happened with them, with their company because they built things differently, the plans were different. But yet it seemed to me that everyone else had exactly the same plan for a response, so I am wondering if you could tell us your thoughts on this. I mean, it certainly seemed that BP cut corners in order to save money.

Could this happen again, and what would happen if a second major blowout occurred while unified command and oil spill response equipment and personnel were busy battling the Deepwater Horizon spill?

Secretary SALAZAR. Mr. Chairman, I very much appreciate your statement, and let me just say we very much agree with you. In fact, if you take a look at the three central questions, perhaps the two that are most obvious for me today right now is the oil spill response capacity representations that were made with respect to skimming, for example, that really has not borne out to be true. The issue of oil blowout containment programs. We have now every day from almost the very beginning I have a U.S. lead call with BP every morning. We go through the strategy that they are unfolding relative to the next containment program. I watched the effort fail, some partially succeed, and now hopefully moving to ultimate success.

So in the context of that dynamic it has seemed to us that it would be imprudent to move forward with a lifting of the moratorium until we get some answers to those basic questions.

Mr. ENGEL. I couldn't agree with you more.

Let me ask you this. The Associated Press recently reported that there are 27,000 abandoned wells in the Gulf of Mexico on federal lease lands. Now, I believe and correct me if I am wrong, that abandoned wells sometimes leak.

So what tools do we have and what additional tools would you need to keep these abandoned wells safe?

Secretary SALAZAR. I have asked Michael Bromwich to develop some recommendations on how you deal with these abandoned wells, and in some ways it is very reminiscent of a problem that some members of the committee are familiar with with respect to abandoned mines. Once they are abandoned, no one owns them, and there is not a lot that sometimes can be done for a very long time.

So I would hope that as part of our overall Gulf Coast Restoration Plan and dealing with oil and gas production that that is an issue that can be addressed perhaps both legislatively as well as dealing with the resource issues that would be required in order to deal with the abandoned wells.

Mr. ENGEL. Thank you. I am going to yield back the balance of my time because I know the time is late, and you have to go, and we have a couple of members who still need to—yes.

Mr. Sullivan, 5 minutes.

Mr. SULLIVAN. Well, thank you, Mr. Chairman.

Mr. Secretary, thank you for being here today, and I just wanted to ask as Secretary did you prior to the Deepwater Horizon incident consider improving rules and regulations regarding MMS, inspections of offshore exploration and production operations, prior to the Deepwell Horizon—Deepwater Horizon blowout?

Secretary SALAZAR. Yes, Congressman Sullivan, the answer to that is yes, there were several efforts, including notice to leasees to increase the safety of drilling in the outer-continental shelf. Their efforts included in our budgets increase the number of inspectors, and so it is an effort that was ongoing in September of last year. We asked the National Academy of Engineering, an arm of the National Academy of Science, to provide recommendations to us on safety issues. We had proposed a rule I believe in June of 2009, that would have dealt with other issues out in the outer-continental shelf. So it was an ongoing effort that we had in terms of our reform program.

Mr. SULLIVAN. And, you know, you have probably heard this analogy a lot, but when we have a commercial airline tragedy, we do not stop all airline travel for like 6 months. We work to find out the route cause in making air travel safer rather than grinding the airline industry to a halt. Why are we shutting down an industry for 6 months here, particularly given companies have drilled tens of thousands of offshore wells in the Gulf over the past 60 years without a prior accident of this nature?

Secretary SALAZAR. The answer, Congressman Sullivan, is that if we were to have another tragedy like the one that we see on the well, there is frankly insufficient resources to be able to respond to that kind of an oil spill response.

In addition, we frankly yet do not know how exactly it is that we are finally going to get the killing of the Macondo Well, and we will not rest until we have that well killed. And so in this kind of a dynamic circumstances, I have explained to the committee it seems to us to have the pause button in place until we can get the answers to some very fundamental, important questions relating to safety and relating to protection of the environment.

Mr. SULLIVAN. And, Mr. Secretary, on the Commission that has been set up by the President to investigate the situation, it has

some former governors and Administrator of EPA. I guess former governor, Bob Graham, U.S. Senator Graham, former Administrator of the Environmental Protection Agency, William Reilly, Francis, and I may get his name wrong, Beinecke. Is that how you say it? President of the Natural Resource Defense Council. It is a non-profit corporation. Donald Boesch, President of the University of Maryland, Center for Environmental Science, Terry Garcia is Vice-President for Mission Programs for the National Geographic Society, Cherry Murray is Dean of Harvard School of Engineering, and Francis, I think it is Ulmer, Chancellor of the University of Alaska.

When the President put this together, why do you think—or does anyone here have experience in drilling wells and work in the oil and gas industry at all?

Secretary SALAZAR. I do not know the members of the Commission, Congressman Sullivan, other than the two chairs, and I think maybe two or three other members of the Commission, but I do know that in selecting the members they were selected because they were the kinds of elder statesmen that would do a great job in reporting out the cause of what happened here and making recommendations.

They also have understood they are in their staff that they are putting in the subject matter expertise that will ultimately be needed for them to do their job. So I am confident that at the end of the day the mission that has been given to the Commission, which is to leave no stone unturned as we find out what exactly happened with this particular blowout, that they will be able to achieve that mission.

Mr. SULLIVAN. And I think you are right. They are elder statesmen. I think they are going to do a good job in that regard. I believe there is a lot of intelligence on this committee, too, but I just—I would like to see, and it is too late now, but I don't know why they didn't include someone that is from the industry that could actually, you know, use real-life experiences to help with this is all I am trying to get at I guess.

Secretary SALAZAR. Well, I think former EPA Administrator Bill Reilly is also on the—was on the Board, maybe he still is on the Board of ConocoPhillips. I also understand that they have hired and are hiring additional people with subject matter expertise as staff members to the Commission.

Mr. SULLIVAN. Thank you, sir. Thank you for being here.

Mr. ENGEL. Mr. Gingrey.

Mr. GINGREY. Mr. Chairman, thank you, and Mr. Secretary, I apologize for coming in late, and I may indeed ask you a question that has already been asked, so forgive me if I do that.

In my opening statement I commented a little bit about the changing of management services to—and I am not going to try to remember what the new name is, but my concern was that at a time when we needed to have all our resources, all hands on deck, if you will, to try to stop the leak and to effect the cleanup ASAP that here we were, you were, indeed, charged maybe, maybe it was the Secretary, responsibility to do that as soon as possible, but if you can tell us what exactly, what was the emergency in regard to reorganization of MMS, and what exactly have we done? You know,

I don't want to sit here and suggest to you that it is rearranging the deck chairs on the Titanic, but, you know, naturally people are a little bit concerned.

So my question is simply this. What did you do, and what does this do, and how does it make it more effective and more fail-safe and correct some of the existing problems that you recognized after this disaster occurred?

Secretary SALAZAR. Thank you very much, Congressman Gingrey. Let me answer in a number of—with a number of different points.

First, my view has been as I testified in September of last year before Representative Rahall's committee that it is important that an organization like MMS have an organic statute because it has existed by executive order since 1981, and it has some critical functions including the safe production of our oil and gas for our Nation as well as generating on average about \$13 billion a year. An agency that has that kind of importance for the American people should have a legislative construct.

Number two, with respect to my reorganization of the agency, what we have done is we have taken the people who are involved in the revenue collection and moved them to another unit of the department. They essentially are about 700 people who are mostly located in the Lakewood Office where we had terminated the Royalty-in-Kind Program earlier this year because of the sex and drug scandals. We think there needs to be distance from the revenue collector from those who are actually leasing out the resource of the American taxpayer. So that is one unit that, if you will, the revenue collector.

Then there are two other units. One unit will actually be the bureau that will actually decide how and where to lease so they will go through the creation of the 5-year plan for the OSC, the leasing plans, the lease sales, the exploratory plans, and the issuance of the APDs.

And then a third unit that essentially will be the inspection and enforcement unit, making sure that the laws, the regulations both with respect to the environment and safety are being complied to.

Mr. GINGREY. Mr. Secretary, that particular unit, will that be beefed up manpower wise?

Secretary SALAZAR. Our proposal is to beef it up significantly. There is a—it is part of the supplemental legislation that is pending before Congress to begin the first chapter of beefing that up, and we hope to have a budget amendment that could increase the number of inspectors and others that are needed to work within the new agency by as many as 450 personnel.

It seems, Congressman Gingrey, as I said earlier on that it is a fool's errand, if you will, to have 4,000 production facilities in the Gulf of Mexico alone and to only have 60 people that are assigned to go out and do the inspections. So the robustness of this agency I think is a necessity for us as a country to move forward with safe oil and gas production in the outer-continental shelf.

Mr. GINGREY. Mr. Secretary, I hope that we will need those 400 more and not—even more if we continue the moratorium. So I got to get that plug into you as well. As soon as we can stop this, I think, ill-advised moratorium and hire those 450 additional people

and get that drilling going again in a safe and effective manner, I think that is what we would like to see, at least from this side of the aisle, and I hope you would agree with us, and thank you so much for being here and testifying and responding to my questions.

Mr. Chairman, I yield back.

Mr. ENGEL. Thank you. Ms. Bono Mack.

Ms. BONO MACK. Thank you, Mr. Chairman.

Mr. Secretary, great to see you again. I think last time I saw you we were working together on a trails issue. It is good to see you. Welcome back to the Hill.

As you probably know, my district is very abundant in renewable fuels, and as you probably know I support renewable fuels, but I also support being very honest with my constituents that in order to transition our economy towards future fuels, we have to do it in a realistic way. In your words to my colleague, Congressman Latta, you said it is a mistake to start and stop energy policy, but you are doing that very thing with this moratorium in my opinion.

I think it is a mistake to do what you said we shouldn't be doing, and I understand what you are talking about, but I just want to weigh in and echo my colleague's sentiment about the moratorium being a mistake. Even though I believe in future fuels and moving us forward, we have to give certainty to people who are drilling today in the Gulf, so I want it to be on the record my displeasure with the moratorium.

With that being said, I think what is really missing from the debate so far is the absolute lack of coordination between all the agencies. I live in a district as you know also that sits on top of the San Andreas Fault, and every day we worry about the big one hitting us, and I think that my constituents have gotten to the point where they don't believe government is going to be there for them, and I don't believe that they think they are going to be well coordinated and provide a good response to a disaster, and I think this is a perfect example of that.

Can you tell me as we go forward with habitat restoration and all that has to be done what you are doing to make sure the agencies under your purview, whether it is National Park Service, whether it is Fish and Wildlife, BLM, whomever it is, how are they going to be better coordinated, and more importantly I think to bring the state in. In the emergency response plans the state is a huge leader in all of those decisions that would be in response to a disaster, but in this case they are being ignored, and we are hearing constantly from the governors that their ideas and their suggestions are being completely ignored.

Can you respond a little bit to what you would do differently, how we are going to do this going forward, and reassure my constituents that we do have our act together because I don't think that they are going to believe that for a minute.

Secretary SALAZAR. I appreciate your questions very much. Let me just say first on the stop and start comment that I made, I made it with respect to National Energy Policy, which I think everybody would agree has not worked through the '70s, the '80s, the '90s, and even until today.

Ms. BONO MACK. And it doesn't work today, and that is the point that I am trying to—

Secretary SALAZAR. That is why we need to have a comprehensive energy program moving forward, and that is why the President has been spending so much time on it.

With respect to habitat restoration, just very quickly, we do believe that the Gulf Coast will be restored to a better place than it was before April 20, and Secretary Mabus at the direction of the President is leading the effort. We are working very closely with him, including multiple meetings that my staff and I had with Secretary Mabus yesterday.

And then thirdly, with respect to your question on coordination, what I would say is this is the most Herculean response effort to an unprecedented disaster that the United States has ever seen, and I am on the front lines of it working with the President, working with my colleagues in the White House, and working with all of the agencies of the United States Government. And when you look at the resource that has been amassed to respond to this ongoing problem which is now in its 90th day, it is something that when you actually realize what the numbers are and the effort are, it makes me proud of the fact that the United States Government is operating in the way that it is.

