

THE DEEPWATER HORIZON INCIDENT: ARE THE MINERALS MANAGEMENT SERVICE REGULATIONS DOING THE JOB?

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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**OVERSIGHT HEARING ON “THE DEEPWATER
HORIZON INCIDENT: ARE THE MINERALS
MANAGEMENT SERVICE REGULATIONS DO-
ING THE JOB?”**

**Thursday, June 17, 2010
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 10:03 a.m. in Room 1324, Longworth House Office Building, The Honorable Jim Costa [Chairman of the Subcommittee] presiding.

Present: Representatives Costa, Faleomavaega, Holt, Heinrich, Markey, Sarbanes, Tsongas, Lamborn, Fleming, Lummis and Hastings.

Also present: Representatives Scalise, Cao, and Bilirakis.

**STATEMENT OF THE HONORABLE JIM COSTA, A
REPRESENTATIVE FROM THE STATE OF CALIFORNIA**

Mr. COSTA. The oversight hearing of the Subcommittee on Energy and Mineral Resources on the *Deepwater Horizon* incident will now come to order. The subject of this morning’s hearing is whether the regulations of the Minerals Management Service within the Department of the Interior are doing their job. We also have a GAO report and three panels of witnesses. We look forward to an instructive hearing this morning. Obviously, there are a lot of questions and concerns that have been raised as a result of this horrific accident.

Before we begin, I would like to ask unanimous consent to allow Members who are not members of the Subcommittee to sit in and participate in this Subcommittee hearing. Without objection, so ordered. I suspect there are several different hearings going on concurrently, but we welcome those Members from the Full Committee to participate who are not part of the Subcommittee, and we will look forward to your contribution.

Mr. Lamborn, you are recognized.

Mr. LAMBORN. Thank you, Mr. Chairman. I would also ask unanimous consent that as they are able to, that three other Members who are not on the Full Committee but do represent states on the Gulf Coast be able to sit in as well: Mr. Scalise of Louisiana, Mr. Cao of Louisiana and Mr. Bilirakis of Florida.

Mr. COSTA. All right. These are Members whose districts have been directly impacted as a result of this horrific accident that has had tragic results in the Gulf, and we certainly want to afford the opportunity to any Members whose districts lie in harm’s way as a result of the terrible impacts that are being felt today.

Mr. LAMBORN. Thank you.

Mr. COSTA. You are welcome.

Let me begin with my opening statement and then we will defer to the Ranking Member here, and then if the Ranking Member of the Full Committee would like to make a brief statement, and then we will get to the heart of the hearing here with the three panels that we have before us this morning.

The Subcommittee on Energy and Mineral Resources is meeting today to hear testimony regarding the Minerals Management Service's regulations, the organizational structure that is now being changed as a result of the horrific accident that took place on the *Deepwater Horizon* on April 20th of this year.

Before we begin, I think it is important that we take a moment to acknowledge the brave men who lost their lives aboard the *Horizon* that night. Although the focus of the Nation right now is on the environmental and economic catastrophe occurring in the Gulf, I think it is fitting and appropriate that we not lose sight of the fact that there was also a tremendous human tragedy as a result of the loss of those lives. So our thoughts and prayers are with those families and workers just as those thoughts and prayers are with everyone along the Gulf Coast who are suffering today as a result of this spill.

This Subcommittee today will do the work that I think the American public expects Members of Congress to do as a part of our oversight, and in response to situations that clearly indicate that this tragedy could have been prevented. While it is expected that many may engage as a result of this horrific accident in the blame game and pointing the fingers, it is also expected that Congress do its appropriate work.

In the aftermath of this explosion, obviously, a number of questions have been raised as to who is responsible, how this spill could be stopped, and what we can do to ensure that something like this hopefully never ever happens again. Three weeks ago, in the Full Committee hearing, we posed some of these questions to the heads of British Petroleum and Transocean, that was the contractor that was drilling the exploratory well.

Today, it is the chore of the Subcommittee to turn the spotlight on the Minerals Management Service because, in the category of lessons to be learned, it is here that it seems to me that the appropriate work of the Subcommittee and the Full Committee, as well as other policy committees that have overlapping responsibility, that we do our due diligence in a way that will allow us to clearly understand what are the lessons to be learned.

Although the term "Minerals Management Service" as we discuss this in the context of this Subcommittee and the Full Committee is always preceded with the adjective "little known" Minerals Management Service by the press, clearly it is a lot better known today. This agency, though, has had its troubles for years. It is well known to members of this Subcommittee, and I believe to Chairman Rahall and myself, because we have held in recent years a number of hearings trying to correct the problems that have existed in recent years within the Minerals Management Service, oversight hearings that go back to 2007.

Recently, the Administration announced plans to split up the Minerals Management Service into three agencies and issue new

rules regarding offshore drilling and safety, some of which already have been published. It is also pushing the pause button on deep-water drilling until the Presidential Commission can report back with recommendations on what happened, how it happened, why it happened, and how, most importantly, to keep it from happening again.

When it comes to regulations, we must, I think, ask the hard questions on how we strike a proper balance between the role of government and the role of the private sector. Clearly, too little regulation can result in unsafe conditions that can ultimately result in the tragedy that we are facing today, but also too much regulation can be a problem as operators begin to expect the government to do everything and absolve themselves of their own safety responsibilities. There clearly is a responsibility on the part of all those who are participating, and it is the job of this Subcommittee and the Full Committee to really make those determinations as we look at legislation to correct these insufficiencies.

I really see this effort as examining the role of risk assessment on one hand and risk management on the other. It is something that is always difficult, but it is something that must be done if we are going to take the necessary corrective action: assessing what are the risks that are out there, prioritizing those risks, and determining what is an appropriate role to establish a management priority list to adequately ensure that we are managing those risks based upon those that create the most potential for a catastrophe, such as the one that we are experiencing now.

When it comes to an organization, therefore, we are trying to strike the proper balance between making sure an agency doesn't have too many conflicting purposes, and ensuring that excessive fragmentation doesn't keep those agencies from, in effect, working effectively, as we hope they will in the future. It would be particularly unfortunate if we went into a full circle and retreated with the same problems of coordination that the Linowes Commission found back in 1982.

For the audience and for those listening here, and I know most members of the Subcommittees are aware, the Minerals Management Service was created in the early 1980s by Secretary Watt as a result of his secretarial authority. It is an organic organization. Therefore, this Secretary or any Secretary could reorganize the Minerals Management Service just as Secretary Watt created it back in the early 1980s for the purposes it was intended for.

But Secretary Salazar, in his testimony to us several weeks ago, indicated that he didn't want to go in that direction; that in fact he wanted us to enact in statute a reorganization of the Minerals Management Service that would have the full force of the law in terms of its responsibility and its jurisdiction as we move forward and be a part, of course, of the appropriation and authorization under full oversight of the Congress.

As I told the Secretary when he testified before us at that time, I hope this reorganizational structure is not simply reorganizing the boxes because I think the public expects us to do better, and certainly if we are going to ensure that future accidents don't happen, we are going to have to create a reorganization of the Min-

erals Management Service that simply is not rearranging the boxes.

I think it is no surprise to those of you who are here and who I have worked with over the years that you know that I am one of those who is a strong supporter of offshore drilling. I believe it is one of the tools in the energy toolbox that we will continue to depend upon for decades as we look at all the energy tools in our energy toolbox. But we should not lose sight of the fact that under normal conditions, offshore exploration and utilization of oil and gas can be done extremely safely with little impact on the environment.

But as we look today, tragic and horrific results can take place if we are not following all of the safety requirements that are necessary. Therefore, we have to, under the category again of lessons to be learned, ensure that if we go forward, we create the confidence in the American public that we can in fact do this safely, and therefore, again, one of the purposes of today's hearing.

So, as I close, let me give you some final thoughts. It might cost a little more to do business during the safe periods as we look at what went wrong and how to fix it, but that cost is nothing compared to the tremendous expense and the tragedy that has resulted because of this accident.

My assessment 59 days into this explosion that took place is that clearly as we look back on other incidences that are comparable, complacency and overconfidence as we look and examine all of the facts that took place were a direct result of this accident. Complacency and overconfidence.

Complacency in so many wells that had been drilled offshore, both in the Gulf and around the world, that this was a routine way of doing business, and overconfidence in systems, redundant systems that were intended to apply in the event of an accident that did not work. Overconfidence in redundancy of systems that clearly failed. We saw that occur, sadly, in NASA with the tragic loss of the Challenger, and the Columbia; again complacency and overconfidence—both by the public sector and the private sector.

We must remind ourselves at the end of the day that we are all human and, therefore, complacency and overconfidence is something that can and does happen. What we have to ensure as we look at the reexamination of how we prevent this from happening in the future is that complacency and overconfidence doesn't revisit us in the future.

So, with that, I look forward to the witnesses' testimony. I will now recognize the distinguished Ranking Member Mr. Doug Lamborn from Colorado.

[The prepared statement of Chairman Costa follows:]

**Statement of The Honorable Jim Costa, Chairman,
Subcommittee on Energy and Mineral Resources**

The Subcommittee on Energy and Mineral Resources is meeting today to hear testimony regarding the Minerals Management Service's regulations and organizational structure in light of the tragic accident aboard the *Deepwater Horizon* on April 20th.

Before we begin, I would like to take a moment to acknowledge the brave men who lost their lives aboard the *Horizon* that night. Although the focus of the nation right now is on the environmental and economic catastrophe occurring in the Gulf, I believe we should not lose sight of the fact that this was also a tremendous human

tragedy, and our thoughts and prayers are with the families of those workers, just as they are also with everyone along the Gulf Coast who is suffering as a result of this spill.

In the aftermath of the explosion, a considerable number of questions have been raised as to who was responsible, how this spill can be stopped, and what we can do to ensure something like this never happens again. Three weeks ago we posed some of these questions to the heads of BP and Transocean. Today we turn our spotlight on the Minerals Management Service.

Although the term “Minerals Management Service” is often preceded by “little-known” when it is mentioned in the press, this agency and its troubles are well known to this subcommittee, as Chairman Rahall or myself have chaired roughly 20 oversight hearings on the agency since 2007.

Recently, the administration announced plans to split the Minerals Management Service into three agencies and issue new rules regarding offshore drilling safety, some of which have already been published. It has also pushed the pause button on deepwater drilling until the Presidential commission can report back with recommendations on what happened, and how to keep it from happening again.

When it comes to regulations, we must ask how to strike the proper balance between the roles of government and the private sector. Too little regulation can obviously lead to unsafe conditions. But too much regulation can also be a problem, as operators begin to expect the government to do everything and absolve themselves of their own safety responsibilities. This is an issue of risk analysis and risk management, and we must do a much better job at both of those.

When it comes to organization, we have to strike the proper balance between making sure an agency does not have too many conflicting purposes, and ensuring that excessive fragmentation does not keep these agencies from working effectively. It would be particularly unfortunate if we went full circle and recreated the same coordination problems that the Linowes (LINN-oh's) Commission found back in 1982.

I am a strong supporter of offshore drilling – I believe it is one of the tools in our energy toolbox that we will continue to depend on for decades to come. We should not lose sight of the fact that under normal conditions, it can be done extremely safely, with very little impact on the environment. But it is these “Black Swan” events – low-probability, high-impact events – that we have to try to prevent, or to handle properly if they occur.

It might cost a little more to do business during the safe periods, but that is nothing compared to the tremendous expense and tragedy that an accident like this can create.

**STATEMENT OF THE HONORABLE DOUG LAMBORN, A
REPRESENTATIVE FROM THE STATE OF COLORADO**

Mr. LAMBORN. Thank you, Mr. Chairman.

Today is day 59 of the *Deepwater Horizon* incident. We are here to examine possible shortcomings with regard to MMS's oversight of oil and gas development on the Outer Continental Shelf. As we conduct this hearing, we still do not know what actually caused the disaster on the *Deepwater Horizon*. We don't know how to stop the oil leaking from the seafloor, and still we don't know what happened that caused the explosion and what caused the failure of the blowout preventer. Yet the Administration has already made the decision to eliminate MMS as an agency, has imposed a six-month moratorium on deepwater drilling, and has stopped all future Outer Continental Shelf leasing.

It is important to keep in mind what we do know though. We know that this incident has had devastating impacts on the Gulf Region; that the Federal Government and BP have still been unable to stop the leaking well; and that BP is liable for all the costs incurred by government agencies responding to the spill, restoration of the environment resulting from the spill, and billions in economic damages to the people of the Gulf and the affected states.

We know that stopping the leak and cleaning up the oil must be BP and the government's first priority. We know that according to Ken Arnold, an engineering expert used by the Department to recommend safety improvements, in his opinion this disaster was, I quote, "A groupthink kind of thing, and there were a bunch of things that were on the borderline. When you keep adding up the mistakes, you end up in a situation where a big problem sneaks up on you."

I wonder how our witnesses here today will explain how MMS is supposed to overcome rationalizing groupthink that results in a disaster. While MMS has tremendous responsibility, I wonder about their ability to overcome human error.

We know that the Administration inspected all the offshore rigs with no significant safety violations and yet has instituted a six-month moratorium as part of a peer-reviewed report. That moratorium was subsequently refuted by seven of the engineering experts they asked to peer review the report. They said that in their professional opinion, I quote, "Changes made in the wording are counter-productive to long-term safety." This is because enacting a six-month moratorium, possibly for political reasons, creates new and unintended safety problems when ongoing drilling is interrupted.

We know that this moratorium is estimated to result in nearly 46,000 lost jobs almost overnight and as many as 300,000 jobs if it continues for a long period of time. Furthermore, EIA estimates the moratorium will result in a reduction of domestic crude oil production.

We know that the Secretary has decided to break up MMS. First, it was two departments, now it appears the plan is to make it three separate entities. On Tuesday, the President announced a new Director from MMS who will be responsible for breaking up and rebuilding the pieces of MMS. As much as the Administration wants to place the blame on their predecessors, the fact remains that while the comprehensive environmental analysis required for the OCS five-year leasing program and the lease/sale was conducted under the Bush Administration, the exploration plan, the application for permit to drill, amended APDs, and inspections of the *Deepwater Horizon* rig were done by the Obama Administration.

We will hear from one of our witnesses today that safety, reportable and lost time incidents for offshore operations and blowout incident rates steadily improved throughout the Bush Administration. That is hardly the record of a group of people that regularly cut the regulated community slack.

I hope that we can see the newly appointed Director of MMS here in the Committee at some point. Unfortunately, the Administration did not send him here today to testify before this Committee.

Mr. Chairman, I look forward to hearing from all of the witnesses today, and I yield back.

[The prepared statement of Mr. Lamborn follows:]

**Statement of The Honorable Doug Lamborn, Ranking Member,
Subcommittee on Energy and Mineral Resources**

Thank you, Mr. Chairman.

Today is day 59 of the Deepwater Horizon incident. We are here to examine the shortcomings with regards to the Minerals Management Service's oversight of oil and gas development on the Outer Continental Shelf.

Although we are holding this hearing, we still do not know what actually caused the disaster on the Deepwater Horizon. We don't know how to stop the oil leaking from the sea floor, and we still don't know what happened to cause the explosion and what caused the failure of the Blow out preventer.

Yet the Administration has already made the decision to eliminate MMS as an agency and stopped all future OCS development.

It is important to keep in mind what we do know?

We know that this incident has had devastating impacts on the Gulf region. That the federal government and BP have still been unable to stop the leaking well and that BP is liable for the costs of the response to the spill including all costs incurred by government agencies responding to the spill, restoration of the environment resulting from the spill, and billions in economic damages to the people of the Gulf and the affected States. We know that stopping the leak and cleaning up the oil must be BP and the Government's first priority.

We know that according to Ken Arnold, an engineering expert used by the Department to recommend safety improvements, that in his opinion, I quote,

"For six hours they were getting information that things were not right on that rig and they were continuing to rationalize that things were OK. It was a group-think kind of thing, and there were a bunch of things that were on the borderline. ... When you keep adding up the mistakes, you end up in a situation where a big problem sneaks up on you."

I wonder how our witnesses here today will explain how MMS is supposed to overcome "rationalizing group-think" that results in a disaster. While MMS has tremendous responsibility, I doubt they have an ability to overcome human error. In our response to this disaster we need to know exactly what happened so we know exactly how to respond.

We know that the administration inspected all the offshore rigs, with no significant safety violations, and yet has instituted a 6-month moratorium as part of a peer-reviewed report. That moratorium was subsequently refuted by 7 of the engineering experts they asked to peer-review the report and in their professional opinion, I quote, "***changes made in the wording are counterproductive to long term safety.***"

We know that this moratorium is estimated to result in nearly 46,200 lost jobs almost overnight and as many as 300,000 jobs if it continues for a long period of time. In addition, it will have a direct impact that will be felt through 2014.

Furthermore, EIA estimates the moratorium will result in a, reductions - of domestic crude oil production that will average about 26,000 barrels per day in the fourth quarter of 2010 and roughly 70,000 barrels per day in 2011.

We've asked the Administration for documents related to this disaster and those documents have not been forthcoming. It is very disappointing when the Administration has the documents that may provide answers that Congress needs to ensure that any legislation considered is designed to address a real problem. It is unfortunate the Administration shows no interest in demonstrating the transparency they demand of everyone else.

We know the Secretary has decided to break up MMS. First, it was two departments, now it appears the plan is to make it three separate entities. Although Acting-Director Abbey is here to testify today, he was only appointed as the acting head of MMS after Director Birnbaum stepped down following our last hearing less than a month ago. Yet, on Tuesday the President announced a new Director for MMS who will be responsible for breaking up and rebuilding the pieces of MMS. Unfortunately, the Administration didn't send Mr. Bromwich here today to testify before the Committee.

I hope that we can soon see Mr. Bromwich before us so we can ask him the important questions and get the important answers about the future of MMS.

CLOSING

Restructuring MMS may be the only way to rebuild public trust for the federal government's role in leasing and development of the Nation's oil and gas resources on the outer continental shelf, however, before we make sweeping changes to the Nation's energy programs we should find out what happened on the Deepwater Horizon Rig April 20th. If it was due to human error all the regulations in the world will never address that problem.

If the MMS was culpable in the accident because they didn't follow or enforce their own regulations ... well new regulations won't fix that problem either.

And finally we need to look at the Administration's emphasis on renewable energy. Did they stray from the core mission of the MMS leaving them leaderless and unfocused?

As much as the Administration wants to place the blame on their predecessors the fact remains that the comprehensive environmental analysis required for the OCS 5-year leasing program and the lease sale was conducted under the Bush Administration, where as the Exploration Plan, APD, amended APDs and inspections of the Deepwater Horizon Rig were the responsibility of the Obama Administration.

We will hear from one of our witnesses today that safety, reportable and lost time incidents', for offshore operations and blowout incident rates steadily improved throughout the Bush Administration. That is hardly a hallmark of a group of people that regularly cut the regulated community slack.

I look forward to hearing from all of the witnesses today.

Mr. COSTA. Thank you, I appreciate that as the Ranking Member. Although with all due respect, I think since the gentleman was just appointed yesterday, it would be rather ambitious to think that he would be prepared to testify today. I will, at the Chair's discretion, and as a courtesy, allow the Ranking Member of the Full Committee to make a brief statement, and then it is the Chair's intention to begin with the first panel of the witnesses. So if the first panel will come forward and get seated, and I will recognize the gentleman from Washington, Doc Hastings, for a brief statement. We will then begin with the first panel.

**STATEMENT OF THE HONORABLE DOC HASTINGS, A
REPRESENTATIVE FROM THE STATE OF WASHINGTON**

Mr. HASTINGS. Thank you very much, Mr. Chairman, and thank you very much for the courtesy of allowing me to make a statement.

As has been stated, we are nearly two months since the start of this crisis, but our priorities today remain the same as they were on day one, and that is to stop the leak, to clean up the spill, and to address the needs of the communities and the businesses in the Gulf of Mexico. But our next job, and the reason for this hearing, is to get answers and fix the failures in order to prevent a disaster like this from happening again.

What is needed are educated reforms, not a rush to judgment. To ensure that all the necessary changes and reforms are made, we need to know what all of the facts are and what went wrong out on the Gulf—both what went wrong at the rig, as well as the Federal bureaucracy charged with overseeing the drilling. Today we are specifically looking at MMS and its regulations.

As I have previously stated and what the Chairman observed in his opening remarks, the failures at MMS have been known for years, and there is bipartisan consensus that fundamental changes need to be made with the existing MMS structure. This must be done to ensure that American-made energy production is the safest in the world.

Now, on Tuesday, yesterday, President Obama appointed a new head of MMS and it is unfortunate that he can't be here today, but I can certainly understand that, and hopefully this Subcommittee will be able to hear from him in the very near future.

So if there are any changes that are to be made, whether it is to MMS or any other policy, it must be done right and thoughtfully

in order to protect the environment, the taxpayers, and American jobs and, I might add, the security of our country.

So, with that, Mr. Chairman, once again thank you for the courtesy and I yield back my time.

Mr. COSTA. Thank you very much. We will now begin with our panel. As I said at the outset, we have three panels this morning, and we will give the appropriate time for all members of the Subcommittee and those who have joined us from the Full Committee an opportunity to ask questions as we go through our process.

So I want to thank the witnesses for appearing. I think all of you have testified before. You know the rules. We have the five-minute rule in which you will make your presentation. The lights there are in front of you. The green light remains on for four minutes, and at the fifth minute the yellow light goes on, and when the red light goes on we would ask you to wrap up your comments, if that is possible.

So our witnesses this morning on the first panel are The Honorable Bob Abbey, the current and soon-to-be former Director of the Minerals Management Service. We appreciate your service, Mr. Abbey; Ms. Mary Kendall, the Acting Inspector General for the United States Department of the Interior; and Mr. Frank Rusco, the Director of National Resources and Environment at the U.S. Government Accountability Office, GAO.

So let us begin first with Mr. Bob Abbey who is the Director of the Minerals Management Service for your opening statement.

STATEMENT OF THE HONORABLE BOB ABBEY, ACTING DIRECTOR, MINERALS MANAGEMENT SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. ABBEY. Well, thank you, Chairman Costa, members of the Subcommittee. I know many of you from my role as the Director of the Bureau of Land Management. In late May, Secretary Salazar asked me to also assume the acting director responsibilities for the Minerals Management Service. It is a pleasure for me to be here today to represent the employees of the Minerals Management Service to discuss our ongoing safety and management reform efforts related to offshore energy activities.

At his address to the Nation this past Tuesday, President Obama described three key areas that the Administration is committed to working on:

First, the stopping of the leak from BP's wells and tackling the related cleanup; second, the recovery and restoration of the Gulf Coast by a long-term Gulf Coast restoration plan; and finally, the prevention of future disasters in the Outer Continental Shelf. The Department and employees of the Minerals Management Service share those commitments.

Since January 2009, Secretary Salazar has taken the Department of the Interior in a bold new direction. We have worked to reform not only the Minerals Management Service's culture of doing business, but the entire Department of the Interior by issuing new ethic standards for all employees.

Other reforms that we are implementing have resulted in a better balance between our energy needs and our stewardship of the environment. For example, Secretary Salazar has counseled lease

sales in the Chukchi and Beaufort Seas because of concerns about the sensitivity of the Arctic and its vulnerability to oil spills. He has counseled the oil and gas lease sale in Bristol Bay in Alaska, and recently announced the establishment of the original renewable energy office located in Virginia which will coordinate and expedite, as appropriate, the development of wind, solar, and other renewable energy resources on the Atlantic Outer Continental Shelf.

The tragedy and the massive spill in the Gulf have made the importance and urgency of this reform very clear. The Secretary has announced the reorganization of the Minerals Management Service and the establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement and the Office of Natural Resources Revenue. This effort will ensure the independence of the Outer Continental Shelf inspections and enforcement missions.

On May 27th, the Secretary delivered to the President the results of a 30-day safety review that he ordered the Department to undertake. The report recommends 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 aggressive new operating standards and requirements for offshore energy companies.

On May 30, 2010, in response to the safety report, the Department issued a directive to oil and gas lessees and operators imposing a six-month moratorium on deepwater drilling. The moratorium will provide time to implement new safety requirements and allow the Presidential Commission to conduct its investigation. This directive applies to drilling activities in water depths greater than 500 feet. Deepwater production will continue and be subject to closer oversight and safety requirements. Shallow water development and production activities, including exploration and development drilling, may proceed with adequate oversight and adherence to safety requirements.

It should be noted that the Department is aware of, and sensitive to, the economical and social impacts of the moratorium and the other notices that we have been issuing that may have on the communities and businesses involved. We are working closely with members of the public and with local elected officials to hear their concerns and consider changes, where appropriate.

Significant attention is also being given to the inspection program. It has long been recognized that inspection personnel face numerous challenges, such as the length of time to travel to deepwater facilities, and increasingly complicated drilling technology. Additional inspection program funding has been requested in Fiscal Year 2011. The number of inspectors needed and the qualifications required to be an inspector are being assessed and no doubt there will be changes.

More recent actions include the President's selection of former Assistant U.S. Attorney and Justice Department Inspector General Michael Bromwich to lead reforms at the Minerals Management Service as the Department accelerates reforms and the regulation and oversight of offshore oil development. Bromwich will oversee reforms of the Minerals Management Service, helping to restore

the integrity and rigor to the relationships between the Federal regulatory officials and oil companies.

Mr. Chairman, this concludes my remarks and I will be happy to respond to questions from you or members of the Subcommittee. [The prepared statement of Mr. Abbey follows:]

**Statement of Robert V. Abbey, Acting Director,
Minerals Management Service, U.S. Department of the Interior**

Thank you, Chairman Costa, Ranking Member Hastings, and Members of the Committee for the opportunity to be here today. I appreciate the opportunity to discuss our ongoing safety and management reform efforts related to offshore energy activities. Since I was named acting director of the Minerals Management Service (MMS), we have continued our aggressive response to the BP oil spill in the Gulf of Mexico and efforts to improve the Department of the Interior's ability to respond to help prevent such events in the future.

I will discuss these reforms in more detail later in my statement, but I want to be clear from the beginning that the changes that we have been making are substantive and systemic, not just cosmetic. These reforms are critical to help us prevent future occurrences of events like the Deepwater Horizon drilling rig explosion and the subsequent BP oil spill.

Immediately after I was named acting director, I reviewed the major changes that we have made at MMS. Since January 2009, the Secretary has taken the bureau in a bold new direction, as exemplified by massive undertakings to tackle the ethics challenges at MMS, develop a new plan for oil and gas development on the Outer Continental Shelf (OCS), and create the renewable energy program.

We have worked to reform the MMS's culture of doing business by issuing new ethics standards for all MMS employees during Secretary Salazar's first weeks here at the Department in January 2009. The Secretary terminated the Royalty-in-Kind program and implemented recommendations to improve MMS's royalty collection program that came from the Department's Inspector General and a committee chaired by former Senators Bob Kerrey and Jake Garn.

The Secretary also extended the public comment period by 180 days on the Draft Proposed 5-year Program for the OCS produced by the previous Administration. He held regional meetings with thousands of stakeholders in Alaska, California, Louisiana, and New Jersey. The information and input gained from these additional meetings led to the Department's announcement, on March 31st, of a new and balanced strategy for exploring and developing our oil and gas resources on the OCS. This plan is intended to focus on development in the right ways and in the right places, provide order and certainty to industry and investors, and deliver a fair return to American taxpayers for the use of their resources.

The changes and reforms we are implementing have resulted in a better balance between our energy needs and our stewardship of the environment. For example, the Secretary cancelled lease sales in the Chukchi and Beaufort Seas because of concerns about the sensitivity of the Arctic and its unique vulnerability to oil spills. He also cancelled the oil and gas lease sale scheduled for the magnificent fishing grounds of Bristol Bay in Alaska. The President formally withdrew Bristol Bay from any oil and gas leasing through June 30, 2017.

As we evaluate new areas for potential exploration and development on the OCS, we will conduct thorough environmental analysis and scientific study, gather public input and comment, and carefully examine the potential safety and spill risk considerations.

Even before the Deepwater Horizon explosion occurred, the Secretary directed the National Marine Board, an arm of the highly respected National Academy of Sciences, to conduct an independent review of MMS's inspection program for offshore facilities. And the Department's fiscal year 2011 budget request provides funding to increase the number of inspectors available for the offshore oil and gas program by more than 10 percent.

The BP Deepwater Horizon oil spill tragedy has also served to underscore the need to develop clean, renewable sources of energy. Since the beginning of the Obama Administration, the Department has been focused on these issues and has set priorities for the environmentally responsible development of renewable energy on our public lands and the OCS. As we have moved forward to implement the President's clean energy goals, we have expanded the scope of the MMS's portfolio to include a stronger and more effective renewable energy program.

On March 11, 2009, Secretary Salazar issued a Secretarial Order that made facilitating the production, development, and delivery of renewable energy on the OCS

and on public lands top priorities at the Department. These goals are being accomplished in a manner that does not ignore, but instead protects our signature landscapes, natural resources, wildlife, and cultural resources, and working in close collaboration with all relevant federal, state, Tribal and other agencies with natural resource stewardship authority.

In April 2009 Chairman Wellinghoff of the Federal Energy Regulatory Commission and the Secretary signed an agreement clarifying our respective agencies' jurisdictional responsibilities for leasing and licensing renewable energy projects on the OCS. This agreement allowed us to move forward with the regulatory framework for OCS renewable energy development that standardized the process and brought certainty to the application process for OCS wind, solar and hydrokinetic resources. This framework is important as it provides the "rules of the road" for states and companies to pursue development of projects on federal submerged lands.

The Secretary also approved the Cape Wind project off Massachusetts' coast, and the Department has taken the first steps to stand up major wind projects off the coasts of New Jersey and Delaware. The Secretary is working with the Atlantic Coast Governors to give renewed impetus to developing the potential for offshore wind projects. In keeping with this goal, on June 8, the Secretary announced that ten governors of East Coast states and the Department signed a Memorandum of Understanding formally establishing an Atlantic Offshore Wind Energy Consortium to promote the efficient, orderly, and responsible development of wind resources on the OCS through increased federal-state cooperation. Under the MOU, the consortium will develop an action plan setting forth priorities, goals, and specific recommendations and steps for achieving the objectives outlined in the agreement.

The Secretary also announced the establishment of a regional renewable energy office, located in Virginia, which will coordinate and expedite, as appropriate, the development of wind, solar, and other renewable energy resources on the Atlantic OCS.

The effort that we have put forward at the Department since January 2009 has been a massive effort to chart a new direction for the Department of the Interior, including MMS.

Substantive and Systemic Improvements

The tragedy and the massive spill in the Gulf have made the importance and urgency of this reform agenda clear. The Secretary issued Secretarial Order No. 3299 announcing the reorganization of the MMS and the establishment of the Bureau of Ocean Energy Management; the Bureau of Safety and Environmental Enforcement; and the Office of Natural Resources Revenue.

Under the supervision of the Assistant Secretary for Land and Minerals Management, the Bureau of Ocean Energy Management will ensure the environmentally responsible and appropriate development of the OCS for both conventional and renewable energy in a predictable and effective manner. The Bureau of Safety and Environmental Enforcement will ensure that all production operations are safe and that potential negative impacts on marine ecosystems and coastal communities are appropriately considered in each phase of development and mitigated to the fullest possible extent through its independent regulation, oversight, and enforcement powers.

Under the supervision of the Assistant Secretary for Policy, Management and Budget, the Office of Natural Resources Revenue will be responsible for the royalty and revenue management function ensuring the full and fair return to the American people for the utilization of these resources.

Secretary Salazar has asked the Assistant Secretary for Policy, Management and Budget, Rhea Suh, the Assistant Secretary for Land and Minerals Management, Wilma Lewis, and one of his Senior Advisors, Chris Henderson, to oversee these reorganization and reform efforts. They all have strong organizational skills and outstanding experience and expertise in strategic planning, business administration, and performance management in the public and private sectors that will be invaluable assets as we move forward to implement this effort, which will ensure the independence of the agency's inspections and enforcement mission.

The Secretary has testified before your Committee in support of organic legislation for the functions now performed by MMS. The OCS currently provides 31 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production. The MMS is one of the largest collectors of non-tax and non-trust revenue for the Treasury, and has collected an average of more than \$13 billion annually for the past 5 years. The Administration believes that agencies with responsibilities of this magnitude should be governed by thoughtfully considered organic legislation.

The President submitted to Congress, along with other Administration proposals to address the BP oil spill, legislation requesting additional funds for the Department to inspect offshore oil and gas platforms, draft enforcement and safety regulations, and carry out studies needed in light of this event. The legislation would also extend the time allowed by statute for MMS to review and approve oil and gas exploration plans from 30 to 90 days.

A Steadfast Focus on Safety

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 we 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.

The Secretary also established an OCS Safety Oversight Board comprising top Departmental officials charged with strengthening safety and improving overall management, regulation, and oversight of operations on the OCS.

On May 27th, the Secretary delivered to the President the results of the 30-day safety review that he ordered the Department to undertake. 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 on-going investigations to identify the root cause of the BP oil spill disaster have been completed. We consulted with a wide range of experts from government, academia and industry in drafting this report, and the draft recommendations contained in it were peer reviewed by seven experts identified by the National Academy of Engineering.

The report recommends 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 aggressive new operating standards and requirements for offshore energy companies. Key recommendations include a recertification of all Blowout Preventers for new floating drilling operations; stronger well control practices, blowout prevention and intervention procedures; tougher inspections for deepwater drilling operations; and expanded safety and training programs for rig workers.

After reviewing the report, the President ordered the Department to immediately implement a number of actions, including a continuation of the existing moratorium and a suspension of the issuance of new permits to drill new deepwater wells until the Presidential Commission investigating the BP oil spill has completed its six-month review. We are taking these immediate actions now, and we are laying the groundwork for additional measures in the future. On June 8th, for example, the Secretary announced the release of a "Notice to Lessees" that provides an initial set of new safety requirements that all offshore operators must meet.

Conclusion

Mr. Chairman, the Secretary and his management team at the Minerals Management Service look forward to working with you over the coming weeks as we continue to implement real reform to improve the safety, transparency, and efficiency of oil and gas exploration and production operations on the OCS.

Mr. COSTA. Well, thank you very much for that testimony, Mr. Abbey, and we will now look forward to our next witness, Mary Kendall, the Inspector General. Please begin your testimony.

STATEMENT OF MARY KENDALL, ACTING INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

Ms. KENDALL. Thank you. Mr. Chairman and members of the Committee, thank you for the opportunity to testify today about the proposed reorganization of the Minerals Management Service and the regulatory structure that MMS has promulgated governing not only its own operations, but those of the offshore energy industry that MMS regulates.

While the Office of Inspector General has not in the recent past conducted any rigorous review of MMS's governing regulations, during the course of other work that the OIG has done we have gained an understanding of some of the regulatory challenges that face MMS. We are also presently in the process of identifying gaps,

weaknesses, and opportunities for improvement in MMS operations and regulations with a focus on the permitting process, the inspections and enforcement programs, environmental and safety requirements, and the regulations governing post-incident review or investigation.

Let me begin with the latter. MMS has five brief paragraphs of regulation to cover post-incident investigation. As a result, in conducting the investigation into the *Deepwater Horizon* disaster, MMS is bound by the Coast Guard regulations which are comprehensive, but in my view, completely backwards, gathering evidence via public hearing rather than developing evidence to culminate in a public forum.

Generally, MMS regulations are heavily reliant on industry to document and accurately report on operations and production. I am not prepared today to comment specifically on MMS's permitting, environmental, or safety regulations, although given the April 20th disaster on the *Deepwater Horizon* and the present circumstances in the Gulf of Mexico, I certainly believe that our review will find opportunities to strengthen the regulations in these areas.

We learned recently that MMS has a dearth of regulations governing their inspection program. Anecdotally, we have also learned that MMS inspectors, at least in the Gulf of Mexico region, operate relatively independently with little direction as to what must be inspected or how. This is not the least of the inspector's challenges, however. We have been told that MMS has approximately 60 inspectors for the Gulf of Mexico region, to cover nearly 4,000 facilities. This is juxtaposed with the Pacific Coast, which has 10 inspectors for 23 facilities. MMS also has difficulty recruiting inspectors due to its grade and pay structure. Industry tends to offer considerably higher wages and bonuses. When they can be recruited, inspectors for MMS receive primarily on-the-job training. In any reorganization effort MMS should consider formalizing and updating its inspector training program and conduct periodic reviews of the program to ensure inspectors receive the proper and current training to keep pace with technological advances and procedural changes.

We also have questions about MMS's enforcement programs. In the operations and safety arena, we question whether the civil penalty regulations are tied appropriately to the seriousness of the violation and the threat to human safety, property, and the environment. Again, the regulations are sparse.

We have also had questions about the influence of industry on MMS in developing regulations. While industry clearly has influence, MMS appears to have followed the proper legal processes in finalizing its regulations. Because MMS relies heavily on an industry that it regulates, however, the possibility for, and the perception of, undue influence will likely remain.

While there is ample opportunity to improve and strengthen the regulations that govern MMS and the industry, the greatest challenge in reorganizing and reforming MMS lies with the culture, both within MMS and within industry. As you know, the Office of Inspector General has issued a plethora of reports critical of various practices and misconduct. While each report included troubling accounts of inappropriate behavior on the part of certain

MMS employees, that conduct was for the most part enabled by industry.

How do we address the conduct of industry representatives? Perhaps it is time to impose some ethics requirements on companies doing business with the government.

Mr. Chairman and members of the Committee, this concludes my prepared testimony today, and I would be happy to answer any questions.

[The prepared statement of Ms. Kendall follows:]

**Statement of Mary L. Kendall, Acting Inspector General,
U.S. Department of the Interior**

Mr. Chairman and members of the committee, thank you for the opportunity to testify today about the proposed reorganization of the Minerals Management Service (MMS) and the regulatory structure that MMS has promulgated, governing not only its own operations, but those of the offshore energy industry that MMS regulates.

While the Office of Inspector General (OIG) has not, in the recent past, conducted any rigorous review of MMS' governing regulations, during the course of other work that the OIG has done we have gained an understanding of some of the regulatory challenges that face MMS. We are also presently in the process of identifying gaps, weaknesses, and opportunities for improvement in MMS operations and regulations, with a focus on the permitting process, the inspections and enforcement programs, environmental and safety requirements, and the regulations governing post-incident review or investigation.

Let me begin with the latter. MMS has five brief paragraphs of regulation to cover post-incident investigation. As a result, in conducting the investigation into the Deepwater Horizon disaster, MMS is bound by the Coast Guard regulations, which are comprehensive, but in my view, completely backwards, gathering evidence via public hearing, rather than developing evidence to culminate in a public forum.

Generally, MMS regulations are heavily reliant on industry to document and accurately report on operations, production and royalties. I am not prepared today to comment specifically on MMS' permitting, environmental or safety regulations, although given the April 20th disaster on the Deepwater Horizon and the circumstances in the Gulf of Mexico presently; I certainly believe that our review will find opportunities to strengthen the regulations in these areas.

We learned recently that MMS has a dearth of regulations governing their inspection program – four brief, general subsections. Anecdotally, we have also learned that MMS inspectors, at least in the Gulf of Mexico region, operate relatively independently, with little direction as to what must be inspected, or how. MMS inspectors are guided, generally, by instructions in a handbook on Potential Incidents of Non-Compliance, or PINCs. This is not the least of the inspectors' challenges, however. We have been told that MMS has approximately 60 inspectors for the Gulf of Mexico region to cover nearly 4,000 facilities. This is juxtaposed with the Pacific Coast, which has 10 inspectors for 23 facilities.

MMS also has difficulty recruiting inspectors due to its grade and pay structure. Industry tends to offer considerably higher wages and bonuses.

When they can be recruited, inspectors for MMS receive primarily on-the-job training. The MMS Offshore Inspector Training program guidance and instructions appear to be considerably out of date, developed between 1984 and 1991, and credit individuals with industry experience. During our investigative efforts, we have found indications that inspector training and training programs have not kept pace with the technological advancements occurring within the industry. In any reorganization effort, MMS should consider formalizing and updating its inspector training program and conduct periodic reviews of the program to ensure inspectors receive the proper and current training to keep pace with technological advancements and procedural changes.

We also have questions about MMS' enforcement programs. In the royalties arena, we have been told repeatedly that, historically, the Office of Enforcement takes action to encourage compliance rather than take a stronger deterrent approach. During the past year however, we have been told that the Office of Enforcement may be taking a more aggressive approach. In the operations and safety arena, we question whether the civil penalty regulations are tied appropriately to the seriousness of the violation and the threat to human safety, property and the environment. Again, the regulations are sparse.

We have also had questions about the influence of industry on MMS in developing regulations. While industry clearly has influence, MMS appears to have followed the proper legal processes in finalizing its regulations. Because MMS relies heavily on the industry that it regulates in so many areas, however, the possibility for, and perception of, undue influence will likely remain.

While there is ample opportunity to improve and strengthen the regulations that govern MMS and the industry that extracts valuable resources from federal lands, the greatest challenge in reorganizing and reforming MMS lies with the culture – both within MMS and within industry. As you know, the OIG has issued a plethora of reports critical of various practices and misconduct. While each report included troubling accounts of inappropriate behavior on the part of certain MMS employees, that conduct was, for the most part, enabled by industry. Secretary Salazar and MMS have taken action to address the misconduct of MMS employees, have implemented and reinforced a new ethics policy, and have indicated some additional steps they intend to take to address some of the conflicts unique to MMS, given its closeness to and reliance upon industry. But how do we address the conduct of industry representatives? Perhaps it is time to impose some ethics requirements on companies doing business with the government.

Mr. Chairman and members of the committee, this concludes my prepared testimony. I would be happy to answer any questions that you may have.

Mr. COSTA. Thank you very much.

Our final witness for this panel and then we will begin the question period is Mr. Frank Rusco, the Director of Natural Resources and Environment with the U.S. Government Accountability Office. Mr. Rusco.

STATEMENT OF FRANK RUSCO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. RUSCO. Thank you, Mr. Chairman and members of the Subcommittee. Thank you for the chance to speak here today on the Department of the Interior's management of oil and gas on Federal lands and offshore, and on plans to reorganize Interior's oil and gas program. This hearing takes place against a sobering backdrop of the ongoing oil spill in the Gulf of Mexico that began April 20th with an explosion and tragic loss of life. It now appears that the spill is, or will be, the largest in history and the effects on sea life, Gulf Coast wetlands, local economies and the livelihoods of many are large and growing.

For the past five years, GAO, Interior's Inspector General, and others have reported on Interior's management of Federal oil and gas resources, both onshore and offshore. These reports have made over 120 recommendations, many of which Interior has been working hard to implement. To be fair, it must be said that in the course of our work we found the vast majority of Interior employees and management to be talented, hardworking and scrupulous. However, we also found pervasive systemwide problems in key areas that we believe must be addressed by Interior's top management as part of any successful reorganization.

Interior has not kept pace with changes in the oil and gas industry or changing lease management practices employed by other resource owners. For example, in 2008, we found that Interior had not comprehensively studied how much or how to charge for Federal oil and gas for over 25 years despite significant changes in the industry over that time frame. Similarly, we found in 2008 that Interior had not kept abreast of lease terms used by some states and other resource owners to encourage faster development of prom-

ising leases while providing more time to develop more speculative leases. To its credit, Interior is currently engaged in reviewing these two areas.

In 2010, we reported that Interior had not kept pace with the oil industry in terms of production verification technologies, including the types of meters used to measure oil and gas and how data from meters are collected and stored. These findings raise questions about whether or not the Federal Government is collecting the proper amount of oil and gas revenue.

Second, Interior lacks agency-wide guidance or regulations that define how it will manage the Federal oil and gas program. For example, MMS evaluates offshore leases using available seismic and other information to estimate a fair market value for the rights to develop any oil and gas on a lease. The MMS will not sell a lease unless it receives at least this amount. In contrast, BLM does not estimate the value of the oil and gas on lands it leases.

Further, in our recent work looking at production verification, we found that Interior's MMS for offshore and BLM for onshore had differing capabilities to evaluate changing production metering and verification technologies, and that they did not coordinate adequately to share information and avoid duplication of effort.

Third, Interior lacks adequate management information systems to provide sufficient oversight of the program. For example, we have identified instances in which, one, database is used to collect and store royalty payment information were not fully compatible; two, data were not collected consistently; three, agency databases lacked key functionality, resulting in staff using off-line work-arounds; four, inaccurate data were recorded in agency databases; and five, some data that would be useful for evaluating management decisions were being collected in an ad hoc fashion.

The oil and gas industry has changed dramatically over the past three decades and will continue to change as technology improves, allowing oil and gas resources to be developed that not long ago were out of reach. This is true onshore with the expanding development of unconventional oil and gas and offshore in deepwater.

The ongoing oil spill in the Gulf illustrates starkly the need to be able to assess the risks associated with new technologies and to attenuate that risk where possible and mitigate the damages associated with even rare catastrophic failures.

As the Secretary consults with Congress on plans to reorganize Interior's oil and gas program, there are opportunities to address this need both onshore and offshore. Changes in technology in the oil/gas industry and gas industry will require evolving guidance and regulations. Such change will provide opportunities for Interior to take the best from its onshore and offshore programs and apply these best practices more consistently within and across MMS and BLM.

Last, any reorganization of Interior's oil and gas program will be most successful if Interior develops management information systems that are robust, compatible across the entire program, and up to date.

This concludes my oral remarks. I will be happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Rusco follows:]

Statement of Frank Rusco, Director, Natural Resources and the Environment, U.S. Government Accountability Office

June 17, 2010



Highlights of GAO-10-852T, a testimony before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, House of Representatives

Why GAO Did This Study

The catastrophic oil spill in the Gulf of Mexico has drawn national attention to the exploration and production of oil and gas from leases on federal lands and waters. The Department of the Interior's Bureau of Land Management (BLM) oversees onshore oil and gas activities, the Minerals Management Service's (MMS) Offshore Energy and Minerals Management oversees offshore oil and gas activities, and MMS's Minerals Revenue Management collects revenues from oil and gas produced. Interior's oil and gas oversight has long been the subject of audits and investigations by GAO, Interior's Office of Inspector General (OIG), and others. In response to the recent oil spill, the Secretary of the Interior has proposed reorganizing MMS.

Over the past 5 years, GAO has issued numerous recommendations to the Secretary of the Interior to improve the agency's management of oil and gas resources—most recently resulting in two reports in March 2010 (see app. II for a list of GAO reports). Overall, GAO's work in this area can be useful in evaluating key aspects of the Secretary's plans to reorganize MMS. In particular, GAO's findings and recommendations can provide guidance on how to achieve effective oversight of federal oil and gas management by improving (1) technical expertise in the agency, (2) performance of analyses and reviews, (3) enforcement of laws and regulations, (4) public access to information, and (5) the degree of independence in the agency.

View GAO-10-852T or key components. For more information, contact Frank Rusco, 202-512-3841, Ruscof@gao.gov.

OIL AND GAS MANAGEMENT

Key Elements to Consider for Providing Assurance of Effective Independent Oversight

What GAO Found

Technical Expertise. Oil and gas production methods on federal lands and waters have become increasingly sophisticated over the past decade. GAO found in a March 2010 report that Interior had challenges in hiring, training, and retaining key staff, leading to questions about the technical capacity of Interior staff overseeing oil and gas activities. Interior's challenges partly stem from competition with the oil and gas industry, which can pay staff higher salaries. Moreover, key technical positions responsible for oversight of oil and gas activities have experienced high turnover rates, which, according to Interior officials, impede their capacity to oversee oil and gas activities.

Ability to perform reviews and require that findings be addressed. In several recent reports, GAO found that Interior was unable to complete necessary reviews, including environmental and oil and gas production verification inspections, and had an ill-defined process for conducting certain offshore environmental analyses. For example, GAO reported in March 2010 that MMS faced challenges in Alaska conducting required environmental reviews, because although Interior policy directed MMS to prepare a handbook providing guidance on how to conduct these reviews, MMS lacked such a handbook. This lack of guidance also left unclear MMS's policy on what constitutes a significant environmental impact.

Enforcement Authority. In a March 2010 review, GAO determined that in some instances, Interior was uncertain about its legal authority for undertaking potential necessary enforcement actions, and that Interior may be inconsistently using its enforcement authority. For example, staff from one BLM office told us that they were not issuing enforcement actions for unauthorized devices intended to modify gas flow upstream of the measurement meter—which may result in inaccurate measurement of gas production volumes. These staff explained that this was due to measurement regulations that were out of date.

Public Access. In its preliminary results from ongoing work on public challenges to BLM's federal onshore oil and gas lease sale decisions in the four Mountain West states responsible for most federal oil and gas development, GAO found state-by-state variation in what protest-related information was made publicly available across BLM state offices. GAO also found that stakeholders, including industry groups and nongovernmental organizations representing environmental, recreational, and hunting interests, expressed frustration with the transparency and timeliness of the information.

Independence. During GAO's work in 2009 and in Interior OIG reports in 2008 and 2010, several instances were identified where Interior staff had inappropriate relationships with oil and gas industry personnel, raising questions about whether Interior's oversight efforts were sufficient. The OIG found numerous instances of inappropriate contact between industry and Interior staff, including staff receipt of gifts.

United States Government Accountability Office

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to participate in this hearing to discuss the Secretary of the Interior's proposal to reorganize the Minerals Management Service (MMS) in response to the Deepwater Horizon drilling rig disaster. The tragic loss of life, damage to natural resources, loss of livelihoods, and harm to local economies that resulted from the explosion, fire, and catastrophic oil spill in the Gulf of Mexico have again drawn national attention to federal oversight of exploration and production of oil and gas from federal land and waters. Under the current organizational structure, the Department of the Interior's bureaus are responsible for regulating the processes that oil and gas companies must follow when leasing, drilling, and

producing oil and gas from federal leases as well as ensuring that companies comply with all applicable requirements. Specifically, the Bureau of Land Management (BLM) oversees onshore federal oil and gas activities, and MMS's Offshore Energy and Minerals Management (OEMM) oversees offshore oil and gas activities. Additionally, MMS's Minerals Revenue Management (MRM) is responsible for collecting royalties on oil and gas produced from both onshore and offshore federal leases. In fiscal year 2009, Interior reported collecting over \$9 billion in royalties for oil and gas produced on federal lands and waters, purchase bids for new oil and gas leases, and annual rents on existing leases, making revenues from federal oil and gas one of the largest nontax sources of federal government funds.

In recent years, we and others, including Interior's Office of Inspector General (OIG) have conducted numerous evaluations of federal oil and gas management and revenue collection processes and practices and have found many material weaknesses (see app. II for related GAO reports). Our work included reviews of Interior's oversight practices, operations, and rules, and our conclusions have been remarkably consistent: the agency has not done enough to meet the challenges it faces. Others, including the Interior OIG and a panel of experts convened by Interior have drawn similar conclusions. As a result, Interior staff are in the midst of attempting to implement over 100 recommendations spanning the scope of the department's operations. We acknowledge Interior's efforts to reassess key oil and gas policies addressing revenue collection and rates of development on federal lands and waters as an important first step to address material weaknesses. In addition, the Secretary of the Interior announced several changes to BLM's leasing process in May 2010.

Because of the recent announcement of the Secretary's proposed reorganization, we have not conducted a detailed analysis of these reorganization plans. However, our recent work on oil and gas management as well as work in the area of strengthening independent oversight of nuclear facilities and operations can be useful in evaluating key aspects of the Secretary's plans to reorganize MMS. In a 2008 report,¹ we identified the following key elements that any nuclear safety oversight organization should possess in order to provide effective independent oversight:

- **Technical expertise:** The organization should have sufficient staff with the expertise to perform sound safety assessments.
- **Ability to perform reviews and require that findings be addressed:** The organization should have the working knowledge necessary to review compliance with requirements, developed through periodic reviews, and should also have sufficient authority to require the program offices to effectively address its review findings and recommendations.
- **Enforcement authority:** The organization should have sufficient authority to achieve compliance with requirements.
- **Public access:** The organization should provide public access to its reports so that those most affected by operations can get information.
- **Independence:** The organization conducting oversight should be structurally distinct and separate from the entities it oversees.

When coupled with findings and recommendations about the management of federal oil and gas leases from our prior and ongoing work, these key elements may provide the Secretary and Congress with a useful framework for evaluating proposed reorganizations. While nuclear safety differs from safety associated with offshore oil and gas development, we believe there are similarities that make the key elements applicable. Specifically, as has been made clear by the recent oil spill disaster in the Gulf of Mexico, Interior is responsible for overseeing an industry with potentially significant impacts on workers, the environment, and vast areas of our oceans. Further, as with nuclear safety, even small probability adverse events can have significant and far-reaching effects.

My testimony today uses the five key elements for effective independent oversight to broadly frame examples from our prior work on the management of federal oil and gas activities issued from June 2005 through March 2010, as well as preliminary results from our ongoing review on public challenges to federal onshore oil and gas leasing decisions, to assist the committee as it considers changes to Interior's oversight. We developed these preliminary results from June 2009 through June 2010 by reviewing federal laws, regulations, and guidance; analyzing data from Interior on the four Mountain West states (Colorado, New Mexico, Utah, and Wyoming) responsible for 69 percent of the oil and 94 percent of the natural gas pro-

¹GAO, *Nuclear Safety: Department of Energy Needs to Strengthen Its Independent Oversight of Nuclear Facilities and Operations*, GAO-09-61 (Washington, D.C.: Oct. 23, 2008). We developed these elements based on a long history of reviewing nuclear safety at DOE and supporting independent oversight and through our work with outside nuclear safety experts.

duced on federal lands during fiscal years 2007 to 2009;² and interviewing BLM officials and stakeholder groups—including representatives from the energy industry, state government, and nongovernmental organizations representing environmental, hunting, fishing, and recreational interests. We conducted the performance audit work that supports this statement in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to produce a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our statement today.

Technical Expertise

Interior agencies should have sufficient staff with the technical expertise to oversee the activities under their authority. Oil and gas production methods on federal lands and waters have become increasingly sophisticated over the past decade. Additionally, oil and gas companies now rely on information technology to manage and oversee their operations. In a March 2010 review, we found that Interior had challenges in hiring, training, and retaining staff in critical oil and gas oversight roles, leading to questions about the technical capacity of Interior staff overseeing oil and gas activities.³

- We found that Interior has faced difficulties in hiring, retaining, and training staff in key oil and gas oversight positions. Specifically, we found that staff within Interior's program for verifying that oil and gas produced from federal leases are correctly measured—including petroleum engineers and inspectors—lacked critical skills because, according to agency officials, Interior 1) has had difficulty in hiring experienced staff, 2) has struggled to retain staff, and 3) has not consistently provided the appropriate training for staff. Interior's challenges in hiring and retaining staff stem, in part, from competition with the oil and gas industry, which generally pays significantly more than the federal government. Moreover, key technical positions responsible for oversight of oil and gas activities have experienced high turnover rates, which, according to Interior officials, impede these oversight employees' capacity to oversee oil and gas activities. These positions included petroleum engineers, who process drilling permits and review oil and gas metering systems, and inspection staff—including BLM's petroleum engineer technicians and production accountability technicians onshore—who conduct drilling, safety and oil and gas production verification inspections (see app. I). For example, we found that turnover rates for OEMM inspectors at the four district offices we reviewed between 2004 and 2008 ranged from 27 to 44 percent. Furthermore, Interior has not consistently provided training to the staff it has been able to hire and retain. For example, neither onshore nor offshore petroleum engineers had a requirement for training on the measurement of oil and gas, which is critical to accurate royalty collections and can be challenging at times because of such factors as the type of meter used, the specific qualities of the gas or oil being measured, and the rate of production. Additionally, although BLM offers a core curriculum for its petroleum engineer technicians and requires that they obtain official BLM certification and then be recertified once every 5 years to demonstrate continued proficiency, the agency has not offered a recertification course since 2002, negatively impacting its ability to conduct inspections. It is important to note that BLM's petroleum engineer technicians are the eyes and ears for the agency—performing key functions and also perhaps the only Interior staff with direct contact with the onshore lease property itself.
- We also found that Interior's efforts to provide its inspection staff with mobile computing capabilities for use in the field are moving slowly and are years from full implementation. Interior inspectors continue to rely on documenting inspection results on paper, and later reentering these results into Interior databases. Specifically, Interior's BLM and OEMM are independently developing the capacity for inspection staff to (1) electronically document inspection results and (2) access reference documents, such as American Petroleum Institute standards and measurement regulations, via laptops while in the field. BLM initiated work on developing this capacity in 2001, whereas OEMM is now in the preliminary planning stages of a similar effort. Accord-

²We assessed the reliability of these data and found them to be sufficiently reliable for our purposes.

³GAO, *Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes*, GAO-10-313 (Washington, D.C.: Mar. 15, 2010).

ing to Interior officials, widespread implementation of a mobile computing tool to assist with production verification and other types of inspections, potentially including drilling and safety, are still several years away. Interior officials said having such a tool would allow inspection staff to not only easily reference technical documents while conducting inspections to verify compliance with regulations but also to document the results of those inspections while in the field and subsequently upload them to Interior databases.

Ability to Perform Reviews and Require that Findings Be Addressed

An effective oversight program should include a component for systematic inspections and reviews, whose findings should be documented and subsequently addressed. In several recent reviews, we found that Interior had been unable to complete its necessary reviews, including both environmental and oil and gas production verification inspections and certain offshore environmental analyses.

- We found that Interior was unable to meet its goals for conducting environmental and production verification oversight inspections because of a management focus on drilling. For example, in June 2005,⁴ we reported that Interior devoted fewer resources to completing onshore environmental inspections—inspections to ensure that oil and gas companies are complying with various environmental laws and lease stipulations. According to Interior staff, one of the principal reasons was that management shifted available resources to processing drilling permits. More recently, in March 2010,⁵ we reported that Interior had only been able to complete approximately one-third of the required onshore production verification inspections, raising concerns about the accuracy of the oil and gas volumes reported to MRM.
- In another March 2010 report,⁶ we found that MMS faces challenges in the Alaska Outer Continental Shelf (OCS) Region in conducting reviews of oil and gas development under the National Environmental Protection Act (NEPA), which requires MMS to evaluate the likely environmental effects of proposed actions, including oil and gas development.⁷ Although Interior policy directed its agencies to prepare handbooks providing guidance on how to implement NEPA, we found that MMS lacked such a handbook. The lack of comprehensive guidance in a handbook, combined with high staff turnover in recent years, left the process for meeting NEPA requirements ill defined for the analysts charged with developing NEPA documents. It also left unclear MMS's policy on what constitutes a significant environmental impact as well as its procedures for conducting and documenting NEPA-required analyses to address environmental and cultural sensitivities, which have often been the topic of litigation over Alaskan offshore oil and gas development. We also found that the Alaska OCS Region shared information selectively, a practice that was inconsistent with agency policy, which directed that information, including proprietary data from industry, be shared with all staff involved in environmental reviews. According to regional MMS staff, this practice has hindered their ability to complete sound environmental analyses under NEPA.
- In an August 2009 report examining Interior's royalty-in-kind (RIK) program,⁸ we found that although MRM staff had made progress in conducting reviews of gas imbalances—instances where Interior may not be receiving the total amount of royalties due from gas production—they were unable to determine the exact amount the agency was owed for imbalances because it lacked certain key information. For example, MRM did not verify production data to ensure it received its entitled percentage of RIK gas from leases taken in kind. Without these and other data, MRM staff were unable to quantify revenues from imbalances, leading to forgone revenues and uncertainty about how much gas the government is owed.
- Until recently, Interior has left key functions it oversees without review for long periods. In two reports issued in 2008, we noted that Interior received

⁴GAO, *Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities*, GAO-05-418, (Washington, D.C.: June 17, 2005).

⁵GAO-10-313.

⁶GAO, *Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin*, GAO-10-276, (Washington, D.C.: Mar. 8, 2010).

⁷Pub. L. No. 91-190, 83 Stat. 852 (1970).

⁸GAO, *Royalty-in-Kind Program: MMS Does Not Provide Reasonable Assurance It Receives Its Share of Gas, Resulting in Millions in Forgone Revenue*, GAO-09-744, (Washington, D.C.: Aug. 14, 2009).

less in royalties and other payments for development of its oil and gas resources than many other countries and that Interior did less than other landowners to encourage development of resources it leased for development. In a September 2008 report on royalties and other payments,⁹ we found that Interior had not done a comprehensive analysis of its royalty and other revenue structure in over 25 years, and we recommended that it do so. In an October 2008 report,¹⁰ we found that Interior had done less than selected states and private landowners to encourage development of oil and gas leases, and we recommended that it develop a strategy to evaluate options to encourage faster development on federal lands. Just this year, Secretary Salazar directed that Interior conduct studies to examine these issues. We are encouraged that Interior is undertaking these efforts and hopeful that the findings of the studies will identify opportunities to improve Interior's oversight of oil and gas development.

Enforcement Authority

Oversight entities must have the authority to ensure that all regulated entities fully comply with the law and applicable regulations. In our March 2010 report,¹¹ we determined that in some instances Interior is uncertain about its legal authority for undertaking necessary enforcement actions and may be using its enforcement authority inconsistently.

- We found that Interior had not determined the extent of its authority over key elements of oil and gas production infrastructure necessary for ensuring accurate measurement. This infrastructure includes meters in (or after) gas plants, which may include the meter where oil and gas are measured for royalties and meters owned by pipeline companies. These companies frequently own, operate, and maintain the meter used at the official measurement point on federal leases and own the production data the meter generates. Because it did not know the extent of its authority, Interior did not know what steps it could take to enforce its standards and regulations for meters. Thus it lacked assurances that royalty-bearing volumes of oil and gas were correctly measured.
- We also found that Interior inspection staff were not, in all cases, pursuing enforcement actions when they identified oil and gas production activities not in compliance with its regulations. Specifically, we found that some Interior staff were not issuing incidents of non-compliance—a type of enforcement action—when they identified certain measurement devices during the course of their inspections, as they believe the current measurement regulations were out of date. If staff do not uniformly ensure compliance with regulations through specified procedures and document their findings, Interior is at risk of not capturing data to know the full extent of particular violations.

Public Access

Organizations should make relevant information widely available to ensure that those most affected by operations, including the public, can fully participate in decision-making processes that can, ultimately, have significant impacts. We recently found that Interior has been providing inconsistent and limited information with respect to its use of categorical exclusions in approving onshore oil and gas activities. Also, in preliminary results from our ongoing work on public challenges to BLM's federal onshore oil and gas lease sale decisions, we found that BLM state offices provide limited and varying amounts of information to the public on their leasing decisions.

- In September 2009, we found that BLM's use of categorical exclusions was not fully transparent.¹² In addressing long-term energy challenges, Congress enacted the Energy Policy Act of 2005, in part to expedite oil and gas development within the United States.¹³ This law authorizes BLM, for certain oil and gas activities, to approve projects without preparing new environmental analyses that would normally be required by NEPA. Section 390 of the Energy Policy Act of 2005 does not specify procedures for involving or informing

⁹GAO, *Oil and Gas Royalties: The Federal System for Collecting Oil and Gas Revenues Needs Comprehensive Reassessment*, GAO-08-691, (Washington, D.C.: Sept. 3, 2008).

¹⁰GAO, *Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development*, GAO-09-74, (Washington, D.C.: Oct. 3, 2008).

¹¹GAO-10-313.

¹²GAO, *Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act*, GAO-09-872, (Washington, D.C.: Sept. 26, 2009).

¹³Pub. L. No. 109-58, 119 Stat. 594 (2005).

either the public or other government agencies when section 390 categorical exclusions are used. According to Interior and BLM officials, there is no requirement to publicly disclose that BLM used a section 390 categorical exclusion to approve a project or to disclose approved section 390 categorical exclusion decision documents. Instead, the public depends on the discretion of each field office for such disclosure. We found that BLM field offices had different degrees and methods of disclosing information related to decisions on section 390 categorical exclusions. For example, some field offices, such as White River and Glenwood Springs, Colorado, publicly disclosed online which Applications for Permit to Drill they approved with section 390 categorical exclusions. In contrast, other field offices, such as Price/Moab, Utah, and Pinedale, Wyoming, did not publicly disclose their decisions to use section 390 categorical exclusions and, in fact, required the public to file Freedom of Information Act requests to identify which projects BLM approved using section 390 categorical exclusions and to obtain copies of approved section 390 categorical exclusion decision documents. In some cases, it was difficult for other governmental agencies—including state environmental agencies—and the public to determine whether BLM had used a section 390 categorical exclusion until it was too late to comment on or challenge BLM's action. When the public and other federal and state agencies do not have a reliable or consistent way of determining which projects have been approved with section 390 categorical exclusions, they lack a fundamental piece of information needed to hold BLM accountable for their use.

- In preliminary results from our ongoing work on public challenges to BLM's federal oil and gas lease sale decisions in the four Mountain West states responsible for most onshore federal oil and gas development, we found the extent to which BLM made publicly available information related to public protests filed during the leasing process varied by state and was generally limited in scope. We also found that stakeholders—nongovernmental organizations representing environmental, recreational, and hunting interests that filed protests to BLM lease offerings—wanted additional time to participate in the leasing process and more information from BLM about its leasing decisions. In May 2010, the Secretary of the Interior announced several agency-wide leasing reforms that are to take place at BLM, some of which may address concerns raised by these stakeholder groups. For instance, BLM state offices are to provide an additional public review and comment opportunity during the leasing process. They are also required to post on their Web sites their responses to letters filed in protest of state office decisions to offer specific parcels of land for oil and gas development.

Independence

The agency should be free from the direct and indirect influence of the oil and gas industry. Our past work, as well as that of Interior's OIG, has identified several instances where Interior staff had inappropriate relationships with oil and gas industry personnel, raising questions about whether Interior's oversight efforts were sufficient.

- During the course of our audit work for our report on Interior's use of categorical exclusions,¹⁴ allegations were made about inappropriate relationships between Interior management and the oil and gas industry. We referred these allegations to Interior's OIG, which initiated an investigation. The results of the investigation substantiated these inappropriate contacts, the details of which are included in an Interior OIG investigative report.
- Additional reports by Interior's OIG have also identified instances that call into question the independence of key staff working in Interior's oil and gas program. In August 2008, Interior's OIG reported on inappropriate relationships between staff working in Interior's RIK program and the oil and gas industry.¹⁵ Specifically, the OIG found that between 2002 and 2006 nearly one-third of the RIK program staff socialized with and received a wide array of gifts and gratuities from oil and gas companies with whom the program was conducting official business. Most recently, in May 2010, the OIG reported on inappropriate relationships between Interior's offshore inspection

¹⁴GAO-09-872.

¹⁵Interior OIG, *Investigative Report: Oil Marketing Group – Lakewood* (Washington, D.C.: Aug. 19, 2008).

staff and certain oil and gas companies operating in the Gulf of Mexico.¹⁶ Interior's Acting Inspector General stated that her greatest concern is the environment in which these inspectors operate, particularly the ease with which they move between industry and government.

In conclusion, over the past several years, we and others have found Interior to be in need of fundamental reform. This past work has found weaknesses across a wide range of Interior's oversight of onshore and off shore oil and gas development. Secretary Salazar has taken notable steps to begin comprehensive evaluations of leasing rules and practices as well as the amount and ways in which the federal government collects revenues. Interior is also currently implementing a number of our recommendations aimed at making improvements within the existing organization of Interior's functions.

As the Secretary and Congress consider what fundamental changes are needed in how Interior structures its oversight of oil and gas programs, we believe that our and others' past work provides a strong rationale for broad reform of the agency's oil and gas oversight functions—at MMS to be sure, but also across other parts of Interior, including those responsible for oversight of onshore areas. If steps are not taken to ensure effective independent oversight, we are concerned about the agency's ability to manage the nation's oil and gas resources, ensure the safe operation of onshore and offshore leases, provide adequate environmental protection, and provide reasonable assurance that the U.S. government is collecting the revenue to which it is entitled. Reorganization and fundamental change can be very difficult for an organization. Although we have not conducted a detailed evaluation of Secretary Salazar's proposals for reforming MMS, we believe that regardless of how MMS is ultimately reorganized, Interior's top leadership must also address the wide range of outstanding recommendations for any reorganization effort to be effective.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions that you or other Members of the Subcommittee may have at this time.

GAO Contact and Staff Acknowledgement

For further information on this statement, please contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement. Other staff that made key contributions to this testimony include, Ron Belak, Dan Feehan, Glenn C. Fischer, Jon Ludwigson, Ben Shouse, Kiki Theodoropoulos, and Barbara Timmerman.

Appendix I: Data on Turnover of Key Department of the Interior Inspection Staff

Table 1: Total Turnover Rates for Bureau of Land Management (BLM) Petroleum Engineers, Fiscal Years 2004–2008

Field office	Turnover percentage FY2004-08	Total number of employees in position, FY2004-08	Total employees leaving position, FY2004-08	Total employees leaving position, FY2004-08 (of the number employed in that fiscal year)					Average number of employees in position, FY2004-08
				2004	2005	2006	2007	2008	
Buffalo	80	5	4	1 of 3	1 of 2	1 of 2	0 of 2	1 of 2	2
Carlsbad	75	4	3	1 of 1	0 of 0	1 of 1	0 of 3	1 of 3	2
Farmington	50	8	4	1 of 6	0 of 6	2 of 6	0 of 5	1 of 5	6
Glenwood Springs	50	2	1	0 of 0	0 of 0	0 of 1	0 of 1	1 of 1	1
White River	100	2	2	0 of 1	1 of 1	0 of 1	0 of 1	1 of 1	1
Pinedale	100	2	2	0 of 1	0 of 1	0 of 1	1 of 2	1 of 1	1
Roswell	80	5	4	0 of 5	0 of 5	2 of 5	0 of 3	2 of 3	4
Vernal	33	6	2	0 of 2	2 of 3	0 of 2	0 of 2	0 of 4	3

Source: GAO analysis of interior data.

Note: We calculated the total turnover rate by (1) counting the number of individual petroleum engineers who separated from BLM, plus those who changed locations, plus those who changed from the petroleum engineer position to another position within that office; (2) dividing that by the number of individual petroleum engineers employed in each BLM office from fiscal years 2004 through 2008. For those individuals who changed jobs or locations, we did not determine whether they changed jobs or locations because of a management decision, as opposed to the employees' own decision.

¹⁶Interior OIG, *Investigative Report: Island Operating Company et al* (Washington, D.C.: Mar. 31, 2010).

Table 2: Total Turnover Rates for BLM Petroleum Engineer Technicians, Fiscal Years 2004–2008

Field office	Turnover percentage FY2004-08	Total number of employees in position, FY2004-08	Total employees leaving position, FY2004-08	Total employees leaving position, FY2004-08 (of the number employed in that fiscal year)					Average number of employees in position, FY2004-08
				2004	2005	2006	2007	2008	
Buffalo	30	20	6	1 of 12	0 of 12	2 of 13	2 of 14	1 of 15	13
Carlsbad	47	19	9	1 of 10	1 of 9	4 of 9	1 of 10	2 of 12	10
Farmington	54	37	20	1 of 22	3 of 25	7 of 24	3 of 21	6 of 22	23
Glenwood Springs	67	3	2	0 of 0	0 of 0	0 of 0	0 of 2	2 of 3	3
Hobbs	22	9	2	2 of 8	0 of 6	0 of 6	0 of 6	0 of 6	6
White River	55	11	6	1 of 2	2 of 3	0 of 1	1 of 2	2 of 7	3
Pinedale	83	12	10	1 of 2	1 of 6	2 of 6	3 of 5	3 of 5	5
Roswell	57	7	4	0 of 4	0 of 4	1 of 4	1 of 4	2 of 5	4
Vernal	17	18	3	1 of 13	1 of 14	1 of 13	0 of 15	0 of 15	14

Source: GAO analysis of interior data.

Note: We calculated the total turnover rate by (1) counting the number of individual petroleum engineer technicians who separated from BLM, plus those who changed locations, plus those who changed from the petroleum engineer technician position to another position within that office; (2) dividing that by the number of individual petroleum engineer technicians employed in each BLM office from fiscal years 2004 through 2008. For those individuals who changed jobs or locations, we did not determine whether they changed jobs or locations because of a management decision, as opposed to the employees' own decision.

Table 3: Total Turnover Rates for BLM Production Accountability Technicians, Fiscal Years 2004–2008

Field office	Turnover percentage FY2004-08	Total number of employees in position, FY2004-08	Total employees leaving position, FY2004-08	Total employees leaving position, FY2004-08 (of the number employed in that fiscal year)					Average number of employees in position, FY2004-08
				2004	2005	2006	2007	2008	
Buffalo	75	8	6	0 of 2	0 of 2	0 of 2	3 of 4	3 of 5	3
Carlsbad	67	3	2	1 of 1	0 of 0	0 of 0	0 of 0	1 of 2	2
Farmington	63	8	5	0 of 3	1 of 4	0 of 3	2 of 5	2 of 5	4
Glenwood Springs	0	1	0	0 of 0	0 of 0	0 of 0	0 of 1	0 of 1	1
Hobbs	50	4	2	0 of 1	0 of 2	0 of 2	2 of 4	0 of 2	2
White River	50	2	1	0 of 0	0 of 0	0 of 0	1 of 2	0 of 1	2
Pinedale	100	3	3	0 of 0	0 of 1	0 of 1	1 of 1	2 of 2	1
Roswell	100	1	1	1 of 1	0 of 0	0 of 0	0 of 0	0 of 0	1
Vernal	50	2	1	1 of 1	0 of 1	0 of 1	0 of 2	0 of 2	1

Source: GAO analysis of interior data.

Note: We calculated the total turnover rate by (1) counting the number of individual production accountability technicians who separated from BLM, plus those who changed locations, plus those who changed from the production accountability technicians to another position within that office; (2) dividing that by the number of individual production accountability technicians employed in each BLM office from fiscal years 2004 through 2008. For those individuals who changed jobs or locations, we did not determine whether they changed jobs or locations because of a management decision, as opposed to the employees' own decision.

Table 4: Total Turnover Rates for Offshore Energy and Minerals Management (OEMM) Petroleum Engineers who Approve Measurement, Fiscal Years 2004–2008

Regional office	Turnover percentage FY2004-08	Total number of employees in position, FY2004-08	Total employees leaving position, FY2004-08	Total employees leaving position, FY2004-08 (of the number employed in that fiscal year)					Average number of employees in position, FY2004-08
				2004	2005	2006	2007	2008	
Gulf of Mexico region	30	10	3	0 of 8	1 of 7	2 of 6	0 of 7	0 of 7	7
Pacific region	0	1	0	0 of 1	0 of 1	0 of 1	0 of 1	0 of 1	1

Source: GAO analysis of Interior data.

Note: We calculated the total turnover rate by (1) counting the number of individual petroleum engineers who separated from OEMM, plus those who changed locations, plus those who changed from the petroleum engineers to another position within that office; (2) dividing that by the number of individual petroleum engineers employed in each OEMM office from fiscal years 2004 through 2008. For those individuals who changed jobs or locations, we did not determine whether they changed jobs or locations because of a management decision, as opposed to the employees' own decision.

Table 5: Total Turnover Rates for OEMM Inspectors, Fiscal Years 2004–2008

District office	Turnover percentage FY2004-08	Total number of employees in position, FY2004-08	Total employees leaving position, FY2004-08	Total employees leaving position, FY2004-08 (of the number employed in that fiscal year)					Average number of employees in position, FY2004-08
				2004	2005	2006	2007	2008	
New Orleans	42	19	8	1 of 13	0 of 13	2 of 13	3 of 14	2 of 13	13
Lake Jackson	27	11	3	0 of 9	0 of 11	2 of 11	0 of 9	1 of 9	10
Lake Charles	41	17	7	2 of 15	0 of 13	0 of 13	1 of 13	4 of 14	14
California	44	9	4	0 of 7	2 of 9	0 of 7	1 of 7	1 of 6	7

Source: GAO analysis of Interior data.

Note: We calculated the total turnover rate by (1) counting the number of individual inspectors who separated from OEMM, plus those who changed locations, plus those who changed from the inspectors to another position within that office; (2) dividing that by the number of individual inspectors employed in each OEMM office from fiscal years 2004 through 2008. For those individuals who changed jobs or locations, we did not determine whether they changed jobs or locations because of a management decision, as opposed to the employees' own decision.

Appendix II: Related Prior GAO Reports

Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes, GAO-10-313, (Washington, D.C.: Mar. 15, 2010).

Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin, GAO-10-276, (Washington, D.C.: Mar. 8, 2010).

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Strategic Petroleum Reserve: Options to Improve the Cost-Effectiveness of Filling the Reserve, GAO–08–521T, (Washington, D.C.: Feb. 26, 2008).

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Mr. COSTA. Thank you very much for the entire panel's testimony, and now we will begin the opportunity to give members of the Subcommittee a chance to ask questions. Let me begin.

Mr. Abbey, you are kind of wearing two hats these days, both with the Minerals Management Service and the Bureau of Land Management. The proposed changes that we are talking about in the Minerals Management Service appears doesn't apply as it relates to the leasing and permitting if we went forward with this implementation for onshore leasing and permitting. Why should they be separate?

Mr. ABBEY. Well, I think there are a couple of reasons, Mr. Chairman, and one is the urgency of moving forward as quickly as possible in reviewing the lessons learned from the terrible *Deepwater Horizon* accident and apply those lessons as quickly as we can into the regulatory reforms that are underway as well as other rules that we will be implementing.

But one of the primary purposes for the reorganization is to provide greater clarity of the mission for both leasing and permitting as well as safety and enforcement, and to try to separate those two functions so that each new bureau that is proposed for creation will have a clear, distinct function and that both missions will be equally executed.

Mr. COSTA. But then what you are eventually saying is that ultimately down the road it could apply it to onshore as well?

Mr. ABBEY. Well, let me address that. Right now we have already created a special office under the Assistant Secretary for Land and Minerals. That special office is made up of employees from both the Minerals Management Service, as well as the Bureau of Land Management and the Office of Surface Mining and Reclamation. The primary purpose of that special office under the auspices of the Assistant Secretary of Lands and Minerals is to provide greater efficiencies and consistency in how we are managing oil and gas as well as all other minerals, both offshore as well as onshore. So

there is work underway already to address the deficiencies and the inconsistencies between offshore and onshore.

Mr. COSTA. Well, to be revisited, but obviously the first priority is to plug the well and to clean up this mess, but it seems to me it is likely that we are going to act on legislation prior to the August break, I would guess, and yet the President has established this Commission that has a six-month time frame. Clearly, they will come with recommendations that may complement but may differ from the recommendations that are currently being made with the Minerals Management Service and to the hearing process as we do our due diligence.

How are we going to incorporate this Commission's recommendations?

Mr. ABBEY. Well, any recommendation that will be forthcoming from that Commission will be certainly considered in how we are going to conduct business in the future. The whole purpose of that Presidential Commission is to look back to determine what lessons have been learned and how we can best apply them so that we can have a safer program that we are managing.

Mr. COSTA. There are some that say that on the shallow wells, the 500 feet of ocean depth and less, that the new regulations for offshore are vague and confusing. Is MMS working on any new guidance for the operators on those shallow wells?

Mr. ABBEY. Mr. Chairman, we issued a notice to lessees last week regarding the need for operators operating in shallow waters to adhere to new safety requirements that was part of that notice to lessees. Due to the confusion among the operators as well as our own employees, we held a meeting with the shallow water coalition members as well as Members of Congress to go through that notice to lessees provision by provision to provide greater clarity.

At the conclusion of that meeting that we had last week, people now have a greater understanding of what the intent of that notice to lessees are and how we intend to implement it.

Mr. COSTA. What would it take for the companies to be able to demonstrate in light of this disaster that they really have the responsibility or the capability I should say, capability to clean up a disaster of this magnitude?

Clearly, all the reports that we have seen, the reports that were filed that were basically kind of cookie cutter copies of one another are, in light of what we have experienced, inadequate to do the job.

Have you had a chance to begin to reassess what a comprehensive containment and clean-up plan would require in a worst case scenario as such as we are experiencing?

Mr. ABBEY. Well, what we are experiencing today certainly is way beyond anyone's imagination of what could have happened with offshore drilling.

Mr. COSTA. Well, now we can imagine it.

Mr. ABBEY. Now we can imagine it.

Mr. COSTA. OK?

Mr. ABBEY. You are absolutely right. There is no doubt that the spill response plans that have been previously submitted by the operators on the Outer Continental Shelf will need to be reviewed and amended based upon the lessons that we now have learned, so the lessees and the operators will be required to go back, revisit

their spill response plans, and to come in with something that will give not only those of us who are now working in the Minerals Management Service, but the American public a little more confidence about their ability to control or to contain any future spills.

Mr. COSTA. Well, obviously today the confidence of the American public on that point, if not at zero, is near zero, so we have to do better.

Quickly, Mr. Rusco and Ms. Kendall, because my time has expired, but in terms of the reorganization proposal that is before us and that will hopefully address in Chairman Rahall's CLEAR Act later this month or in July, do you see any potential problems in the reorganization plan?

Mr. RUSCO. We do have some concerns about just the ability of Interior staff to simultaneously respond to the catastrophic oil spill in the Gulf, to undergo a major structural reorganization, and also work to implement the over 120 recommendations made by GAO, the DOI Inspector General, and Interior's Royalty Policy Committee.

We do feel that any reorganization should be done only after thoughtful analysis with sufficient time to consider a variety of organizational structures and in consultation with Congress.

Mr. COSTA. Yes, on that point, I mean, I think members of the Subcommittee ought to note, I think we need to spend time in looking at the current staffing to do the inspection. I mean, the numbers I have are basically five for the West Coast, one for Alaska, and 56 members for the Gulf Coast. That is not going to get the job done if we are going to bring in the regulatory requirements that I think many of us believe is going to be necessary to begin to reinstall confidence, and so we are going to have to do a cost analysis of how many inspectors you really need based upon the rigs that are out there.

Ms. Kendall, do you have any concerns about this reorganization plan that you would like to point out to us?

Ms. KENDALL. Well, I certainly share your concerns about the inspectors.

Mr. COSTA. The staffing?

Ms. KENDALL. The staffing, definitely, and I agree with Mr. Rusco that it needs to be well thought out and considered before hasty action is taken. Unexpected and unintended consequences attach to most actions, and I think proceeding thoughtfully and carefully is definitely the way we need to proceed, the Department needs to proceed in the reorganization.

Mr. COSTA. All right. My time has expired clearly. Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman.

Ms. Kendall, the Department takes very seriously the importance and integrity of scientific and peer-reviewed documents. In fact, your office in the past has conducted a number of thorough investigations into the accusations that political appointees changed or modified scientific documents after they were peer reviewed.

Now, according to recent press reports and releases from the Department, the recent offshore safety report after being peer reviewed was edited by political operatives at either the Department or at the White House to assert, against the recommendation of the report signers, that a six-month OCS, Outer Continental Shelf mor-

atorium was appropriate. This was then falsely presented to the public as the sole work of the engineers and experts whose names were signed onto the report.

These experts have since objected to this misrepresentation. They have also suggested that this political decision to impose a moratorium will not only cost jobs, energy security, and huge amounts of needed revenue, but may actually threaten the safety of workers and increase environmental threats to the Gulf Region already so hard hit by this spill.

I want to know if your office is planning or has even already opened an investigation into who made these changes.

Ms. KENDALL. Congressman Lamborn, we have not. I understand right now that the 60-day moratorium is the issue of a lawsuit brought against the Department by industry. It has been the Office of Inspector General's practice for as long as I have been with the office that when a matter is in another forum, such as a Federal District Court, unless there is a compelling need for us to get involved and, in this case, we have not heard from either of the parties—either the Department or the industry—we would not investigate that. I think it would be inappropriate.

I mean, I have heard all the things that you have itemized here. I was not involved in the process of developing that report, and I think it would be inappropriate for me to comment on it.

Mr. LAMBORN. And by the way, I didn't want to make any suggestion that you were involved. In fact, it is good that you are not so that you can be a disinterested, objective observer because there needs to be an investigation.

Let me point out that the lawsuit that you are referring to is about the enactment of the six-month moratorium. It has nothing to do with the report that some said should result in a moratorium. These are two entirely different matters. So why can't you do an investigation of who made the changes in a peer-reviewed document to say that there should be a moratorium when that was not in the document originally?

Ms. KENDALL. Perhaps we can revisit that issue. I think the distinction is a fine one, but I would like to be able to think about it a little further.

Mr. LAMBORN. Well, I know that some Members of Congress, both in the Senate and in the House, have called for you to make this investigation. Do you see any reason why you can't do this type of investigation?

Ms. KENDALL. No, we could certainly do that type of investigation.

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

Mr. COSTA. All right.

Mr. LAMBORN. And I would like to introduce for the record, without objection, a letter on this issue from Senator Vitter and Representative Scalise.

Mr. COSTA. All right, without objection so ordered.

[The letter submitted for the record by Mr. Lamborn follows:]

Congress of the United States

Washington, DC 20510

June 16, 2010

The Honorable Mary L. Kendall
Acting Inspector General
Department of the Interior
1849 C St., NW
Washington, DC 20240

VIA ELECTRONIC MAIL AND FACSIMILE
IMMEDIATE ATTENTION REQUESTED

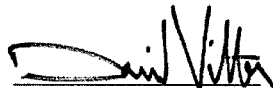
Dear Inspector General Kendall:

It has come to our attention that inappropriate activity may have occurred as it relates to a 30-day review the Department of the Interior utilized in justifying the current moratorium in the Gulf of Mexico. Recent press releases have stated that "the team of engineers reviewed, approved and signed off on a version of the 30-day review that was presented to them by the Administration. However, after they signed their names to this document, a significant change was made – a change that led to the 6-month suspension of deepwater exploratory drilling."

In justifying its broad moratorium on deepwater drilling, senior officials emphasized that the measure was recommended by a DOI report prepared in consultation with scientists and industry experts. Unfortunately, it appears that the team of scientists assembled by the National Academy of Engineering strongly refutes this claim.

Section 515 of the Information Quality Act (IQA) directs federal agencies to maximize "the quality, objectivity, utility, and integrity" of information they prepare and disseminate and it requires agencies to adopt and follow implementing guidelines. The OMB guidelines note the IQA applies to the "creation, collection, maintenance, and disseminating of information." The basic standard of care is that information must be "accurate, clear, complete, and unbiased." Stricter and even more rigorous quality standards apply when the information is "influential," meaning it will "have a clear and substantial impact on important public policies..."

In light of the allegations of inappropriate tampering with a scientific review with significant public policy implications, we ask you to identify when and how the modifications to the report occurred, and if there was any violation of law as it relates to the Information Quality Act or otherwise.



David Vitter
U.S. Senate

Sincerely,


Steve Scalise
U.S. House of Representatives

Mr. COSTA. The gentleman from New Mexico, Mr. Heinrich, for five minutes.

Mr. HEINRICH. Thank you, Mr. Chair.

I have a few questions for you, Director Abbey, and I want to say I appreciate your service for taking over what is clearly, even in the interim, an organization that has been highly challenged and has a lot of issues that we need to get to the bottom of, and work

through over the next months to make sure that this kind of thing never happens again.

We have all seen a copy of the oil response plan from BP. It was approved by MMS back in, I think, November of 2008. It determined that the worst case scenario for an uncontrolled blowout from the Gulf was 300,000 barrels of oil per day. It says, "I hereby certify that BP Exploration and Production, Incorporated, has the capability to respond to the maximum extent practicable to a worst case discharge or a substantial threat of such a discharge resulting from the activities proposed in our exploration plan."

Now, I know the estimates have changed and we are now looking at something between 35,000 and 69,000 barrels per day from this event. That is nowhere near the worst case scenario that they said that they were planning for, and I think we can all agree that at least within the first couple of months the response to that 35 to 60 thousand barrels was completely anemic. I can only imagine what a 300,000 barrel per day event would look like.

Do you think MMS fundamentally made a mistake in approving some of these plans for these large-scale events that on paper said everything is fine without digging into the background and making sure that they actually had the physical capability to manage a catastrophe like this?

Mr. ABBEY. Congressman, I think that is an excellent question, and there are a number of investigations and reviews underway right now to determine just what Minerals Management Service employees did as part of their review process.

I will say this, and I will use the Chairman's own words, I think over time all of us, whether it is society, employees of the Minerals Management Service or the industry, became complacent and overconfident that such a spill like the one we are seeing today could never occur. We now know differently. As we look forward to apply the lessons that we are learning each day, you are going to see a more diligent effort on the part of any regulatory agency who has any jurisdiction at all relative to the offshore drilling and protection. We will do a better job.

As far as addressing your specific question, I will tell you this; that during my period of time, four weeks now with the Minerals Management Service, I have seen nothing but professionalism on the part of its employees. I do think a reorganization is needed so that we can separate the various functions, distinct functions of that organization so that we can have some checks and balances. So I am certainly all for the reorganization proposals as we presented. I do think also that a better job needs to be done in the future.

Mr. HEINRICH. What can we do right now? What is the MMS or the Administration doing to make sure that all of our other offshore producers, whether we are talking about the old rigs in California or we are talking about Alaska, the Gulf, that we deal with this gap between what is on paper and what is physically capable in a response of them, what are they capable of providing in terms of personnel, in terms of skimmers, in terms of containment devices to deal with the blowout?

What is MMS doing to make sure that, God forbid this thing should happen on another well someplace else offshore, that the

producer has the capability and it is their responsibility under the OPA, the Act that was passed back in 1990, that they have the physical capability to respond to that?

Mr. ABBEY. Well, I certainly think that that is one of the purposes for this pause, the six-month moratorium, to allow all of us to go back and to determine the plans that are in place today, whether or not they are adequate to address what could potentially occur out there. The first and foremost effort that we are applying right now is to prevent future spills, anything like this from ever happening again.

The Secretary ordered and we have implemented inspections on all deepwater rigs to make sure that the equipment that they have on those rigs are what they say they have on those rigs, that they are appropriate, that they are qualified people on those rigs to manage the equipment. We are increasing the number of inspections on not only deepwater rigs but also shallow water rigs, and at the same time we are reviewing the plans that had been previously submitted to determine if they are still adequate.

Mr. HEINRICH. That brings me to another thought, and we have heard some stories, both within this disaster and also allegations on other rigs, of a mismatch between, for example, the engineering drawings for equipment and what is actually there, or you know, we heard all about the batteries and the miswiring and all those things associated with the blowout preventer.

Is part of that process also doing some sort of review to make sure that when the drawings or the documentation says X, that we don't have Y when you actually get out there onto the rig?

Mr. COSTA. This will have to be the gentleman's last question, and please respond succinctly.

Mr. ABBEY. And my response will be quick. That is part of the review.

Mr. COSTA. All right. The Chair will now recognize the gentleman from Wyoming, Ms. Lummis.

Ms. LUMMIS. Thank you, Mr. Chairman.

My first question is for Ms. Kendall. A former MMS Director testified before this Committee last week or two weeks ago that after requesting the IG to come in and do a review of mismanagement—excuse me—misbehavior within the MMS, that it took three years to get an IG's report. That happened twice.

Can you explain to me why it should take three years when a director of an agency asks for an inspector general's report, and then is told, you know, stand at ease while we do our report so they can't even solve the problems that they themselves have identified and requested the IG to evaluate, how that advances good government?

Ms. KENDALL. Congresswoman, I am not aware of an incident where that occurred, where MMS has requested an investigation of us, and then something has taken that long.

The other thing that puzzles me is that our policy is one where as we find things during the course of an investigation if there is something that the Department can do management-wise to solve some underlying sort of organic problem, we will communicate with the Department at the time we find this information. We don't hold it until the end. Now in some cases they may not have everything

they need to take administrative action say against an individual until they have a final report, but they can take corrective management action if there is an organic problem that led to some misconduct.

Ms. LUMMIS. Well, Mr. Chairman, the testimony that we heard from a former MMS Director in this Committee was that an MMS Director had requested an IG's hearing in 2004, and got the final report in 2007, and then subsequently a follow-up report requested in 2007 was not issued until 2010. That seems to me to be inadequate in terms of a time frame for responding to a request by an administrator to solve the problems within their own agency. So I would refer, and let us visit about that further because that was brought to our attention a couple of weeks ago.

Mr. Abbey, do you believe that BLM's leasing program should be removed from BLM oversight and given to a separate agency, BLM's leasing programs?

Mr. ABBEY. I do not.

Ms. LUMMIS. OK, thank you. I also have a question about the unionized employees that are inspectors in the Gulf. A couple of weeks ago, again in testimony before this Committee, we learned that that father and son inspection team that last inspected the *Deepwater Horizon* well came to their subsequent questioning session with a union lawyer, and that they were unionized employees. It seems to me that in an inspector situation, that union representation and unionization of these types of employees may not be the best and appropriate place for unionization. Do you agree or disagree?

Mr. ABBEY. No, Congresswoman, I really do not agree with that. I don't think that this event had anything to do with the union or whether or not the inspectors were unionized. There is a lot that we are going to learn about our inspection program. There is a lot that we already had underway prior to the *Deepwater Horizon*. Secretary Salazar had asked the National Marine Board to conduct an independent review of the Minerals Management Service inspection program and to come in with their own recommendations so that we could improve the work that was currently being performed by our inspections.

It is very complicated work, but going back to your question it has nothing to do with whether or not the inspectors are unionized or not.

Ms. LUMMIS. And Mr. Rusco, you mentioned that with regard to lease terms that have come a long way, that we maybe at the Department of the Interior have not kept up to date with the lease terms that would give the people of the United States more return for their minerals in the Gulf, and I would just commend to your attention the changes that were made in the lease terms for the State of Wyoming's own oil and gas, and surface agreements, which were updated during the last four years under its director, Lynne Boomgaarden, who has since returned to the private practice of law, but she did a really good job updating the terms of the State of Wyoming's oil and gas leases, and surface use agreements to provide for more safety, for environmental protection, and for stronger lease terms and return to the people of the State of Wyoming in the instance of Wyoming's terms, and they might serve as a good

example for onshore Department of the Interior lease terms. Not the offshore, we don't have that much—

Mr. COSTA. Not in Wyoming.

Ms. LUMMIS. Thanks, Mr. Costa.

Mr. COSTA. That will have to be the gentlewoman's last word. The Chair will now recognize the gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. Thank you to the witnesses.

I am convinced when all of this look back and inquiry is done that we will determine that for years, years ago really MMS handed over to the oil industry the keys to the kingdom, and they have taken full advantage of that, and what we are about is we have to get the keys to the kingdom back because the industry really doesn't seem to be able to act responsibly on its own.

Now when you look at the resources available to MMS, the lack of resources, and the lack of vigilance, I think that will also be part of this story. If I am the industry, MMS is like a fly buzzing around my head. It is a joke, and we have to figure out how to make the agency more relevant so the industry actually cares when they show up for an inspection.

I mean, people who are—and you made the point, people who don't get paid enough so that you can recruit good people—and they are standing next to an industry person on the rig who is telling them this, that and the other thing, and you know, weaving and bobbing and so forth, it is not a fair fight. We have to get back to where the industry actually cares when an MMS inspector is coming because maybe they have to like get with the program.

So what I am curious about is just the permit process because I am very interested in going forward how we make sure that certain parts of that process are elevated in the statute, particularly the ability to demonstrate as a company that if you are going to go drill on the moon, or you know, 5,000 feet under the surface of the ocean, that the techniques that you have for stopping a spill actually will work there, and you have to certify to that, and there has to be some independent verification of it, and so forth and so on.

So what happens? The application comes in, all the boxes are checked, and then the MMS folks go to work. So can you just take me through the process that happens when that permit comes in, in terms of getting to the approval stage?

Mr. ABBEY. Well, an application for a permit to drill is submitted. It would be based upon the exploration plan that had already been submitted and previously approved by the Minerals Management Service. There would have been an analysis of the exploration plan to determine what the likely consequences of future drilling would be based upon the terms and conditions of the exploration plan.

The Minerals Management Service employees would then look at the application for permit to drill. They would assess the adequacy of the information that was contained in that permit application. They would move forward and either reject the application for a permit to drill or to accept it.

At that point in time once a permit is issued to the industry member they can go forward and begin their operations.

Mr. SARBANES. Wait a second. So what you just described could be an entirely paper exercise, right? Permit comes in, information is sought. The personnel of MMS review that, determine whether it is incomplete or whether it is insufficient, and ask for more information. More information comes in and an intelligent person can figure out how many extra pages to add to their application to get that box checked.

Are there points along the way in that initial process you just described where somebody is actually going out and kicking the tires on the operation? I mean, really sort of pulling the layers back and trying to corroborate whether what is presented on paper is actually matched by the reality? Does that happen or would you say the resources aren't there for that to happen?

Mr. ABBEY. Well, up until the time that you have approved an application for permit to drill, there are really no tires to kick. There are no operations to go out and review or inspect. It is only after they have the authorization to move forward to lay their platform and then to commence with drilling is there any action that an inspector can go out and monitor, and to determine whether or not they are conducting business—

Mr. SARBANES. Well, you could go—if somebody is saying that the *Deepwater Horizon* rig, if there is a problem that happens the way we are going to respond to it is with X, Y, and Z technique, or equipment, or relying on the blowout preventer or something, you could say to them, well, can you demonstrate other places where this is in place, and we can go check it out? We can do an independent review of whether a blowout preventer actually can never fail like the sun coming up every day, or whether it is just another piece of equipment that can fail. I mean, presumably there are places you can go look to verify what is being submitted even though it is not for that particular location or rig, right?

Mr. ABBEY. That is true.

Mr. SARBANES. OK.

Mr. ABBEY. The experience that the people have that are doing the reviews certainly have been involved in a number of inspections and a number of plan reviews and approvals, you know, in the conduct of doing business. There are an awful lot of similarities in the operations that are occurring in the Gulf of Mexico, so you are absolutely right relative to do we have the knowledge of what is being proposed and has it worked elsewhere.

And the answer to that question is what is usually proposed by an operator as part of their exploration plan or as part of their application for permit to drill is state-of-the-art, best management practices. It has been tried and proven to work in other parts of the Gulf of Mexico and, therefore, there are some similarities, there are some familiarity with what is being proposed by the operator, and the Minerals Management Service would make their determination based upon the papers that have been submitted, the plan, the applications, and also their own experience with similar operations operating in that same area.

Mr. COSTA. The gentleman's time has expired.

All right, the Chair will now recognize the gentleman from Louisiana, Mr. Fleming.

Mr. FLEMING. Thank you, Mr. Chairman.

I have a question for Ms. Kendall. To preface it, I think it has been clearly brought out that failure of oversight and perhaps even corruption in MMS, which has been in prior administrations and extends to date in this administration, has been a serious problem, and one difficult to overcome.

But a statement that you made, Ms. Kendall, made the cilia in my ears stand up; that is, perhaps it is time to impose some ethics requirements on companies doing business with the government.

Would that extend to environmental groups?

Ms. KENDALL. Help me if you would, Congressman, with what you are suggesting.

Mr. FLEMING. Well, would an environmental group providing office space and meals to NLCS employees be a violation of ethics rules?

Ms. KENDALL. I can't really speculate on that. It may, it may not. I would certainly need more information.

Mr. FLEMING. The NLCS is the National Landscape Conservation Service, part of BLM.

Ms. KENDALL. Yes, sir.

Mr. FLEMING. So I realize that you may not be familiar with specific situations, but just an agreement, just in general can we agree that an environmental group providing free office space and meals to governmental employees who have some responsibility of oversight, that would be a violation of ethics rules in general, would it not?

Ms. KENDALL. It would depend. Quite frankly, the ethics regs are very specific. If this environmental group were a prohibited source, then yes, but without more I could not opine on whether it would or not be in and of itself.

Mr. FLEMING. OK. So this is a very targeted ethics issue then. It would apply to some but not others in terms of those who may influence government is what you are saying?

Ms. KENDALL. The gift acceptance rule, which would be meals, and the space is a little—I am not as familiar with what that might imply, but gifts are covered under the ethics regs and government officials are prohibited from receiving gifts from prohibited sources with some exceptions in terms of dollar amount.

Mr. FLEMING. I hear what you are saying, those are kind of the rules, but the question more is in line with what your personal belief or perhaps the belief of the OIG, but I will follow up with another question.

In your testimony today, you say that we need to consider penalties against the companies which provide gifts to MMS employees. Should we, in consideration of those rules, expand that consideration to gifts of all Interior employees?

Ms. KENDALL. Oh, yes.

Mr. FLEMING. OK. So I guess kind of to follow up and maybe a last question on this before we move on, so if I understand you correctly, are you suggesting that the impotency of the OIG to have oversight over MMS, the inability of the Administration to, I guess, root out the corruption in MMS, and to control the cozy relation-

ships with companies, that we now have to go to the companies themselves to impose ethics rules? We can't really accomplish that by reining in our own departments?

Ms. KENDALL. No, that is not what I was implying, Congressman. My testimony was suggesting that essentially it takes two, and the MMS employees that we are talking about, I would echo Mr. Abbey's statement that we are talking about a very limited number of people. The OIG reports that have come out that have been, well, scathing, if you will, about the conduct of some MMS employees, it is very, very limited in terms of numbers.

But that having been said, the conduct always related to something vis-à-vis industry, and my suggestion is that perhaps, like we do with government contractors now, have affirmative responsibility for industry to disclose. Maybe it is something that would be useful in this arena as well, but to have industry understand what the rules are that apply to the people that they deal with on the government side. It seems to me to be a very simple thing that we could do, and require from companies who want to do business with the government.

Mr. FLEMING. Well, I in no way would defend any ethics lapses by companies and certainly environmental groups, and I certainly agree with you on the transparency, but I am a bit concerned that that does suggest that either we are impotent and unable to control ethics problems in our own governmental department in the Administration, or perhaps that we give up or maybe we give them a pass so now we put the responsibility on outside groups and companies.

Ms. KENDALL. No, I am not suggesting that at all. I think it is a two-part solution.

Mr. COSTA. The gentleman's time has expired, and the Chair will now recognize the gentlewoman from Massachusetts, Ms. Tsongas.

Ms. TSONGAS. Thank you, Mr. Chairman. Sorry to lean over here—

Mr. COSTA. You need to give the gentlewoman a little room there so she can have an opportunity to ask her questions and make her comments.

Ms. TSONGAS. Thank you so much for your testimony, and I know we are all so concerned about the ongoing extraordinary spill that we all have witnessed to on a daily ongoing basis.

But Mr. Abbey, you happen to mention that a spill of this magnitude was beyond anyone's imagination, and Mr. Cassidy, my colleague from Louisiana, who is not here today, in an earlier hearing said that this was an absolute failure of imagination. In my view it is an abject failure because if nothing else the sheer depth at which this well was placed tells us that if an event occurred in which technology did not immediately solve the problem, and we had a continuous event, that we had the potential for an environmental disaster, and we have seen that.

In spite of BP's best efforts, they did not have in place a plan to respond to a continuous event. They were never asked to have a plan in place to respond to a continuous event of this magnitude in the event that technology did not help them.

So my question is, Mr. Sarbanes has asked about the permitting process, and you said there are instances in which applicants are

rejected. Do you in the course of that have a presumption that there are instances in which “No” is an appropriate basis for the application, and that that “No” is based on a common-sense understanding that if an event occurs at depth that we now see, and technology does not keep it from being abruptly shut off, that the challenges are so extraordinary that the environmental impacts and economic impacts can only be what we are seeing today and, therefore, the risk does not warrant whatever we might gain from such a well?

Mr. ABBEY. Well, I think that is an excellent question. I will say this; that any regulatory agency should always be ready to say no if they do not have sufficient information or adequate information to do an analysis of what is being proposed and understand what are the likely consequences of the proposed action.

The question I think that you raise, Congresswoman, is best addressed maybe by the Presidential Commission. It is really a very complex issue that we are dealing with. Oil and gas is going to continue to be for years to come a major component of our nation’s energy portfolio. A large percentage of our domestic oil and gas in this country is produced from offshore. We have to take that into account as we move forward, but we have to be smarter about it. We have to make sure that any future drilling is done right, it is done safely, and it is done in compliance with the law.

As to the broad spectrum of the question that you raise, I really believe it is best addressed by the Presidential Commission.

Ms. TSONGAS. Would the others address this as well? And I am just curious, as we go forward not only should the Commission address it, but in the reorganization of MMS there should be an appropriate place for this kind of risk assessment, and understanding whether or not it is possible, possible to put in place a quick response to an event such as occurring down in the Gulf, and given that, if that is not possible, you know, all the modeling out there, all the appropriate response planned for, if it is not possible, then when is “No” warranted?

But I would like the others to respond to how they see the capacity of the MMS to deal with this, and whether reorganization has a potential to address it as well.

Mr. RUSCO. Well, we have found systemwide and pervasive problems at Interior in terms of attracting and retaining enough of the kind of expertise to do the jobs that we looked at in terms of safety and production inspections, production verification inspections, meter calibration inspections. I think that the knowledge required to understand the technology in the deep Gulf has to evolve as the technology evolves, and what we have seen is that Interior has been challenged in keeping abreast of technology and having enough of the right kinds of expert staff on hand to address these issues. That is something they must address in any reorganization or even if they don’t reorganize. They must address that in order to be effective.

Ms. TSONGAS. Do you think it is possible to put in place a response plan to an event like this that could have quickly dealt with this issue or do you think there is a level of human impossibility here; that it just would require too much—just too much, more

than anybody could have in place to immediately deal with an event of this nature?

Mr. RUSCO. I am sorry. I am certainly not qualified to answer that question. We have not evaluated that specific question.

Ms. TSONGAS. Mr. Abbey, do you have any sense of that?

Mr. ABBEY. Well, first, the response plans is not only the responsibility of the Minerals Management Service but also the United States Coast Guard. There are some jurisdictions there, and responsibilities as well, as far as trying to contain any spill that might occur in the Outer Continental Shelf.

Congresswoman, I am not a technical expert either relative to the engineering capabilities of trying to contain a spill of this magnitude. I do believe that there is sufficient equipment and certainly sufficient technology that would allow us to contain such a spill but we have to be prepared to react. Well, first and foremost, to try to prevent future spills of this magnitude, then second, if there is such a spill in the future, that we have to do a better job of reacting.

Mr. COSTA. The gentlewoman's time has expired. We thank her and thank the witnesses.

We will now recognize the last member of the Subcommittee who is here, and then the Chair will begin to recognize other members of the Full Committee who have joined us, Mr. Faleomavaega from American Samoa.

Mr. FALEOMAVAEGA. Thank you—

Mr. COSTA. Excuse me. I have just noticed that we have votes and following the gentleman's questions, the Committee will recess for the purposes of us going to vote for the series of votes, and then we will come back and continue the hearing with this first panel. So the gentleman is recognized.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I do appreciate your leadership and our Ranking Member's initiative in holding this hearing, and I do want to thank the members of the panel for their most eloquent statements in this very serious issue that we are now discussing before this Subcommittee.

I find it somewhat ironic. Why are we seemingly surprised that something like this has happened in terms of oversight responsibilities that the Federal agencies have toward this matter, for example, of the oil spillage?

My point is that we cannot even account for the billions of dollars the American Indian tribes had supposedly given the responsibility to the Department of the Interior to account for, and why are we surprised with a Department that has a \$13 billion budget to oversee hundreds of billions of dollars of our nation's resources. And when I hear that—if I heard it correctly from our Inspector General—that 16 inspectors to review 4,000 facilities. I mean, I am somewhat a little puzzled, Mr. Chairman, and I wanted to ask our panel.

It is quite obvious that the Interior Department doesn't have the resources, and I wanted to ask, as has been cited, that the MMS agency, subagency of the Interior Department, you know, you have about 70,000 employees that work for the Department of the Interior. That is quite a number to be responsible for.

What I am curious about, Mr. Abbey, is that the President made an announcement that the Administration is seriously looking at allowing more offshore drilling, and I suspect—I am sure, was the MMS agency taken into account for all the—to make sure that we are going to do this properly, or was this just something that the White House just dreamed of, that said we should do it because we need energy?

Of course, we need energy, and I wanted to ask Mr. Abbey, was there any given serious accounting before the President to make the decision that we should go to offshore drilling before this disaster occurred?

Mr. ABBEY. The track record as far as operations in the Outer Continental Shelf has been a fairly good one. Again, it goes back to maybe a little overconfidence relative to the abilities of not only the regulatory agency like the Minerals Management Service to respond to any kind of spill, but also the fact that the industry knew what they were doing as they went forward and developed these resources.

There are 1,700 employees working for the Minerals Management Service. There are 62 or thereabout inspectors. Those 62 inspectors perform on an average 24,000 inspections per year. Now, these inspections can be anywhere from two hours to up to a three-member team conducting inspections over a three-day period, depending upon the—

Mr. FALEOMAVAEGA. So in the 22,000 inspections, somehow or some way one of these major corporations happened to have gotten a record of not complying with a lot of these standards and they get away with it. Am I correct that BP was one of the corporations that really was given a lot of citations and warnings about some of the noncompliance of some of these standards, and yet somehow it went past?

Mr. ABBEY. Most of the notices of noncompliance or incidents of noncompliance are fairly minor and they can be corrected within a matter of days. If they are serious, then the Minerals Management Service will actually shut in a production facility or a drilling facility until the deficiency is taken care of.

Mr. FALEOMAVAEGA. Now according to the media reports there were warnings given to BP, or this certain rig that was being questioned, and yet nothing was done. Is that correct?

Mr. ABBEY. I don't know. You know, I would rely upon the investigations and the reviews that are underway right now because we are going to learn a lot about exactly what took place rather than reacting to allegations.

Mr. FALEOMAVAEGA. OK. One other question I have, Mr. Abbey and I am glad we have the GAO, we have the Inspector General. We have to get this thing worked out pretty well. It is my understanding that the offshore rig, *Deepwater Horizon*, is registered under the flag of the Republic of the Marshall Islands.

Now, of all places, this whole registration process, I think they were only paid \$20,000, and this practice has been going on for how many years where you go and register in a foreign flag which certifies that it is OK, but pay \$20,000, and supposedly the Republic of the Marshall Islands now are supposed to be responsible for

safety standards and equipment, and the operations of this rig, is that correct?

Mr. ABBEY. Well, I have heard that. I think that is a question better asked of the United States Coast Guard.

Mr. FALEOMAVAEGA. Well, let me ask you this. Should we continue this practice of registration the way we are doing it now so that companies could escape paying taxes? Hiring cheap labor. No, I want to ask your honest opinion of this. Should we change the whole process of the registration?

Mr. ABBEY. Well, as a citizen of the United States and not a representative of the Minerals Management Service or this administration, I would say that is a good question for this Congress to look into.

Mr. FALEOMAVAEGA. Thank you, Your Honor. My time has expired.

Mr. COSTA. OK, I think that is an objective response of some sort.

The Subcommittee will now recess for the purpose of votes. For those of you in the audience, those witnesses, you might want to stretch your legs. I guess you have time to get a cup of coffee. I suspect we will not be back here until about noontime or so, so you have a little break, and when we return we will resume the questioning. Mr. Grijalva and Bilirakis and others have an opportunity to ask their questions. There are a couple of questions I would like to have another chance to ask these witnesses, and then we will begin with the second panel.

So I suspect we are going to be here, depending upon the length of the members' interest of questions, at least for another couple of hours. So at this point the Subcommittee will now recess.

[Recess.]

Mr. COSTA. The Subcommittee will now come to order. We have returned from our voting recess. That is the good news. The bad news is I am told that we will be going back to vote in about another 20 minutes or half an hour. The Chair will try to give as many members an opportunity to be recognized between now and the next time that we are asked to return to vote, and then, of course, I also am informed maybe that those could be our last votes of the day, and hopefully that will be the case, and if it is, then we will come back and by that time hopefully get to our second panel and our third panel. But I will keep you informed. As much as information as I have you will have as soon as I have it.

So with that understood, we have another member of the Full Committee who chairs a subcommittee within Natural Resources, a gentleman from Arizona, my friend Mr. Grijalva.

Mr. GRIJALVA. Thank you very much, Mr. Chairman, and thank you for your courtesy in inviting Natural Resources Committee members to be part of this hearing. I appreciate it very much, and also to the Ranking Member as well. Thank you.

Mr. Abbey, first the good news is that I am glad you are going to be full time back at BLM.

Mr. ABBEY. Me, too.

Mr. GRIJALVA. That is good news for our Committee as well. Let me begin with a couple of issues. I understand that MMS is doing an investigation of BP Atlantis, something that we wrote in a letter

twice requesting that there be some kind of follow up based on comments made by Mr. Abbott and other people regarding issues there in terms of not following the requirements, and you know, there is a certification statement that MMS has from BP Atlantis.

I was going to request formally that—you know, we have been told that BP keep as-built documents, which is the crux of the issue, in electronic form and uses the databases to record their status. I am assuming MMS is the agency that obtains copies of all these from BP, and in the course of this post-incident investigations that are going on. If you could please provide immediately, if not sooner, to the Committee Chair for dissemination to the rest of us an electronic copy of that information, a copy of the as-builts along with the drawing log, which I think is important, and the database that is used to record the status of the documents. I think that would help this Committee, in terms of its due diligence, to look at the post-incident record that has been going on about these investigations, and that is in the form of a request, and I will transmit that as well to the Chair.

Mr. COSTA. I would like to reinforce that and the Chair would like that information ASAP for all the members of the Full Committee.

Mr. GRIJALVA. Thank you. Mr. Abbey, the next panel, Mr. Abbott will testify about the BP Atlantis steps relative to the request. We have sent a letter, then another. I had the opportunity to meet with Mr. Abbott yesterday. He told me that he has still not been interviewed or contacted by MMS regarding the investigation. Do you feel that that is part of the post-incident process that is going on, and the issue that not only I, but other Members of Congress has raised regarding Mr. Abbott's information that he provided about BP Atlantis; that Mr. Abbott and other individuals, and other personnel shouldn't they be part of a discussion, and talking to them about the information they have so that it will be forthcoming and part of this whole post-incident analysis that is going on and investigation?

Mr. ABBEY. Well, Congressman Grijalva, in preparation for this hearing I did look into the information that we have compiled regarding the allegations that had been made by Mr. Abbott. I don't have any specific knowledge relative to what all those facts are, but in preparation for this testimony I did read documents that Mr. Abbott was interviewed by Minerals Management Service employees as well as a member of our Office of the Solicitor.

I have also looked into exactly what our investigation has found. I will say this, that the investigations and the allegations are taken serious, and that investigation continues. But, to date, the Minerals Management Service has confirmed that BP submitted a complete hazard analysis as required by regulations, and that it was approved by the Minerals Management Service.

Before production at the Atlantis facility, the Minerals Management Service conducted four inspections of the process safety system, and that these inspections included a review of the surface safety system function logic and we found no violations.

Since BP began producing at the Atlantis platform, the Minerals Management Service has inspected the Atlantis three times, and during these inspections we verified that the component of the

safety devices and their associated shutdown functions were found to be with no abnormalities, and that we issued no incident of non-compliance.

During our third inspection, however, Congressman, we did find an issue, an incident of noncompliance for a leaking safety valve, and that valve was fixed that same day.

Mr. GRIJALVA. I appreciate the information and I am assuming that will be forthcoming in some written documentation that the Committee and my office, which has been requesting this, can review. Mr. Abbott will be a panelist later on and I am sure he will have a point of view on the information and also the comments that he has been interviewed. It is my recollection that he has not, but be that as it may.

Let me quote one thing if I may, Mr. Chairman, and it is from a BP submitted application. In response to a Senate inquiry BP said, "BP is not aware of any MMS practice requiring an applicant to attach its initial application, proof of strength of the blind-sheer rams on blowout preventers," which is the subject and it quotes the regulation, and the regulation, this is BP saying that we are not aware that we have to provide information on blowout preventers.

Then they go on to say—then the contents, this is from MMS regulations, "Information that shows blind-sheer rams installed in the stack, both surface and subsea stacks are capable of sheering the drill pipe in the hole under maximum anticipated surface pressures."

How concerned should we be that if BP has not been verifying the quality of its blowout preventers because they are saying that it is not required by MMS, shouldn't that be, and was MMS aware that BP was in noncompliance with this one particular requirement?

Mr. COSTA. This will have to be the gentleman's last question.

Mr. GRIJALVA. Thank you very much, sir.

Mr. ABBEY. I am not aware again of what was required in the past. I will say this; that under the safety report that was issued by the Secretary of the Interior to the President, there were some recommendations regarding what we anticipate to be required of operators in the future. We followed up and when I say we, the Minerals Management Service followed up with that safety report with our own notice to lessees identifying new requirements that we are going to be enforcing as a result of not only this incident but also the fact that we do want to improve the safety within the industry.

We are looking at blowout preventers and we are requesting independent third party verification that the equipment on these platforms are sufficient to do the jobs that they are intended to perform. Not only are we asking that third party verifications, but we are also asking and directing that the CEOs of each of these operators verify that they are in full compliance with our new requirements, and then we are conducting our own independent inspections as a follow up to the independent verifications that we are receiving.

Mr. GRIJALVA. Thank you, sir.

Mr. COSTA. Very good. If you could encapsulate the answer that you have just given in the form of a formal response, as a letter

to the Chair of this Subcommittee, Ranking Member, and I will be happy to share it with the Full Committee members.

Mr. ABBEY. We will do that.

Mr. COSTA. But I think it is important to have that on the record.

OK, our next member, actually he is not a member of the Committee, but he is a guest of the Committee and we are pleased to have him here, the gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman, and thank you, Ranking Member Lamborn. I really appreciate you allowing me sit in on the panel today.

Mr. COSTA. The Ranking Member cashed in some big favors to get you in here so you should appreciate it. Not really. I am teasing.

Mr. BILIRAKIS. As a member from the Tampa Bay area, of course, I am especially interested in the oil spill taking place, actually unfolding throughout the Gulf, I think what we have learned the most complex and dangerous part of deepwater drilling is what takes place subsurface. As we get into deeper and deeper water, 5,000 feet, 6,000 feet, and even 7,000 feet below the surface operations get more and more complex. I think you would agree with that.

What is surprising to me is that while there are a whole slew of regulations for rigs at surface level, rules and regulations for subsurface operations are sparse. Why is that the case? And the question is for the entire panel.

Mr. ABBEY. I will take my first shot at that. I wish I could answer it more specifically and directly to your question. I really don't know. I do know that the technologies are very similar in shallow water and deepwater even though the drilling is more complex in deepwater. I do know that they both require due diligence, both require that there is equipment that is capable of performing the jobs and tasks they are intended to perform, and that there are adequate safeguards, including redundant safeguards, to prevent what we are experiencing today from ever occurring.

Again, the investigations and the reviews that are underway today will certainly help us have a better understanding of exactly what took place and what needs to be done differently in the future.

Mr. BILIRAKIS. And you do admit that they are sparse, is that correct? Is that correct?

Mr. ABBEY. I am sorry. What was the question?

Mr. BILIRAKIS. That the rules and regulations are sparse.

Mr. ABBEY. I really don't know, Congressman.

Mr. BILIRAKIS. Anyone else on the panel, please?

Ms. KENDALL. I am afraid I am with Mr. Abbey on this. I am not familiar, personally familiar with the regulations in any level of detail. I have come to learn basically everything I know about deepwater drilling in the last month or so.

The regs, they do have requirements. What I understand is that they have gone from basically prescriptive requirements to performance-based requirements, and so that is something that my office is looking at as well in terms of where there are gaps, if indeed

there are gaps in terms of safety measures, not only deepwater but shallow water as well.

Mr. BILIRAKIS. Sir, would you like to respond?

Mr. RUSCO. GAO has not studied this specific issue and I can't respond directly to your question, but we do have concerns about systemwide and pervasive problem in keeping up with technologies in other areas that we have looked at. To the extent that that is occurring in this case, then it is something that needs to be addressed, and we do expect to be looking at this.

Mr. BILIRAKIS. In your position, shouldn't you be familiar with these regulations? And I would like to get a response in writing as soon as possible. Thank you.

During the course of the six-month moratorium that the Administration has imposed on deepwater drilling there have been suggestions that MMS review spill response plans for existing deepwater rigs. I am wondering if spill response plans were ever reviewed or approved in the first place. Is there a database that exists that shows that MMS reviews and approves these plans?

Mr. ABBEY. Spill response plans are reviewed and approved prior to permits being issued. You know, based upon those reviews it would be determined whether or not the spill plan is adequate to cover what might occur based upon the analysis and the determination at the time of what might be a worst case scenario.

As we mentioned before in earlier comments to members of this Committee, what we are experiencing today is beyond what we imagined could occur in such a spill scenario. So those response plans will be reevaluated based upon the lessons that we are learning to determine whether or not they need to be improved.

Mr. BILIRAKIS. Is there a database that currently exists?

Mr. ABBEY. I would imagine, Congressman, that there is an approval mechanism that we can share with you relative to the documentation or the review that took place. I don't know whether or not it is electronic database, but we can certainly look into your question and respond accordingly.

Mr. BILIRAKIS. Please do.

Mr. ABBEY. OK.

Mr. BILIRAKIS. Anyone else like to respond to this?

I am wondering if you might briefly explain the complexity of operations that take place subsurface. Can you paint a picture of how flow lines, wellheads, pipelines and safety shutdown systems work, and what type of engineering required to not only build those systems, but also operate them? Do you believe MMS employees have a full understanding as to these nuances and also do you believe MMS or any other government agency is better equipped to review and approve plans than industry experts?

Mr. COSTA. The witnesses might answer the latter part of that question rather than the first part of that question, but that has to be your last question because we will let our other colleagues—

Mr. BILIRAKIS. Yes, sir.

Mr. COSTA. You have gone beyond time.

Mr. BILIRAKIS. Yes, sir, Mr. Chairman.

Mr. ABBEY. Well, I think you are absolutely right, Mr. Chairman. I am better prepared to answer the last part of your question than the first.

The Minerals Management Service do have capable engineers employed to conduct the necessary reviews and analyses and make appropriate determinations relative to the adequacy of the plans that are being submitted. We are very fortunate to have good engineers working within this organization.

As has been brought out, technology continues to change. We are continuing to do our best to stay abreast of what that technology is, and how best to make sure that our own employees are well aware of what is being proposed today and what might be proposed in the future. There is still work that we can do that would improve that overall performance, but I do believe we have the capable expertise.

Now, do we have enough of that expertise is a whole different issue, and I would say that we could certainly help the organization by bringing in some additional people.

Mr. BILIRAKIS. Thank you very much. Thank you, Mr. Chairman.

Mr. COSTA. That is going to have to be it. Thank you, Mr. Bilirakis.

They have just called roll again. Mr. Gohmert, we will recognize you for five minutes, and I will take a quick look at it and I will see if I can get Mr. Cassidy before we recess again before we go to the second panel.

Mr. GOHMERT. Thank you, Mr. Chairman.

Mr. COSTA. And if you don't use all your time you can defer to Mr. Cassidy.

Mr. GOHMERT. Mr. Abbey, we have been told that MMS is being divided into three new entities. Do you have a job already designated in those three new entities?

Mr. ABBEY. I have a job already that I am going back to as soon as the new Director of the Minerals Management Service arrives on Monday. I am the Director of the Bureau of Land Management, and that is the job I will return to on Monday.

Mr. GOHMERT. So you won't be part of those three?

Mr. ABBEY. I will not, no.

Mr. GOHMERT. Well, I know you regret that.

[Laughter.]

Mr. GOHMERT. Well, let me ask. The staff had done some work for a prior hearing, and we had found out that the one unionized entity within MMS was the offshore inspectors, and Director Birnbaum didn't know a whole lot about the unionized aspect. She didn't know about unionized contract, so I am curious and I want to ask you.

Since these offshore inspectors are unionized, and their union contract, were there limits on their travel or amount of time they could work in a day, anything like that that could affect how much inspection they could do?

Mr. ABBEY. Sir, I am not aware of the specifics of their individual contracts. I do know that unions do negotiate the work environment, terms and conditions of a work environment. I would be surprised if that might not be part of the contract, but I do not know that specifically.

Mr. GOHMERT. Well, we also found out that according to her the major check and balance, the control that made sure that an offshore inspector was doing his job was actually to have them sent out in pairs so that one could report the other if there was some problem, and they were not doing their jobs. So I was asking her if it was a good idea to have the last inspection team that went out to the *Deepwater Horizon* before the blow be a father and son team, and she said that was under investigation.

So my question to you is different. Has there been any limitation so we won't have any more father and son or related teams that are supposed to be double-checking each other as offshore inspectors?

Mr. ABBEY. There are changes in the works, Congressman, and I don't know whether or not the father/son team had anything to do—well, I know. I mean, I am not sure it is an issue.

Mr. GOHMERT. Oh, you don't think it would be a problem to have the only check and balance be a father and son team? They are going to watch each other carefully and report the other one if they are not doing their job just right. You don't see a problem with that?

Mr. ABBEY. Congressman, I do not because I believe that if we ask someone to do the job, they are going to do the job. That is not to say we should not have checks and balances to ensure that people are actually doing the job that we are asking them.

Mr. GOHMERT. We were told that was the check and balance, to make sure they were doing their job. Well, I would suggest to you it is not a good idea, and that something should be done about that.

Well, now we have heard the President say he wanted to find out, and I will paraphrase, who is rear end to kick, he wanted to find out about kicking rears, but—

Mr. COSTA. It is a term we use in California and Texas.

Mr. GOHMERT. We know that the President has declared this six-month moratorium, and that there are other companies who are not nearly as irresponsible as BP was, and that it is costing them a fortune to shutdown their rigs and some of them are probably moved off if this is really going to be a six-month moratorium. So I am curious. Is it deemed to be by MMS a measure of kind of kicking some rears of some oil companies to force them into costing millions and millions of dollars just to sit idle because BP screwed up? Is that the purpose of the moratorium?

Mr. ABBEY. No, it is not at all the purpose. The purpose of the moratorium is to—

Mr. GOHMERT. Well, then have there been inspectors that are being sent out to those 33 so you could get back to the President and say, these guys are innocent, they are doing everything right, they did not have a problem with blowout preventers like BP, they weren't cutting corners, they are doing everything right, so don't penalize them? Have there been inspectors going out so you could let the President know he doesn't have to keep kicking their rears? They are doing their jobs correctly.

Mr. ABBEY. Well, Secretary Salazar immediately asked and directed the Minerals Management Service to conduct an inspection

of all deepwater rigs shortly after this incident. Those evaluations have taken place.

Mr. GOHMERT. Well, my time is running out so a quick question for Ms. Kendall. We had heard from the Inspector General previously on investigating the 1998-1999 leases in which the price adjustment language was pulled out for those two years, and according to him, there were two people within the Interior Department that knew why that language was pulled out, and it obviously cost our country, I thought, hundreds of millions, now I am told it is billions of dollars that went to the big oil instead of—

Mr. COSTA. Mr. Gohmert, you know, I always give a little leeway but you are going to your colleague's time and I want to—

Mr. GOHMERT. Well, if I can just finish the question because it is critical to this country.

Mr. COSTA. OK. Well, you are impeding upon your colleague's time here.

Mr. GOHMERT. So my question is, now that we found out that one of the two people that pulled the language out has returned to Interior, because Devaney said, she left, she went to BP. We can't question her. Now that she is back in government service with Interior, have you questioned as to why she cost the country billions of dollars by pulling the price adjustment language out?

Ms. KENDALL. No, we have not, Congressman. My recollection was not that Ms. Baca was one of the two people that was involved. That is just not my recollection. I would have to go back and look at that.

Mr. COSTA. We will have to check that out in all fairness.

Mr. Cassidy from Louisiana, you have five minutes. We have 378 people who have not voted and seven minutes and 17 seconds before the vote is called. It is the Chair's intention when we wind up with this question we will recess once again, and I will adjourn this panel. We will not be back for an hour, probably two o'clock. Go have some lunch and we will do Panel No. 2 and No. 3. OK, quickly, Mr. Cassidy.

Mr. CASSIDY. Mr. Abbey, I am told by some they feel there is a de facto moratorium on shallow water operations; that the two permits that were done were rescinded the next day; and that, yes, there are conversations but never is there clarity. It is always it has just moved, it is just out of reach. The conversations are along going along with the rig operators, not with the lessees, and the lessees feel, rightfully so, they should be looped in because they are going to be captain of the ship, as we say, when we were getting sued in health care.

So any comments on that?

Mr. ABBEY. Well, there is no moratorium on shallow water drilling and operations. We have submitted or actually approved and shared with the lessees that they are going to be adhered to new safety requirements before any drilling occurs.

Mr. CASSIDY. No, I was told that they heard those. They accepted them. They thought they were reasonable. Actually they said they were already industry standard, and yet they are still not getting permitted.

Mr. ABBEY. Well, I am not sure about that, Congressman Cassidy. I will say this. Once we receive that third party verification

that their equipment is functional, that it is doing the job that it is intended to do, there should be no problem moving forward with—

Mr. CASSIDY. Is the third party already engaged? Are they already doing the inspection?

Mr. ABBEY. That would be up to the operator or the lessee to engage that third party.

Mr. CASSIDY. So just to be clear, you are saying that if you contract with a third party who is going to come in and inspect and then, boom, we are ready to go?

Mr. ABBEY. On previously approved applications for permits to drill.

Mr. CASSIDY. That is great. Thank you.

Also in the testimony, I am sorry I came in late and if this was addressed, I apologize, but somebody's testimony on the Pacific Coast indicated that there are 10 inspectors for like 28 rigs and in the Louisiana Gulf Coast there are like, I don't know,, 30 inspectors for thousands of rigs.

Mr. COSTA. There are five on the West Coast and one in Alaska.

Mr. CASSIDY. So why is the, if you will, per-rig count so much higher on the West Coast than there is on the Gulf Coast?

Mr. ABBEY. I will say this. It is my understanding that there are six inspectors in the Pacific and something in the neighborhood of 56 or so—

Mr. COSTA. Right, five and one.

Mr. ABBEY.—in the Gulf. And so I do not have an answer to why there is such a discrepancy in the numbers based upon the rigs and where those rigs are located. I will say this; that the Minerals Management Service needs more inspectors in the Gulf of Mexico.

Mr. CASSIDY. OK, that leads me to my next question. I was struck that this kind of automatic system where your inspectors can type in data and it is immediately uploaded which I just thought was yesterday's news is not going to be done for six years through this system. Now, why has it taken so long to put something that would seem so basic in place which is direct uploading of data?

Mr. ABBEY. I don't know but I can certainly get back to you on that.

Mr. CASSIDY. And from GAO, any comments on that because I think I read that in your testimony, or somebody's?

Mr. RUSCO. We have found in general that there has been issues with keeping up with technology, and one of the things I think you may be referring to is the production verification technology the industry uses which is second-by-second data collection and storage on production.

Mr. CASSIDY. So why don't we—I mean, not to interrupt, but I only have a minute 50 left. As I was reading that, I was struck. I know that contractors working for the Army Corps have to have a data set that the Corps can kind of plug into like Spock used to do in somebody's brain, and immediately understand what is going inside that brain. Now, it doesn't mean they have to expose their whole company, they just have to expose the data set that interfaces with the Army Corps database.

Why can't we—this makes perfect sense to me—require that the lessees let us know what their data is as it relates to flow rates?

Mr. RUSCO. It could be done and there is a pilot program to do that, but it is not moving very quickly.

Mr. CASSIDY. And why in the heck not?

Mr. RUSCO. I don't know the answer to that fully, but I know that BLM has developed its own software for this and there is off-the-shelf software available that would—

Mr. COSTA. Should be able to do it.

Mr. RUSCO.—have full functionality.

Mr. CASSIDY. Last question, and he is about to gavel me so I am trying to get it in before that the light turns red. There really seems to be a conflicting set of values here. On the one hand your testimony, Ms. Kendall, is that these people go have barbecues together. On the other hand we all know they go to college together, so if we are going to have somebody that knows anything, there are not that many petroleum engineering schools. I also hear that industry is way ahead of government in terms of their knowledge base of what cutting-edge technology is. And then I read in testimony that, by golly, we are not doing continuing education for our inspectors.

And so it almost seems like the guys that are actually doing the work on the rigs are about a mile ahead of the inspectors in terms of knowledge. The only way we are going to give the inspectors that knowledge is to allow them to have a barbecue over a continuing education conference; on the other hand that is held up as a perception of impropriety, so it is always like we have to from birth make people petroleum engineers like we do the Dalai Lama, and say, listen, you cannot go into industry, you must stay in business, but you have to know a heck of a lot.

Now somehow I don't understand how to reconcile that. Thoughts from any of you?

Mr. ABBEY. I do if I could. I think that there are a couple of reasons where there is an appearance that industry is way advanced in the technological expertise versus the government. First and foremost, we are asking our inspectors in many cases to do an almost impossible task. On one hand we are asking them to go out and inspect production verification, production platforms, and at the same time turn around and inspect drilling operations.

I think in the industry they specialize, and so they may have some skills and abilities to do certain things on the platform, and yet we are asking our inspectors to do much more than just specialize; we are asking them to look at production as well as drilling operations.

Mr. COSTA. And they get paid more for it.

Mr. CASSIDY. Believe me. Clearly, when I am reading that we have turnover because industry pays so much more, I am, frankly, nihilistic that we are ever going to be able to compete, so whenever we get somebody who has such brilliance in one area, why wouldn't industry hire him away?

So that said, you have been generous, Mr. Chairman. I yield back.

Mr. COSTA. All right, thank you very much.

One quick question, Mr. Abbey, I don't know if you can answer it quickly or not. If there was a combined onshore and offshore inspection fee force, do you think it would be an improvement over the current situation?

Mr. RUSCO. I would like to answer that. I think that our studies have repeatedly found that there are problems with coordination across the Interior's oil and gas programs. It goes across BLM field offices, it goes across MMS offices, and it goes between MMS and BLM for offshore and onshore.

There are a lack of coordinating mechanisms, there is a lack of sharing of information, and there is a danger of duplicative efforts.

Mr. COSTA. So you are saying combining it would not work?

Mr. RUSCO. No, I am saying it might be a valuable—well, what we have recommended is a greater coordination. We recommend that there is this coordinative—

Mr. COSTA. If staffed properly and coordinated properly, yes, it could work.

Mr. RUSCO. I believe so. We have not recommended specifically a single force, but what we have recommended is consistent with that; that there be greater coordination and that there be greater communication and sharing of information and expertise.

Mr. COSTA. Well, thank you, Mr. Rusco. I thank the members of the Subcommittee, the Full Committee, everybody has been here. Thank the panel. You have been patient and you have been very good in answering our questions. Those of you in the audience and those in Panel 2 and 3, I am going to ask you to continue to be patient. We are going to recess the Subcommittee once again. We will come back at two o'clock to hear Panel 2 and Panel 3. I am sorry, but we have six votes, and I have to try to get there to cast this first vote. The Committee is now recessed.

[Recess.]

Mr. COSTA. The Subcommittee on Energy and Minerals will now reconvene. We took a break during those last series of votes. There were six of them. I felt we would be finished before two o'clock. I want to apologize to the witness on the second panel, and the witnesses on the third panel because obviously I was off by about 20 minutes, and the audience.

It is the intention of the Chair now to go through this second panel and the third panel, and conclude the hearing when that takes place. Members that are here will be recognized under the same terms as we hold with the previous witnesses—previous panel, excuse me.

And so now with Panel 2 the Chair will recognize the gentleman, Mr. Ken Abbott who is a former contractor for the British Petroleum platform called Atlantis. So Mr. Abbott, you have been very patient today. I appreciate that. You waited all morning and heard the testimony, and there were some references in this morning's testimony as it was toward some of the comments that you have made, and so I suspect after your five minutes there will be questions as it relates to those and everything else that has been discussed here this morning. So please begin. You have five minutes.

**STATEMENT OF KENNETH ABBOTT, FORMER CONTRACTOR,
BP ATLANTIS**

Mr. ABBOTT. Thank you, Mr. Chairman.

My background and training is in the field of engineering project management. For over 30 years I have worked in the management of a wide variety of large onshore and offshore engineering projects. My employers have been among the largest engineering construction managers in the world, including M.W. Kellog, Brown and Root, Stone & Webster, Shell Oil, Jacobs Engineering, and others.

Engineering project management is a field dedicated to management of large engineering projects. I am not an engineer and I do not do engineering. I provide management support for engineers by establishing project schedules and budgets and by auditing the performance of the project against them. In addition, I manage the engineering document control systems and database records necessary for the engineers to do their work. BP Atlantis is the world's deepest moored oil and gas platform production facility. It is located in very 7,000 feet of water in the Gulf of Mexico, deeper than the deepwater Horizon well now fouling the Gulf. It is rated to produce 200,000 barrels of oil per day and large quantities of natural gas far more than the Horizon well.

In August 2008, I started work under contract with the BP Project Management Office for the BP Atlantis project on the subsea team. I was hired as a project controls lead and had responsibility which included management of the engineering documents. Almost immediately upon reporting to work I was confronted with the problem that BP Atlantis operations, the department that actually operates the rig, was demanding as-built P&IDs, which are very important engineering documents that operations must have to operate safely.

Mr. COSTA. Do you want to explain P&ID?

Mr. ABBOTT. Process and instrument diagrams.

Mr. COSTA. All right. We are not engineers either.

Mr. ABBOTT. Right, it just kind of shows the overall flow, layout of piping and instruments for the whole project.

Mr. COSTA. We have a problem here in government. We have all the acronyms as well.

Mr. ABBOTT. We have tons of them in the industry.

Anyway, we did not have these P&IDs to provide to operations. These are documents that should have been supplied before the rig started production, but at that time Atlantis had already been in operation for about a year.

Another BP manager had written in an e-mail that the P&IDs for subsea are not complete and have not been approved for or handed over to operations. This could lead to catastrophic operator errors. Currently there are hundreds, if not thousands, of subsea documents that have never been finalized, yet the facilities have been turned over.

And by the way, this was included in the distribution we made to the Committee as one of the attachments.

From this time until I was fired on February 5, 2009, I worked to obtain BP engineer approval as-built drawings needed to safely operate the rig. We made little, if any, progress. Technip, the vendor company which was the lead engineering contractor, did not

have and could not provide up-to-date P&IDs. The BP lead engineers responsible for various sectors within the project did not have and could not provide up-to-date P&IDs.

At one point BP management vetoed a plan to solve the problem because if its estimated cost of 2 million. The more I insisted that we had to develop or obtain these documents the more unpopular I became. Industry practice and MMS regulations require engineering approved design and construction. BP is the owner/operator that overall had responsibility for overall integration of various component designs, and that has not been done properly.

The integration engineering is a critical part of engineering the system. Before I was terminated from BP, we developed a database of all the complete and incomplete documents to analyze the overall completion status. The results were astounding. Out of the total of over 7,000 drawings and documents, almost 90 percent had never received any engineering approval of any kind, not even for design, and you can see the last column of this attached chart, and this shows that BP itself did not fulfill its role of integration engineering.

This lack of critical engineering documentation is being seen on the *Deepwater Horizon* rig, was involved in the Texas City disaster in 2005, and the Alaska pipeline spills in 2006. It is a common thread for those disasters in BP Atlantis, and the days after I was terminated, I tried to file complaints with the BP ombudsman, the Department of the Interior, Inspector General, and the Department of Justice and MMS.

I did receive a written response from the BP ombudsman over a year later. Judge Stanley Sporokin, the ombudsman, found that my complaints about the lack of proper engineering documents was valid.

In conclusion, from my experience in working in the industry for over 30 years I have never seen these kinds of problems with other companies. I have never seen another company with this kind of widespread disregard for proper engineering and safety procedures that I saw at BP and that we hear from the news reports about Horizon, Texas City and the BP Alaska pipeline spills. BP's own investigation of itself by former Secretary of State Mr. Baker reported that BP has a culture which simply does not follow safety regulations. From what I saw, that culture has not changed. It is very saddening to me that the Department of the Interior and MMS seem unwilling to enforce the law against the culture of repeat violations. Thank you.

[The prepared statement of Mr. Abbott follows:]

Statement of Kenneth W. Abbott

Mr. Chairman and Members of the Committee:
Thank you for inviting me to testify today.

Background and Career

My background and training is in the field of engineering project management. For over 30 years, I have worked in the management of a wide variety of large engineering projects. My employers have been among the largest engineering construction managers in the world including M.W. Kellogg, GTE Mobilnet, Stone & Webster, Brown & Root, Shell Oil, Jacobs Engineering and others. While I have worked on a wide variety of projects, the large majority have involved petrochemical and energy projects, including refineries and offshore facilities. (Resume attached as Ex. A)

Engineering project management is a field dedicated to management of large engineering projects. I am not an engineer and I do not do engineering. I provide management support for engineers by establishing project schedules and budgets and auditing performance against them. In addition, I manage engineering document control systems, database records, financial records and other types of management records necessary for the engineers to do their work.

Importance of Engineering Documents

Before a skyscraper, or a petrochemical plant, or an offshore production facility, or a wireless data network or any other major project can be physically constructed, it is first constructed on paper, or now in computers.

The first phase of building a project is to design the project, from overall concept down through systems and subsystems to individual parts. A complex project usually involves thousands of engineering drawings and documents; each one of which goes through many drafts and revisions before the final design is approved. Part of my job is to organize and manage those drawings and documents so that engineers can find the correct document when they need it. The design phase ultimately arrives at an approved design which is certified by the engineering staff for the owner of the project.

After a design is certified, it is typically necessary for new drawings to be prepared to be used in the fabrication and construction of the project. These fabrication or construction drawings add details needed for the manufacture or construction of the physical equipment. These drawings are also approved and certified, again by the engineering staff for the owner. They are then turned over to vendors who use them for the actual fabrication or construction.

During the fabrication and construction phase, it often becomes necessary to make changes to account for unforeseen issues, such as how equipment physically fits together or takes up space. All such changes must be approved by the engineering staff for the owner and the drawings are modified and certified by engineering as matching the physical construction.

At the end of the project, the owner then has, not only the physical facility, but a large body of engineering drawings and documents which correctly record the actual physical construction, along with the history of changes made during the project which led to the final result. These final documents are referred to as "As-Built" drawings and documents; the term "as-built" means that these documents are up to date and correspond to the physical equipment in the facility. Therefore, someone can learn the physical facility by looking at the "as-builts."

Many of the as-builts will be used by the Operations Department (the department which actually operates the facility) to create safe operating procedures, testing and maintenance procedures, training procedures, etc.

One of the important categories of drawings is P&IDs—the abbreviation for Piping and Instrument Diagrams. Their importance lies in the fact that a petrochemical operation is similar to a giant spider web of pipes that connect vessels which contain the product with valves, pumps, heaters, and instruments which measure temperatures, flow rates and pressures. The Operations Department of the facility must constantly start, stop, redirect or maintain product flow or flow rates, or raise, lower or maintain temperatures and pressure. Electronic signals are used to control the valves, heaters, pumps and other equipment based on information gathered by instruments and computerized operation procedures. The P&IDs document all of this equipment and how it is interconnected from the wellhead to where the product leaves the facility, and are the basis for developing the operating procedures.

In my experience, it is universally true that, for petrochemical facilities, as-built P&IDs must be turned over to the operations department that will operate the facility *before* startup of the facility. It is my training that a facility cannot be safely operated without up to date P&IDs. Textbooks say that P&IDs serve as a guide for those who will be responsible for the final design and construction. Based on this diagram:

1. Mechanical engineers and civil engineers will design and install pieces of equipment.
2. Instrument engineers will specify, install, and check control systems.
3. Piping engineers will develop plant layout and elevation drawings.
4. Project engineers will develop plant and construction schedules.

Before final acceptance, the P&IDs serve as a checklist against which each item in the plant is checked.

(Richard Turton, Richard C. Bailie, Wallace B. Whiting, Joseph A. Shaewitz, Analysis, Synthesis, and Design of Chemical Processes, 2nd Edition, 2003)

Experience at BP Atlantis

BP Atlantis is the world's deepest moored oil and gas production facility; it is located in over 7,000 feet of water in the Gulf of Mexico about 150 miles south of New Orleans. It is rated to produce 200,000 bbls. of oil per day and large quantities of natural gas, far more than the Deepwater Horizon well now fouling the Gulf and its beaches.

In August, 2008, I started work under contract for the BP project management office for the BP Atlantis Project, on the Subsea Team. I was hired as a "project controls lead" and had responsibility which included management of the engineering documents.

The BP Product Execution Plan (PEP) for Subsea Atlantis fit into this system. BP Lead engineers were assigned to each sector of the project. Outside vendor Technip Offshore, Inc. was primary engineering contractor. At each phase, the BP Lead Engineers were to review and approve designs and technical documents for their respective sectors. It was specifically provided that:

As-Built Documentation

The Lead Engineer for each discipline area will ensure that all technical documentation is updated to reflect the as-built condition of the equipment prior to deployment to the field.

A project such as Atlantis is incredibly complex in two ways: First, there are many components produced by many vendors which must all work together. Second, there are many challenges created by the extreme water depth which must be overcome by cutting edge engineering techniques. One of the functions of the owner/operator, BP in this case, is to assure that engineering knowledge and expertise look at the system overall to be sure that all of the parts function together; this is called "integration." The signature of the BP engineer signing off on a given drawing signifies approval taking into account this integration function.

Almost immediately upon reporting to work, I was confronted with the problem that BP Atlantis Operations was demanding as-built P&IDs and we did not have them to provide to Operations. At this time, Atlantis had already been in operation for about a year and the equipment had long-since been deployed to the field.

I received a copy of an email (attached as Ex. B) written by my immediate predecessor in my job, Barry Duff, who had been promoted to another position. In it, he wrote why he was refusing to provide P&IDs to Operations. He wrote that:

- "The P&IDs for Subsea are not complete have have [sic] not been approved or handed over to Operations."
- "This could lead to catastrophic Operator errors due to their assuming the drawing is correct. Turning over incomplete drawings to the Operator for their use is a fundamental violation of basic Document Control, the IM Standard and Process Safety Regulations."
- "Currently there are **hundreds if not thousands** of Subsea documents that have never been finalized, yet the facilities have been turned over."

From this time until I was fired on February 5, 2009, I worked to obtain BP engineer approved, as-built P&IDs and all other as-built project drawings with little, if any, progress. Technip, the vendor company which was the lead engineering contractor did not have and could not provide up to date P&IDs. The lead engineers responsible for various sectors within the project did not have and could not provide up to date P&IDs. The more I insisted that we had to develop or obtain them, the more unpopular I became. At one point, BP management vetoed one plan because of its estimated cost of \$2 million.

BP Atlantis Deficiencies

While I was at BP Atlantis, we developed a database in which we had all of the engineering documents and coded the database with the completion status (or latest approval status) of each document. We also obtained and put in the database the completion status as shown by Technip's document control system. This allowed us to analyze overall what documents we had and their completion status.

The results were astounding to me. The Table (attached as Ex. C) shows the completion status for all documents in the various sectors of the project. The overwhelming majority of documents and drawings had never received any engineering approval at any phase of development. The last column shows the percentage never having any approval at all. Out of the total of over 7,000 drawings and documents, almost 90% never received any approval of any kind, not even for design.

With reference to specific systems:

- The oil and gas products under high pressure are managed, contained and transported to the floating surface vessel by the wellhead, the tree, the manifolds, pipelines and flowlines, controls and risers. For all of these system, less than 10% were certified as approved by engineering.

- The wellhead is the equipment which controls pressures inside the well at the upper end of the casing, below the tree—none of those documents ever had any engineering approval.
- The tree is a series of valves immediately above the well which have the same function as the BOP stack during drilling; they control pressures and can be used to shut down the well if needed; they are a critical part of the Safety Shutoff System. On Atlantis, they also include valves to control flows related to the manifolds. Of these critical components, 98% never received any engineering approval.
- The software logic for the safety shutoff system does not have engineering approval.
- Welding procedures for such critical items as manifolds do not have engineering approval.

I have now learned that MMS regulations as well as BP internal procedures and project execution plan require that designs for these facilities be approved by BP engineers specializing in the design of offshore structures. BP records reflect that the design was not, in fact, approved by engineers.

The Subsea portion of Project Atlantis was being constructed in “Drill Centers (DC’s),” each one of which collects the product from several wells and passes it to the surface facility. When I went to work for Atlantis, DC-1 was in production and DC-3 was under construction. It came to my attention that we did not have “approved for construction” documents for DC-3. In my experience, entering into construction without “approved for construction” documents can be a major problem. I immediately attempted to obtain approved for construction documents, but was never able to obtain them.

During development of such a project, it is normal that much of the equipment must be tested before being placed into service. I learned that the nature of the records kept by BP for such testing did not allow the results of a given test to be correlated to the item which was tested. As a result, there was no way for anyone to learn from the database whether a particular item had been tested with a particular test, or the results of the testing actually done on a particular component. In November 2008, I was advised that BP personnel and Malcolm Voss, engineer for Technip, had reached an agreement on how to resolve this problem. However, a number of such agreements were reached which were never carried out; I have no knowledge of whether this agreement was actually completed.

While I was at BP, I spent many hours in meetings with my management and others on the Subsea Team attempting to solve the problems of the non-existent as-builts. It was never solved.

The lack of As-Builts is a common thread running through BP disasters from Texas City (15 dead) to Alaska (200,000 gallons spilled into Arctic tundra) to Deepwater Horizon (blowout preventer modified and would not close) to BP Atlantis.

Dept. of Interior and MMS Refuse to Act

Within a few days after being fired, I made a complaint about the situation to the BP Office of the Ombudsman which I understand was created after BP failed to respond to employee concerns regarding unsafe conditions at its Texas City Plant. It is my understanding that the Office of the Ombudsman is supposed to be sure that complaints of unsafe conditions are dealt with properly. I provided full information to the Ombudsman and had a number of meetings, telephone calls and written communications with them over the next several months. I did not receive any substantive reply from them for over a year. I will discuss that response later in my statement.

On March 9, 2009, I emailed Earl Devaney, Inspector General of the Dept. of the Interior at doioig.gov. I sent him full information on the unsafe conditions. I never received any response. Several months later, someone from that office contacted my attorney and confirmed that my email had been received. An employee from the OIG did contact me by phone once in mid 2009, but said he could not help since I was not a government employee. No one else from the DOI OIG ever contacted me about the unsafe conditions of the Atlantis project or took any other action to my knowledge.

After receiving no further response from the Department of the Interior, I contacted an attorney from the firm of Perry & Haas in Corpus Christi, Texas. They asked me to furnish them with all of my documentary information and they wrote a letter providing all of that information to the Attorney General and the local United States Attorney (attached as Ex. D). They felt that the evidence showed that BP was committing fraud on the Federal Government by operating in violation of the statutes and regulations which govern oil and gas operations in the Gulf. On April 21, 2009, my attorneys filed a *qui tam* suit to force BP to repay to the Govern-

ment the amount it had taken fraudulently. They also provided the Government with a report from an engineer detailing the importance of the BP Atlantis deficiencies and explaining that those deficiencies could lead to a catastrophic failure with resulting catastrophic harm to the environment of the Gulf of Mexico.

My attorneys have informed me that on May 19, 2009, they had a personal meeting in Houston, Texas with an Assistant United States Attorney. Also present by telephone were an attorney from the Department of Justice; another attorney from the Department of the Interior; and four representatives of MMS, Mr. Saucier, Mr. Domangue, Ms. Moser, and Mr. Herbst. My attorneys have reported to me that the MMS personnel strongly took the position that BP Atlantis was safe and they did not need to take any action.

On May 27, 2009, my attorneys wrote a lengthy letter to the attorney from the Department of the Interior warning that the kind of problems I have told them of created an imminent risk of catastrophe to the Gulf of Mexico (attached as Ex. E.). In this letter, my attorneys pointed out in writing the great threat to the environment created by deep water drilling if proper procedures are not following.

At a later date, I participated in a personal meeting with the Asst. United States Attorney, the attorneys from DOJ and DOI and the MMS representatives. Again, the MMS representatives strongly expressed their opinion that BP Atlantis was safe.

Since that time, I have relied on my attorneys and Food and Water Watch to seek action from the Government. In general, I am aware that they have been in contact with MMS continually for about a year, and have urged upon the MMS the importance of taking action to prevent a catastrophe in the Gulf. FWW has also contacted Members of Congress who have demanded action from MMS.

In April, I finally received a written response from the ombudsman. We have now learned that a BP internal investigation through Judge Sporkin, the ombudsman, verified my complaints about the absence of documentation for Atlantis (letter attached as Ex. F). Judge Sporkin was interviewed by AP and confirmed that BP did not have the necessary documents for Atlantis (attached as Ex. G). Regardless, MMS still refuses to take action.

Atlantis Deficiencies Similar to Deepwater Horizon

I am personally sick at heart over the Horizon tragedy. Like millions of others, my family and I have vacationed and fished in the Gulf, and used it for recreational purposes. My work and career are tied to the oil and gas industry, much of which is in the Gulf. I feel that the pollution of the Gulf, the destruction of the beaches, the destruction of its recreational and economic value is a national tragedy. I feel strongly that it would not have happened with proper procedures.

Several different causes for the blowout have been reported on the news. Many of them would be caused by the same problems I have seen on Atlantis.

- 1) blowout preventers did not close—on Atlantis, safety shutdown system logic has not been engineer-approved; this could cause failure of shutdown systems;
- 2) rig crew did not understand makeup of blowout preventers—this would be due to failure to have up to date as-built documents; same problem as Atlantis;
- 3) a mechanic apparently did not have access to manual shutdown procedures for diesel engines—again, failure to have proper documentation;
- 4) there was apparently no gas sniffer and automatic shutdown for the diesel engines—failure to have safety equipment which should have been present happens when proper engineering procedures are not followed.

From my experience working in the industry for over 30 years, I have never seen these kinds of problems with other companies. Of course, everyone and every company will make mistakes occasionally. I have never seen another company with the kind of widespread disregard for proper engineering and safety procedures that I saw at BP and that we hear from the news reports about BP Horizon, or BP Texas City, or the BP's Alaska pipeline spills. BP's own investigation of itself, by former Secretary of State James Baker, reported that BP has a culture which simply does not follow safety regulations. From what I saw, that culture has not changed.

Dept. of Interior/MMS Refusal to Enforce Regulations

At first, I could not believe it when MMS refused to take any action and loudly insisted nothing was wrong before they had done any investigation. As far as I know, MMS did nothing to investigate my complaints for over a year. They have never contacted me except for the one conference I had with them and the U.S. Attorney. MMS never contacted me as part of an MMS investigation. They have now

filed papers in my lawsuit saying that they started an investigation in April 2010, over a year after my first complaints, and only after a demand from many Members of Congress.

Of course, this makes sense only after we learn of MMS history of failure to enforce regulations, granting waivers and taking favors from the industry.

I read that Congress is considering new regulations. Perhaps the regulations should be improved; perhaps we do need some new regulations.

It seems to me that we need to start by enforcing the regulations we already have. My attorneys believe BP is now in violation of many regulations, but that MMS is refusing to enforce the regulations now on the books. No matter what the regulations, BP has a history of ignoring and violating the regulations, so it doesn't matter what the regulations say unless they are enforced.

Among various responses to FWW, MMS has stated directly that it is not enforcing large segments of the regulations. MMS has written that they do not enforce Part I [eye] of the regulations as to subsurface equipment (attached as Ex. H). Lawyers tell me that Part I of the OCS regulations contains requirements that:

- companies create and maintain and provide MMS with access to:
 - as-built drawings
 - design assumptions
 - fabrication records
 - inspection and test results;
- keeping testing records
- construct and use only certified engineer-approved designs
- comply with multiple industry regulations which have been codified into the Federal regulations
- comply with a Certified Verification Program

MMS has repeatedly written to FWW that they DO NOT ENFORCE THESE REGULATIONS for subsea equipment—even though the written regulations specifically include subsea equipment. The greatest danger of environmental damage is from loss of control of oil and gas in the underwater sector. It makes no sense to simply refuse to enforce regulations for that sector. Because MMS refuses to follow and enforce its regulations, FWW and I have together filed another suit against the Secretary of the Interior seeking a court order to enforce the law and the regulations.

Unbelievably, even when MMS claims to enforce certain requirements, it renders them meaningless. For example, the requirement that companies maintain as-built drawings: MMS has written that its regulations *do not* require the drawings kept to be accurate or complete (attached as Ex. I).

Now, after a year of refusing to act, MMS now says they want to do an investigation that will take months. This is totally unreasonable. BP has a database of the engineering documents and the completion status of each document. I have provided copies of that database to MMS. It would take a qualified person no more than a few minutes to analyze the database for the information needed, and only a few hours to compare the results to the actual electronic images of the documents.

Deepwater Horizon demonstrates the urgency of assuring proper safe procedures. Catastrophe can strike unsafe conditions at any moment. The worst case scenario for BP Atlantis is a torrent of 200,000 bbls. per day into the Gulf, many times worse than Deepwater Horizon. The danger is known to be present, the situation is urgent and delay makes no sense.

Finally, in his court filings, Secretary Salazar says that the court cannot enforce the law, that he has the right to decide to do nothing. The statute passed by Congress says different; the statute says:

“The Secretary ... **shall** enforce safety and environmental regulations promulgated pursuant to this subchapter.” 43 USC Sec. 1348

The Secretary is not above the law passed by Congress; he is required to enforce the law. If the Secretary had followed the law, Deepwater Horizon may not have occurred. Let's not have another tragedy because the Secretary will not follow the law.

New Statutory and Congressional Action

With the assistance of my attorneys and advice from Food and Water Watch, we would respectfully recommend that the Congress consider the following action:

1. Establish a Safety and Environmental Regulatory Agency independent of the Dept. of the Interior.
2. No one presently at MMS should be allowed a regulatory position in the new agency. The culture of corruption and coziness appears too deep to be fixable.

3. Regulatory personnel should not come from the rank of the industries being regulated; statutes should close the “revolving door.” The present Deputy Secretary of the Interior for Land and Minerals Management having direct supervision over MMS comes to the Department directly from BP. At BP, she was VP for BP America’s Health, Safety and Environment department which was responsible for the Alaska oil spills disaster, the Texas City disaster, and, now, of course the Deepwater Horizon disaster, to name only a few. It does not make sense for a person with that record to be placed in charge of enforcement, yet Secretary Salazar’s new “reorganization” of MMS leaves this same person in charge of the new enforcement office.
4. Process Safety Management (PSM) regulations which are enacted under the OSHA and Clean Air Acts in identical language should be applied to OCS. (See 40 CFR Part 68 Chemical Accident Prevention Programs and 29 CFR 1910.119 Safety Process Management of Highly Hazardous Chemicals).
5. The penalties for a disaster such as Deepwater Horizon, or the Alaska oil spills should include forfeiture of the leases which the company holds. A company which cannot properly operate the leases should forfeit them and they should be turned over to a company which can and will operate them properly.

NOTE: Attachments have been retained in the Committee’s official files.

Mr. COSTA. Thank you, Mr. Abbott. We will now begin the period of questions, and I still start.

Was there any indication that—I mean, I understand about the issue you stated in your testimony that the documents, whether the documents were complete, but do you have any evidence that demonstrates that components of these documents that you have referenced were either substandard or damaged, or in any way constituted an imminent hazard within the platform Atlantis?

Mr. ABBOTT. Yes, sir, I do. As part of my responsibility of managing the project documents, we kept electronic database with all the drawings in it in a drawing log that showed the status of the drawings. You know, if it had been reviewed and approved. Ninety percent were preliminary.

Mr. COSTA. So if we wanted to gain those documents, who has them today? British Petroleum?

Mr. ABBOTT. Yes, sir.

Mr. COSTA. MMS, or is there an independent third party?

Mr. ABBOTT. BP, British Petroleum has those documents, and the drawing log.

Mr. COSTA. And they are not required to be filed with the Minerals Management Service?

Mr. ABBOTT. As I understand the regulations, they are required to be available and kept in some location for review by the Minerals Management Service, and you know, I don’t believe—I know that 90 percent of them have not been approved by engineers, have not been as-built, and that is the last I saw on the document log.

Mr. COSTA. You make a comparison, and it is obviously a very serious one, and I am certain that you do that as a matter of conscience, that the situation with Atlantis that you think, as you noted, drilling at even deeper ocean depths is comparable to the *Deepwater Horizon*, but there are distinctions in the sense that the British platform—the British Petroleum platform Atlantis is a production platform while the Horizon was a drilling rig. There are relative differences—I have been out there—between production and drilling.

Are you indicating as a result of that that the safety factor is such that this nonproduction platform should be at this point shutdown or closed?

Mr. ABBOTT. You mean the production platform, right?

Mr. COSTA. Right.

Mr. ABBOTT. Yes, I do think it should be—I do believe it should be shutdown based on the fact of the really poor engineering design and non-adherence to normal engineering practice. They do not have final as-built drawings. Because of that the operators out there do not have a good road map or a good driver's manual, if you will, of how that rig should work, and it is a tremendously complex rig, and they run big risks if they don't have those plans.

I saw similarities between the Atlantis and Deepwater based on, you know, information from articles I have read. For example, when BP tried to shutdown the BOP, blowout preventer on the Deepwater, they wasted a day because they had the wrong drawings. Transocean didn't have the current drawings either. The drawings had been changed—the design of the BOP had been changed after it was installed. Nobody bothered—even though BP approved that, nobody bothered to produce new engineering drawings for those operators. So, you know, even the owner/operator BP was sitting there trying to figure out how to shut that thing off, pushing the wrong buttons, and you know, there was wiring changes. That is a perfect example of the same kind of problem that BP Atlantis has.

Mr. COSTA. Yes, let me ask a couple of questions as it relates to that point. One, were you ever on the *Deepwater Horizon*?

Mr. ABBOTT. No, sir. I worked in the Houston office.

Mr. COSTA. Did you ever review the drawings or the plans for the *Deepwater Horizon*?

Mr. ABBOTT. No, sir.

Mr. COSTA. All right. Your comparative analysis is based upon what you have read over the last month?

Mr. ABBOTT. That is correct, sir.

Mr. COSTA. All right. You say it is unreasonable for the Minerals Management Service to take months to investigate the Atlantis. Since you have provided copies of the British Petroleum database to the Minerals Management Service, I am trying to remember the time in which your relationship with British Petroleum was terminated, but wouldn't that database, I mean because the Minerals Management Service is now doing that as a result of the order by the President, doing that due diligence with the Secretary of the Interior as they are reviewing all of these deepwater platforms, but isn't that data a year and a half old?

Mr. ABBOTT. The data I had at the time, it goes back to February 2009, when I was laid off, it shows that 90 percent of the drawings had not been reviewed by engineers or issued as-built. The data that they can get now, there should be a current drawing log, and drawings electronically available. That should be a pretty simple matter to check in a few days by the MMS personnel.

Mr. COSTA. Well, that is my point, though, and obviously if they have this new updated information they will be able to do an analysis to see whether or not it has changed from the information that you had, which was over a year ago.

Mr. ABBOTT. Exactly.

Mr. COSTA. Whether or not they have corrected any of those drawings or plans or whether they are the same.

Mr. ABBOTT. Exactly, so I don't know why they just don't do that. You know, they told Congress, this Committee I believe in February, they would do it by May. They had three months to do it. They could have just pulled that log and a few drawings to spot check them, and that would have taken maybe a few days. That was never done, and now they want three more months.

Mr. COSTA. My time has expired so I want to allow my colleagues an opportunity, but let me ask you just one quick question as it relates to that point you made.

Do you believe the expertise is there that resides within the Minerals Management Service to do that spot check, to do the efforts that are necessary to either hold British Petroleum in violation or to either clear them?

Mr. ABBOTT. I can't answer that, Congressman. I don't have any good concept of their capabilities, and I am not an engineer anyway. I know the—

Mr. COSTA. You stipulated that for the record so—

Mr. ABBOTT. There are people that can do that.

Mr. COSTA. Yes, but I mean, and again I am going over my time, but I would assume from all the work that you have done you have had experience in your previous work with the Minerals Management Service, right? I mean, don't you have any interaction or relation in your past?

Mr. ABBOTT. No, not really.

Mr. COSTA. Really?

Mr. ABBOTT. I produced the drawings and we put them out to the site, and the MMS does—

Mr. COSTA. I want to pursue that if I get a second round of questions.

Mr. ABBOTT. Sure.

Mr. COSTA. Because I find that interesting. I think the gentleman from New Jersey, Mr. Holt, is next.

Mr. HOLT. Thank you, Mr. Chairman, and as Chairman, you get as many rounds of questioning as you want.

Thank you, thanks for your testimony, Mr. Abbott.

Mr. ABBOTT. Sure.

Mr. HOLT. Help me understand what you think are the risks of BP Atlantis not having the proper documentation. Following on the Chairman's question, I mean, this is a production facility rather than exploratory or drilling facility. I am not an expert in this area but I think the safety record is better once these things are in production. So what do you see as the risk here?

Mr. ABBOTT. Well, I would agree there are—

Mr. HOLT. Maybe you can try to compare it to—

Mr. ABBOTT. Sure.

Mr. HOLT.—the risk of something like the *Deepwater Horizon*.

Mr. ABBOTT. Well, Congressman, first of all, the *Deepwater Horizon* was strictly a drilling rig and they were drilling one rig. The BP Atlantis is a multiple well site. There are many production wells. I think probably four to six in production now. They are hooked up directly to the piping and all. But there are also two

drilling rigs there drilling new rigs right nearby the Atlantis. So rightfully so it is a combination, drilling and production rig.

And yes, production rigs are theoretically more safe because, you know, you are not going through the whole drilling process. Here is the thing, you know. All of this equipment, be it production or drilling rigs, is subsurface with tremendous pressures and tremendous heat. They say that the pressure down at the bottom of that ocean can take a 55-gallon jug and reduce it to the size of a thimble.

Now this means that the manifolds and all the piping underneath has to be extreme new cutting-edge metallurgy, welding procedures, et cetera. If those welding procedures and that metallurgy was not reviewed by BP engineers who know the overall design, then there is a tremendous danger that there could be errors, OK?

There is also a tremendous possibility that the operators if they don't have the latest drawings in front of them could make mistakes in an emergency situation when they are shutting this rig down, and you know, that could be deadly.

Mr. HOLT. OK, thank you. So help me understand. Why would BP not provide this or not want to provide this documentation? Do they save time or do they save money, or is it just sloppy procedure, and it would have been in their financial interest to provide these but they just didn't get around to it? I mean, what do you think is behind this?

Mr. ABBOTT. OK. From what I saw there, you know, working the budgets, working the document control and scheduling, what I believe what I saw was that BP management set the tone and they were more concerned with production and cost, making the money, safety was the last issue. That I found to be very much true.

Mr. HOLT. In other words, producing the documents, the drawings and so forth, would cut into production time—

Mr. ABBOTT. Exactly.

Mr. HOLT.—and, therefore, cost money.

Mr. ABBOTT. Because, Congressman, if you just go with your theme, if you just take—you know, engineering normally goes through several iterative processes. You have a preliminary design, it is approved by the owner company, and they go back and forth with the vendors and get it right to fit their design, and finally they produce as-built drawings. That takes many thousands of man-hours to do.

If you just shortcut and say, we are going to take the preliminary drawings and build it based on that, it cost you a lot less money, and that is what they did.

Mr. HOLT. The BP Atlantis, in all parts of the operation there this documentation was missing?

Mr. ABBOTT. Yes, sir. Ninety percent of the drawings. Even engineer approved by BP drawings were missing.

Mr. HOLT. OK.

Mr. ABBOTT. Subsea only. I am sorry. Everything below the surface that is what I worked.

Mr. COSTA. You might want to reiterate—excuse me—for the record that distinction because I think it is important for folks to know the percentage of a platform that is above the water, and

that is below, and the potential hazard risks that you are concerned of.

Mr. ABBOTT. Right. The subsea, you know, includes things like the risers, the piping, the umbilicals, the wellhead, the BOPs and in case of the production unit, the trees, and you know, they are at least half of the total cost versus everything above the surface, and what happens is that above the surface there are some low-pressure and high-pressure elements; you know, piping. But below the surface it is pretty much all high pressure and high temperature, so it is special metals, and in my opinion, the most dangerous of all the piping and equipment that is built for that platform lies beneath the sea.

Mr. HOLT. You testified that the MMS did not quickly respond to your claims, your reports. Have they now?

Mr. ABBOTT. No, sir, they have not.

Mr. HOLT. So since you have been announced as a witness at this hearing you have not heard from the MMS, for example?

Mr. ABBOTT. No, sir. The only time I heard from them was last June. My attorney and I had a meeting with the Justice Department, and MMS was on the phone. I think they asked me one or two questions. They said they would follow up with an interview with me. Never happened. They said in February of this year when your Committee sent your letter to investigate it, and in May when you sent it you specifically mentioned they should talk with me. They have never talked with me in any sense at all; done any kind of interview.

Mr. HOLT. And just a very quick question since my time is up. Have any other people joined you in these reports of missing documentation and so forth?

Mr. ABBOTT. Well, Barry Duff, whose letter you have, was my predecessor at BP and a long-time BP employee, who was promoted when I came in. He wrote a very direct letter saying that there are hundreds, if not thousands, of drawings that are not complete and could cause catastrophic operator errors.

You know, I pursued that. I asked him for a list of problems when I went in, and I pursued that problem, and all it got me was a very unpopular reputation and pretty much ran off.

Mr. HOLT. Thank you, Mr. Chairman.

Mr. COSTA. Thank you, Mr. Holt, and thank you, Mr. Abbott. The next member of the Subcommittee, the gentlewoman from Wyoming, Ms. Lummis.

Ms. LUMMIS. Well, Mr. Chairman, I am late enough to the game here, but I appreciate the opportunity to ask questions and I will decline, but thank you very much. Thank you, Mr. Abbott.

Mr. ABBOTT. You are very welcome, Congresswoman.

Mr. COSTA. OK. The next member of the Subcommittee is the gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

Thank you for your testimony. In describing these drawings I mean I get the picture that if you do not have the drawings you are basically flying blind a lot of the time, is that—

Mr. ABBOTT. Exactly, Congressman. Exactly.

Mr. SARBANES. At what point in the process of MMS's interaction with BP should MMS have become aware of a problem with the absence of drawings?

Mr. ABBOTT. That is a very good question, Congressman. There is an MMS regulation that says the owner/operator will have as-built drawings, and he will keep them in a place where we can review them. But you know what the real problem is? From what I have seen in the last year and a half, they don't review them at all. And so it scares the heck out of me.

I do not believe that MMS—this is my opinion—looks in any way at drawings to see if they had been completed and reviewed by engineers and if they are as-built, and that is the real danger. And if this Committee can change anything, it would be to get them to do their job to inspect the drawings and not just to go out there and check pressure readings, and look and see if they did a safety test. That is not enough.

On land-based systems, refineries, if you ever thought of sending something as a final product from an engineering company to a refinery that was not as-built and approved by your engineers, you would be fired. It is as simple as that.

Mr. SARBANES. So is there a point at which a permit is issued to the company for production let us say where you would say without MMS having seen or reviewed these drawings, that that permit should not be issued?

Mr. ABBOTT. Absolutely. They have two certifications, or two plans. One is an exploration plan, and one is a production plan for every well that they design and build. What happened on the production side when they were ready to start production is that BP had to certify to MMS that they had completed as-built drawings, and they were engineer-approved. I haven't yet seen that certification. We have asked for it, and I understand they are going to try to get it for the Committee.

But if that certification said, yes, it was done, then it was falsified.

Mr. SARBANES. I guess you would say that as a threshold matter the certification should have been received by MMS before a permit was issued, but beyond that even with a certification MMS should have done enough independent review to be able to assure itself that that certification was well founded?

Mr. ABBOTT. Absolutely, Congressman. You know, when they started production in November of '07 on Atlantis—remember I came to work there in August of '08, almost a year later. When I came in there they had the problem of 90 percent of the drawings not being approved, not being issued to the operator.

The operations manager, Ron Berger, met with me in January of 2009, and said, Ken, I don't have any drawings for my operators out on the rig site; no as-built drawings. I said I will try to get them, and I kept trying until I was run off.

Mr. SARBANES. And as we have this hearing today and Atlantis is in production, what percentage of those drawings do you think are available in the way that they should be? Do you have any way—

Mr. ABBOTT. When I left, 90 percent of the drawings were not as-built and not reviewed by any BP engineers, and I know that

Judge Sporkin, the ombudsman for BP who reviewed my complaint about that, said in an AP article three weeks ago that to the best of his knowledge they weren't complete in September of 2009. BP is telling him now recently that they have been done but he has no documented proof of that.

Mr. SARBANES. So it is possible that at production facility people are still flying blind, it is possible.

Mr. ABBOTT. Absolutely.

Mr. SARBANES. Now, you know the President put this moratorium in place for offshore drilling beyond 500 feet, right?

Mr. ABBOTT. Correct.

Mr. SARBANES. So that is not with respect to facilities that are already at the production stage.

Mr. ABBOTT. Correct. Production can keep going.

Mr. SARBANES. Right. Is it possible that even if you have a moratorium on drilling that the drilling operation could have reached a stage that if you don't have in place the right kind of oversight, that even though you go into a moratorium mode, that there is still some risk there, or do you believe that when you impose a moratorium on a drilling operation, that from that point forward you have eliminated the potential risks that exists?

Mr. ABBOTT. Well, as long as you set the well in properly, which is what they would be doing as a result of this moratorium, it should be safe until you resume the drilling. But, once again, the drilling is the more dangerous side. If you don't have good engineer-approved designs and if the owner/operator, BP, is getting lazy and wants to save money and just take those preliminary drawings from their vendors and use them, then you have tremendous risk there; and the minute they start up, they are in the same risk pool as they were before.

Mr. SARBANES. Thank you.

Mr. COSTA. The gentleman's time has expired. Our next member of the Committee who is sitting in on the Subcommittee is Mr. Markey for five minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Mr. Abbott, in 2009, an independent firm that BP hired to serve as its ombudsman headed by former Federal Judge Stanley Sporkin substantiated that BP was violating its own policies by not having completed engineering documents on board the BP Atlantis rig when it began operating in 2007. However, BP's managing attorney stated to the Associated Press on May 15th that "BP has reviewed the allegations and found them to be unsubstantiated."

Mr. Abbott, why would BP not have these critical documents before starting operations of the BP Atlantis rig?

Mr. ABBOTT. Congressman, the only reason I—and this is my opinion—is because they felt it would be a lot cheaper just to build it, cutting corners, and not getting the drawings approved from their vendors by their own people, and you know, that is exactly what they did. They shortcut those man-hours and used poor engineering practices.

Mr. MARKEY. Mr. Abbott, what was the response of your superiors at BP when you alerted them that the BP Atlantis was missing crucial final engineering documents that could lead, as one BP official stated, to catastrophic operator error?

Mr. ABBOTT. Well, Congressman, first I talked to the lead engineers when I discovered the problem, and I got big kickback from them because they weren't used to doing that. They asked me why should we have to approve these drawings, and I said because every other engineering company I have ever seen an owner company does, OK, it is standard engineering practice.

And when I went to my supervisors, and his boss and talked about it, they told me don't put pressure on the engineers. You know, you are causing problems. And they really discouraged me trying to pursue that, which was part of my job, and you know, I just don't want to see people die because I know what can happen if the operators at any kind of plant don't have good as-built final issued drawings.

Mr. MARKEY. Mr. Abbott, do you have any reason to believe that there are other BP rigs currently operating in the Gulf of Mexico that have similar safety deficiencies as the BP Atlantis?

Mr. ABBOTT. Well, as Congressman Costa remarked and I had told him this and he remarked on it, basically I see similarities between Atlantis and the *Deepwater* facility from what I see in the press, and there are at least three different incidences that describe the same situation. One was the problem with the blowout preventer where neither BP nor Transocean had the most current drawing. That is inexcusable for an owner/operator BP to not have those drawings on that site.

And you know, an interview with one of the mechanics, another incident on *Deepwater*, and the man said, you know, I smelled the gas coming up from the well. The engine started surging. The automatic shut off didn't work. And if I had just had a procedure for manually shutting down that engine, I might have saved us all. He did not have a procedure, a simple one-page procedure for shutting down an engine. That is what I call a big lack of engineering documentation.

Mr. MARKEY. All right. Mr. Abbott, right now BP's chief executive officer, Tony Hayward, is testifying before the Energy and Commerce Committee right across the street. We all know that BP cut corners and ignored warning signs with the *Deepwater Horizon*, but you have raised questions about the safety of other BP rigs that are currently operating in the Gulf of Mexico.

Mr. Abbott, what is your message to Mr. Hayward as he testifies before Congress today?

Mr. ABBOTT. Well, for one thing I would say, Mr. Hayward, please get a complete honest answer for these congressmen. You know, three weeks ago he said that there was nothing wrong with the BP Atlantis drawings when the unit started up, and there is nothing wrong today. He said that in a letter to his people. At the same time, Judge Sporkin, his chief investigator into employee complaints about safety, had said, "Yeah, there is something wrong. Mr. Abbott is right. These drawings are not complete."

And so I would say to Tony, please get this right, and I would say in general, these rigs—all the BP rigs—need to be checked out to see if they have complete design drawings for those operators, and I have real doubts about that.

Mr. MARKEY. So you believe there could be other rigs out in the Gulf of Mexico without complete designs, without completed procedures to take in the event that something goes wrong?

Mr. ABBOTT. I know for sure the Atlantis did. I know from what I have read that *Deepwater* had similar problems that could have helped cause the disaster, and I can only assume that at the very least we ought to be checking out all the BP rigs, checking the drawings. Not going out there and checking pressures and safety checks that MMS is currently doing, and that is what they are doing.

Mr. MARKEY. Do you believe, Mr. Abbott, that there could be another BP ticking time bomb out in the Gulf of Mexico as we sit here today and Mr. Hayward sits testifying across the street?

Mr. ABBOTT. I absolutely do, Congressman. I know for a fact that Atlantis has four to five times the flow capacity with about eight wells, that this one well, *Deepwater Horizon* had, and it has got just as much risk and just as much high technology engineering that could be wrong.

Mr. MARKEY. Should any of the BP rigs be shutdown right now in order to ensure that a complete safety inspection is completed?

Mr. ABBOTT. Well, since after a year and a half of trying to get both BP and MMS to inspect this thing and check the drawings, I would say that the best solution at this point would be to shut that rig down and then to put the onus on BP to prove that it is safe; to fix the—anything can be fixed if you spend enough time, but it is dangerous as it is and it needs to be shut down.

Mr. COSTA. The gentleman's time has expired.

Mr. MARKEY. I think that the only—

Mr. COSTA. I know, but I had some questions I would like to ask.

Mr. MARKEY. Can I finish just one sentence, Mr. Chairman?

Mr. COSTA. Yes, you can finish one sentence.

Mr. MARKEY. I appreciate it. I think that the only thing worse than one oil spill in the Gulf of Mexico would be two BP oil spills in the Gulf of Mexico. I think that BP and Congress should heed the warning that you are providing today, Mr. Abbott. Thank you, Mr. Chairman.

Mr. ABBOTT. Thank you, Congressman.

Mr. COSTA. Thank you. Mr. Abbott, you described yourself, I think, correct me if I am wrong, as a project manager?

Mr. ABBOTT. Project controls manager.

Mr. COSTA. Project controls manager. And how often or how long have you been doing this?

Mr. ABBOTT. It has pretty much been my whole career for 30 to 33 years.

Mr. COSTA. And has most of it been on offshore platforms?

Mr. ABBOTT. Probably about seven years of it has been offshore, and the rest has been onshore. Everything from \$70 million projects to \$3 billion projects onshore.

Mr. COSTA. So as a project manager I think with the seven years and the additional years onshore experience you have what is considered good experience on offshore platforms.

Mr. ABBOTT. Right.

Mr. COSTA. And you indicated that you have worked for Shell and what other companies?

Mr. ABBOTT. Some of the major owner companies are Shell and General Electric, and BP, of course. Engineering procurement construction companies that do the work in the field, and those include Stone & Webster.

Mr. COSTA. Let us stipulate for the record this is not your first rodeo.

Mr. ABBOTT. No.

Mr. COSTA. OK? The reason I am asking that is because I am trying to get some comparative analysis based upon the testimony you have given this afternoon with regard to your experience with British Petroleum on the platform Atlantis—and some other platforms that you may have worked on. I suspect you are a pretty thorough guy. You sound like you are.

This kind of documentation for plans and drawings that you describe in your testimony is the same kind of information you would request for Shell or any of the other companies you worked with?

Mr. ABBOTT. Absolutely. It is standard engineering practice.

Mr. COSTA. And it was forthcoming on those instances?

Mr. ABBOTT. In every case, and you better not do it improperly or you wouldn't be there.

Mr. COSTA. So are you saying based upon your experience of seven years on offshore platform and the time that you have spent onshore that there seems to be a culture of carelessness, at least, or as I said this morning in the testimony, an atmosphere of overconfidence and complacency that came together that created this horrific disaster?

Mr. ABBOTT. Congressman, I do agree that there is a culture of complacency and nonconcern for safety issues at BP, the like of which I haven't seen anywhere I have worked. You know, nobody is perfect. No company is perfect. But it is thoroughly embedded and management sets the tone there, and you know, people do what management tell them to do.

Mr. COSTA. So in dealing with this, how long did you work for British Petroleum?

Mr. ABBOTT. I was at British Petroleum for approximately six months.

Mr. COSTA. OK, so it was six months compared to 20 plus years of working with other companies?

Mr. ABBOTT. Correct. Well, probably 29.

Mr. COSTA. So a project manager is generally hired by a company to take on a certain project. You work it through to the end, and then if the company likes your work you get hired for another project, or you move on to another company. What are you doing now?

Mr. ABBOTT. I am a contractor and I finished my last project, completed in December of last year. It was an Exxon-SABIC Elastomer project onshore, and I have been looking since then.

Mr. COSTA. So you were hired by another major oil company or energy company after BP.

Mr. ABBOTT. Right.

Mr. ABBOTT. Actually, I worked for Swift, a contractor, and I was seconded to an Exxon-SABIC as a project representative, client representative with Fleur & Jacobs.

Mr. COSTA. Well, you mentioned earlier that you had little contact, and I am surprised about this because with the Minerals Management Service—I just would have thought that in seven years of working on offshore platforms, one of the purposes of this Subcommittee’s hearing, and one that we are looking at is how to reorganize the Minerals Management Service. The Administration has put a proposal out there, and we are vetting it now at this time to see what we think is good, and what needs to be changed, and clearly for me the staffing ratios have got to be looked at.

I mean, you can break it down into different organizational structures, but clearly the staffing ratios are inadequate to do the job with the amount of platforms, whether they be production platforms or drilling platforms, to ensure that the regulations and safeties are being done, but I cannot understand for the life of me why after seven years of doing that you would have had no interaction with the Minerals Management Service inspection personnel.

Mr. ABBOTT. It is really a quite easy explanation. Most of my assignments I have worked in the home office and sometimes in the field on the engineering projects, like you said, where they design, and buy, and you know, have built all the components for the offshore and onshore units. But in that role we just don’t really have any contact with MMS people.

The MMS people primarily deal with the operations people on the rig and the operations managers, and I guess they probably deal a lot with the regulatory people within the oil companies, you know, as far as leasing arrangements and all, but my experience they don’t deal very much at all with the engineer and design and construction folks.

Mr. COSTA. Interesting. My final question, and I have gone over my time again. Congressman Markey commented and asked you the question about the potential of a “ticking time bomb.” You have been involved in this field for 29 years, as you indicated. Do you believe it is—in terms of the risk analysis versus the risk management—safe for us to continue to utilize the oil and gas finds that are available to our country to be used as part of an overall energy portfolio? And should we be able to continue to do this safely, or do you think that the utilization of offshore leases for oil and gas fields, at some point, should be ended?

I mean, you know, a fair bit about the energy needs of this country and the world. I mean, my basic question to you is can this be done safely, and if it can, what should we be doing to ensure that it is safe as we do our due diligence?

I mean, as I made the statement, I think you heard me this morning, unfortunately, the confidence factor by the American public if not zero is near zero as to our ability to do this and to utilize this important source of energy for our country. So could you give me your thoughts on this?

Mr. ABBOTT. Certainly, Congressman.

Mr. COSTA. Because it goes to the heart of ultimately how we move forward in a comprehensive energy package that is absolutely critical to our country in the twenty-first century.

Mr. ABBOTT. Absolutely. You are asking for my opinion and I will be glad to give it to you. From what I have observed I am a realist as well as somebody that wants to protect our Gulf—I live there—

and the lives of the people working on it. But at the same time I know that very scarce oil and gas resources are being depleted onshore and in shallow depths. That is a fact. And we are left with a deep sea, and we have to find out how to use it and we have to be able to control it and make it safe for our environment.

I believe that a very basic type of regulation is being overlooked by the MMS, and that is they need to be checking to see, they ask for the drawings. They say you have to have as-built drawings. The should be doing some kind of cursory check, looking at the document log to see if the drawings have been issued as-built, spot checking some of the drawings to make sure there is no fooling around, and that should take a few days on each rig, Congressman, and if we accomplish nothing else but got that regulation in force, I think that you all would have done a tremendous benefit value for this country.

I think there are things that could be made better in the regulations, but I am not an expert in that, I am not going to go into it. I just think the regulators need to regulate. The oil companies need to know that in the end there are regulators that are serious about it.

Mr. COSTA. So do you believe it could be done safely?

Mr. ABBOTT. I think absolutely it can be done safely. I don't think it is beyond our technology. A country that has built some of the biggest dams in the world and space shuttles, I certainly think that we could figure out how to drill a hole in the ocean and not have it blow out.

Mr. COSTA. Thank you. Mr. Sarbanes has a question or comment.

Mr. SARBANES. Yes, a quick question. Getting back to the moratorium that has been imposed, you said that with respect to drilling operations that are underway that the moratorium will cause—what is it that they will do, basically put those in a pause mode? What is that they do?

Mr. ABBOTT. Well, they will probably shut the—you know, depending on where they are at in the drilling operation, they will probably shut that well in, cap it off in some way, and then move the rig somewhere else, you know, where they can drill.

My attorney is correct on that. I don't know if they are just going to stop the current drilling or, you know, put a cap on it and move it totally. I am not totally clear on that, so I am really kind of, well, opinionating on that.

Mr. SARBANES. How long does it take to take either of those measures, to sort of shut down a drilling operation, would you say?

Mr. ABBOTT. And honestly, I just can't comment on that. I am not close enough to that to give you a reliable time.

Mr. SARBANES. OK. Well, as I listen to testimony, I guess what I am worried about is we now have in everyone's mind the notion that the moratorium is in place, but I am curious as to how long it actually takes before you can say that that is true. I mean, you issue a moratorium on a Monday. Does that mean by Monday night all of these drilling operations have been put into a pause mode? Probably not. So if it is Friday or two weeks or three weeks out, are we going to discover later if something goes wrong that while they were in the process of getting this thing shut down, but then in the meantime something happened, and if that is the case, then

I think BP's drilling operations in particular somebody ought to be going and looking at those, looking right over their shoulder as they are implementing the moratorium because they have already demonstrated a culture that doesn't seem to put a high priority on this, and if those rigs are at higher risk, which I have to believe they are given that culture, then somebody needs to be paying a lot of attention to how the moratorium is actually being implemented because I could see us waking up and reading a newspaper headline about how some other drilling operation that was supposed to be getting closed down has blown up.

Mr. ABBOTT. Congressman, I would agree with you completely on that. You know, to say we have a six-month moratorium by itself does nothing for us because, you know what, six months from now if everything goes the way it is MMS will still be doing the same kind of inspections and not checking the drawings. My recommendation would be to see that these inspections are done properly; that they include reviews of the design-basis drawings to see if they are up to snuff, and to see if they are complete. Then all the other things that they should do as well—the safety checks, the pressure checks—and there should be a plan. They could stagger these inspections, and I could see it would take six months to get these things in place. But if nothing changes in six months, they are right where they were, and you are right—it is just as dangerous as ever when they start them up.

Mr. COSTA. Is the gentleman finished?

OK, you may be right, Mr. Abbott, but in six months we are supposed to have the new improved Minerals Management Service, so if in fact that is the case, hopefully the sort of oversight and review that you are suggesting here today will be taking place, we hope.

I don't know if it is worth repeating for members of the Subcommittee, but I hope there is no confusion as to what the elements are of the moratorium that the President has implemented with regard to both deepwater and water under 500 feet or less because I know we talk a lot about it today and we talked about it in all the other hearings, but the moratorium for six months is any wells that were being drilled for production purposes but have not yet reached production stage, or any anticipated new efforts that we are going to take advantage of their API, and had moved far along and up the process to begin actually drilling the exploratory well, that is the subject of the moratorium as I understand it.

Those production wells under Atlantis, as you testified today, are currently operating. You said there are what, eight wells there—oil and gas wells?

Mr. ABBOTT. Well, there is intended to be 16 eventually. You know, I have been gone a year now so I don't know how many they have actually got in. When I left they had, I think, four of them operating. They could have five or six now, but understand, there was two new wells being drilled when all this happened.

Mr. COSTA. How many wells were in production when you were out there?

Mr. ABBOTT. When I was there, there were four.

Mr. COSTA. Four.

Mr. ABBOTT. Right.

Mr. COSTA. Did you get a chance to review the drawings on the blowout valves and some of the other issues that we are dealing with now on the *Deepwater Horizon*?

Mr. ABBOTT. No, not the drawings on the *Deepwater Horizon*. No, I was strictly—

Mr. COSTA. No, no, on the—

Mr. ABBOTT. On the Atlantis.

Mr. COSTA. On the four wells on the Atlantis.

Mr. ABBOTT. Well, remember, on the Atlantic on the production side we had trees, yeah, and we had tree drawings so would show—a tree replaces—

Mr. COSTA. Right.

Mr. ABBOTT.—a blowout preventer when it goes into production.

Mr. COSTA. And it sits on the ocean floor.

Mr. ABBOTT. Exactly.

Mr. COSTA. And so were you confident that those safety aspects on the Atlantis were in place?

Mr. ABBOTT. I know that they had preliminary well drawings, but none of them had been approved by BP engineers, so you know, not very safe if you haven't even reviewed the design of them, and issued them as-built to the operators.

Mr. COSTA. All right.

Mr. ABBOTT. None of them were approved.

Mr. COSTA. On the permanent trees that were of the four wells—

Mr. ABBOTT. Correct.

Mr. COSTA.—when you were there were in production?

Mr. ABBOTT. Right.

Mr. COSTA. All right. I could go on but I won't. We have another panel. The gentlewoman from Wyoming I believe has a question.

Ms. LUMMIS. Thank you, Mr. Chairman. Now I am in the flow of the conversation so I appreciate your letting me follow up on your line of questioning, Mr. Costa.

Where Mr. Costa seemed to be going, and I think he was really getting to the heart of the matter finally, which is, it seems that, and tell me if you agree with this statement, safety and the priority that safety is from company to company varies, depending on the culture of the company. The size of the company—be it small, medium or large—is not an indicator of who may be the safest, or the most reliable, or the most responsible. In fact, you really have to look at each company individually to understand whether their corporate culture is one that values safety of people and the environment, and so you shouldn't just judge big companies as being more safe and capable than little companies, or vice-versa, based on their size. You really have to zero in on the company itself.

Mr. ABBOTT. And look at their track record. That is the other giveaway. Exactly.

Ms. LUMMIS. Thank you, Mr. Chairman.

Mr. COSTA. Thank you, and I want to thank you, Mr. Abbott, for your patience and for your testimony, and let us move on to our third panel who have been waiting a good time here since ten o'clock.

Mr. ABBOTT. Thank you, all.

Mr. COSTA. Thank you. If you will come forward.

All right, our third panel is now here. You get the prize for who waits the longest, but there are less of us here to ask questions so maybe that's a benefit, of sorts. We would like to recognize this group that involves a combination of various perspectives.

Mr. Christopher Mann, Senior Officer of Pew Environmental Group; Mr. Alan Spackman, Vice President of the Offshore Technical & Regulatory Affairs for the International Association of Drilling Contractors, otherwise known as IADC.

Mr. SPACKMAN. We just call it I-A-D-C.

Mr. COSTA. OK. Got it, I-A-D-C. Mr. Erik Milito, Group Director of Upstream and Industry Operations for the American Petroleum Institute; Ms. Danielle Brian, the Executive Director of the Project on Government Oversight, I like this anagram, POGO; and Mr. Steve Maley, the Operations Manager for the Badger Oil Corporation, is that correct?

Mr. COSTA. All right, and I understand you are more representative of the smaller—I don't know if that is the appropriate term since we have to be careful, some of the adjectives we use here. Well, the less than larger energy companies.

Mr. MALEY. I only represent Badger Oil Corporation.

Mr. COSTA. OK. You can tell us all about Badger when you get to testify.

So let us begin with Mr. Christopher Mann, the Senior Officer at the Pew Environment Group. I think you folks have sat around here long enough today to get the rules. You have to activate your microphone. You have that clock in front of you, and it is green for four minutes, yellow for a minute, and then it turns red. As you can see, the Chair tries to give a little bit of discretion, and as long as you don't get him upset. Everybody has been on good behavior here today, so why don't you begin, Mr. Mann.

STATEMENT OF CHRISTOPHER MANN, SENIOR OFFICER, PEW ENVIRONMENT GROUP

Mr. MANN. That is my first rule, Mr. Chairman, not to upset you, so at this point in the program, I will try to be brief and get right to it.

I very much appreciate the opportunity to share the views of the Pew Environment Group on the Minerals Management Service regulation of offshore energy development. I want to note that the recommendations in my written statement were developed in coordination with the Ocean Conservancy.

The *Deepwater Horizon* oil spill has become the worst environmental disaster in U.S. history. It brings into sharp relief the cost of both human and environmental of our society's dependence on fossil fuels. Clearly, something went disastrously wrong with that drilling operation, but revelations since the spill about environmental shortcuts and lack of oversight by the Minerals Management Service show that this disaster is as much a failure of governance as it is a failure of technology.

My written statement provides detailed recommendations for reform of both the Oil Pollution Act and the Outer Continental Shelf Lands Act.

Although oil spill recovery response is vital, we are now, sadly, reminded that once the oil is in the water, much of the damage is

inevitable. Prevention is the name of the game and my remarks today will focus on reforming the development process in the hope of preventing a repeat of the *Deepwater Horizon*.

Our government system to decide where, when, and how to drill in the offshore environment is in need of substantial reform. Congress last seriously amended the Outer Continental Shelf Lands Act in 1978, when Jimmy Carter was in the White House and disco music ruled the airwaves, a sartorial period when most of us would probably prefer to forget. During the intervening 32 years, the technology to extract oil and gas has advanced dramatically, but technologies always fail eventually and the technology to prevent and respond to oil spills has not kept pace.

We believe the management of offshore oil and gas development is deeply flawed from the five-year planning process through production, and needs to be brought into the modern era.

The structural reforms proposed by the Administration are an important first step, but Congress should amend the Outer Continental Shelf Lands Act to ensure that the risks of offshore energy development are fully and accurately assessed and managed.

What are the key problems Congress should focus on? The OCS Lands Act provides a narrow single sector approach that prioritizes oil and gas extraction over other ocean uses and human and environmental safety. Both the Pew Oceans Commission and the U.S. Commission on Ocean Policy cited single sector management of marine resources as a factor that contributes significantly to the degradation of our marine ecosystems.

The OCS Lands Act focuses on expeditious development which pressures and processes—I am sorry—which pressures the process and creates strong forward momentum for production, especially after the period when leases are sold. The OCS Lands Act does not include standards for environmental protection to which decision-makers can be held accountable, and it places decisionmaking squarely in the hands of the Minerals Management Service which lacks expertise or institutional interest in broad ocean issues and has clearly failed to assess objectively and accurately the potential risks of OCS drilling.

Last, current law allows inadequate environmental analysis and inadequate preparation for, and capacity to respond to, oil spills. What do we recommend Congress do about this?

Congress should amend the policy statement in the OCS Lands Act and create substantive standards to prioritize protection of coastal and marine ecosystem health. Standards should include the identification and protection of important ecological areas, collection and analysis of baseline scientific information, and a requirement for demonstrated capacity for oil spill response by potential lessees. Congress should ensure that Federal agencies beyond the Minerals Management Service have a much greater role in OCS energy development decisions. Congress should amend the Lands Act to require joint preparation of, or at a minimum concurrence by the Secretary of Commerce in five-year oil and gas leasing programs and the NEPA documents that accompany that planning.

Congress should ensure environmental review is thorough at each step of the leasing process. The ocean agencies should be required to examine worst case scenarios and cumulative impacts.

Categorical exclusions are not intended to cover actions with potentially serious environmental consequences and should, therefore, not be applied at any stage of the OCS development process.

Finally, we recognize that moving toward more comprehensive ocean management comes with additional costs. To address these needs Congress should set aside a portion of OCS revenues in a permanently appropriated dedicated fund for ocean and coastal and Great Lakes conservation and management.

There are clearly profound environmental consequences from development of oil and gas resources offshore, but there is a compelling logic in taking a small portion of the revenue we derive from developing those resources and reinvesting it in the conservation and management of renewable ocean and coastal resources. The CLEAR Act, introduced by Congressman Rahall last year, provides a good model for the structure of such a fund.

Mr. Chairman, we look forward to working with both Congress and the Administration to protect the health of our oceans as we meet our nation's energy needs. That should not be an either/or proposition. Thank you.

[The prepared statement of Mr. Mann follows:]

**Statement of Christopher G. Mann, Senior Officer,
Pew Environment Group**

Chairman Costa, Ranking Member Lamborn and Members of the Subcommittee: My name is Christopher Mann and I serve as a Senior Officer with the Pew Environment Group in Washington, D.C. I greatly appreciate your invitation to appear before the Committee to share our views on regulation of offshore oil and gas leasing and development. The Pew Environment Group is the conservation arm of the Pew Charitable Trusts. We are dedicated to advancing strong environmental policies that are informed and guided by sound science on climate change, wilderness protection and marine conservation. I manage a number of Pew's marine conservation initiatives, including our efforts to promote comprehensive, ecosystem-based management of our oceans, coasts and Great Lakes.

The explosion and sinking in late April of the Deepwater Horizon oil rig some 50 miles off the coast of Louisiana brought once more into sharp relief the costs, both human and environmental, of our society's dependence on fossil fuels. Emerging evidence of malfunctioning equipment and repeated failures to contain the spill show the risks inherent in offshore development. Revelations about environmental shortcuts and lax oversight by the Minerals Management Service (MMS)—the federal agency charged with ensuring that offshore development is conducted safely—are equally troubling. As this unprecedented environmental disaster unfolds, it has become clear that our government system to decide where, when and how to drill in the offshore environment is in need of substantial review and reform. We believe that the management of offshore oil and gas development is deeply flawed from the five-year planning process through production. If any good can come of the ongoing environmental tragedy in the Gulf of Mexico, it is that Congress may assert its oversight responsibilities and enact significant reforms of the Outer Continental Shelf (OCS) development process.

The structural reforms proposed by the administration are an important first step in changing both the process and the culture of OCS development at the Department of the Interior (DOI). A more durable solution is for Congress to amend the Outer Continental Shelf Lands Act (OCSLA) to establish a new approach that fully and accurately assesses and manages the risks of offshore energy development. These amendments should espouse the goal of safely developing offshore energy resources while protecting the health of marine ecosystems and the coastal economies that depend on them.

Congress has not enacted significant amendments to OCSLA since 1978. In the 32 intervening years, amazing advancements in technology have allowed extraction of oil and gas from ever-deeper waters. Sadly, the technology for extraction appears to have far outstripped the quality of oil spill prevention and response capabilities. Since 1978, we have also learned a great deal about the long-lasting impacts of oil spills on marine and coastal ecosystems. Oil in the marine environment is more per-

sistent and more toxic to marine life than was believed when Congress last seriously considered OCSLA reform. It is time for an overhaul of OCSLA and the Oil Pollution Act (OPA), the statutes that respectively govern mineral extraction from our oceans, and oil spill liability, response and recovery.

To address the shortcomings in the current system, the Pew Environment Group recommends the following commonsense reforms:

- No new offshore oil leasing, exploration or production should take place until the recommendations of the independent commission established by the President are released and new safety and environmental standards are put in place.
- Environmental and safety analysis and management should be separated from the collection of revenue from OCS minerals development.
- OCSLA, which governs offshore mineral leasing and development, and its implementing regulations should be amended to ensure the environmental effects of oil and gas development, including cumulative impacts, are thoroughly reviewed and appropriately addressed.
- OPA, which governs oil spill contingency planning and response, should be amended to increase the timeliness and effectiveness of oil spill response and recovery.
- Statutory limits on liability for damages resulting from oil spills should be eliminated to ensure that the full cost of economic and environmental damages is recovered.

These recommendations are addressed in detail below.

MMS has proved incapable of effective planning, regulation and oversight, and federal law governing oil and gas activities on the OCS does too little to ensure that coastal and ocean ecosystems are protected. There are several key problems with the current statutory regime:

Single-sector approach—Decisions about oil and gas activities on the OCS have not been integrated with other ocean management decisions. Both the Pew Oceans Commission and the U.S. Commission on Ocean Policy cited single-sector management as a factor that contributes significantly to the degradation of marine ecosystems, and recommended moving towards multi-objective regional planning for the conservation and management of marine resources.

Focus on expeditious development—In planning and administering OCS oil and gas activities, existing law requires MMS to balance oil and gas development with the protection of human, marine and coastal environments. In practice, however, MMS prioritizes resource extraction, often at the expense of these other concerns as demonstrated by the current spill.

Lack of substantive standards—Under OCSLA, MMS need only consider environmental impacts and then can balance potential harms and benefits with oil and gas development in whatever way it wants. OCSLA does not include substantive, enforceable standards mandating environmental protection to which decision-makers can be held accountable.

Decision-making in the hands of the MMS alone—MMS lacks expertise or institutional interest in broad ocean issues and has clearly failed to assess objectively and accurately the potential risks of OCS drilling. Other agencies with expertise and management responsibility over marine and coastal resources have only a limited role in decisions regarding oil and gas planning, leasing, exploration and development. The devastating effects that oil and gas development can have on marine life require a more balanced assessment of costs and benefits that can only be achieved by bringing in additional natural resource perspectives and expertise.

Inadequate environmental analyses: Current law allows MMS to avoid preparing full and comprehensive analyses at both the programmatic and site-specific project stage, as contemplated by the National Environmental Policy Act (NEPA).

Inadequate response capability: Current law does not mandate that oil spill response plans be effective, or that response capacity and technical standards for safety and efficacy of response be sufficient.

RECOMMENDATIONS

The current system for planning, analyzing and overseeing oil and gas activities on the OCS must be reformed. Ideally, OCS oil and gas decision-making should be integrated into a comprehensive ocean governance structure, as has been recommended by the Pew Oceans Commission, the U.S. Commission on Ocean Policy and President Obama's Ocean Policy Task Force. Until such an approach can be de-

veloped and implemented, targeted amendments to OCSLA and OPA 90¹ are necessary to improve the OCS oil and gas planning and development process and reduce the likelihood of future offshore oil spills and other environmental impacts.

I. ESTABLISH A MISSION AND SUBSTANTIVE STANDARDS THAT PROTECT MARINE AND COASTAL RESOURCES AND THE ENVIRONMENT

MMS's² focus on resource extraction, and its failure to ensure protection of coastal and ocean ecosystems, can be traced directly to the policy set forth in OCSLA. Section 3 states in part that the OCS should be made available for "expeditious and orderly development, subject to environmental safeguards." 43 U.S.C. § 1332(3). This policy has allowed MMS to treat protection of the environment as a secondary consideration. Moreover, although certain of OCSLA's provisions address environmental concerns, they lack meaningful and substantive standards. As a result, the statute gives enormous discretion to the agency, which routinely tips the balance in favor of oil extraction over environmental protection. To address these issues, Congress should (1) change the nation's OCS policy and/or make Congressional findings to prioritize protection of coastal and marine ecosystem health; and (2) set forth meaningful, substantive standards designed to reduce environmental impacts to better guide agency decision making.

A. Amend OCSLA's OCS policy and/or add Congressional findings

Under OCSLA, the nation's OCS policy does not place sufficient emphasis on protection of coastal and ocean ecosystem health. Congress should clarify that OCS oil and gas activities can occur only when science demonstrates that development poses minimal environmental risk. To that end, Congress should amend the nation's existing OCS policy to state that protection, maintenance and (where appropriate) restoration of coastal and ocean ecosystems is the paramount OCS policy objective; development of mineral resources is permissible only if it will not compromise that objective. The amended policy should provide that oil and gas activities on the OCS are appropriate only:

- In those areas of the OCS where science shows that oil and gas activities can proceed with minimal risk to the health of ocean ecosystems;
- When regulators have a thorough understanding of the ecosystem and environmental baseline, the risks of exploration or development, and the potential consequences of accidents;
- Rigorous safety measures are in place and enforced, and there is a demonstrated ability to mount an effective response to accidents in real-world conditions;
- When oil and gas activities would not impede the development and production of renewable energy; and
- When such activities use the best available technology in order to ensure the highest levels of protection for human life and marine resources.

This policy can be amplified in Congressional findings that recognize the value of non-mineral marine and coastal resources such as:

- Healthy coastal and ocean ecosystems are of vital importance to the nation;
- These ecosystems provide jobs, food, recreational opportunities, and subsistence resources, and they support and provide habitat for fish, marine mammals, birds and other wildlife;
- They provide myriad other ecosystem services; and
- The OCS surface and seabed may be important for the development of renewable energy sources.

B. Improve agency decision making by enacting meaningful, substantive standards

Although some provisions of OCSLA address environmental concerns, those provisions do not contain meaningful, substantive standards. For example, when developing a five-year leasing program, OCSLA requires the Secretary of the Interior to "consider" environmental values and "balance" impacts on the environment with oil and gas development. 43 U.S.C. § 1344(a). The lack of specific standards gives the Secretary broad discretion, which provides little accountability for or yardsticks with which to measure decisions. OCSLA should be amended so that environmental con-

¹In many instances, statutory changes would require corresponding changes to agency regulations. For example, changes to OCSLA would likely require DOI to revise the regulations that implement OCSLA. In the absence of legislative action, DOI can also make substantial revisions to the OCSLA regulations on its own.

²On May 19, 2010, Secretary of the Interior Ken Salazar signed a Secretarial Order that calls for MMS to be reorganized into three separate administrative entities. In this document, "MMS" refers to Minerals Management Service or its successor agencies.

cerns and marine resources are not just “considered” or “balanced,” but are protected pursuant to a discernable, enforceable standard. Specifically, amendments should include the following substantive standards:

- In developing five-year oil and gas leasing programs, Congress should require the lead agencies to identify important ecological areas within the areas proposed for inclusion in the program.³ Such areas should be excluded from the five-year leasing program, and any areas included in or likely to be affected by a five-year program should be subject to specific, stringent precautions that must be satisfied before the sale of any leases wholly or partially within them.
- Congress should require the collection of specific types of baseline scientific information on OCS areas before they can be included in a five-year program. For example, before an area of the OCS is included in a five-year program, Congress should require three (or more) years of baseline weather, water, wind, ocean chemistry and other environmental data. It should require similar baseline studies for wildlife—including fish, birds, invertebrates and marine mammals—and of the benthic environment. Unless and until such data are compiled for a given area of the OCS, that area should not be eligible for inclusion in a five-year program. In addition, Congress should require a more rigorous and meaningful evaluation of environmental sensitivity and marine productivity based on the baseline science information. In the event of a spill, these data can play a critical role in contributing to natural resource damage assessments.
- Under OCSLA, MMS “sells” leases, which give oil companies the conditional right to explore for and develop oil on certain tracts of the ocean floor. History shows that the mere existence of these rights—whatever their scope—may skew government decision-making toward allowing oil and gas exploration and development to go forward, even if there are legitimate reasons not to proceed. To guard against this imbalance, Congress should require potential lessees to meet specific standards *before* OCS lease tracts are sold. For example, Congress should prohibit the sale of oil and gas leases unless and until operators have demonstrated their ability to respond effectively to an oil spill in real-world conditions in a given area. Congress should ensure safety and improve agency decision making by imposing quantitative standards that are rigorous, but realistic. Congress could, for example, prohibit lease sales unless and until potential operators demonstrate that they can remove a specific percentage of oil from a worst-case scenario spill in the area of the OCS proposed for leasing.
- Congress should also require all OCS leases to include more rigorous safety and technology provisions. The government should develop and enforce its own technology standards for environmental and safety performance. For example, Congress could require OCS leases to provide that no exploration or development is allowed unless OCS operators demonstrate that they are using the most effective safety technology, regardless of cost. Congress should also require MMS to incorporate into OCS leases environmentally protective timing and location stipulations to reduce the potential for environmental damage and harm to coastal communities.
- Congress should also eliminate the provision of OCSLA that requires approval of an exploration plan within thirty days of the date the exploration plan is submitted. Currently, this requirement does not preclude MMS from conducting a thorough environmental analysis; MMS could complete a NEPA analysis before it deems an exploration plan submitted, for example. However, the thirty-day requirement has caused confusion and given MMS an excuse to rush its environmental analyses—or avoid them altogether—through the use of categorical exclusions. Congress should eliminate the 30-day deadline under which MMS must approve a “submitted” exploration plan to facilitate more rigorous NEPA analysis.
- At the exploration, development and production plan stages, the National Oceanic and Atmospheric Administration (NOAA and and the U.S. Fish &

³ Congress could define important ecological areas as geographically delineated areas which by themselves or in a network have distinguishing ecological characteristics, are important for maintaining habitat heterogeneity or the viability of a species, or contribute disproportionately to an ecosystem’s health, including its biodiversity, function, structure, or resilience. For example, important ecological areas could include areas of high productivity or diversity; areas that are important for feeding, migration, or the lifecycle of species; or areas of biogenic habitat, structure forming habitat, or habitat for endangered or threatened species.

Wildlife Service (FWS) must issue permits or consult under the Marine Mammal Protection Act (MMPA), Magnuson-Stevens Fisheries Conservation and Management Act (MSA) and the Endangered Species Act (ESA). Similarly, the Environmental Protection Agency (EPA) may have responsibilities under the Clean Air Act and the Clean Water Act. Greater participation by these agencies in the five-year planning process and the preparation of associated NEPA documents will improve analysis and decision making as they carry their responsibilities under these statutes.

II. AMEND THE PROCESS FOR OCS ENVIRONMENTAL REVIEW, PLANNING AND DEVELOPMENT

The current process for administering oil and gas activities on the OCS can be improved by a series of targeted changes. First, expert agencies beyond MMS should have a much greater role in decisions about and preparation of environmental analyses for OCS oil and gas activities. Second, both five-year programs and individual lease sales should identify with greater precision areas of the OCS that will be subject to leasing; area-wide lease sales should be eliminated. Third, the statute should include explicit requirements governing the type of NEPA analysis that must be prepared at each stage of the OCSLA process.

A. The Secretary of Commerce should jointly develop and prepare five-year oil and gas leasing programs.

Congress should change Section 18 of OCSLA so that the Secretary of Commerce, who has resource protection responsibilities under the Marine Mammal Protection Act, the Endangered Species Act and the Magnuson-Stevens Fishery Conservation Act, is an equal partner in making initial decisions about if, when, where and how to allow oil and gas leasing, exploration and development on the OCS.

B. MMS and NOAA should jointly prepare NEPA documents for all OCS oil and gas activities, with input from other resource agencies and local experts.

To ensure that environmental analyses for OCS oil and gas actions are sufficiently comprehensive, Congress should amend OCSLA to require that NOAA and MMS jointly prepare NEPA documents. *See* 40 C.F.R. § 1501.5(b) (“Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement . . .”). NOAA’s broad ocean expertise and its role as a natural resource trustee will help ensure that environmental analyses contain a proper range of reasonable alternatives and assess accurately the risks of oil and gas activities. Congress should specify that other administrative agencies with relevant expertise, including USFWS, USGS, EPA, and others, contribute to the NEPA process as cooperating agencies. *See* 40 C.F.R. § 1506 (describing role of coordinating agencies). All agencies participating in the process should identify areas that must be off limits to oil and gas activities due to unavoidable and unacceptable impacts on other marine resources as well as areas of special concern. The lead agencies should adopt the resource agencies’ recommendations as to areas to be off limits to leasing, and disputes between or among agencies should be referred to the Council on Environmental Quality (CEQ) for resolution. The statute should also require that the Secretary solicit and take into account local and traditional knowledge from affected communities.⁴ This would ensure that expert concerns are heard from the outset, and could help avoid complications later in the process. Affected states and local governments must also be partners in preparation of the NEPA analyses.

C. Alternatively, concurrence should be required by the Secretary of Commerce on five-year programs and NEPA documents for all offshore oil and gas activities.

An alternative to joint preparation of five-year programs and NEPA analyses is for Congress to require the Secretary of the Interior to obtain the concurrence of the Secretary of Commerce and other natural resource agencies as appropriate for both five-year OCS programs and for NEPA documents related to offshore oil and gas activities. A model for this approach is the requirement under section 404 of the Clean Water Act for concurrence by the Administrator of the Environmental Protection Agency for dredge spoil disposal permits by the Army Corps of Engineers.

⁴This requirement is particularly necessary in the Arctic, because of the cultural importance of ocean resources, the value of local and traditional knowledge, and the difficulty in engaging with Arctic communities.

D. The agencies should narrowly tailor planning and leasing decisions.

As a matter of policy, in developing five-year leasing programs during the past several decades, the Secretary of the Interior has defined “planning areas” that encompass tens or even hundreds of millions of acres. These planning areas are much larger than specific areas with high oil and gas development potential, and it is impossible to conduct meaningful environmental analyses on planning areas of that scale. Congress should amend section 18 of OCSLA to require five-year programs to identify with greater precision the portions of planning areas that will be open to oil and gas leasing by, for example, placing an upper limit on the percentage of a planning area that may be included in any one five-year leasing program. Alternatively, Congress could require MMS to focus individual lease sales on specific lease tracts, rather than offering enormous portions of planning areas.⁵ It is also possible to require government oversight of seismic data collection so that the data can be used to more precisely define areas to be offered for lease.

E. Congress should mandate that environmental review adequately consider every stage of the oil and gas leasing and development process.

Under current law, agency practice and judicial interpretation, the segmented nature of the OCSLA process has resulted in poor quality NEPA analysis. At the five-year plan and lease sale phases, MMS’s broad, generalized NEPA documents gloss over important issues and potential environmental impacts. Instead of filling in those gaps with detailed, site-specific information, later NEPA analyses—if any—largely recapitulate the information contained in previous documents. This analytical shell game results in a failure to analyze important effects on the human environment and missed opportunities to develop alternatives to the proposed actions. Congress should prevent this by mandating specific requirements for environmental analysis at each stage in the OCSLA process and requiring full, site-specific analysis of exploration and production as early as possible.

OCSLA should state explicitly that preparation of a national five-year program is a major federal action significantly affecting the quality of the human environment that requires the preparation of a programmatic Environmental Impact Statement (EIS). The NEPA analyses must assess fully the effects of oil and gas development and specifically must include an assessment of the effect of a 5-year schedule on any potential future alternative energy source or use of the OCS.

Congress should also explicitly require that a site-specific EIS be prepared at the lease-sale stage. As noted above, Congress should foster more meaningful environmental analysis by limiting lease sales so that they are targeted toward specific lease tracts rather than large sections of planning areas. Smaller lease sales will allow for site-specific analysis in lease-sale EISs. These site-specific lease sale EISs must include a full assessment of the effects of exploration and development. Current interpretation of OCSLA falsely treats the stages of oil and gas production as unrelated. As a result, MMS’s NEPA analyses fail to address fully the effects of all aspects of oil and gas operations. For NEPA purposes, agencies should assume that exploration and development will follow the lease sale stage, and should assess all impacts from such exploration and development before leases are sold.

In addition to analyzing site-specific impacts of exploration and development, lease-sale EISs must include rigorous cumulative impact analyses to avoid the potential for geographic segmentation. They must also include an analysis of the potential impacts of a catastrophic oil spill—even if such an event is perceived to be unlikely—from the activities that could flow from the lease sale. NEPA analyses must also include a meaningful consideration of local and traditional knowledge. Categorical exclusions under NEPA must not be allowed for any OCS activity.

At the exploration or development stage, changes that have occurred since the lease sale EIS, or new information about projected impacts, will require preparation of a new or supplemental EIS to ensure that the effects of all aspects of oil and gas operations are assessed in an EIS. This is especially likely in frontier areas, or when operators intend to use new technologies. If the effects of exploration and development have been assessed fully at the leasing stage and there are no changes or new information, an Environmental Assessment (EA) should be prepared to assess impacts and determine whether an EIS is necessary, or whether a finding of no significant impact is adequate.

⁵ Including the recommendations of NOAA and other expert entities as to areas where oil and gas activities should not occur due to unacceptable impacts to living marine and coastal resources will also serve to narrow the scale of the 5-year plan offerings.

III. REQUIRE EFFECTIVE OIL SPILL PREVENTION AND RESPONSE

In the Oil Pollution Act of 1990 (OPA 90), Congress directed the President to “issue regulations which require an owner or operator of a tank vessel or facility . . . to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.” 33 U.S.C. § 1321(j)(5)(A)(i). According to that statute, such spill plans must “identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge.” 33 U.S.C. § 1321(j)(5)(D)(iii) (emphasis added).

As the Deepwater Horizon tragedy has shown irrefutably, these requirements and the regulations promulgated pursuant to them are inadequate. The basic problems are as follows:

- There is a complete lack of accountability. Neither the law nor the regulations require operators to demonstrate that the spill response plan could be effective. There is no requirement that the Department of the Interior verify that the technologies proposed for use have been shown to work, that the vessels and other capacity on scene would be sufficient, or that coordinated efforts could be successful. Nor is there a standard against which the government can evaluate the company’s description of the worst-case discharge. In short, there are no standards against which the government can measure the adequacy or likely effectiveness of a spill response plan.
- There is no requirement for federal or state response capabilities. In other words, if a spill were to exceed the response capacity (as it has in the Gulf of Mexico), there is no requirement that other vessels or capacity be able to respond. This problem is particularly acute in the Arctic, where response capacity is nearly 1000 miles away.
- Technical standards are insufficient, and could be improved by requiring redundancy, requirements for relief well drilling, better modeling and studies of dispersants proposed for use.
- There should be no limit on liability for damages resulting from oil spills to ensure that the full cost of economic and environmental damages is recovered.

In developing spill response needs for specific geographic areas the following steps should be conducted:

- Conduct an Oil Spill Risk Assessment to provide a comprehensive evaluation of the oil spill risks from oil and gas activity, and to identify priority risk reduction measures that can be implemented to reduce oil spill risks.
- Assess oil spill response capacity. Evaluate the capacity of spill response systems (including dedicated equipment, vessels, and personnel available to respond to an oil spill). Use scenario analyses to examine the capabilities and limits of available technologies to respond to potential oil spills identified through a Spill Risk Assessment. Establish an ongoing testing and evaluation program to further refine available technologies and develop new technologies for offshore oil spill response.
- Conduct an oil spill response gap analysis. A “response gap” exists whenever environmental conditions exceed the operating limits of oil spill cleanup equipment. An oil spill response gap analysis will quantify the operating limits of the oil spill response systems available and will calculate how frequently those operating limits are reached in the area of oil and gas operations.
- Ensure the process is transparent and scientifically rigorous. All meetings, reports, and work products should be available for public and stakeholder review and input. All research projects and products should be peer reviewed.
- Establish regional citizen advisory councils for oil spill preparedness. One of the most effective provisions of OPA 90 was the creation of a regional panel made up of tribal and community representatives from the Prince William Sound. This body has proven to be effective at ensuring the best spill response and prevention capabilities have stayed in place since the Exxon Valdez oil spill. Congress should consider expanding this model nationwide.

IV. INVEST REVENUES DERIVED FROM OFFSHORE DEVELOPMENT IN OCEAN AND COASTAL CONSERVATION AND RESTORATION

The Deepwater Horizon spill provides a harsh reminder of the impacts of human activities on the health of marine ecosystems. To address these threats, Congress should establish permanently appropriated, dedicated funding for ocean, coastal, and Great Lakes conservation and management. There is a compelling logic in taking public revenues derived primarily from the extraction of non-renewable ocean

resources and investing them in the conservation and management of renewable resources. Such a financing scheme will pay rich dividends long after the oil and gas coming from our oceans has been used. A good model for this is section 605 of the CLEAR Act, introduced last year by Chairman Rahall. The bill would cover ten percent of OCS revenue into the fund each year. This would provide approximately one billion dollars annually for ocean and coastal management. The proposed trust fund would be used to support three classes of activities for protection, maintenance and restoration of marine ecosystem health: grants to states based on a formula similar to that used to allocate funds under the Coastal Zone Management Act; competitive grants for ocean conservation and management available to public and private entities; and grants to support regional ocean partnerships.

In addition, as the events of the last two months have revealed, the technology and capacity to prevent, respond to and restore damage from oil spills is woefully inadequate. We need to find balance between extraction capability and response and recovery capability. Congress should revitalize the Oil Spill Liability Trust Fund by increasing revenue going into it, and by making substantial funding available for research and development of oil spill prevention, response and recovery technologies and techniques.

CONCLUSION

The tragedy in the Gulf of Mexico makes it all too clear that we simply must make better decisions about the management of our offshore energy resources, for the safety of offshore workers, for the health of our oceans and coasts, and for the coastal communities that depend on them. The OCSLA, and its implementation over many years, has allowed offshore development that is too focused on extraction and insufficiently focused on ensuring safety and protecting the environment. The flaws in our offshore development process have long been known, but until now the political will to change the system has largely been lacking. Our system of government often responds best in a crisis. If any good can come from the Deepwater Horizon spill, perhaps it is that Congress will find the impetus to reform the laws governing offshore development and response to oil spills.

Mr. Chairman and members of the Committee, we look forward to working with both Congress and the Administration to ensure that the health of our oceans and coasts is protected as we meet our nation's energy needs. This should not be an either or proposition.

Mr. COSTA. Thank you, Mr. Mann. I appreciate your testimony. And our next witness is Mr. Alan Spackman, Vice President of the Offshore Technical & Regulatory Affairs for the International Association of Drilling Contractors. Mr. Spackman.

STATEMENT OF ALAN SPACKMAN, VICE PRESIDENT, OFFSHORE TECHNICAL & REGULATORY AFFAIRS, INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

Mr. SPACKMAN. Thank you, Chairman Costa, members of the Committee. I want to thank you for the opportunity to speak to you here today on the restructuring of the MMS and how the implementation of a Health, Safety and Environmental Case might affect the restructuring effort.

While IADC opposes the moratoria imposed on offshore drilling, IADC does support many of the recommendations made by Secretary Salazar in his 27 May report to the President. One such recommendation is the adoption of a safety case requirement based on the 2009 IADC HSE case guidelines to be imposed on deepwater drilling.

By using a risk-based approach to the analysis of hazards a safety case provides a tool for the assessment of new technology and the development of controls to manage the associated risks without the protracted delays inherent in the development of prescriptive regulations. I will address why many have chosen to implement a

safety case, what are the prerequisites to successfully implementing a safety case, how key parts of a safety case are developed, and the challenges to implementing a safety case in the United States.

Historically, the safety case has served three principal functions. Its primary use allows companies to identify hazards in the workplace and establish the risk management controls needed to meet their internal health, safety and environmental objectives.

As the capability of a safety case to assist in meeting internal objectives was recognized, its use was broadened and companies began to ask their contractors to implement a safety case. Regulatory bodies were not far behind in establishing their own, sometimes differing, objectives.

What are the prerequisites? A company implementing a safety case must have a robust and effective management system to assure the output of a safety case is reflected in the workplace. The commitment to implementing a safety case must be ongoing. There must be a constant learning in the workplace and feedback into the risk management process. If a safety case is to be effectively used to address external goals, there must be a dialogue leading to clear understanding and incorporation of either the client's or the regulator's expectations into the safety case.

The three main elements in the development of a safety case are: the identification of major hazards and events, and the assessment of risk control measure to prevent and mitigate the hazards and integration of these measure into operations.

While each safety case will be unique, for offshore drilling there are a number of commonly recognized hazards. Fourteen such hazards are shown on this slide. Regulatory jurisdiction over each of these hazards is spread across multiple agencies. Jurisdictional issues between agencies can adversely influence effective development and implementation of a safety case.

A team identifies the risk control measures necessary to prevent the unwanted event from occurring as well as measure to mitigate the effect should the event occur despite the precautions. A team then reviews equipment design, operating instructions, training plans, emergency response plans, et cetera, in order to provide a means to implement the control measures.

What are our immediate challenges? The Secretary's report says the safety case will be imposed by emergency rulemaking. IADC is concerned that this process will not allow for the dialogue necessary for industry and DOI to reach a mutual understanding of DOI's specific goals for the safety case.

The report recommends that a well construction interface document accompany the safety case. There are presently no government or industry guidelines that describe the content of such a document. A dialogue is urgently needed so as to understand DOI's expectations regarding the content of this document.

The Coast Guard shares jurisdiction over offshore drilling operations with the Department. MMS had worked with the Coast Guard to clearly identify boundaries on areas of individual and mutual regulatory concern. We are concerned that with the safety case these boundaries may shift.

Review of the safety case will require a cadre of personnel with the knowledge and experience to address the full scope of the identified hazards and risk control measures addressed in the document. Their experience must match that of the team that develops it. There will also be a need for auditors to assess the implementation of the safety case both onshore and offshore.

For its part, IADC is committed to assisting in drilling contractors to implement the safety case, sustaining a dialogue with the oil companies to facilitate safety case implementation, and engaging the Department to facilitate a mutual understanding for safety case expectations.

Thank you.

[The prepared statement of Mr. Spackman follows:]

Statement of Alan Spackman, Vice President, Offshore Technical and Regulatory Affairs, International Association of Drilling Contractors

The International Association of Drilling Contractors

The International Association of Drilling Contractors (IADC) is a trade association representing the interests of oil-and-gas and geothermal drilling contractors worldwide. IADC's contract-drilling members own virtually all of the world's land and offshore drilling units and drill the vast majority of the wells that produce the planet's oil and gas. This includes all mobile offshore drilling units (MODUs) operating in areas under the jurisdiction of the United States and nearly all MODUs operated under competitively-bid contracts worldwide. IADC's membership also includes oil-and-gas producers, and manufacturers and suppliers of oilfield equipment and services.

Founded in 1940, IADC's mission is to improve industry health, safety and environmental practices; advance drilling and completion technology; and champion responsible standards, practices, legislation and regulations that provide for safe, efficient and environmentally sound drilling operations worldwide. IADC holds Accredited Observer status before two specialized agencies of the United Nations, the International Maritime Organization and the International Seabed Authority. The Association is a leader in developing standards for industry training, notably its Well Control Accreditation Program (WellCAP)® and rig-floor orientation program, RIG PASS®. IADC is headquartered in Houston and has offices in Washington D.C., the Netherlands, Thailand, and the United Arab Emirates, as well as chapters in the UK, Venezuela, Brazil, Australasia, South Central Asia, Southeast Asia, the Middle East and across the United States.

Increased Safety Measures for Energy Development on the Outer Continental Shelf

While IADC strongly opposes the blanket moratorium imposed on deepwater drilling operations, IADC recognizes value in many of the recommendations contained in the Department of Interior's "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (DOI Report). IADC specifically supports the recommendations for: the development of more rigorous requirements for well design and training. IADC also supports enhanced organizational and safety management through the adoption of safety case requirements based on the 2009 IADC Health, Safety and Environmental Case Guidelines for Mobile Offshore Drilling Units; mandating Well Construction Interfacing Documents for deepwater drilling operations; and the development of regulations for Safety and Environmental Management Systems. It is on these last three, integrally-related items, that IADC will focus.

What is a Health, Safety and Environmental (HSE) Case?

The DOI Report recommends adoption of safety case requirements based on the 2009 IADC Health, Safety and Environmental Case Guidelines for Mobile Offshore Drilling Units (IADC Guidelines) through emergency rulemaking.

The IADC Guidelines recognize that a HSE Case serves three primary purposes:

1. To demonstrate in a structured way that a Drilling Contractor's risk-reducing controls can achieve the organization's established goals for health, safety, environmental and security performance;
2. To demonstrate to clients that its management system's risk reducing controls meet the client's defined expectations relating to health, safety, environment or security; and

3. To demonstrate to regulators that its management system's risk reducing controls meet the regulator's defined expectations relating to health, safety, environment or security.

Developing and maintaining a HSE Case provides continuous assurance that existing HSE risks are effectively managed and provides assurance that risks associated with changes to equipment, activities or locations, as well as systemic weaknesses identified by incident analyses and audits, will be effectively managed.

The evolution of the Safety Case as a regulatory tool

It is only possible to achieve absolute safety if as a society we do not undertake hazardous activities. However we know that the application of technology brings great benefits to us as a society. The skill comes in exploiting potentially hazardous technology while minimizing the risks – accepting that it is not possible to totally eliminate all risks.

The concept of regulatory bodies using the mechanism of a Safety Case as a tool to help manage safety risks is not new. The tool first gained widespread use in the nuclear power industry. As the use of Safety Cases became more prevalent, it became evident that the same techniques could be used to address health and environmental risks, and this expanded tool became known as a HSE Case. More recently, the tool is also being applied to security.

Use of the tool by regulatory bodies continues to expand, particularly in the offshore oil and gas industries. This is evidence of the value of the concept of moving from prescriptive regulations, which due to the time and effort to produce, apply static and often outdated controls to reduce risk, to a more adaptive performance-based approach to regulation.

The offshore oil and gas industries focused on the Safety Case concept after the 1988 explosion and fire on the Piper Alpha production platform in the UK sector of the North Sea, which resulted in 167 fatalities.

The Piper Alpha investigation led to the recognition that the existing system of prescriptive regulation was unsustainable. Not only could prescriptive regulations never keep pace with changes in technology, they served to foster a mentality under which compliance with the prescriptive minimum regulatory requirements was presumed to adequately address the risks in the workplace. This led the UK Parliament to eliminate most (but not all) prescriptive safety regulations for the offshore oil and gas industry. In their place, the U.K. mandated that a Safety Case be developed by the owners and operators of offshore facilities and submitted for acceptance by the UK Health and Safety Executive. The legislation and regulations describe objectives for the control of major hazards (i.e., those with the potential to result in fatalities). Duty holders then must justify that the equipment and methods used will achieve these objectives so as to fulfill the regulatory obligations. Complementing the Safety Case legislation and regulations are Approved Codes of Practice (approved or issued by government), government-issued guidance documents and industry standards. At this time, the U.K.'s Safety Case does not directly address environmental risks; however, the risk-reduction controls necessary to reduce safety risk are often the same as those necessary to control environmental risk.

Norway's move from a prescriptive to a performance-based approach to regulating the offshore oil and gas industries has been more evolutionary in nature. As its approach has evolved, it has moved toward an integrated scheme for controlling health, safety and environmental risks that recognizes the use of a Safety Case as a tool for managing these risks. While doing so, it has moved away from 'inspection' and has adopted an approach of 'supervision.' Approval of plans and activities has been replaced by acceptance or consent. The 'supervision' takes the form of audits, verification and investigations, to which a great deal of transparency is provided by timely posting of results on the Internet. Among regulatory agencies having similar responsibilities, the Petroleum Safety Authority (PSA) is unique in its expenditure of effort and resources to interact with the industry and the workforce in order to keep abreast of changes in technology, to understand the challenges facing offshore operations and move toward mutually acceptable solutions to those challenges.

Norway does not require the submission for acceptance of a Safety Case. It was considered, but it was concluded that the proper processing of a Safety Case by the regulator is a very resource demanding exercise which does not add to safety. Further, it is Norway's view that acceptance of a Safety Case inevitably transfers parts of the operator's responsibility to ensure compliance with statutory requirements on to the regulator. "Perhaps not really in a legal sense – but morally", according to PSA's Director General, Magne Ognedal. This said, PSA does require that operators do the same risk assessments and describe how they intend to control identified risks similarly to the way they would in a Safety Case regime. Their documented assessments and calculations (or parts of them) must be kept and handed over to

PSA should so require. To complement its performance based approach, PSA commissions numerous studies addressing identified areas of concern and actively participates in the development of non-mandatory guidance which it uses to influence industry in the establishment of performance goals. It also actively participates in the process of developing industry standards, both at a national and international level.

Australia is the country to most recently require a Safety Case. This change was made coincident with a (partial) federalization of health and safety responsibilities previously held by State and Territorial authorities. While Australia's National Offshore Petroleum Safety Authority (NOPSA) adopted a Safety Case approach, its underlying legislative authority did not extend to well operations. This shortcoming was highlighted by the 2009 Montara platform blowout and subsequent fire that consumed the (then unmanned) MODU, *West Atlas*. The Montara Commission of Inquiry is scheduled to release its report this month. It is expected that his report will recommend changes to the regulatory regime to expand the authority of NOPSA, but retain the Safety Case approach.

Other countries that already mandate use of a Safety Case or HSE Case for offshore oil and gas activities include: Cuba, Denmark, Faeroe Islands, Germany, Ireland, Italy, the Netherlands, and New Zealand. Countries that are reportedly considering implementation of a Safety Case or HSE Case approach include: Angola, Brazil, Canada (independently in provincial and Federal jurisdictions), India, Malaysia, Oman, Qatar, Senegal, South Africa and Trinidad and Tobago.

Each of the jurisdictions that have adopted a Safety Case or HSE Case approach has done so within the context of its own culture, and often within the constraints of legislative boundaries or competing legislation. This has resulted in considerable contrasts:

- Some jurisdictions require a Safety Case, but do not explicitly mandate that there be an auditable safety management system in place to implement the controls necessary to reduce the risk associated with those hazards.
- Some jurisdictions look for the Safety Case to integrate concerns of occupational health, safety, and environment at all potential risk levels, while others only explicitly require analysis of hazards capable of producing multiple fatalities.
- Some jurisdictions attempt to quantitatively set acceptable risk thresholds in terms of exposure rate, while others seek to assure that risk is 'as low as reasonably practicable.'
- In some jurisdictions the regulators actively and cooperatively work across the jurisdictional boundaries of their individual regulatory agencies to holistically address health, safety and environmental risk associated with all activities, while in other jurisdictions the regulator's view is narrowly constrained to its underlying regulatory authority, even though its regulations may demand a Safety Case addressing all hazards.

Some oil companies require contractors to provide a Safety Case as part of the bidding process and/or prior to commencing operations.

Development of the IADC Guidelines

In response to the UK's implementation of Safety Case regulations following the Piper Alpha, IADC commissioned the development of a workbook to assist drilling contractors in the preparation of a Safety Case in accordance with the UK requirements. While this workbook served to improve understanding of the requirements of the new regulations, its attempt to rely on quantitative risk assessment for extremely low probability but high consequence events was not seen as leading to control measures that would lead to residual risk (risk after the application of control measures) that met the regulatory objective of being "as low as reasonably practicable." Further, while the workbook output addressed the regulatory mandate, it was cumbersome and the results were not easily communicated to the workforce. IADC members saw the need for improvement.

As additional countries in the North Sea region began implementing their own (differing) Safety Case requirements (or in the case of those also addressing environmental concerns, HSE Case requirements) IADC members sought an approach to the development of a HSE Case that would overcome the shortcomings of the workbook and could be used to satisfy regulatory mandates in multiple regulatory jurisdictions as their MODUs moved among countries in response to market conditions. Because MODUs are also subject to maritime requirements imposed by both flag-State authorities and the maritime authorities of the coastal State in which they operate, IADC members saw value in assuring that the management system embodied in a Safety Case would meet the requirements of the International Maritime Organization's (IMO's) International Management Code for the Safe Operation of

Ships and for Pollution Prevention (ISM Code). Further, as several of the large integrated oil companies that employ IADC-member MODUs impose contractual requirements for a HSE Case, IADC has attempted to assure that the IADC guidance would produce a HSE Case meeting their expectations.

In fulfillment of these demands, in February 2003, IADC issued the first edition of the IADC Health, Safety and Environmental Case Guidelines for Mobile Offshore Drilling Units. These Guidelines have been structured to provide reasonable assurance that, by following the Guidelines, a rig owner, can produce a HSE Case that will satisfy the Safety Case or HSE Case requirements of those co-operating countries for which a cross-reference between their regulatory requirements and the Guidelines has been developed, *i.e.*, Australia, Denmark, Germany, Italy, Netherlands, Norway and the United Kingdom. These Guidelines remain under continuous review.

IADC makes these Guidelines freely available for downloading from the internet at: <http://www.iadc.org/hsecase/index.html>

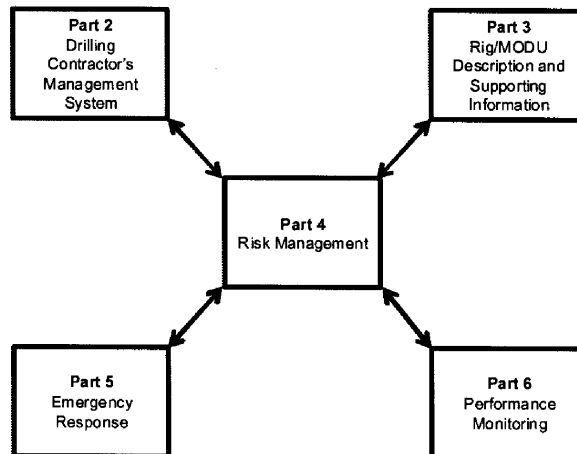
IADC would welcome the opportunity to work with the Department of Interior's newly-established Bureau of Safety and Environmental Enforcement¹ towards including the United States in the list of countries for which a HSE Case produced following the Guidelines will satisfy their regulatory requirements. We believe this would be of benefit both to our members, their clients and to the United States. IADC sees some challenges in this regard; however, we do not believe they are insurmountable.

Principles of the IADC Guidelines

The IADC Guidelines consist of six parts and a series of supporting appendices.

Part 1—Introductions consists of an introduction and a description of typical internal (*i.e.*, self-imposed by the drilling contractor) and external (e.g., client and regulatory body) expectations. Importantly, appendix 4 of the Guidelines contains a series of cross-references between the relevant regulations of the cooperating regulatory bodies, and the ISM Code, in order to provide assurance to these stakeholders that their expectations will be met by a HSE Case produced following the Guidelines.

The remaining five parts are interrelated, and centered on risk management, as shown in the following diagram.



Part 2—Drilling Contractor's Management System describes the Drilling Contractor's management system and presents objectives that must be met to demonstrate assurance that HSE risks are reduced to a tolerable level. For purposes of regulatory compliance, the elements of the management system in the Guideline have been carefully selected for consistency with the ISM Code. This does not demand that a specific format be utilized; rather, the company should be able to demonstrate, through cross-reference, that any mandatory elements are being met. Reg-

¹Throughout this testimony, references to the Minerals Management Service (MMS) should be understood to be references to the Bureau of Safety and Environmental Enforcement.

ulatory bodies attempting to audit management systems must have specialized skills and training to do so effectively. There are applicable industry standards for such auditors (e.g., ISO 10011).

Recognizing that many of the risks associated with the operation of MODUs are associated with the specific activities to be performed under the drilling contract the Guidelines include provisions addressing alignment of the Drilling Contractor's management system with that of the client through the creation of bridging documents.

Because of the breadth of references consulted in the development of the management system guidance within the Guidelines, it is IADC's view that this portion of the HSE Case will satisfy the requirements that will be proposed for Safety and Environmental Management Systems in fulfillment of the DOI Report.

The methods of achieving the objectives of the management system are considered in the risk management undertaken in accordance with the process for risk management described in Part 4 of the Guidelines. However, it is important to recognize that only through an effective management system can the implementation and functionality of the risk controls be assured.

Part 3 – MODU/Rig Description and Supporting Information describes the equipment and systems necessary to meet the objectives described in the management system and to fulfill the requirements of the Contractor's Scope of Operations. In developing this section, and the Scope of Operations, it is necessary to compile detailed information about the MODU and its equipment.

Critical operating limits for a broad range of equipment and primary structure, as established by the design criteria (or risk tolerance, if lower) must be documented. Limits for items ranging from the primary hull structure of the MODU to switches used to assure shut-down of machinery must be considered. Thus, it is far easier to complete this part during the design and construction of a new MODU than it is to assemble the required information for an existing unit.

In understanding and setting the operating boundaries there is heavy reliance on applicable standards such as those developed and maintained by classification societies (e.g., the American Bureau of Shipping or Det Norske Veritas) and standards developing organizations such as the International Organization for Standardization (ISO) and the American Petroleum Institute (API). Prescriptive regulations, where applicable, may also dictate the operational boundaries that are established. This reliance on standards demands that the persons developing this portion of the HSE Case understand the standards that are cited, their applicability and their limitations. To function effectively, regulatory bodies assessing the HSE Case must have a cadre of personnel that are similarly competent.

Again, the residual risks associated with the MODUs equipment and systems, after the application of any applicable design standards, must be assessed in the risk management under Part 4.

Part 4 – Risk Management describes the Risk Management Process for assuring that the risks associated with a Contractor's Scope of Operations are reduced to a level that is tolerable to the Drilling Contractor and other stakeholders.

As illustrated in the above graphic, the Risk Management Process is at the heart of the HSE Case. The process must consider the management objectives (Part 2) and the systems and equipment (Part 3). Any gaps related to the objectives in Parts 2 and 3 that are identified in Part 4 must be addressed through the Contractor's management system. The Risk Management Process described in the Guidelines has been developed to comply with requirements of:

- The cooperating regulatory bodies in Australia, Denmark, Germany, Italy, Netherlands and the United Kingdom; and
- The ISM Code.

As earlier noted, regulatory bodies requiring the production of either a Safety Case or a HSE Case have differing requirements for the hazards that they require to be assessed, and their risk tolerability limits. The Guidelines attempt to identify these differences so as to facilitate regulatory compliance and generally suggest that an "all hazards" approach be undertaken.

In no operating area or condition is a HSE Case developed *de novo*. There is always some empirical evidence of the major hazards, and there have often been prescriptive regulatory requirements, or industry guidance and standards developed to address these hazards. The Guidelines contain a list of major hazards that are commonly encountered. There are often multiple regulatory bodies that exercise jurisdiction over the hazard and/or associated risk control measures.

The following table lists these hazards and, for typical MODU operations in the U.S., identifies the regulatory agencies having jurisdiction over associated risk control measures. (This list is intended as illustrative, not exhaustive.)

Hazard	Agencies exercising some jurisdiction over preventive control measures **
Attack or terrorist activity	FAA, FBI, FS, TSA, USCG
Blowout (loss of well control)	EPA, MMS, USCG
Explosion	FS, MMS, USCG
Events from adjacent installations	MMS
Epidemic or Pandemic	CDC, USCG
Fire	FS, MMS, USCG
Diving operations	MMS, USCG
Dropped objects	FS, MMS, USCG
Helicopter crash	FAA, USCG
Loss of stability	FS, USCG
Major mechanical failure	FS, USCG
Mooring or Station keeping failure	FS, MMS, USCG
Seismic activity	FS, MMS, USCG
Ship collision	FS, USCG
Structural failure	FS, MMS, USCG
Toxic release	EPA, FAA, FS, MMS, USCG
Weather and storms	FS, MMS, NOAA, USCG

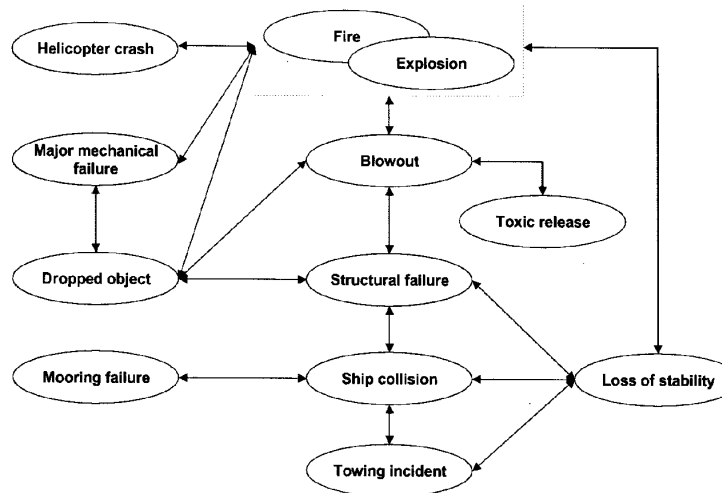
** