

111TH CONGRESS
2D SESSION

S. 3344

To establish an independent, nonpartisan commission to investigate the causes and impact of, and evaluate and improve the response to, the explosion, fire, and loss of life on and sinking of the Mobile Drilling Unit Deepwater Horizon and the resulting uncontrolled release of crude oil into the Gulf of Mexico, and to ensure that a similar disaster is not repeated.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2010

Mr. WHITEHOUSE (for himself, Mr. MENENDEZ, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish an independent, nonpartisan commission to investigate the causes and impact of, and evaluate and improve the response to, the explosion, fire, and loss of life on and sinking of the Mobile Drilling Unit Deepwater Horizon and the resulting uncontrolled release of crude oil into the Gulf of Mexico, and to ensure that a similar disaster is not repeated.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be referred to as
 3 the “BP Deepwater Horizon Disaster Inquiry Commission
 4 Act of 2010”.

5 (b) **TABLE OF CONTENTS.**—The table of contents of
 6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Establishment and duties of BP Deepwater Horizon Disaster Inquiry
 Commission.
- Sec. 4. Composition of Commission.
- Sec. 5. Meetings and hearings.
- Sec. 6. Powers of Commission.
- Sec. 7. Staff of Commission.
- Sec. 8. Compensation and travel expenses.
- Sec. 9. Security clearances for Commission members and staff.
- Sec. 10. Reporting and termination of Commission.
- Sec. 11. Authorization of appropriations.

7 **SEC. 2. DEFINITIONS.**

8 For purposes of this Act, the following definitions
 9 apply:

10 (1) The term “Commission” means the BP
 11 Deepwater Horizon Disaster Inquiry Commission.

12 (2) The term “Mobile Drilling Unit Deepwater
 13 Horizon” means the drilling platform owned by
 14 Transocean, Ltd, and leased to BP Exploration and
 15 Production, Inc.

16 (3) The term “oil disaster” means the explo-
 17 sion, fire, and loss of life on and sinking of the Mo-
 18 bile Drilling Unit Deepwater Horizon and the result-
 19 ing pollution, including the uncontrolled release of
 20 crude oil into the Gulf of Mexico.

1 **SEC. 3. ESTABLISHMENT AND DUTIES OF BP DEEPWATER**
2 **HORIZON DISASTER INQUIRY COMMISSION.**

3 (a) ESTABLISHMENT.—There is hereby established
4 an independent, nonpartisan commission within the execu-
5 tive branch, to be known as the BP Deepwater Horizon
6 Disaster Inquiry Commission.

7 (b) DUTIES.—

8 (1) INVESTIGATION OF CAUSES.—The Commis-
9 sion shall conduct an investigation of the causes of
10 the oil disaster, including an investigation of the fol-
11 lowing:

12 (A) The performance of BP Exploration
13 and Production, Inc., Transocean, Ltd., and
14 other entities affiliated with the Mobile Drilling
15 Unit Deepwater Horizon.

16 (B) The compliance of such entities with
17 Federal, State, and local laws and regulations,
18 and their conformance with their own practices
19 and industry practices.

20 (C) The performance of Federal, State,
21 and local agencies responsible for oversight, in-
22 spection, and enforcement.

23 (D) The compliance of such agencies with
24 Federal, State, and local laws and regulations
25 governing their actions.

1 (2) EVALUATION OF IMPACT.—The Commission
2 shall evaluate the current and future impact of the
3 oil disaster on the environment, economy, and public
4 health.

5 (3) EVALUATION OF RESPONSE.—The Commis-
6 sion shall evaluate the adequacy of the response to
7 the oil disaster, including an evaluation of the fol-
8 lowing:

9 (A) The response by BP Exploration and
10 Production, Inc., Transocean, Ltd., and other
11 entities affiliated with the Mobile Drilling Unit
12 Deepwater Horizon.

13 (B) The compliance of such entities with
14 Federal, State, and local laws and regulations,
15 and their conformance with their own practices
16 and industry practices for responding to such a
17 disaster.

18 (C) The response by Federal, State, and
19 local agencies.

20 (D) The compliance of such agencies with
21 Federal, State, and local laws and regulations
22 governing their response.

23 (E) The accuracy and availability to the
24 public of information about the oil disaster
25 from—

1 (i) BP Exploration and Production,
2 Inc., Transocean, Ltd., and other entities
3 affiliated with the Mobile Drilling Unit
4 Deepwater Horizon; and

5 (ii) Federal, State, and local agencies.

6 (F) How the response to the oil disaster is
7 affected by conditions in the marine and atmos-
8 pheric environment (including sea state, tides,
9 currents, wind speed and direction, and absence
10 of sea ice).

