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WORKER HEALTH AND SAFETY FROM THE OIL RIG TO THE SHORELINE

HEARING

BEFORE THE

COMMITTEE ON
EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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WORKER HEALTH AND SAFETY FROM THE OIL RIG TO THE SHORELINE

Wednesday, June 23, 2010
U.S. House of Representatives
Committee on Education and Labor
Washington, DC

The committee met, pursuant to call, at 10:00 a.m., in Room 2175, Rayburn House Office Building, Hon. George Miller [chairman of the committee] presiding.

Present: Representatives Miller, Kildee, Payne, Andrews, Woolsey, Hinojosa, Tierney, Holt, Davis, Bishop of New York, Loebsack, Hirono, Altmire, Hare, Clarke, Courtney, Shea-Porter, Polis, Tonko, Sablan, Titus, Chu, Kline, Petri, Castle, Biggert, Guthrie, Cassidy, and Thompson.

Staff present: Aaron Albright, Press Secretary; Andra Belknap, Press Assistant; Jody Calemine, General Counsel; Lynn Dondis, Labor Counsel, Subcommittee on Workforce Protections; Jose Garza, Deputy General Counsel; David Hartzler, Systems Administrator; Gordon Lafer, Senior Labor Policy Advisor; Livia Lam, Senior Labor Policy Advisor; Sadie Marshall, Chief Clerk; Jerrica Mathis, Legislative Fellow, Ed & Labor; Bryce McKibbon, Staff Assistant; Richard Miller, Senior Labor Policy Advisor; Revae Moran, Detailee, Labor; Alex Nock, Deputy Staff Director; Robert Presutti, Staff Assistant, Labor; Meredith Regine, Junior Legislative Associate, Labor; James Schroll, Junior Legislative Associate, Labor; Mark Zuckerman, Staff Director; Kirk Boyle, General Counsel; Ed Gilroy, Director of Workforce Policy; Angela Jones, Executive Assistant; Barrett Karr, Staff Director; Brian Newell, Press Secretary; Jim Paretti, Workforce Policy Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Ken Serafin, Professional Staff Member; Linda Stevens, Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Professional Staff Member.

Chairman MILLER [presiding]. A quorum being present, the committee will come to order to hold a hearing on worker health and safety from the—pertaining to the British Petroleum oil spill. We are trying to cover the area from the area around the rig to the shoreline, for those who are interested in what we are doing today.

Today the Education and Labor Committee meets to examine critical issues surrounding the health and safety of workers on the oil rig to the shoreline. Sixty-five days ago, during the final stages of drilling an exploratory well 52 miles off the coast of Louisiana,

a blowout and subsequent fire on the Deepwater Horizon rig killed 11 workers and injured 15 others.

This devastating event set in motion the worst environmental disaster in our nation's history. Even more striking, it seems there is no—currently there is no end in sight. We are told that it will take months—even years—to fully calculate the human, economic, and environmental damage.

As cleanup and response activities continue, we must not forget the men who lost their lives and were injured in the Deepwater. We must take every step available to protect against something like this happening again. For the 25,000 workers participating in the cleanup work in the Gulf, we must ensure that everything possible is done to protect the health and safety of the workers cleaning up this mess.

At the core of the tragedy is a multinational corporation with a dismal safety record in this country. This same company cuts corners that resulted in 15 deaths at the Texas City refinery. This same company ignored warnings about corroded pipelines that resulted in 200,000 gallons of crude oil spilled on the Alaska North Slope.

It appears that Deepwater is simply another example of British Petroleum prioritizing profits over the health and safety of workers. British Petroleum's Deepwater Horizon tragedy didn't happen by chance nor was it the result of a "perfect storm" of events. It was predictable and could happen again.

This is why the work of our nation's health and safety agencies is so important. They are tasked by Congress to protect workers when a company carelessly puts its workers in harm's way.

The 130-member crew operation of the Deepwater Horizon was a complex one with a 20 story-high oil derrick at its center spanning the size of a city block. The oversight and regulation of the Deepwater and similar operations is a—appears to be a jurisdictional mishmash between three federal agencies and international shipping laws.

The Occupational Health and Safety Act is our nation's premier law governing workplace health and safety. Since the agency's creation 40 years ago, workplace injuries and fatalities have dropped as workers have had access to on-the-job protections.

However, OSHA does not have any authority for enforcing safety rules beyond three miles of the coastline. Outside of the three miles the United States Coast Guard has the authority, by virtue of the law of this country, to issue worker safety regulations.

The Mineral Management Service also gets into this by covering the safety for drilling equipment and industrial systems. Additionally, the Coast Guard has ceded responsibility for enforcing Coast Guard regulations to Mineral Management Service on fixed oil platforms. And the Deepwater Horizon is a sea-going vessel flagged under the Marshall Islands, not subject to rigorous U.S. licensing requirements.

In light of the current tragedy in the Gulf, I hope we can answer whether or not there is a better way to oversee and protect the health and safety of oil rig workers. The Deepwater disaster clearly demonstrates that the status quo is not good enough and that we must do better.

When something does go wrong it is just as important that there is clear guidance and swift and coordinated response. There are thousands of square miles of the Gulf of Mexico and hundreds of miles of shoreline currently impacted by this spill.

The scale of the cleanup operation is massive and will likely continue to involve thousands of workers over a considerable period of time. It is vital that everything be done to prevent adding to the human toll of this disaster.

The cleanup activity from the shoreline to the source of the spill presents many risks to workers, such as exposure to dangerous conditions and substances that have both short-and long-term health implications. That is why all agencies must coordinate effectively and provide the necessary equipment and expertise to protect cleanup—to protect the cleanup workers.

We will hear testimony today on how cleanup operations are proceeding and whether the cleanup workers are being adequately protected. Starting today, our nation must assess whether or not there are sufficient safety protections on these operations to prevent companies from putting profits ahead of safety.

Our task, beginning today, is to look more deeply into whether or not the current regulatory framework for worker safety is appropriate and effective. Has the responsibility for worker safety been diffused among various agencies with no minimum standard for ensuring worker safety protection?

If agencies other than OSHA regulate safety, should their rules be at least as effective as OSHA's where they overlap? Does the OCS worker covered by MMS and the Coast Guard regulations have adequate whistleblower protections?

Is there need for independent safety regulators so that an agency that is responsible for leasing and revenue collection is not responsible for worker safety and environmental protection? Is there a better structure to ensure worker safety protections from process safety hazards? Are the agencies in charge of the spill response sufficiently coordinating their efforts?

Our witnesses today will provide valuable insights into these questions. I thank the witnesses for joining us and look forward to their testimony.

And with that, I would like now to recognize Congressman Kline, the Senior Republican of the Committee.

[The statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Chairman, Committee on Education and Labor

Good morning.

Today, the Education and Labor Committee meets to examine critical issues surrounding the health and safety of workers on the oil rig to the shoreline.

Sixty-five days ago, during the final stages of drilling an exploratory well 52 miles off the coast of Louisiana, a blowout and subsequent fire on the Deepwater Horizon killed eleven workers and injured fifteen others.

This devastating event set into motion the worst environmental disaster in our nation's history. Even more striking, there seems to be no end in sight.

We're told it will take months or even years to fully calculate the human, economic and environmental damage.

As clean-up and response activities continue, we must not forget the men who lost their lives and were injured at Deepwater. We must take every step available to protect against something like this happening again.

For the 25,000 workers participating in clean-up work in the Gulf, we must ensure that everything possible is done to protect the health and safety of the workers cleaning up BP's mess.

At the core of this tragedy is a multinational corporation with a dismal safety record in this country.

This same company cut corners that resulted in 15 deaths at its Texas City refinery.

This same company ignored warnings about corroded pipes that resulted in 200,000 gallons of crude spilled in Alaska's North Slope.

BP's Deepwater Horizon tragedy didn't happen by chance, nor was it the result of a "perfect storm" of events. It was predictable and could happen again.

This is why the work of our nation's health and safety agencies is so important. They are tasked by Congress to protect workers when a company carelessly puts its employees in harm's way.

The 130 crew operation of the Deepwater Horizon was a complex one, with a twenty story-high oil derrick at her center, spanning the size of a city block.

The oversight and regulation of Deepwater and similar operations is a jurisdictional mishmash between three federal agencies and international shipping laws.

The Occupational Safety and Health Act is our nation's premiere law governing workplace health and safety. Since the agency's creation 40 year ago, workplace injuries and fatalities have dropped as workers' have had access to on-the-job protections.

However, OSHA does not have any authority for enforcing safety rules beyond three miles of the coastline. Outside of three miles, the United States Coast Guard has the authority to issue worker safety regulations.

The Minerals Management Service also gets into the game by covering safety for drilling equipment and industrial systems. Additionally, the Coast Guard has ceded responsibility for enforcing Coast Guard regulations to MMS for fixed oil platforms.

And, the Deepwater Horizon is a sea-going vessel flagged under the Marshall Islands and not subject to more rigorous U.S. licensing requirements.

In light of the current tragedy in Gulf, I hope we can answer whether there is a better way to oversee and protect the health and safety of oil rig workers. The Deepwater disaster clearly demonstrates that the status quo is not good enough.

We must do better.

When something does go wrong, it is just as important that there is clear guidance and a swift and coordinated response.

There are thousands of square miles of Gulf of Mexico and hundreds of miles of shoreline currently impacted by the spill.

The scale of the cleanup operation is massive and will likely continue to involve thousands of workers over several years. It is vital that everything is done to prevent adding to the human toll of this disaster.

The cleanup activity from the shoreline to the source of the spill presents many risks to workers—such as exposure to dangerous conditions and substances that have both short and long-term health implications.

That is why all agencies must coordinate effectively and provide the necessary equipment and expertise to protect cleanup workers.

We will hear testimony today on how cleanup operations are proceeding and whether cleanup workers are being adequately protected.

Starting today, our nation must assess whether there are sufficient safety protections on these operations that prevent companies from putting profits ahead of safety.

Our task beginning today is to look more deeply into whether the current regulatory framework for worker safety is appropriate and effective.

Has responsibility for worker safety been diffused amongst various agencies, with no minimum standard for ensuring worker safety protection? If agencies other than OSHA regulate worker safety, should their rules be at least as effective as OSHA's where they overlap?

Do OCS workers covered by MMS and Coast Guard regulations have adequate whistleblower protections? Is there a need for independent safety regulators, so that an agency that is responsible for leasing and revenue collection is not also responsible for worker safety and environmental protection?

Is there a better structure to ensure worker safety protections from process safety hazards? Are the agencies in charge of the spill response sufficiently coordinating their efforts? Our witnesses today will provide valuable insight into these questions. I thank our witnesses for joining us today and the committee looks forward to their testimony.

Mr. KLINE. Thank you, Mr. Chairman.

And welcome, to our witnesses. I want to thank all of our witnesses for your service to our country, and particularly to the men and women—the people—of the Gulf Coast during this horrific time.

It has been 2 months since an explosion onboard the Deepwater Horizon oil rig claimed the lives of 11 workers and injured 17 more. Sadly, this catastrophic event 50 miles from the shoreline continues to devastate the businesses, communities, and families residing along the Gulf Coast. Our thoughts are with the victims' families and the people of the Gulf Coast as they fight to preserve their way of life.

BP bears total responsibility, including full financial liability of this tragedy, and they must be held accountable for the loss of life, the damage inflicted on the local economy, and the devastation of the area's vast natural resources. I am pleased that an escrow fund managed by an independent third party has been created to mitigate the terrible ongoing impact being felt by the Gulf states and an untold number of American citizens.

While not squarely within this committee's jurisdiction, every member of Congress has an obligation to ensure BP provides every individual who has a legitimate claim with the just and timely compensation they and their families deserve. This committee does, however, have oversight responsibilities concerning workplace safety.

Today we are here to discuss the safety of oil rig workers as well as the workers sent to the scene to clean up this environmental disaster. As of June 14th there was estimated between 40 million and 115 million gallons of oil have spilled into the Gulf of Mexico.

And unlike some other oil in the Gulf, the oil that continues gushing 5,000 feet below sea level is heavy, crude, and easily emulsified, giving the cleanup crews a monumental task. As Ed Overton, an environmental scientist with the the Louisiana State University, has stated, "If I had to pick a bad oil I would put this right up there."

As we learned from recent events, including the aftermath of Hurricane Katrina, too often the hazards to worker safety are not fully understood at the time of the crisis. We must take every precaution and nothing for granted in the BP oil spill, recognizing that in an unprecedented disaster such as this one we are learning as we go.

Response workers must have every resource necessary to move quickly and in a manner that does not compromise the workers' own health and safety. Numerous federal agencies, each operating with their own mission and array of officials' rules and regulations have descended on the Gulf to assist in the cleanup and investigate the cause of this disaster.

Yet, we know from experience that poorly organized federal bureaucracies can be clumsy, delay response time, and even impede efforts underway at the state and local levels. There are a number of federal agencies sharing regulatory responsibility, involving the both safety of crews working on the rigs and the teams cleaning up the beaches.

State officials and individual citizens have expressed frustration as they attempt to navigate the federal response process. It is my hope today's hearing will help sort this all out and provide a clear picture of how industry, states, and the federal government are ensuring workplace safety on oil rigs and in the event of an oil spill.

We will also look for answers to a number of important questions, such as whether federal regulators are properly balancing worker safety and the need for a fast response effort and whether or not BP is doing everything in its power to ensure the safety of workers struggling around the clock to rescue the Gulf Coast from this unimaginable disaster.

Mr. Chairman, as a nation we mourn the loss of life and livelihood in the Gulf region. Now is the time to ask tough questions so we can move forward in a manner that protects all workers and restores to the people of the Gulf Coast their cherished way of life.

Thank you, Mr. Chairman, for holding this hearing. And I yield back.

[The statement of Mr. Kline follows:]

Prepared Statement of Hon. John Kline, Senior Republican Member, Committee on Education and Labor

Thank you Mr. Chairman. Welcome to our witnesses and thank you all for your service to the country and the people of the Gulf Coast during this difficult time.

It has been two months since an explosion onboard the Deepwater Horizon oil rig claimed the lives of 11 workers and injured 17 more. Sadly, this catastrophic event 50 miles from the shoreline continues to devastate the businesses, communities, and families residing along the Gulf Coast. Our thoughts are with the victims' families and the people of the Gulf Coast as they fight to preserve their way of life.

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safety on oil rigs and in the event of an oil spill. We will also look for answers to a number of important questions, such as whether federal regulators are properly balancing worker safety and the need for a fast response effort, and whether or not BP is doing everything in its power to ensure the safety of workers struggling around the clock to rescue the Gulf Coast from this unimaginable disaster.

Mr. Chairman, as a nation we mourn the loss of life and livelihood in the Gulf region. Now is the time to ask tough questions so we can move forward in a manner that protects all workers and restores to the people of the Gulf Coast their cherished way of life.

Thank you for holding this hearing, Mr. Chairman, and again, thank you to the witnesses for being with us this morning.

Chairman MILLER. Thank you very much.

Pursuant to committee rule 7(c) all members may submit an opening statement in writing which will be made part of the permanent record of this hearing. And I would like now to introduce our panel of witnesses.

First will be Rear Admiral Kevin Cook, who is the director of prevention policy for Marine safety, security, and stewardship for the U.S. Coast Guard. In his current role Rear Admiral Cook develops and maintains policy standards and program alignment for the prevention activities of the Coast Guard, including navigation safety, Marine casualty investigation, and vessel inspection. At the time of his selection he was serving as chief of staff to the 13th Coast Guard district in Seattle, Washington.

Next will be Mr. Doug Slitor, who is currently acting chief of Office of the Offshore Regulatory Programs for the Bureau of Ocean Energy Management, Regulation, and Enforcement, formerly Mineral Management Services. Mr. Slitor has been with the Department of the Interior since 1981. He has served as chief of the OCS information program, worked in the inspection and enforcement program, and has also served as the national civil penalties coordinator branch chief of safety and enforcement.

Dr. David Michaels is the assistant secretary of labor for occupational safety and health in the Occupational Safety and Health Administration. Prior to joining OSHA, Dr. Michaels was a professor of environmental and occupational health at George Washington University School of Public Health and Health Services, where he directed the department's project on scientific knowledge and public policy. From 1998 to 2001 Dr. Michaels served as assistant secretary for energy—of energy for Environment Safety and Health.

Dr. John Howard is the director of the National Institute of Occupational Safety and Health, which is part of the Centers for Disease Control and Prevention. He served in this capacity from July 2002 to July 2008 and was reappointed in September 2009.

Dr. Howard is board-certified in internal medicine, legal medicine, and occupational medicine. He has also been admitted to the practice of medicine and the law in the state of California and the District of Columbia and he is a member of the U.S. Supreme Court Bar.

Before we begin, some of you are familiar with the congressional system, but when you begin your testimony, which will go 5 minutes, a green light will go on. When there is a minute remaining an orange light will go on; we would ask you to start thinking about summarizing your testimony. And then a red light, at which your time has run out, but we want you to make sure that you fin-

ish in what you believe is a coherent fashion for you in getting your thoughts across.

Rear Admiral Cook, we will begin with you. Welcome to the committee.

STATEMENT OF REAR ADMIRAL KEVIN COOK, DIRECTOR, PREVENTION POLICY FOR MARINE SAFETY, SECURITY, AND STEWARDSHIP, U.S. COAST GUARD

RADM COOK. Good morning, Mr. Chairman, and distinguished members of the committee. I appreciate the opportunity to appear before you to discuss the issues related to mariner safety in the oil industry. In my role as the Coast Guard director of prevention policy I oversee vessel, offshore facility, and mobile offshore drilling unit compliance with applicable U.S. and international laws, regulations, and treaties.

I prepared a written statement to support today's testimony and would ask to have the included in the record, Mr. Chairman.

Chairman MILLER. Without objection.

RADM COOK. On the evening of April 20th the mobile offshore drilling unit, Deepwater Horizon, reported an explosion. The Coast Guard's response began as a search and rescue mission.

Within a few hours 115 of the 126 crew members were safely rescued. Search and rescue continued over the next 3 days, but sadly, the remaining 11 crew members were never found.

Before continuing, I want to express my heartfelt condolences to the families and friends of the 11 men who so tragically lost their lives.

The safety of mariners operating in the U.S. waters, including the outer continental shelf, or OCS, is paramount importance to the Coast Guard. To help ensure mariner safety the Coast Guard coordinates with various federal agencies, including the Minerals Management Service and the Occupational Health and Safety Administration. With mariner safety as a primary driver directly after the Deepwater Horizon incident the Coast Guard, in partnership with MMS, issued a safety alert requiring operators on the OCS to carry out an immediate and extensive review of critical safety equipment and emergency procedures.

There are four types of units which operate on the outer continental shelf. They can be either U.S. or foreign flagged. These units are fixed and floating facilities, mobile offshore drilling units—also known as MODUs and rigs—and support vessels. Regardless of the flag of registry for the type of offshore unit, the Coast Guard assumes an appropriate enforcement role.

In 2004 a memorandum of understanding between the Coast Guard and MMS delegated responsibility to MMS for ensuring worker safety on fixed outer continental shelf facilities. In accordance with Title 33 of the Code of Federal Regulations in Subchapter N, prior to turning over the annual examination of these facilities to MMS the Coast Guard carries out an initial inspection to ensure the facility is in compliance with applicable safety regulations.

Additionally, in accordance with Title 30 of the Code of Federal Regulations, the two agencies work closely together to review the current regulations and propose revisions as necessary to maintain

appropriate levels of safety and keep pace with evolving offshore technology.

The Coast Guard carries out safety inspections on U.S.-flagged floating facilities, MODUs, and vessels operating on the outer continental shelf in order to verify safety and issue the necessary flag state statutory certificates.

For foreign flag MODUs, the flag state or a recognized organization working on behalf of the flag state carries out the inspections required to issue those statutory certificates. The Coast Guard then conducts port state control examinations on these MODUs in order to verify that they meet equivalent domestic and international safety requirements prior to them being permitted to commence drilling operations in U.S. waters.

The U.S. Coast Guard's port state control program exceeds current international guidelines, and every annual port state control examination we perform on foreign units incorporates verification of worker safety requirements. In accordance with domestic and international law, all vessels—including self-propelled MODUs over 500 gross tons, the category which the Deepwater Horizon fits into—are required to have the safety management system fully implemented. This management system provides for safe practices and ship operation and a safe working environment for crew members. The Coast Guard verifies satisfactory implementation of this safety management system upon each examination.

The outer continental shelf Lands Act grants the Coast Guard certain workplace safety authority on the OCS. Regulations have been promulgated on many occupational safety issues within the realm of the Coast Guard's maritime safety expertise—for example, lifesaving, firefighting, and personal protective equipment. The Coast Guard standards for workplace safety on the outer continental shelf are found in Title 33, Code of Federal Regulations, Subchapter N.

Under a 1979 memorandum of understanding between the Coast Guard and OSHA, the agencies set forth procedures intended to avoid duplication while still retaining each agency's respective responsibilities. The memorandum of understanding emphasizes the Coast Guard's role as the principal federal agency in matters of safety and occupational health on the OCS.

In closing, let me emphasize that the Coast Guard places the highest priority on the safety and health of all mariners operating on the U.S. outer continental shelf. The Coast Guard and MMS are conducting a joint investigation of the Deepwater Horizon incident. The lessons learned from this investigation will be incorporated into revised guidelines to further enhance worker safety.

The Coast Guard looks forward to continuing cooperation with MMS and OSHA to maximize safety and health protection of mariners working in the offshore oil industry and to avoid duplication of effort.

Thank you again for the opportunity to testify today. I will be pleased to answer any questions that you have.

[The statement of Admiral Cook follows:]

Prepared Statement of RADM Kevin Cook, Director of Prevention Policy, U.S. Coast Guard

Good morning Mr. Chairman and distinguished members of the Committee. I appreciate the opportunity to appear before you to discuss issues related to the health and safety of all individuals working on the outer continental shelf. In my role as Coast Guard Director of Prevention Policy, one of my primary responsibilities is to oversee the compliance of vessel, offshore facility, and mobile offshore drilling units with all applicable U.S. and international laws, regulations, and policies.

On the evening of April 20, 2010, the Transocean-owned, BP-chartered, Marshall Islands-flagged Mobile Offshore Drilling Unit DEEPWATER HORIZON, located approximately 72 miles Southeast of Venice, Louisiana, reported an explosion and fire onboard. This began as a Search and Rescue mission—within the first few hours, 115 of the 126 crewmembers were safely recovered; Search and Rescue activities continued through April 23, but the remaining 11 crewmembers were never found.

Concurrent with the Search and Rescue mission, efforts to extinguish the fire and mitigate the impacts of the approximately 700,000 gallons of diesel fuel onboard began almost immediately. After two days of these efforts, on April 22, the Mobile Offshore Drilling Unit sank into approximately 5,000 feet of water. On April 23, remotely operated vehicles located the Mobile Offshore Drilling Unit on the seafloor, and on April 24, BP found the first two leaks in the riser pipe and alerted the federal government. Within 24 hours of leaks being detected, the Coast Guard's Federal on Scene Coordinator (FOSC) accessed the Oil Spill Liability Trust Fund (OSLTF) to ensure funds were available to speed the federal response to the threat of an oil spill. Remotely operated vehicles continue to monitor the flow of oil.

The Federal on-scene Coordinator established the Unified Area Command on April 23 in Robert, LA. The Unified Area Command utilized the Incident Command System as a proven organizational structure for incident management in accordance with the National Response Framework and the National Oil and Hazardous Substances Pollution Contingency Plan. The function of Incident Command System is to provide a common method for developing and implementing tactical plans to efficiently and effectively manage a multi-agency response to an emergency, such as an oil spill. The Incident Command System organization for this response includes Incident Command Posts and Unified Commands at the local level, and a Unified Area Command at the regional level. It is comprised of representatives from the Coast Guard (the FOSC), other federal, state and local agencies, as well as BP as a responsible party.

From the very beginning of this crisis, the federal government has been in charge of the largest environmental cleanup effort in our nation's history—an effort led by Admiral Thad Allen, who has almost forty years of experience responding to disasters. Thousands of ships and other vessels have been deployed to the Gulf. There are now nearly 33,000 personnel who are working across four states to contain and clean up the oil. These personnel are assisting in efforts to prevent more oil from coming ashore, clean beaches, train response workers, and help process claims.

As a result of our efforts, millions of gallons of oil have already been removed from the water through burning, skimming, and other removal methods. Over five-and-a-half million feet of boom has been laid to block and absorb the approaching oil. We have approved the construction of new barrier islands in Louisiana in an effort to stop the oil before it reaches the shore, and we are working with Alabama, Mississippi, and Florida to implement creative approaches to protect their unique coastlines.

Inspection of oil platforms

The Minerals Management Service (MMS) is responsible for inspecting oil platforms on behalf of the Coast Guard, using Coast Guard regulations. Because Mobile Offshore Drilling Units are considered vessels, however, they also fall under the purview of the Coast Guard's inspection regime. Each Mobile Offshore Drilling Unit documented under the laws of a foreign nation must obtain a Letter of Compliance (now called a Certificate of Compliance) from the Coast Guard prior to engaging in outer continental shelf activities. When a foreign flagged Mobile Offshore Drilling Unit, such as DEEPWATER HORIZON, enters U.S. waters, the owner must contact the Coast Guard and request a Certificate of Compliance inspection. A Certificate of Compliance is valid for a two-year period in accordance with 33 CFR 143.210.

In order to issue a Certificate of Compliance, one of three conditions must be met:

- The Mobile Offshore Drilling Unit is constructed to meet design and equipment standards of the I.S. Coast Guard's regulations at46 CFR part 108;
- The Mobile Offshore Drilling Unit is constructed to meet the design and equipment standards of the documenting nation (flag state) if the standards provide a

level of safety generally equivalent to or greater than that provided under 46 CFR part 108; or

• The Mobile Offshore Drilling Unit is constructed to meet the design and equipment standards for Mobile Offshore Drilling Units contained in the International Maritime Organization Code for the construction and equipment of Mobile Offshore Drilling Units.

Certificate of compliance/certificate of inspection

The Coast Guard is responsible for carrying out the inspections, tests and surveys required to issue the necessary statutory certificates on U.S. Mobile Offshore Drilling Units. For foreign vessels, the flag state—or authorized recognized organization (RO) working on behalf of the flag state—carries out the inspections, tests and surveys required to issue the statutory certificates. The Coast Guard performs port state-level examinations on foreign vessels to verify that the flag state has met its responsibilities and that the Mobile Offshore Drilling Unit meets the appropriate international and domestic requirements.