Ms. BONO MACK. Mr. Secretary, I think this is where we disagree, and I think my constituents are going to react to what you just said.

You are very proud of the fact that we have a huge, bureaucratic, large government response to a disaster, and we are ignoring people on the local level and the local voices and people who have ideas. You are saying you are very proud of a huge bureaucracy and a bureaucratic response to it, and I think that is the problem.

We have so many bureaucrats and people out there who don't know what they are doing, and to get to my colleague Sullivan's question about the panel, the President's panel has nobody who even knows anything about drilling a well, you know, and I—hey, I consider myself a warm and fuzzy Republican, and I like a lot of people who are on that panel, but I think it is short-sided in the fact that it doesn't have people who have serious expertise in how to drill a well. It just seems that bringing expertise in the oil and gas field to that panel would have been a good thing.

And just since I have 13 seconds left, you still contradicted yourself. I understand what you are saying about a national energy policy, but you cannot say that it is OK to start and stop right now, because that is what you are doing. It is the exact same thing that you are advocating against.

So I am right on the money at zero, zero, and I appreciate the opportunity to question the Secretary. Thank you.

Secretary SALAZAR. If I may, Chairman Markey, just—

Mr. MARKEY [presiding]. Please.

Secretary SALAZAR [continuing]. Respond to the Congresswoman. First, with respect to this effort and reaching out to the local communities and to the governors, every day my colleague, Valerie Geradin and a number of other people from the White House are on a telephone call where the governors participate. Some days, some days they don't. The President himself has made a personal

outreach to them. I have done the same thing. I have been to the Gulf Coast, Houston, I think the last count was ten or 11 times. My Assistant Secretary Tom Strickland, 17 times.

Ms. BONO MACK. But then how does that explain that there are still booms sitting unused in warehouses, and there are boats sitting unused, and skimmers sitting unused? You can say you can reach out to somebody, but it is not being deployed.

Secretary SALAZAR. I would be happy to get you a copy of the daily report which we receive, but this is a huge mobilization of an effort to deal with a very tragic and a very unprecedented disaster, and the President has said, leave no stone unturned, do not rest, and get the job done, and that is what we are committed to do.

Mr. MARKEY. We thank the gentlelady.

I will tell you what we can do. I was intending on concluding the hearing right now, but I can recognize the gentleman from Texas for 2 minutes.

Mr. BURGESS. I thank the Chairman for the recognition.

Secretary Salazar, when President Obama came and spoke to the country about the problems of the Gulf, he said that he had expanded offshore drilling, “under the assurance that it would be absolutely safe.”

Now, the concept of being absolutely safe, apparently there was a team that advised the president, Carol Browner, yourself, and Secretary Chu, so is that factual? Is there a team that advised the President on the fact that offshore drilling was—could be assured was absolutely safe, and were you part of that group?

Secretary SALAZAR. Our view, Congressman Burgess, is that we had and still have a thoughtful plan in terms of moving forward. The Gulf of Mexico was a place where thousands of wells had been drilled. We felt that there was a place in the eastern part of the—that would still keep you 125 miles from Florida, for there was 67 percent of the resource that could be recovered.

Mr. BURGESS. So you and Carol Browner and Dr. Chu did advise the President that this was absolutely safe?

Secretary SALAZAR. Let me just say what we—what I did as Secretary of the Interior is I developed this plan, and I developed the plan over a very long period of time that included multiple hearings from New Jersey to Louisiana to California to Alaska and hundreds of thousands of comments, so it was my plan and my recommendation that I made to the President.

Mr. BURGESS. So in retrospect now would you say that you made a mistake, that that was wrong?

Secretary SALAZAR. I would—no. I would say that the plan that we put forward was, in fact, a very thoughtful plan. We canceled five leases of huge sales in Alaska, for example, because we felt that the oil spill response capability was insufficient.

Mr. BURGESS. But in light of what has happened were you, in fact, wrong at that assessment?

Secretary SALAZAR. I think the plan that we put forward at the end of March was a plan which took a year to develop with huge input from all of the stakeholders and which I believe is still a good plan.

Mr. BURGESS. OK.

Mr. MARKEY. The gentleman’s time has expired again.

Mr. Chairman, you—Mr. Secretary, we know that you went above and beyond to be here this afternoon. It is greatly appreciated by this committee. We have jurisdiction over energy production generally in the United States of America, and so our title is the Energy and Commerce Committee. Your service to our country is greatly appreciated, and we thank you for being here today.

This hearing is adjourned. Thank you.

[Whereupon, at 4:30 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



United States Department of the Interior
OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

SEP - 9 2008

Memorandum

To: Secretary Kempthorne

From: Earl E. Devaney
Inspector General *Earl E. Devaney*

Subject: OIG Investigations of MMS Employees

This memorandum conveys the final results of three separate Office of Inspector General (OIG) investigations into allegations against more than a dozen current and former Minerals Management Service (MMS) employees. In the case of one former employee, Jimmy Mayberry, he has already pled guilty to a criminal charge. The cases against former employees, Greg Smith and Lucy Querques Dennet, were referred to the Public Integrity Section of the Department of Justice (DOJ). However, that office declined to prosecute. The remaining current employees await your discretion in imposing corrective administrative action. Others have escaped potential administrative action by departing from federal service, with the usual celebratory send-offs that allegedly highlighted the impeccable service these individuals had given to the Federal Government. Our reports belie this notion.

Collectively, our recent work in MMS has taken well over two years, involved countless OIG human resources and an expenditure of nearly \$5.3 million of OIG funds. Two hundred thirty-three witnesses and subjects were interviewed, many of them multiple times, and roughly 470,000 pages of documents and e-mails were obtained and reviewed as part of these investigations.

I know you have shared my frustration with the length of time these investigations have taken, primarily due to the criminal nature of some of these allegations, protracted discussions with DOJ and the ultimate refusal of one major oil company – Chevron – to cooperate with our investigation. Since you have already taken assertive steps to replace key leadership and staff in the affected components of MMS, I am confident that you will now act quickly to take the appropriate administrative action to bring this disturbing chapter of MMS history to a close.

A Culture of Ethical Failure

The single-most serious problem our investigations revealed is a pervasive culture of exclusivity, exempt from the rules that govern all other employees of the Federal Government.

In the matter involving Ms. Dennet, Mr. Mayberry and Milton Dial, the results of this investigation paint a disturbing picture of three Senior Executives who were good friends, and who remained calculatedly ignorant of the rules governing post-employment restrictions, conflicts of interest and Federal Acquisition Regulations to ensure that two lucrative MMS contracts would be awarded to the company created by Mr. Mayberry – Federal Business Solutions – and later joined by Mr. Dial. Ms. Dennet manipulated the contracting process from the start. She worked directly with the contracting officer, personally participated on the evaluation team for both contracts, asked for an increase to the first contract amount, and had Mayberry prepare the justification for the contract increase. Ms. Dennet also appears to have shared with Mr. Mayberry the Key Qualification criteria upon which bidders would be judged, two weeks before bid proposals on the first contract were due.

In the other two cases, the results of our investigation reveal a program tasked with implementing a “business model” program. As such, Royalty in Kind (RIK) marketers donned a private sector approach to essentially everything they did. This included effectively opting themselves out of the Ethics in Government Act, both in practice, and, at one point, even explored doing so by policy or regulation.

Not only did those in RIK consider themselves special, they were treated as special by their management. For reasons that are not at all clear, the reporting hierarchy of RIK bypassed the one supervisor whose integrity remained intact throughout, Debra Gibbs-Tschudy, the Deputy Associate Director in Denver, where RIK is located. Rather, RIK was reporting directly to Associate Director Dennet, who was located some 1500 miles away in Washington, DC, and to whom the unbridled, unethical conduct of RIK employees was apparently invisible (although the Associate Director had been made aware of the plan by RIK to explore more formal exemption from the ethics rules.)

More specifically, we discovered that between 2002 and 2006, nearly 1/3 of the entire RIK staff socialized with, and received a wide array of gifts and gratuities from, oil and gas companies with whom RIK was conducting official business. While the dollar amount of gifts and gratuities was not enormous, these employees accepted gifts with prodigious frequency. In particular, two RIK marketers received combined gifts and gratuities on at least 135 occasions from four major oil and gas companies with whom they were doing business – a textbook example of improperly receiving gifts from prohibited sources. When confronted by our investigators, none of the employees involved displayed remorse.

We also discovered a culture of substance abuse and promiscuity in the RIK program – both within the program, including a supervisor, Greg Smith, who engaged in illegal drug use and had sexual relations with subordinates, and in consort with industry. Internally, several staff admitted to illegal drug use as well as illicit sexual encounters. Alcohol abuse appears to have been a problem when RIK staff socialized with industry. For example, two RIK staff accepted lodging from industry after industry events because they were too intoxicated to drive home or to their hotel. These same RIK marketers also engaged in brief sexual relationships with industry contacts. Sexual relationships with prohibited sources cannot, by definition, be arms-length.

Finally, we discovered that two of the RIK employees who accepted gifts also held inappropriate outside employment and failed to properly report the income they received from this work on their financial disclosure forms. Smith, in particular, deliberately secreted the true nature of his outside employment – he pitched oil and gas companies that did business with RIK to hire the outside consulting firm – to prevent revealing what would otherwise, at a minimum, be a clear conflict of interest.

Conclusion

As you know, I have gone on record to say that I believe that 99.9 percent of DOI employees are hard-working, ethical and well-intentioned. Unfortunately, from the cases highlighted here, the conduct of a few has cast a shadow on an entire bureau.

In summary, our investigation revealed a relatively small group of individuals wholly lacking in acceptance of or adherence to government ethical standards; management that through passive neglect, at best, or purposeful ignorance, at worst, was blind to easily discernible misconduct; and a program that had aggressive goals and admirable ideals, but was launched without the necessary internal controls in place to ensure conformity with one of its most important principles: “Maintain the highest ethical and professional standards.” This must be corrected.

Recommendations

In conclusion, we offer the following Recommendations.

1. Take appropriate administrative corrective action.

Some very serious misconduct is identified in these reports. While the OIG generally does not take a position concerning what administrative corrective action might be appropriate in any given matter, in this instance there may be significant enough misconduct to warrant removal for some individuals. Given the unwillingness of some to acknowledge their conduct as improper, the subjects of our reports should be carefully considered for a life-time ban from working in the RIK program.

2. Develop an enhanced ethics program designed specifically for the RIK program.

Given the RIK culture, an enhanced ethics program must be designed for RIK, including, but not limited to, 1) an explicit prohibition against acceptance of any gifts or gratuities from industry, regardless of value; 2) a robust training program to include written certification by employees that they know and understand the ethics requirements by which they are bound; and 3) an augmented MMS Ethics Office.

3. Develop a clear, strict Code of Conduct for the RIK program.

A fundamental Code of Conduct with clear obligations, prohibitions, and consequences appears to be necessary to repair the culture of misconduct in the RIK program. This

code should include a clear prohibition against outside employment with the oil and gas industry or consultants to that industry. Given the considerable financial responsibilities involved, MMS should also consider implementing a Random Drug Testing program specifically for RIK.

4. Consider changing the reporting structure of RIK.

The management reporting structure of the RIK program must be seriously reconsidered. Given the challenges that will be faced in rebuilding this program, it seems imperative that RIK have management oversight in immediate proximity, not some 1,500 miles away in Washington, DC.

If you have any questions, please do not hesitate to contact me at (202) 208-5745.

Attachments

The Washington Post

Ban on deep-water drilling adds insult to injury

By Bobby Jindal
Saturday, July 17, 2010; A13

By now, everyone no doubt realizes that I am not a fan of the pace at which the federal government has worked to contain the oil spill in the Gulf of Mexico. Sadly, federal officials were slow to act and overly bureaucratic. They have never really understood the urgency of the situation down here. I'm not raising a question of motive; it's simply a function of the federal government being a slow-moving albatross. The only way to attack a crisis like this is with the urgency of a military mind-set.