11 (G) How the response to the oil disaster
12 affects the marine and atmospheric environ-
13 ment (including with respect to marine life and
14 fisheries), and the accuracy and availability to
15 the public of information about the effects of
16 the response.

17 (4) DEVELOPMENT OF RECOMMENDATIONS.—

18 The Commission shall develop recommendations—

19 (A) to improve the response to the oil dis-
20 aster, including through modification of pro-
21 posed plans to mitigate and monitor the impact
22 of the oil disaster; and

23 (B) to minimize the risk and mitigate the
24 impact of future such disasters, including
25 through—

1 (i) changes to Federal law and regula-
2 tions, including laws and regulations for
3 public health and safety, conservation, and
4 resource management and other laws and
5 regulations for preventing and mitigating
6 the impact of such disasters; and

7 (ii) improvements in industry prac-
8 tices.

9 (5) EVALUATION OF IMPLICATIONS FOR OFF-
10 SHORE OIL AND GAS ACTIVITIES.—The Commission
11 shall evaluate the implications of the oil disaster,
12 and any risk of other such disasters, for current and
13 future offshore oil and gas activities by the United
14 States.

15 (c) REVIEW OF INFORMATION BY COMMISSION.—In
16 carrying out the duties assigned by subsection (b), the
17 Commission shall comply with the following requirements:

18 (1) REVIEW OF INFORMATION.—The Commis-
19 sion shall review and (as applicable) qualitatively
20 and quantitatively analyze the following information,
21 subject to its availability:

22 (A) The report submitted pursuant to the
23 Joint Investigation convened in paragraph (3)
24 of the Joint Department of the Interior and

1 Department of Homeland Security Convening
2 Order dated April 27, 2010.

3 (B) Other Federal, State and local govern-
4 mental evaluations of the oil disaster.

5 (C) Data and evidence from oversight, in-
6 spection, and enforcement activities, including
7 monitoring activities.

8 (D) All other information determined by
9 the Commission to be of value in carrying out
10 its duties.

11 (2) EVALUATION OF AVAILABILITY AND ACCU-
12 RACY OF INFORMATION.—The Commission shall
13 evaluate the availability and accuracy of baseline
14 data against which the impact of the oil disaster
15 may be measured.

16 **SEC. 4. COMPOSITION OF COMMISSION.**

17 (a) COMPOSITION OF COMMISSION.—Not later than
18 30 days after the date of the enactment of this Act, the
19 President shall appoint 15 members to the Commission,
20 including each of the following individuals:

21 (1) One individual from each list submitted
22 pursuant to subsection (c).

23 (2) The Governor of a Gulf State, or the Gov-
24 ernor's designee.

1 (3) The Governor of a Coastal State other than
2 a Gulf State, or the Governor's designee.

3 (4) One individual from a Gulf State who has
4 been affected by the oil disaster.

5 (b) ADDITIONAL REQUIREMENTS FOR COMPOSI-
6 TION.—The membership of the Commission shall include
7 individuals with natural resources and environmental ex-
8 pertise, legal and investigative expertise, and expertise in
9 oil and gas activities, spill response, and any other area
10 determined by the President to be of value to the Commis-
11 sion in carrying out its duties. To the extent practicable,
12 the President shall seek diversity in the membership of
13 the Commission.

14 (c) RECOMMENDATIONS FOR APPOINTMENT.—The
15 following individuals shall submit to the President a list
16 of candidates for membership in the Commission:

17 (1) The majority leader of the Senate.

18 (2) The minority leader of the Senate.

19 (3) The Speaker of the House of Representa-
20 tives.

21 (4) The minority leader of the House of Rep-
22 resentatives.

23 (d) PROHIBITION ON APPOINTMENT OF CERTAIN IN-
24 DIVIDUALS.—

1 (1) IN GENERAL.—Not more than two members
2 of the Commission may be either of the following:

3 (A) An officer or employee of the Federal
4 Government.

5 (B) An individual who has ever had, or has
6 pending, a contractual relationship with the
7 Minerals Management Service.

8 (2) CONFLICTS OF INTEREST.—No member of
9 the Commission shall have ever had a relationship
10 with the Department of the Interior or the Depart-
11 ment of Homeland Security that the President de-
12 termines to constitute a conflict of interest.

13 (e) CHAIRMAN AND VICE CHAIRMAN.—The President
14 shall designate the Chair and Vice Chair of the Commis-
15 sion from among its members.

16 (f) VACANCIES.—Any vacancy in the Commission
17 shall not affect its powers, but shall be filled in the same
18 manner in which the original appointment was made.

19 **SEC. 5. MEETINGS AND HEARINGS.**

20 (a) MEETING DATES.—

21 (1) INITIAL MEETING.—The Commission shall
22 hold its initial meeting not later than 60 days after
23 the date of the enactment of this Act.

1 (2) SUBSEQUENT MEETINGS.—The Commission
2 shall hold subsequent meetings upon the call of the
3 Chair or a majority of its members.

4 (b) PUBLIC MEETINGS AND HEARINGS.—

5 (1) REQUIREMENT.—The Commission shall
6 hold at least—

7 (A) two public meetings or hearings in an
8 area of the Gulf Coast affected by the oil dis-
9 aster; and

10 (B) one public meeting or hearing in an
11 area under consideration for future offshore oil
12 and gas activities.

13 (2) CONFIDENTIALITY.—Public meetings and
14 hearings of the Commission shall be conducted in a
15 manner consistent with the requirements of all stat-
16 utes, regulations, and Executive orders with respect
17 to confidentiality of information.

18 (c) QUORUM.—Eight members of the Commission
19 shall constitute a quorum.

20 **SEC. 6. POWERS OF COMMISSION.**

21 (a) HEARINGS AND EVIDENCE.—For the purpose of
22 carrying out this Act, the Commission or (if authorized
23 by the Commission) any subcommittee or member of the
24 Commission may—

1 (1) hold hearings, take testimony, receive evi-
2 dence, and administer oaths; and

3 (2) subject to subsection (b), require the at-
4 tendance and testimony of witnesses and the produc-
5 tion of books, records, correspondence, memoranda,
6 papers, and other documents.

7 (b) SUBPOENAS.—

8 (1) ISSUANCE.—

9 (A) IN GENERAL.—A subpoena may be
10 issued under this subsection only—

11 (i) by agreement of the Chairman and
12 the Vice Chairman; or

13 (ii) by the affirmative vote of eight
14 members of the Commission.

15 (B) SIGNATURE.—Subject to subparagraph
16 (A), subpoenas issued under this subsection
17 may be issued under the signature of the Chair-
18 man or any member designated by a majority
19 of the Commission, and may be served by any
20 person designated by the Chairman or a mem-
21 ber designated by a majority of the Commis-
22 sion.

23 (2) ENFORCEMENT.—

24 (A) IN GENERAL.—In the case of contu-
25 macy or failure to obey a subpoena issued

1 under paragraph (1), the United States district
2 court for the judicial district in which the sub-
3 poenaed person resides, is served, or may be
4 found, or where the subpoena is returnable,
5 may issue an order requiring such person to ap-
6 pear at any designated place to testify or to
7 produce documentary or other evidence. Any
8 failure to obey the order of the court may be
9 punished by the court as a contempt of that
10 court.

11 (B) ADDITIONAL ENFORCEMENT.—In the
12 case of a failure of a witness to comply with a
13 subpoena or to testify when summoned under
14 authority of this section, the Commission may,
15 by majority vote, certify a statement of fact
16 constituting such failure to the appropriate
17 United States attorney, who may bring the
18 matter before a grand jury for its action, under
19 the same statutory authority and procedures as
20 if the United States attorney had received a
21 certification under sections 102 through 104 of
22 the Revised Statutes of the United States (2
23 U.S.C. 192 et seq.).

24 (c) CONTRACTING.—The Commission may, to such
25 extent and in such amounts as are provided in appropria-

1 tion Acts, enter into contracts to enable the Commission
2 to discharge its duties under this Act.

3 (d) INFORMATION FROM FEDERAL AGENCIES.—

4 (1) IN GENERAL.—The Commission may secure
5 directly from any executive department, bureau,
6 agency, board, commission, office, independent es-
7 tablishment, or instrumentality of the Government,
8 information, suggestions, estimates, and statistics
9 for the purposes of this Act. Each department, bu-
10 reau, agency, board, commission, office, independent
11 establishment, or instrumentality shall, to the extent
12 authorized by law, furnish such information, sugges-
13 tions, estimates, and statistics directly to the Com-
14 mission, upon request made by the Chairman, the
15 chairman of any subcommittee created by a majority
16 of the Commission, or any member designated by a
17 majority of the Commission.

18 (2) RECEIPT, HANDLING, STORAGE, AND DIS-
19 SEMINATION.—Information shall be received, han-
20 dled, stored, and disseminated by members of the
21 Commission and its staff consistent with all applica-
22 ble statutes, regulations, and Executive orders.

23 (e) ASSISTANCE FROM FEDERAL AGENCIES.—

24 (1) GENERAL SERVICES ADMINISTRATION.—
25 The Administrator of General Services shall provide

1 to the Commission on a reimbursable basis adminis-
2 trative support and other services necessary to the
3 performance of the Commission's tasks.

4 (2) OTHER DEPARTMENTS AND AGENCIES.—In
5 addition to the assistance prescribed in paragraph
6 (1), departments and agencies of the United States
7 shall provide to the Commission such funds, facili-
8 ties, staff, and other support services as necessary
9 and authorized by law.

10 (f) POSTAL SERVICES.—The Commission may use
11 the United States mails in the same manner and under
12 the same conditions as departments and agencies of the
13 United States.

14 **SEC. 7. STAFF OF COMMISSION.**

15 (a) IN GENERAL.—

16 (1) APPOINTMENT AND COMPENSATION.—The
17 Chairman, in consultation with the Vice Chairman,
18 and in accordance with rules agreed upon by the
19 Commission, may appoint and fix the compensation
20 of an executive director and such other personnel as
21 may be necessary to enable the Commission to carry
22 out its duties, without regard to the provisions of
23 title 5, United States Code, governing appointments
24 in the competitive service, and without regard to the
25 provisions of chapter 51 and subchapter III of chap-

1 ter 53 of such title relating to classification and
2 General Schedule pay rates, except that no rate of
3 pay fixed under this paragraph may exceed the
4 equivalent of that payable for a position at level V
5 of the Executive Schedule under section 5316 of title
6 5, United States Code. Employees of the Depart-
7 ment of the Interior and the Department of Home-
8 land Security shall not be appointed to the staff of
9 the Commission.

10 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

11 (A) IN GENERAL.—The executive director
12 and any personnel of the Commission shall be
13 considered employees under section 2105 of
14 title 5, United States Code, for purposes of
15 chapters 63, 81, 83, 84, 85, 87, 89, and 90 of
16 that title.

17 (B) MEMBERS OF COMMISSION.—Subpara-
18 graph (A) does not apply to members of the
19 Commission.

20 (b) DETAILEES.—Any Federal employee, including
21 an employee of the Coast Guard, the Department of the
22 Interior, the National Oceanic and Atmospheric Adminis-
23 tration, and the Environmental Protection Agency, but
24 not an employee of the Minerals Management Service,
25 may be detailed to the Commission without reimbursement

1 from the Commission, and such detailee shall retain the
2 rights, status, and privileges of his or her regular employ-
3 ment without interruption.

4 (c) CONSULTANT SERVICES.—The Commission may
5 procure the services of an expert or consultant in accord-
6 ance with section 3109 of title 5, United States Code, at
7 a rate that shall not exceed the equivalent of that payable
8 for a position at level IV of the Executive Schedule under
9 section 5315 of title 5, United States Code.

10 **SEC. 8. COMPENSATION AND TRAVEL EXPENSES.**

11 (a) COMPENSATION.—Each member of the Commis-
12 sion may be compensated, for each day during which the
13 member is engaged in the actual performance of the duties
14 of the Commission, at a rate that shall not exceed the
15 equivalent of that payable for a position at level IV of the
16 Executive Schedule under section 5315 of title 5, United
17 States Code.

18 (b) TRAVEL EXPENSES.—While away from their
19 homes or regular places of business in the performance
20 of services for the Commission, members of the Commis-
21 sion shall be allowed travel expenses, including per diem
22 in lieu of subsistence, in the same manner as persons em-
23 ployed intermittently in the Government service are al-
24 lowed expenses under section 5703(b) of title 5, United
25 States Code.

1 **SEC. 9. SECURITY CLEARANCES FOR COMMISSION MEM-**
2 **BERS AND STAFF.**

3 The appropriate Federal agencies or departments
4 shall cooperate with the Commission in expeditiously pro-
5 viding to the Commission members and staff appropriate
6 security clearances to the extent possible pursuant to ex-
7 isting procedures and requirements. No person shall be
8 provided access to classified information under this Act
9 without the appropriate security clearances.

10 **SEC. 10. REPORTING AND TERMINATION OF COMMISSION.**

11 (a) **REPORTS.**—The Commission shall submit to the
12 President and Congress, and make concurrently available
13 to the public—

14 (1) such interim reports as the Commission de-
15 termines will be of immediate value in mitigation of
16 the oil disaster and prevention of other such disas-
17 ters; and

18 (2) not later than 9 months after the date of
19 the enactment of this Act, a final report containing
20 the results of each investigation and evaluation per-
21 formed pursuant to section 3, and the recommenda-
22 tions developed pursuant to subsection (b)(4) of
23 such section.

24 (b) **TERMINATION.**—

25 (1) **IN GENERAL.**—Except as provided under
26 paragraph (2), the Commission shall terminate 60

1 days after the date on which the final report is sub-
2 mitted under subsection (a)(2).

3 (2) **EXTENSION.**—The President may extend
4 the termination date of the Commission as the
5 President determines necessary to coordinate with
6 any related law enforcement investigations.

7 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as are necessary to carry out this Act. Amounts so appro-
10 priated shall remain available until the termination of the
11 Commission.

○