Responsibilities for worker safety

The Outer Continental Shelf Lands Act, 43 USC 1331 et seq., enacted in 1953 and amended in 1978, grants the Coast Guard certain workplace safety authority on the outer continental shelf. The Act requires the Coast Guard to promulgate regulations or standards applying to "unregulated hazardous working conditions related to activities on outer continental shelf upon a determination that such regulations or standards are necessary" (43 USC 1347 (c)), and preserves the authority of other agencies with respect to outer continental shelf on matters related to their respective areas of expertise (43 USC 1347(d)).

The Coast Guard has promulgated regulations on many occupational safety issues on the outer continental shelf within the realm of its maritime safety expertise (e.g. personal protective equipment, lifesaving and firefighting). The Coast Guard standards for workplace safety on the outer continental shelf may be found in 33 CFR Parts 140-147.

Under a Memorandum of Understanding between the Coast Guard and OSHA dated Dec. 19, 1979, the agencies set forth procedures intended to avoid duplication regarding the issuance of citations for violations, while still retaining each agency's respective responsibilities. The Memorandum of Understanding emphasizes the Coast Guard's role as the "principal Federal agency in matters of occupational safety and health on the outer continental shelf," and is directed toward "minimize[ing] the need for OSHA's routine inspection authority."

MMS has also promulgated certain safety and health regulations, primarily pertaining to fire and explosion hazards, 30 CFR 250.106 et seq.

Conclusion

In closing, I would like to reiterate that the Coast Guard's role as the principal Federal agency in matters of occupational safety and health on the outer continental shelf and it's commitment to the safety and health of all individuals working on the outer continental shelf. The Coast Guard will continue to cooperate with OSHA and MMS to maximize the safety and health protection of mariners and streamline our efforts.

Thank you again for the opportunity to testify today. I am happy to answer any questions you may have.

Chairman MILLER. Thank you.

Mr. Slitor?

I don't think your——

STATEMENT OF DOUG SLITOR, ACTING CHIEF, OFFICE OF OFFSHORE REGULATORY PROGRAMS, OFFSHORE ENERGY AND MINERALS MANAGEMENT, BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION, AND ENFORCEMENT (FORMERLY MINERALS MANAGEMENT SERICE), U.S. DEPARTMENT OF THE INTERIOR

Mr. SLITOR. Okay.

Thank you, Chairman Miller, Ranking Member Kline, and members of the committee, for the opportunity to be here today to dis-

cuss the Bureau of Ocean Energy Management Regulation and Enforcement's regulatory program on the health and safety of workers on oil and gas facilities on the outer continental shelf. I will refer to our agency as BOE through the balance of my testimony.

The BOE holds paramount the safety of all operations under its jurisdiction on the OCS. With over 35,000 people directly or indirectly involved in the exploration, development, and production of vital energy resources for our nation, every action taken by BOE is designed to ensure that risks to personnel are eliminated or mitigated to the greatest extent possible.

Following the tragic and unprecedented explosion of the Deepwater Horizon drilling rig, Secretary Salazar ordered immediate inspections of all deepwater oil and gas drilling operations in the Gulf of Mexico, and the department, along with the U.S. Coast Guard, issued a safety notice to all rig operators reminding them of their responsibilities to follow our regulations and to conduct full and thorough tests of their equipment.

As directed by the OCS Lands Act, the Bureau of Ocean Energy Management shares jurisdictional authority on offshore oil and gas activities with the U.S. Coast Guard. While BOE has regulatory requirements that speak to worker health and safety in a very general sense, Coast Guard's mandate is more specific to offshore personnel safety.

BOE's primary function is to ensure the operator complies with all regulations addressing drilling, production, and workover equipment, and process safety management. By regulating these activities BOE requirements create a safer work area for offshore workers.

As mentioned, BOE does have general health and safety regulations that require the operator to conduct operations in a safe and workman-like manner and to provide for the safety of all personnel by taking all necessary precautions to correct and remove any hazardous oil and gas accumulation or other health, safety, or fire hazards. BOE also has requirements for the training of personnel regarding their competency level in conducting their jobs.

OCSLA directed the U.S. Coast Guard to oversee personnel safety. Coast Guard's requirements address personal protection equipment—safety belts and harnesses, personal flotation devices, respiratory protection, eyewash equipment, deck openings, means of escape, guards, rails, and fences, life-preservers, first aid kits, fire extinguishers, and emergency drills.

Through a regulatory change in 2002 the Coast Guard authorized BOE to conduct safety inspections on their behalf. This was done in an effort to optimize the use of government resources and improve safety compliance through the application of the more frequent BOE inspection regime. Since 2003 the BOE has conducted almost 4,000 partial and complete fixed platform inspections annually on behalf of the Coast Guard.

As both BOE and the Coast Guard have been given distinct regulatory authorities over OCS activities, these two agencies have had to work together closely where these jurisdictions intersect. In 2004 a memorandum of understanding was signed by both agencies for the purpose of addressing individual areas of mutual jurisdiction through a series of topic-specific memoranda of agreements.

The overarching MOU provides the basis by which the two agencies clearly articulate lines of authority and address how we can work together most efficiently. The MOAs are more technical in nature, providing detailed guidance on topics such as civil penalties, incident investigations, and floating offshore facilities.

The OCSLA also requires BOE and the Coast Guard to investigate and prepare a public report of each incident that includes fatalities, major fires, spills over 200 barrels, or serious injuries. On March 27th, 2009, BOE and the Coast Guard signed a MOA identifying the responsibilities of each organization. The MOA delineates these responsibilities by the type of facility and the type of system involved in the incident, which agency has investigative jurisdiction, and how the agencies should coordinate and conduct joint investigations when appropriate.

If operators fail to comply with BOE regulations they are subject to incidence of noncompliance with enforcement actions ranging from a warning to the shut-in of an entire production facility. In cases where a violation has created high potential for or resulted in injury to personnel, the violation is referred for civil penalty review.

If BOE determines that a violation contains an element of knowing and willful intent then BOE may refer the violation to the inspector general for their consideration as a criminal penalty. For those operators displaying chronic poor performance, BOE has regulations that allow for an operator to be placed on probation or disqualify them from operating on the OCS or acquiring any new leases or reassignments of existing leases.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to questions you or members of the committee have.

[The statement of Mr. Doug Slitor follows:]

Prepared Statement of Doug Slitor, Acting Chief, Office of Offshore Regulatory Programs, Bureau of Ocean Energy Management, Regulation, and Enforcement

Thank you, Chairman Miller, Ranking Member Kline, and Members of the Committee for the opportunity to be here today. I appreciate the opportunity to discuss the Bureau of Ocean Energy Management, Regulation and Enforcement's (BOE) regulatory program on health and safety issues of workers on oil and gas drilling rigs and production platforms on the Outer Continental Shelf (OCS).

The tragedy and massive spill in the Gulf illustrates the need to improve safety on the OCS. To ensure the independence of the OCS inspections and enforcement mission, the Secretary announced the reorganization of the MMS, which will establish the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement under the supervision of the Assistant Secretary for Land and Minerals Management; and the Office of Natural Resources Revenue under the supervision of the Assistant Secretary for Policy, Management and Budget. On June 18th, 2010, Secretary Salazar issued Secretarial Order number 3302, and renamed the Minerals Management Service the Bureau of Ocean Energy Management, Regulation and Enforcement ("Bureau of Ocean Energy" or "BOE") as it undergoes this reorganization and reform.

Following the tragic and unprecedented explosion of the Deepwater Horizon drilling rig, Secretary Salazar ordered immediate inspections of all deepwater oil and gas drilling operations in the Gulf of Mexico, and directed the MMS to stop issuing all permits to drill new offshore oil and gas wells. The Department along with the U.S. Coast Guard also issued a joint safety alert to all rig operators reminding them of their responsibilities to follow our regulations and to conduct full and thorough tests of their equipment.

At the President's direction, on May 27th, the Secretary presented to the President his recommendations for measures to improve offshore drilling safety as part of a 30-day safety review. The purpose of that Safety Report was to evaluate oil and gas safety measures that could be put in place on an interim basis before the ongoing investigations of the Deepwater Horizon accident and subsequent BP oil spill disaster have been completed. The report recommended a number of specific measures that can be taken on both a short and longer term basis to improve the safety of offshore oil and gas activities, including enhanced operating standards and requirements for offshore drilling activities. Key recommendations include: certification of all blowout preventers for new floating drilling operations; stronger well control practices, blowout prevention and intervention capabilities; more comprehensive inspections for drilling operations; and expanded safety and training programs for rig workers.

The President ordered the Department to immediately implement a number of actions. Accordingly, the Secretary issued a 6-month moratorium on deepwater drilling (for this purpose, defined as water depths greater than 500 feet) and a suspension of the issuance of permits to drill new deepwater wells. The Department immediately took those actions, and laid the groundwork for additional measures in the future. On June 8, the Department issued a "Notice to Lessees" that provides an initial set of new safety requirements that all offshore operators must meet.

The Department holds paramount the safety of all operations under its jurisdiction in the OCS. With over 35,000 people directly or indirectly involved in the exploration, development, and production of important energy resources for our Nation, BOE strives to ensure that risks to personnel are eliminated or mitigated to the greatest extent possible. This is accomplished through life cycle oversight that is driven by primarily prescriptive regulations.

The BOE derives its authority from the OCS Lands Act that established Federal jurisdiction over submerged lands. Through the Secretary of the Interior, MMS (now the BOE) was designated as the administrative agency responsible for mineral leasing of submerged OCS lands and for supervision of offshore operations after lease issuance. The OCS Lands Act states that the Secretary "* * * shall require on all new drilling and production operations, and, wherever practicable, on existing operations, the use of the best and safest technologies which the Secretary determines to be economically feasible * * *"

Regulations governing offshore operations under BOE jurisdiction are unambiguous when it comes to offshore safety. These regulations also require the use of Best and Safest Technology (BAST) and that operators conduct their business in such a way as to "prevent injury or loss of life". If operators fail to comply with BOE regulations, they are subject to Incidents of Non-Compliance (INCs), with enforcement actions ranging from a warning to the shut in of an entire production facility. In cases where a violation has created high potential for or resulted in injury to personnel, the responsible party is referred for civil and criminal penalty review. In the last five-year period, MMS issued 12,087 INCs for violations of MMS regulations. In the same time period MMS pursued and closed 154 civil penalty cases that resulted in fines of $8.5 million. For chronic poor performance, MMS regulations allow for BOE to place an operator on probation or disqualify them from operating on the OCS or acquiring new leases.

The OCS Lands Act delegated certain responsibilities for safety on offshore facilities to the U.S. Coast Guard (USCG). The USCG is responsible for the inspection of personal protective equipment, such as safety belts and harnesses; life vests; respiratory protection; personal flotation devices; deck openings; slipping and tripping hazards; lights and fog horns; guards, rails, and fences; communications equipment; fire extinguishers; emergency drills; means of escape; and lifeboats and escape capsules. Through a regulatory change in 2002, the authority to conduct safety inspections on behalf of the USCG was delegated to MMS. This was done in an effort to optimize the use of government resources and improve safety compliance. Since 2003, the MMS conducted almost 4,000 fixed-platform inspections on behalf of the USCG.

As both MMS and the USCG have been given authority through the OCS Lands Act to ensure worker safety, these two agencies have necessarily had to work together closely where these jurisdictions overlap. In 2004, a Memorandum of Understanding (MOU) was signed by both agencies for the purpose of addressing individual areas of mutual jurisdiction through a series of topic-specific Memoranda of Agreements (MOAs). The MOU provides the basis by which the two agencies clearly articulate lines of authority and address how we can work together most efficiently. The MOAs are more technical in nature, providing detailed guidance on topics such as civil penalties, incident investigations, and floating offshore facilities. The MOAs provide guidance to regulators for consistent oversight and enforcement action, and

provide offshore operators and contractors with clear direction about what is expected of them as lease holders or operators.

The regulations and inspections are designed to eliminate or minimize accidents, but as the Deepwater Horizon incident vividly illustrates, accidents do still occur. When they do, a series of reporting activities are triggered. Reporting requirements for BOE were updated with the publication of a new regulation in 2006. Fatalities, injuries that require the evacuation of the injured person, losses of well control, fires and explosions, and other similar significant events must be reported immediately via oral communication to the BOE District Manager. Beyond whatever immediate action may be necessary to respond to a significant event, a written follow-up report is required within 15 calendar days. Oral presentation of information for events required to be reported is limited to information that can be transferred quickly due to a potentially ongoing emergency. This information includes the date and time of occurrence, name and contact data, lease and block data, the name of the facility involved, and the type of incident and injury or fatality. Written reports, however, require submittal of data that has been verified after the response, and involve discussion of any corrective actions taken and data on monetary damage.

During the five-year period prior to publication of the 2006 rule, MMS received an average of 210 incident reports per year. Following rule publication, incident reports increased by an average of 285 percent, providing the agency with improved reporting mechanisms on the types and severity of accidents that were occurring. The increase in the number of reports reflected an increase in reportable accidents due to changes in the reporting threshold. An analysis of the data indicated increasing trends related to crane and lifting incidents. This in turn has informed how staff conducts offshore inspections and regulatory development. Safety alerts are issued by BOE or jointly with USCG to alert operators of incidents that have occurred and provide recommendations to operators so they can immediately mitigate through improved work process management at their facilities.

The OCS Lands Act requires BOE and USCG to investigate and prepare a public report of each incident that includes fatalities, major fires, spills over 200 barrels, or serious injuries. The BOE and the USCG conduct investigations for many other incidents as well. Since 2005 the MMS has completed 21 major-panel investigations and 378 district investigations. The two agencies coordinate incident investigations through an MOA signed on March 27, 2009. The MOA identifies the responsibilities of both BOE and USCG for incident investigations on the OCS. As detailed in the MOA, these responsibilities are delineated by the type of facility involved in the incident (fixed, floater, MODU) and type of system involved in the incident (i.e. drilling, production, unit stability, fire protection, etc). The MOA identifies which agency has investigative jurisdiction for various types of equipment, processes, and facility systems. It also provides processes for determining who will conduct the investigation and for the coordination and conduct of joint investigations when appropriate.

The BOE conducts an initial onsite investigation for many of the incidents reported. Formal investigations are then conducted for the more serious or significant incidents as determined by the actual and potential outcome of the accidents as well as the complexity of the circumstances associated with the accident. The BOE District investigations are conducted by a team appointed by the District Manager of the office responsible for the area where the incident occurred. Teams are primarily composed of District office personnel, but may involve other BOE or non-BOE personnel. Occasionally, the District Manager may appoint an individual to conduct an investigation, rather than a team.

For more serious accidents, Panel Investigations are conducted by a team appointed by the BOE Regional Director for the region where the incident occurred. A panel leader is designated to direct the work of the team. Teams are primarily composed of Regional and District personnel, but may involve other BOE or non-BOE personnel. Panel investigations are usually conducted when a more in-depth investigation is needed and may involve more comprehensive investigation techniques such as formal hearings. Such is the case with the on-going Deepwater Horizon investigation, in which the BOE and USCG are working together, bringing their respective expertise together in an effort to determine the root cause of the incident.

I would like to reiterate that the BOE places a high priority on the safety and health of workers on the OCS. Again, the tragic and massive oil spill in the Gulf illustrates the need for improved safety in this area. We will continue to cooperate with OSHA and the U.S. Coast Guard to maximize the safety and health protection of oil rig personnel.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to questions you or Members of the Committee have.

Chairman MILLER. Thank you.
Secretary Michaels?

STATEMENT OF DAVID MICHAELS, ASSISTANT SECRETARY, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. MICHAELS. Good morning, Mr. Chairman, Ranking Member Kline, members of the committee. Thank you for inviting me to discuss worker health and safety from oil rig to shoreline. This issue has been brought to our attention in the most tragic way possible, with the deaths of 11 workers and injuries to 17 others as a result of the explosion on the Deepwater Horizon.

Secretary of Labor Hilda Solis' vision for the Department of Labor is "good jobs for everyone." Good jobs are safe jobs, and the Occupational Safety and Health Administration is working closely with other federal agencies to prevent additional worker injuries, illnesses, and deaths from the oil spill cleanup.

As you are aware, OSHA has no regulatory or enforcement authority over oil drilling rigs or production platforms located on the outer continental shelf, where the Deepwater Horizon was located. Section (4)(b)(1) of the Occupational Safety and Health Act preempts OSHA from enforcing its regulations if a working condition is regulated by another federal agency. I will therefore focus my remarks on OSHA's efforts to keep workers safe during oil spill cleanup operations.

Our involvement in the BP oil spill is part of a coordinated federal response which includes the Coast Guard, the National Institute for Occupational Safety and Health, the National Institute for Environmental Health Sciences, and other government agencies, as well as BP, to ensure that cleanup workers are protected. OSHA personnel were first deployed to the Gulf during the week of April 26th and are now present at all 17 staging areas.

Every day, OSHA has over 146 professionals protecting workers throughout the Gulf region, 25 of whom are assigned solely to the oil response cleanup. We have made more than 1,100 inspections and taken over 500 environmental samples. OSHA is on the beaches and on the boats to make sure BP and its contractors are protecting cleanup workers.

Depending upon their assignments, these workers are at risk for injury and illness from heat, falls, drowning, fatigue, sharp objects, as well as bites from insects, snakes, and other native species. Many of these workers also face exposure to crude oil, oil byproducts, dispersants, cleaning products, and other chemicals used in the cleanup.

When OSHA finds a safety problem or learns of one from workers we notify BP and expect the specific problem and similar concerns elsewhere are promptly addressed across the entire response area. We then follow up to determine if the problem has been corrected.

OSHA is also ensuring that BP is providing workings free of charge the proper training and proper protective equipments. So far, OSHA has found this process to be effective and it has not had to issue citations or propose civil penalties to obtain compliance.

That option remains available, however, and we will not hesitate to use it should we determine that it is necessary.

One of the most serious health hazards facing those involved in the cleanup effort is heat. Workers are often in the hot sun in the Gulf's high humidity wearing chemical-resistant Tyvek coveralls, boots, and gloves for 12-hour shifts. There have already been over 100 incidents of illnesses from heat among workers involved in the cleanup, some very serious.

From the outset, OSHA has insisted that BP implement a robust program to protect workers from heat stress and heat stroke. All work sites now have a heat stress plan that includes a matrix setting out specific work-rest requirements based on the heat and relative humidity, and if workers are wearing protective clothing and equipment, which can exacerbate the hazards.

To determine whether workers are exposed to dangerous levels of toxic chemicals, OSHA, along with NIOSH, is reviewing BP's monitoring data and has brought in a team of industrial hygienists to conduct our own independent air monitoring both on the shore and on cleanup vessels. OSHA experts are observing and characterizing worker exposures in each job task to determine the appropriate level of protection from air contaminants.

We are working closely with NIOSH to investigate reports of work-related illnesses and to establish a health surveillance program for workers involved in the event. We have also distributed to workers close to 50,000 copies of safety fact sheets, pocket cards, and pocket guides. Materials are printed in Spanish and Vietnamese, as well as English, in recognition of the diverse population inhabiting the Gulf Coast region.

In order to get a firsthand understanding of our challenges I first traveled to Louisiana on May 2nd with a team of experienced health professionals. I returned with Secretary Solis earlier this month.

OSHA's top priority is to ensure that oil spill responsive cleanup operations are done as safely as possible and we are working hard to accomplish this. Last week the president assured the nation, "We will fight this spill with everything we have got for as long as it takes." OSHA will be there for that fight doing all we can to protect the safety and health of those fighters.

Thank you very much for the opportunity to testify today. I am happy to answer your questions.

[The statement of Mr. Michaels follows:]

Prepared Statement of Hon. David Michaels, Ph.D., MPH, Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor

MR. CHAIRMAN, RANKING MEMBER KLINE AND MEMBERS OF THE COMMITTEE: Thank you for inviting me to join you this morning to discuss worker health and safety from oil rig to the shoreline. This issue has been brought to our attention in the most tragic way possible—with the deaths of eleven workers, and injuries to 17 others as the result of the April 20th explosion on the Deepwater Horizon offshore oil drilling platform. Now, two months into this disaster, which President Obama aptly called an "assault on our shores and our citizens," thousands of employees and volunteers are working every day to clean up the mess. The Occupational Safety and Health Administration (OSHA) is working closely with other Federal agencies to prevent additional worker injuries, illnesses and deaths from the oil spill cleanup. I am here today to discuss these ongoing efforts.

As you are aware, OSHA has no regulatory or enforcement authority over mobile oil drilling rigs or production platforms located on the Outer Continental Shelf (OCS) where the Deepwater Horizon was located. Section (4)(b)(1) of the Occupational Safety and Health Act preempts OSHA from enforcing its regulations if a working condition is regulated by another agency of the Federal government. Thus, even though OSHA has some authority over OCS lands, because the Coast Guard has extensive regulations that apply to these facilities and coordinates its inspection program with the Minerals Management Service (MMS) to ensure that the USCG workplace safety requirements are carried out, OSHA has no regulatory or enforcement authority on oil drilling rigs or production platforms on the Outer Continental Shelf. I will therefore focus my remarks today on OSHA's efforts to keep workers safe during oil spill cleanup activities.

Oil spill cleanup workers are on the front lines of the nation's response to the Deepwater Horizon disaster. Currently it is estimated that there are more than 33,000 people involved in the response, including over 13,000 cleanup workers employed by BP or its contractors, 1,600 National Guardsmen and women, workers on over 6,000 boats supporting the response operations, and more than 1,800 Federal employees directly involved in the cleanup operations in four states. And that number grows every day. Secretary of Labor Hilda Solis' vision for the Department is "Good Jobs for Everyone." Good jobs are safe jobs and OSHA is extremely involved in making sure workers involved in the oil response and cleanup efforts go home safely when their work is done.

OSHA's involvement in the Deepwater Horizon oil spill is part of a coordinated Federal response which includes the Coast Guard, HHS's National Institute for Occupational Safety and Health (NIOSH) and National Institute of Environmental Health Sciences (NIEHS), and other government agencies, as well as BP, to ensure that workers are protected from hazards associated with cleanup work. OSHA is the lead agency responsible for the enforcement of worker safety and health standards for onshore cleanup and in the coastal waters (approximately 3 to 6 nautical miles from shore).

The Department of Labor, through OSHA, is a member of the National Response Team and has been an active participant in the oil spill response by providing guidance, assistance, and support to the Coast Guard at the National Incident Command, the Unified Area Command and Area Commands.

On June 10th, OSHA signed a Memorandum of Understanding (MOU) with the Federal On-Scene Coordinator (FOSC) for the Deepwater Horizon response. The MOU solidified a close working relationship between the FOSC and OSHA, and established a specific mechanism for coordination. OSHA and the FOSC recognize the importance of close cooperation among all the agencies that have responsibilities during the oil cleanup efforts. The MOU furthers joint efforts to monitor compliance with safety and health standards and to protect workers. The FOSC and OSHA will share relevant information with each other to promote worksite safety in the Deepwater Horizon Response, including information provided by workers, local government officials or any other person.

OSHA has the authority to conduct safety and health inspections of cleanup activities involving employees of BP and other private and Federal employers—and if necessary to issue citations—to determine if safe working conditions are being provided for employees. The MOU provides the means for OSHA to notify the FOSC when it intends to take enforcement action against BP, BP's contractors, or any other employer engaged in response activities.

OSHA personnel were first deployed to the Gulf during the week of April 26th and are now present in all 17 staging areas in Louisiana, Mississippi, Alabama and Florida. OSHA's Health Response Team, based in Salt Lake City, arrived in Louisiana on May 6th to provide technical support to OSHA response site personnel for worker exposure monitoring.

Every day, OSHA has over 146 professionals protecting workers throughout the Gulf Region, 25 of whom are assigned solely to the Oil Response Cleanup. We are in the field and on boats to make sure BP and its contractors are protecting cleanup workers from health and safety hazards. OSHA inspectors ensure that the employer is complying with heat precautions, personal protective equipment and training requirements, and is properly addressing chemical and electrical hazards, decontamination of personnel and equipment, and many other hazards, such as being hit by the numerous vehicles dropping off supplies. As of June 11th, OSHA staff had made over 1000 site visits, both unannounced and coordinated with BP, covering all 17 staging areas, and the active worksites on shore or at sea.

Depending on their assignments, oil spill cleanup workers face hazards from heat, falls, drowning, fatigue, loud noises, sharp objects, as well as bites from insects, snakes and other wild species native to the Gulf Coast region. Many of these work-

ers also face exposure to crude oil, oil byproducts, dispersants, cleaning products, and other chemicals being used in the cleanup process. OSHA is working to ensure that employers protect workers from this vast array of hazards.

When OSHA finds a safety problem or learns of one from workers, we notify BP so that the specific problem and similar concerns are addressed across the entire response area. OSHA then ensures the problem is corrected. When necessary, OSHA raises concerns to the Unified Command. OSHA is also ensuring that BP is providing workers with both the proper training and proper protective equipment (boots, gloves and other necessary protective gear). At this point, OSHA has found this process to be effective, and it has not had to issue citations or propose civil penalties to obtain compliance. That option remains available, however, should we determine that it is necessary.

All workers involved in the cleanup operation that have contact with contaminated material are required to receive training free of charge. Emphasis is placed on ensuring workers are trained in a language and vocabulary they understand. OSHA has been working with NIOSH, NIEHS and BP since the Deepwater Horizon sank to ensure that BP is providing the appropriate training, in the appropriate language to all workers involved in the clean up. OSHA, along with NIEHS, continues to monitor this program. In response to recently received information, OSHA is in the process of increasing the training requirement for crews on the vessels of opportunity engaged in offshore oil cleanup activities. Expanded training will cover chemical hazards and exposures, decontamination procedures, sampling results and workers' rights.

One of the most serious health hazards facing those involved in the Gulf Oil Spill Response is heat stress. There have already been over 100 incidents of illnesses from heat among workers involved in the cleanup, some very serious. From the outset, OSHA has insisted that BP implement a robust program to protect workers from heat stress and heat stroke, a potentially life threatening hazard for people working in cleanup operations. Many of these people work 12 hours a day, 7 days a week, wearing chemical resistant Tyvek coveralls, boots and gloves, in the hot and humid weather along the Gulf. BP has now implemented, at all work sites, a heat stress plan that includes a matrix setting out specific work/rest requirements based on the heat and relative humidity, and whether workers are wearing protective clothing and equipment—which can exacerbate the hazard.