Even after the well is finally capped, the damage done to our environment, to the Gulf of Mexico, and to our marshes, wetlands and beaches will take years to repair. There is another type of damage from this spill: its human impact. Thousands of lives, businesses and families are reeling.

Against this backdrop, the federal government unwisely chose to add insult to injury by decreeing a moratorium on deepwater drilling in the gulf. This ill-advised and ill-considered moratorium, which a federal judge called "arbitrary" and "capricious," creates a second disaster for our economy, throwing thousands of hardworking folks out of their jobs and causing real damage to many families. Now this federal policy risks killing 20,000 more jobs and will result in a loss of \$65 million to \$135 million in wages each month.

To ensure that such a disaster does not happen again, should the federal government increase oversight, or require additional and better equipment or on-site federal inspectors, or even temporarily pause drilling at specific rigs for additional reviews? Of course. Could it? Of course. But by simply stopping all deepwater drilling, federal officials appear more interested in ideology and scoring political points -- as they have done with the misguided cap-and-trade legislation -- at the expense of Americans who derive their livelihood from the energy industry.

Let's be clear: This moratorium will do nothing to clean up the Gulf of Mexico, and it is already doing great harm to many hardworking citizens. The effects will extend well beyond Louisiana. Since the moratorium was announced, America has already lost two rigs to foreign countries. More drilling companies are negotiating right now to work elsewhere. Every time we decrease our level of production, we make America more dependent on foreign sources of energy.

On those few occasions when our country suffers a commercial airline tragedy, we do not respond by stopping all air travel for six months. Rather, we get to work figuring out the root cause and set about trying to make air travel safer. We don't grind everything to a halt and put tens of thousands of people out of work, jeopardizing our economy.

So, my state joined a lawsuit against the moratorium. We pointed out that a majority of the experts the federal government consulted before the ban, including representatives from the National Academy of Engineering, have stated publicly that they do not agree with the six-month blanket moratorium.

The court sided with the people of Louisiana in this matter. Consider the judge's statements: that the federal moratorium would result in the loss of jobs and livelihoods, that the government's action "does not seem to be fact-specific" and that the "government's hair-splitting explanation abuses reason and common sense."

One might assume that the federal government would back down, lift the moratorium and get on with the business of ensuring that nothing like this ever happens again in federal waters.

Nope.

Our federal government chose to fight on in court, and lost a second time.

Surely now, many of us thought, the federal government would stop its efforts to halt all drilling and instead get serious about more rigorous oversight and inspections.

Nope.

Instead, the federal government drafted a new moratorium. This seems to be a cynical ploy. It will take time to again take federal officials to court. If Washington loses, officials can issue a third moratorium and play this game out as long as they want. Such is the power of the federal government.

Louisianans, of all people, don't want to see another drop of oil spilled into the Gulf of Mexico. It is our land and our way of life that are being harmed. Yet the administration tells our people to simply file a claim with BP or file for unemployment. Our people want to work, not collect unemployment checks.

We don't want to see the federal government create a second disaster, an economic disaster, for the people of our state thanks to its "capricious" and "arbitrary" actions. The bottom line is this: Thousands of Louisianans shouldn't have to lose their jobs just because the federal government can't do its job.

The writer, a Republican, is governor of Louisiana.

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MEMORANDUM

July 16, 2010

To: Subcommittee on Energy and Environment and the Subcommittee on Oversight and Investigations Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “The Role of the Interior Department in the Deepwater Horizon Disaster”

On Tuesday, July 20, 2010, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations and the Subcommittee on Energy and Environment will hold a joint hearing entitled “The Role of the Interior Department in the Deepwater Horizon Disaster.” This hearing will examine the Interior Department’s actions before and since the Deepwater Horizon explosion on April 20, 2010.

I. BACKGROUND

On April 20, 2010, the Deepwater Horizon, an oil rig contracted by BP to drill a deepwater well in the Gulf of Mexico, exploded. Eleven people died and 15 were injured. After a second explosion on April 22, 2010, the Deepwater Horizon sank, breaking the riser pipe running from the rig to the seafloor where it had been attached to the well’s blowout preventer (BOP). On April 24, 2010, remotely operated vehicles (ROVs) confirmed that oil was spewing from the site into the Gulf of Mexico.

After repeated efforts failed to activate the BOP at the wellhead and shut off the well, BP made various attempts to stem the flow of oil from the well site. In May, the company began drilling two relief wells to intersect the original well and plug it; it is estimated that these relief wells may be completed by mid-August.¹ BP’s interim measures have failed to stop the leak:

¹ *BP Oil Spill: Relief Well is Ahead of Schedule, Close to Target*, Christian Science Monitor (July 7, 2010) (online at www.csmonitor.com/Environment/2010/0707/BP-oil-spill-Relief-well-is-ahead-of-schedule-close-to-target).

- A containment dome, placed over the flow on May 7, 2010, became clogged with frozen gas and water;
- In late May, the “top kill” and “junk shot” procedures, in which liquid and objects were pumped into the well to clog it, did not stem the leak;
- Another cap, placed on June 3, 2010, began gathering a small fraction of the oil.

Preliminary tests yesterday of a new containment cap lowered on July 10, 2010, suggest that the new cap may have stopped the leak for the first time since April.

The Flow Rate Technical Group, a collection of scientists convened by U.S. Coast Guard Commandant Admiral Thad Allen, has estimated that oil is flowing into the Gulf at a rate of 35,000 to 60,000 barrels a day.² Under the top official estimate for leakage rates, this amounts to over 3 million barrels, of which approximately 750,000 has been collected.

President Obama has called the oil spill in the Gulf the “worst environmental disaster America has ever faced.” To date, response and recovery operations have cost an estimated \$3.5 billion,³ and the federal government has billed BP \$222 million.⁴ BP is strictly liable for cleanup costs. In June, BP committed \$20 billion to a fund that will be independently administered to pay damage claims resulting from the blowout.

II. COMMITTEE INVESTIGATION

The Oversight and Investigations Subcommittee has held three hearings on the Deepwater Horizon incident. On May 12, 2010, the subcommittee examined the causes of the explosion, hearing testimony from officials from the major companies involved: BP, which leased the rig; Transocean, which owned the rig; Halliburton, which performed the cement work on the well; and Cameron, which manufactured the BOP used at the wellhead. The subcommittee learned about the local impact of the spill at a field hearing in Chalmette, Louisiana on June 2, 2010. BP CEO Tony Hayward testified before the subcommittee at a hearing on June 17, 2010, where he was asked about decisions made on the rig that appeared to compromise safety in order to cut costs.

The Energy and Environment Subcommittee has held four hearings related to the oil spill. On May 27, 2010, the subcommittee examined the ongoing response to the spill, hearing testimony from representatives from EPA, NOAA, the Interior Department, the Army, and the

² Department of the Interior, *U.S. Scientific Team Draws on New Data, Multiple Scientific Methodologies to Reach Updated Estimate of Oil Flows from BP’s Well* (June 15, 2010) (online at www.doi.gov/news/pressreleases/Flow-Rate-Team-Updates-Estimate-of-Oil-Flowing-from-BP-Well.cfm).

³ *BP Says Oil Spill Costs Climb to \$3.5 Billion*, Associated Press (July 12, 2010).

⁴ Deepwater Horizon Incident Joint Information Center, *Administration Sends Fourth Bill to BP* (July 13, 2010) (online at www.deepwaterhorizonresponse.com/go/doc/2931/778879/).

Coast Guard. It studied some of the spill's potential impacts on people and the environment at a June 10, 2010 hearing. On June 15, 2010, heads of five major oil companies – BP, Chevron, ConocoPhillips, ExxonMobil, and Shell – responded to questions about the safety of deepwater drilling and their preparedness for a spill. The subcommittee held a legislative hearing on June 30, 2010, to discuss a draft of the “Blowout Preventer Act of 2010,” which provides solutions to some of the problems revealed by the Deepwater Horizon incident.

III. DEPARTMENT OF THE INTERIOR

Following the explosion of the Deepwater Horizon, the Interior Department has taken action to learn about what went wrong on the rig. A few weeks after the accident, the Minerals Management Service (MMS) and the Coast Guard launched a joint investigation to determine the cause of the Deepwater Horizon incident and to make safety recommendations.⁵ The joint investigation's third round of hearings commences on July 19, 2010.

In addition, addressing concerns that MMS' duties to collect royalties, ensure safety, and conduct oversight were in conflict with one another, Secretary Salazar issued a Secretarial Order on May 19, 2010, dividing MMS into three new and separate organizations – the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue.⁶ On July 14, 2010, the Interior Department issued a report on implementation of the Secretary's Order.

The Interior Department has taken several steps to ensure that offshore drilling is safer in the future. Shortly after the explosion, MMS and the Coast Guard issued safety recommendations to operators and drilling contractors, directing them to examine well control equipment, drilling and casing practices, lifesaving, firefighting, and other emergency equipment, and to ensure that personnel are properly trained.⁷ In response to a directive from President Obama, Secretary Salazar issued a 30-day safety report outlining measures to promote safety in drilling in the Outer Continental Shelf.⁸ His recommendations included new safety measures regarding BOPs, well control, and personnel. In addition, the report announced a temporary six-month moratorium on new wells being drilled with floating rigs. MMS directed lessees and operators to implement the safety measures outlined in the Secretary's report through

⁵ Deepwater Horizon Joint Investigation, (online at www.deepwaterinvestigation.com/go/site/3043/)

⁶ Department of the Interior, Order No. 3299, *Establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue* (May 19, 2010) (online at www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=32475).

⁷ MMS/USCG Joint Safety Alerts No. 2 (Apr. 30, 2010) (online at www.mms.gov/safetyalerts/joint_2.htm).

⁸ Department of the Interior, *Increased Safety Measures for Energy Development on the Outer Continental Shelf* (May 27, 2010) (online at www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598).

a Notice to Lessees (NTL).⁹ In another new NTL, Secretary Salazar reversed a 2003 decision by the Interior Department that had exempted many lessees from submitting a blowout scenario.¹⁰

Secretary Salazar's initial moratorium was halted by the 5th Circuit Court of Appeals. On July 12, 2010, Secretary Salazar issued a new suspension of deepwater drilling on wells that use a subsea or surface BOP on a floating facility in the Outer Continental Shelf.¹¹ This new "temporary pause" is narrower than the first, focusing on drilling configurations and technologies rather than drilling depth. In his memorandum announcing the decision, Secretary Salazar weighs the economic impact of the suspension, but states that the temporary suspension is necessary because of the serious threat presented by continued drilling.

IV. WITNESSES

The following witnesses have been invited to testify:

The Honorable Gale Norton
Secretary of the Interior, 2001-2006

The Honorable Dirk Kempthorne
Secretary of the Interior, 2006-2009

The Honorable Ken Salazar
Secretary of the Interior

⁹ Minerals Management Service, NTL No. 2010-N05, *Increased Safety Measures for Energy Development in the OCS* (June 8, 2010) (online at www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=34536).

¹⁰ Minerals Management Service, NTL. No. 2010-N06, *Information Requirements for Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents in the OCS* (June 18, 2010) (online at www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=35724).

¹¹ Department of the Interior, Decision Memorandum Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Continental Shelf (July 12, 2010) (online at www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=38375).



The 2010 Oil Spill: Minerals Management Service (MMS) and National Environmental Policy Act (NEPA)

Kristina Alexander
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June 1, 2010

Congressional Research Service

7-5700

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CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

On April 20, 2010, an exploratory oil well in the Gulf of Mexico exploded, killing 11 people and causing an oil spill that a group of federal experts has said is the worst in American history. The oil well was on a tract leased by British Petroleum (BP), having obtained a lease and the relevant permits from the federal government. Under relevant federal law, federal actions that may have adverse environmental effects are required to be reviewed for potential environmental harm under the National Environmental Policy Act (NEPA). This report will review those environmental procedures. While there are additional environmental obligations imposed on Outer Continental Shelf (OCS) drilling by other acts, this report will not review those requirements.

