

Exposing Corruption Exploring Solutions  
Project On Government Oversight

Testimony of  
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Before the  
House Committee on Oversight and Government Reform  
on  
Examination of The Department of the Interior's  
Oversight of Offshore Oil Drilling

July 22, 2010

I would like to thank Chairman Edolphus Towns for inviting me to testify today about the Department of the Interior's oversight of offshore drilling and the Minerals Management Service (MMS). I also want to thank Ranking Member Darrell Issa and Representative Carolyn Maloney for their unrelenting oversight of this troubled agency—for Representative Maloney, she has been pursuing accountability for this agency since 1996.<sup>1</sup> I would also like to thank the House Natural Resources Committee and the Senate Energy and Natural Resources Committee for the work they've done producing strong legislation to enact many of the recommendations I will make today. Since 1995, the Project On Government Oversight (POGO) has issued five reports about MMS's inadequate oversight of the major oil and gas companies, primarily with a focus on the loss of royalty revenue.<sup>2</sup> The Deepwater Horizon disaster in the Gulf is another direct result of MMS's failure to do its job. It is important that the Department of the Interior and Congress do what they can now to learn from this catastrophe and make sure the reorganization of MMS fully addresses the fundamental conflicts and weaknesses inherent to that agency.

MMS was created by the Department of the Interior by Secretarial Order in 1982 following the findings of the Linowes Commission that the U.S. Geological Survey (USGS) could not

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<sup>1</sup> Carolyn Maloney (D-NY), "Oil and Gas Royalties."

[http://maloney.house.gov/index.php?option=com\\_issues&task=view\\_issue&issue=237&parent=11&Itemid=35](http://maloney.house.gov/index.php?option=com_issues&task=view_issue&issue=237&parent=11&Itemid=35)  
(Downloaded July 20, 2010)

<sup>2</sup> Project On Government Oversight, *Drilling the Taxpayer: The Department of Interior's Royalty-In-Kind Program*, September 18, 2008. <http://www.pogo.org/pogo-files/reports/natural-resources/drilling-the-taxpayer/nr-rik-20080918.html>; *Drilling For The Truth: More Information Surfaces On Unpaid Oil Royalties*, January 1, 1997. <http://www.pogo.org/pogo-files/reports/natural-resources/drilling-for-the-truth-more-information-surfaces-on-unpaid-oil-royalties/nr-oil-1997.html>; *Wait! There Is More Money to Collect...Unpaid Oil Royalties Across the Nation*, January 1, 1996. <http://www.pogo.org/pogo-files/reports/natural-resources/wait-there-is-more-money-to-collect/nr-oil-1996.html>; *With A Wink And A Nod: How the Oil Industry and the Department of Interior Are Cheating the American Public and California School Children*, March 1, 1996. <http://www.pogo.org/pogo-files/reports/natural-resources/with-a-wink-and-a-nod/nr-oil-19960301.html>; *Department of Interior Looks the Other Way: The Government's Slick Deal for the Oil Industry*, January 1, 1995. <http://www.pogo.org/pogo-files/reports/natural-resources/department-of-interior-looks-the-other-way/nr-oil-1995.html>.

effectively manage royalty collections.<sup>3</sup> Royalty collections were a buried mission at USGS, and as a result, the Commission found that there was little accountability or reason for taxpayers to be confident that Interior was getting taxpayers their fair share for their natural resources. A lack of accountability will also likely be one of the final conclusions of the numerous investigations being conducted into the Deepwater Horizon disaster. It is remarkable how little has changed.

MMS was created because royalty collections were buried at USGS, yet royalty collections and inspections were buried again in MMS. The agency had two conflicting missions: to manage mineral resources on the Outer Continental Shelf (OCS) and to collect and distribute bonuses, rents, and royalties from companies that lease and produce minerals from Federal lands, both onshore and offshore, and from Indian lands.<sup>4</sup> In both of these missions, the agency largely saw itself as a partner of industry, handling oil and gas companies with kid gloves. For instance, MMS gave a safety award to Transocean,<sup>5</sup> the owners of the Deepwater Horizon rig. As more evidence of the problems presented by this close relationship with industry, the Interior Department Inspector General has testified that they question the enforcement program and whether civil penalties are in line with the seriousness of violations.<sup>6</sup> Finally, the *Washington Post* found that the company from which MMS claimed to have received its largest fine between 2000 and 2009 could find no evidence that the fine had been levied.<sup>7</sup> MMS's mistakes and anemic oversight have resulted in billions of dollars in uncollected royalties,<sup>8</sup> and now its mistakes and poor oversight have contributed to the Deepwater Horizon disaster that has devastated the Gulf and is depriving many of their livelihoods.