Other aspects of the heat stress plan ensure that:

- Workers are trained in the hazards of heat and the precautions necessary to prevent heat stress.
- Work begins early in the day to take advantage of cooler temperatures.
- Shaded rest areas are provided at all work areas.
- Workers drink liquids and take rest breaks throughout their work shifts.
- Heat stress monitors are on site at all times to ensure the work/rest regimen is adhered to, that workers are drinking enough to stay fully hydrated and that any workers exhibiting symptoms of heat related illness are immediately given fluids, rest and other appropriate care.

OSHA is also concerned about the potential health effects from inhaling chemicals in the crude oil, weathered oil, oil dispersants, cleaning agents, and other chemicals, which we continue to monitor, in order to assess and characterize the hazards the present. Aside from those workers on ships directly adjacent to the oil leak who are exposed to fresh oil, most of the cleanup workers are exposed to weathered or partially weathered oil, where all or most of the toxic volatile substances have evaporated.

To determine whether workers are exposed to dangerous levels of toxic chemicals, OSHA, along with NIOSH, is reviewing BP's monitoring data and has brought in a team of industrial hygienists to conduct its own independent air monitoring both on shore and on the cleanup vessels. OSHA is characterizing worker exposures in each job task to determine the appropriate level of protection from air contaminants. From the exposure characterizations already completed, we have developed, in collaboration with our colleagues at NIOSH, a personal protective equipment (PPE) matrix which outlines the equipment workers should be using for each job duty to protect them from the hazards and exposures associated with that job. For example, respirators are recommended at the source, whereas evidence does not support use of respirators in other locations and job duties. The matrix is posted on our website along with our sampling protocols and sampling results. The website includes clear information about where the samples were collected and what jobs the workers were doing when they were monitored. OSHA is also analyzing the "soup" of crude oil, oil by-products, dispersants, and any other material to determine what hazards the mixture might present workers as they respond to and cleanup the oil spill. We are

currently working with NIOSH to develop and issue a respirator and general worker health protection policy.

Finally, OSHA is monitoring other chemical exposures, such as exposures to chemical solvents used to clean boats, to determine whether workers are being appropriately protected from these exposures.

We have also distributed thousands of safety fact sheets and the OSHA-NIEHS pocket guides to workers involved with the oil spill cleanup along the Gulf Coast. The pocket guides and fact sheets are printed in Spanish and Vietnamese as well as English, in recognition of the diverse population inhabiting the Gulf Coast region.

In addition, OSHA has a webpage titled, "Keeping Workers Safe During Oil Spill Response and Cleanup Operations." This site has an abundance of helpful information for cleanup workers and the general public on the hazards that workers face, including crude oil, insects, snakes, poisonous plants, drowning, oil dispersants, ergonomic stresses, fatigue, and slips, trips and falls. It also has extensive safety information on subjects such as respiratory protection, boat and vessel safety, PPE and hazardous waste operations. The site references special oil spill training materials from other governmental agencies and provides useful contacts, as well as information on workers' rights. It is excellent comprehensive information that I am proud to recommend.

In order to get a first-hand view of health and safety activities in the Gulf, I first traveled to Louisiana on May 2nd with a team of experienced hazardous material professionals to lead efforts to ensure that cleanup operations were performed promptly, effectively and safely. At our initial meeting, I was joined by representatives of NIOSH, NIEHS and EPA, establishing a close working relationship between these public health agencies. I returned with Secretary Solis on June 9th and 10th to inspect efforts on behalf of the health, safety and well-being of cleanup workers affected by the spill. We met with beach cleanup workers in Port Fourchon to make sure that they received the required training and that they were provided the necessary equipment to be protected from job hazards. We also discussed worker safety efforts with community organizations representing fishermen and other cleanup workers.

OSHA's Deputy Assistant Secretary (DAS) Jordan Barab participated in a multi-agency delegation to the Gulf on June 1st—2nd where, after being briefed by the Unified Command leadership, he reviewed the safety and health protections in place to prevent worker injuries and illnesses. In Port Fourchon, he observed beach cleanup workers skimming the sand and collecting oil deposits. He also traveled to Venice, Louisiana, which is a major staging area for the Vessels of Opportunity Program, designed and implemented to provide local boat operators an opportunity to assist with response activities. DAS Barab spoke with workers about issues of concern to them which included exposure to chemicals, working in extreme heat, fatigue. He also verified that the workers had received the required protective health and safety training, in a language and at a level that they could understand.

Conclusion

OSHA's top priority is to ensure that oil spill response and cleanup operations are done as safely, effectively and efficiently as possible. As the President said in his address to our nation, "We will fight this spill with everything we've got for as long it takes." OSHA will be there for that fight, doing all that it can to protect the safety and health of those fighters.

Thank you for the opportunity to testify today. I am happy to answer your questions.

Chairman MILLER. Thank you.

Dr. Howard?

STATEMENT OF DR. JOHN HOWARD, DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, U.S. DEARTMENT OF HEALTH AND HUMAN SERVICES

Dr. HOWARD. Good morning, Mr. Chairman, and Ranking Member Kline, and members of the committee.

Following the fire and explosion on the Deepwater Horizon on April 20th, CDC immediately activated its emergency response center to coordinate response activities across the agency. CDC's Na-

tional Center for Environmental Health leads the incident command and works closely with the National Institute for Occupational Safety and Health to respond to potential health threats to the public, to workers, and volunteers from the disaster.

As of today, CDC has 269 staff involved in the response, including 21 staff deployed to the Gulf Coast states. Throughout this response, CDC has been coordinating our efforts with other operating divisions of the Department of Health and Human Services, with the Coast Guard, with OSHA, with EPA, and state and local health departments in the Gulf states.

As a part of the overall response, NIOSH has undertaken three activities: First, NIOSH is rostering workers involved in the response by means of a voluntary questionnaire. This roster will serve as an accurate record of individuals involved in the response, which will be vital for possible future studies to determine whether health conditions that may develop in the future are associated with occupational exposures during the cleanup.

To date, NIOSH has rostered more than 14,000 workers and we continue to work hard to include as many of the responders as possible. We are rostering workers as they complete training and at the staging areas in order to reach workers already trained.

In the last week NIOSH has also begun rostering some response workers online through a secure Web site. NIOSH has provided the secure link to multiple federal agencies, to BP, and to others, and has asked them to refer workers to the Web site to complete the roster electronically. NIOSH is also reaching out to state and local health partners to identify mechanisms to assist us in rostering all parish, local, state, and National Guard workers.

Second, NIOSH is conducting health surveillance summates for worker symptoms, health complaints, injury and illness, or job stress, by collecting data from all sources and analyzing that data to detect trends in injury and illness reports so that we can recommend interventions to prevent injuries and illnesses. NIOSH is encouraging workers to report symptoms they feel are associated with the response work to both their employers, to medical personnel, and to state and local health departments.

NIOSH is also drawing on the surveillance data being collected and analyzed by our colleagues in the Centers for Disease Control. CDC is collecting data from 60 poison control centers through the Gulf region. The majority of those calls thus far have been from response workers.

CDC is also collecting data through the BioSense surveillance system, which we used during the H1N1 epidemic, from 86 health care facilities. Many of them are community clinics funded by the Health Resources and Services Administration of HHS, from clinical labs, from hospital systems, ambulatory care centers, and from V.A. medical treatment facilities, pharmacy chains, et cetera, to prevent any—to detect any increase in respiratory or other possible oil-related health effects.

CDC is also analyzing surveillance data being collected by state health departments in the Gulf to monitor for potential health effects related to the oil spill. CDC has posted results of these collaborative surveillance activities on the CDC Web site and updates these regularly.

Third, NIOSH is conducting health hazard evaluations of reported illnesses among workers involved in onshore and offshore operations, as request by BP on May 28th, June 18th, and, most recently, at 8 a.m. this morning, a comprehensive request for workers involved in all activities on water and the land. We deployed several NIOSH staff members, including industrial hygienists and medical officers, to the Gulf to work on these evaluations.

They are evaluating worker exposures to heat stress, volatile organic compounds, chemical oil dispersants, diesel exhaust from vessels, and other hazards as they are being identified. We are also administering health symptom surveys to workers involved in various onshore and offshore operations.

Once the HHE is completed NIOSH will compile the findings and recommendations in a report that will be provided to the employer and employee representatives, and will be publicly available on the NIOSH-CDC Web site. As we learn more, CDC and NIOSH will update its recommendations regularly.

Thank you, Mr. Chairman, for your continued support, and I am pleased to answer any questions you may have.

[The statement of Dr. Howard follows:]

Prepared Statement of Hon. John Howard, M.D., Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services

Good morning, Mr. Chairman, Ranking Member Kline, and distinguished members of the committee. Thank you for inviting me to testify today. I am Dr. John Howard, Director of the National Institute for Occupational Safety and Health (NIOSH), which is part of the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS). I am here today to provide an update on NIOSH's response to the recent Gulf of Mexico oil spill and our ongoing efforts to anticipate, monitor and respond to the potential health threats to workers.

CDC's Coordinated Response

On April 20, 2010, after the fire and explosion on the Deepwater Horizon leading to the oil spill, CDC immediately began monitoring the situation. On April 22, CDC staff participated in the National Response Team's activation meeting and then formed an oil spill task force to monitor and respond to any potential public health hazards associated with the oil spill. CDC quickly publicized information describing the potential health risks associated with the oil spill and steps individuals can take to protect their health and safety. On May 10, CDC's Emergency Operations Center (EOC) officially activated and began coordinating CDC's response, which includes staff from NIOSH and the National Center for Environmental Health, which is leading the EOC incident command and response activities. As of June 17, 204 CDC staff were involved in the agency's response to the oil spill, and many of these staff are from NIOSH.

Throughout the response to the oil spill, CDC has closely coordinated our efforts with other components of HHS—including the Assistant Secretary for Preparedness and Response, the Food and Drug Administration (FDA), the National Institutes of Health (NIH), and the Substance Abuse and Mental Health Services Administration; other federal partners like the U.S. Coast Guard (USCG), the Department of Labor's Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency (EPA); and the Gulf coast states.

NIOSH's Response Activities

As part of CDC's overall response, NIOSH involvement in the oil spill response began very early. NIOSH was with OSHA and NIH's National Institute of Environmental Health Sciences (NIEHS) in the initial HHS response visit to the Gulf during the week of May 3. Since then, NIOSH has been providing information to BP, OSHA, the Coast Guard, and other federal and state partners about protecting response workers and volunteers from potential occupational safety and health hazards. I would now like to provide an update on the work that NIOSH has been doing to protect the response workers and volunteers, which includes:

Rostering responders;
Collecting and evaluating health surveillance and injury and illness data;
Conducting a health hazard evaluation of workers;
Developing recommendations for response workers and volunteers; and
Providing guidance on traumatic incident stress.

Rostering Responders

NIOSH is administering surveys to thousands of clean-up workers in an effort to compile a roster that will serve as an accurate record of many individuals involved in the response. The information collected in this roster would be vital for possible future studies to determine whether health conditions that may develop in the future are associated with occupational exposures during the cleanup. A roster is an important tool to capture site-specific information, such as a worker's job task, time on task, available exposure information, use of personal protective equipment (PPE), and other related factors. Participation in the survey is voluntary, and once the information is collected, NIOSH will protect individuals' personally identifiable information as confidential to the extent allowed by the law.

We are rostering workers as they complete safety training required for all responders and at the staging areas in order to reach workers already trained. It has been challenging to enroll workers due to the different locations staging areas and training sites. To date we have visited many of the staging areas in Louisiana to roster workers. We are currently enrolling workers in Mississippi, Alabama, and Florida and returning to LA's newly added staging areas. New staging areas are continuously being added in locations across the Gulf region. Through our rostering efforts, we have already captured information from more than 14,000 workers responding to this event. In an attempt to reach all cleanup workers, the survey is being administered in English, Spanish, and Vietnamese. This is an unprecedented effort, and NIOSH is working hard to ensure that our roster will include information for as many of the responders to this event as possible.

In the last week, NIOSH also began rostering response workers online through a secure Website. NIOSH has provided the secure link to multiple federal agencies and BP, and has asked them to refer workers to the Website to complete the rostering form electronically. NIOSH is also reaching out to state and local partners to identify mechanisms to assist us in rostering all parish, local, state, and National Guard workers. NIOSH has created a database, which includes information from the paper surveys that is entered manually as well as information uploaded electronically from the Web-based surveys. Data from the electronic survey will be analyzed in the same manner as those completed on paper. A copy of the survey is included as Exhibit 1.

Collecting and Evaluating Health Surveillance and Injury and Illness Data

CDC is conducting surveillance across the Gulf States for health effects possibly related to the oil spill using national and state-based surveillance systems. NIOSH is analyzing injury and illness data collected at the BP medical sites. NIOSH is using all of this data to monitor reports of worker illness and injury and to work with the States, OSHA, and BP to identify trends and potential health effects. CDC's National Center for Environmental Health (NCEH) contacted the American Association of Poison Control Centers to request that local poison control centers code any calls related to the oil spill so that CDC can track them. The majority of the calls we have received so far have been from response workers. NIOSH is also using CDC's BioSense surveillance system—which analyzes diagnostic and pre-diagnostic health data from clinical laboratories, hospital systems, ambulatory care sites, health plans, U.S. Department of Defense and Veterans Administration medical treatment facilities, and pharmacy chains—to enhance surveillance for respiratory health effects in states along the Gulf of Mexico coast. CDC is receiving surveillance data collected by Alabama, Florida, Louisiana and Mississippi and is working closely with the respective state epidemiologists to look for any health effects that may be related to the oil spill. CDC posted results from these collaborative surveillance activities on the CDC Website on June 10. NIOSH is also encouraging workers to report symptoms they feel are associated with response work to employers, medical personnel, or state and local health departments.

Conducting Health Hazard Evaluation of Workers

NIOSH has a unique opportunity to assess these occupational safety and health hazards that may arise as we conduct Health Hazard Evaluations (HHEs) of reported illnesses among workers involved in onshore and offshore cleanup operations. Several NIOSH staff members have been deployed to the Gulf coast to work on the HHEs, including industrial hygienists—who are assessing exposures through observation, industrial hygiene assessments, and evaluation of work practices and use of

PPE—and medical officers—who are evaluating illnesses and injuries among groups of onshore and offshore workers. Industrial hygienists are evaluating exposures to volatile organic compounds such as carbon monoxide, hydrogen sulfide, benzene, diesel exhaust, and propylene glycol (a component of the dispersant). The medical teams are administering health symptom surveys to workers involved in various onshore and offshore operations. The Louisiana Department of Health and Hospitals has agreed to provide medical reports of seven previously hospitalized fishermen for NIOSH physicians to review. Additional reports of the incident from the Coast Guard, OSHA, and BP are being reviewed as well. Once the HHE is completed, NIOSH will compile the findings and recommendations in a report that will be provided to employer and employee representatives, and it will be publicly available on the NIOSH Website.

The additional HHE request received on June 18 will assist NIOSH in addressing activities associated with exposures that may occur during all types of operations related to this event. Since knowledge about potential inhalational exposures to the mixed exposure of crude oil, dispersant and combustion products associated with the Deepwater Horizon response work is incomplete and still evolving, NIOSH believes it is prudent to reduce the potential for adverse health effects by the responsible use of engineering controls, administrative controls and PPE, including respirators when appropriate. The following is a description of each of the categories of worker exposure.

Source Control Activities: The source control vessels conduct activities closest to the area where crude oil appears on the surface, including drilling relief wells, conducting underwater operations at the source such as subsurface dispersant application, and providing support and supplies.

Vessels involved in Burning Crude Oil: Vessels involved in crude oil burning are exposed to crude oil/dispersant that is less aged and may emit more VOCs than crude/dispersant closer to shore that may have undergone more weathering.

Vessels not involved in Source Control or Burning: Some vessels operating offshore engage in deployment of containment and sorbent booms and skimming operations to remove oil from the water. These vessels are not involved in burning nor are they located in close proximity to in-situ burning. Generally, these vessels have contact with oil that has weathered, and, as such, does not emit significant amounts of VOCs

Shoreline Activities: The types of activities associated with shoreline cleaning include manual removal of "tarballs" or "tarpatties," shovel removal of oiled-contaminated sand, low pressure flushing, manual sorbent application, and manual cutting of vegetation.

Decontamination Activities: Vessels, PPE and other equipment may become contaminated with weathered oil. Workers and volunteers may also be involved in cleaning and caring for birds, turtles and other wildlife

Waste Stream Management Activities: Response and remediation workers are engaged in the disposal and recycling of hazardous solid and liquid wastes during collection, storage, transport and final disposal.

Health Studies of Tanker Oil Spills

It is important to note that in recent years several studies of previous oil spill response efforts have reported acute health effects in response workers. These studies may underestimate the health effects associated with oil response work since the magnitude and duration of the Deepwater Horizon response is unprecedented. At this time, there has been no comprehensive assessment of all response worksites in the Gulf, and as a result, we have an incomplete understanding of the human health toxicity associated with exposure to large amounts of dispersants and the toxicity associated with mixed exposure to large amounts of crude oil and dispersants together. This means that knowledge about potential human health effects to the mixed exposure of crude oil and dispersant associated with the Deepwater Horizon response work is still evolving. Therefore, NIOSH believes it is prudent to reduce the potential for such adverse health effects by the responsible use of administrative controls and PPE.

Developing Recommendations for Response Workers and Volunteers

To ensure a comprehensive approach to worker safety and health, NIOSH has been working closely with OSHA to develop Interim Guidance which focuses on issues specific to the Deepwater Horizon response. The recommendations in the Interim Guidance include:

Conducting exposure assessment: Exposures to toxic chemical and physical agents should be comprehensively and routinely assessed during work activities under varying conditions.

Pre-Placement Evaluation: NIOSH currently is working with OSHA to develop recommendations for pre-placement evaluations for workers involved in the Deepwater Horizon response to ensure that each worker receives appropriate advice about his or her health status and the potential demands of the work before they begin.

Medical Care and Symptom, Near-Miss, Injury and Illness Reporting and Recording: All health symptoms, illnesses, injuries or near-misses related to work activities should be reported by workers and volunteers, should be recorded by employers, contractors and volunteer organizations, and should be evaluated by safety and health or licensed health care professionals with action taken to protect workers

Heat stress prevention: Excessive exposure to hot environments can cause a variety of heat-related problems, including heat stroke, heat exhaustion, heat cramps, and fainting. Heat can also increase the risk of injuries in workers from sweaty palms, fogged-up safety eyewear, and dizziness. Protective clothing and other PPE will increase the risk of heat-related problems. PPE should be selected to minimize heat stress on the wearer.

Fatigue Prevention: Disaster response workers often work longer shifts and more consecutive shifts than the typical 40-hour work week. Working longer hours may increase the risk of work injuries and accidents and can contribute to poor health. Therefore, disaster response organizations should have management plans in place to minimize fatigue risks, recognize hazards, and provide regular opportunities for worker rest and recovery.

Use of PPE: A variety of PPE will be needed by Deepwater Horizon response workers and volunteers. Administrative controls and engineering controls should be utilized first to minimize the need for PPE in any particular job. Where such controls will not effectively minimize the exposures, then PPE will be necessary.

Guidance on Selection of Protective Clothing: Choosing the proper chemical and flame resistant protective garments is an exercise in the selection of fabric, seam and design. The selection must be based on expected exposure and verified by field audits and changed if the selected PPE does not perform adequately. The potential for contribution to heat stress must also be considered in the selection of protective clothing, in addition to the potential exposure to fire, water, oil and tar, and other chemicals.

Reuse of Personal Protective Equipment: Consult the manufacturer's instructions on whether personal protective equipment should be disposed of or cleaned after use. Many manufacturers of PPE, in particular manufacturers of gloves, will provide information on breakthrough times from various chemicals (time it takes for the chemical to pass through the protective material). Given the warm and humid conditions existing during the Deepwater Horizon Response, disposable filtering facepiece respirators will likely need to be discarded after several hours of use, in part because they will become moist with perspiration.

Use of Respiratory Protection: A decision to use respiratory protection should be based on the best available qualitative information using the expert opinion method and on the best available comprehensive quantitative information about the type and level of exposure to toxic chemical and physical agents by the inhalational route. The use of effective engineering and administrative controls, and other personal protective [sic]

Resources for Use of Respiratory Protection: Information about which respirators are approved by NIOSH, how to get them and how to use them, can be found at the NIOSH Respirator Trusted-Source Information Page at: *http://www.cdc.gov/niosh/npptl/topics/respirators/disp—part/RespSource.html#sect1.*

Voluntary Use of Respirators: Respiratory protection may be worn by employees voluntarily as permitted by the OSHA Respiratory Protection Standard (29 CFR Section 1910.134). An employer may provide respirators at employees' requests or permit employees to use their own respirators if the employer determines that use, in itself, will not create a hazard (29 CFR Section 1910.134(c)(2)(i)).

Recommendations contained in the Interim Guidance will be updated as more information about exposures is collected and assessed in relationship to the incidence and prevalence of symptoms, illnesses and injuries.

Providing Guidance on Traumatic Incident Stress

Deepwater Horizon response workers and volunteers are at risk of feeling uncomfortable levels of stress from what mental health professionals refer to as a traumatic incident. NIOSH is developing guidance that describes the range of ordinary reactions to stress—such as complaints of physical ailments, trouble thinking clearly, emotional concerns, and behavioral changes—which responders may experience during their work or in the weeks or months that follow. NIOSH guidance recommends that responders take care of themselves and monitor their own emotional

and physical health both during the response and after the event ends. Specifically, responders should: control the pace of their rescue and recovery efforts and be mindful of potential hazards; maintain adequate nutrition, hydration and rest; and monitor their own mental and emotional health. Additionally, the Substance Abuse and Mental Health Services Administration (SAMHSA) supports Mental Health First Aid training and other psychological health programs for dealing with trauma and stress for first responders, behavioral health workers, and persons who are experiencing the aftermath of traumatic situations. NIOSH and SAMHSA are collaborating to assure that the guidance provided is aligned with the tools and services available to individuals to address their reaction to this traumatic incident.

Exhibit 1 – Gulf Coast Oil Spill Survey

Form Approved
OMB No. 0920-0851
Exp. Date XX/XX/XXXX

Date _____

Gulf Coast Oil Spill Initial Survey

Name (Last, First, MI)

Date of birth / /

Last four digits of social sec.

Gender ☐ Male ☐ Female

Race/Ethnicity ☐ White ☐ Black ☐ Hispanic ☐ Asian ☐ Other

Cell phone (with area code)

Street address

City

State

ZIP

Email address

Name and number of contact who will know where you are in 6 months

Employer or volunteer organization on site

What has been your USUAL Job prior to the Spill?

How many years have you been working at your USUAL job?

On the Oil Spill, are you a: ☐ BP employee ☐ Contractor ☐ Government worker ☐ Volunteer ☐ Don't Know

Would you be willing to be contacted about participating in a possible post-event survey? ☐ Yes ☐ No

Response Work (please be as specific as possible)

What will be your job or responsibilities?

Will your job tasks involve the potential of exposure to oil or oily substances?
☐ Yes
☐ No
☐ Don't Know

If yes, please describe the tasks:

What are your expected deployment location(s)?

How long are you planning on working on the oil spill?
☐ less than 1 week to one week
☐ 1 week to 2 weeks
☐ more than 2 weeks to one month
☐ More than one month
☐ As long as the work is available
☐ I don't know

What training have you received? (Check all that apply)
☐ Module 1: BP HSE Basic Orientation
☐ Module 2: Contractor Expectations
☐ Module 3: Post-Emergency Spilled Oil Cleanup
☐ First Responder Awareness
☐ Annual refresher
☐ First Responder Operations (8 hr)
☐ Annual refresher
☐ Hazardous Materials Technician (24 hr)
☐ Annual refresher
☐ HAZWOPER (24 hr)
☐ Annual refresher
☐ HAZWOPER (40 hr+)
☐ Annual refresher
☐ Other training, describe:

Are you expecting to use personal protective equipment to protect your skin?
☐ Yes
☐ No
☐ Don't Know

Are you expecting to use personal protective equipment to protect your eyes (goggles or eyewear)?
☐ Yes
☐ No
☐ Don't Know

Are you expecting to use respiratory protection?
☐ Yes
☐ No
☐ Don't Know

Have you been fit-tested for a respirator in the last year?
☐ Yes
☐ No
☐ Don't Know

Do you smoke?
☐ Yes, number of cigarettes per day:
☐ No
☐ Prefer not to answer

CDC recommends that adults be vaccinated for tetanus every 10 years. Have you had a tetanus vaccine within the past 10 years?
☐ Yes
☐ No
☐ Don't Know

Do you have other issues or concerns?

I have read and understand the Data Use and Disclosure sheet about who is collecting this information and how it will be used and that my participation is voluntary.

Signature _____

Public reporting burden of this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to CDC/ATSDR Information Collection Review Office, 1600 Clifton Road NE, MS D-74, Atlanta, Georgia 30333; ATTN: PRA (0920-0851).

Conclusion

CDC continues to work diligently to anticipate, monitor and respond to potential health threats to protect the health and safety of workers, volunteers and residents along the Gulf coast. This oil spill underscores the importance of CDC's work and

the need for further health and safety research. It is important to protect response workers, volunteers and Gulf coast residents against potential health hazards now so that we can prevent future chronic health effects associated with this spill. As this event evolves and we learn more about potential health hazards, CDC will update our recommendations. I appreciate the opportunity to describe the steps NIOSH is taking to protect response workers and volunteers along the Gulf coast. Thank you for your continued support. I am pleased to answer any questions you may have.

Chairman MILLER. Thank you.

Thank you to all of the witnesses for your testimony, and again, for your expertise.

Dr. Howard, just quickly, I appreciate your remarks on the rostering. Obviously we learned a terrible lesson after 9/11 and after Katrina for people who volunteer or were hired to work in what turned out to be seriously toxic waste sites. And I know this was raised in the Energy and Commerce Committee last week also, but I really appreciate you getting very aggressive about getting these people rostered so that if we have something similar happen we know who and what their status was and the rest of that when they came here. So thank you very much for that.

As I understand the situation, we have—back in 19-maybe-53, or 1979, ocean responsibilities were delegated to the Coast Guard under the outer continental shelf legislation of that time, and that has continued forward with the rewrites—some of the rewrites that took place after Exxon Valdez. And then the Coast Guard has delegated the actual responsibility for onsite inspections to MMS. Is that a fair statement here of kind of the situation we are in?

Dr. Howard. Yes.

RADM COOK. Mr. Chairman, the part about—that you discussed initially with the Outer Continental Lands Act giving the Coast Guard the authority to go and regulate the safety health was true. The part about then Coast Guard transferring to MMS is just a subset of six platforms which are on the outer continental shelf for which the Coast Guard does the initial safety and health inspection and then MMS does the annual inspection, because many of them are unmanned——

Chairman MILLER. Right.

RADM COOK [continuing]. Some of them are simply well heads. So the bigger units are mobile offshore drilling units still——

Chairman MILLER. And the authority for the worker safety inspections there is showed how on the mobiles?

RADM COOK. Well, the Coast Guard has primacy and we have a detailed MOA which goes section by section of the mobile offshore drilling unit on which part the Coast Guard or MMS will look at in detail, but the Coast Guard has primacy.

Chairman MILLER. But who is doing the onsite inspections?

RADM COOK. The Coast Guard is.

Chairman MILLER. The Coast Guard is?

RADM COOK. And MMS also has inspection functions for which we have split out in an MOA——

Chairman MILLER. So you are both doing onsite inspections——

RADM COOK. Correct.

Chairman MILLER [continuing]. According to that memorandum of understanding.

RADM COOK. That is correct. It is delineated, though; it is not both doing the same thing.

Chairman MILLER. I hope not. Okay.

Just for the information of the committee members, I should have said that under previous agreement the chair and the senior Republican will have 10 minutes each opening.

And then that is—you review MMS's work in their portion that you have delegated to them? Do you have an annual review? Do you have a 5-year review of how that is going?

RADM COOK. We have quarterly meetings with MMS and review all the different aspects of our relationship, and that is at the, kind of the D.C. oversight regulatory level, and that has been out of our standards shop. And then on the coastline or, you know, primarily the Gulf area where we interact on an operational basis, we share in each other's joint training activities.

Chairman MILLER. So for this purpose on worker safety the Coast Guard's the lead agency?

RADM COOK. That is correct, sir.

Chairman MILLER. Okay. Thank you.

After this tragic accident and those people were being interviewed, and we have gone back and forth in a number of different areas, there has been substantial evidence that workers—whether they are online workers, whether they are supervisorial individuals, whether they were from a contractor, or subcontractor, or whatever their situation was on this rig—that there were serious concerns about the process that was—as it was going forward to close in this well. Where are workers' whistleblowing rights protected in this act?

RADM COOK. Sir, I am going to answer that in an operational way, because I am not—I don't have the legal standard at hand. But all of our inspectors and investigators are trained from the variety of different types of vessels that we interact with, including the mobile offshore drilling units. Wherever we get a complaint we protect the anonymity of the person making the complaint and we follow up immediately.

But as far as direct whistleblower statute, I will have to get back to you on the record for that.

Chairman MILLER. So you don't know whether you have whistleblower protection.

Secretary Michaels, in OSHA there is specific whistleblower protection, is there not? Am I correct?

Mr. MICHAELS. Yes, sir.

Chairman MILLER. And in theory people cannot be retaliated against or punished for exercising that right?

Mr. MICHAELS. That is the theory, correct.

Chairman MILLER. Mr. Slitor, where do your people go for whistleblower protection, and how do they enforce this?

Mr. SLITOR. I am not sure of the legislation how it speaks to whistleblower. I don't believe that it is listed as part of the requirements.

However, we have issued an NTL regarding whistleblower——

Chairman MILLER. What is that? What is an NTL?

Mr. SLITOR. I am sorry. A notice to lessee. And it has emanated from a GAO study conducted on MMS and production verification. So we wanted to ensure that there was an avenue for people to——

Chairman MILLER. That was related to whether or not people were keeping two sets of books or honestly reporting——

Mr. SLITOR. Correct.

Chairman MILLER [continuing]. Production to the federal government.

Mr. SLITOR. And it directed them to the inspector general's office, and other than——

Chairman MILLER. But right now you can't sit here either—and tell me that those individuals that might have wanted to not proceed further with this process because they felt it was unsafe, either in terms of the rig, or the personnel, or the environment—however—there is no place where their rights or posted on these rigs with respect the that.

Mr. SLITOR. Not directly related to that type of activity——

Chairman MILLER. Some employers have told me and they have shown me posters that they have posted as a company policy, but again, in many instances they have a contractor running these rigs; the oil company itself is not doing that. Is that correct?

Mr. SLITOR. I believe that can be the case.

Chairman MILLER. Well, we will follow up with you, but this is obviously—you have an inherently dangerous workplace, and the question of whether or not a worker will have the ability and the protection to say, "Stop," in the face of danger is a very serious problem if that doesn't exist by right in the law.

We have just went through a horrible mine accident in West Virginia, and it became very clear that even with whistleblower protections miners were seriously intimidated, miners were threatened because they wanted to—the owners wanted to produce coal.

Here, we have had a great deal of attention to the cost of these rigs, to the cost of operating them, decisions that were apparently made because they didn't want to delay any longer, any more hours, to getting this rig offsite so it could go off and be released to somebody else. This is an environment that is a disaster for workers to work if those concerns aren't explicit in the law. So I will stop there on that point and maybe come back to it later.

Dr. Michaels, let me ask you this—you are starting to look at the issue of process safety management—MMS and you. Is that correct? Regulations with respect to process safety management?

Mr. MICHAELS. You are speaking to——

Chairman MILLER. Mr. Slitor, Mr.—or, well, I don't know which one of you takes responsibility because you are——

Mr. SLITOR. We have a rule that is under review in the department and they are moving forward on safety and environmental management systems, which speaks to safety organization and management——

Chairman MILLER. Where did you get the expertise to develop this rule?

Mr. SLITOR. This rule is—we participated with American Petroleum Institute in developing——

Chairman MILLER. That is an organization of the oil companies?

Mr. SLITOR. Yes—developing a recommended practice. It has been in use for approximately 15 years. We have kind of monitored the——

Chairman MILLER. Been in use on the rigs for 15 years?

Mr. SLITOR. It is a voluntary program since it is a recommended practice. We are moving forward at this time to make it a requirement.

Chairman MILLER. Have you discussed this with OSHA?

Mr. SLITOR. Yes, actually, we have.

Chairman MILLER. When?

Mr. SLITOR. It was after the Deepwater Horizon event. OSHA contacted us to gain a better understanding of our regulations and—with respect to worker safety, and that came up in the conversation.

Chairman MILLER. Well, my time has run out, but I would be very concerned on how this is being developed. This safety process management rules are absolutely critical in these work environments. It is stunning that we don't have one in place for this—for these rigs.

We have obviously been through it as a committee in a number of chemical and refinery tragic accidents that have taken place. My district, I represent five or six refineries, and these rules are critical to the processes. And when you start to move through a refinery you are going to change processes, you are going to change operation, you are going to go to a shutdown, you are going to go to a restart. These are the things that really give you some of the best protection for workers.

OSHA has been in this field for 35 years, and I just find that when you are taking advice from the oil industry you wouldn't bounce that off against the very—that they regulate the oil industry where we have had these tragedies in refineries in Washington, in the Midwest, in Texas, in my district, where people have lost their lives, that we wouldn't have some kind of discussion before this goes to final rule, that it wouldn't just come out of the oil industry's recommendations. We have been through that on this committee. I am not sure that is what the public is looking for at this moment, so I would hope that there would be a little timeout here to rethink whether this is really the system that will offer the protection.

Mr. Kline?

Mr. KLINE. Thank you, Mr. Chairman. Listening, as I always do, Mr. Chairman, carefully to your questions, and clearly, as you were going through you can see that there is confusion—perhaps on your part, perhaps on their part, but I think on everybody's part—about who is in charge. Who is in charge?

And so we have wonderful public servants sitting down here representing government agencies and in listening to you, I understand that there are MOUs and MOAs and discussions, but it is not entirely clear to me that we know who is in charge here. So I am going to continue to explore that with you and I expect that many of my colleagues will as we go forward.

Dr. Michaels, at a hearing last week a question was asked about the possibility of OSHA taking over rig worker safety and the response Deputy Assistant Secretary Jordan Barab stated, "Nobody

has offered it to us and we certainly haven't asked." Are you better able today to speak to the agency's view?

Mr. MICHAELS. The administration has no position on this issue. Right now we are working very closely to help each other and to learn from each other in terms of protecting the workers and on the shore, and I think this experience has driven these agencies to work much more closely together.

Mr. KLINE. Well, that is a heck of a way to have to be driven to work more closely together. We have seen this before; we certainly saw it in the intelligence and defense communities after the terrible tragedy of 9/11 and the subsequent military reaction, they were driven together, but it is a heck of a way to do it. It would be so much better if we could work this out in advance.

Just supposing—continuing with you, Dr. Michaels—that you allow for the possibility that OSHA actually takes over the responsibility, or maybe we take—following up on the chairman's question about where this was designated—could you do it? Do you have the resources? Do you have the people?

Mr. MICHAELS. We certainly don't have the resources. I mean, the requirement of inspecting—there are two different issues, really. One is the resources of inspecting offshore rigs that require vessels to get to them and a great deal of additional staff.

OSHA currently has a very limited staff to look at process safety management issues; I know this committee has looked at that before. And unfortunately, we have even taken people from the Texas-Louisiana area who are inspecting oil refineries now to help with the cleanup effort.

The other issue, though, is really to think about the OSHA regulatory regime and the approach we take, and this is a good opportunity to relook at that. Because right now, you know, for example, in oil refineries they have a lot of the same risks as oil drilling operations. We have a system where we inspect on some regular basis, but certainly not frequently, and we would need a great deal more staff to be in the refineries at all times.

And we find ourselves going to refineries that are very complex that take a huge amount of time to investigate, and the Contra Costa County, where the chairman is from, has a very extensive staff in their county to look at just the refineries in that region. We don't have that level of—we don't have that level of resources.

But what we find is that when we go into an oil refinery the limited OSHA fines have not a big effect. I mean, the maximum fine for a serious penalty is $7,000. When we are talking about a company whose profits are in the billions of dollars a year the—I think they look at the costs of OSHA fines as just really part of the cost of doing business.

So if we were to take on this issue we would have to rethink the way we do inspections and the way we issue fines——

Mr. KLINE. Okay. But you don't have—you simply don't have the people or the expertise right now, and it would take some time, I would presume, before you could get that.

Following up—I am staying with you just a little bit longer here, and actually this is going to go over to Admiral Cook—on May 25th you issued a memorandum to Admiral Allen stating many things—it is a copy here—but part of it was, you are quoted as saying,

"OSHA has witnessed numerous deficiencies at several work sites and staging areas through the Gulf Coast region."

Can you describe some of those?

And then to you, Admiral Cook, what has been your response here as we are trying to coordinate the multiple agencies here and figure out who is in charge?

Mr. MICHAELS. You know, OSHA went to all these staging areas as they were being put together and we saw a number of different problems at different levels. We saw site security issues just when those sites were opening up and hundreds of workers were being brought in. We thought the security and essentially logistics of the site weren't adequate to protect worker safety. We were concerned about heat.

But we had two sort of more pressing, more larger concerns. One was that it wasn't clear what the line of authority was within BP. When we would raise this issue with the local or our contact within BP we didn't see the problem getting abated immediately, and we insisted the problem was abated immediately.

And we didn't see the resources there to deal with these problems as BP and its contractors geared up for much larger operations. So we thought it was important to raise that issue immediately, which we did with BP and we did with Admiral Allen. And Admiral Allen responded very quickly, communicated to BP the importance of this, and their response since then has been very good. So we are very pleased with the response to that memo.

Mr. KLINE. Admiral Cook, can you address the Coast Guard's response to the memo?

RADM COOK. Congressman, one of the things that—you know, not in a bureaucratic sense but in a way to formalize it, we went back and put in writing again, with, between—our relationship between OSHA and the Coast Guard at the federal on-scene coordinator level, the unified commander that was down there representing the Coast Guard in New Orleans—so the OSHA and Coast Guard responsibilities were clear and reinforced, and what we did is continue to build on OSHA presence in all the different staging areas, and OSHA has now expanded and sometimes rides the vessels that are—that BP has hired to do some of the booming strategies or some of the skimming strategies.

So what we have done is integrated OSHA to the maximum extent possible so that we can leverage their expertise as part of the overall safety net. But clearly the federal on-scene coordinator has overall responsibility for site safety as regarding the response.

Mr. KLINE. Okay. Thank you.

Let's talk about overall on-scene responsibility. There have been news reports of late that there were a number of vessels—skimmers and boats—ready to go to work here in helping to clean up and mitigate the damage, and the reports we have seen were that they were stopped—they were prevented from doing this because of the lack of inspection by the Coast Guard, or perhaps there was an inspection by somebody and there weren't enough life preservers, and so forth.

And this goes to the point—couple of points here about who is in charge and the balance between cleaning up and mitigating the disaster and being responsive to the people who live on the Gulf

Coast and checking blocks. And I fully understand that checking blocks can be very important when safety is at stake, but I am wondering about the balance and the urgency—and I am looking at you, Admiral Cook, because I take your point that you are in charge, and the on-scene commander, and these are floating vessels, although Dr. Michaels said that OSHA was "on the beaches and on the boats," so I am not sure what—again, what OSHA is doing on the boats.

It is sort of that question about who is in charge, but I would like you to address that question of how you are balancing the response to the disaster on the coast and responding to the demands of the people living on the Gulf Coast and protecting the environment down there, and safety of the workers. And then maybe one or both of you can address that—who is doing what to whom on the boats?

RADM COOK. Mr. Congressman, first off, I want to convey that there is a sense of urgency, so the balance is clearly we want to do the right thing for the environment; we certainly don't want to put anybody in harm's way in doing that.

I would like to just characterize one example which recently got a lot of play in the media. There were some barges who had some vacuum sucking equipment installed on top of them that were being used in the Louisiana area, and they were going to be used in a variety of locations—coastal, but on out what we call the boundary line, or kind of the—if there was a clear opening to a river it would be where the river went into the sea, but in New Orleans—I mean, in Louisiana it is sometimes a little bit tough to tell.

But some of the barges were going to be used beyond the boundary line, and there were stability issues that they wouldn't have to take into account if they were used closer in, but the last thing we wanted to do was have those barges go out and flip over. Well, the work that went on was stability calculations, you know, back in our engineering center, so it wasn't real visible within the media what was going on, and as soon as that work was complete those barges were allowed to go back into service.

So I would say there are a number of cases where we are out there. Another one is—another situation we—I just want to describe that side of the balance where we have to look at more than check-the-box—vessels that are hired that weren't intended for oil spill cleanup service. We want to make sure they have fire extinguishers, life preservers, the right navigational lights in case they are used at night.

So we do those things and every once in a while one of those gets more public attention than the case rightly deserved——

Mr. KLINE. Let me let Mr. Michaels—my time is—it is turning red here. But I guess what I am getting at is that considering the magnitude of this tragedy and the need to respond quickly because the oil moves inexorably into these marshes, it seems to me that we would make sure that there is somebody in the organization—somebodies, many of them in the Coast Guard, or in OSHA, or in MMS, or OBE, or whatever we change the name to—that you would be working 24/7, and if it took—you needed more inspectors that you would be pulling people from Antarctica or someplace to

make sure that they were there and getting this done in a timely fashion.

And I guess my time is up, but I am hoping at some point we will understand the relationship of what OSHA is doing on the boats along with the Coast Guard.

I am sorry, Mr. Chairman. I see that my 10 minutes——

Chairman MILLER. If I might add to this question, we ran into this problem in the oil spill in San Francisco Bay a couple of years ago. I think what we really need along areas like the Gulf Coast or harbors—we need a precertification of private boats fishing because you lose a huge amount of time while you are trying to decide whether the fishermen can be helpful or not and whether they comply. And I think we need a program of annual certification of those people who would want to participate.

In San Francisco we lost two tide cycles. Well, in two tide cycles a relatively small spill by any—was all of a sudden out the Golden Gate and into the ocean and onto the beaches. So we can't do this after the oil is in the water; it all has to be done on a constant basis, I think, so that we know that those people one, they can be effective, two, they have the capacity to—they have the safety equipment and they are ready to go. Because we lose just too much time going through this after the accident.

Congresswoman Woolsey?

Ms. WOOLSEY. Thank you very much, Mr. Chairman. Good lead-in on the San Francisco Bay spill.

From that very moment I have had this question, and Ranking Member Kline said it too: Who is in charge? It just really—and it was so much smaller for us but we thought it was devastating.

It was so clear to me that we have so many elements to these spills: Who is in charge of prevention? Who is in charge of certification? Who is in charge of cleanup? Who is in charge of safety and health? Research and development has to be at the forefront so we can know better how to treat all of this and how to prevent it all.

I am thinking we need an umbrella agency. I don't know who that agency is. And I am also thinking that maybe over each of the major sections there will be a lead agency, such as, for today we are talking about safety and health, OSHA for safety and health. I am just throwing that out there as an idea.

What I would like to know, Rear Admiral Cook and Mr. Slitor—tell me, before this incident in the Gulf how many times did each of your agencies inspect that particular site and did you come up with anything that was suspicious? And what did you do about it? Just tell me about your inspections, starting with you, Admiral.

RADM COOK. Yes, Congresswoman. First off, the Coast Guard has been inspecting the Deepwater Horizon every year since 2001, when it came in—first came into U.S. service, and we do the—an inspection for which we take the information that is provided by the flag state, their certification with international standards, and then we validate it.

Over the 9 years that we have been inspecting it they have only had two deficiencies, but really, we are looking at the navigation, lifesaving, and some of the firefighting aspects that go along with accommodations, almost as if it was a ship—because it is a, you know, it is a vessel until it is attached to the seabed.

So we are looking at all those type of activities that we would normally associate with a ship, and then MMS or BOE comes in and takes care of the—more of the production aspects that associate it with drilling.

So the two discrepancies were just a placarding issue, and in one case a gauge that wasn't calibrated correctly, which they fixed on scene. So they have had a good safety record with us.

Ms. WOOLSEY. So, Mr. Slitor?

Mr. SLITOR. Our experience has been, actually, similar. I don't have the actual number of total inspections that we have conducted since 2001, but we—it is our policy to visit and inspect drilling facilities every 30 days, or as close to that as we possibly can. Weather plays a big factor, at times.

Over the—I believe it is the last two or three inspections that we conducted on the Deepwater Horizon they did not have any incidents of noncompliance.

Ms. WOOLSEY. So then, Dr. Michaels, you are OSHA and you are going in there to inspect, first of all, would you hope they had a safety committee of some sort that you would be hearing from, but would you tell us what you think you would be looking for?

Mr. MICHAELS. You have raised a very interesting question—what OSHA would do and what I think should be done really are two different questions. OSHA has the same sort of approach that we go and we look for compliance with certain rules, and that is important.

But the two traditional ways that OSHA and other agencies look at safety and health in these process safety and management situations are inadequate, in my view, because really these are what we call low probability, high consequence events that often occur because of a combination of conditions and decisions that are made—often decisions that are made to save money or to move quickly, and that is the history of the BP Texas City disaster, and likely the history of this, though the history has not yet been totally written.

So when an employer tells us, for example, "This facility is safe because of very few injuries notices," we say, "Well, that is not really relevant." But we see that in press conferences all the time. You know, the night before the Deepwater—the night that the Deepwater Horizon exploded, BP executives were on the ship giving a—on the vessel giving a plaque to the workers for 7 years of no lost-time injuries.

Ms. WOOLSEY. Oh, wow.

Mr. MICHAELS. So one measure that we use, which is injury rates, is not useful. The other thing is when we look at compliance with certain rules, at any point in time they could be being complied with and we can't be there all the time, so we have to look at how they make decisions, how they investigate near misses—the instance that could have predicted what goes on. And that is a very different regulatory approach.

And frankly, OSHA doesn't do well either. But that is the approach that I would have taken and would like to take not just on the Deepwater Horizon site, but across oil refineries and chemical plants as well.

Ms. WOOLSEY. So, Mr. Chairman, if I could just say 1 more minute—not a minute even.

Had some of the employees—the workers—on the vessel been able to speak out they would have been able to point out areas of danger?

Mr. MICHAELS. Absolutely.

Ms. WOOLSEY. Thank you.

Chairman MILLER. Thank you.

Mr. Castle—Congressman Castle?

Mr. CASTLE. Thank you, Mr. Chairman. Like everybody else here, you know, we are concerned about the health issues, the environmental issues that have arisen from this. But obviously the deaths of the people who were working there is a matter of great concern, and my questions in the limited time I have will be in the whole area of prevention and future prevention.

And, you know, it is a little confusing as to exactly who is in charge or to what is going on here, but I have at least read or heard—and if I don't state this correctly please straighten me out—that there was a shut-off device or a breaker system of some kind or another that apparently may have actually come up with—parts of it may have come up with the oil and gas that was being retrieved, so there was some knowledge that perhaps it was not working. Who had knowledge of that or whether that is an accurate statement I don't know, but, Admiral Cook and Mr. Slitor, can you comment on that?

Mr. SLITOR. I notice similar things from what I have read in the newspaper, but we need to wait until we get the results of the accident investigation before we can even comment on what is in the newspaper, so I really can't speak to that directly.

Mr. CASTLE. Well, if there is a shut-off device and it is in place how would a worker or anyone else inspecting that rig know that it is either functioning or not functioning?

Mr. SLITOR. We require the operator to conduct regular tests of the BOP—the blowout preventer—system, and they are pressure tests to see if they can hold the pressure—the formation pressure.

Mr. CASTLE. Okay. Can you tell us now when that last test was performed in that particular blowout preventer system on this rig?

Mr. SLITOR. When the last test—I don't know the particular date of that, but I believe the requirement is that they test BOPs every 14 days.

Mr. CASTLE. And that is a self-test which they do themselves. Is that the idea?

Mr. SLITOR. Correct.

Mr. CASTLE. Okay.

And you had no report—none of you had any report that it was not functioning correctly, or anything of that nature?

Mr. SLITOR. No. When we do inspections we test all of the operator's—or inspect all of the operator's testing record to ensure that they have done all tests for the various devices onboard, whether drilling or production, and these have frequencies of, you know, weekly, biweekly, monthly, every 6 weeks, depending on what the particular device is.

Mr. CASTLE. Based on what you know now with the history of the last couple months of all this, would you—either of you—

change the inspection frequency or systems that were in place then to prevent future problems with rigs such as this—frequency of inspections or anything else that perhaps could be done?

Mr. SLITOR. In the 30-day report to the president Secretary Salazar has come out with a number of recommendations, some of which speak to our inspection frequency and augmenting the inspection workforce, and to witness tests—some of the testing that is done on critical devices such as the blowout preventers. That can happen at any time during a 24-hour period, so we are looking at ways to provide more oversight on those tests.

Mr. CASTLE. Can you tell us whether there was any correspondence, in terms of communications, with BP or anyone else dealing with the Horizon drilling rig before this happened, in, say, the 30 days before, with respect to either the blowout prevention system or anything else that might have been some sort of a lead that there was a possible potential problem that could explode as it did?

Mr. SLITOR. No. I am not aware of any type of documentation or information transfer that would have indicated that there was any kind of problem, but I can get back to you on that and see if there is something, but I am not aware of any.

Mr. CASTLE. Okay. I realize you are the acting chief in this case, Mr. Slitor, but are you satisfied that the people at MMS are sufficient, in terms of both numbers out there in the Gulf and numbers in terms of what you have to do at home in Washington or wherever it may be, to continue the kind of work that MMS should be doing with respect to prevention of something such as this?

Mr. SLITOR. No, I don't believe we do have sufficient resources. We have 56 inspectors in the Gulf of Mexico, and about a handful of those are more supervisory and administrative and have significant office functions, so it is actually less folks that actually get out there to do these inspections. And as you know, there are over 3,500 facilities offshore, so it is a challenge to meet our statutory requirement of inspecting every facility annually. So to that end we have put in budget requests to augment the inspection workforce.

Mr. CASTLE. I know my time is up, but my notes had indicated that you try to inspect every 30 days, I thought, and you just said annually.

Mr. SLITOR. There are two types of facilities out there. There are drilling rigs that are mobile, and there are production platforms. We try to inspect drilling rigs every 30 days because they are mobile, they do move around from place—location to location, and frequently they are on a location for 3 months or so, but can be as much as a year, depending upon the target they are after and a number of other factors. So for drilling rigs we do go out every 30 days or as close to that as we possibly can.

Mr. CASTLE. Thank you.

I yield back, Mr. Chairman.

Chairman MILLER. Mr. Kildee?

Mr. KILDEE. I thank you, Mr. Chairman.

As a corollary to the governor's question, a certain culture exists in various agencies. We have two agencies that have a key role here: the MMS and the Coast Guard.

I would like to address this to the two physicians, Dr. Michaels and Dr. Howard: Was there a proper focus among those two agen-

cies, or within those two agencies? Was there a proper understanding of their mission?

Were both adequately performing based upon the need with the various factors out there in the Gulf? Was one doing a better job than the other? And what could one or the other be doing better to fulfill their mission?

Mr. MICHAELS. Mr. Kildee, I am not sure I can comment on the particular work on offshore drilling regulations by these two agencies, but I can look very carefully at—we work very closely with the Coast Guard on a number of different activities and we are very pleased with their work and our relationship with them, and we have relatively little contact with MMS, or with BOE, so I can't really comment on their particular work.

Mr. KILDEE. Doctor?

Dr. Howard. Yes, sir. Previous to this episode, the National Institute for Occupational Safety and Health or CDC has not had any knowledge of these offshore activities.

Mr. KILDEE. There are four of you here representing. All of you are concerned about the safety of those people who are working in that area and about the environment, but all the factors. Would it not be helpful if you bring your area of concern and your area of expertise into the other two agencies to discuss some overlapping interests that one may not have thought of?

Admiral, could you suggest how you could coordinate better between the various agencies that have at least a level of responsibility?

RADM COOK. Yes, Congressman. You know, one thing I just, you know, want to point out is that OSHA has a maritime safety advisory committee—a federal advisory committee. The Coast Guard has a seat on there. I mean, that is just one area where we try and be part of the maritime fabric of what OSHA is concerned about.

But I think the best way is to continue the meetings that we have with MMS and I said to our standards organization where we develop regulations—the advisory committee activity. And I think what we can do is add more of that type of activity where there is information-sharing.