Multiple environmental reviews were conducted by the Minerals Management Service (MMS) at each stage of OCS development. For the particular well in question, MMS addressed the environmental impacts on four occasions, including two full environmental impact statements, an environmental assessment, and a categorical exclusion. The fact that MMS categorically excluded the exploration plan from a NEPA analysis is controversial, since that is the first step in which drilling would be conducted. It appears MMS followed its internal procedure for NEPA reviews in the western and central areas of the Gulf of Mexico by employing a categorical exclusion for an exploration plan. However, that procedure has never been reviewed by a court to see if it is consistent with the law or whether an exception to the categorical exclusion may apply in this case. Had this project occurred in a different geographical area, including the eastern area of the Gulf of Mexico, it would have undergone a higher level of environmental scrutiny.

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Background and Context

On April 20, 2010, an exploratory oil well in the Gulf of Mexico exploded, killing 11 people and causing an oil spill that a group of federal experts says is the worst spill in United States history.¹ The oil well was on a tract leased by British Petroleum (BP), having obtained an oil and gas lease and the relevant permits from the federal government. The spill was at the Mississippi Canyon Block 252, which is one block obtained by BP under Lease Sale 206. Under applicable federal law, federal actions that may have adverse environmental effects are required to be reviewed for potential environmental harm under the National Environmental Policy Act (NEPA). Additional environmental obligations are imposed by the Outer Continental Shelf Lands Act (OCSLA),² Endangered Species Act,³ Marine Mammal Protection Act,⁴ and the Coastal Zone Management Act⁵ but will not be examined within this report. Rather, this report focuses on the environmental analyses conducted by MMS and their compliance with NEPA.

NEPA

NEPA states that for all “major Federal actions significantly affecting the quality of the human environment” federal agencies shall prepare a “detailed statement” of “the environmental impact of a proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] alternatives to the proposed action.”⁶ Agencies must comply to “the fullest extent possible.”

The Minerals Management Service (MMS) of the Department of the Interior is the federal agency charged with overseeing oil and gas exploration of the Outer Continental Shelf (OCS). MMS issued the lease to and approved the exploration plan of BP for the oil well that caused the spill. Under NEPA terminology, MMS is the *lead agency* for any environmental reviews.⁷

NEPA includes three types of environmental reviews with different levels of scrutiny into the environmental effects of an action. The goal of the reviews is for an agency to be able to demonstrate that it has taken an appropriately *hard look* at the environmental consequences of its planned activity.⁸ The environmental review is also supposed to involve the public.⁹ The most

¹ Department of the Interior Press Release, *Flow Rate Group Provides Preliminary Best Estimate Of Oil Flowing from BP Oil Well* (May 27, 2010). Available online at <http://www.doi.gov/news/pressreleases/Flow-Rate-Group-Provides-Preliminary-Best-Estimate-Of-Oil-Flowing-from-BP-Oil-Well.cfm>. Original estimates that the well was leaking oil at 5,000 barrels a day were found to be low.

² 43 U.S.C. §§ 1331-1356a. For analysis of the OCSLA, see CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

³ 16 U.S.C. § 1531 – 1544. See Section 1536 for consultation obligations of federal agencies.

⁴ 16 U.S.C. §§ 1361 – 1384. See Section 1371(a)(5)(A) for incidental takes of marine mammals.

⁵ 16 U.S.C. §§ 1451-1456. See Section 1456(c) for federal actions affecting coasts.

⁶ 42 U.S.C. § 4332. The act also requires consideration of “(iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources ...”

⁷ MMS was reorganized, effective May 19, 2010. Secretary of the Interior Order No. 3299. It appears that under this reorganization, the NEPA functions would be performed by the Bureau of Ocean Energy Management.

⁸ *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976) (the role of a court is to ensure than an agency took a “hard look” at the environmental consequences); *National Audubon Society v. Department of the Navy*, 422 F.3d 174, 185 (continued...)

comprehensive review is concluded by an environmental impact statement (EIS). It is required by NEPA for all agency actions that will significantly affect the environment. An EIS should demonstrate that the agency considered a reasonable range of alternatives that took a hard look at the environmental consequences of a proposed action. An EIS also requires extensive public involvement, including a public comment period for a draft EIS and consideration of those comments in the final document.

Where an action may not have significant effects, or when an agency is unsure of the degree to which an action may have significant impacts, a review called an environmental assessment (EA) is conducted. An EA also requires consideration of alternatives to the action and a review of the effects, but it is intended to be an abbreviated review. The public comment period is limited and could occur only upon completion of a final document.

The third type of review is for actions that agencies have pre-determined have no significant impact, typically because an agency routinely conducts the activity. This type of review is a categorical exclusion (CE, sometimes known as a Cat Ex). Technically, it means a formal review is not required because the agency has already determined that the environmental consequences of the action will not be significant.¹⁰ Agencies prepare lists of CEs and may exclude a particular action if it is on that list. The decision to invoke a CE for a project must be documented in some way.¹¹ CEs are not allowed when there are extraordinary circumstances surrounding a proposed action, which generally include the presence of endangered species or significant resources of some type, such as archeological sites. This is consistent with the purpose of CEs—they do not apply when there could be a significant environmental impact.

Aside from the interpretive case law, the requirements for NEPA reviews can be found in two places: the regulations issued by the Council on Environmental Quality (CEQ),¹² and within agency-specific regulations or guidelines. Generally speaking, the CEQ regulations provide the foundation for NEPA compliance, while the agency guidelines provide for more specific application to the circumstances of a particular agency. In the case of MMS, NEPA procedures are found within the Department of the Interior agency-wide NEPA guidelines in the Departmental Manual (DM),¹³ as well as in MMS guidelines within the DM.¹⁴

(...continued)

(4th Cir. 2005) (a hard look “encompasses a thorough investigation into the environmental impacts of an agency’s action and a candid acknowledgement of the risks that those impacts entail”); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992) (courts review whether an EIS “contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences”); *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, at 838 (D.C. Cir. 1972) (an environmental review complies with NEPA “so long as the officials and agencies have taken the ‘hard look’ at environmental consequences mandated by Congress”).

⁹ 40 C.F.R. § 1506.6. See *California v. Block*, 590 F.2d 753 (9th Cir. 1982) (informed public participation is a goal of NEPA).

¹⁰ 40 C.F.R. § 1508.4.

¹¹ *California v. Norton*, 311 F.3d 1162 (9th Cir. 2002).

¹² 40 C.F.R. part 1500.

¹³ 516 DM 1-15, available online at http://206.131.241.18/app_DM/index.cfm?fuseaction=searchDM&keyword=516%20DM%201-15.

¹⁴ 516 DM 15.

MMS NEPA Reviews

MMS's summary of its OCS program indicates there are four different stages at which it performs an environmental review for OCS leasing.¹⁵ The summary indicates what type of environmental review is typically done at each stage. Those stages, and the typical environmental reviews, are:

- develop a 5-year program—EIS;
- plan for a specific lease sale—EIS;
- approve the exploration plan—EA; and
- approve development and production plan—EIS.

The four stages are based on the OCSLA.¹⁶

Records indicate that MMS conducted four separate environmental reviews related to the oil well known as Mississippi Canyon Block 252, including two EISs, one EA, and a CE. These four documents relate to the first three stages described above; two reviews were conducted at the lease sale stage, and the development and production stage had not been reached. Mississippi Canyon Block 252 was at the exploration stage. Briefly, those four documents are as follows:

- April 2007: MMS issued an EIS for the OCS Five Year Leasing Program, the 2007-2012 Outer Continental Shelf (OCS) Oil and Gas Leasing Program. This document considered environmental impacts related to off shore drilling, not just within the Gulf of Mexico, but for the two other areas in which off shore drilling is conducted: around Alaska and along the Atlantic coast.
- April 2007: MMS issued an EIS for the lease sale in the western and central portion of the Gulf of Mexico.
- October 2007: MMS issued an EA for lease sale 206, which included Mississippi Canyon Block 252, finding no new significant impact. This document was intended by MMS to supplement the other environmental reviews, which is why instead of the accepted NEPA terminology of "finding of no significant impact" (FONSI) it referred to no "new" significant impacts.
- April 2009: MMS issued a CE for the exploration plan that authorized BP to begin exploratory drilling on its site.

Additionally, two other environmental reviews were conducted that relate to drilling in the Gulf. Both were programmatic environmental assessments, meaning they were designed to consider broad impacts from a type of federal action and not just the impacts from one action. Programmatic environmental reviews are viewed as an efficient way to consider impacts without creating redundant reviews.¹⁷ In July 2004, MMS announced completion of a programmatic EA that evaluated potential impacts of geological and geophysical testing in the Gulf.¹⁸ That testing

¹⁵ A copy of this is available online at http://www.mms.gov/PDFs/5MMS_Leasing101.pdf.

¹⁶ 43 U.S.C. § 1344—5-year plan; 43 U.S.C. § 1337(a)—lease sale; 43 U.S.C. § 1340—exploration plan; and 43 U.S.C. § 1351—development and production.

¹⁷ 40 C.F.R. § 1500.4: "Agencies shall reduce excessive paperwork by ... (i) using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues."

¹⁸ MMS, Geological and Geophysical Exploration for Mineral Resources on the Gulf of Mexico Outer Continental (continued...)

included seismic testing. A different programmatic EA was announced in March 2005 for Structure-Removal Operations in the Gulf,¹⁹ which typically involve the use of explosives.

The 2007-2012 Outer Continental Shelf Oil and Gas Leasing Program

In February 2006, and again in August 2006, MMS sought comments on its proposed 5-year lease plan for 2007-2012 that would expand OCS leasing areas. The proposed plan addressed 21 OCS areas, including two in the Gulf of Mexico.²⁰ An EIS for this plan was prepared, and the final 5-year Plan EIS was completed in April 2007.²¹ The 2007-2012 OCS Oil and Gas Leasing Program became effective on July 1, 2007. However, a federal court of appeals determined that MMS had not complied with all of the environmental requirements, and the program was returned to MMS for revision.²² A preliminary revised 5-year plan was announced in March 2010.²³

The EIS for the 5-year Plan

The EIS for the 5-year Plan for 2007-2012²⁴ describes its scope as being regional and programmatic, and it also describes the assumptions made when evaluating the environmental effects of the proposed action. It divides the environmental effects based on the three geographical areas within the 5-year Plan: Gulf of Mexico, Atlantic, and Alaska. Different assumptions are made for each area, and the environmental effects are premised on that. One assumption for the Gulf of Mexico is the scale of oil spills that could be expected to occur.²⁵ The estimates were made for potential spills during production and transportation, and do not appear to consider oil spills at the exploration stage. A large oil spill, according to the 5-year Plan EIS, would be one of 1,000 barrels (bbl) or greater. Based on historical modeling, MMS calculated a probable large oil spill from a platform to be 1,500 bbl and 4,600 bbl from a pipeline.²⁶ The spill from the current Mississippi Canyon exploration well is categorized as a platform-related spill. The 5-year Plan EIS estimates that the Gulf of Mexico wells would produce 4 to 8 billion bbl of oil and have nine large oil spills (four from pipelines; four from platforms; and one from a

(...continued)

Shelf - Final Programmatic Environmental Assessment, MMS 2004-054 (July 2004). 69 Fed. Reg. 45851 (July 30, 2004).

¹⁹ MMS, Structure-Removal Operations on the Gulf of Mexico Outer Continental Shelf Programmatic Environmental Assessment, MMS 2005-013 (February 2005). 70 Fed. Reg. 9965 (March 1, 2005).

²⁰ 71 Fed. Reg. 50457, 50458 (Aug. 25, 2006).

²¹ 72 Fed. Reg. 24326 (May 2, 2007).