If there is any small silver lining in the Deepwater Horizon disaster, it's that it has called attention to long-needed reforms. POGO supports proposed efforts to reorganize MMS into three bureaus and end the conflict of mission,<sup>9</sup> and would like to see this reaffirmed statutorily. But

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<sup>3</sup> Commission on Fiscal Accountability of the Nation's Energy Resources "Fiscal Accountability of the Nation's Energy Resources," January 21, 1982. <http://pogoarchives.org/m/nr/linowes-report-19820121.pdf>; Department of the Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement, "OCS Lands Act History." <http://www.mms.gov/aboutmms/OCSLA/ocslahistory.htm> (Downloaded July 19, 2010)

<sup>4</sup> According to MMS's website, "The MMS's mission is to manage the ocean energy and mineral resources on the Outer Continental Shelf and Federal and American Indian mineral revenues to enhance public and trust benefits, promote responsible use, and realize fair value." <http://www.mms.gov/aboutmms> (Downloaded July 19, 2010)

<sup>5</sup> "GoM Rig Teams Win MMS District SAFE Award, Transocean Nominated for National SAFE Award," *Beacon: Transocean in the Spotlight*, Summer 2009, Issue 2. <http://www.beaconmag.com/gomrigteamswinmm.html> (Downloaded July 19, 2010)

<sup>6</sup> Testimony of Mary L. Kendall, Acting Inspector General for the Department of the Interior before the House Committee On Natural Resources Subcommittee on Energy and Mineral Resources, June 17, 2010, p. 3. <http://www.doi.gov/images/stories/KendallTestimony17June2010.pdf> (Downloaded July 20, 2010)

<sup>7</sup> Marc Kaufman, Carol D. Leonnig and David Hilzenrath, "MMS investigations of oil-rig accidents have history of inconsistency," July 18, 2010. [http://www.washingtonpost.com/wp-dyn/content/article/2010/07/17/AR2010071702807\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/07/17/AR2010071702807_pf.html) (Downloaded July 19, 2010)

<sup>8</sup> For example, MMS significantly cut back on its auditing staff. See: Project On Government Oversight, "POGO's Written Testimony for the House Government Reform Committee regarding the Interior Department: A Culture of Managerial Irresponsibility and Lack of Accountability?" September 14, 2006, <http://www.pogo.org/pogo-files/testimony/natural-resources/nr-oil-20060914.html>.

<sup>9</sup> Project On Government Oversight, "Breaking up MMS and Kicking Industry out of Bed: POGO Applauds Sec. Salazar's Announcement," May 19, 2010. <http://www.pogo.org/pogo-files/alerts/natural-resources/nr-doi-20100519.html>

this restructuring must include building a robust infrastructure of expertise and ethics that will make this agency an effective custodian of the public's resources.

To understand the reforms necessary, it is important to understand MMS's failures.

### **Slowing the Revolving Door**

One of the most problematic causes of the inappropriate closeness between MMS and industry is the frequency with which officials have gone through the revolving door. Several have been sentenced to prison for violations of conflict-of-interest laws or obstruction of justice.<sup>10</sup> As long as the door continues to revolve between industry and Interior or MMS, the public cannot be sure their interests are being served.

The most egregious example of this problem is the last Director of MMS under the previous administration, Randall Luthi—who became the president of an offshore drillers trade association, the National Ocean Industries Association, 14 months after leaving MMS.<sup>11</sup> As a disturbing sidenote, his predecessor at the Association, Tom Fry, was also a former MMS Director.<sup>12</sup> These two cases are emblematic of what is wrong with the agency. When the Director of MMS joins a trade association whose explicit mission was to secure a “favorable regulatory and economic environment for the companies that develop the nation’s valuable offshore energy resources,”<sup>13</sup> taxpayers have to question whose interests were actually being served when he was at MMS. In the case of Mr. Luthi—who joined the trade association approximately 14 months after leaving MMS—it’s unclear whether he was always ideologically opposed to the agency’s mission.