Currently, I would say it is more at the headquarters level with OSHA. In the field we have a lot of interaction with MMS because the activity is primarily in the Gulf of Mexico, although certainly not exclusively. Everyone knows that.

So I think in the future what we have to do is aim to formalize some of that interaction and look to where we can build more, because I think one of the underlying pinnings of this program where we look at safety and health on the outer continental shelf is that the Coast Guard has vessels to get out there, we have a combined contract for aviation to get out there. So there are some logistical things that the agency who is going out there needs to be able to carry the ball effectively.

Mr. KILDEE. Mr. Slitor?

Mr. SLITOR. I would agree with Admiral Cook. We would embrace the idea of bringing OSHA in and coordinating among the three agencies to ensure that we all know the breadth of our regulations and how we oversee those regulations. So I think it is a positive suggestion.

Mr. KILDEE. Well, might that avoid some contradictory regulations or those that aren't compatible?

Mr. SLITOR. I am sorry; I did not hear.

Mr. KILDEE. Might that avoid some contradicting regulations or regulations that might not be compatible?

Mr. SLITOR. Yes, I do believe that would. That is a big part of our coordination with the Coast Guard, working on not only our quarterly meeting that we hold in Washington here, but we do fairly frequent training with our inspectors and Coast Guard personnel in the various regions to understand better concerns of their statutes and regulation, since we are out there as their eyes and ears.

Mr. KILDEE. Thank you, Mr. Chairman.

Chairman MILLER. Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman, Mr. Ranking Member. I would kind of like to continue a little bit with the sort of the questions that Mr. Kildee has raised regarding integration and coordination, which is obviously always important.

After the World Trade Center and Hurricane Katrina national disasters RAND conducted research projects with respect to lessons learned related to public health and worker safety and health. The studies made several recommendations to prepare for future events, and the studies suggested specifically an integrated approach to safety management events. The studies suggested that, you know, for example, assessing the health hazards associated with cleanup was subject to debate, as it is in this incident.

To these lessons that need to be internalized by the federal agencies to avoid the stakes being repeated, what are the specific actions that have been taken to implement an integrated approach to safety management?

RADM COOK. Congressman, thank you for that question, because it gives me the opportunity also to mention, we have had this undercurrent of who is in charge, and now let me just talk—this is about the response. You know, under the National Contingency Plan the Coast Guard is the federal on-scene coordinator for coastal spills. EPA is the federal on-scene coordinator for inland spills.

So with that goes a host of requirements, and it actually requires an incident command system to bring together the variety of agencies as well as the responsible party so that we end up with an integrated response. And I think that speaks to some who say, "Why was OSHA on the boats?" It wasn't that OSHA was in charge of safety on the boats; OSHA was helping as part of the unified command to address safety issues in an integrated fashion.

So that dates back really to the Exxon Valdez, and at that time they also envisioned what we have termed our national incident commander, which Admiral Allen fills that role now. This is the very first event where we have ever had a national incident commander under the National Contingency Plan. We have exercised it every 3 years in accordance with the regulations for spills of national significance—exercises where we draw in agencies and we get industry to step up and be responsible parties for those exercises so that we get a realistic approach to integrating.

But I would say the scale of this response, you know, is beyond anything that we have ever exercised, for sure—the largest response—you know, I think Admiral Allen has characterized it as a

siege. We have some 35,000 people involved in the response right now, and in terms of vessels and being prepared and all that, there is 2,700 vessels of opportunity, so to speak—fishing vessels or other ones that are being used that weren't really intended for that purpose.

So I think it is integrated to the extent it can. This response, though, is of very large magnitude.

Mr. THOMPSON. Any other panelists have any thoughts or comments on the integration?

Mr. MICHAELS. Just to add that within the, you know, the structure it has been fill-up, it is very clear where expertise and responsibilities lie. So OSHA, for example, is on those boats because we are measuring exposure to chemicals, we are observing the work that is done, where the Coast Guard is concerned about the seaworthiness of the vessels and various sea-related activities. But in fact, the work that we are looking at is not particular to the boat, but it is worker exposure.

So it actually works pretty well in terms of the—that safety and health are integrated very well between the four or five agencies that are actively involved in the cleanup operation.

Mr. THOMPSON. Admiral, you talked about how this is, you know, beyond the scope and size of what you anticipated the first time to implement this incident command system. I am assuming that there are ongoing lessons being learned and being documented in terms of how to refine and improve this process for future application.

RADM COOK. Yes, Congressman. I am not really prepared to enumerate those right now, but yes, we are thinking that, you know, possibly there will be some legislation, you know, which will help to point the way forward from beyond what was done with the Exxon Valdez from OPA 90. Because certainly the framework is there, but in order to scale up to a spill which we can't really quantify the extent—in this case, something that keeps coming from the well—I think we need to rethink some of the aspects of coordination.

Mr. THOMPSON. Thank you, Chairman.

Chairman MILLER. Thank you.

Mr. Andrews?

Mr. ANDREWS. Thank you, Mr. Chairman. I appreciate you calling this hearing so we can focus, you know, beyond the obvious tragedy of the loss of the way of life for people in the Gulf and the tragedy to the environment is the tragedy of 11 people not coming home to their families anymore. And I think that is something we really ought to be focusing on in addition to the rest of the very sad news here.

My understanding is that long before any of you got here Mr. Michaels' agency, in 1979, signed an agreement with Admiral Cook's agency that said that worker safety would be the responsibility of the Coast Guard. Then, in 2003 Admiral Cook's agency signed—or delegated to Mr. Slitor's agency the responsibility of actually doing the inspections that are incumbent in that duty. Am I right about that?

RADM COOK. Congressman, the essence is correct. The part about the delegating—Coast Guard delegating to Minerals Manage-

ment Service, or BOE, is not entirely correct. That is just for annual visits to fix facilities——

Mr. ANDREWS. Okay.

RADM COOK [continuing]. Which some of them are unmanned, and——

Mr. ANDREWS. Okay. Thank you.

And I have heard testimony this morning that, with respect to the rigs, that their practice is to inspect at least every 30 days. Is that right, Mr. Slitor?

Mr. SLITOR. Yes, that is correct.

Mr. ANDREWS. How many people go on those inspection visits?

Mr. SLITOR. It certainly depends on the size of the facility——

Mr. ANDREWS. How many went to this facility?

Mr. SLITOR. I believe at the last inspection there was two inspectors that went to that——

Mr. ANDREWS. How long do they—how much time do they spend on the inspection?

Mr. SLITOR. I would have to get back to you on the precise time, but it was probably on the order of a full day.

Mr. ANDREWS. I thought I heard you testify, too, that there—are there 58 people that you have doing the business of these inspections—is that right?

Mr. SLITOR. Sixty-two total, across all regions, 56 of which are in the Gulf of Mexico.

Mr. ANDREWS. And of those 56 people, how many actually go out to the rigs and do the inspections?

Mr. SLITOR. The way that our inspection workforce is set up, that all inspectors have responsibility or are trained to do both drilling and production inspections, but——

Mr. ANDREWS. So these are field personnel, not desk personnel?

Mr. SLITOR. Well, nearly.

Mr. ANDREWS. Okay.

Mr. SLITOR. About five are so supervisory inspectors that their duties keep them in——

Mr. ANDREWS. How many rigs are there that need to be inspected in that category of inspections? How many are there in the Gulf?

Mr. SLITOR. Well, it fluctuates quite a bit, of course, depending upon the price of oil, but it can range anywhere from 40 to 100.

Mr. ANDREWS. So let's say the midrange of that would be 70. There would be 840 inspections a year, right—70 times 12?

Mr. SLITOR. Yes.

Mr. ANDREWS. So you have 56 people doing 840 inspections a year?

Mr. SLITOR. Once a month, yes.

Mr. ANDREWS. Yes. Once a month. So how many inspections does the typical inspector do per week?

Mr. SLITOR. Again, that number is quite varied because of the nature of the facilities can be—as Rear Admiral Cook pointed out—can be literally a single well—that has very little equipment to extremely large production facilities. So to come up with an average number, I am not sure what that might be, because some—it can take a day to do many of the inspections, or it can take a few hours to do some of these very small things.

Mr. ANDREWS. But the Deepwater Horizon fell into the day-long type category because it was more complex and larger?

Mr. SLITOR. More complex, and the distance to shore is a big concern, or a big factor in what you can accomplish.

Mr. ANDREWS. I think your testimony indicated that in the last 5 years you issued 12,087 incidents of noncompliance and proceeded and closed 154 civil penalty cases. Do you know how that stacks up with previous 5-year periods? Is it more? Was it less?

Mr. SLITOR. No, I do not know. I will——

Mr. ANDREWS. Could you get that for us for the record?

Let me just say, Mr. Chairman, in closing, one concern that I have is that any time someone gets sort of too far away from their core business it raises some concerns. I mean no disrespect to any of the agencies here, but one of the things that struck me about the testimony this morning is that we have a federal agency whose core business is worker safety, which is OSHA.

And in 1979 OSHA decided, in conjunction with the Coast Guard, that it would sort of get out of that business and the Coast Guard would get into it. And there there is some arrangement, although I didn't quite precisely state it, where in 2003 the Coast Guard decided that it will at least share that responsibility with Mr. Slitor's agency.

One of the things we ought to take a look at is whether, you know, the core business of the two agencies doing these inspections is really close enough to the job they have been given to do.

Chairman MILLER. Well, I think the gentleman—if the gentleman would yield just quickly—raises a very important point. In 1979 this industry, for the most part, did not exist. We were still operating off technology from the 1950s and 1960s on the outer continental shelf very close in, for the most part.

I have had oil company CEOs tell me that when you make this decision you are betting the company; you are betting the company to go into this deep water, whether you go in Brazil, or you go in Nigeria, or you go in the Gulf of Mexico. And there is a huge amount of pressure on the oil executives, on the workers, on the safety organizations, and others.

But that primary mission, I think you are right, has to somehow—it has to be walled off because they have an obligation to workers who are put in very difficult situations. I have been in these worksites as a worker and as a member of Congress. This is a tough place to do work. These are remarkable people who can do it on a constant basis, and I think you raised some important issues.

Mr. Cassidy?

Mr. CASSIDY. Thank you, Mr. Chairman.

Dr. Michaels, the—I am looking here at a CRS report—Congressional Research Service—speaking about oil and gas industry safety statistics, and as I gather, as it turns out, the chairman characterized it as inherently dangerous, and I suppose any such industry is, but I will point out that the oil and gas extraction industry has an injury rate that is significantly lower than other industries, and yet you use the term, which I really like, concept of low incident but high impact. And I think you also put that in context that if it is low incidence, high impact, oftentimes that it is a confluence

of—did you say human error, mechanical error, or how did you put that?

Mr. MICHAELS. Well, it is a combination of factors. There are existing conditions—physical conditions and then, you know, individual decisions that are made—that lead to these disasters.

Mr. CASSIDY. So, I am a physician, so my mind kind of, of course, will come from whence it comes, and I have noticed that in health care no matter how many systems you have, if you have somebody that makes a series of bad decisions, that oftentimes a terrible incident will occur despite good systems, despite everybody else behaving with proper concern. And I gather that by analogy that is almost what happens in these low frequency, high impact sort of conditions, or can be part of it?

Mr. MICHAELS. I don't know if we can generalize across the board, but when we look back, for example, at BP Texas City, which was a disaster which has been well researched, we saw that there were a number of systems that were not put into place that would have—or a number of decisions that were made over the course of several years that, had they been made differently, would have avoided the death toll there. And then there was operator error that—and conditions, essentially, the malfunctioning of machinery that measured the operator error, so the operators didn't know that they had made the mistake.

So those combination of things led to this event. And so from a safety point of view——

Mr. CASSIDY. Let me interrupt you, just—of time. So one of the things that is very, kind of, weird here is that BP is on the rig to give a safety award.

Mr. MICHAELS. Right.

Mr. CASSIDY. Steven Newman, who is testifying in Energy and Commerce, has had a time-out rule, that anybody on trans-ocean rigs could call time-out if they thought there was a safety issue. And yet, our concern is that there was an absence of attention to safety.

And is there a way to reconcile the two, where there is a rig with great safety records, and an operator with the time-out rule, and an industry standard which has fewer injuries relative to other industries, and yet, here—boom, this happens. Now, how would you interpret that?

Mr. MICHAELS. It is obviously complex. First, it is important to separate out personal safety issue, which is the injury and illnesses, versus process safety. And that is now fairly well understood by safety experts, though people still often conflate the two.

Within that, though, we know from looking at some of these events that you have to have multiple levels of safety, or multiple protections in place. And apparently in the Deepwater Horizon a number of the things that should have stopped the blowout from occurring didn't work, and obviously we are still trying to figure out exactly what that was.

But then, even if you have a situation where workers understand they can, you know, call a time-out or things like that—and I don't know if that was true or not—but if they can do that, there are still decisions made—production decisions that are made—you know, how long should we let this cement harden, for example——

Mr. CASSIDY. So both systems failures and personal failures.

Mr. MICHAELS. Exactly.

Mr. CASSIDY. Now, one of the concerns is that there is an absence of regulation, but I am struck, Mr. Slitor, that your agency, in 2002, issued new rules and within the year of issuing the new rules you had a 285 percent increase in what, INCs, or something—2006 incident reports per year.

Mr. SLITOR. Right.

Mr. CASSIDY. So it appears that both you have the regulations and that you were doing the job if you were suddenly reporting roughly 500 incidents per year. Is that a fair statement?

Mr. SLITOR. It needs to be qualified. That 285 percent increase was the result of redefining the reporting threshold. So it——

Mr. CASSIDY. So you lowered the threshold, therefore that which was previously acceptable now no longer was.

Mr. SLITOR. Correct. We wanted to know more of what was going on out there and we——

Mr. CASSIDY. So, and this is under 2006. I think one of the concerns is that the previous administration relaxed rules, but in terms—it actually seems as if they actually lowered the threshold by which violation would take place.

Mr. SLITOR. No, not by which violation would take place. We are talking about the requirement upon the operator to report incidents.

Mr. CASSIDY. Okay.

Now, and, Admiral, again, one of the concerns that I think my colleague raised a good point: Should we take your safety inspections and give it OSHA, which has kind of a dedicated responsibility for worker safety, and yet here are you all and I see that it is part 142 of Title 33 includes regulations relating to workplace safety and health on the OCS.

Do you think you do a good job? I will just say, again, it looks like the industry is actually safer than other industries, which, if your end point is safety I would say you would, but I would just like your take on that.

RADM COOK. Congressman, I would say we could always improve, but I think the Coast Guard is the right agency to be looking at safety of vessels. We understand the maritime context better than any other agency within the government, so that when we inspect a mobile offshore drilling unit inside a fire cell that is navigationally, structurally, firefighting, lifesaving—all that stuff is right and is safe, and then they move into the drilling or production phase, you know, that is a little bit of a different world. But as far as determining safety and health in a maritime context for ships of all types, including mobile offshore drilling units, I think the Coast Guard is the right agency.

Mr. CASSIDY. Mr. Chairman, thank you for the indulgence. I yield back.

Chairman MILLER. Thank you.

Mr. Hare?

Mr. HARE. Thank you, Mr. Chairman.

Dr. Howard, I have a question for you here. I have been a longstanding supporter of the work that NIOSH does to enhance worker safety across the board, and first of all, let me thank you for the

work that your organization does to ensure that workers on the ground are protected.

I wonder if you could tell me in what way that your education resource centers have been called upon to assist in this disaster. For example, I know the students of the University of Illinois at Chicago have recently been trained in hazardous waste cleanup, which is directly applicable to current efforts in the Gulf, and is there more that can be done to leverage their expertise, research ability, and training capacity to perhaps increase their role for future disasters such as the Deepwater Horizon?

Dr. Howard. Yes, sir. We have, as you know, 17—we fund 17 education and research centers throughout the United States, and I think that the expertise within those centers should be tapped. In this situation we have tapped some of that expertise informally.

One of the issues that the National Institutes of Health director announced on the 15th was money available to look at human health effects. I hope that that money is made available through requests for applications for these institutions that not only we fund but superior academic institutions in the Gulf region so that they are able to participate in the research that needs to be done following this incident on human health effects.

Mr. HARE. As the chairman mentioned, I am glad that you are having this list because we have already seen reports of people going to the hospital who are complaining of all kinds of problems that they have had, and I am concerned with some of the dispersants that are being used in terms of how toxic are they, you know, people getting sick down the road from this. I mean, this is going to be a very, very long process of cleaning up and—you know, probably years.

And I think the important thing, as the chairman mentioned, is being able to, you know, have a list of people so that if there is a problem—a health problem—we can address it. I mean, it would seem to me that if we didn't do that that would just, you know—it is beyond belief to me.

Mr. Slitor, it is my understanding and the committee's understanding that the inspector that went on the Deepwater Horizon had only been on as an inspector for 4 months. Is that correct—he had 4 months experience?

Mr. SLITOR. Are you speaking of the last inspection?

Mr. HARE. Correct.

Mr. SLITOR. That is not my understanding.

Mr. HARE. Okay.

Mr. SLITOR. My understanding is the inspector that was on there the last time has been a long-term employee of MMS.

Mr. HARE. All right. If you could just double check that for me, I would be interested to see.

Mr. SLITOR. Sure.

Mr. HARE. The other thing—and I just want to make sure I heard you correctly—you said when you are putting together this inspection thing that the oil producers help develop the inspection process. Is there anybody else that you think ought to be brought into the mix besides the people on it?

Because I guess the one thing that concerns me is we have heard, again, reports about inspection reports being done in pencil

and then being written over in ink. So if these folks are writing their own inspection reports and then somebody is tracing over them, you know, I don't know whether that is factual or not, but I am just saying that is very disturbing to me and I think to a lot of people.

So, you know, it is sort of these guys are helping to write their own inspection things for you guys to go in and inspect. You know, I mean——

Mr. SLITOR. Well, I would understand your concern and we would share that, certainly, if we found that to be the case. But we are talking about two different things going on here.

The industry standards groups that write recommended practices—these are highly vetted and rigorous procedures for doing this. Their sole goal is to develop practices for all of industry that speak to safety of either devices, equipment, methods, and we review—we sit on a number of these, not as a—member, but they are interested in our contribution as a regulator. So we are involved and we tell them of our concerns along the way as these are developed.

Mr. HARE. I just have one final question. I know I am running out of time.

If you or Admiral—if you folks are inspecting any one of these and your inspectors see something that, in their professional opinion, could be very, very troublesome here—in other words, have some serious consequences—do you have the authority to shut that well down?

Mr. SLITOR. Without a doubt, sir. Without a doubt.

RADM COOK. Same for the Coast Guard, sir.

Mr. HARE. Okay. Well, I am glad to hear that. Thank you so much.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Guthrie?

Mr. GUTHRIE. Thank you, Mr. Chairman.

And thank you. What Congressman Hare brought up is important. And I think that what the chairman and the ranking member said earlier about precertifying being ready—Congressman Hare brought up dispersants, and one of the frustrating things amongst several things that people I have talked to have with the response from the administration's side of it is we put dispersants into the water, we are all hoping it is going to disperse the oil and be successful, and then we find out it is got human or other environmental impacts of its own.

And I guess my question is, did we know those threats were there but it was viewed—a decision was made to use a dispersant knowing the environmental impact it would be better—the worse impact would be to not use the dispersant, or did we just use something and then figure out there is a problem later—we were just completely unprepared for this kind of oil spill we are using dispersants?

RADM COOK. Congressman, I will go ahead and answer your question not on a true, technical, scientific basis, but the procedures in the National Contingency Plan require that the regional response team, which is Interior, EPA—Coast Guard and EPA co-

chair it—and each region of the—federal region of the country—they have to authorize the use of dispersants before they can even be applied.

In this case, the Gulf Coast plans already had preapproved use of the dispersants and the actual dispersant that was used, the Corexit. And that was done with the full knowledge and basis of testing that had to support its approval done in advance, so it was thought at the advance approval time that the impact of the dispersants would be less than the hazards presented by the oil making its way to the surface and reaching the beaches.

Mr. GUTHRIE. But in reality it has been different, or are we still studying that?

RADM COOK. Well, the authorization, even though it was preapproved, comes with a lot of testing that has to be done, and EPA is overseeing the continuous work on testing.

Mr. GUTHRIE. Okay.

I have a question for Mr. Slitor. In MMS the I.G.'s report was not flattering at all of the activities that MMS—that who has been regulating this industry—and so now I think you laid out in your testimony the process about MMS's investigation. Is there a conflict, or do you see a conflict, or how do you avoid a conflict of your agency and doing this investigation, which will look at the way your agency regulated the industry which has been brought into question, your performance by the I.G. report?

Mr. SLITOR. No, Congressman. I don't believe there is a conflict in this regard. The I.G. report, I believe, has found unethical behavior, without a doubt, and that is not—does not characterize our inspection workforce nor the intent of the people that do work in MMS.

The people that are conducting the accident investigation are truly dedicated to finding out what is going on; they are very familiar with the processes, the equipment, and it is just—I know those folks, and it is their nature to get after the truth and how things went wrong.

Mr. GUTHRIE. Good. I am glad you have confidence, because that is important that we do that. I appreciate that.

And then one more for Dr. Howard: You did a—in your testimony—a speech—or your written testimony—in New Orleans based on registering and trying to—ensuring that we have a good documentation of workers who are exposed. And just, could you give a—I guess I have probably a couple of minutes left—just an overview of what you were talking about, and are we registering—are we doing this correctly? And is there anything preliminary that you have seen in your studies already?

Dr. Howard. The rostering effort thus far has resulted in nearly 15,000 workers being rostered. One question that we have, of course, is what is the real denominator?

We have asked and been given BP's list of badged individuals. We are going through that list now to figure out what is the true denominator so we can have some idea whether we are 50 percent successful, 25 percent successful, or nearly 100 percent successful.

Some of the government agencies have asked for their individuals to be rostered. We are doing through electronic Web site for them.

As everyone has noted this morning, one of the lessons of 9/11 is that we did not have such a roster. It made any immediate or long-term follow-up of human health extremely difficult. So this is a primary mission of ours to get everyone rostered.

Mr. GUTHRIE. Well, I am glad that all of you are taking our workers' safety very important as you move forward, and we appreciate that. That is very important we do so, and thanks.

I yield back.

Chairman MILLER. Dr. Howard, why would this continue to be voluntary? Why would we allow a worker to go into the area without being rostered?

Dr. Howard. Well, we don't have the legal authority to involuntarily ask individuals to roster, but we certainly——

Chairman MILLER. Well, don't hire the person, with all do respect.

Dr. Howard. I am sorry?

Chairman MILLER. Don't hire the person.

Dr. Howard. Well, the employer certainly has that ability.

Chairman MILLER. I mean, if we have learned something from 9/11 it was these gaps turned out to be very costly for victims, for the government, for mitigators. Okay.

Mr. Courtney?

Mr. COURTNEY. Thank you, Mr. Chairman.

First of all, I just wanted to say that for some people who have been critics of the government's response, I think Admiral Cook's opening remarks about the fact that 115 lives were saved because of the search and rescue response that the Coast Guard mounted immediately is something that shouldn't be forgotten, and I want to just again publicly thank the Coast Guard for their efforts at that time.

One of the chairman's comments when he opened this hearing was the fact that in addition to sort of the cross-jurisdictional issues that we are trying to figure out here today within the U.S. government there are also international maritime issues that add another layer of complexity to try and just sort out the rules here. This is a rig which was built in South Korea, operated by a Swiss company, under contract to a British firm, BP, flagged by the Marshall Islands, who contracts out its inspections to a private company.

And, Admiral Cook, in your opening remarks—or your written remarks—you indicated that when the Coast Guard is doing its statutory certification for foreign vessels the flag state or authorized recognized organization working on behalf of the flag state carries out the inspections, tests, and surveys required to issue the statutory certificates, which I assume were submitted to the Coast Guard in the form of reports.

Again, just in terms of who is doing the inspections, the initial certificates with a foreign-flagged rig, how is that working? How is that different than if it was a U.S.-flagged rig?

RADM COOK. Mr. Congressman, and first let me just say thank you for acknowledging the lives saved there, and I think that is somewhat of a statement of the fact that the types of requirements the Coast Guard has for lifesaving equipment, and our inspection

techniques, and things like that, validate that those were useful and helped save lives at the time.

So I will try and drive down—and it is a little—it is a complex web, but in some terms it is called a safety net because we do have a flag state that has responsibilities, we have a recognized organization which, in this case, was the American Bureau of Shipping, which is an agency which specializes in maritime—almost like a maritime surveyor—and there are several of those throughout the world.

There are very few of them, but they have a lot of expertise, and that is who has done the—they have been recognized by the Marshall Islands to carry out the certification inspections in their behalf.

We, as the Coast Guard, represent the U.S. to the International Maritime Organization, where the foundational codes are developed, and we invest our best engineers and operational people to try and make those codes that are enforced throughout the world up to the standards of the U.S. So they have met the international mobile offshore drilling unit code, they were issued the right certificates, and then they presented themselves for inspection to the Coast Guard.

We go on, we know what we need to look for to validate that the rig is up to standards, and if we have anything that we see out of the ordinary—you know, any kind of navigation thing, safety thing, firefighting, on and on—we are able to then dig further and we do what is called an expanded exam, and there is no limits to an expanded exam. You know, we could spend a week there if we needed to, but typically that is not necessary. So we make sure that they back up, proof is in the pudding, verify what has been presented to us.

Mr. COURTNEY. Well, clearly the countries that a lot of these companies gravitate towards in terms of getting flagged, whether it is Liberia, Marshall Islands, Panama—I mean, they are going there sometimes for tax reasons, sometimes for other reasons, but flags of convenience, as they are referred to. I mean, there is certainly a concern that people have that the rules are not the same standards that the U.S. would apply.

And one quick example, and maybe you can respond to it because it has been reported in the press, which is that the Marshall Islands permitted a dual command structure so that the sea captain on the rig was not the person solely in charge of decision at the time of the explosion, that there was a offshore installation manager who had, basically, concurrent authority with the sea captain.

Again, press reports have suggested that that would never happen on a U.S.-flagged rig, and again, I just wonder if you could comment on that because, you know, that obviously would appear to be something that we have to accept under the rules of international maritime.

RADM COOK. That split in responsibility between the vessel master and the offshore installation manager is allowable underneath the International Safety of Life at Sea Convention. So they did meet international standards. We at the U.S. signed up for that convention.