²² Center for Biological Diversity v. U.S. Department of the Interior, 563 F.3d 466 (D.C. Cir. 2009).

²³ 75 Fed. Reg. 16833 (April 2, 2010). Available online at <http://www.mms.gov/5-year/PDFs/PRP2007-2012.pdf>. On that same date, MMS announced intent to prepare an EIS for the next 5-year plan, from 2012 to 2017. 75 Fed. Reg. 16828 (April 2, 2010).

²⁴ MMS, Outer Continental Shelf Oil & Gas Leasing Program: 2007-2012, Final Environmental Impact Statement MMS 2007-003 (hereinafter 5-year Plan EIS). Available online at <http://www.mms.gov/5-year/2007-2012FEIS.htm>.

²⁵ 5-year Plan EIS, Ch. IV, pp. IV-28 – IV-31.

²⁶ 5-year Plan EIS, Ch. IV, pp. IV-29.

tanker).²⁷ These numbers are for deepwater and near-shore drilling combined. Approximately 75% of the leasing activity is planned for deepwater.

The programmatic environmental effects for the preferred alternative for the Gulf Coast included impacts on the following: air and water quality; mammals and birds; fish, fisheries, and fish habitat; sea turtles; coastal and seafloor habitats; areas of special concern; socio-economic impacts; archeological resources; tourism and recreation; and land use.²⁸ Some protected resources in the area include the following endangered species:

- Northern Right Whale
- Blue Whale
- Fin Whale
- Sei Whale
- Humpback Whale
- Sperm Whale
- West Indian Manatee
- Leatherback turtle
- Green turtle
- Hawksbill turtle
- Kemp's Ridley turtle
- Loggerhead turtle
- Gulf Sturgeon
- Whooping crane
- Piping plover
- Alabama beach mouse
- Choctawhatchee beach mouse
- St. Andrew beach mouse and
- Perdido Key beach mouse.

The baseline data described above largely influences the discussion of environmental impacts within this EIS. The data contemplate four platform spills across the entire 40-year lease term (and not just the five years of the 5-year Plan) would produce spills of approximately 1,500 bbl each, and only three of those spills would be in deepwater. Accordingly, the analysis of the effects from the spills are limited to considering how a 1,500 bbl spill could affect the environment. There is no extrapolation or other hypothesis for what would happen if the spill were larger. Based on the assumptions of limited spill quantities, the conclusion for the environmental consequences tends to be in one of two camps: one, that the magnitude of harm would depend on

²⁷ 5-year Plan EIS, Table IV-4.

²⁸ 5-year Plan EIS, Ch. IV, pp. IV-33 to IV-102.

the timing and quantity of the oil spill (see, for example, Coastal Waters, Marine Waters, Marine Mammals, Marine and Coastal Birds, Essential Fish Habitat, Sea Turtles); or two, that because a deepwater spill is calculated to be at 1,500 bbl, it is unlikely to reach areas where significant impacts could occur (see, for example, Marine and Coastal Birds, Terrestrial Mammals, Coastal Barrier Beaches, Sea turtle nesting, Seafloor Habitat and Live Bottom and Pinnacle Areas).

Environmental groups argued that the agency failed to take a hard look at the environmental consequences of its action. Limiting the size of a potential spill could limit the size of impacts that are reviewed. However, the court that reviewed this matter, the D.C. Circuit Court of Appeals,²⁹ has determined that challenges to the sufficiency of that NEPA process for the 5-year plan could not be reviewed.³⁰ The court said that the 5-year Plan NEPA review had “not yet reached that ‘critical stage’ where an ‘irreversible and irretrievable commitment of resources’ has occurred that will adversely affect the environment.”³¹ The court suggested that the appropriate time for such claims would be at the leasing stage. Accordingly, this ruling bars any challenge to the 5-year Plan NEPA review.

This position is consistent with other courts that have reviewed NEPA challenges of multiple stage administrative programs. The Second Circuit has held that a federal action, in that case an administrative hearing involving Mobil Oil, is not subject to NEPA until that point where there might be irreversible and irretrievable commitments of resources.³² Similarly, the D.C. Circuit held that a Forest Service procedure for identifying areas for oil and gas leases was not ripe because it could prove unnecessary if no leases were ever issued.³³ No irreversible or irretrievable commitment of resources had been made.

The EIS for 11 Gulf of Mexico Lease Sales

In April 2007, MMS also completed the EIS for the 11 lease sales for the Gulf of Mexico, the Multisale EIS.³⁴ For the lease sales, the MMS divided the Gulf of Mexico into three regions: Western (the Texas coast); Central (the coasts of Louisiana, Mississippi and Alabama); and Eastern (the Florida coast). Eleven lease sales were planned for the Western and Central areas and none for the Eastern area.³⁵ A number of leases could be issued within each of the 11 lease sales,

²⁹ 43 U.S.C. § 1349(c)(1) gives this court exclusive jurisdiction for review of OCSLA leasing program approvals. This exclusive jurisdiction has been found to apply only to OCSLA claims and not to NEPA claims related to OCSLA approval. See *Get Out Oil, Inc. v. Andrus*, 477 F. Supp. 40, 42 (C.D. Cal. 1979).

³⁰ *Center for Biological Diversity v. U.S. Department of the Interior*, 563 F.3d 466 (D.C. Cir. 2009).

³¹ *Center for Biological Diversity v. U.S. Department of the Interior*, 563 F.3d 466, 480 (D.C. Cir. 2009).

³² *Mobil Oil Corp. v. FTC*, 562 F.2d 170, 173 (2d Cir. 1977) (finding that certain adjudicatory proceedings were not subject to NEPA because the final order was still speculative).

³³ *Wyoming Outdoor Council v. U.S. Forest Service*, 165 F.3d 43 (D.C. Cir. 1999). See also *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988) (holding that no EIS was required where lease was issued forbidding surface occupancy (and therefore oil drilling)).

³⁴ MMS, Gulf of Mexico OCS Oil and Gas Lease Sales: 2007-2012; Western Planning Area Sales 204, 207, 210, 215, and 218; Central Planning Area Sales 205, 206, 208, 213, 216, and 222; Final Environmental Impact Statement, MMS 2007-018 (April 2007) (hereinafter Multisale EIS). Available online at <http://www.gomr.mms.gov/homepg/regulate/enviro/nepa/nepaprocess.html#Recent%20NEPA%20Documents>.

³⁵ Approximately 5.8 million acres located in the southeastern part of the Central Planning Area (CPA) are not included in the lease sale area, despite being opened to leasing by the Gulf of Mexico Energy Security Act of 2006 after years of leasing moratoria in appropriations acts. 71 Fed. Reg. 35258 (June 27, 2007).

typically over 300, based on the amount of resources an area is estimated to produce. For more details on the facts underlying the Western and Central lease sales, see **Appendix A**.

The Multisale EIS evaluated the environmental impacts from routine operations as well as accidents such as oil spills. It reviewed all of the different steps involved in extracting oil—seismic testing, exploratory drilling, development and production, transportation, and removing structures at the end of the lease.

Blowouts and other spills were evaluated, first, on the probability of such events occurring, and then analyzing the probable resulting environmental effects. Like the 5-year Plan EIS, the Multisale EIS used historical data as the basis for the size of an oil spill. According to MMS, the most likely size of an oil spill that was greater than 1,000 bbl would be 4,600 bbl.³⁶ However, MMS states that large oil spills (meaning spills greater than 1,000 bbl) are “low-probability events.”³⁷

MMS used modeling to see how a 4,600 bbl spill would dissipate when on the surface. (Although it studied both surface and subsurface spills, MMS noted that subsurface spills would behave the same as surface spills once they reached the top.) MMS found that natural weathering would dissipate 32% to 74% of the slick; between 30% and 32% would be lost to the atmosphere via evaporation; and about 2% to 42% would be lost into the water column via natural dispersion.³⁸ No modeling was done on a larger spill.

The Multisale EIS did consider the possibility of a larger offshore spill for the leases, although it did not analyze impacts from such a spill. It found that a spill larger than 10,000 bbl had greater than a 99% chance of occurring during the 40-year period.³⁹ A mean number of spills of that size was estimated between 11 and 13 for that time period.⁴⁰ MMS analyzed the environmental effects of a spill of 4,600 bbl, the “most likely size of a spill greater than 1,000 bbl.”⁴¹

In general, the probability of an offshore oil spill greater than 1,000 bbl (but not larger than 4,600 bbl) reaching an environmentally sensitive resource was found to be small, ranging from less than 0.5% (for example, reaching Gulf communities, listed beach mice, or Gulf Sturgeon habitat), but greater for other resources (for example, the probability of such a spill reaching waters used by coastal sea turtles ranged from 6% to 35%, while the odds of a spill reaching sea turtle nesting and mating habitat were 4%).⁴² Thus, an offshore spill larger than 1,000 bbl was not found to be a significant environmental impact.

³⁶ Multisale EIS, p. 4-232.

³⁷ Multisale EIS, p. 4-228. Ninety-four percent of all spills in the Gulf were found to be less than 1 bbl, contributing 5% by volume to all spills. Multisale EIS, p. 4-235.

³⁸ Multisale EIS, p. 4-233.

³⁹ Multisale EIS, p. 4-75

⁴⁰ *Id.*

⁴¹ Multisale EIS, p. 4-232.

⁴² Multisale EIS, p. 4-243.

The Multisale EIS includes a discussion of blowouts as a *Loss of Well Control* (LWC), of which a blowout is the most severe form. Most LWC events were found to last half a day.⁴³ Therefore, MMS concluded impacts to marine water quality were not estimated to be significant.⁴⁴ However, it is noted that the noise from a blowout explosion could injure marine mammals, depending on their proximity.⁴⁵

Adequacy of the Environmental Review of the Multiple Lease Sales

It could be questioned whether the review within the Multisale EIS was comprehensive enough to satisfy a court that MMS fully complied with NEPA. The act requires “a detailed statement” on “any adverse environmental effects which cannot be avoided should the proposal be implemented.”⁴⁶ A court could consider the adequacy of not reviewing the environmental effects of spills over 10,000 bbl when MMS calculated a greater than 99% probability that such a spill would occur. On the other hand, the court could find that reviewing spills of 4,600 bbl met NEPA’s standards. There is no court decision reviewing this document.

NEPA requires an agency to consider the environmental consequences of its actions during the development of a proposal.⁴⁷ Courts apply the “rule of reason” to see if the document is sufficient. One court described that review as finding whether an EIS “contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.”⁴⁸ In general, courts have held that the goals of NEPA are satisfied when an EIS “sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved.”⁴⁹

In the case of OCS leases, courts have accepted that there are staged analyses with different degrees of scrutiny matching the different OCSLA steps. In a suit challenging an EIS prepared for one lease sale in the Arctic,⁵⁰ the plaintiffs argued that the NEPA analysis was flawed because it significantly underestimated the amount of oil that might be spilled.⁵¹ The Ninth Circuit held that they were “least troubled by what may seem to be incomplete or speculative data at the lease sale stage,” noting that prior to exploration “an oil spill risk analysis can never be more than speculative.”⁵² The court’s comfort with the data was based on the fact that OCSLA had tiered analyses: “the amount and specificity of information necessary to meet NEPA requirements varies at each of OCSLA’s stages.”⁵³ It referred to the U.S. Supreme Court decision regarding the tiered environmental analysis of OCSLA, *Secretary of the Interior v. California*.⁵⁴ In that case, which

⁴³ Multisale EIS, p. 4-239.

⁴⁴ Multisale EIS, p. 4-260.

⁴⁵ Multisale EIS, p. 4-275.

⁴⁶ 42 U.S.C. § 4332(2)(C)(ii).

⁴⁷ *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976).

⁴⁸ *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992).

⁴⁹ *County of Suffolk v. Dept. of the Interior*, 562 F.2d 1368 (2d Cir. 1977) (holding that an EIS for OCS drilling proposal was not inadequate).

⁵⁰ The Multisale EIS for the Gulf reviewed 11 lease sales.

⁵¹ *Tribal Village of Akutan v. Hodel*, 869 F.2d 1185 (9th Cir. 1988).

⁵² *Id.* at 1192.

⁵³ *Id.*

⁵⁴ *Secretary of the Interior v. California*, 464 U.S. 312 (1984) (holding that an adverse effects analysis under the CZMA was not required at the lease sale stage).

did not consider NEPA, the Supreme Court said that a lease sale on its own “does not directly mandate further activity that would raise an oil spill problem,” and therefore, there was no need to perform a CZMA environmental analysis at that point.⁵⁵ The Supreme Court and the Ninth Circuit predicated their decisions on the fact that the desired environmental review could occur at a later stage in the OCSLA process.

Other courts have considered the argument that an environmental document at the lease sale stage should have considered the potential effects of a larger spill, ultimately rejecting that claim.⁵⁶ In a dispute in the Ninth Circuit, the NEPA document had discussed impacts from spills exceeding 1,000 barrels and those exceeding 10,000 barrels for OCS drilling in the Arctic. The plaintiff wanted consideration of spills of greater than 100,000 bbl, based on the Amoco Cadiz spill of 1.6 million barrels in 1978, and the 3.5 million bbl exploratory well blowout in the Gulf of Mexico in Mexican waters in 1979. The district court held that plaintiff had not made its argument well, failing to show how impacts from a 100,000 bbl spill would be different from those discussed for a 10,000 bbl spill. Additionally, the court noted that an EIS does not have to consider every possible impact: “The rule of reason applicable to environmental impact statements does not require an inquiry into every conceivable situation that may occur no matter how remote or speculative it may be.”⁵⁷

The Ninth Circuit agreed with the conclusion of the district court, but for different reasons. It found that the tiered environmental reviews under the OCSLA would mean that as drilling became more likely, the impacts of a 100,000 bbl spill may be considered. The lease sale stage was a preliminary stage, according to the court: “Further information about the probability and location of a 100,000 barrel spill will become available as lessees survey their tracts, or test them, or plan for production and development.”⁵⁸

While NEPA requires consideration of a range of alternatives, it does not require consideration of a worst case scenario, such as another 3.5 million bbl spill.⁵⁹ An earlier version of the CEQ regulations did require such an evaluation when an agency had “incomplete or unavailable information” regarding the effects of an action. In that case, an agency was required to “include a worst case analysis and an indication of the probability or improbability of its occurrence.”⁶⁰ In general, courts have held that an EIS “is not required to discuss every conceivable consequence of an agency’s actions. Under the rule of reason, the environmental impact statement is not required to consider alternatives or consequences that are only speculative or are too remote.”⁶¹ It would

⁵⁵ *Secretary of the Interior v. California*, 464 U.S. 312, 317 (1984).

⁵⁶ *Village of False Pass v. Watt*, 565 F. Supp. 1123 (D.C. Alaska 1983), *aff’d sub nom.*, *Village of False Pass v. Clark*, 733 F.2d 605 (9th Cir. 1984).

⁵⁷ *Village of False Pass v. Watt*, 565 F. Supp. 1123, 1147 (D.C. Alaska 1983).

⁵⁸ *Village of False Pass v. Clark*, 733 F.2d 605, 616 (9th Cir. 1984).

⁵⁹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Sierra Club v. Sigler*, 695 F.2d 957 (5th Cir. 1983) (holding the Corps of Engineers did not have to consider the worst case scenario of a tanker losing all of its cargo when considering the impacts of a dredging permit basing its holding in significant part on a now-revised CEQ regulation).

⁶⁰ 40 C.F.R. § 1502.22(b) (revised in 1986). The current regulations require an agency to prepare a statement regarding unavailable information that includes *reasonably foreseeable significant adverse impacts*, which is defined as including “impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence.”

⁶¹ *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1074 (1st Cir.1980).

be up to a court to consider whether a blowout spill from Lease Sale 206 was too remote and speculative for MMS to consider in its environmental review.

Lease Sale 206 Environmental Assessment

The third environmental review in the OCS process is the environmental assessment (EA) prepared for lease sale 206 in the Gulf (Lease Sale 206 EA).⁶² The oil spill is occurring in Mississippi Canyon Block 252 of this lease sale. MMS prepared environmental assessments for other particular lease sales in the Western and Central Gulf, such as Lease Sale 207, although a Supplemental EIS was prepared for Lease Sale 224 in the Eastern Gulf.

Typically, an EA leads to one of two conclusions: discovery of a significant impact and then preparation of an EIS, or a finding of no significant impact (FONSI). MMS terms their EAs differently. It issues an EA-FONNSI, meaning finding of no *new* significant impact, reflecting the tiered environmental analyses for the OCS process. Lease Sale 206 EA recognizes that it “tiers off the Multisale EIS and incorporates much of the material by reference.”⁶³ According to MMS, new information related to the lease sale was discovered, but did not change the conclusions reached within the Multisale EIS.⁶⁴

The EA appears to back off some of the environmental impacts considered in the EIS. It states that because activity was overestimated, the environmental impacts “may have been overstated.”⁶⁵ While new information was considered within the EA, MMS found it supports the conclusions made in the Multisale EIS, and so no new conclusions are made within the EA.⁶⁶ The Lease Sale 206 EA refers to the Multisale EIS review of spills greater than 1,000 bbl.⁶⁷ No reference to larger spills was found, such as a 4,600 bbl spill. In fact, oil spills were discussed in more general terms throughout the document than in either of the EISs, which were incorporated by reference.

No legal challenge to the Lease Sale 206 EA has been found. However, challenges to other EAs for OCS drilling have been found for EAs issued for particular lease sales in the Arctic. Courts have found EAs should be used in these circumstances to determine whether “the new circumstance must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.”⁶⁸ If those different impacts are found, an EIS or Supplemental EIS is warranted. A federal district court considered whether a Supplemental EIS should have been prepared three years after conclusion of a multisale EIS for the Arctic region, instead of an EA. It found that the multisale EIS in that case had considered scenarios that

⁶² MMS, Proposed Gulf of Mexico OCS Oil and Gas Lease Sale 206; Central Planning Area; Environmental Assessment, MMS 2007-059 (Oct. 2007) (hereinafter Lease 206 EA). Available online at <http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html#Recent%20NEPA%20Documents>.

⁶³ EA FONNSI, introduction.

⁶⁴ EA FONNSI, p. 1.

⁶⁵ Lease 206 EA, p. 14.

⁶⁶ Lease 206 EA, p. 18.

⁶⁷ Lease 206 EA, p. 24.

⁶⁸ *Sierra Club v. Froehke*, 816 F.2d 205, 210 (5th Cir. 1987); *North Slope Borough v. Minerals Management Service*, No. 3:07-cv-0045-RRB, *2 (D. Alaska April 12, 2007); *Oregon Natural Resources Council v. Devlin*, 776 F. Supp. 1440, 1449 (D. Ore. 1991).

included the new data addressed by the EA.⁶⁹ As this conclusion is fact-specific, it cannot be used to predict whether a court may reach the same decision regarding the Lease Sale 206 EA.

Categorical Exclusion for the Exploration Plan

The final environmental document to date for the Mississippi Canyon Block 252 oil well is a categorical exclusion for the exploration plan (EP) submitted by BP (EP CE). As discussed above, a categorical exclusion may be used by an agency when a category of actions has been determined to have no significant effect on the environment either individually or cumulatively.⁷⁰ The CEQ regulations provide that any procedures allowing CEs must also include “extraordinary circumstances” for when a CE would not apply.⁷¹

In 1986, MMS issued its list of categories of activities excluded from further NEPA review within the DOI Departmental Manual.⁷² The list was revised in 2004. The Departmental Manual states that a CE does not apply if “the action qualifies as an exception under Appendix 2 of 516 DM.” A copy of the MMS categorical exclusions and the exceptions are available as **Appendix B** to this report.⁷³

CRS has reviewed the documentation by MMS recording its decision to invoke a categorical exclusion for the EP. The documentation is referred to as a Categorical Exclusion Review (CER) with Analysis and includes reviews for specific environmental harms. The CE process begins when a leaseholder (in this case BP) submits an exploration plan for MMS approval.⁷⁴ MMS reviews the plan to see if it fits any of the published categorical exclusions. The agency must also see whether any exceptions to those CEs apply. The decision must be documented. MMS uses forms that include check lists to document the CERs.

According to MMS, CEs are available when “the impacts from the common operations are expected to be negligible to non-existent based upon general information gathered during past environmental analyses.”⁷⁵ This means that based on its experience, MMS has found that those operations have at most negligible environmental impacts, and therefore, additional review is not required.

The CER documents from MMS do not indicate which CE was used. However, it seems likely that MMS invoked CE C(10), which is a CE that applies to exploration plans:

⁶⁹ North Slope Borough v. Minerals Management Service, No. 3:07-cv-0045-RRB, *2 (D. Alaska April 12, 2007).

⁷⁰ 40 C.F.R. § 1508.4.

⁷¹ 40 C.F.R. § 1508.4.

⁷² The *Federal Register* notice announcing these CEs refers to them as being functions transferred from the Geological Survey (GS) and the Bureau of Land Management (BLM) to the MMS upon its establishment. 51 Fed. Reg. 1855 (Jan. 15, 2986).

⁷³ It is also available online at http://206.131.241.18/app_DM/act_getfiles.cfm?relnum=3625.

⁷⁴ In practice, multiple versions of an EP may be submitted, such as an initial EP, or an amended EP. The CER for BP shows separate reviews were conducted for archaeological resources, chemosynthetic communities, and what was referred to as a NEPA (I) determination. Copies of these documents (either the I-EP (Initial Exploration Plan) with a NEPA final date of April 15, 2009, or the A-EP (Amended Exploration Plan) with a NEPA final date of April 3, 2009) are available from the author.

⁷⁵ MMS, Discussion of Categorical Exclusion Reviews (undated). A copy of this document is included as **Appendix C**.

Approval of an offshore lease or unit exploration development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico (30 CFR 250.2) except those proposing facilities: (1) In areas of high seismic risk or seismicity, relatively untested deep water, or remote areas, or (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; or (3) in areas of hazardous natural bottom conditions; or (4) utilizing new or unusual technology.⁷⁶

This CE appears to have been created in 1978 in guidelines for MMS's predecessor. It is the only CE that makes specific reference to an OCS area, or, in fact, contains any geographical restriction. It excludes two of the four stages OCSLA actions from further NEPA review. It excludes both exploration plans in the western and central Gulf of Mexico and development and production plans in those areas. In contrast, the other CEs exclude what appear to be more general, administrative activities such as "issuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators, Guidelines, and field rules ..." (C)(1); "approval of unitization agreements, pooling, or communitization agreements" (C)(4); and "approval of suspension of operations and suspensions of productions" (C)(6).

The CE for Gulf plans could be based on the OCSLA amendments of 1978.⁷⁷ Those amendments address certain NEPA requirements, giving exemptions to activities in the Gulf of Mexico. The relevant section of that law, Section 25 (codified at 43 U.S.C. § 1351(e)(1)), states that "at least once the Secretary shall declare the approval of a development and production plan in any area or region ... of the outer Continental Shelf, other than the Gulf of Mexico, to be a major Federal action."⁷⁸ While this language contains some ambiguity as to whether the "at least once" requirement must be used by the Secretary for all development plans or on a plan-by-plan basis, this suggests that approval of a development and production plan in the Gulf of Mexico might never need to be declared a *major federal action* (key words in NEPA to mandate preparation of an EIS).⁷⁹ No similar statutory reference to exploration plans exists, but this may be the foundation for excluding Gulf of Mexico plans from environmental analyses.