There have already been several improvements to ethics policies at Interior since our 2008 report. POGO applauds President Barack Obama’s Executive Order for Ethics Commitments by Executive Branch Personnel,<sup>14</sup> and Secretary Salazar’s Memorandum to Employees on their

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<sup>10</sup> Department of Justice, “Former Interior Deputy Secretary Steven Griles Sentenced to 10 Months in Prison for Obstructing U.S. Senate Investigation into Abramoff Corruption Scandal,” June 26, 2007. [http://www.usdoj.gov/opa/pr/2007/June/07\\_crm\\_455.html](http://www.usdoj.gov/opa/pr/2007/June/07_crm_455.html) (Downloaded July 19, 2010); Department of Justice, “Former Department of Interior Official Pleads Guilty to Conflict of Interest Charge,” July 30, 2008. <http://www.usdoj.gov/opa/pr/2008/July/08-crm-672.html> (Downloaded July 19, 2010); Department of Justice, “Former Department of Interior Official Pleads Guilty to Felony Violation of Post Employment Conflict Law,” September 15, 2008. <http://www.usdoj.gov/opa/pr/2008/September/08-crm-818.html> (Downloaded July 19, 2010)

<sup>11</sup> National Ocean Industries Association, “Biography: Randall Luthi, President, National Ocean Industries Association.” <http://www.noia.org/website/download.asp?id=38559> (Downloaded July 19, 2010)

<sup>12</sup> National Ocean Industries Association, “Tom Fry Announces Retirement from the National Ocean Industries Association,” October 9, 2009. <http://www.noia.org/website/article.asp?id=35791> (Downloaded July 19, 2010)

<sup>13</sup> Project On Government Oversight, “Oil Drilling Trade Group Slips the F-Word into Its Mission Statement,” June 11, 2010. <http://pogoblog.typepad.com/pogo/2010/06/oil-drilling-trade-group-slips-the-fword-into-its-mission-statement.html>

<sup>14</sup> The White House, “Ethics Commitment By Executive Branch Personnel,” January 21, 2009. [http://www.whitehouse.gov/the\\_press\\_office/Ethics-Commitments-By-Executive-Branch-Personnel](http://www.whitehouse.gov/the_press_office/Ethics-Commitments-By-Executive-Branch-Personnel) (Downloaded July 19, 2010)

ethical responsibilities.<sup>15</sup> Secretary Salazar has also worked to improve the ethical culture of the agency by urging employees to seek the guidance from bureau or office ethics officials to avoid even the appearance of impropriety,<sup>16</sup> and to increase independence by splitting the agency into three bureaus, which should be reinforced statutorily.<sup>17</sup> Furthermore, both the Senate Energy and Natural Resources Committee and the House Natural Resources Committee have approved legislation to slow the revolving door.<sup>18</sup> We prefer the House's stronger provision, which would make the ban on going from Interior to industry two years instead of one as in the Senate version, and would establish civil and criminal penalties for all revolving door, financial conflict of interest, and gift ban violations. We fully endorse the House version and hope it is soon passed into law.

In addition to this important reform, which we hope the members of this committee will support, we also recommend that Interior and Congress consider the following recommendations:

- Require government officials to enter into a binding revolving door exit plan that sets forth the programs and projects from which the former employee is banned from working. Like financial disclosure statements, these reports should be filed with the Office of Government Ethics and available to the public. This requirement would benefit government employees who are unaware of or confused by post-government restrictions or who have multiple post-employment bans covering different time periods. It would also enhance public trust in the government.
- Require recently retired government officials and their new employers to file revolving door reports attesting that the former government employee has complied with his or her revolving door exit plan.