In our own regulations we have continued to require that the master and the officer—the offshore installation manager be the same person, so his license is a master with an OIM endorsement. And I think that is one of the areas that we do need to explore further and, you know, consider all the aspects of having that split. The split does not take place until the drilling connection to the bottom takes place, but still, we need to know clearly who is in charge.

Chairman MILLER. Thank you.

Mr. Loebsack?

Mr. LOEBSACK. Thank you, Mr. Chair.

This has really been pretty enlightening, I have to say. A little stressing, obviously, the lack of coordination that does exist at the federal level. I know everyone is trying their best to do what they can now after the disaster. I just see this truly as a national disaster, not just a regional or a local disaster, for a variety of reasons, but I appreciate all the work that you folks are doing.

I would just like to focus a little bit again on sort of the post-disaster response. NIOSH and OSHA are working together, you said, Dr. Howard—is that correct—to develop an interim guidance. Is that what it is called—an interim guidance? Can you talk about that a little bit?

Dr. Howard. Yes, sir. Both OSHA and NIOSH have been looking at all of the hazard profile in all of the exposure groups of workers involved with the response and then have been developing a comprehensive interim guidance for protecting workers and volunteers in the Deepwater Horizon response.

Mr. LOEBSACK. Can you give us some specifics as to what that is, what that means, what are the different things that you are looking at?

Dr. Howard. Well, there are a number of very important issues. Dr. Michaels mentioned the issue of heat stress. Fatigue, long hours is another important issue.

The issue of personal protective clothing is an important issue. Clothing can exacerbate heat stress. The issue of respiratory protection is an important issue.

So all of those issues we are trying to put together into a guidance that both agencies can stand behind, would be able to inform the Coast Guard, BP, all of the contractors, and others involved in the response.

Mr. LOEBSACK. And what about psychological and mental stress?

Dr. Howard. Clearly that would be in our guidance, too. First of all, long hours and fatigue add to stress, and the work itself can be very stressful—response work itself can be stressful.

Mr. LOEBSACK. When might we have data—I assume you are collecting some kind of data at this point as far as the effects not only of the dispersants but the oil, and the fires, all the rest. When we will have data?

Dr. Howard. We are not yet focused directly on the effects. Right now we are focusing on prevention, and so we have a tremendous amount of data about the exposures, and that is what we are focusing on.

In addition, though, every report of a potential work-related illness is followed up on by the medical detectives at NIOSH. Yester-

day the Institute of Medicine convened a large meeting in New Orleans that both Dr. Howard and I participated in to think about how to collect data on effects into the future, both physiologic and psychological effects, and that process is just beginning.

To this point there aren't too many effects other than mental health-related. We believe that the physical effects we know a great deal about what is going on right now, and fortunately they are still limited, but we need to follow up on that.

Mr. LOEBSACK. Do you know how many workers have reported illnesses that may have resulted from the cleanup work? Do we have specific numbers on that?

Dr. Howard. Dr. Michaels mentioned several hundred workers had reported symptoms. I believe that was one of the issues. A lot of workers report symptoms of odors—hydrocarbon odors—a lot of workers report heat-related illnesses and have sought medical attention. The department has a mobile unit—medical unit—in Venice, Louisiana, and we have had over 178 visits to that both from workers as well as residents in the area.

Mr. LOEBSACK. And I guess sort of going back to the whistleblower issue but something broader than that, and that is workers feeling free to report when they are injured or when they are suffering illnesses. How are we doing on that post-disaster, at this point?

Dr. Howard. That is a very important issue. We have gotten one formal whistleblower complaint so far, which we are following up on. We have been very clear to the public, to workers, and to BP that workers should feel free to call us.

BP has said workers are free to call, but I think this is a message that we have to repeat over and over because we aren't everywhere all the time, and I think people already are feeling very stressed and very concerned about their future, their employment, their income, their families. And I think this is an issue we will have to deal with, you know, as long as the cleanup goes on, and we have to play a proactive role in encouraging people to call us.

Mr. LOEBSACK. And making sure that they are free and that they—or they won't be fired, or whatever the case may be.

Dr. Howard. And if we find an example of that to make a public shaming of the company involved. And we have had examples so far where subcontractors have done things that are clearly against our regulations—for example, charging roofers for protective equipment which should be free.

And together with BP we have made it very clear to that company that is wrong; those companies have publicly said, "We are wrong," and reimbursed the workers, and done it in a way that they won't do it again. And so we have to be on the case on this. This is a real concern.

Mr. LOEBSACK. Thank you.

Thank you all.

Thank you, Mr. Chair.

Chairman MILLER. Thank you.

We currently have votes on the floor. My intent is before we go to the vote to recognize Ms. Chu, Mr. Polis, and Ms. Hirono. So we are going to try to do that now, and I think that means we will not be coming back unless somebody lets the chair know.

Congresswoman Chu?

Ms. CHU. Thank you, Mr. Chair.

I wanted to ask questions about heat illness. I authored a heat illness bill for farm workers in California, and as far as I know it is the only state with worker protections against heat illness. In California it is mainly a dry heat, but I can imagine how much it is aggravated on the Gulf Coast and what it must be like now in June,. and what it will be like in the upcoming months of July and August.

Now, I understand that the workers in the Gulf are working 20 minutes and then resting 40 minutes. Is this true, and did OSHA set up this schedule? Or how was this schedule determined and how is OSHA enforcing this rest break, Dr. Michaels?

Mr. MICHAELS. First, Congresswoman, I want to thank you for your work on heat in California. You led the nation and I hope we and other states will be able to follow you as well.

Heat is a very important issue. Every year between 20 and 40 workers lose their lives to heat in the country. Far more people are made ill, as well, and as we said before, that is a very significant issue on the coast. We have had well over 100 reports of heat illness with some people being sick at some medical facilities as well.

There is a matrix that has been put together by BP and the Interstate Command which goes through the working conditions based on temperature, relative humidity, and the clothes that people are wearing. If people are wearing chemical-resistant clothes—you know, boots, gloves, and Tyvek outfits—it is—in hot weather—it is very difficult to work.

And so in those requirements workers work 20 minutes on and then 40 minutes in the shade being rehydrated. If it is a lower temperature or they are not wearing certain equipment it can be 30-30 or it could be 40-20. And so it depends.

We insist that—OSHA is enforcing that to our—not through issuing citations, but saying, "This is what we insist on," and there is no disagreement across the entire operation that that is the way it must be, because we really are afraid of people being seriously made ill or killed by this, because it is a really hazard. I know some people don't take it as seriously as we do.

In addition, there are now medics at every one of the staging areas to take pulses, to look at workers, to tell them to get out of the sun when they think that there is a problem, to talk to people about symptoms, to ensure that they are protected. So this is actually the example of sort of the way we are working right now. We don't have a heat standard, and it would be difficult for us to enforce a heat standard using citations.

On the other hand, because of the nature of where we are working we say, "This is what must be done," and everybody does it. So I think that is actually working pretty well.

Ms. CHU. In my bill we also had requirements for water, access to shade, and training for employees to learn how to prevent heat illness. Do you have any of those elements in there?

Mr. MICHAELS. All of those things about heat is in the training now, shade—in fact, when I was down there recently there were complaints that the shade areas were not closely enough—situated closely together and so that was then changed; they were put at

much more close intervals on the beach so workers could get to those more quickly. And lots of hydration is available and people are really regularly reminded they must drink a lot.

Ms. CHU. Very good.

Just to switch to a different topic, I have a concern about the Vietnamese-American fishermen that are down there. About one-third of the fishermen are Vietnamese, and many of them are linguistically isolated—that is, they speak primarily Vietnamese.

We know that there are very difficult emotions they are feeling now—hopelessness, and depression, and even suicidal thoughts. So, Dr. Howard, what is the availability of Vietnamese-speaking mental health professionals and literature, and what is being done to address the mental health effects of the Vietnamese fishermen population and on their families, too?

Dr. Howard. Certainly that issue is extremely important for all workers, and clearly what we are doing in terms of education is getting our materials in English, Spanish, and Vietnamese. The part of HHS that does behavioral health support, SAMHSA, is very much involved in the Gulf, and we are working with state and local health departments on that issue to make sure that none of the linguistically challenged folks are unaware of the issues related to stress as well as heat and other hazards.

Ms. CHU. And is there any monitoring to determine whether there are enough mental health professionals that speak the language?

Dr. Howard. We are doing that now actively with state health departments to make sure that there is enough personnel available. I don't have an answer for you today, but I would say that we can follow up with you about that.

Ms. CHU. I would appreciate that.

Chairman MILLER. Mr. Polis?

Mr. POLIS. Thank you, Mr. Chairman.

I want to talk—some questions for Dr. Michaels and Rear Admiral Cook. First, you know, a little history: Valdez Crud was the nickname that was given to the sickness experienced by cleanup workers, which Exxon attributed to a cold or flu. I have to say that I found it incredibly troubling that during the Exxon Valdez spill Exxon argued that their cleanup workers simply had a nasty flu that was spreading throughout their camp accounting for symptoms that just happened to be more closely aligned with high chemical and crude oil exposure.

Now, unfortunately, that so-called flu, for many Exxon Valdez cleanup workers, lasted over 20 years. That is a long flu. And I think it is time that we realized that cleanup crews are being exposed to unhealthy chemicals and toxins that can have debilitating long-term health effects.

Now, here we are today, 20 years later, but most troubling of all, we are watching history repeat itself and we seem to be learning too little from the past disasters. Just weeks ago we saw BP taking the strategy page right out of Exxon's book by saying they are the same common symptoms with the result of food poisoning.

BP's Tony Hayward said: I am sure they were genuinely ill, but whether it had anything to do with dispersants in oil, whether it was food poisoning or some other reason," et cetera. Exxon said of

this disaster that the illnesses were a flu-like upper respiratory illness that spread because of crowded living conditions.

I would like to ask why you think a company in Exxon or BP's position would want to link common symptoms of crude oil and chemical exposure to a virus or food poisoning no matter how obvious the linkage to toxic exposure the symptoms could be.

Mr. MICHAELS. You know, I can't speak to BP's motivation, but we see over and over again situations where workers—even where workers are injured, fairly the worker is blamed. I mean, at BP Texas City the initial response of BP was to fire the workers involved, and only after there was an investigation that was done it was shown they weren't—you know, they did make mistakes, but they weren't at fault at all because of the way the system works, and they were actually rehired again with apologies made.

The issue, though, of figuring out what illnesses are associated with the exposure is a very tough one. You know, we have long-term OSHA rules on what is recordable, but what is going on in the Gulf now is any time a worker reports a condition that they believe to be work-related—either reports it to us, reports it to NIOSH, to BP, or through one of the health surveillance systems that Dr. Howard works on, that goes into the system and the medical detectives from NIOSH actually investigate it, because we have learned from Exxon Valdez. We need to run down every one of these cases.

Mr. POLIS. Now, a follow-up question there: It is my understanding that there is a clause that specifically states that under OSHA cold and flu will not be considered work-related, so is there any concern that throwing into question these symptoms' linkage to toxic exposure could limit your ability to investigate?

Mr. MICHAELS. I don't think so. I mean, officially it is not recordable because the way we—what is useful—you know, we take recordable conditions consist. But in this situation we are running down every report of an illness, and this may lead to changes in the way we record injuries, but certainly I think in this case we are not construing these as any less valid than any other reports.

Mr. POLIS. Admiral Cook?

RADM COOK. Just briefly, Congressman, you know, I am sitting here wearing the uniform trying to represent all aspects of the Coast Guard. We receive our medical support from the public health service, so we have an admiral on staff in the public health service who is our chief medical officer, and he has just spent the better part of the last week in the Gulf in the same meetings as our two doctors here, and—because we are so interested, too. So I think there has been some learning that has gone on over the years as far as getting in there and trying to assess the impact of workers quickly.

Mr. POLIS. Well, I want to encourage you all to look at the lessons that we have learned in the last 20 years from the Exxon Valdez incidents. We really can't let history repeat itself, and we need your agencies to be very vigilant in that cause.

And I yield back.

Chairman MILLER. Ms. Hirono?

Ms. HIRONO. I would appreciate short answers because we are running out of time.

Dr. Michaels, in October Secretary Solis suggested imposing a fine of $87 million on BP. Has BP paid that fine?

Mr. MICHAELS. No. We are still in settlement negotiations with them.

Ms. HIRONO. But you intend to pursue that to the——

Mr. MICHAELS. We are pursuing it.

Ms. HIRONO [continuing]. Ultimate degree?

Mr. MICHAELS. But more importantly than the fine, we want the hazards abated, and that is——

Ms. HIRONO. Sure, they need to make the changes at—I take it at the Texas refinery?

Okay.

Mr. Slitor, you said in your testimony that after larger disasters, which this is, there is a panel investigation done. Was a panel investigation done after the Texas disaster where 15 people died and 170 people were injured?

Mr. SLITOR. None that we were involved in. That isn't within our jurisdiction. We have from three miles out—you are speaking of the Texas refinery?

Ms. HIRONO. Yes.

Mr. SLITOR. No. We do not have jurisdiction——

Ms. HIRONO. So who does the investigation on that, and shouldn't there be some lessons learned because they were talking about the same company?

Mr. MICHAELS. OSHA investigated and the Chemical Safety Board did a very extensive investigation. We have—and the Baker Commission—we have lots of lessons learned; the problem is applying them.

Ms. HIRONO. You said that could have been applicable—that applies?

Mr. MICHAELS. I think there are several, yes.

Ms. HIRONO. Apparently the MMS people didn't get it, right? So this, again, speaks to the need for coordination, and I would think that after the Texas disaster that maybe that would have led to some cooperation and coordination, and if it didn't—and I know that you are all sitting here saying that you are going to be collaborative and all that—how can we be assured, because after a huge disaster that happened with BP in their Texas refinery if this didn't happen how can we be reassured that you are, in fact, going to coordinate response and do all the things that we would like you to do?

Mr. Slitor, would you like to respond to that?

Mr. SLITOR. I can respond to part of that. We have no authority over the refinery activity, but I would imagine that the lessons learned from that among our three bureaus will be shared on the applicable points to this particular disaster.

Ms. HIRONO. Especially as I am seeing even with the same company that seems to have had a lengthy record of safety violations and all that, which leads me, Mr. Slitor, to my last question. I do have more, but we are out of time. You mentioned in your testimony there are over 12,000 INCs for violations of your requirements, regulations. How many of those involve BP?

Mr. SLITOR. I would have to get back to you. I don't know how many involve——

Ms. HIRONO. So before this testimony, knowing that we were going to be focused on BP, you didn't happen to look to see how many of these citations involve BP?

Mr. SLITOR. No.

Ms. HIRONO. You will get that to us?

Mr. SLITOR. I can get that to you.

Ms. HIRONO. Thank you.

Chairman MILLER. Thank you very much. I would just say, I know this sounds like a lot of lack of coordination, what have you. As one who was present on-site at the Exxon Valdez for a considerable period of time, this is a different world. Workers there who would face down in the oil were told to get up and go to work or get fired, and this went on over, and over, and over, and over again, and with little discussion that is now taking place.

You know, this accident happened in one of the most sensitive environments, complex environments in the entire—obviously in the entire United States, with the Gulf and the Delta regions of that area. We all understand the magnitude of this spill and the rest of that, but the fact of the matter is that we are now, in real time, talking to workers, and workers have a place to report, I think, it is really a testimony to how far we have come from 9/11, Katrina, Exxon Valdez, to today, and I want to appreciate that coordination.

We are trying to figure out—it is not just a question of coordination, but we really have—we remove the barriers to the expertise being applied where it should, and that is not a process of second guessing. This is an opportunity to learn, as we have said. We are referring back to laws from 1953, 1979, 1983.

It is a different world out there today in disaster response, in worker safety, in the complexity of these work sites. Today, here, what is the human safety problem can become an environmental problem rapidly because when something goes wrong on one of these rigs that ordinarily it would injure somebody, it would be confined—like in my hometown, the refineries, it can get out of hand rather rapidly. And so these crossovers here are difficult, jurisdictionally, to deal with.

We never thought we would ever use this much dispersant at one time. That decision is far different than the initial one, while it may be helpful in the short run.

Anyway, I really appreciate your cooperation with the committee. We are going to come back to you. I am very, very concerned about the process management rule being expedited. I know there is some pressure to get it done. I think we had better pause a moment here and see if this is really the rule that we want in place and that will work, given the magnitude of this tragedy.

So with that, all members will have 14 days to submit additional materials and questions for the hearing record. And again, thanking the witnesses for your time and your expertise and your experience, the hearing will stand adjourned.

[The statement of Mr. Payne follows:]

Prepared Statement of Hon. Donald M. Payne, a Representative in Congress From the State of New Jersey

Thank you Mr. Chairman.

The BP Deepwater Horizon tragedy has been labeled as one of the worst environmental disasters in the nation's history. On April 20, 2010, the lives of 11 workers were lost and fifteen others were injured as a result of neglect from BP.

The BP Deepwater Horizon has had a devastating impact on fisheries, wildlife, and tourism in the Gulf Coast, among other things. Included in the many concerns is the health and safety of workers employed to clean this disaster.

There have been roughly 25,000 workers engaged in the Gulf Coast oil spill cleaning effort, which is expected to extend into the coming months and years. As the focus on ending and cleaning the spill continues, we must not neglect the health and safety of workers.

According to the Centers for Disease Control and Prevention, long term exposure to dispersants can cause central nervous system problems, or do damage to blood, kidneys or livers. In the sixty-five days since the Deepwater incident, there have been reports of flu-like symptoms and respiratory problems from workers. Emergency room doctors and other physicians in the Gulf Coast continue to see a pattern of symptoms among patients who work closely with the cleaning efforts. This has led to the investigation of the long term impact of this spill on workers.

BP is ultimately being held responsible for all things related to this disaster; however, our current catastrophe is a result of a breach in responsibility on BP's part. Today, we will examine the responsibility of federal agencies to worker safety and health in this oil spill clean up.

The Occupational Safety and Health Administration (OSHA), United States Coast Guard and the Minerals Management Service (MMS) all hold a portion of responsibility in ensuring worker safety. I look forward to examining how these agencies are currently fulfilling their responsibilities to health and safety for workers tasked with cleaning the BP Deepwater Horizon disaster. Additionally, I hope we can explore how the assignment of personnel to the Gulf is affecting enforcement activities elsewhere.

Thank you.

[Additional submissions of Mr. Miller follow:]

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF OCEAN ENERGY, MANAGEMENT, REGULATION, AND ENFORCEMENT,
Washington, DC, October 01, 2010.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, House of Representatives, Washington, DC 20515.

DEAR MR. CHAIRMAN: Thank you for your letter dated June 25, 2010, to the Interior Secretary Salazar, cosigned by Chairman, Committee on Natural Resources, Nick J. Rahall, II, requesting that the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) work closely with the Occupational Safety and Health Administration (OSHA) in the development of new Safety and Environmental Management System (SEMS) regulation. As Director of BOEMRE, I have been asked to respond on the Secretary's behalf. A similar response is being sent to Chairman Rahall.

I have meet with OSHA Assistant Secretary David Michaels on two separate occasions on issues of mutual interest, including rulemaking, and our staffs have engaged in a productive dialogue. We have developed the SEMS regulation and expect to publish it in the near future. During the process, we received valuable input from OSHA that we have considered in developing the rule.

We anticipate the need for future rulemaking as the SEMS program evolves and will continue to work closely with OSHA. If you have further questions, please contact me at (202) 208-3500 or Ms. Lyn Herdt, Chief, BOEMRE, Office of Congressional Affairs, at (202) 208-3502.

Sincerely,

MICHAEL R. BROMWICH,
Director

[VIA FACSIMILE],
CONGRESS OF THE UNITED STATES,
Washington, DC, June 25, 2010.

Hon. HILDA SOLIS, *Secretary,*
U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210.

Hon. KEN SALAZAR, *Secretary,*
U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

DEAR SECRETARY SALAZAR AND SECRETARY SOLIS: During our respective tenures as Chairman of the Natural Resources Committee, we have long advocated more rigorous oversight of the Minerals Management Service (MMS) (now renamed the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOE)). This interest as only increased as a consequence of the Deepwater Horizon incident.

Building on the series of hearings the Committee on Natural Resources has held this spring, the Committee on Education and Labor held a hearing on June 23, 2010, entitled "Worker Health and Safety from the Oil Rig to the Shoreline" that examined the frame work for worker health and safety oversight following the explosion and fire on the Deepwater Horizon in the Gulf of Mexico which killed 11 worker and injured 17. At this hearing, witnesses indicated that there had been only limited interaction between the Occupational Safety and Health Administration (OSHA) and MMS/BOE in the reviewing and proposed "Safety and Environmental Management Systems" regulation, which covers worker safety on the Outer Continental Shelf (OCS). This rule is absolutely critical because it sets forth a systems approach to managing explosive and flammable materials throughout every function and decision involved in offshore oil and gas drilling and production processes.

We are writing to urge the Department of the Interior to actively engage OSHA to seek that agency's expertise and experience on process safety management prior to issuing any final "Safety and Environmental Management Systems" regulation. In parallel, we urge OSHA to review proposed MMS regulation in light of its own experience in enforcing a similar safety management regulation, and to incorporate lessons learned from major oil rig disasters such as Piper Alpha rig explosion off the coast of the United Kingdom. OSHA's process safety management rule, which it finalized in 1992, served as the basis for an $87 million proposed fine against BP at its Texas City refinery. The MMS proposed regulation and OSHA's rule share a common feature: both are focused on management systems to ensure hydrocarbons stay inside pipes in complex industrial processes such as oil rigs and refineries.

While the purpose of the proposed MMS rule is laudable—to improve environmental and worker health and safety on the Outer Continental Shelf—we have some concerns that the rule is not comprehensive enough. It is based on the American Petroleum Institute's Recommended Practice 75 (API RP 75), yet only includes 4 of the 12 provisions of that RP. However, following the Deepwater Horizon disaster, it is unclear whether the API's approach is sufficiently robust for developing the Interior Department's proposed rule, and it is imperative to assess whether the API Recommended Practice is sufficient. Furthermore, the proposed rule appears to exclude a number of the mandatory elements contained in OSHA's process safety management regulations, such as assessing hazards during startup and shutdown, incidents investigations, training for process safety management, and assessing the consequences of deviation from operating procedures. Notably, the proposed rule excludes any formal role for employee participation, whereas OSHA has expressed requirements for participation in process hazard analysis and access to information. While the proposed rule does not foreclose operators from adopting a more comprehensive approach on a voluntary basis, we want to be sure that there are no gaps in the regulatory safety net.

We urge both of your agencies to complete this review and assessment as quickly as possible so as not to delay issuance of this regulation, which is already overdue. We also respectfully request that both agencies brief us once the BOE-OSHA review has been completed.

Moving forward, the health and safety of OCS workers depends on maximizing interagency cooperation and expertise. Thanks you for your immediate attention to this critical matter.

Sincerely,

GEORGE MILLER, *Chairman,*
Committee on Education and Labor,

NICK RAHALL, *Chairman,*
Committee on Natural Resources.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, July 29, 2010.

(HOUSE RULES)

Statement of Administration Policy

H.R. 5851—Offshore Oil and Gas Worker Whistleblower Protection Act of 2010
(Rep. Miller, D–California and Rep. Markey, D–Massachusetts)

The Administration strongly supports House passage of H.R. 5851, the "Offshore Oil and Gas Worker Whistleblower Protection Act of 2010," because it would provide important whistleblower protections to workers on the Outer Continental Shelf.

All workers should be able to protect their health and safety by reporting violations of the law or workplace hazards without fear of retaliation from their employers. These protections are particularly important for workers whose lives depend on their employers' assurances of their safety. Congressional hearings have revealed that workers on the Deepwater Horizon offshore oil drilling platform had significant safety concerns, but feared they would lose their jobs if they spoke out. Whistleblower protections must be meaningful so that workers feel secure enough to speak up when they see hazards going unaddressed.

There is currently no Federal law adequately protecting offshore workers who blow the whistle on worker health and safety hazards. While there are some protections for workers who blow the whistle on environmental or pipeline safety violations, these are not uniform. H.R. 5851 would extend strong whistleblower protections to workers on the Outer Continental Shelf, including workers who are part of a drilling or spill clean-up operation. The bill would accomplish this by prohibiting retaliation against workers who, among other things, report violations relating to the Outer Continental Shelf Lands Act or refuse to perform their duties based on the good faith belief that the work could result in injury or illness, or could cause public harm, such as an oil spill. H.R. 5851 also would provide that any covered worker who is a victim of retaliation be made whole by reinstatement, back pay, and compensatory and punitive damages.

For these reasons, the Administration strongly supports H.R. 5851, and urges its swift passage.

[Questions submitted for the record follow:]

[VIA E-MAIL],
U.S. CONGRESS,
Washington, DC, June 25, 2010.

RADM KEVIN COOK, *Director,*
Prevention Policy for Marine Safety, Security, and Stewardship, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593.

DEAR REAR ADMIRAL COOK: Thank you for testifying at the Wednesday, June 23, 2010, Committee on Education and Labor hearing on "Worker Health and Safety from the Oil Rig to the Shoreline" in Washington, DC.

I have additional questions for which I would like written responses from you for the hearing record:

1. What specific whistleblower protections are provided to private sector workers who are employed between the in-shore areas where OSHA has jurisdiction (shoreline to 3 miles out) and the Outer Continental Shelf, and are working on vessels, platforms, drilling rigs, MODUs, and support equipment that is covered under USCG worker safety and health regulations?
2. What employees are covered, if any?
3. Which employees are excluded, if any?
4. Please name the specific statute or statutes and regulations that cover such employees for protected activity.
5. What activity or actions are protected under such whistleblower statutes, and which is excluded?
6. What agency adjudicates those claims?
7. Is there an expressed right to refuse unsafe work and if so, where is that provided and to the extent that it is, what happens is there is retaliation?

Please send your written response to Meredith Regine of the Committee on Education and Labor staff at meredith.regine@mail.house.gov by COB on Wednesday, July 5, 2010—the date on which the hearing record will close. If you have any ques-

tions, please contact Ms. Regine at 202-225-3725. Again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER,
Chairman.

[VIA E-MAIL],
U.S. CONGRESS,
Washington, DC, June 25, 2010.

Mr. DOUG SLITOR, *Acting Chief,*
Office of Offshore Regulatory Programs, Offshore Energy and Minerals Management, Bureau of Ocean Energy, Management, Regulation, and Enforcement, 1849 C Street, NW, Washington, DC 20240.

DEAR MR. SLITOR: Thank you for testifying at the Wednesday, June 23, 2010, Committee on Education and Labor hearing on "Worker Health and Safety from the Oil Rig to the Shoreline" in Washington, DC.

I have additional questions for which I would like written responses from you for the hearing record:

1. What whistleblower protections are provided to private sector workers employed on the Outer Continental Shelf drilling rigs, platforms or related equipment who are covered under BOE safety and health regulations?
2. What employees are covered, if any?
3. Which employees are excluded, if any?
4. Please name the specific statute or statutes and regulations that cover such employees for protected activity.
5. What activity or actions are protected under such whistleblower statutes, and which is excluded?
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7. Is there an expressed right to refuse unsafe work and if so, where is that provided and to the extent that it is, what happens is there is retaliation?

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Sincerely,

GEORGE MILLER,
Chairman.

[VIA E-MAIL],
U.S. CONGRESS,
Washington, DC, June 25, 2010.

Dr. DAVID MICHAELS, *Assistant Secretary,*
Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

DEAR ASSISTANT SECRETARY MICHAELS: Thank you for testifying at the Wednesday, June 23, 2010, Committee on Education and Labor hearing on "Worker Health and Safety from the Oil Rig to the Shoreline."

One of the Committee Members had an additional question for which he would like a written response from you for the hearing record.

Congressman Dennis J. Kucinich (D-OH) asks the following question:

I am gravely concerned about the immediate and long-term health effects of the spill and the clean-up operations on workers. The cleanup workers of the 1989 Exxon Valdez spill continue to suffer from their exposure to the crude oil and the dispersants used during the cleanup. The same is true of the 2002 Prestige spill in Spain. And we are all too familiar with the plight of the 9-11 workers

I'd like to think that we have learned our lesson from these disasters and that the workers will not suffer from chronic diseases for the rest of their lives. Unfortunately, early indications are not promising. We are hearing reports of little or no personal protective equipment availability, exposure to volatile organic compounds, many of which are carcinogenic, exposure to dispersants—the composition of which we still don't know, and exposure to acidic gases and acutely toxic gases like hydrogen sulfide.

Workers are considered to be the canary in the coal mine because what happens to them may also happen to other exposed to the same hazards. Dr. Michaels, you have an admirable history of advocacy for the public's health so I'd like to ask you this question;

If we can't fully protect the workers, despite your efforts, how can we possibly protect all the potentially affected communities? I have in mind the coastal communities that will be exposed to airborne compounds at levels that are toxic but aren't detectable by normal smell; the oil droplets that get aerosolized into particles so small they go deep into the lungs where they can do major damage; the massive infusion of metals like lead and cadmium and polycyclic aromatic hydrocarbons into the marine ecosystem and therefore into the national food chain through bioaccumulation.

Please send your written response to Meredith Regine of the Committee on Education and Labor staff at meredith.regine@mail.house.gov by COB on Wednesday, July 5, 2010—the date on which the hearing record will close. If you have any questions, please contact Ms. Regine at 202-225-3725. Again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER,
Chairman.

[VIA E-MAIL],
U.S. CONGRESS,
Washington, DC, June 25, 2010.

Mr. DOUG SLITOR, *Acting Chief,*
Office of Offshore Regulatory Programs, Offshore Energy and Minerals Management, Bureau of Ocean Energy Management, Regulation, and Enforcement, 1849 C Street, NW, Washington, DC 20240.

DEAR MR. SLITOR: Thank you for testifying at the Wednesday, June 23, 2010, Committee on Education and Labor hearing on "Worker Health and Safety from the Oil Rig to the Shoreline."

One of the Committee Members had additional questions for which she would like written responses from you for the hearing record.

Congresswoman Dina Titus (D-NV) asks the following questions:

Thank you to all the witnesses for being here today. While deep sea drilling is not a big issue in my state of Nevada, worker safety certainly is an important issue, and workers in Nevada have paid the price for lax safety oversight. It is important we keep workers safe during the oil spill clean-up, but I also want to focus on how we can prevent a situation like this from occurring to begin with and keep the workers on oil rigs safe at all times.

1. You said earlier at this hearing that the number of MMS inspectors—especially those without "substantial office responsibilities"—is not adequate to conduct all of the inspections MMS is responsible for.

a. With this in mind, could you please give us a little history of your agency since the Memorandum of Agreement with the Coast Guard was signed?

b. Specifically, has your agency grown appropriately to meet expanding need, has the budget increased correspondingly, and have personnel and resources been enhanced as requested by the agency?

c. If not, why not?

2. It seems that several government agencies have been coordinating and working well together on worker safety issues in the response to the oil spill.

a. What has the role been of other entities, such as the Department of Homeland Security and state and local governments, in ensuring the safety of clean-up workers and the general public?

b. What plans or efforts are being put in place now for the future role these groups will assume as more and more of the oil hits our shores?

Please send your written response to Meredith Regine of the Committee on Education and Labor staff at meredith.regine@mail.house.gov by COB on Wednesday, July 5, 2010—the date on which the hearing record will close. If you have any questions, please contact Ms. Regine at 202-225-3725. Again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER,
Chairman.

[VIA E-MAIL],
U.S. CONGRESS,
Washington, DC, June 25, 2010.

Mr. JOHN HOWARD, M.D., M.P.H., J.D., LL.M., *Director,*
National Institute for Occupational Safety and Health, Center for Disease Control and Prevention, U.S. Department of Health and Human Services, Suite 9200, 395 E Street, SW, Washington, DC 20201.

DEAR DIRECTOR HOWARD: Thank you for testifying at the Wednesday, June 23, 2010, Committee on Education and Labor hearing on "Worker Health and Safety from the Oil Rig to the Shoreline."

One of the Committee Members had additional questions for which she would like written responses from you for the hearing record.

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Please send your written response to Meredith Regine of the Committee on Education and Labor staff at meredith.regine@mail.house.gov by COB on Wednesday, July 5, 2010—the date on which the hearing record will close. If you have any questions, please contact Ms. Regine at 202-225-3725. Again, we greatly appreciate your testimony at this hearing.

Sincerely,

GEORGE MILLER,
Chairman.

[VIA E-MAIL],
U.S. CONGRESS,
Washington, DC, June 25, 2010.

Dr. DAVID MICHAELS, *Assistant Secretary,*
Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

DEAR ASSISTANT SECRETARY MICHAELS: Thank you for testifying at the Wednesday, June 23, 2010, Committee on Education and Labor hearing on "Worker Health and Safety from the Oil Rig to the Shoreline."

One of the Committee Members had additional questions for which she would like written responses from you for the hearing record.

Congresswoman Dina Titus (D-NV) asks the following questions:

Thank you to all the witnesses for being here today. While deep sea drilling is not a big issue in my state of Nevada, worker safety certainly is an important issue, and workers in Nevada have paid the price for lax safety oversight. It is important we keep workers safe during the oil spill clean-up, but I also want to focus on how we can prevent a situation like this from occurring to begin with and keep the workers on oil rigs safe at all times.

1. You spoke of how the Deepwater Horizon incident was a "low frequency, high consequence" event. We have been dealing for decades with events that fit that description, including Three Mile Island. You also have pointed out that our current ways of measuring or predicting these events are inadequate. Is OSHA working on models of safety to prevent, and/or deal with such events?

2. It seems that several government agencies have been coordinating and working well together on worker safety issues in the response to the oil spill.

a. What has the role been of other entities, such as the Department of Homeland Security and state and local governments, in ensuring the safety of clean-up workers and the general public?

b. What plans or efforts are being put in place now for the future role these groups will assume as more and more of the oil hits our shores?

Please send your written response to Meredith Regine of the Committee on Education and Labor staff at meredith.regine@mail.house.gov by COB on Wednesday, July 5, 2010—the date on which the hearing record will close. If you have any questions, please contact Ms. Regine at 202-225-3725. Again, we greatly appreciate your testimony at this hearing.

[VIA E-MAIL],
U.S. CONGRESS,
Washington, DC, June 25, 2010.

RADM KEVIN COOK, *Director,*
Prevention Policy for Marine Safety, Security, and Stewardship, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593.

DEAR REAR ADMIRAL COOK: Thank you for testifying at the Wednesday, June 23, 2010, Committee on Education and Labor hearing on "Worker Health and Safety from the Oil Rig to the Shoreline."

One of the Committee Members had additional questions for which she would like written responses from you for the hearing record.

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Sincerely,

GEORGE MILLER,
Chairman.

[Responses to questions submitted follow:]

RADM Cook's Responses to Questions Submitted for the Record

Question: What specific whistleblower protections are provided to private sector workers who are employed between the in-shore areas where OSHA has jurisdiction (shore to 3 miles out) and the Outer Continental Shelf, and are working on vessels, platforms, drilling rigs, MODUs, and support equipment that is covered under USCG worker safety and health regulations?

What employees are covered, if any?

Which employees are excluded, if any?

Please name the specific statute or statutes and regulations that cover such employees for protection activity.

Response: Coast Guard Workplace Safety and Health Regulations for Outer Continental Shelf Activities establish protections for any person making a report of an alleged violation of the OCS regulations, at 33 CFR 142.7(c). This regulation makes clear, in relevant part, that as a safeguard the identity of any person making a report of violation of the Workplace Safety and Health regulations will not be made available to persons other than those tasked with investigating the report, unless the person making the report consents to being identified.

Another general whistleblower protection for seamen is found at 46 USC 2114(a)(1)(A). The statute states that "[a] person may not discharge or in any manner discriminate against a seamen because—the seamen in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency * * * that the seamen believes that a violation of maritime safety law or regulation * * *

has occurred. Enforcement of this provision is available in federal court. In addition, 46 USC 3115(a) prohibits any official of the Coast Guard from disclosing the identity of any individual that provides information on vessel defects, imperfections, and overall safety of an inspected vessel on which he or she is serving. This includes information on watch keeping and work hours.

In addition, other general whistleblower protection clauses that may apply to private sector workers employed where OSHA has jurisdiction (shore to 3 miles out) and on the Outer Continental Shelf are found within federal environmental protection laws: the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, and the Solid Waste Disposal Act. Lastly, the Pipeline Safety Improvement Act may also apply to such employees. The Clean Air Act (CAA), 42 USC 7622, provides protections for employees who report potential violations regarding air emissions from area, stationary and mobile sources into the air. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9610 provides protections for employees who report potential violations regarding clean-up or uncontrolled or abandoned hazardous waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. The Federal Water Pollution Control Act (FWPCA), 33 USC 1367, provides protections for employees who report potential violations regarding discharges of pollutants into the navigable waters of the United States or in connection with activities under the Outer Continental Shelf Lands Act, 43 USC 1331 et seq. The Toxic Substances Control Act (TSCA), 15 USC 2622, provides protections for employees who report potential violations regarding the testing and use of certain chemical substances and the mixture of chemical substances over which the Environmental Protection Act has authority. The Solid Waste Disposal Act (SWDA), 42 USC 6971, provides protections for employees who report potential violations regarding the generation, transportation, treatment, storage, and disposal of all solid wastes, including those wastes determined to be hazardous wastes. (The materials used in the clean-up of the Deepwater Horizon oil spill are being treated as solid waste.) The Pipeline Safety Improvement Act (PSIA), 49 USC 60129, provides protections for employees who report potential violations regarding pipeline safety. Based on the definitions in the PSIA, it appears that rigs, such as the Deepwater Horizon, are pipeline facilities and, therefore, are subject to the PSIA. The implementing regulations for the whistleblower provisions in these environmental protection statutes are found at 29 CFR Part 24. The implementing regulations for the PSIA are found at 29 CFR Part 1981.

If an employer is covered under one of the environmental protection statutes, it may not discharge or in any way retaliate against any employee because he or she reported potential violations of environmental laws and regulations or the PSIA and its regulations to either the employer or the government.

Question: What activity or actions are protected under such whistleblower statutes, and which is excluded?

What agency adjudicates those claims?

Response: 33 CFR 142.7 covers reports of unsafe working conditions relating to outer continental shelf activities. It is based on general authorities contained in the Outer Continental Shelf Lands Act. 33 CFR 142.7 provides as a safeguard that, except as authorized by the reporting individual, his identity is protected from everyone other than officers within the Department of Homeland Security who have a need to know in the performance of their official duties. The report is made to the Coast Guard Officer in Charge, Marine Inspection or his representative.

There are two other statutes that are not specific to outer continental shelf activities that apply only to seafarers. The first, 46 U.S.C. § 3315, requires licensed mariners to affirmatively point out defects during inspections of vessels by Coast Guard marine inspectors. This statute only applies to licensed individuals on vessels. The official who receives this report may not disclose the identity of the individual to anyone except a person authorized by the Secretary of the Department of Homeland Security.

The second, 46 U.S.C. § 2114, provides protection for seaman from discrimination if he reports a violation of a marine safety law or regulation. This statute is limited to individuals who are seamen. The seaman can also refuse to perform duties ordered by his employer when he has a reasonable apprehension of serious injury to himself, other seamen or the public, but he must have asked the employer to correct the unsafe condition. When a seaman reports a condition to the Coast Guard or other federal agency and he is discharged or discriminated against as a result of the report he can seek judicial relief in Federal district court.

The environmental whistleblower provisions (CAA, CERCLA, FWPCA, TSCA, and SWDA) protect employees who provide information, file complaints, and/or participate in a proceeding or other action related to the administration or enforcement of the statutes. The Secretary of Labor and the courts have consistently taken a broad view of what is considered protected under the environmental statutes, including internal complaints to management, raising concerns to the media, and refusals to perform work.

Under the PSIA, the whistleblower protection provision protects employees who, inter alia, provide information, file complaints, or participate in proceedings related to violations of any federal law relating to pipeline safety, and employees who refuse to engage in any practice made unlawful by any federal law relating to pipeline safety.

The basic elements of a whistleblower claim are the complainant's protected activity under a whistleblower statute, the employer's knowledge of the protected activity, an adverse action taken against the complainant, and a causal connection between the protected activity and the adverse action. A causal connection may be inferred when an adverse action occurs shortly after protected activity. Causal connections may also be inferred from one or more indicators such as animus (exhibited ill will) toward the protected activity, disparate treatment of the complainant in comparison to other similarly situated employees, a pretextual explanation for the adverse action, false testimony or manufactured evidence. If, after investigating and reviewing the evidence, OSHA is unable to determine, by a preponderance of the evidence, the existence of a prima facie case, then the case must be dismissed.

Under the environmental statutes, complainants have 30 days from the day they learned of the adverse action to file a retaliation complaint. Under the PSIA, complainants have 180 days. However, equitable tolling might operate to extend the filing deadline in certain situations.

The Department of Labor adjudicates claims under the environmental statutes and the PSIA. Complainants who file whistleblower complaints with OSHA under these statutes may object to the Secretary's investigative findings (and order) and request a de novo hearing before a Department of Labor administrative law judge. Further right of administrative appeal is provided to the Department of Labor's Administrative Review Board, which issues final decisions of the Secretary. The ARB's decisions may be appealed to federal courts of appeal.

Question: Is there an expressed right to refuse unsafe work and if so, where is that provided and to the extent that it is, what happens if there is retaliation?

Response—Oil Rig and Oil Spill Workers: 33 CFR Part 142 is applicable to lessees, permittees, persons responsible for actual operations, and persons working in OCS activities. These regulations address recognized hazards, reporting unsafe working conditions, and also specify protective equipment and safe working conditions on OCS facilities.

In making reports of unsafe conditions, the identity of any person making the report is not made available, without the permission of the reporting person, to anyone other than those officers and employees of the Department that would investigate such reports and would have a need for the record in the performance of their official duties.

The 33 CFR Part 142 regulations do not apply to oil spill workers.

Right to refuse work: Under the environmental protection statutes with whistleblower protection clauses, there are no express provisions for employees who refuse to work because of alleged environmental violations by an employer. Irrespective of this factor, the Secretary of Labor—where complaints are made and adjudicated—interprets the environmental protection statutes to protect refusals to work when an employee has a reasonable belief that his or her working conditions are unsafe or unhealthful, and he or she does not receive an adequate explanation from a responsible official that the conditions are safe. The PSIA, however, expressly protects refusals to engage in any practice made unlawful by a federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer. Under all of these statutes, any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of any of the statutes, is not protected.

Question: It seems that several government agencies have been coordinating and working well together on worker safety issues in the response to the oil spill.

What has the role been of other entities, such as the Department of Homeland Security and state and local governments, in ensuring the safety of clean-up workers and the general public?

What plans or efforts are being put in place now for the future role these groups will assume as more and more of the oil hits our shores?

Response: The role of all Federal, state and local entities in ensuring the safety of clean-up workers responding to the Deepwater Horizon incident and the general public has been and continues to be a top priority. Strict to all applicable Occupational Safety and Health Administration (OSHA) regulations and National Institute of Occupational Safety and Health (NIOSH) recommendations are in place. Temporary suspension of any applicable regulation or standard is reviewed on a case by case basis. For further information see *http://www.osha.gov/oilspills/oilspill-activity-update.html* and *http://www.cdc.gov/niosh/topics/oilspillresponse/*

Adherence to these regulations and safety standards are embedded with the enduring Incident Action Plans as well as the Deepwater Horizon Severe Weather Contingency Plan which guides response actions leading to, during, and after a hurricane or tropical storm.

Below is the response to your question regarding a HOTLINE that workers can call to report health and safety problems on a rig. There is one attachment, which includes OSHA's worker safety fact sheet (contains BP hotline info).

QUESTION: Is there a HOTLINE workers can call to report health and safety problems on a rig? Who investigates complaints?

ANSWER: According to a representative from The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) who participates in the NIC's Interagency Solutions Group:

"The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) has not required the rig operator to post a Hot Line number to report unsafe working conditions. BOEMRE requires a Hot Line number to report violations to the Inspector General related to production, such as theft, tampering, and falsifying records. Rig workers have contacted BOEMRE District offices to report concerns and issues. Although the district offices do not advertise their number at a Hot Line, due to the constant communication between the rigs/platforms and the district offices, the number is readily available. Should BOEMRE receive a call or other communication from an offshore worker, the BOEMRE District Manager dispatches an inspector to conduct an inspection on the platform in question to determine if the complaint has merit."

OSHA's worker safety Fact Sheet, which contains BP hotline information, is attached.

OSHA® FactSheet

Deepwater Horizon/Mississippi Canyon 252 Oil Spill

OSHA's top priority is to ensure that oil spill response and cleanup operations are done as safely, effectively and efficiently as possible. This fact sheet provides basic information about common operations, hazards, training and worker protection. If you are unsure or think your work is unsafe, STOP and ASK your supervisor. You can call OSHA at one of its gulf coast Area Offices during normal working hours or at 1-800-321-OSHA (6742) or TTY 1-877-889-5627 for further information.

OSHA - Florida		**OSHA - Louisiana**		**OSHA - Texas**	
Ft. Lauderdale	954-424-0242	Baton Rouge	225-298-5458	Corpus Christi	361-888-3420
Jacksonville	904-232-2895	**OSHA - Mississippi**		Houston North	281-591-2438
Tampa	813-626-1177	Jackson	601-965-4606	Houston South	281-286-0583
		OSHA - Alabama			
		Mobile	251-441-6131		

BP Hotlines
Volunteers: 866-448-5816
Vessels of Opportunity Program (skimming operations): 281-366-5511

What Are the Operations and Hazards During Shoreline and Vessel Operations?

If you are involved in response and cleanup of weathered oil, you might be:

- Placing or recovering booms
- Skimming and pumping oil (inshore)
- Loading and unloading booms, supplies and people
- Pressure washing boats
- Picking up oil-covered debris
- Conducting other shoreline cleanup operations
- Launching and/or landing boats

Hazards from these operations can include:

- Heat stress – can range from heat exhaustion (headaches, dizziness, weakness, fainting) to heat stroke (hot; may no longer be sweating; confusion). Heat stroke is an emergency and requires immediate medical care.
- Sunburn and sun poisoning
- Skin and eye irritation or rashes (dermatitis) from contact with "weathered" oil
- Cuts, sprains and other injuries
- Drowning
- Being hit by earthmoving or other equipment
- Traffic hazards and car accidents
- Bites from snakes, fire ants and mosquitoes, rodents and alligators
- Lightning and severe weather
- Back injury from lifting and carrying
- Noise
- Exhaustion and fatigue from long hours and demanding work

Exposure to any of these hazards depends on what you are actually doing and where you are working. For example, heat stress is a real concern for all outdoor activities because the weather is hot and humid. If you are pulling in oil-covered booms, then contact with weathered oil, drowning, and back injuries are also concerns.

Volunteers should be protected as well. For information, call the BP Hotline at 866-448-5816.

What Is Your Employer Required to Do?

1. **Train you** on the hazards of your job in a language that you understand. You must be trained before you begin oil spill response and cleanup work. Your employer must determine the type and length of training you will need. Training is based on your job duties and the job's hazards.

If you are:	You must receive:
Doing work that does NOT involve materials contaminated by the spill	1½ hour training [Module 2 – Contractor Expectations (includes Basic Health & Safety Orientation)]
Doing work cleaning up oil-contaminated shoreline or vessel operations involving "weathered" oil recovery	4 hours of training [Module 3 – Post-Emergency Spilled Oil Cleanup (includes Basic Health & Safety Orientation and Contractor Expectations)] NOTE: These workers will be supervised by people with at least 40 hours of hazardous operations training.

OSHA is monitoring BP to make sure that their site training meets OSHA requirements. To work on the spill cleanup, you must receive training from an instructor approved to provide training for this event. The training is provided for **free**. After you successfully complete the class, you will receive an identification card as proof of your training.

2. **Establish safe work practices** and **give you the personal protective equipment you need** to do the job safely. Work practices and protective equipment requirements depend on the hazards of each job.

Examples of safe work practices that your employer should use to protect you include:

- Providing rest breaks throughout a work shift to help control heat stress. Providing break and rest areas in the shade. Providing you with water to drink throughout the shift. Training you on the signs of heat illness. Using a buddy system. Providing sunscreen to protect you from sunburn and sun poisoning.
- Training you how to lift loads safely and ensuring that you have the right equipment or enough people to lift heavier loads.
- Having buckets, brushes, water and soap available and providing you with instructions about how to clean oily protective equipment before removing it.

Most jobs will require some type of personal protective equipment. In general, your employer needs to provide protective equipment and must train you on how to use it. Examples of jobs and personal protective equipment include:

- For jobs that do not involve contact with oil, like picking up clean debris along the shoreline, employers need to give you **work gloves**.
- For jobs involving oil-contaminated debris and those involving contact with oil or other chemicals, employers need to provide additional protective equipment such as **oil- or chemical-resistant gloves, boots and coveralls**.
- For jobs involving work on vessels, docks or other areas with potential drowning hazards, employers need to provide **life jackets (personal floatation devices)**.

Your employer must determine the safe work practices and protective equipment that are appropriate for each job. This information must be provided to you during training. More information is available in the OSHA/National Institute for Environmental Health Science (NIEHS) Safety and Health Awareness for Oil Spill Cleanup Workers (http://www.osha.gov/Publications/Oil_Spill_Booklet_05.11_v4.pdf) and on OSHA's Oil Spill webpage at http://www.osha.gov/oilspills/index.html.

3. **Develop a health and safety site plan** and **share it with you.** The plan must contain information about the job and work site hazards, and spell out the requirements for safe work practices, personal protective equipment, training and emergencies.

What Other Worker Safety Requirements Apply to Oil Spill Response and Cleanup?

Your employer must follow the other requirements in OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) standard and the OSHA standards for other hazards, equipment, or operations that might be present at your work site (for example **noise, personal protective equipment** and **powered industrial trucks**). You can find more information about these requirements in other OSHA fact sheets and on OSHA's website at www.osha.gov.

Worker Rights

You have the right to a safe workplace. The *Occupational Safety and Health Act of 1970* (OSH Act) was passed to prevent workers from being killed or seriously harmed at work. The law requires that employers provide their employees with working conditions that are free of known dangers. OSHA sets and enforces protective workplace safety and health standards. OSHA also provides information, training and assistance to workers and employers. Workers may file a complaint to have OSHA inspect their workplace if they believe that their employer is not following OSHA standards or there are serious hazards. Contact OSHA at 1-800-321-OSHA (6742) if you have questions or want to file a complaint. We will keep your information confidential. We are here to help you.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For more complete information:

OSHA® **Occupational Safety and Health Administration** U.S. Department of Labor — www.osha.gov (800) 321-OSHA

DTSEM 6/2010

Below are two more responses to staff questions relating to the 21 June hearing. Please let me know if you have any questions!

QUESTION: Deepwater Horizon workers had complaints about safety, especially concerns related to drilling. Should CG have followed up with these complaints?

ANSWER: There is no record of complaints regarding safety aboard the DEEPWATER HORIZON received by the Coast Guard prior to the DEEPWATER HORIZON casualty.

For complaints the Coast Guard receives related to marine safety, security and environmental protection, if the Coast Guard has jurisdiction over the complaint, it would be documented in the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database and appropriate measures taken to investigate and resolve the complaint.

If a complaint involves a safety program administered by another federal agency (for example, concerns relating to drilling safety are administered by the Minerals Management Service), the complaint is referred directly to the cognizant agency.

For complaints not involving safety, the Coast Guard directs the complainant to contact the appropriate agency.

QUESTION: What is the CG's relationship with OSHA? Does CG receive OSHA guidance regarding potential workplace occupational safety problems? Does CG look at OSHA standards? What does CG do to protect worker safety?

ANSWER: The February 2010 OSHA Directive CPL 02-01-047 provides current policy, information and guidance with respect to OSHA authority over persons working on vessels and facilities on or adjacent to U.S. navigable waters and the Outer Continental Shelf (OCS). [see *http://www.osha.gov/OshDoc/Directive—pdf/CPL—02-01-047.pdf* Appendix E for details].

The Coast Guard has a very good working relationship with OSHA and has been a longstanding member of OSHA's Federal Advisory Committee on Maritime Occupational Safety and Health (MACOSH). MACOSH was established on February 8, 1995 to advise the Assistant Secretary for Occupational Safety and Health on issues relating to the delivery of occupational safety and health programs, policies, and standards in the maritime industries of the United States. The committee provides a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved. The committee consists of 15 members who represent different interests within the maritime industry. The 15 members are divided into 3 equal groups representing: 1) government, 2) employers, and 3) employees.

The 1978 amendments to the Outer Continental Shelf Lands Act greatly increased the U.S. Coast Guard's authority to promulgate and enforce safety and health regulations on the OCS. The CG has promulgated regulations on many occupational safety and health issues on the OCS (such as personal protective equipment, housekeeping, guarding of deck openings, means of escape, lifesaving appliances, firefighting equipment, emergency equipment, work vests, alarm systems, emergency evacuation plans, and safety zones (33 CFR 140.1 et seq.)), as well as commercial diving, 46 CFR Part 197, Subpart B et seq. (the CG diving regulations also cover diving in other locations).

The 1979 "Memorandum of Understanding between the U.S. Coast Guard and OSHA Concerning Occupational Safety and Health on the Outer Continental Shelf (OCS)" established procedures to increase consultation and coordination between the agencies, including: development, promulgation and enforcement of standards; investigation of accidents; investigation of allegations; and joint training programs.

Director Howard's Responses to Questions Submitted for the Record

1. It seems that several government agencies have been coordinating and working well together on worker safety issues in the response to the oil spill.

a. What has the role been of other entities, such as the Department of Homeland Security and state and local governments, in ensuring the safety of clean-up workers and the general public?

The Department of Health and Human Services (HHS), defers to our colleagues at the Department of Homeland Security (DHS) as to the full extent of their role in ensuring the safety of clean-up workers and the general public. The U.S. Coast Guard (USCG) is the lead agency in the Deepwater Horizon Response and is in the best position to provide information regarding Coast Guard and/or DHS activities. Additionally, the DHS Office of Health Affairs also works with the designated Senior Health Official, Admiral Galloway, and his team to provide subject matter expertise and to coordinate reporting on public health, worker safety, and food safety issues.

From the time of the announcement of the explosion and fire, the HHS Assistant Secretary for Preparedness and Response's Regional Emergency Coordinators in Region VI (includes Louisiana and Texas) and Region IV (includes Mississippi, Alabama and Florida) were in close communication with the States' Emergency Coordinators, the State Departments of Health, and the Association of State and Territorial Health Officials. On May 31 HHS, in coordination with the Louisiana Department of Health and Hospitals, set up a mobile medical unit in Venice, Louisiana

to provide triage and basic care for responders concerned about health effects of the oil spill.

HHS has a Memorandum of Understanding with the USCG and ASPR liaisons serve as Medical Unit Leaders at the Command Centers in Houma, LA, and Mobile AL, and has deployed ADM James Galloway of the U.S. Public Health Service and his staff to the National Incident Command Center in DC. The HHS Assistant Secretary for Health has been addressing recovery issues.

The HHS Centers for Disease Control and Prevention (CDC), in coordination with state and local health departments, is conducting surveillance across the Gulf States for health effects related to the oil spill. Early on, CDC worked with states to help define what to watch for in their own surveillance systems and what enhancements to make to their surveillance systems to have more effective vigilance of health effects related to the oil spill. States now share the results with CDC (and with each other) and some of the most useful data are coming from the states' own surveillance systems. CDC is also using established national surveillance systems: The National Poison Data System (NPDS) and BioSense. This health surveillance will capture health issues that may arise in the general public. A summary of state findings are posted on the CDC website. See *http://www.bt.cdc.gov/gulfoilspill2010/2010gulfoilspill/health—surveillance.asp.*

CDC's Environmental Health Team continues to review EPA environmental data with the purpose of determining whether exposure to oil, oil constituents, or dispersants might cause short term or long term health effects. Data include sampling results for air, water, soil/sediment, and material actually reaching the beach or marsh.

CDC's National Institute for Occupational Safety and Health (NIOSH) is working to protect workers and volunteers from potential safety and health hazards related to the spill and clean up efforts. NIOSH is conducting Health Hazard Evaluations to evaluate potential exposures and health effects among response workers. An interim report of the finding is available at *http://www.cdc.gov/niosh/hhe/pdfs/interim—report—1.pdf.* NIOSH is also helping the Department of Labor's Occupational Safety and Health Administration (OSHA) and National Institute of Health's National Institute of Environmental Health Sciences (NIEHS) with technical assistance for training response workers. NIOSH together with OSHA have recently released an Interim Guidance for Protecting Deepwater Horizon Response Workers and Volunteers to ensure a comprehensive approach to occupational safety and health available at *http://www.cdc.gov/niosh/topics/oilspillresponse/protecting/. CDC is also sharing its health information with industry, OSHA, the Department of Homeland Security's (DHS) U.S. Coast Guard, and other federal and state agencies.*

Additionally, CDC has participated in public availability sessions and press conferences for residents of the Gulf Coast. In order to maintain open lines of communication, CDC has liaison officers in Florida, Louisiana and Texas and at the Public Health Unit in the Unified Command Post in Mobile.

NIEHS administers the Worker Education and Training Program (WETP), which for 24 years has provided safety training to emergency responders and the hazardous materials workforce. Through this program, NIEHS provided nearly immediate assistance to the oil spill response to protect the health of oil spill workers and continues working with Coast Guard and BP officials as well as local and state officials, academic institutions, and other federal agencies to provide worker safety training. NIEHS continues to help NIOSH improve worker participation in the Gulf Coast worker roster by recommending the incorporation of participation in the roster and surveillance forms into training curricula being delivered to workers who may perform cleanup work.

In partnership with OSHA and the Unified Command, more than 8,000 pocket-sized booklets from NIEHS entitled "Safety and Health Awareness for Oil Spill Cleanup Workers" have been distributed to instructors, safety officials, front-line responders participating in the BP Vessels of Opportunity Program, and beach workers in the Shoreline Cleanup Assessment Team. The booklets also have been printed in English, Spanish and Vietnamese. The training is being paid for and administered by BP, and is being provided in English, Spanish and Vietnamese. All of the NIEHS worker training resources and materials are available online, www.niehs.nih.gov/oilspill.

b. What plans or efforts are being put in place now for the future role these groups will assume as more and more of the oil hits our shores?

The long-term human health effects from the oils spill are unknown. As a result, HHS has begun planning for future activities that will provide opportunities to learn about potential health hazards. HHS' current efforts include continued health

communications; continued and enhanced public health surveillance; continued analysis of environmental sampling data from oil contaminated areas (oil, soil, water, and sediment); and identifying data gaps to address and evaluate potential long-term and short-term health effects. These efforts are being planned and carried out in coordination with state, local and federal partners.

Communications

HHS will continue to provide timely, accurate and actionable information to the public, Gulf Coast residents, clinicians and clean-up workers/volunteers to understand and protect themselves from potential and evolving health risks associated with the oil spill. HHS has posted to its website factsheets for various audiences on what to expect from the oil spill and how to protect health: *http://www.hhs.gov/gulfoilspill/index.html.* HHS also has over one million Twitter followers and uses this social media outlet to send health related messages.

Environmental Health Monitoring

CDC will continue to analyze environmental sampling data and conduct toxicological evaluations.

Surveillance

CDC will continue to coordinate surveillance activities with Gulf State health departments for health effects in the general population and response workers possibly related to the oil spill, including providing technical assistance to enable states to generate mental health surveillance data. To do this, CDC will continue to use both state-based and national surveillance systems, National Poison Data System and BioSense. CDC will continue to analyze 2009 and 2010 Behavioral Risk Factor Surveillance System (BRFSS) data from affected states and will continue to identify changes and trends in mental and behavioral health indicators based on questions in BRFSS. CDC is also collaborating with HHS' Food and Drug Administration (the lead federal agency for food safety) to monitor the safety of the seafood supply.

Research

HHS is collaborating with a number of internal and external partners to create an agenda of oil related research issues, especially those that would address possible long-term health effects and outcomes. In order to better inform the research efforts needed to determine health impacts from the oil spill and dispersants, the HHS Office of the Assistant Secretary for Preparedness and Response convened a workshop by the Institute of Medicine (IOM) at the end of June in New Orleans and will continue to work with the IOM to get advice on proposed research studies and to have them monitor research efforts on an ongoing basis. CDC is also conducting a pilot study to identify gaps in scientific knowledge about the specific dermal and respiratory effects of oil and dispersant mixtures and oil burning combustion products associated with this discharge.

NIH will devote $10 million to support research on the potential human health effects of the oil spill. NIEHS will recruit clean-up workers and Gulf residents and will collect biological samples, health histories, as well as information about clean-up work they performed and the nature of their exposures. In the near term, NIH will establish a baseline of such information and then monitor the oil spill workers for respiratory, immunological and neurobehavioral effects. NIEHS will work with other HHS agencies, federal partners, as well as local communities and universities to both assess and implement its research plan.

Assistant Secretary Michaels' Responses to Questions Submitted for the Record

Representative George Miller (CA–7th)

Question 1: What whistleblower protections are provided to private sector workers employed on the Outer Continental Shelf drilling rigs, platforms or related equipment who are covered under OSHA safety and health regulations?

Response: The familiar gaps and inconsistencies in whistleblower protections for workers are exacerbated on the Outer Continental Shelf (OCS) by the preemption of OSHA's jurisdiction by the U.S. Coast Guard and the Bureau of Ocean Energy, Management, Regulation and Enforcement, creating a vacuum in the most basic of whistleblower protections—protection to blow the whistle on matters relating to worker safety and health under Section 11(c) of the OSH Act, 29 USC §660(c); 29 CFR Part 1977. For this reason, OSHA and the Administration strongly support enactment of the Offshore Oil and Gas Worker Whistleblower Protection Act, H.R.

5851, which would provide clear and certain remedies for offshore oil and gas industry workers who engage in safety activity.

Because the Coast Guard has the statutory authority to prescribe and enforce standards or regulations affecting the occupational safety and health of seamen aboard inspected vessels, OSHA may not enforce the OSH Act with respect to those conditions. Although OSHA and the U.S. Coast Guard (USCG) agreed in a 1983 memorandum of understanding that OSHA would retain its whistleblower authority under the OSH Act, even where the USCG had jurisdiction of occupational safety and health, the U.S. Court of Appeals for the Fifth Circuit (which covers Louisiana, Texas, and Mississippi), held that the whistleblower provision of the OSH Act does not apply to workers whose working conditions are comprehensively regulated by another agency (in that case, the Coast Guard). The Fifth Circuit, whose jurisdiction includes a vast portion of the Nation's offshore oil and gas activity, refused to give effect to the OSHA/Coast Guard interagency agreement. The intricacies of this jurisdictional issue are more fully described in the response to Question 2 below, but the reality for workers is virtually no protection for blowing the whistle relating to occupational safety or health.

There are other whistleblower protections that apply on the OCS, but they are not related to worker safety and health. The whistleblower protection provisions of the Clean Air Act; the Federal Water Pollution Control Act; the Toxic Substances Control Act; the Solid Waste Disposal Act; the Comprehensive Environmental Response, Compensation, and Liability Act; and the Pipeline Safety Improvement Act, which are administered by OSHA, may also apply, if the protected activity alleged to have resulted in or contributed to retaliation is related to environmental or pipeline safety. Unfortunately, workplace safety and health issues on OCS drilling rigs, platforms or related equipment are not related to environmental or pipeline safety, and therefore not covered by these laws.

Question 2: What employees are covered, if any?
Question 3: Which employees are excluded, if any?

Response: Section 11(c) of the Occupational Safety and Health Act

Like other provisions of the OSH Act, geographical coverage under section 11(c) is defined by section 4(a), which provides in pertinent part: "This Act shall apply with respect to employment performed in a workplace in a State * * * [and] Outer Continental Shelf Lands [OCS] defined in the Outer Continental Shelf Lands Act. * * *" For purposes of 11(c), the protected activity and the unsafe or unhealthful conditions that are the subject of the protected activity must be in the geographic areas specified in section 4(a).

According to the Outer Continental Shelf Lands Act, the OCS includes all subsoil and seabed lying seaward and outside the lands beneath the navigable waters within the jurisdiction of a state under the Submerged Lands Act (which is typically three miles from shore, but approximately nine miles in the Gulf of Mexico) and "* * * all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources * * *" 43 U.S.C. § 1333(a)(1). OCS facilities include platforms permanently attached to the seabed or subsoil of the OCS, buoyant OCS facilities securely and substantially moored so that they cannot be moved without special efforts, and mobile offshore drilling units (MODUs) when in contact with the seabed of the OCS for the exploration of subsea resources. 33 C.F.R. 140.3, 140.10. Thus, while a structure attached to the OCS, such as a drilling rig, is potentially within OSHA's geographical coverage, vessels on the OCS except MODUs when in contact with the seabed, are not.

Once it is determined that the protected activity and the underlying conditions were in areas defined by section 4(a), it must then be determined whether OSHA's enforcement authority under section 11(c) is pre-empted by another federal agency. Section 4(b)(1) provides in pertinent part: "Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health." The U.S. Court of Appeals for the Fifth Circuit, which covers Louisiana, Texas, and Mississippi, has held that, because of section 4(b)(1) of the Act, section 11(c) does not apply to a seaman aboard a vessel whose working conditions are comprehensively regulated by the Coast Guard. The court reasoned that when the Congress said that "[n]othing" in the OSH Act shall apply to conditions regulated by other federal agencies it meant that no provision of the Act, including section 11(c), would apply to such conditions Donovan v. Texaco, Inc., 720 F.2d 825 (5th Cir. 1983). While the Texaco case specifically involved Coast Guard requirements, the court's ruling would be equally applicable in cases involving regu-

lations issued by other agencies such as the Bureau of Ocean Energy, Management, Regulation and Enforcement. At this time it is binding on the U.S. District Courts within that Circuit.

Because of the limitations imposed by the Fifth Circuit's decision in Texaco, OSHA' s authority to use Section 11(c) to protect whistleblowers on oil or gas drilling platforms or on MODUs on the OCS within the range of the Fifth Circuit may be seriously questioned. Working conditions on OCS facilities, such as fixed oil and gas drilling platforms and mobile offshore drilling units (MODUs), are subject to extensive regulations of both the Coast Guard and the Bureau of Ocean Energy, Management, Regulation and Enforcement (formerly the Minerals Management Service), including regulations dealing with fire and explosion hazards and a wide variety of other working conditions.

For example, 33 CFR Part 142, which is enforced by the Coast Guard, is "intended to promote workplace safety and health by establishing requirements relating to personnel, workplace activities and conditions, and equipment on the Outer Continental Shelf" (§ 142.1). It provides at § 142.4(a) that "[e]ach holder of a lease or permit under the Act shall ensure that all places of employment within the lease area or within the area covered by the permit on the OCS are maintained in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards." It further provides, in § 142.7(a), that "[a]ny person may report a possible violation of any regulation in this subchapter or any other hazardous or unsafe working condition on any unit engaged in OCS activities to an Officer in Charge, Marine Inspection." Although § 142.7(c) provides that the identity of any such person shall not be disclosed without that person's permission, there is no whistleblower protection for reporting possible violations or hazardous conditions.

Question 4: Please name the specific statute or statutes and regulations that cover such employees for protected activity.

Response: As mentioned in the response to Question 1, the reality for workers on the OCS is that there is virtually no protection for blowing the whistle on worker health and safety hazards. That is the reason why OSHA and the Administration strongly support H.R. 5851, and why its enactment is so critical.

Question 5: What activity or actions are protected under such whistleblower statutes, and which is excluded?

Response: As mentioned in the response to Question 1, the reality for workers on the OCS is that there is virtually no protection for blowing the whistle on worker health and safety hazards. Once again, that is the reason why OSHA and the Administration strongly support H.R. 5851, and why its enactment is so critical.

Question 6: What agency adjudicates those claims?

Response: As mentioned in the response to Question 1, the reality for workers on the OCS is that there is virtually no protection for blowing the whistle on worker health and safety hazards. Once again, that is the reason why OSHA and the Administration strongly support H.R. 5851, and why its enactment is so critical.

Question 7: Is there an expressed right to refuse unsafe work and if so, where is that provided and to the extent that it is, what happens is there is retaliation?

Response: As mentioned in the response to Question 1, the reality for workers on the OCS is that there is virtually no protection for blowing the whistle on worker health and safety hazards. Once again, that is the reason why OSHA and the Administration strongly support H.R. 5851, and why its enactment is so critical.

Representative Dina Titus (NV–3rd)

Question 1: You spoke of how the Deepwater Horizon incident was a "low frequency, high consequence" event. We have been dealing for decades with events that fit that description, including Three Mile Island. You also have pointed out that our current ways of measuring or predicting these events are inadequate. Is OSHA working on models of safety to prevent, and/or deal with such events?

Response: In 1996, OSHA promulgated its Process Safety Management (PSM) standard with the purpose of preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. Such consequences can include toxic, fire or explosion hazards. While the PSM standard covers many hazardous operations, such as oil refineries, the standard does not apply to operations that preempt OSHA jurisdiction. Such operations can include oil and natural gas drilling and nuclear power plants.

To ensure strong PSM systems, we need to do a better job of identifying useful leading indicators. We all know the warning that "past performance is no guarantee of future success." This is particularly true of the low-frequency, high-impact events that process safety programs guard against. The oil and gas industry must continue

to develop and track leading indicators to measure the performance and continuously improve process safety management systems. Recent work by the Center for Chemical Process Safety and American Petroleum Institute (API) is a good start.

Additionally, it comes down to organizational culture—a set of practices that define the organization and influence the individuals who make up the organization: organizational safety culture must come from the top.

OSHA is also working to improve its own targeting system. Until recently, OSHA has based its refinery targeting system on Days Away, Restricted, or Transferred (DART) rates. Specifically, only those refineries with elevated rates of injuries and illnesses were selected for programmed inspections. Clearly we need to change this. While injury and illness numbers are important, they are not the only indicator of establishments with major problems. We need to find a better way to target problem refineries or other production sites so that we can better spend our resources at facilities where potential disaster exists.

And to the extent we continue to factor DART rates into our targeting mechanism, we need to make sure that they are accurate. That is why we are paying special attention to safety incentive and discipline programs that have been shown to discourage workers from reporting injuries and illnesses.

We are also starting to take the safety of the entire refinery workforce into account—no matter who the employer is or the industry code they fall under—to ensure we do not miss any important indicators. Previously, our targeting system was based only on the injury and illness rates of employers, not contractors who may make up a large part of the workforce and employ workers who do some of the most dangerous work in the refineries.

OSHA is continuing a concerted effort to enlist the cooperation of industry, labor, and other stakeholders in developing models and systems of safety to prevent and address high-catastrophic events. This cooperation is crucial to maximizing our impact because OSHA cannot inspect every refinery every year.

You can also expect to see OSHA collaborating more with the National Institute for Occupational Safety and Health (NIOSH), Environmental Protection Agency, and other agencies to address the worker health and safety problems in the refinery and petrochemical industry—and in other industries as well. Together, we can develop a more effective system for targeting problem hazards and problem worksites, and addressing the problems that we have identified. And, in connection with hazards to which workers outside our jurisdiction are exposed, OSHA is actively collaborating with other agencies to assist in promoting worker safety.

Question 2: It seems that several government agencies have been coordinating and working well together on workers safety issues in the response to the oil spill.

a. What has the role been of other entities, such as the Department of Homeland Security and state and local governments, in ensuring the safety of clean-up workers and the general public?

b. What plans or efforts are being put in place now for the future role these groups will assume as more and more of the oil hits our shores?

Response: OSHA has joined with agencies in the Department of Homeland Security, including the U.S. Coast Guard; the Department of Health and Human Services (HHS), including the National Institute for Occupational Safety and Health (NIOSH) and the National Institute of Environmental Health Sciences (NIEHS); and other federal agencies, in ensuring the safety and health of workers involved in the Gulf oil spill response and cleanup operations. Examples of collaborative efforts with other Federal agencies include the coordination of injury/illness monitoring with NIOSH; the coordination of safety and health training with NIEHS; and the coordination of exposure sampling with NIOSH, the Environmental Protection Agency (EPA), the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration (NOAA).

In addition, OSHA attends daily conference calls with local and State governments to address and resolve safety and health issues. These coordination efforts among Federal agencies and State and local governments will continue throughout the response and cleanup efforts.

Representative Dennis Kucinich (OH–10th)

Question: Workers are considered to be the canary in the coal mine because what happens to them may also happen to others exposed to the same hazards. Dr. Michaels, you have an admirable history of advocacy for the public's health so I'd like to ask you this question:

If we can't fully protect the workers, despite your efforts, how can we possibly protect all the potentially affected communities? I have in mind the coastal communities that will be exposed to airborne compounds at levels that are toxic but aren't detectable by normal smell; the oil droplets that get aerosolized into particles so small they

go deep into the lungs where they can do major damage; the massive infusion of metals like lead and cadmium and polycyclic aromatic hydrocarbons into the marine ecosystem and therefore into the national food chain through bioaccumulation.

Response: OSHA's jurisdiction with respect to the Gulf oil spill extends only to workers involved in response and cleanup operations. OSHA's role is to provide advice and consultation to the federal on-scene coordinator (in this case the U.S. Coast Guard) regarding hazards to persons engaged in response activities. OSHA does not have jurisdiction over health risk assessments or exposure monitoring of the general public or the surrounding communities. The federal on-scene coordinator is responsible for coordinating federal resources for the overall response, including public safety. However, OSHA is monitoring and responding to potential occupational health concerns.

We have stationed safety and health professionals throughout the Gulf Region who visit worksites every day to protect oil response cleanup workers from health and safety hazards. OSHA staff is evaluating the safety at worksites around the Gulf, covering the vessels of opportunity, beach cleanup, staging areas, decontamination, distribution and deployment sites. When OSHA finds problems or learns about them from workers, we immediately bring them to the attention of BP and ensure that they are corrected. OSHA also raises its concerns through the Unified Command so they are addressed across the entire response area. OSHA is also ensuring that employers provide, free of charge, appropriate personal protective equipment such as boots, gloves and other protective equipment.

To determine whether workers are exposed to dangerous levels of toxic chemicals, OSHA is conducting its own independent air monitoring both on shore and on the cleanup vessels for crude oil, weathered oil, dispersants, and cleaning agents to characterize exposures and determine if any chemicals are present at dangerous levels. OSHA is also reviewing data from BP, the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA). OSHA is working with NIOSH to characterize worker exposures in each job category so that workers can receive necessary protections from air contaminants. This information is available to the public on OSHA's oil spill response website at: *http://www.osha.gov/oilspills/index.html. At this time, OSHA has identified no exposures that exceed any of the most up-to-date standards for hazardous chemicals.*

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 0 9 2010

The Honorable George Miller
Chairman
Committee on Education and Labor
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Ocean Energy Management, Regulation and Enforcement to questions submitted following the June 23, 2010 oversight hearing on ***"Worker Health and Safety from the Oil Rig to the Shoreline."***

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable John Kline
Ranking Member
Committee on Education and Labor

COMMITTEE ON EDUCATION AND LABOR
UNITED STATES HOUSE OF REPRESENTATIVES
WORKER HEALTH AND SAFETY FROM THE OIL RIG TO THE SHORELINE
JUNE 23, 2010

Questions from Chairman Miller

1. *What whistleblower protections are provided to private sector workers employed on the Outer Continental Shelf drilling rigs, platforms or related equipment who are covered under BOE safety and health regulations?*

   Response: BOEMRE regulations do not specifically provide whistleblower protections to private sector workers on the Outer Continental Shelf.

2. *What employees are covered, if any?*

   Response: See response to Question 1.

3. *Which employees are excluded, if any?*

   Response: See response to Question 1.

4. *Please name the specific statute or statutes and regulations that cover such employees for protected activity.*

   Response: See response to Question 1.

5. *What activity or actions are protected under such whistleblower statutes, and which is excluded?*

   Response: See response to Question 1.

6. *What agency adjudicates those claims?*

   Response: See response to Question 1.

7. *Is there an expressed right to refuse unsafe work and if so, where is that provided and to the extent that it is, what happens if there is retaliation?*

   Response: See response to Question 1.

Questions from Ms. Titus

Thank you to all the witnesses for being here today. While deep sea drilling is not a big issue in my state of Nevada, worker safety certainly is an important issue, and workers in Nevada have paid the price for lax safety oversight. It is important we keep workers safe during the oil spill clean-up, but I also want to focus on how we can prevent a situation like this from occurring to begin with and keep the workers on oil rigs safe at all times.

1. *You said earlier at this hearing that the number of BOEMRE inspectors – especially those without "substantial office responsibilities" – is not adequate to conduct all of the inspections BOEMRE is responsible for.*

   a. *With this in mind, could you please give us a little history of your agency since the Memorandum of Agreement with the Coast Guard was signed?*

   Response: Through a regulatory change in 2002 and subsequent Memorandums of Understanding and Memorandums of Agreement, the authority to conduct worker safety inspections on behalf of the USCG was delegated to BOEMRE. This was done in an effort to optimize the use of government resources and improve safety compliance. Since 2003, the BOEMRE has conducted almost 4,000 fixed-platform inspections on behalf of the USCG.

   b. *Specifically, has your agency grown appropriately to meet expanding need, has the budget increased correspondingly, and have personnel and resources been enhanced as requested by the agency?*

   Response: Recent actions to evaluate and meet the expanding need include initiating an independent study by an arm of the National Academy of Engineering to examine how we could upgrade our inspection program for offshore rigs and requesting substantial increases in the BOEMRE budget for FY 2010 and FY 2011 to increase the number of inspectors for offshore facilities.

   c. *If not, why not?*

   Response: BOEMRE has been carefully assessing a risk-based inspection effort in a Pilot Program stage. In this pilot, all production facilities are defined as either lower risk or higher risk based upon several criteria – production, manned or unmanned, and proximity to environmentally sensitive areas. The goal is to concentrate on higher risk facilities and reallocate resources to other critical work such as follow-up inspections or

accident investigations. Additionally, BOEMRE plans to increase the frequency of higher risk oversight as we add to the inspection workforce. BOEMRE also plans on witnessing more critical activities where it was impossible to do so before due to manpower constraints.

2. *It seems that several government agencies have been coordinating and working well together on worker safety issues in the response to the oil spill.*

   a. *What has the role been of other entities, such as the Department of Homeland Security and state and local governments, in ensuring the safety of clean-up workers and the general public?*

   Response: Although BOEMRE is not involved in developing or coordinating worker safety issues or procedures related to the oil spill cleanup, interagency coordination has been an important tenet of the overall response through the Unified Command structure.

   b. *What plans or efforts are being put in place now for the future role these groups will assume as more and more of the oil hits our shores?*

   Response: Although BOEMRE is not involved in developing or coordinating worker safety issues or procedures related to the oil spill cleanup, interagency coordination has been an important tenet of the overall response through the Unified Command structure.

[Whereupon, at 12:09 p.m., the committee was adjourned.]

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