

**U.S. House of Representatives**  
**Committee on Oversight and Government Reform**  
**Darrell Issa (CA-49), Chairman**



**The BP Oil Spill Recovery Effort: The Legacy of Choices  
Made by the Obama Administration**

**STAFF REPORT**  
**U.S. HOUSE OF REPRESENTATIVES**  
**112<sup>TH</sup> CONGRESS**  
**JUNE 2, 2011**

## EXECUTIVE SUMMARY

The Oversight and Government Reform Committee has conducted a yearlong investigation into the efficiency, adequacy, and accuracy of the federal response to the Gulf Oil Spill. This on-going investigative effort included three separate fact finding trips to southern Louisiana, Mississippi, and Florida, careful examinations of accounts provided by the Administration that directly conflict with the experience of federal and local officials on the ground, as well as a Congressional hearing. Investigators have interviewed over 50 federal, state, and local officials, as well as more than 50 residents of the affected region. The results of the investigation are documented in this report as well as a staff report issued by Ranking Member Issa on July 1, 2010, entitled *How the White House Public Relations Campaign on the Oil Spill is Harming the Actual Clean-Up*.

In his response to the disaster in the Gulf, the President faced three crucial decisions, the consequence of which will have long term ramifications for residents of the Gulf and for the United States. The first decision was whether to federalize the response through the Stafford Act or act under the Oil Pollution Act; the second concerned how to reform the failed Minerals and Management Service (MMS); and the third was whether to impose a limited ban on the most risky drilling practices or to impose a broader based moratorium. Each of these critical decisions have had far reaching consequences for the people of the Gulf Coast.

The report makes the following key findings:

- **The Administration ceded leadership and management responsibilities for addressing the suffering of oil spill victims to BP.**

*President Obama had to choose between federalizing the response to the oil spill under the Stafford Act or allowing BP to lead the effort under federal oversight under the authorities of the Oil Pollution Act. While BP would have been financially responsible for clean-up costs under either scenario, President Obama chose the option of letting BP lead and make critical decisions on recovery efforts under the authority of the Oil Spill Act.*

- **Many Gulf Resident and Local Leaders Believe BP is not Meeting its Obligations**

*Failure to fund removal of clean-up equipment debris, uncertainty surrounding mental health services, and frustration associated with the compensation process are among the concerns of affected Gulf Coast residents. Many believe BP is not meeting its obligations and the federal government has abdicated its responsibility to intervene.*

- **Concerns Persist that the BP Oil Spill Liability Trust Fund is Stripping Victims of their Rights**

*President Obama pledged that the oil spill fund “will not be controlled by either BP or by the government.” A Federal judge, however, has ruled that Kenneth Feinberg, who administers the fund, is not a “true third-party neutral” administrator and is not*

*independent from BP. Concerns exist about excessive compensation delays, inconsistent judgments, requirements that victims relinquish further claims against BP as a condition of compensation, and efforts to dissuade victims from obtaining legal representation.*

➤ **After the Spill, The Administration’s Reorganization of the Agency that Regulates Drilling Ignored Critical Input**

*Upon entering office Interior Secretary Ken Salazar was aware of systemic problems at the agency that regulates drilling (MMS) and indicated an early commitment to meaningful reform. In January 2009, he told employees “[w]e will make sure you have the tools you need to hold special interests accountable, to protect taxpayers from getting fleeced, and to ensure that those who develop our natural resources follow the law of the land.” Little occurred, however, until efforts were put in motion after the oil spill to radically restructure and spilt the agency. The reorganization of MMS was announced less than one month after the oil spill. Furthermore, it did not address important recommendations made by MMS employees, Government Accountability Office studies, and investigations by the Department of Interior Inspector General.*

➤ **Before Implementing the Drilling Moratorium, Administration Documents Indicate Officials Made False Assumptions about Effects and Job Losses**

*In examining the economic impact of imposing a drilling moratorium, the Administration relied on numerous false assumptions. In one internal analysis, the Administration assumed that “drilling could re-start on January 1, 2011.” In reality, the first new drilling permit was not issued until months later. Alarmingly, in dismissing larger projections of unemployment the document also noted, “we are comfortable with our conservative approach because the loss in employment is not long term, so the full effects of the indirect and induced employment may not be fully felt as some businesses may be willing to sustain short term losses to avoid having to lay off and subsequently rehire workers.” As oil rigs leave the Gulf, layoffs continue, and the economic consequences of the moratorium continue these assumptions have been exposed as deeply flawed.*

➤ **The Formal Moratorium on Drilling was Replaced by a “Permitorium”**

*Secretary Salazar announced the end of the moratorium on October 13, 2010. According to many in the industry, this declaration provided little relief. The moratorium in the Gulf of Mexico was replaced by a “permitorium” – whereby drilling activity remained at a standstill not by operation of law – but because of inaction processing permits. Prior to the disaster, permits to drill usually took two weeks to process. However, not a single new deepwater permit was issued until a U.S. District Judge ordered the agency to take action on five permits by March 19, 2011 and by March 31 on two additional permits.*

➤ **Some Post-Oil Spill Drilling Regulations are Extremely Burdensome but Have No Relevance to Safety**

*One of the most perplexing examples of a new regulation is the requirement that operators perform an Archaeological Assessment Report. Under this new rule, any new applicant to drill must demonstrate that their proposed activity will not harm shipwrecks or other archaeological resources. Operators must conduct ocean floor analyses with specialized equipment to determine if certain spotted anomalies are actually shipwrecks with the potential to be impacted by exploration or drilling. Furthermore, operators will be required to employ an underwater archaeologist to assist in the analysis of this data and to provide regulators with survey data. When operators asked about how to implement this new rule; and more specifically, if operators would need to hire an underwater archaeologist, regulators responded affirmatively that they would have to bring a marine archeologist on staff.*

➤ **Small Businesses and Local Governments are Still Suffering the Effects of the Moratorium**

*Multiple business owners and local government officials continued to express concern and even despair about the long-term effects of the moratorium and crack down on deep-water drilling. Future bankruptcies and layoffs remain likely due to the continued scarcity of new permits being issued. One business owner told committee staff, “I’ve been in the oil service for 35 years ... After all we went through and saw with the moratorium I won’t expose myself and my employees to the risk of doing business in the U.S. ever again.” Localities are also facing severe revenue shortages due to the loss of tax income from offshore drilling operations.*

On April 20, 2010, an explosion rocked the Deepwater Horizon, which was under contract with British Petroleum (BP) to drill an exploratory well at the Macondo site, in federal waters, 48 miles off the coast of Louisiana.<sup>1</sup> This explosion took the lives of 11 crew members and triggered one of the largest ecological and economic disasters in U.S. history. The explosion triggered a sequence of events that led to 4.9 million barrels of oil being spilled into the Gulf of Mexico<sup>2</sup> and caused untold economic damages. However, not all of the suffering experienced by Gulf Coast residents necessarily stemmed from the explosion. Much of the suffering and loss was made worse by poor decisions by the Obama Administration. These decisions relate to the legal framework guiding the response; the reorganization of a failed federal agency; and the banning of virtually all drilling activity in the Gulf of Mexico. This report will examine each decision and explore the known consequences of that decision.

### **Administration's Choice: OPA vs. Stafford Act**

#### The Choice

The Obama Administration had the choice to act under one of two legal frameworks to respond to the crisis: the Oil Pollution Act (OPA) or the Stafford Act. OPA is primarily a statute that sorts out liability in the event of an oil spill, while the Stafford Act is a broader framework for the federal government to respond to a disaster, such as a hurricane or earthquake.

The Stafford Act provides the government with a framework for proactive federal assistance. It authorizes the President to issue a major disaster declaration, either unilaterally or in response to requests from affected states.<sup>3</sup> A gubernatorial request is usually required to trigger a Major Disaster declaration, however the President has the authority to make an emergency declaration without a request from a state under circumstances where "the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority."<sup>4</sup> In the case of the *Deepwater Horizon*, an explosion in federal waters caused the subsequent oil spill. Accordingly, President Obama could have made a disaster declaration on his own or at the request of a state.

A major disaster declaration provides states access to the most advantageous federal assistance, especially as focus turns to long term recovery. Such assistance includes temporary housing, crisis counseling, infrastructure repair and replacement, emergency protective measures, and community disaster loans, among other provisions. A response under the Stafford Act would follow the National Disaster Recovery Framework and would speed a wide range of

---

<sup>1</sup> Maureen Hoch, *New Estimate Puts Gulf Oil Leak at 205 Million Gallons*, PBS News Hour, available at <http://www.pbs.org/newshour/rundown/2010/08/new-estimate-puts-oil-leak-at-49-million-barrels.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Francis X. McCarthy, *Potential Stafford Act Declarations for the Gulf Coast Oil Spill: Issues for Congress*, CRS REPORT TO CONGRESS, July 23 2010, available at <http://www.fas.org/sgp/crs/misc/R41234.pdf>. [hereinafter CRS GULF COAST SPILL].

<sup>4</sup> 42 U.S.C. § 5192

federal aid to states determined to be overwhelmed by the catastrophe. While typically the Stafford Act imposes liability on third parties in cases where the entity causing the incident acted intentionally to cause the harm<sup>5</sup> a separate provision under the Act governs instances where negligence caused the harm. Under the “Duplication of Benefit” provision, non Stafford Act resources, such as funds from responsible parties under OPA, are available to reimburse Stafford Act expenditures.<sup>6</sup>

However, the Administration chose to manage the federal response under the framework provided by the OPA, which relies heavily on the “responsible parties” to respond to an oil spill. Under OPA, the responsible parties are strictly liable for all costs associated with the cleanup efforts, although their liability for economic damages is capped at \$75 million per incident.<sup>7</sup> Under this framework, the Federal Government, via the Coast Guard, plays largely a secondary, oversight role in response activities. According to Coast Guard Rear Adm. Sally Brice-O’Hara, in this case BP is in the lead, and the Coast Guard oversaw the operation.<sup>8</sup> In April 2010, administration officials referred to BP as their “partners” in the response.<sup>9</sup>

While there was a broad national consensus that BP should be held accountable for the damage caused by the spill, there was no consensus that the federal government should abdicate its role in the response. According to statements and press accounts at the time, it appears that a primary consideration for President Obama’s use of OPA rather than the Stafford Act to respond to the oil spill was his strong desire to hold BP responsible for the cost of the cleanup and recovery.<sup>10</sup> President Obama stated:

As far as I’m concerned, BP is responsible for this horrific disaster, and we will hold them fully accountable on behalf of the United States as well as the people and communities victimized by this tragedy. We will demand that they pay every dime they owe for the damage they’ve done and the painful losses that they’ve caused.<sup>11</sup>

Given this rationale, the OPA appeared to have the benefit of legal clarity with regard to BP’s responsibility to pay for the clean-up. However, the Administration could have relied on the “Duplication of Benefit” provision of the Stafford Act, and held BP financially accountable, while at the same time maintaining control over the response. Under the Stafford Act, the Federal Government, in conjunction with the states and localities, would have decided what they needed in order to manage the disaster. Under OPA, BP had a significant amount of influence in determining the nature and extent of the response. This difference turned out to be critical as local governments struggled to respond to the crisis.

---

<sup>5</sup> See, CRS GULF COAST SPILL , *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Jeffry Brown, *Coast Guard Cleanup is ‘Team Effort,’* PBS News Hour (April 29, 2010).

<sup>9</sup> Robert Gibbs, Press Secretary, White House Press Briefing on the BP Oil Spill in the Gulf Coast, (Apr. 29, 2010), *available at* <http://www.whitehouse.gov/the-press-office/press-briefing-bp-oil-spill-gulf-coast>.

<sup>10</sup> Salazar: BP “On the Hook” for Gulf Oil Crisis, CBS NEWS, May 20, 2010, *available at* <http://www.cbsnews.com/stories/2010/05/20/earlyshow/main6502199.shtml>.

<sup>11</sup> President Barack Obama, Remarks by the President to the Nation on the BP Oil Spill (May 27, 2010), *available at* <http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill>.

## The Consequences

There are two key problems associated with President Obama's reliance on BP to organize and execute the response. The first is that BP, while responsible, is not primarily in the business of responding to large scale emergency and relief efforts and accordingly was poorly equipped to do so. The second is that BP owes a fiduciary duty to its shareholders, not to the American public. This stands in marked contrast to the Federal Government – which has a federal agency dedicated to responding to emergencies (Federal Emergency Management Agency, FEMA) and has a primary obligation to citizens of the Gulf Coast. Accordingly, the Federal Government was in a much better position to lead the response efforts, and have BP follow, rather than the other way around.

Almost immediately, state officials raised concerns that the federal government was relying too heavily on a private company that seemed to be overwhelmed, compromising the quality of the response. On April 30, 2010, Governor Bobby Jindal of Louisiana said “We're concerned that BP's current resources are not adequate to the challenge.”<sup>12</sup> He went on to say “We have encouraged BP strongly to seek even more assistance from the federal government because I do think this response could overwhelm their capabilities.”<sup>13</sup> On May 6, 2010, former Florida Governor, Charlie Crist, requested the Administration make available federal resources to states under authority from the Stafford Act. In the letter, Crist stated, “Florida and other states have in the past benefited from the application of the Stafford Act, the engagement of FEMA and the availability of National Emergency Grants and Disaster Unemployment Grants and payment of Disaster Unemployment Assistance.”<sup>14</sup>

Other consequences of acting under the OPA, as opposed to the Stafford Act, include: confusion over command and control; mismanagement of claims processing; and inadequate attention to health impacts of the spill.

## Command and Control

As this Committee outlined in its July 2010 report<sup>15</sup> on issues affecting the Gulf, the BP-Coast Guard partnership led to substantial confusion as to who was really in control and deciding the fate of the region. As the report stated, federal and local officials were concerned about the arrangement. Rear Admiral Jim Watson, the senior-most official at the Unified Area Command

---

<sup>12</sup> Ned Potter, et al. *BP 'Overwhelmed' by Gulf of Mexico Oil Spill*, ABC NEWS, Apr. 30, 2010, available at <http://abcnews.go.com/WN/Eco/oil-spill-hits-louisiana-shore-obama-orders-offshore/story?id=10519296>.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from the Honorable Charlie Crist, Governor, to the Honorable Barack Obama, President of the U.S. (May 6, 2010).

<sup>15</sup> Ranking Member Darrell Issa, *How the White House Public Relations Campaign on the Oil Spill is Harming The Actual Cleanup*, Dec. 14, 2010, available at [http://oversight.house.gov/images/stories/Reports/7-1-10\\_OGR\\_Report\\_-\\_How\\_the\\_White\\_House\\_Public\\_Relations\\_Campaign\\_on\\_the\\_Oil\\_Spill\\_is\\_Harming\\_the\\_Actual\\_Clean-up.pdf](http://oversight.house.gov/images/stories/Reports/7-1-10_OGR_Report_-_How_the_White_House_Public_Relations_Campaign_on_the_Oil_Spill_is_Harming_the_Actual_Clean-up.pdf).

in Robert, LA, said that “The framework probably isn’t up to the task.”<sup>16</sup> Also, Parish officials maintain that the federal government has not been in control since day one. In four separate interviews, senior-ranking Parish officials described how, until the President’s visit on May 28, 2010, BP was in charge. According to one official, “until two weeks ago [after the President’s May 28, 2010, visit], BP was in charge and the Coast Guard looked to them for direction.” Furthermore, “Coast Guard asks BP,” not vice-versa.<sup>17</sup> When specifically asked to agree or disagree with the assertion that the federal government had been in control since day one, another official firmly disagreed.

Interviews with state and local leaders in Mississippi and Florida further demonstrate the inverted relationship between BP and the Coast Guard. Colonel Lee Smithson, Director of Military Support at the Mississippi National Guard spoke of both BP and the Coast Guard pushing the National Guard to demobilize before they were ready.<sup>18</sup> He said: “The coast guard maintained that public announcement saying ‘we are very optimistic, but we are not ready to go home,’ but behind the scenes, they are going ‘ya’ll need to pack your bags and go home.’”<sup>19</sup> Col. Smithson told them he would not order his Guardsmen off the spill response until he received orders from his commander-in-chief, Governor Haley Barbour, or one of his designees.<sup>20</sup>

#### *Anchor Removal and the OPA*

A major concern for Parish presidents, fishermen, and residents during the recovery phase of the response is determining who is responsible for removing thousands of anchors that sit on the bottom of the Gulf. The anchors are the remains of thousands of booms put in place by BP to protect the marshy coasts from the oil spill. Craig Taffaro, President of St. Bernard’s Parish, estimates that up to 3,500 anchors sit on the Gulf floor in his Parish alone.<sup>21</sup> When BP removed the booms from Gulf waters, it appears that BP left the anchors holding the booms in place on the sea floor, which creates problems for the environment, tourists, and fishermen alike. For example, an anchor that remains in shallow waters could cause significant damage to an unsuspecting boater. Moreover, the anchors may eventually wash ashore, damaging vulnerable marshland.<sup>22</sup> Upon the urging of President Taffaro and the presidents of Jefferson and Plaquemines Parishes, BP agreed in late 2010 to examine how to locate the anchors in the water; however, they never agreed to their full removal from the Gulf.<sup>23</sup> BP objects to the removal of the anchors because they insist that the contractors hired to place the booms removed all of the

---

<sup>16</sup> *Id.*

<sup>17</sup> Interview with Craig Taffaro, President, St. Bernard’s Parish (Mar. 24, 2011) [hereinafter INTERVIEW CRAIG TAFFARO].

<sup>18</sup> Interview with Col. Lee Smithson, Director of Military Support, Mississippi National Guard (Mar. 23, 2011).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Benjamin Alexander-Bloch, *BP to Look Into Locating Anchors Left Over After Oil Spill Boom was Removed*, THE TIMES-PICAYUNE, Dec. 25, 2010.

<sup>22</sup> See, INTERVIEW CRAIG TAFFARO, *supra* note 17.

<sup>23</sup> Benjamin Alexander-Bloch, *BP to Look Into Locating Anchors Left Over After Oil Spill Boom was Removed*, THE TIMES-PICAYUNE, Dec. 25, 2010.

anchors and that if anchors were on the Gulf floor they would have collapsed below the sediment.<sup>24</sup>

In response to the request of the Parish Presidents, BP agreed to consider the removal of the anchors, contingent upon the completion of a study to determine how to locate and remove them. This study included an analysis to determine if it was economically feasible for BP to carry out this process and included an experiment to determine the best method for locating the anchors already in the water – by dropping more anchors in the water.<sup>25</sup> Capt. Lincoln Stroh of Unified Command stated “the response is committed to ensuring that BP uses a safe and proven method to find and remove orphan anchors so that teams do not break submerged pipelines or further harm fragile ecosystems by causing erosion.”<sup>26</sup> As of May 2011 the anchors remain in the water.

Under the OPA, BP, as the responsible party, faces unlimited liability for the cost of cleanup related to the spill. This would include removal of anchors used during the response to the spill. Yet under the arrangement between BP and this Administration, it appears that BP has a significant say in how they will fulfill their legal obligation.

### Mismanagement of claims processing

#### *Creation of the Oil Spill Liability Trust Fund*

The oil spill, which threatened to severely damage miles of coastline, has also wreaked havoc on the Gulf Coast economy. In response to the spill, the National Oceanic Atmospheric Agency (NOAA) shut down all commercial fishing activity in the Gulf.<sup>27</sup> The perceived threat of oil washing up on the Mississippi, Alabama, and Florida beaches scared away potential tourists and devastated the travel/tourism industry in these states.<sup>28</sup> Accordingly, the BP oil spill eliminated a significant amount of economic activity that the states and residents count on. As discussed earlier, under the OPA, BP was legally liable for damages relating to clean up efforts, but had limited liability with respect to economic damages. This limited liability was contingent upon the accident being the result of negligence, rather than gross negligence or willful misconduct.<sup>29</sup> Moreover, the OPA expressly does not preempt claims under state law or common law. Accordingly, if a plaintiff could demonstrate that BP’s negligence caused economic harm, then there would be no cap on damages.<sup>30</sup>

Gulf Coast residents immediately felt the impact of the oil spill in their pocket book and accordingly BP initiated an ad hoc system of claims processing. Prior to the creation of the Gulf

---

<sup>24</sup> Benjamin Alexander-Bloch, *BP Will Launch Test to Find Boom Anchors Left in Gulf After Oil Spill*, THE TIMES-PICAYUNE, Jan. 20, 2011.

<sup>25</sup> See, INTERVIEW CRAIG TAFFARO, *supra* note 17.

<sup>26</sup> *Id.*

<sup>27</sup> *Oil Fallout: Feds Expand Gulf Fishing Ban*, MSNBC, May 18, 2010, available at [http://www.msnbc.msn.com/id/37212911/ns/disaster\\_in\\_the\\_gulf/t/oil-fallout-feds-expand-gulf-fishing-ban/](http://www.msnbc.msn.com/id/37212911/ns/disaster_in_the_gulf/t/oil-fallout-feds-expand-gulf-fishing-ban/).

<sup>28</sup> *Id.*

<sup>29</sup> 33 U.S.C. §§ 2704(c)(1)(A) and (B).

<sup>30</sup> Posting of David Pettit to Natural Resources Defense Council Staff Blog, [http://switchboard.nrdc.org/blogs/dpettit/what\\_bp\\_oil\\_catastrophe\\_legal.html](http://switchboard.nrdc.org/blogs/dpettit/what_bp_oil_catastrophe_legal.html) (May 4, 2010).

Coast Claims Facility (GCCF) on August 23, 2010, BP had been making initial payments for interim, short-term damages, as required by OPA.<sup>31</sup> BP indicated that during this time, it had paid \$399 million in damages.<sup>32</sup> Of this, \$157 million is listed as “Wage Loss – Undefined.”<sup>33</sup>

In the summer of 2010, President Obama was facing heavy criticism<sup>34</sup> and slipping poll numbers<sup>35</sup> over how the spill was being handled. BP was facing incredible uncertainty as to the overall cost of the recovery and response.<sup>36</sup> In June of 2010, amidst much publicity, President Obama announced that he had reached a deal with BP where the company would provide \$20 billion for a fund that he said “will not be controlled by either BP or by the government – the “Oil Spill Liability Trust Fund” (“Fund”).

According to President Obama, the Fund was established to provide “substantial assurance that the claims people and businesses have will be honored.”<sup>37</sup> By the terms of the agreement, BP is required to make quarterly installment payments into the fund, which is available to address legitimate claims against BP for damages relating to the oil spill. According to the GCCF the following are eligible claimants: “Individuals and Businesses that have incurred damages as a result of the Spill may submit a claim to the GCCF for Removal and Clean Up Costs, Damage to Real or Personal Property, Lost Earnings or Profits, Loss of Subsistence Use of Natural Resources, or Physical Injury or Death.”<sup>38</sup> The White House touted Kenneth Feinberg’s appointment as claims administrator as the vital showing that the liability fund was in and of itself independent from BP.<sup>39</sup> President Obama stated the “fund will not be controlled by either BP or by the government”<sup>40</sup> and went on to say that the funds would “be put in a [sic] escrow account, administered by an impartial, independent third party.”<sup>41</sup> Subsequent to Mr. Feinberg’s appointment, Mr. Feinberg and the Gulf Coast Claims Facility (GCCF) became the primary mechanism for performing BP’s obligations under the Oil Pollution Act of 1990 (OPA).<sup>42</sup>

This arrangement seemed to provide advantages to both the Obama Administration and BP. By obtaining a \$20 billion promise from BP, the Administration appeared to be taking

---

<sup>31</sup> 33 U.S.C. § 2705 (a).

<sup>32</sup> Press Release, BP, BP Reports Nearly \$400 Million in Claims Payments as Program Transitions to GCCF (Aug. 23, 2010) available at <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7064597>.

<sup>33</sup> *Id.*

<sup>34</sup> Laura Bassett, *James Carville Takes On Obama On Oil Spill : He’s ‘Risking Everything’ with ‘Go Along with BP Strategy,’* HUFFINGTON POST, May 22, 2010, [http://www.huffingtonpost.com/2010/05/21/obama-faces-new-wave-of-c\\_n\\_585620.html](http://www.huffingtonpost.com/2010/05/21/obama-faces-new-wave-of-c_n_585620.html).

<sup>35</sup> Holly Bailey, *Public Opinion Turning Against Obama on Oil Spill*, YAHOO! NEWS, May 26, 2010, available at [http://news.yahoo.com/s/ynews/ynews\\_pl2270](http://news.yahoo.com/s/ynews/ynews_pl2270).

<sup>36</sup> Steve Hargreaves, *Oil Spill Costs: What Will BP Really Pay?*, CNN MONEY, May 6, 2010, available at [http://money.cnn.com/2010/05/06/news/economy/BP\\_liability/](http://money.cnn.com/2010/05/06/news/economy/BP_liability/).

<sup>37</sup> Posting of Jesse Lee to White House Blog, <http://www.whitehouse.gov/blog/> (Jun. 17, 2010 2:35 PM EST).

<sup>38</sup> Gulf Coast Claims Facility, *Frequently Asked Questions*, last visited May 30, 2011, available at <http://www.gulfcoastclaimsfacility.com/faq#Q7>.

<sup>39</sup> Posting of Jesse Lee to White House Blog, <http://www.whitehouse.gov/blog/> (Jun. 17, 2010 2:35 PM EST).

<sup>40</sup> Barack Obama, President of U.S., Statement by the President After Meeting with BP Executives, (Jun. 16, 2010) available at <http://www.whitehouse.gov/the-press-office/statement-president-after-meeting-with-bp-executives>.