## **Ending Interior's Partnership with Industry**

The second reason for MMS's closeness to industry is that, as Tyler Priest, clinical professor of business history and director of global studies at the University of Houston's C.T. Bauer College of Business, has pointed out, MMS has always been a "junior partner" to industry, dependent on

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<sup>15</sup> Department of the Interior, "Secretary Salazar Outlines High Ethical Standards for Interior Department in Memo to All Employees," January 26, 2009. [http://www.doi.gov/archive/news/09\\_News\\_Releases/012609a.html](http://www.doi.gov/archive/news/09_News_Releases/012609a.html) (Downloaded July 19, 2010)

<sup>16</sup> Department of the Interior, "Secretary Salazar Outlines High Ethical Standards for Interior Department in Memo to All Employees," January 26, 2009. [http://www.doi.gov/archive/news/09\\_News\\_Releases/012609a.html](http://www.doi.gov/archive/news/09_News_Releases/012609a.html) (Downloaded July 19, 2010)

<sup>17</sup> Department of the Interior, "Salazar Divides MMS's Three Conflicting Missions," May 19, 2010. <http://www.doi.gov/news/pressreleases/Salazar-Divides-MMSs-Three-Conflicting-Missions.cfm> (Downloaded July 19, 2010)

<sup>18</sup> Outer Continental Shelf Reform Act of 2010 (S. 3516), [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s3516is.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s3516is.txt.pdf) (Downloaded July 20, 2010) and the Consolidated Land, Energy, and Aquatic Resources Act of 2010 (H.R. 3534). POGO and 12 other organizations sent a letter of support for the Wyden Revolving Door Amendment to S. 3516, the Outer Continental Shelf Reform Act of 2010: "POGO Letter of Support for Amendment to Slow Revolving Door between Industry and Interior," June 29, 2010. <http://www.pogo.org/pogo-files/letters/natural-resources/nr-doi-20100629.html>

industry for the technical knowledge MMS employees need to be able to do their jobs.<sup>19</sup> President Obama has acknowledged that this dependence on industry has been a festering sore for MMS: “What’s also been made clear from this disaster is that for years the oil and gas industry has leveraged such power that they have effectively been allowed to regulate themselves.”<sup>20</sup> It is deeply concerning that MMS allowed industry to perform inherently governmental functions by allowing industry’s technical analysis to determine how to adapt or develop regulations.<sup>21</sup>

Looking at MMS’s decisions leading up to the Deepwater Horizon disaster, it’s clear that this dependence translated into MMS allowing industry to break the rules, or simply exempting industry from them. To list just a few examples, MMS allowed BP to delay a blowout preventer test and to perform the test at a lower level than originally planned,<sup>22</sup> and went through a \$42 million lease sale without conducting a required environmental impact statement, against the advice of an MMS biologist.<sup>23</sup> And who can forget that MMS approved numerous companies’ emergency response plans that showed so little thought for the protection of the Gulf that they accounted for the welfare of walrus?<sup>24</sup>

All of these problems are rooted in the belief that industry knows best. As a result, MMS has not been an effective enforcer of regulations, but instead has allowed industry to operate largely on what the GAO described as “an honor system.”<sup>25</sup> Billions of dollars in royalty underpayments,<sup>26</sup> and the oil disaster in the Gulf, have demonstrated that this honor system doesn’t work.

A large hurdle facing MMS is cultural: this is an agency that has been subservient to and dependent on industry for too long. Changing this requires more than reorganization; and it requires more than new leadership. POGO worries that Secretary Salazar’s well-intentioned split, creating smaller offices, could also diminish the effectiveness of auditing and inspections, and

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<sup>19</sup> Tyler Priest, “The Ties that Bind MMS and Big Oil,” *Politico*, June 9, 2010.

<http://www.politico.com/news/stories/0610/38270.html> (Downloaded July 19, 2010)

<sup>20</sup> The White House, Office of the Press Secretary, “Remarks by the President on the Gulf Oil Spill,” May 27, 2010.

<http://www.whitehouse.gov/the-press-office/remarks-president-gulf-oil-spill> (Downloaded July 19, 2010)

<sup>21</sup> Inherently governmental functions include “the determination of agency policy, such as determining the content and application of regulations, among other things.” Federal Acquisition Regulation Subpart 7.503(c)(5).

[https://www.acquisition.gov/far/current/html/Subpart%207\\_5.html#wp1078196](https://www.acquisition.gov/far/current/html/Subpart%207_5.html#wp1078196) (Downloaded July 19, 2010)

<sup>22</sup> Ian Urbina, “Documents Show Early Worries About Safety of Rig,” *The New York Times*, May 29, 2010.

<http://www.nytimes.com/2010/05/30/us/30rig.html> (Downloaded July 20, 2010)

<sup>23</sup> Mark Jaffe and David Olinger “Tracking Down Mineral Management Service’s Dysfunctional History of Drilling Oversight,” *The Denver Post*, June 6, 2010. [http://www.denverpost.com/headlines/ci\\_15236764](http://www.denverpost.com/headlines/ci_15236764) (Downloaded July 20, 2010)

<sup>24</sup> Opening Statement of Rep. Henry A. Waxman, Chairman, Committee on Energy and Commerce, “Drilling Down on America’s Energy Future: Safety, Security, and Clean Energy,” June 15, 2010.

<http://energycommerce.house.gov/documents/20100615/Waxman.Statement.ee.06.15.2010.pdf> (Downloaded July 19, 2010)

<sup>25</sup> Government Accountability Office, *Testimony Before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, House of Representatives, on Mineral Revenues: Data Management Problems and Reliance on Self-Reported Data for Compliance Efforts Put MMS Royalty Collections at Risk* (GAO-08-560T), March 11, 2008, p. 18. <http://www.gao.gov/new.items/d08560t.pdf> (Downloaded July 19, 2010)

<sup>26</sup> House Oversight and Government Reform Committee, *Teapot Dome Revisited: Dereliction of Fiduciary Duty at the Interior Department*, October 7, 2009. <http://republicans.oversight.house.gov/images/stories/Reports/2009-10-07mmsreport.pdf> (Downloaded July 19, 2010)

make it difficult to attract high-quality people needed to really create change. But Interior can get the qualified officials it needs if it looks beyond industry, the Interior Solicitor's office, or MMS. For example, Secretary Salazar could appoint one of the state or tribe auditors who have been frustrated with MMS's lax royalty auditing to head up the new auditing bureau. Someone from the Government Accountability Office or the IG's office could be an effective head of the bureau charged with inspections. These loyal critics care about MMS's oversight mission and want it to succeed, and are exactly the kind of people MMS employees and industry need to see in the lead.

No matter what reforms are put in place, they can only be effective with increased transparency about MMS's operations. Interior should provide:

- Congress and the public easy access to non-proprietary information regarding leases, volumes of production, production costs, audits, Environmental Impact Statements, and safety assessments.
- Quarterly public reviews of inspection activities by MMS that would be sent to the Secretary, the IG, and Congress. It is important to note that Interior has not released information about oil and gas leases, despite being given several opportunities to do so by measures outlined in the Open Government Directive.<sup>27</sup> Interior's willingness to increase its openness in the wake of the Gulf disaster should be considered a real acid test as to how committed the Administration is to the kind of transparency measures that will help citizens hold the federal government and industry accountable.

We are concerned that Interior's reforms lack input from outside stakeholders, or even inside stakeholders such as the regional employees.<sup>28</sup> We hope that they will soon be seeking input from states and Indian tribes on the reorganization—particularly those states and tribes that have been conducting royalty audits and ostensibly partnering with Interior for over two decades.

At least as important, we hope the policymakers in Washington begin talking to, and learning from, the front-line inspectors policing the Gulf. If they did, they would learn that the Titanic will still be steaming towards the iceberg unless they reach far down into the remains of MMS and demand change. They would learn that even after the Deepwater Horizon explosion, inspector concerns are being ignored. For example, an MMS inspector was alarmed when he discovered that a deep-water production facility (or SPAR) was operating days after he had issued a cease and desist order during a congressionally mandated inspection. When the inspector contacted his Supervisor in order to gain approval to issue another cease and desist order and possibly forward the offense for Civil Penalty because the SPAR was operating in what he believed was in dangerous noncompliance, his Supervisor overruled him. And this is in the wake of the Gulf crisis. This incident is not unique, but has become the norm where inspectors feel they need to ask permission from their Supervisors because they are more likely to get in trouble for issuing an Incident of Noncompliance (INC), than for not issuing one. This is where the real work will have to happen -- changing that culture.

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<sup>27</sup> The White House, "Open Government Directive," December 8, 2009.

<http://www.whitehouse.gov/open/documents/open-government-directive> (Downloaded July 19, 2010)

<sup>28</sup> Department of the Interior, "Salazar Receives Implementation Plan for Restructuring the Department's Offshore Energy Missions," July 14, 2010. <http://www.doi.gov/news/pressreleases/Salazar-Receives-Implementation-Plan-for-Restructuring-the-Departments-Offshore-Energy-Missions.cfm> (Downloaded July 19, 2010)

Congress should also enhance oversight by establishing a Gulf of Mexico Regional Citizens Advisory Council to increase public participation in oversight. The Council should include representatives of groups disproportionately impacted by risks of energy production from each of the five Gulf states to conduct citizens' oversight.<sup>29</sup> The Council should be modeled after successful citizens advisory councils in Alaska authorized in the Oil Pollution Act of 1990 after the Exxon Valdez disaster.<sup>30</sup>

### **Increasing Technical Expertise and Independence**

It is important to make sure that the newly created Bureaus have the expertise and resources that they need. The Inspector General has reported that high staff turnover has contributed to weak oversight<sup>31</sup> and that staff lack proper training, technological knowledge, and skills to do their job—Interior only provided onshore engineers training once in the past 10 years, for example.<sup>32</sup> In addition to these problems, it is hard for Interior to attract and keep the talent it needs when Inspectors start as a GS-7.<sup>33</sup> That there are only 60 Inspectors in the Gulf region to cover nearly 4,000 facilities only compounds the retention problem.<sup>34</sup>

As we stated before, POGO has long believed MMS suffers from a conflict of mission. The sole mission of a federal royalty management and collection program should be determining and enforcing revenue obligations of private companies operating on public and Indian lands. Prior to the proposed split, however, auditors and other compliance and enforcement personnel reported to officials within MMS whose responsibilities also include prioritizing leasing and development, and who may be more inclined to make the royalty management program *look* successful rather than *be* successful. As POGO discovered, in some instances MMS told their professional auditors to stop auditing, even when the auditors had discovered evidence that companies were underpaying royalties.<sup>35</sup> The Deepwater Horizon disaster has demonstrated that similar pressures may have undermined the effectiveness of MMS inspectors, especially given past GAO findings that management's focus on drilling meant that Interior was unable to meet

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<sup>29</sup> Representatives on councils would be selected by peers.

<sup>30</sup> Prince William Sound Regional Citizens' Advisory Council, "About the Council." <http://www.pwsrca.org/about/index.html> (Downloaded July 19, 2010)

<sup>31</sup> Government Accountability Office, *Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin* (GAO-10-276), March 2010. <http://www.gao.gov/new.items/d10276.pdf>

<sup>32</sup> Government Accountability Office, *Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes* (GAO-10-313), March 15, 2010, Executive Summary. <http://www.gao.gov/new.items/d10313.pdf> (Downloaded July 19, 2010)

<sup>33</sup> Project On Government Oversight, "The Starting Salary for an Offshore Operations and Safety Inspector at MMS is \$38K," June 4, 2010. <http://pogoblog.typepad.com/pogo/2010/06/the-starting-salary-for-an-offshore-operations-and-safety-inspector-at-mms-is-38k.html>

<sup>34</sup> Testimony of Mary L. Kendall, Acting Inspector General for the Department of the Interior, Before the House Committee on Natural Resources Subcommittee on Energy and Mineral Resources, June 17, 2010, p. 2. <http://www.doi.gov/images/stories/KendallTestimony17June2010.pdf> (Downloaded July 19, 2010)

<sup>35</sup> Testimony of Bobby Maxwell Before the Subcommittee on Energy and Mineral Resources United States House of Representatives, March 28, 2007, pp. 1-2. [http://resourcescommittee.house.gov/images/Documents/20070328/testimony\\_maxwell.pdf](http://resourcescommittee.house.gov/images/Documents/20070328/testimony_maxwell.pdf) (Downloaded July 19, 2010)

environmental and oil and gas production verification goals.<sup>36</sup> We believe that the proposed split of MMS would help to increase MMS's independence from industry.

In some cases, MMS lacks the rules and tools it needs to do its job. For example, the GAO found that Interior's measurement regulations are grossly outdated and fail to address current measurement technologies, and as a result, royalty payments may not be accurate.<sup>37</sup> Royalty collections are one of the largest sources of revenue for the government after taxes, and MMS has a fiduciary responsibility to taxpayers to ensure their accurate measurement and collection. Representative Maloney's legislation asking for the National Academy of Engineering to determine the need for improvements (H.R. 1462) would significantly help MMS accomplish this.

When it comes to the inspectors, we believe it is essential for the government establish federal training academies to ensure that inspectors both on and offshore receive regular training not paid for or run by industry. Similar permanent federal training academies already exist for mine and health safety, the Army, Air Force, Coast Guard, Maritime, Navy, and FBI.<sup>38</sup> To give some color to the IG's findings that training had not been offered in ten years, POGO learned of an inspector who after three years on the job still had NO training. According to testimony before the joint Coast Guard/MMS hearings in Louisiana, the last inspection conducted on the Deepwater Horizon was performed by an inspector who was still "in training" for drilling inspections.<sup>39</sup> Why was MMS sending inspectors to conduct inspections they were not adequately trained to conduct?

POGO is finding that MMS inspectors are just beginning to speak out -- despite the fact that they have no real whistleblower protections. And I can tell you with experience that MMS has been a hostile place for whistleblowers. If there is another takeaway from the disaster, it is that whistleblower protections for federal employees are urgently needed.

In addition to establishing these training academies, Congress and Interior should:

- Statutorily affirm the split of MMS.
- Ensure that there will be enough inspectors.

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<sup>36</sup> Government Accountability Office, *Testimony Before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, House of Representatives, on Oil and Gas Management: Key Elements to Consider for Providing Assurance of Effective Independent Oversight* (GAO-10-852T), June 17, 2010, p. 5. <http://www.gao.gov/new.items/d10852t.pdf> (Downloaded July 19, 2010)

<sup>37</sup> Government Accountability Office, *Oil and Gas Measurement: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes* (GAO-10-313), March 2010, Executive Summary. <http://www.gao.gov/new.items/d10313.pdf>

<sup>38</sup> United States Department of Labor, "National Mine Health and Safety Academy." <http://www.msha.gov/PROGRAMS/EPD2.HTM> (Downloaded July 19, 2010)

<sup>39</sup> U.S. Coast Guard / MMS Marine Board of Investigation into the Marine Casualty, Explosion, Fire, Pollution, and Sinking of Mobile Offshore Drilling Unit Deepwater Horizon, with Loss of Life in the Gulf of Mexico, May 11, 2010, p. 315. [http://www.deepwaterhorizonresponse.com/posted/3043/Deepwater\\_Horizon\\_Joint\\_Investigation\\_Transcript\\_May\\_11\\_2010.621903.pdf](http://www.deepwaterhorizonresponse.com/posted/3043/Deepwater_Horizon_Joint_Investigation_Transcript_May_11_2010.621903.pdf) (Downloaded July 20, 2010)



- Consider increasing the pay and GS scale for inspectors to be comparable to MMS auditors and IG evaluators and criminal investigators. The disaster in the Gulf has demonstrated that rig inspectors perform equally important functions for Interior, and they should be adequately compensated for it.
- Provide oil and gas industry employees with best-practices whistleblower protections so that workers who face retaliation will have a fair review of their complaints by the Department of Labor and access to district courts, such as those included in the financial reform legislation for financial industry employees, and the protections established for manufacturing and transportation employees, Department of Defense contractors, and others.
- Consider creating an incentive program to encourage whistleblowers to come forward and disclose wrongdoing to the Department of the Interior. Such a program would allow for an award to whistleblowers whose information leads to the federal government pursuing successful sanctions on those regulated under the Outer Continental Shelf Lands Act.

Ultimately, the reorganization of MMS needs to make clear that the resultant bureaus are there to serve taxpayers and protect their resources, not industry. The reorganization effort should include a clear spelling out of the missions and goals of the various new bureaus, guidelines and rules for carrying out the various tasks of the bureaus, and an establishment of clear lines of communication between different offices within the bureaus and other agencies so that employees know who to confer with on particular issues and how to confer with them.

We are happy that Congress and the Administration are taking a serious look at MMS's problems, but it shouldn't have taken a disaster of this magnitude to fix the obvious and well-known problems at this agency. If we can learn from this disaster and ensure more safety and oversight and fewer conflicts of interest going forward, perhaps we can avoid another disaster like that in the Gulf. As a first important step, Congress must enact H.R. 3534 and S. 3516.

Thank you again for your oversight of MMS and for asking me to testify. I look forward to answering any questions you may have, and to working with your Committee on this issue.