BP discussed a Worst Case Scenario Response in its initial EP for Mississippi Canyon Block 252, indicating it considered a potential large-scale spill. The EP states that for exploratory wells A and B at Block 252, the worst case scenario would be a blowout at the exploratory stage, leading to a spill of 162,000 gallons (3,857 bbl) of crude oil a day.⁸⁰ The EP indicates that BP's regional oil spill response plan for a worst case scenario had been approved by MMS.⁸¹

⁷⁶ 516 DM 15.4(C)(10).

⁷⁷ P.L. 95-372, § 25, 92 Stat. 659 (1978).

⁷⁸ The legislative history for this amendment does not discuss why the Gulf was excepted from this provision. However, the Conference Report suggests that the exception was for efficiency: "to limit bureaucratic redtape and otherwise minimize delays in the search for and production of oil and gas" which was "going on for a number of years" in the Gulf. H. Rep. 95-1474, at 115 (Aug. 10, 1978). The Gulf exclusion was within the Senate language, while the House had no exclusion. *Id.*

⁷⁹ As referenced earlier in this report, MMS policy is that development and production plans undergo a full EIS. However, the MMS allows a CE for development and production plans in the western and central areas of the Gulf of Mexico, essentially exempting those plans from that policy. Because it was still in exploration, the Mississippi Canyon Block had not reached the stage of development and production. It is not known whether MMS would have issued a CE for that plan as well.

⁸⁰ EP, § 7.1.

⁸¹ EP, § 7.1.

Despite referring to a blowout in the context of a response plan, no blowout scenario was included in the EP. This appears to be based on MMS policy for the area. Section 2.7 of the EP states: "A scenario for a potential blowout of the well from which BP would expect to have the highest volume of liquid hydrocarbons is not required for the operations proposed in this EP."⁸² While MMS regulations require disclosure of a blowout scenario in EPs,⁸³ MMS provided an exception in a 2008 Notice to Lessees. The exception exempts OCS actions in the Gulf from blowout scenario requirements under certain conditions.⁸⁴

Even if a blowout scenario was not prepared, it seems there would be significant amounts of oil released if the worst case scenario of a blowout occurred, oil at quantities greater than considered in the Multisale EIS or the Lease Sale 206 EA. However, because a CE was used for the EP, instead of an EIS or an EA, a review of the environmental impacts for a spill of this size was not conducted. They were not considered within the previous EISs or the EA either.

Adequacy of the Environmental Review of the Exploration Plan

No court has reviewed this categorical exclusion (516 DM 15.4(C)(10)), either to determine whether on its face it meets the standards which CEs are to follow—actions that either individually or cumulatively are found not to have a significant effect on the environment—or as it has been applied to any exploration or development plan. However, the Ninth Circuit considered whether MMS had properly used a different CE in California when approving lease suspensions. The court found the use of that CE was not adequately justified by MMS.⁸⁵ In that case 36 lease suspensions were sought nearly 30 years after a large oil spill near Santa Barbara. Under the OCLSA, MMS may suspend the term of a lease when a lessee is not able to begin production within the term of the lease, thus avoiding expiration of the lease.⁸⁶ The court found that there was no documentation of the CE, and that some exceptions to a CE could have applied that MMS did not consider. Accordingly, the court remanded the NEPA review to MMS.

It is possible a court may find that exceptions to CEs apply in the case of the EP CE, in which case the BP CE would be invalid. (The exceptions are included as part of **Appendix B**.) One exception that may apply addresses effects on ESA-listed species, meaning a CE could not be used if an action may: "have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species."⁸⁷ All of the environmental documents address the effects of an oil spill on listed species and the critical habitat of the Gulf Sturgeon. For example, the Lease Sale 206 EA states that over the 40-year term of the lease, 119 loggerhead, 10 leatherback, 1 hawksbill, 13 Kemp's

⁸² BP, Initial Exploration Plan, Mississippi Canyon Block 252, OCS-G 32306 (received by MMS Feb. 23, 2009) (hereinafter EP). A copy of this document is available from the author.

⁸³ 30 C.F.R. § 250.213(g). A lawsuit challenging the DOI's issuance of the Notice was filed in federal court. *Gulf Restoration Network v. Salazar*, No. 2:10-cv-01497 (E.D. La. filed May 18, 2010).

⁸⁴ MMS, Notice to Lessee 2008 G-4 (May 1, 2008). Available online at <http://www.gomr.mms.gov/homepg/regulate/regis/ntls/2008NTLs/08-g04.pdf>. Under this Notice, a blowout scenario is only required for OCS drilling if 1) Florida is an affected state; 2) the activity occurs within protective zones of Flower Garden Banks or Stetson Bank; 3) activity includes installation of surface facility at greater than 400 meters; 4) initial Development Operations Coordination Documents (DOCDs) and supplemental DOCDs with new multiwell structures if either Texas or Louisiana is an affected state; and 5) initial EPs if Texas is an affected state. Notice 2008 G-4, p. 6.

⁸⁵ *California v. Norton*, 311 F.3d 1162 (9th Cir. 2002).

⁸⁶ 43 U.S.C. § 1334(a)(1).

⁸⁷ 516 DM Appx. 2, exception 2.8.

ridley, and 38 green turtles will be killed.⁸⁸ It is possible a court could find that these effects could be considered “adverse.” Another exception to the CEs addresses actions when the impacts cannot be known, perhaps due to the fact that the harm depends on the scale, timing, and location of an oil spill: “2.4 - Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.”

Even if the exceptions do not apply, MMS may be required to explain in the CE why they do not. Under accepted law, if there is substantial evidence that an exception *may* apply, an agency must document why an exception to a CE does *not* apply in order to support the CE.⁸⁹ While the CER documents specifically address exceptions regarding archeological resources and chemosynthetic communities, finding that neither exception applies, there is no explicit reference to any other exception.

The fact that this project was in the Gulf of Mexico made a difference in the type of review MMS conducted. Arguably, a heightened level of review might have reached a different conclusion as to the probable environmental impacts. If the EP had been in the Arctic, the CE for the Gulf plans would not apply and consideration of a blowout scenario also would have been required. Instead, EAs are used, which must sufficiently analyze the environmental impacts of the action. When the Ninth Circuit reviewed an EA for an exploration plan in the Beaufort Sea in the Arctic (hereinafter the Beaufort Sea EP), it found that an EA was not adequate.⁹⁰ The BP EP and the Beaufort Sea EP are factually similar in that they result from a nearly identical set of tiered NEPA analyses. The Beaufort Sea EP also came after an EIS for a 5-year plan (for 2002-2007), an EIS for the multiple lease sale, and a series of EAs for particular lease sales. Like the EP CE, endangered species were present at the planned drilling site. In the case of the Beaufort Sea EP the court indicated experts expressed concern that the exploration plan could have significant impacts on polar bears and whales. An EA-FONNSI was issued, meaning no new significant impacts were found. The court held that the Beaufort Sea EA did not indicate MMS took a “hard look” at the environmental impacts of the exploration plan since substantial questions remained regarding the harm to wildlife and the people in the area.⁹¹ MMS revoked its approval of the EP.⁹²

The EP CE, perhaps, could be justified as a fourth environmental review, implying that all of the environmental impacts had been considered in the earlier, more expansive documents. Technically, however, that is not how a CE is intended to be applied. The NEPA regulations do not provide that CEs may be used to exclude reviews on the basis that previous analyses already considered impacts. A CE is supposed to be invoked because the project would not have any impacts. NEPA allows tiered environmental reviews⁹³ when the impacts have already been considered.

Additionally, this rationale runs counter to the OCSLA staging justification used by courts as to why environmental reviews at the lease sale stage or earlier did not need to be in depth. Those

⁸⁸ Lease 206 EA, p. 41.

⁸⁹ *Jones v. Gordon*, 792 F.2d 821 (9th Cir. 1986).

⁹⁰ *Alaska Wilderness League v. Kempthorne*, 548 F.3d 815 (9th Cir. 2008), *vacated as moot*, 571 F.3d 859 (9th Cir. 2009) (upon rescission by MMS of the EP approval).

⁹¹ *Alaska Wilderness League v. Kempthorne*, 548 F.3d 815, 825 (9th Cir. 2008), *vacated as moot*, 571 F.3d 859 (9th Cir. 2009).

⁹² See *Alaska Wilderness League v. Kempthorne*, 571 F.3d 859 (9th Cir. 2009).

⁹³ 40 C.F.R. § 1500.4(i).

courts held that a more intense environmental review was not needed at the early stages of the OCSLA because it would occur when actual drilling was imminent.⁹⁴ For example, the justification used by the District Court of Alaska for why a 100,000 bbl spill did not have to be analyzed may not apply when a CE is used at the exploration stage instead of a more in-depth analysis: "Congress has decided to allow key decisions having serious environmental consequences to be made at the exploration and production and development stages instead of requiring all decisions to be made at the pre-leasing and leasing stages."⁹⁵

The Ninth Circuit's rationale for why a larger oil spill was not examined at the lease sale stage was that environmentally significant activities did not occur then. A more thorough review would be conducted later:

by purchasing a lease, lessees acquire no right to do anything more. Under the plain language of OCSLA, the purchase of a lease entails no right to proceed with full exploration, development, or production ... the lessee acquires only a priority in submitting plans to conduct those activities. If these plans, when ultimately submitted, are disapproved, no further exploration or development is permitted.⁹⁶

If no review were conducted later, this justification may not seem to be supportable. The Ninth Circuit had suggested in another case that the exploration stage was where a spill analysis would be most appropriate.⁹⁷

The U.S. Supreme Court also emphasized the importance of administrative review of the post-lease actions: "an OCS lease authorizes the holder to engage only in preliminary exploration; further administrative approval is required before full exploration or development may begin."⁹⁸ It could be argued that the EP CE is the inverse result of what is supposed to happen with tiered environmental reviews. Instead of the process described by the courts where the environmental review becomes more exacting as the drilling becomes imminent, the opposite has happened and no additional environmental analysis was conducted.

Conclusion

The exploration well blowout in the Gulf of Mexico appears to have major, and potentially catastrophic, environmental effects. None of the environmental reviews under NEPA considered an oil spill of this magnitude. However, it is unclear whether that violates NEPA, which has no requirement for analysis of a worst case scenario. The use of a categorical exclusion at the exploration stage appears to be procedurally correct under MMS policy, provided there were no applicable exceptions. However, the legality of that CE has never been examined by a court, which could consider whether an exemption from a NEPA review at the point where drilling is imminent violates NEPA either because extraordinary circumstances existed in the case, or because, in general, the tiered OCSLA process envisioned more scrutiny of environmental consequences after the lease stage.

⁹⁴ *Center for Biological Diversity v. U.S. Department of the Interior*, 563 F.3d 466, 480 (D.C. Cir. 2009).

⁹⁵ *Village of False Pass v. Watt*, 565 F. Supp. 1123 (D.C. Alaska 1983).

⁹⁶ *Village of False Pass v. Clark*, 733 F.2d 605, 608 (9th Cir. 1984).

⁹⁷ *Tribal Village of Akutan v. Hodel*, 869 F.2d 1185, 1192 (9th Cir. 1988).

⁹⁸ *Secretary of the Interior v. California*, 464 U.S. 312, 321 (1984).

Appendix A. Background Facts

Source: MMS, Gulf of Mexico OCS Oil and Gas Lease Sales: Final Environmental Impact Statement (MMS 2007-018) (April 2007).

Duration of Gulf of Mexico OCS Oil and Gas Activity—40 years (p. 4-5):

- Exploratory drilling activity can take place over an 8-year period, beginning within one year after the lease sale.
- Development activity takes place over a 39-year period, beginning with the installation of the first production platform and ending with the drilling of the last development wells.
- Production of oil and gas begins by the third year after the lease sale and continues through the 40th year.
- Final abandonment and removal activities occur in the 40th year.

Amount of oil and gas expected to be produced (p. 4-5):

Western Gulf:

- Oil = 242 – 423 million bbl
- Gas = 1.644 – 2,647 trillion cubic feet

Central Gulf:

- Oil = 776 – 1,292 million bbl
- Gas = 3.236 – 5.229 trillion cubic feet

Amount of seismic testing expected (p. 4-7):

- Western Gulf—400 – 800 blocks
- Central Gulf—1,000 – 2,000 blocks

Number of exploration and delineation wells from this lease sale expected during 40-year period (p. 4-10):

- Western Gulf—42 – 66
- Central Gulf—65 – 96

Number of development wells from this lease sale anticipated during 40-year period (p. 4-13):

- Western Gulf—155 – 221
- Central Gulf—330 – 468

Number of loss of well control events (including blowouts) from this lease sale estimated during 40-year period (p. 4-250):

- Western Gulf—1 – 2
- Central Gulf—2 – 3

Number of offshore oil spills estimated from this lease sale during 40-year period (p. 4-241):

- Western Gulf—800 – 1,500 spills/ 400 – 21,000 bbl of oil
- Central Gulf—2,700 – 4,500 spills/ 5,500 – 26,500 bbl of oil

Natural seeps of oil, annual average (1990-1999) (Table 4-12):

- Western Gulf—490,000 bbl
- Eastern Gulf⁹⁹—490,000 bbl

Probability of spills greater than 10,000 bbl occurring (Table 4-15):**Western Gulf:**

- Mean number of spills from all sources (facilities, pipelines, shuttle tankers)—3
- Probability of occurrence—92% – 96%

Central Gulf:

- Mean number of spills from all sources (facilities, pipelines, shuttle tankers)—9
- Probability of occurrence—99+%

Historical data on offshore spills greater than 10,000 bbl in the Gulf of Mexico from 1985-1999 (Table 4-16):

- From pipelines: 2 spills; 30,000 bbl spilled in total
- From platforms: 0 spills

⁹⁹ Data not available for Central Gulf.

Appendix B. MMS Categorical Exclusions

Source: 516 DM

15.4 Categorical Exclusions. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the MMS also performs, the following MMS actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2:

A. General.

- (1) Inventory, data, and information collection, including the conduct of environmental monitoring and nondestructive research programs.
- (2) Actions for which MMS has concurrence or co-approval with another Bureau if the action is a categorical exclusion for that Bureau.

B. Internal Program Initiatives.

- (1) All resource evaluation activities including surveying, mapping, and geophysical surveying which do not use solid or liquid explosives.
- (2) Collection of geologic data and samples including geologic, paleontologic, mineralogic, geochemical, and geophysical investigations which does not involve drilling beyond 50 feet of consolidated rock or beyond 300 feet of unconsolidated rock, including contracts therefor.
- (3) Acquisition of existing geological or geophysical data from otherwise private exploration ventures.
- (4) Well logging, digital modeling, inventory of existing wells, and installation of recording devices in wells.
- (5) Establishment and installation of any research/monitoring devices.
- (6) Test or exploration drilling and downhole testing included in a project previously subject to the NEPA process.
- (7) Insignificant revisions to the approved 5-year leasing program.
- (8) Prelease planning steps such as the Call for Information and Area Identification.

C. Permit and Regulatory Functions.

- (1) Issuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators, Guidelines and field rules for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal.
- (2) Approval of production measurement methods, facilities, and procedures.
- (3) Approval of off-lease storage in existing facilities.

- (4) Approval of unitization agreements, pooling, or communitization agreements.
- (5) Approval of commingling of production.
- (6) Approval of suspensions of operations and suspensions of production.
- (7) Approval of lease consolidation applications, lease assignments or transfers, operating rights, operating agreements, lease extensions, lease relinquishments, and bond terminations.
- (8) Administration decisions and actions and record keeping such as:
 - (a) Approval of applications for pricing determinations under the Natural Gas Policy Act.
 - (b) Approval of underground gas storage agreements from a presently or formerly productive reservoir.
 - (c) Issuance of paying well determinations and participating area approvals.
 - (d) Issuance of drainage determinations.
- (9) Approval of offshore geological and geophysical mineral exploration activities, except when the proposed activity includes the drilling of deep stratigraphic test holes or uses solid or liquid explosives.
- (10) Approval of an offshore lease or unit exploration, development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico (30 CFR 250.2) except those proposing facilities: (1) In areas of high seismic risk or seismicity, relatively untested deep water, or remote areas, or (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; or (3) in areas of hazardous natural bottom conditions; or (4) utilizing new or unusual technology.
- (11) Approval of minor revisions of or minor variances from activities described in an approved offshore exploration or development/production plan, including pipeline applications.
- (12) Approval of an Application for Permit to Drill (APD) an offshore oil and gas exploration or development well, when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or Development Operations Coordination Document.
- (13) Preliminary activities conducted on a lease prior to approval of an exploration or development/production plan or a Development Operations Coordination Plan. These are activities such as geological, geophysical, and other surveys necessary to develop a comprehensive exploration plan, development/production plan, or Development Operations Coordination Plan.
- (14) Approval of Sundry Notices and Reports on Wells.
- (15) Rights-of-ways, easements, temporary use permits, and any revisions thereto that do not result in a new pipeline corridor to shore.

D. Royalty Functions. All functions of the Associate Director for Royalty Management including, but not limited to, such activities as: approval of royalty payment procedures, including royalty oil contracts; and determinations concerning royalty quantities and values, such as audits, royalty reductions, collection procedures, reporting procedures, and any actions taken with regard to royalty collections (including similar actions relating to net profit and windfall profit taxes).

Exceptions To Categorical Exclusions

516 DM 2 Appendix 2

The following exceptions apply to individual actions within categorical exclusions (CX). Environmental documents must be prepared for actions which may:

- 2.1 Have significant adverse effects on public health or safety.
- 2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.
- 2.3 Have highly controversial environmental effects.
- 2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- 2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- 2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.
- 2.7 Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
- 2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.
- 2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
- 2.10 Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

Appendix C. The MMS Categorical Exclusion Review Process

Source: Minerals Management Service

A more detailed discussion of Categorical Exclusion Reviews (CERs) and the NEPA process for review of Industry Submittals follows:

Descriptions for the “NEPA Determination Type” field under FastFacts?

The **NEPA Determination Type** is identified in a **NEPA Determination Type Review** at the very beginning of the Categorical Exclusion Review (CER) process and it establishes the level of NEPA analyses that should be conducted for a particular proposal. Based upon details about the proposed action, policy, and programmatic NEPA analyses, the NEPA Determination Type could be either:

- **CER with no further Analyses**; i.e., finalize the CER with no additional reviews/conditions of approval (COAs)
- **CER with Analyses**; i.e., continue processing/review under a CER with the applicable protected resource reviews assigned; or
- **Prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)**

When it’s a categorical exclusion [review] with analysis, what kind of analysis is it?

Though not a document in the same sense as an EA or EIS, the CERs ultimately consist of a series of procedures and activity-specific reviews that are conducted and compiled so that MMS is assured that the activity can remain Categorical-Excluded from review under an EA or EIS. The CERs are completely digital and therefore, stored within TIMS as part of the Administrative Record along with all documentation related to the proposed action (in this case, the EPs on MC252) and all associated surveys/reports. Even though Central and Western Gulf of Mexico drilling and production activities are Categorical-Excluded from any additional review, MMS GOMR prepares CERs on each proposal to ensure that “**extraordinary circumstances**” do not exist and to ensure that the agency has the ability to consider the best-available data/technology on a case-by-case basis, which in turn affords real-time adaptive management of assessment triggers, reviewing standards, and conditions of approval/mitigation.

When an exception criteria [now called an “extraordinary circumstance”] is identified during analysis, what exactly does that mean?

An “extraordinary circumstance” (EC) is an identified condition that could exist within an action that could be Categorical-Excluded from additional NEPA analysis. MMS has 12 ECs identified under 43 CFR § 46.215 (see last page) that it reviews the proposed action against to determine if any of the activities proposed by the operator may “trigger” or cause an EC condition to occur. If an EC is identified for a proposal that cannot be avoided (either in the NEPA Determination Review or protected resource reviews), an EA must be prepared. The EA, in turn, could result in a Finding of Significant Impact (FOSI), which would then require preparation of an EIS.

Detailed Discussion:

The DOI and MMS can categorically-exclude (CatEx) certain actions from further NEPA analyses if it is determined that they would not have a significant effect on the environment (individually or cumulatively). The MMS CatEx list is currently found in the Departmental Manual (see 516DM15.4) and it not only contains administrative actions, but also common OCS operations. The impacts from the common operations are expected to be negligible to non-existent based upon general information gathered during past environmental analyses about the type of activities, the area of the proposed action, programmatic NEPA analyses (Program/Sale EISs/EAs), and the past actions as conducted and observed. The specific MMS operational CatEx corresponding to the submittal of an Exploration Plan (EP) is below:

MMS Categorical Exclusion

under 516 DM 15.4

C. Permit and Regulatory Functions.

10. Approval of an offshore lease or unit exploration plan (EP), development/production plan (DPP), or a Development Operation Coordination Document (DOCD) in the central or western Gulf of Mexico (30CFR250.2) except those proposing facilities:

In areas of high seismic risk or seismicity, relatively untested deep water, or remote areas, or within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; or in areas of hazardous natural bottom conditions; or utilizing new or unusual technology.

Since the CatEx list is based upon general/historical information and generalized/programmatic information, GOMR goes the extra step and prepares a Categorical Exclusion Review (CER) for each action to determine if site-specific details of the proposed operations will not result in an Extraordinary Circumstance (EC), which would require that an EA be prepared. Coordinators in GOMR's Environmental Compliance Section (ECS) follow a set of submittal-specific SOPs and utilize a detailed GIS application, PMT GIS, that addresses the activity being proposed and compares information with established business rules/EC triggers based upon the specific resources to determine if the action should be reviewed under an Environmental Assessment (EA) and which, if any, protected resource reviews should be assigned for the CER/EA.

When the NEPA coordinator is finished following the SOP, their NEPA Determination Review and associated *PMT GIS* report will identify the initial **NEPA Determination Type**, which could include;

- **CER with no further Analyses**; i.e., finalize the CER with no additional reviews/conditions of approval (COAs)
- **CER with Analyses**; i.e., continue processing/review under a CER with the applicable protected resource reviews assigned; or
- **Prepare an EA/EIS.**

All of the applicable information related to the NEPA Determination and/or any resource reviews is recorded in the Technical Information Management System (TIMS) and the *PMT GIS* Report is attached in the respective NEPA Determination Type Review. A copy of the plan/application is provided to the NEPA Decision Maker for a concurrence review of the TIMS information and *PMT GIS* Report. If the Decision Maker concurs with the coordinator, **NEPA Determination Type** is also recorded in TIMS for the specified submittal. If the Chief has any questions about the NEPA determination type, the information will be reviewed together until a decision can be made.

Once concurrence is given, all necessary reviews are assigned to resource specialists (i.e., marine archaeologists, benthic biologists, meteorologists, oceanographers, etc.) and tracked in TIMS. The SME informs the NEPA Coordinator if additional information or a clarification is required and/or when the review is completed. The completed review will note one of the following:

- The proposed action will have no impact on the protected resource.
- The proposed action requires a condition of approval (COA) to ensure that an extraordinary circumstance (EC) will not be met/triggered.
- The proposed action may cause a significant impact and an EA is recommended.

When all of the applicable reviews are completed, the SME's conclusions, and any suggested conditions of approval/mitigation (if necessary), are recorded in TIMS and compiled by the NEPA Coordinator for presentation to the NEPA Decision Maker. The NEPA decision maker will review the findings and choose from the following **Final NEPA Actions**:

- **CER Approved;** (Action can be CatExed with no COAs—an EC will not be triggered/occur); or
- **CER Approved;** (Action can be CatExed with COAs—to ensure that an EC will not be triggered/occur);
- **Prepare an EA/EIS.**

43 CFR § 46.215 Categorical Exclusions: Extraordinary circumstances

Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.

- Have significant impacts on public health or safety.
- Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.
- Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

- Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.
- Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.
- Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.
- Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
- Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).
- Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).

Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112). Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

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