<sup>41</sup> *Id.*

<sup>42</sup> Times Topics, *Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico*, NYT, Apr. 20, 2010, available at [http://topics.nytimes.com/top/reference/timestopics/subjects/o/oil\\_spills/gulf\\_of\\_mexico\\_2010/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/o/oil_spills/gulf_of_mexico_2010/index.html).

charge of the situation. For BP, the settlement provided a measure of certainty with regard to their liability for damages. If the federal government decided to sue under the Oil Pollution Act, and the courts found that the accident was the result of gross negligence, willful misconduct, or violation of federal safety, construction, or operating regulations, then BP would not be protected by any liability limitations and would be exposed to indefinite damage amounts. It also appears that the arrangement has allowed BP to maintain some measure of control over the adjudication of claims.

### *Status of the Claims Fund*

It was not long before the shortcomings of the GCCF rose to the surface. There are two issues that stand out as being particularly problematic. First, it appears that the much touted independence of the GCCF was illusory, and that BP may have retained influence over the administration of the Fund. In the second, it appears that the White House, which created the fund, has done very little to ensure the proper administration of claims.

### *Concerns the GCCF is Undermining the Rights of Potential Claimants*

There are wide-spread concerns that the GFFC is mismanaging the fund and creating unnecessary confusion among potential claimants in the Gulf States. In the first instance, a Federal judge determined that Mr. Feinberg, as the Head of the BP Claims Fund, was not independent from BP, as was promised by the Obama Administration.<sup>43</sup> This determination was in response to complaints made by attorneys for spill victims who were suing BP. Judge Carl J. Barbier of Federal District Court in New Orleans ruled that Mr. Feinberg is not a “true third-party neutral” because BP pays his salary directly, an arrangement that is governed by a contract. This same contract also includes provisions requiring him to turn over all information to BP at the termination of the fund.<sup>44</sup> Moreover, BP maintains the ability to audit Feinberg Rozen LLP (Mr. Feinberg’s law firm). Finally, the court determined that both the GCCF and Feinberg are in reality serving the interest of BP because at the time a claim is settled, the GCCF requires claimants release and assign all rights or claims against BP and any liable parties.<sup>45</sup> The Court ordered the Fund to fully disclose the relationship between Mr. Feinberg, the GCCF, and BP, in order to make it clear that the GCCF is primarily promoting the interests of BP.<sup>46</sup>

In addition to the above referenced litigation, attorneys general of Louisiana, Mississippi, Alabama, and Florida have asked a federal judge to monitor Mr. Feinberg’s actions to “ensure fair and prompt payment” of claims.<sup>47</sup> Mississippi Attorney General Jim Hood claims that the fund administered by Feinberg has paid only “3 percent of interim business claims and 9 percent of individual interim claims” and that the facility required “unreasonable” documentation and determined that the inability of claimants to provide documentation as a grounds to deny claims.<sup>48</sup> Attorney General Hood also claims that Mr. Feinberg’s claims facility pressures claimants to use the Quick Pay Option.<sup>49</sup> The Quick Pay Option gives individuals \$5,000 and

---

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Laurel Brubaker Calkins, *Feinberg Says Judge Should Stay Out of BP Oil Spill Claims Fund*, BLOOMBERG, Apr. 13, 2011, available at <http://www.bloomberg.com/news/2011-04-12/feinberg-tells-judge-to-stay-out-of-bp-oil-spill-claims-process.html>.

<sup>48</sup> *Id.*

<sup>49</sup> Holbrook Mohr, *Dispute Heats Up Over BP’s \$20 Billion Oil Spill Fund*, MIAMI HERALD, Apr. 13, 2011.

businesses \$25,000 if they sign a waiver affirming that they will not sue and will not seek more money from the claims facility. Alabama Attorney General Luther Strange reports that almost all of the claims processed for his state, 98.9 percent, used the quick-pay option.<sup>50</sup> Moreover, Strange raises concerns about the transparency of a process that he contends is “frustrating and inadequate.”<sup>51</sup>

The concerns expressed by the attorneys general are echoed by the individuals interviewed by Committee staff. For example, interviews with local officials in Lafourche Parish revealed that many of their constituents complained that the GCCF was pushing claimants to settle their claims quickly and to forfeit future compensation rights.<sup>52</sup> This concern was also raised by a group of Louisiana fishermen, who told Committee staff that the GCCF is just pushing people into the Quick Claim process, which forfeits further legal rights, in order to make it look like they are making progress on settling claims.<sup>53</sup>

Somewhat more alarming is the fact that Mr. Feinberg, who is not independent from BP, has said publically that people filing claims will not need a lawyer.<sup>54</sup> In interviews with Committee staff, Louisiana fishermen spoke of how initially GCCF representatives said they would not need a lawyer to file a claim. These same representatives later reversed themselves and advised the fisherman to get attorneys.<sup>55</sup> The later advice seems to be common sense as many observed that friends who hired attorneys were “getting further through the line”—their claims were being processed faster.<sup>56</sup> In cases where a claimant requested a lawyer, GCCF would refer the claimant to an attorney, but these attorneys were hired by BP.<sup>57</sup> In expressing frustration over this situation, one fisherman wondered “Why do I need to tell them my problem, if my problem is with them?”<sup>58</sup>

There is also a concern that the amounts paid by the Fund are just a fraction of the amounts that claimants are requesting from BP. Alabama’s AG Strange maintains that Mr. Feinberg and the GCCF refuse to provide the requesting attorneys general with information relating to the ratio of claims paid vs. made.<sup>59</sup> In a letter to Mr. Feinberg, AG Strange writes:

Along the lines of transparency, why doesn’t the GCCF release the data that would reflect the ratio of what is being paid versus what is being claimed? Paying

---

<sup>50</sup> Press Release, Attorney General Luther Strange, Local Officials Deplore Human, Economic Effects of Gulf Coast Oil Spill as Well as Delay in Processing Claims (Mar. 21, 2011) *available at* [http://www.ago.state.al.us/news/03212011\\_134757916.pdf](http://www.ago.state.al.us/news/03212011_134757916.pdf).

<sup>51</sup> *Id.*

<sup>52</sup> Interview with Lafource Officials, Lafource Parish (Mar. 24, 2011) [hereinafter INTERVIEW LAFOURCE OFFICIALS].

<sup>53</sup> Interview with Fishermen, St. Bernard’s Parish (Mar. 24, 2011) [hereinafter INTERVIEW ST. BERNARDS FISHERMEN].

<sup>54</sup> Frederic J. Frommer, *Feinberg Sells Compensation Fund to Spill Victims*, ABC NEWS, Jul. 19, 2010, *available at* <http://abcnews.go.com/Business/wireStory?id=11197009&page=1>.

<sup>55</sup> *Id.*

<sup>56</sup> *See*, INTERVIEW ST. BERNARDS FISHERMEN, *supra* note 53.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Sabrina Canfield, *AGs Claim BP Pass Given to ‘Distort & Subvert,’* COURTHOUSE NEWS SERVICE, April 11, 2011, *available at* <http://www.courthousenews.com/2011/04/11/35663.htm>.

\$3.5 billion when claimed losses are many billions more is hardly a reason to claim success. Providing the complete picture of claims versus payment is essential for an accurate and fair evaluation of the GCCF process.<sup>60</sup>

Jennifer Belsom, an employee of St. Bernard's Parish, explained to Committee staff that she had frequently observed instances where the GCCF requested potential claimants to fill out long forms and produce multiple sources of documentation, only to later determine that the paperwork was not needed. For example, she told the story of a Louisiana bartender who had gathered sixty-four pages of documents attempting to verify her loss. After submitting the paperwork GCCF had instructed her to gather, she was informed that the tips she made in the first quarter of 2010, pre-oil spill, will not be considered as a comparative measure of lost wages post-oil spill.<sup>61</sup> According to one Parish employee, "[GCCF] is a complete and utter joke; it's a pack of lies. It's just stalling—stalling techniques until they'll just give up and just take that Quick Payment."<sup>62</sup>

### *Oversight of the Fund*

In addition to concerns over the independence of the GCCF, it appears that the claims processing mechanism is not operating in an efficient or predictable manner. Attorney General Strange, of Alabama, has criticized the Obama Administration's lack of oversight over Mr. Feinberg's administration of the GCCF, suggesting that the President "could do a much better job in holding his feet to the fire."<sup>63</sup> The Administration, however, has not given any indication as to whether or not it thinks the GCCF is getting the job done. In fact, when reporters asked White House spokesman Jay Carney the simple question of whether or not the Administration thought that Ken Feinberg was doing a good job, he would not answer the question and merely noted that the Department of Justice has made suggestions to the GCCF about the claims process.<sup>64</sup>

### *Problems Regarding the Claims Fund*

While a lack of transparency makes it hard to know exactly how well the GCCF fund is actually working, interviews conducted by Committee staff reveal many instances of breakdowns in the claims process.

One of the fundamental problems with the claims process is the unpredictability and inconsistency in the processing of claims. One Lafourche Parish fisherman informed staff that while he and another fisherman filled out very similar claims and had similar incomes, he

---

<sup>60</sup> Press Release, Attorney General Luther Strange, Local Officials Deplore Human, Economic Effects of Gulf Coast Oil Spill as Well as Delay in Processing Claims (Mar. 21, 2011), *available at* [http://www.ago.state.al.us/news/03212011\\_134757916.pdf](http://www.ago.state.al.us/news/03212011_134757916.pdf).

<sup>61</sup> See, INTERVIEW ST. BERNARDS FISHERMEN, *supra* note 53.

<sup>62</sup> *Id.*

<sup>63</sup> Posting of George Altman to al.com, [http://blog.al.com/live/2011/02/white\\_house\\_wont\\_grade\\_feinber.html](http://blog.al.com/live/2011/02/white_house_wont_grade_feinber.html) (Feb. 24, 2011, 1:06 PM).

<sup>64</sup> Jay Carney, Press Secretary, White House Briefing, (Feb. 23, 2011) *available at* <http://www.whitehouse.gov/the-press-office/2011/02/23/press-briefing-press-secretary-jay-carney-2232011>.

received \$100,000 more.<sup>65</sup> While not complaining, he suspects that the difference is attributable to different officials processing similar claims. This lack of uniformity in claims administration leaves claimants feeling like the decision-making process is arbitrary. Other fishermen complain that the claims process takes too long. One reason for the delay is the fact that after a claim has been filed, it takes 90 days before the GCCF responds, and that if the applicant makes a minor mistake in the application, their claim goes to the back of the line, and starts a new 90 period of GCCF review.<sup>66</sup> Several Louisiana oystermen reported meeting with GCCF officials in October 2010, to request emergency funds to help ensure the productivity of damaged oyster beds. However, they never received a response.<sup>67</sup>

Louisiana business owners interviewed by Committee staff also expressed their frustration with the GCCF, saying that it needs to do more and the federal government needs to make them do it. According to Lori Davis, President of Rig Chem, a small business that services the drilling industry, “It is not anybody else’s fault but BP’s fault...they need to pay for what has happened. The federal government needs to support making that happen in a way that people don’t have to suffer.”<sup>68</sup> She observed that “Feinberg comes down here, he makes his appearances—he flies in, and he flies out. He says what he wants to say, he listens to people complain, he never really does anything.”<sup>69</sup>

### Treatment of health impacts

One of the more troubling consequences of the President’s choice to operate under the OPA is the impact it has had on the treatment of mental and physical health effects of the oil spill. The Stafford Act would have provided mental health services to those affected by disasters. Section 316 of the Stafford Act authorizes crisis counseling so long as the governor of the affected state requests this relief. Contingent on a Health and Human Services (HHS) review of the state program, the state mental health program receives a grant to identify and treat related mental health effects. Crisis counseling under the Stafford Act usually lasts for a year.<sup>70</sup> In cases of extreme disasters, such as Hurricane Katrina, the Oklahoma City Bombing, and the 9/11 Attacks, all of which invoked the Stafford Act, crisis counseling went on for longer than two years.<sup>71</sup>

In an interview with staff, Dr. Howard Osofsky, the Kathleen and John Bricker Chair and Professor of Psychiatry at Louisiana State University School of Medicine, explained that “the real concern is that there will be a premature pull back...we are not at a point to wind-down.”<sup>72</sup> The BP and Coast Guard implemented funds for mental health services run out in December

---

<sup>65</sup> Interview with Rodney Dufrene, Lafource Parish fisherman (Mar. 24, 2011).

<sup>66</sup> See, INTERVIEW ST. BERNARDS FISHERMEN, *supra* note 53.

<sup>67</sup> *Id.*

<sup>68</sup> Interview with Lori Davis, President, Rig Chem, (Mar. 24, 2011), [hereinafter LORI DAVIS INTERVIEW].

<sup>69</sup> *Id.*

<sup>70</sup> Interview with Francis McCarthy, Analyst Emergency Management Policy, Congressional Research Service (May 18, 2011).

<sup>71</sup> *Id.*

<sup>72</sup> Interview with Dr. Howard Osofsky, Professor of Psychiatry, Louisiana State University School of Medicine (May 10, 2011) [hereinafter INTERVIEW HOWARD OSOFSKY].

2011.<sup>73</sup> Using the Stafford Act would have allowed the state to make determinations on the length of time necessary to provide funding for mental health relief programs; instead, BP is in control of the money that pays for mental health programs.

Louisiana Parish officials and doctors alike have expressed concern about mental health declines within their communities.<sup>74</sup> Domestic abuse claims have risen since the BP Oil Spill – Plaquemines Parish reports a doubling of claims from before to after the oil spill, and Mayor Stan Wright of Bayou La Batre, Alabama claims domestic abuse complaints have risen 320 percent since the BP Oil Spill.<sup>75</sup> In an interview with Committee staff, Dr. Osofsky, confirmed these reports. Dr. Osofsky also reported increases in instances of depression, anxiety, and posttraumatic stress disorder (PTSD) in patients in the months after the oil spill. Dr. Osofsky attributed these symptoms to the disruption the spill has imposed on the economic, family, and social life of Gulf Coast residents.<sup>76</sup> In addition to mental health effects, Dr. Mike Robichaux, a local doctor practicing in Raceland, LA., has treated oil spill cleanup workers and others experiencing physical health effects that may be related to the spill. He reports that his patients have dizziness, seizures, and extreme stomach pain – ailments that have yet to have a causal determination.<sup>77</sup>

Dr. Osofsky explained that the one constant feeling amongst Gulf residents is fear and uncertainty. From the rising incidents of mental health effects to the physical symptoms experienced by those who worked most closely with the spilled oil and the dispersants, there is a real fear amongst Gulf citizens about the long term impact of the spill. Diagnosis is complicated by the fact that the most frequently reported health complaints could be caused by either physical or mental problems. Therefore it is difficult to determine whether the cause of physical symptoms experienced by cleanup workers are evidence of a larger problem associated with exposure to dangerous chemicals.

Since the Hurricane Katrina disaster, Gulf residents are one of the most studied populations in America regarding the impacts of disasters. In the wake of the BP Oil Spill, the National Institute of Environmental Health Sciences is producing an epidemiological study of the long-term health effects on those who did oil spill cleanup in the Gulf.<sup>78</sup> The National Institute of Health sponsored the study, funded in part by a \$20 million grant made by BP.<sup>79</sup> Long-term epidemiological studies are necessary for understanding the overall impact of the BP Oil Spill on clean-up workers in the Gulf, but immediate action is necessary to determine why people in the Gulf are currently experiencing increased incidence of mental and possibly physical health

---

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Jacqui Patterson, *Gulf Oil Drilling Disaster: Gendered Layers of Impact*, TRUTHOUT.ORG, <http://www.truthout.org/gulf-oil-drilling-disaster-gendered-layers-impact/1304696115>; Video: Bayou Mayor: Domestic Violence Up ‘320% ‘Since Oil Spill (BBC America) available at [http://news.bbc.co.uk/2/hi/programmes/world\\_news\\_america/8740073.stm](http://news.bbc.co.uk/2/hi/programmes/world_news_america/8740073.stm).

<sup>76</sup> See, INTERVIEW HOWARD OSOFSKY, *supra* note 72.

<sup>77</sup> Interview with Dr. Mike Robichaux, Physician (Apr. 26, 2011).

<sup>78</sup> *The Gulf Long Term Follow-Up Study (GuLF STUDY)*, available at <http://nihgulfstudy.org/>.

<sup>79</sup> Interview with Dr. Judy Salerno, Executive Officer of the Institute of Medicine (May 13, 2011).

impacts. Failure to do so will only feed into the fear and uncertainty plaguing the victims of the spill.

### **Administration's Choice: Hasty Re-organization of MMS**

#### Republican Oversight of the Minerals Management Service

Since February of 2006, Committee Republicans have investigated numerous allegations of waste, fraud, and abuse at the hands of the Minerals Management Service (MMS). In the years leading up to the *Deepwater Horizon* disaster, the Committee's oversight efforts demonstrated a substantial need to reform MMS, in particular the collection of offshore royalty revenue, which amounts to nearly \$12 billion in annual income to the federal government. Working in conjunction with GAO and the DOI Inspector General, staff has found that flawed data and collection practices, inadequate accountability procedures, ethical lapses, and outright corruption have led to billions of dollars of lost revenue to the federal treasury over the past ten years. The fact that MMS cannot account for oil and gas production and cannot, therefore, accurately collect royalty revenue, represents a massive breach of a fiduciary duty owed to the American people.

These findings, corroborated by 10 GAO and 10 IG reports, are detailed in an October 7, 2009 staff report issued by then-Ranking Member Issa entitled, *Teapot Dome Revisited: Dereliction of Fiduciary Duty at the Interior Department*. This report also served as the foundation for H.R. 3736, the Minerals Management Service Reform Act, introduced by then-Ranking Member Issa on October 7, 2009. This legislation, sought to divorce MMS from the Interior Department and establish it as an independent agency.

Despite six hearings held by Committee Republicans on the failures within MMS in 2006, as well as repeated requests by then-Ranking Member Issa in 2007, 2008, and 2009, Democrats held no hearings on the troubles facing the agency until after the explosion. As a result, factors that likely contributed to, or at a minimum exacerbated one of the worst environmental and economic disasters in American history escaped rigorous oversight for nearly four years.

#### Obama Administration Failed to Reform the Minerals Management Service

Upon entering office, Secretary Salazar was aware of systematic problems at MMS and indicated an early commitment to initiate meaningful reform at the agency. In January 2009, he told MMS employees that "[w]e will make sure you have the tools you need to hold special interests accountable, to protect taxpayers from getting fleeced, and to ensure that those who develop our natural resources follow the law of the land."<sup>80</sup> Despite this pledge, there is little to suggest what, if anything, the Secretary did over the past year to address the ongoing failures

---

<sup>80</sup> Ken Salazar, Secretary, Dep't of the Interior, Remarks to Employees at MMS Office in Denver, CO (Jan. 29, 2009) available at, [http://www.doi.gov/news/speeches/2009\\_01\\_29\\_speech.cfm](http://www.doi.gov/news/speeches/2009_01_29_speech.cfm).

within MMS. Even President Obama noted in May 2010 that “there wasn’t sufficient urgency in terms of the pace of how those changes [at MMS] needed to take place.”<sup>81</sup>

This early commitment to reform lost momentum as competing priorities, such as the development of alternative energy resources, monopolized the focus of MMS management. For example, a recently retired MMS official who was responsible for managing all offshore programs noted that the majority of his time was devoted to development of alternative energy programs.<sup>82</sup> Further, in June 2009, Secretary Salazar appointed Elizabeth Birnbaum to serve as Director of MMS. At the time, the Secretary praised her “in-depth knowledge of energy issues, natural resource policy and environmental law as well as her managerial expertise and work in coalition building... [these qualities] will be especially important as we advance President Obama’s new energy frontier and lay the foundation for a clean energy economy.”<sup>83</sup> However, when the accident in the Gulf reignited calls for reform, Ms. Birnbaum, lacking the necessary skill set to respond to the disaster, abruptly resigned from her position. As one supporter pointed out, “she had not been ordered to clean house at the scandal stained agency, but to promote renewable energy.”<sup>84</sup>

### The Choice: Secretary Salazar’s Misguided Attempt to Reform the Minerals Management Service

In the wake of the April 20, 2010, accident aboard the *Deepwater Horizon*, the acute public scrutiny of MMS – and its historic shortcomings – drove Secretary Salazar to launch a hasty and massive reorganization of the United States’ offshore oil and gas operations. In a May 11, 2010, announcement, Secretary Salazar renewed calls to reorganize MMS operations, emphasizing the need to establish an independent safety and enforcement function.<sup>85</sup> Two days later, on May 13, 2010, he tasked two political appointees – both with just approximately one year of experience at DOI – to build on his May 11, 2010, announcement and develop and oversee a plan to restructure MMS.<sup>86</sup> It took just under one week for this handful of political appointees to evaluate and recommend a complete restructuring of offshore oil and gas management. On May 19, 2010, Secretary Salazar issued Secretarial Order 3299, eliminating MMS and transferring offshore oversight responsibilities to the established Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) and revenue collection to a new Office of Natural Resources Revenue. BOEMRE is further divided into the Bureau of Ocean

---

<sup>81</sup> President Barack Obama, Remarks by the President to the Nation on the BP Oil Spill (May 27, 2010), *available at* <http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill>.

<sup>82</sup> Interview with Chris Oynes, Former Associate Director of OMM, Department of the Interior, in Washington, DC (July 13, 2010).

<sup>83</sup> News Release, Secretary Ken Salazar, Department of the Interior, *Secretary Salazar Names Liz Birnbaum Director of the Minerals Management Service*, June 25, 2009, *available at* [http://www.doi.gov/news/pressreleases/2009\\_06\\_25\\_release.cfm](http://www.doi.gov/news/pressreleases/2009_06_25_release.cfm).

<sup>84</sup> Mike Soraghan, *Interior: Birnbaum’s Game of Telephone Ends in Firing*, ENERGY AND ENVIRONMENT DAILY, (May 28, 2010), *available at* <http://www.eenews.net/public/EEDaily/2010/05/28/2>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE).<sup>87</sup>

In interviews with Committee staff, political appointees from DOI charged with restructuring MMS professed that the only impetus for the reorganization was the April 20, 2010 accident on the *Deepwater Horizon*.<sup>88</sup> Additionally, they stated that the public perception of an ongoing conflict of interest at MMS played an important role in their decision to split the agency into three entities.<sup>89</sup> Only after the Secretary announced the new agency structure did DOI begin to assess how they would implement the reorganization, including, for the first time, outreach to current MMS employees. Even then, those who were afforded an opportunity to meet with the DOI team after the initial announcement noted that their meetings were limited to about one hour and they remained uncertain whether their concerns would be addressed.<sup>90</sup>

### The Consequences

The massive reorganization of the MMS at a time when the agency is facing significant challenges associated with the cause of the BP oil spill, as well as chronic management challenges, may have created more problems than it solved. According to the Government Accountability Office (GAO):

Interior may lack the resources and skills it needs to simultaneously address significant changes in its practice and effectively meet routine responsibilities while reorganizing the agency responsible for offshore oil and gas activities.<sup>91</sup>

Accordingly, GAO designated Management of Federal Oil and Gas Resources, including production and revenue collection, as high risk because of “(1) shortcomings with Interior’s revenue collection policies. (2) weaknesses in Interior’s human capital management, and (3) inherent challenges Interior faces in reorganizing its offshore and revenue collection functions.”<sup>92</sup> (emphasis added)

In interviews with Committee staff, career MMS officials from across the country also raised concerns that this hastily conceived reorganization placed political expediency over meaningful reform. These employees specifically cautioned that splitting MMS into three separate entities, a decision made in Washington without substantial input from current MMS

---

<sup>87</sup> Ken Salazar, Secretary, 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 Resource Revenue (May 19, 2010).

<sup>88</sup> Interview with Chris Henderson and Rhea Suh, Department of the Interior (July 15, 2010).

<sup>89</sup> *Id.*

<sup>90</sup> Interview with Lars Herbst, MMS Regional Director, Robert, in Louisiana (Jun. 16, 2010); Interview with John Goll, MMS Regional Director – Alaska, Telephone Interview from Washington, D.C. (Jul. 12, 2010); Interview with Chris Oynes, Former Associate Director of OMM, MMS, Department of the Interior, in Washington, DC (Jul. 13, 2010); and Interview with Ellen Aronson, MMS Regional Director – Pacific, Telephone Interview from Washington, D.C. (Jul. 14, 2010).

<sup>91</sup> Government Accountability Office, *Why It’s High Risk*, available at [http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management\\_federal\\_oil\\_gas.php](http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management_federal_oil_gas.php).

<sup>92</sup> *Id.*

officials, lacked an adequate understanding or appreciation of the daily operations and challenges of MMS.<sup>93</sup> As a result, officials warned that the proposed reorganization will not address the chronic failures that have plagued MMS, but it may have the unintended consequence of hampering the agency's ability to fulfill its responsibilities.<sup>94</sup> This concern is echoed by GAO who reported that:

GAO and others – including the Department of the Interior's Office of the Inspector General and Interior's Royalty Policy Committee – have identified significant problems with Interior's management of federal oil and gas resources, which provide an important source of energy for the United States, create jobs in oil and gas industry, and generate billions of dollars annually in revenues.... These [failures] include human capital and other challenges that jeopardize Interior's management of federal oil and gas resources.

As of December 2010, many recommendations remain unimplemented and ongoing GAO work and other studies will likely identify additional challenges and recommendations. Interior will be challenged to successfully implement existing and future recommendations and undertake a major reorganization....<sup>95</sup> (emphasis added)

In order to execute this messy divorce between BOEM and BSEE, BOEMRE hired a high-priced consulting firm – McKinsey & Company – for the price of \$7.9 million to advise the agency on how to proceed.<sup>96</sup> According to an interview with Tommy Beaudreau, Senior Advisor to Director Bromwich, and a former Bromwich law partner, BOEMRE will spend every penny of that amount to complete the transition.<sup>97</sup> In exchange for nearly \$8 million, McKinsey will: (1) develop the implementation plan and assessment of the organizational effectiveness of the Office of Natural Resource Revenue; (2) develop a concept of operations for BOEM and BSEE (3) implement a plan for BOEM and BSEE; and (4) execute the implementation plan for all three offices.<sup>98</sup> According to Mr. Beaudreau, McKinsey was also paid to review the effectiveness and wisdom of executing Secretary Salazar's May 19, 2010, Order 3299, to split MMS into three operational divisions.<sup>99</sup> In other words, Secretary Salazar ordered the division of MMS in great haste without consulting the appropriate experts, and it was left to Administrator Bromwich to ask questions later.

---

<sup>93</sup> Interview with MMS District and Regional Office Employees – Gulf of Mexico, Louisiana, (Jun. 15- 16, 2010); Interview with John Goll, MMS Regional Director – Alaska, Telephone Interview from Washington, D.C. (Jul. 12, 2010); Interview with Chris Oynes, Former Associate Director of OMM, MMS, Department of the Interior, Washington, DC (Jul. 13, 2010); and Interview with Ellen Aronson, MMS Regional Director – Pacific, Telephone Interview from Washington, DC (Jul. 14, 2010).

<sup>94</sup> *Id.*

<sup>95</sup> Government Accountability Office, *Why It's High Risk*, available at [http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management\\_federal\\_oil\\_gas.php](http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management_federal_oil_gas.php).

<sup>96</sup> BOEMRE Task order/Contract with McKinsey (Aug. 13, 2010).

<sup>97</sup> Interview with Tommy Beaudreau, Senior Advisor to Director Bromwich, BOEMRE (May 19, 2011) [hereinafter TOMMY BEAUDREAU INTERVIEW].

<sup>98</sup> BOEMRE Request for Quote # M10PS00217, *MMS Reorganization Support Services* (June 3, 2011).

<sup>99</sup> See, TOMMY BEAUDREAU INTERVIEW, *supra* note 97.

Had Secretary Salazar consulted with career employees before making his decision, he would have learned that the proposed reorganization, which splits the functions of the Offshore Energy and Minerals Management (OEMM) into two separate entities - BOEM and BSEE - was problematic. As a result of this rushed division, certain functions, such as pre- and post - lease environmental compliance review, would be separated. When interviewed by Committee staff, career employees stated that the effective execution of these responsibilities depends on their ability to work and communicate seamlessly and that these new layers of bureaucracy could hinder their ability to effectively operate.<sup>100</sup>

Employees also noted that opting for wholesale change without a careful assessment of the operational realities not only ignores underlying challenges, but it can also hinder existing responsibilities – a concern echoed by GAO. Responding to then-Ranking Member Issa’s question as to whether the reorganization inherently delays the agency from making necessary changes that need to be made, Frank Rusco, Director of Natural Resources and the Environment at GAO, responded that “organizational change is difficult and disruptive and takes a lot of the agency’s resources. At the same time the agency is trying to respond to the oil crisis and do the work needed to lift the moratorium and it still has a backlog of recommendations to deal with. It is a concern.”<sup>101</sup> Indeed, according to senior DOI staff, many of the critical reforms GAO and others have recommended will not be implemented until sometime in 2011, after the restructuring is complete.<sup>102</sup>

MMS officials also stated that the proposal would require a large influx of new employees, presenting significant human resource challenges.<sup>103</sup> For example, Secretary Salazar has expressed his desire to hire hundreds of new inspectors. However, recruitment and retention efforts are already extremely challenging, and are particularly difficult for inspectors. Qualified candidates - many of whom come from industry<sup>104</sup> - must agree to take up to a 50% pay cut to join the agency; and once hired require up to two years of training depending on their background. These are just a few of the many issues raised by MMS employees, highlighting the challenges presented by DOI’s hurried top-down approach to reforming the agency.

In addition to its hasty and haphazard reorganization of MMS, which ignored concerns raised by GAO, the DOI IG and others, DOI also moved forward without understanding the role the agency played in creating the circumstances which contributed to the accident. At the time the reorganization was announced, there were at least five separate official investigations and/or studies related to offshore oil and gas operations in the United States – many of which were launched in response to the incident.<sup>105</sup> Even so, Secretary Salazar and DOI pushed an

---

<sup>100</sup> *Id.*

<sup>101</sup> *Offshore Drilling: Will Interior’s Reforms Change Its History of Failed Oversight? H.Comm on Oversight and Gov’t Ref.*, 111<sup>th</sup> Cong. (2010) (statement of Frank Rusco, Director, Natural Resources and the Environment, GAO).

<sup>102</sup> Interview with Chris Henderson and Rhea Suh, Department of the Interior, Washington, DC (July 15, 2010).

<sup>103</sup> *Id.*

<sup>104</sup> MMS officials were adamant that presently, working for the oil and gas industry is the only place where potential candidates can gain the experience necessary for certain functions, especially inspections.

<sup>105</sup> *See e.g.*, The National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling; BP’s Deepwater Horizon Accident Investigation Report; The U.S. Coast Guard Deepwater Horizon Joint Investigation Team.

aggressive top-down approach to reforming MMS at the worst possible time—in the middle of a crisis and before obtaining key facts about what actually caused of the incident.

### **Administration's Choice: Moratorium in the Gulf**

In the aftermath of the explosion aboard the *Deepwater Horizon*, Department of Interior Secretary Ken Salazar twice ordered a six month moratorium on deepwater drilling in U.S. waters. The Secretary's orders effectively banned much of the economic activity that sustains the Gulf states, particularly Louisiana. At that time, many residents of Louisiana expressed their fear that the moratorium had the potential to inflict more pain on the region than the spill itself, and it was imposed over the vehement objections of local leaders and their constituents.<sup>106</sup> Moreover, the Department of Interior executed this sweeping decision without making any effort to consult with safety experts on the wisdom of imposing an outright ban on all drilling activity in the Gulf, and without conducting a thorough economic analysis of the impact a moratorium would have on the local or national economy prior to making the decision.<sup>107</sup> However, despite DOI's failure to conduct a comprehensive cost benefit analysis, internal documents obtained by the Committee, reveal that Secretary Salazar did understand the potential blow that he moratorium could be to the region. In a memorandum authored by Secretary Salazar to Director Bromwich stated:

In reaching this decision [the moratorium], I am aware that the suspension of deepwater drilling over the next few months will have a serious, negative impact on rig workers and those who support them. I am also aware that, as a general matter, the safety record for deepwater drilling has been good.<sup>108</sup>

Moreover, Secretary Salazar and Director Bromwich were on notice that the moratorium could increase oil prices in the short term by \$.47 a barrel and decrease GDP in 2010 by \$10.2 billion (.070 percent of the total), and \$3.3 billion in 2011 (.02 percent of the total).<sup>109</sup>

#### First Moratorium

On June 15, 2010, President Obama announced a far reaching six-month moratorium on nearly all drilling in the Gulf.<sup>110</sup> The moratorium applied to new drilling in water depths greater than 500 feet, and suspended drilling on 33 wells currently under construction.<sup>111</sup> The President's action was recommended by Secretary Salazar, in a May 27, 2010, report entitled,

---

<sup>106</sup> RANKING MEMBER DARRELL ISSA, OVERSIGHT & GOV'T REFORM COMM., *How the White House Public Relations Campaign on the Oil Spill is Harming the Actual Cleanup*, Dec. 14, 2010, available at [http://oversight.house.gov/images/stories/Reports/7-1-10\\_OGR\\_Report\\_-\\_How\\_the\\_White\\_House\\_Public\\_Relations\\_Campaign\\_on\\_the\\_Oil\\_Spill\\_is\\_Harming\\_the\\_Actual\\_Clean-up.pdf](http://oversight.house.gov/images/stories/Reports/7-1-10_OGR_Report_-_How_the_White_House_Public_Relations_Campaign_on_the_Oil_Spill_is_Harming_the_Actual_Clean-up.pdf).

<sup>107</sup> *The Economic Effects of the Offshore Drilling Moratorium: S. Comm. on Small Business*, 111<sup>th</sup> Cong. (2010) (statement of the Honorable Rebecca M. Blank, Under Secretary for U.S. Economic Affairs, Department of Commerce).

<sup>108</sup> Memorandum to Michael R. Bromwich, Director of BOEMRE, from Secretary Ken Salazar DOI Jul. 12, 2010.

<sup>109</sup> MMS Economic Impact Assessment Jun. 10, 2010.

<sup>110</sup> President Barack Obama, Remarks by the President to the Nation on the BP Oil Spill (June 15, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill>.

<sup>111</sup> Memorandum from Upstream Insight on Moratorium Halts US Deepwater Drilling For Six Months (June 3, 2010).

“Increased Safety Measures for Energy Development on the Outer Continental Shelf.”<sup>112</sup> According to a report issued by the Inspector General for the Department of Interior, the Secretary’s recommendation to impose a moratorium was not peer reviewed and was not supported by the scientists and industry experts who had otherwise been cooperating with the Administration.<sup>113</sup>

The moratorium was immediately challenged by providers of support services to offshore oil and gas operations, who argued the decision to impose a moratorium was arbitrary and capricious.<sup>114</sup> On June 22, 2010, a federal court ruled that the plaintiffs were likely to succeed on their claim and preliminarily enjoined enforcement of the suspension.<sup>115</sup> This decision was affirmed by the 5<sup>th</sup> Circuit Court of Appeals.<sup>116</sup>

In the order blocking the Department of Interior from enforcing the moratorium, Judge Martin Feldman specifically cited his belief that the Department actively sought to distort the opinions and advice of “five of the National Academy experts and three of the other experts,” which publically stated that they do not agree with the six month moratorium on drilling, because the moratorium actually increases risk of an oil spill once drilling is resumed.<sup>117</sup> Moreover, the Judge pointed to the adverse economic impact of a broad based moratorium, stating that:

“It is only a matter of time before more business and jobs and livelihoods will be lost. The defendants trivialize such losses by characterizing them as merely a small percentage of the drilling rigs affected, but it does not follow that this will somehow reduce the convincing harm suffered. The effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the plaintiffs (and other suppliers, and the rigs themselves) lose business and the movement of the rigs to other sites around the world will clearly ripple throughout the economy in this region.”<sup>118</sup>

Even senior career officials at MMS disagreed with a blanket six month moratorium scheme on drilling. In an email obtained by the Committee, William Hauser, Chief, Branch of Regulations and Standards, expressed his frustration with the moratorium stating, “The more I write this stuff the more I believe we can/should/could regulate/stop activities through a prudent management process versus a moratoria scheme.”<sup>119</sup>

## Second Moratorium

---

<sup>112</sup> DEPT. OF INTERIOR, *Increased Safety Measures for Energy Development on the Outer Continental Shelf*, May 27, 2010, available at

<http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598>.

<sup>113</sup> OFFICE OF THE INSPECTOR GENERAL, DEPT. OF INTERIOR, *Federal Moratorium on Deepwater Drilling*, May 27, 2010, available at <http://www.doioig.gov/images/stories/reports/pdf/DeepwaterMoratoriumPublic.pdf>.

<sup>114</sup> *Hornbeck Offshore Servs., L.L.C. v. Salazar*, No. 10-1663 (E.D.La, 2010).

<sup>115</sup> *Id.*

<sup>116</sup> *Hornbeck Offshore Servs., L.L.C. v. Salazar*, No. 10-30585 (5<sup>th</sup> Cir., 2011).

<sup>117</sup> *Hornbeck Offshore Servs., L.L.C. v. Salazar*, No. 10-1663 (E.D.La, 2010).

<sup>118</sup> *Id.* at 22.

<sup>119</sup> W. Hauser, Chief of Regulations and Standards, MMS (email, date redacted).

Despite the judicial decision to invalidate the original moratorium, Secretary Salazar announced a nearly identical moratorium on July 12, 2010.<sup>120</sup> Billed as “a temporary pause on deepwater drilling to provide time to implement safety reforms,”<sup>121</sup> the second moratorium appears to merely be a post hoc rationalization of the original moratorium. The new moratorium did nothing to address the economic concerns of the community or the safety concerns raised by experts. In fact, a *New York Times* editorial stated that the second ban is “as strong as the first ban.”<sup>122</sup> According to Dan Juneau, President of the Louisiana Association of Business and Industry:

“[The new moratorium] seems to be geared toward rigs with blowout preventers which everyone in the deep waters have and many in the shallow waters do as well. It is a reaffirmation that the Obama administration is going to keep things shut down, in spite of the 5<sup>th</sup> Circuit’s ruling.”<sup>123</sup>

It appears that the economic impact of the moratorium was never a significant factor considered by the Administration prior to imposing the moratorium. In a decision memorandum authored by BOEMRE Director Michael Bromwich to Secretary Salazar, it states that “economic effects may be considered in determining the scope of any suspension of drilling activity.”<sup>124</sup> However, according to testimony of Rebecca M. Blank, Under Secretary for U.S. Economic Affairs at the Department of Commerce, the Administration never once conducted a study of the economic impact the moratorium would have on the Gulf Coast economy and on oil production before instituting the moratorium.<sup>125</sup>

Former Senator Bob Graham and William K. Reilly, who were appointed to head the President’s Commission to investigate the BP oil spill, have expressed criticism over the nature and duration of the moratorium. After hearing testimony from a variety of local officials, Mr. Reilly stated that, “It’s not clear to me why it should take so long.”<sup>126</sup> Former Senator Graham echoed these concerns, reportedly saying that the moratorium was a burden on the economic life of the Gulf Coast.<sup>127</sup> He said the federal government has had nearly three months to inspect the rigs in the Gulf and wondered why it was taking so long to determine whether they can safely restart operations.<sup>128</sup>

---

<sup>120</sup> David Jackson, *Obama Team Lifts Gulf Coast Oil Drilling Moratorium*, USATODAY, Oct. 13, 2010.

<sup>121</sup> Press Release, Department of the Interior, Sec. Salazar Issues New Suspensions to Guide Safe Pause on Deepwater Drilling (July 12, 2010) (*available at* <http://www.doi.gov/news/doinews/Secretary-Salazar-Issues-New-Suspensions-to-Guide-Safe-Pause-on-Deepwater-Drilling.cfm>).

<sup>122</sup> Editorial, *A New, and Necessary, Moratorium*, NY TIMES, July 13, 2010, *available at* <http://www.nytimes.com/2010/07/14/opinion/14wed1.html>.

<sup>123</sup> Email from Dan Juneau, President, La Assoc. of Bus. & Indus. to Committee Staff (July 15, 2010).

<sup>124</sup> Memorandum from Director Bromwich on Options Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Continental Shelf (July 10, 2010).

<sup>125</sup> *The Economic Effects of the Offshore Drilling Moratorium*, S. Comm. On Small Business, 111<sup>th</sup> Cong (2010) (testimony of the Honorable Rebecca M. Blank, Under Secretary for U.S. Economic Affairs, Department of Commerce).

<sup>126</sup> John M. Broder, *Offshore Drilling: To Pause or Not to Pause*, NYTIMES, July 13, 2010, *available at* <http://green.blogs.nytimes.com/2010/07/13/offshore-drilling-to-pause-or-not-to-pause/>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

## The Permitorium

Secretary Salazar announced the end of the moratorium on October 13, 2010. According to many in the industry, this declaration provided little relief. The moratorium in the Gulf of Mexico was replaced by a “permitorium” – whereby drilling activity remained at a standstill not by operation of law – but because of inaction on the part of BOEMRE. Prior to the disaster, Mineral Management Service (MMS) processed and issued permits to drill in two weeks, on average.<sup>129</sup> However, not a single deepwater permit was issued by BOEMRE until U.S. District Judge Martin Feldman ordered the agency to take action on five permits by March 19, 2011, and by March 31 on two additional permits.<sup>130</sup>

On February 28, 2011, BOEMRE finally issued the first deepwater drilling permit since the explosion aboard the *Deepwater Horizon*.<sup>131</sup> The permit was issued to Noble Energy, and allows them to resume drilling they had started before April 20, 2010. Specifically, the permit allows Noble Energy to drill a by-pass well in Mississippi Canyon Block 519, approximately 70 miles south east of Venice, La. An operator drills a bypass well in order to drill around a mechanical problem in the original hole to the original target from the existing wellbore. In this case, Noble Energy will be drilling around the plugs set in the original well when drilling was suspended in order to complete the long delayed project.

Since February, BOEMRE has approved 15 additional deepwater permits – 13 of which simply allow operations to resume on a previously approved well. Only one permit has been issued for a well that had not been previously approved.<sup>132</sup> On May 10, 2011, Judge Feldman issued an additional order requiring BOEMRE to act on six additional applications within 30 days. In his decision Judge Feldman determined that, “the government has presented no credible assurances that the permitting process will return to one marked by predictability and certainty.”<sup>133</sup> (emphasis added) He went on to say that “Processing a scant few applications is at best a tactical ploy in a real world setting.”<sup>134</sup> Moreover, it has severe implications for the future productivity of the region. It generally takes five to ten years once a permit is issued to bring the oil to market.<sup>135</sup> According to internal BOEMRE documents obtained by the Committee, 100 new wells would have been drilled by December 10, 2010 but for the moratorium.<sup>136</sup>

---

<sup>129</sup> Laurel Brubaker Calkins & Allen Johnson Jr., *U.S. Appeals for Delay in 30-Day Order on Drill Permits*, BLOOMBERG BUSINESS WEEK, Mar. 10, 2011, available at <http://www.bloomberg.com/news/2011-03-10/u-s-asks-appeals-court-to-delay-30-day-order-on-drill-permits.html>.

<sup>130</sup> *EnSCO Offshore Co. v. Salazar*, 2011 WL 692029 (E.D. La. 2011).

<sup>131</sup> Press Release, Bureau of Ocean Energy Management, Regulation and Enforcement, BOEMRE Approves First Deepwater Drilling Permit To Meet Important New Safety Standards in Gulf of Mexico (Feb. 28, 2011) (available at <http://www.boemre.gov/ooc/press/2011/press0228.htm>).

<sup>132</sup> Status of Drilling Permits & Plans Subject to Enhanced Safety and Environmental Requirements in the Gulf of Mexico, Bureau of Ocean Energy Management, Regulation and Enforcement (last visited May 19, 2011), available at [http://www.gomr.boemre.gov/homepg/offshore/safety/well\\_permits.html](http://www.gomr.boemre.gov/homepg/offshore/safety/well_permits.html).

<sup>133</sup> *EnSCO Offshore Co. v. Salazar*, 2011 WL 692029 (E.D. La. 2011).

<sup>134</sup> *Id.*

<sup>135</sup> Ayesha Rascoe, *U.S. Set to ‘Reopen’ Offshore Drilling Sector*, NATIONAL POST, Mar. 3, 2011, available at <http://www.nationalpost.com/todays-paper/setto+reopen+offshore+drilling+sector/4375547/story.html>.

<sup>136</sup> Minerals Management Service Economic Impact Assessment June 10, 2010.

In addition to the immediate impact on the residents of the Gulf Coast, the year long pause in drilling operations will also mean a decline in domestic output of crude oil.<sup>137</sup> Deep-water drilling in the Gulf accounts for about 1.25 million barrels of oil a day – or about one-quarter of America's domestic crude oil production. The Gulf contribution is expected to drop by about 250,000 barrels a day over the next few years according to the U.S. Energy Information Administration.<sup>138</sup> According to an internal MMS memorandum, the future outlook for production is even dimmer. Mary Katherine Ishee, Deputy Director of BOEMRE, stated that:

Once the Moratorium is lifted, drilling, construction, and production schedules will have to be renegotiated and there will be backlog of work, so drilling, construction and production may not resume at all of the halted locations simultaneously. This will slow re-hiring of previous workers, and make the economic recovery lesser rapid.<sup>139</sup>

### Regulations Following the Spill

While the moratorium was wreaking economic havoc across Gulf Coast communities, BOEMRE was busy drafting new rules and regulations that were ostensibly designed to enhance the safety of future drilling operations. After the *Deepwater Horizon* disaster, it is clear that a new, safer system is necessary for drilling in the Gulf of Mexico; however, the focus of any regulatory changes must be on *continuing* safe drilling. A regulatory system that merely places roadblocks in the way of new exploration will only prolong the economic pain first imposed by the illegal moratorium. Yet, many of the latest regulations promulgated by BOEMRE are not designed to get the industry back up and running again. Rather, it appears they have created, and will continue to create, a significant amount of uncertainty and confusion within the offshore oil and gas community.

New regulations promulgated by BOEMRE are some of the most aggressive changes to offshore oil and gas production in U.S. history. These rules range from new regulations covering safety, oversight, and environmental protection to permitting, drilling, and development processes for oil and gas operations. In some cases, these new regulations apply to both offshore operations themselves, as well as the businesses that supply offshore rigs, many of which are small businesses. The regulated community as well as state officials has raised concerns about the feasibility and practicality of these new regulations.

### *Archaeological Requirements on Operators*

One of the most perplexing regulations promulgated by BOEMRE is the requirement that operators perform an Archaeological Assessment Report as part of National Environmental

---

<sup>137</sup> Mark Guarino, *On Gulf Coast, nail-biting over future of domestic oil drilling*, CHRISTIAN SCIENCE MONITOR, Jan. 11, 2011, available at <http://www.csmonitor.com/USA/2011/0111/On-Gulf-Coast-nail-biting-over-future-of-domestic-oil-drilling>.

<sup>138</sup> The US Energy Information Administration, *Short-Term Energy Outlook*, March 8, 2011, available at <http://www.eia.gov/emeu/steo/pub/contents.html>

<sup>139</sup> Information Memorandum from Mary Katherine Ishee, Deputy Director, BOEMRE to Wilma A. Lewis Assistant Secretary Land and Minerals Management Jun. 21, 2010.

Policy Act (NEPA) analysis and in conjunction with the National Historic Preservation Act.<sup>140</sup> Under this new rule, any new applicant to drill will have to demonstrate that their proposed activity will not harm shipwrecks or other archaeological resources.<sup>141</sup>

The application of this rule requires that operators literally become underwater archaeologists, entering a field where they have little experience. Operators must conduct ocean floor analyses with specialized equipment to determine if certain spotted anomalies are actually shipwrecks with the potential to be impacted by exploration or drilling.<sup>142</sup> Furthermore, operators will be required to employ an underwater archaeologist to assist in the analysis of this data and to provide BOEMRE with survey data. When operators asked about how to implement this new rule; and more specifically, if operators would need to hire an underwater archaeologist, BOEMRE representatives responded affirmatively that they would have to bring a marine archeologist on staff.<sup>143</sup> The archaeological assessment requirements are a prime example of the seemingly absurd and capricious nature of the new regulations placed on offshore drilling operations.

### *SEMS*

Many small businesses are concerned with the implementation of Safety and Environmental Management System (“SEMS”) Workplace Rules. BOEMRE points out in its Workplace Safety Rule Fact Sheet that many large operators have already established SEMS programs; however, it does not mention the smaller operators or those businesses who work closely with operators. Small businesses that have contacts with operators’ rigs will also be required to establish their own SEMS programs at the request of the large operators.<sup>144</sup> Small businesses are not situated to perform the same level of SEMS analysis that large-multinational corporations can. Accordingly, many of these small businesses that service large operators may be forced out of business if they cannot implement a SEMS program.<sup>145</sup> BOEMRE has not addressed the concerns of small business owners who work closely with large operators on the SEMS issue.

Committee staff interviewed Lori Davis, President of RigChem and Cori Kief, President of Offshore Towing, Inc. on March 24, 2011. Ms. Davis is a small business owner of a specialty chemical business, who at the time of the interview already had to downsize her business as a result of the BP Oil Spill and the subsequent moratorium on drilling.<sup>146</sup> According to Ms. Davis, new SEMS regulations may seriously jeopardize the ability of small businesses, like her own, to

---

<sup>140</sup> Bureau of Ocean Energy Management, Regulation and Enforcement, *Gulf of Mexico Archaeological Information*, (last visited May 20, 2011), available at <http://www.gomr.boemre.gov/homepg/regulate/enviro/archaeological/introduction.html>.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Bureau of Ocean Energy Management, Regulation and Enforcement Industry Workshop (March 23, 2011).

<sup>144</sup> Bureau of Ocean Energy Management, Regulation and Enforcement, *The Workplace Safety Rule on Safety and Environmental Management Systems (SEMS)*, (last visited May 30, 2011) available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45791> [hereinafter BOEMRE WORKPLACE SAFETY].

<sup>145</sup> See, LORI DAVIS INTERVIEW, *supra* note 68.

<sup>146</sup> *Id.*

sustain themselves because they simply cannot afford to keep up with all the change. Moreover, she is not sure that she can complete the SEMS program as quickly as necessary to comply with the new mandate, passed down from large operators. Cory Kief informed Committee staff that while his company has already obtained a similar safety certification, it took his company five years to complete the International Organization of Standards and the International Safety Management Code (ISO/ISM) process.<sup>147</sup> In addition, the SEMS program requires the employment of workers who can undergo the training and are willing to have the mentality and attitudes to implement it.<sup>148</sup> Unfortunately for Lori, she has already lost over 70 percent of her business as a result of the moratorium and finds it hard to hire technical and skilled employees.<sup>149</sup> Regulations such as the SEMS program may leave many small businesses with little choice but to shutter their business.

### *“Should-to-Must” Requirements*

The new Workplace Safety Rule is another BOEMRE regulation intended to improve safety practices for offshore drilling operations. Unfortunately, its implementation has proven to be challenging in practice. The thrust of the Workplace Safety Rule is to make mandatory the practices in the American Petroleum Institute’s (API) Recommended Practice 75 (API RP 75).<sup>150</sup> The API RP 75 is a collection of best practices designed to improve the safety of a wide variety of operations and the specific recommendations vary depending on the type of operation. They were not designed to be mandatory directives, and certainly not designed to be executed all at once. These facts were lost on BOEMRE as the agency changed all “should” best practice recommendations to “must.”

Failing to understand the purpose of the API guidelines, BOEMRE chose to implement the “should-to-must” requirement through a direct final rule.<sup>151</sup> By issuing mandate as a “direct final rule” BOEMRE skipped the normal process of notice and comment, where presumably the agency would have been notified of its error.

After the private sector and the affected Gulf states voiced strong objections based on the infeasibility of the rules, BOEMRE published a guidance document entitled “Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility (Should-to-Must Guidance),” with the goal of ameliorating fear caused by the careless “should-to-must” direct final rule.<sup>152</sup> In the Should-to-Must Guidance, BOEMRE acknowledged industry’s argument that the incorporation of the API documents required that any “should” is to be interpreted as “must” for

---

<sup>147</sup> Interview with Cory Kief, President, Offshore Towing, (Mar. 24, 2011), [hereinafter CORI KIEF INTERVIEW].

<sup>148</sup> *Id.*

<sup>149</sup> LORI DAVIS INTERVIEW *supra* note 68.

<sup>150</sup> *Id.*

<sup>151</sup> Bureau of Ocean Energy, Management, Regulation and Enforcement, *Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility*, (last visited May 20, 2011), available at <http://www.boemre.gov/ooc/pdfs/DeepwaterGuidanceSupplement.pdf> [hereinafter BOEMRE APPROVAL REPORT].

<sup>152</sup> “Oil and Gas and Sulphur Operations in the Outer Continental Shelf – Increased Safety Measures for Energy Development on the Outer Continental Shelf,” part III, Final Rule, Federal Register 75:198 (October 14, 2010) p. 63351.

purposes of the Code of Federal Regulations.<sup>153</sup> Accordingly, BOEMRE conceded that some degree of flexibility is important for the feasible and practical implementation of the API incorporated documents. To this end, BOEMRE is now willing to consider, based on agency approval, other practices that may accomplish similar goals as those contained in the API document.<sup>154</sup>

While this report acknowledges BOEMRE efforts to clarify operators' obligations, it appears that a significant amount of uncertainty remains regarding the "should- to-must" regulations. The guidance document may not go far enough in relieving the uncertainty of the direct final rule. Due to the vague nature of the guidance document, the drilling community's uncertainty is augmented because of concerns about whether BOEMRE will actually back-off the "should-to-must" requirement or if these issues will linger on as industry attempts to follow still ambiguous guidance.<sup>155</sup>

## NEPA

On August 16, 2010, Michael R. Bromwich, Director of BOEMRE, ordered a full review of the agency's use of "categorical exclusions" under the National Environmental Policy Act (NEPA).<sup>156</sup> The result of this review was a decision to limit the use of categorical exclusions for deepwater drilling projects. A categorical exclusion is a NEPA designation that is in essence a "previously determined" finding that there is no environmental impact from a proposed action.<sup>157</sup> Upon receiving a categorical exclusion, an operator is relieved from the obligation of performing additional environmental review such as an environmental assessment or an environmental impact statement, both of which require time-consuming analysis and subject the project to legal challenge. MMS had frequently relied on this exception when issuing exploratory permits. However, for the remaining permitting steps, MMS typically required operators to perform either environmental assessments or environmental impact statements.<sup>158</sup>

BOEMRE now requires that each new exploration plan approval undergo a well-by-well environmental review, which effectively curtails the long standing bi-partisan support of categorical exclusions. Louisiana Secretary of the Department of Natural Resources Scott Angelle, who at the time of the BP Oil Spill was acting Lieutenant Governor, noted that this well-by-well environmental assessment as required by BOEMRE is one of the biggest issues facing the return of the oil and gas industry because it draws out the permitting process and is unnecessarily repetitive, since a robust Environmental Impact Statement (EIS) is conducted by the federal government, prior to a lease sale, of which said EIS's contemplate this type of

---

<sup>153</sup> See, BOEMRE APPROVAL REPORT, *supra* note 150.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Press Release, Dept. of Interior, *Categorical Exclusions for Gulf Offshore Activity to be Limited While Interior Reviews NEPA Process and Develops Revised Policy*, (Aug. 16, 2010) (available at <http://www.doi.gov/news/doinews/Categorical-Exclusions-for-Gulf-Offshore-Activity-to-be-Limited-While-Interior-Reviews-NEPA-Process-and-Develops-Revised-Policy.cfm>).

<sup>157</sup> Kristina Alexander, *The 2010 Oil Spill: MMS/BOEMRE and NEPA*, CRS Report, Mar. 2, 2011, available at <http://www.fas.org/sgp/crs/misc/R41265.pdf>.

<sup>158</sup> *Id.*

exploration activity.<sup>159</sup> Secretary Angelle maintains that the effect of the new environmental process on leasing and drilling could slow the return of the energy industry to the region even more.<sup>160</sup>

Another example of the bureaucratic nature of the new NEPA requirements is the change in operator standards. It is not uncommon that after one well operator has successfully completed the permitting process, including the environmental impact requirements of NEPA, that another operator may take over the production capabilities of the well. When this occurs, no environmental changes are made concerning the well; the only change is the company who operates the well. However, BOEMRE will now require that the new operator conduct another complete NEPA analysis on the well operation.<sup>161</sup> This requirement provides no practical benefit. If a valid environmental analysis has already been undertaken, this new regulation only adds on unnecessary layers of red tape, and inhibits a long standing industry practice that has no effect on safety.

### The Consequences

At the outset, experts predicted that the policy would idle as many as 46,200 jobs and long term job losses could reach 120,000 by 2014.<sup>162</sup> According to the Administration's own modest calculations, 9,450 workers would lose their jobs due to the direct affect of the moratorium, and an additional 13,797 workers would lose their jobs because of the moratorium's indirect effects.<sup>163</sup> Moreover, Director Bromwich was aware that the moratorium would disproportionately harm small operators. An internal memorandum circulated at DOI on June 21, 2010, states, "Smaller companies and those drill rigs that cannot find work in shallow water or conducting allowed activities in deepwater or be transported across open oceans may face losses that are insurmountable. These companies may no longer be open after the moratorium ends."<sup>164</sup> Based on interviews conducted by Committee staff, it appears that the dismal predictions about the economic fallout from the spill are being realized across the region.

### *Rigs Leaving the Gulf*

Since the imposition of the moratorium, 12 drilling rigs (seven deep-water and five shallow water) have left the Gulf for operations in other countries.<sup>165</sup> Five of these deepwater rigs went to Africa – headed to such nations as Nigeria, Egypt and Congo.<sup>166</sup> Two other

---

<sup>159</sup> Interview with Scott Angelle, Secretary, Louisiana Dept. of Natural Resources (Mar. 23, 2011).

<sup>160</sup> *Id.*

<sup>161</sup> Bureau of Ocean Energy, Management, Regulation and Enforcement, *Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility*, (last visited May 20, 2011), available at <http://www.boemre.gov/ooc/pdfs/DeepwaterGuidanceSupplement.pdf>.

<sup>162</sup> *Id.*

<sup>163</sup> Memorandum from Director Bromwich on Options Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Continental Shelf (July 10, 2010).  
Memorandum from Mary Katherine Ishee, Deputy Director, BOEMRE on Background on Shallow and Deepwater policy Issues (June 21, 2010).

<sup>165</sup> Fact Sheet: Impacts of the Obama Administration's *De Facto* Moratorium, U.S. House of Representatives Natural Resources Committee Chairman Doc Hastings.

<sup>166</sup> *Id.*

deepwater rigs moved to South America – Brazil and French Guiana.<sup>167</sup> Diamond Offshore Drilling Inc.’s rigs *Ocean Endeavor* and *Ocean Confidence* signed contracts to work in Africa after operators in the Gulf of Mexico declared *force majeure* on the rigs due specifically to the moratorium implemented by the Obama administration and BOEMRE.<sup>168</sup> Larry Dickerson, President and CEO of Diamond Offshore, lamented the loss of American jobs but said, “With new contracting severely restricted in the Gulf of Mexico as a result of uncertainties surrounding the offshore drilling moratorium, we are actively seeking international opportunities to keep our rigs fully employed.”<sup>169</sup> When rigs leave the Gulf due to the uncertainties created by this Administration they rarely return to their point of origin. Accordingly, these seven deepwater rigs will likely never return to the Gulf of Mexico to produce American oil, generate American revenue, and create American jobs. Instead, they will promote and expand economic growth in foreign countries.

With drilling rigs moving to other countries and a sustained lack of drilling, companies both large and small are seeing real economic effects from the moratorium. For example, the Loews Corp., a conglomerate whose holdings include Diamond Offshore, had lower 2011 Q1 earnings because of the lack of revenue generated as a result of the moratorium on drilling.<sup>170</sup> Small businesses have been hurt even more. Throughout Louisiana, Mississippi, and other Gulf states, there are many small businesses whose primary customers are the rigs and operators now silenced by the moratorium and permitiorium. These businesses have more to worry about than just lost quarterly profits. Cory Kief, president of Offshore Towing, Inc. a rig moving and ocean towing company, shared with Committee staff that, “If things in the Gulf don’t return to normal my business will be closed by December.”<sup>171</sup> Small businesses, like Cory Kief’s, are fighting for their lives under the moratorium, and see only sparse relief with the modest number of permits issued by BOEMRE.

### *The Moratorium’s Impact on Small Business*

As small business owners, both Lori Davis and Cory Kief have felt the devastating effects of the moratorium in the form of the regulations promulgated by BOEMRE and by the lack of drilling in the Gulf. At the outset of the moratorium, Offshore Towing, Inc., held meetings with its employees where they agreed that they would forsake their benefits so that no one would lose their jobs.<sup>172</sup> Like RigChem and Offshore Towing, small businesses in the Gulf are doing everything they can to survive. Given all of the hardship they have already endured, many small businesses are on the brink of failure through no fault of their own.

Before the moratorium, neither Rig Chem nor Offshore Towing had any debt. In 2011, both companies felt such harsh economic pressure that they were forced to apply for loans in

---

<sup>167</sup> *Id.*

<sup>168</sup> *US Drilling Ban Sends Rig to Offshore Egypt*, Petroleum Africa, Jul. 12, 2010, available at <http://www.petroleumafrika.com/en/newsarticle.php?NewsID=9945> (last visited May 18, 2011).

<sup>169</sup> *Id.*

<sup>170</sup> *Loews’ Profit Slips as Diamond Offshore Hurts*, Reuters, May 2, 2011, available at <http://www.reuters.com/article/2011/05/02/loews-idUKL3E7G21AH20110502?type=companyNews>

<sup>171</sup> See, CORI KIEF INTERVIEW, *supra* note 146.

<sup>172</sup> *Id.*

order to forestall laying off their employees, whom they consider to be like family.<sup>173</sup> Sadly, Cori expects that he will have to fire two to three people from his sales department if work does not pick up for him.<sup>174</sup> In addition to their own troubles, both companies are running into a cash flow problem because many independent operators that are still attempting to operate in the Gulf cannot afford to pay for services rendered as soon as they are performed. Rather, RigChem and Offshore find that they must accept slower and smaller payments for already completed work.<sup>175</sup> The independent operators struggle to stay afloat because of the uncertainty that surrounds the future of their businesses, a consequence of the moratorium and subsequent permitiorium.<sup>176</sup> Unfortunately, Cory and Lori are the rule, not the exception.

The pain inflicted on the community is not limited to those involved in the oil and gas business. Many of the small business owners who live in Parishes heavily populated with those with ties to oil and gas also feel the pain. Business owners ranging from dentists to contractors feel the pressure from both the layoffs and the reduced wages that the moratorium brought to the Gulf. Dr. Michael Peneguy, DDS, noticed a 20 percent decrease in business. He remarked, “I know five patients who have been laid off and two have transferred. One relocated to Texas and another to Egypt.”<sup>177</sup> Realtors and contractors have similar stories. Sales have come to a “screeching halt” and home vacancies are common.<sup>178</sup> General Contractor Lester Benoit aptly summed up the feeling of many in the Gulf: “Everyone seems to be scared and banks cautious.”<sup>179</sup>

In late-March 2011, Seahawk Drilling, a driller in the Gulf of Mexico with 20 jackup rigs, declared Chapter 11 bankruptcy.<sup>180</sup> Seahawk CEO Randy Stilley attributed the bankruptcy to his company’s inability to secure permits due to the moratorium and the subsequent permitiorium hindering the expansion of drilling.<sup>181</sup> Seahawk faced initial financial trouble at the beginning of the BP Oil Spill, and was forced to cut 50 percent of its work force as a result of the moratorium.<sup>182</sup> Mr. Stilley stated: “In the 11 months after the Deepwater Horizon accident, it became clear that Seahawk’s greatest rival was no longer our industry competitors, but the U.S. government.”<sup>183</sup> This sentiment is one that pervades the oil and gas community in the Gulf – everyone understands the need for safety but above all, Gulf residents want to go back to work to provide for their families and their communities doing the work that they have done their whole lives.

---

<sup>173</sup> See e.g., CORI KIEF INTERVIEW, *supra* note 146; LORI DAVIS INTERVIEW *supra* note 68.

<sup>174</sup> See, CORI KIEF INTERVIEW, *supra* note 146.

<sup>175</sup> See e.g., CORI KIEF INTERVIEW, *supra* note 146; LORI DAVIS INTERVIEW *supra* note 68.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> Editorial, Randy Stilley, *A Preventable Bankruptcy in the Gulf of Mexico*, Washington Post, Mar. 23, 2011, available at [http://www.washingtonpost.com/opinions/a-preventable-bankruptcy-in-the-gulf-of-mexico/2011/03/19/ABnGs3KB\\_story.html](http://www.washingtonpost.com/opinions/a-preventable-bankruptcy-in-the-gulf-of-mexico/2011/03/19/ABnGs3KB_story.html).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

At its peak, Seahawk had 1100 employees— a purely American company whose shallow water rigs operated only in the Gulf.<sup>184</sup> When the BP Oil Spill occurred their stock suffered, and compounded with the souring of an international deal, they ran out of cash. During the moratorium, Seahawk had as few as two rigs working out of a total of 20, an unsustainable level of activity. Mr. Stillely has begun new ventures; however, the distinct difference is that is new ventures are *all* overseas. In an interview with Committee staff, he stated: “I’ve been in the oil service business for 35 years.... After all we went through and saw with the moratorium I won’t expose myself and my employees to the risk of doing business in the U.S. ever again.”<sup>185</sup> Although he would rather be working at home, Mr. Stillely now prefers to do business in politically volatile regions of the world rather than the United States because of the constantly changing regulatory atmosphere.

People up and down the Gulf coast share similar stories. Charlotte Randolph, President of Lafourche Parish expressed her concern to Committee staff that “nine out of her top ten” taxpayers are employed in the oil and gas industry, which will be directly impacted by the moratorium.<sup>186</sup> In Louisiana coastal communities such as Houma, Morgan City and Lafayette, one out of every three jobs is related to the oil and gas industry; these jobs are now in jeopardy along with the \$12.7 billion in total wages earned by employees working in the Gulf Coast oil and gas industry. Their unemployment would result in decreased tax receipts and additional budget restrictions for a Parish that is already experiencing a very lean year. According to an analysis performed by the Gulf Economic Survival Team, Louisiana and its Parishes stand to lose between \$150 million and \$700 million in state and local sales tax revenue due to the moratorium, thereby negatively impacting all government services, from police and fire protection, to schools and hospitals.

More specifically, data from Lafourche Parish shows a significant decrease in ad valorem taxes at the local level. Ad valorem taxes are real and personal property taxes collected by the local parishes and directly reflect the amount of economic activity that has been halted in the Gulf. According to Ryan Friedlander, Director of Finance for Lafourche Parish, the tax assessor estimates a decrease of 2012 ad valorem collections of 8-10 percent for both inventory and equipment based on based on a drop in inventory and water craft days worked in 2010 along with 2011 data for consumer property.<sup>187</sup> This would represent a total decrease in ad valorem taxes of 16-18 percent since the BP Oil Spill began.<sup>188</sup> This represents a loss of nearly \$6 million dollars in parish-wide ad valorem tax dollars.<sup>189</sup> Although more difficult to analyze and calculate, sales tax dollars are expected to decrease in the Parish by five to six percent.<sup>190</sup>

This data shows that local governments are suffering immensely because of the Obama Administration’s moratorium and subsequent permitorium on drilling. This has real consequences for the residents of the Gulf Coast because declining tax revenue translates into declining services available to the residents of southern Louisiana. Due to the system of

---

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Interview with Charlotte Randolph, President, Lafourche Parish (June 15, 2010).

<sup>187</sup> Interview with Ryan Friedlander, Director of Finance, Lafourche Paris (Mar. 24, 2011).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

calculating ad valorem taxes, 2012 collections are already negatively impacted. Even if property use were to return to pre-BP Oil Spill levels, the positive tax implications from an ad valorem standpoint would not be seen for a few years down the road. Clearly, the moratorium has done more than just affect “big oil”. The Parishes will feel the tax implications for years to come and lag any recovery that comes to other sectors.

In examining the likely economic impact of imposing a drilling moratorium, the Administration relied on numerous false assumptions. In one internal analysis, the Administration assumed that “drilling could re-start on January 1, 2011.”<sup>191</sup> In reality, the first new drilling permit was not issued until months later.<sup>192</sup> Alarming, in dismissing larger projections of unemployment the document also noted, “we are comfortable with our conservative approach because the loss in employment is not long term, so the full effects of the indirect and induced employment may not be fully felt as some businesses may be willing to sustain short term losses to avoid having to lay off and subsequently rehire workers.”<sup>193</sup> As oil rigs leave the Gulf, layoffs continue, and the economic consequences of the moratorium continue these assumptions have been exposed as deeply flawed.

### *Industry Strives to Make Drilling Safer*

The explosion aboard the Deepwater Horizon and the confusion in the subsequent days and months clearly demonstrated that MMS and BP had failed to implement rigorous safety standards. Moreover, there is agreement that changes needed to be made to the flawed system that allowed the disaster to occur. However, evidence suggests the regulations promulgated by BOEMRE do not promote the revitalization of a safe oil and gas industry in the Gulf; instead, they hinder production even when operators have made significant strides to become safer. For example, the oil industry made a substantial investment in safety by creating a rapid-response system to prevent another disaster like the BP Oil Spill.<sup>194</sup> BOEMRE’s regulations do not appear to take this into account.

The extraordinary difficulties and costs associated with the cleanup of the Gulf oil spill have not been lost on other companies in the oil and gas industry. It is abundantly clear that private industry is strongly incentivized to adhere to the strongest safety practices in order to protect both the environment as well as their own private interests. Accordingly, four of the largest oil companies, Exxon-Mobil, Shell, Chevron, and Conoco Phillips, committed \$1 billion to create a rapid-response system to deal with future potential oil spills.<sup>195</sup> This rapid response system includes the creation of modular containment equipment that would be available for use

---

<sup>191</sup> Minerals Management Services (MMS), *Economic Impact Assessment: Effects of Drilling Pause for 6 Months*, June 10, 2010 [hereinafter MMS ECONOMIC IMPACT ASSESSMENT].

<sup>192</sup><sup>192</sup> David Hammer, *U.S. approves first deepwater oil drilling permit since BP spill*, THE TIMES-PICAYUNE, Feb 28, 2011, available at [http://www.nola.com/news/gulf-oil-spill/index.ssf/2011/02/us\\_approves\\_first\\_deepwater\\_oil.html](http://www.nola.com/news/gulf-oil-spill/index.ssf/2011/02/us_approves_first_deepwater_oil.html).

<sup>193</sup> See, MMS ECONOMIC IMPACT ASSESSMENT, *supra* note 194.

<sup>194</sup> Jad Mouawad, *3 Oil Firms Commit \$1 Billion for Gulf Rapid-Response Plan*, N.Y. TIMES, Jul. 21, 2010, available at <http://www.nytimes.com/2010/07/22/business/energy-environment/22response.html>.

<sup>195</sup> *Id.*

and could contain spills as deep as 10,000 feet and capture up to 100,000 barrels of oil a day.<sup>196</sup> A nonprofit organization known as the Marine Well Containment Company operates and maintains the emergency capability mechanism. Industry executives express confidence that this measure will enable a rapid response to contain any future blowout or spill that may affect the Gulf region. They expressed optimism that it will also restore the government and the citizens' confidence in the oil industry to operate with the proper safety precautions in place.<sup>197</sup> Unfortunately, BOEMRE's policies do not recognize the necessary and important contributions that industry has made.

## Conclusion

In dealing with the enormous and dynamic challenge of helping gulf communities recover from the BP Oil Spill, the Obama Administration had a choice of two paths: federalize the response or leave the management and leadership of recovery efforts to BP. Although BP would have still been held financially responsible under either scenario, the Obama Administration chose the latter option and placed BP at the frontline of responsibility and decision making. While BP is unquestionably and admittedly responsible for the oil spill, the government's decision to place the perpetrator of a reckless and unnecessary tragedy at the helm of recovery operations was clearly controversial. To many spill victims it was also outright offensive and frustrating. Regardless of whether placing BP in such a role was the correct decision, the legacy of BP's recovery efforts was, at root, a choice of the Obama Administration. The many problems – from slow responses to waste and abuse – that arose in the recovery effort managed by BP nonetheless occurred under a framework chosen by federal officials up to and including the President of the United States. The merits and consequences of putting BP in this position of authority and responsibility are important topics for Congress to consider.

Beyond the most immediate task of addressing an unfolding disaster, the Obama Administration also faced two additional choices where outsourcing responsibility to BP was not an option. The first involved the future of the long troubled government agency, the Minerals Management Service (MMS) of the Department of Interior, which had primary responsibility for regulating the safety of offshore drilling. While the Obama Administration had long talked about the need for reform, change at MMS had been slow to arrive until the unknown agency was suddenly thrust into a bright and scrutinizing public spotlight following the explosion aboard the *Deepwater Horizon*. Less than a month after the explosion, Interior Secretary Ken Salazar had announced an ambitious reorganization of MMS that split the agency into three components. While the announcement played well in the media, the basic reorganization plan ran counter to recommendations made by the Government Accountability Office, the Department of Interior Inspector General, and a staff report prepared by this committee in 2009. Significant questions remain about the effectiveness of Secretary Salazar's basic reorganization strategy and the wisdom of concocting such a significant long-term effort in the midst of a crisis and under the restrictions of an artificial timeline that seemingly precluded input from entities that had studied systemic problems at MMS for years.

---

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

The final choice involved the decision to implement a broad moratorium on deep water drilling in the Gulf of Mexico. Documents indicated that the Administration clearly understood the moratorium would have negative consequences for workers, communities, the price of oil, and the future of energy production in the region. The decision to impose a moratorium, however, was not supported by scientists or industry experts who had otherwise been cooperating with the Administration. Another document also shows that the Administration made false assumptions about the economic effects of a moratorium. The Administration underestimated the length of time a moratorium would delay energy projects after it was lifted, misjudged the willingness and ability of businesses to retain employees, and misinterpreted the readiness of oil rigs to leave the Gulf of Mexico for foreign destinations. Dismissing more dire predictions, officials even embraced a self-described “conservative approach” to estimating job losses. The effects of the moratorium and its de facto successor, the “permitorium” (a period where drilling was technically allowed but practically disallowed by a slow and belabored permitting process), continue to draw the ire of oil spill victims who also identify as victims of the federal government’s heavy handed approach against an industry and many small businesses that had – with the exception of BP and its involved partners – done nothing wrong.

The BP oil spill clearly demonstrated that when companies like BP create massive environmental damage they will be held accountable. This is not only just, but also gives the private sector powerful incentives to achieve the highest standards of safety and good operating practices in order to avoid billions in liabilities and loss of reputation. As the United States struggles to create jobs in an economic downturn and improve energy independence, there are important lessons to learn, criticisms to discuss, and decisions that Congress and the Administration will ultimately have to make. This report, and the committee’s overall investigation into the federal government’s response to the oil spill, are intended to advance this necessary process and bring to light the perspectives of oil spill victims. A perspective that many feel has been shut out from the discussion over energy and environmental policies written in the name of “recovery.”

## **About the Committee**

---

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

## **Contacting the Committee**

---

### **For press inquiries:**

**Frederick R. Hill**, Director of Communications  
(202) 225-0037

### **For general inquiries or to report waste, fraud or abuse:**

Phone: (202) 225-5074  
Fax: (202) 225-3974

<http://republicans.oversight.house.gov>



Committee on Oversight and Government Reform  
Chairman, Darrell Issa (CA-49)

---

2157 Rayburn House Office Building  
Washington, DC 20515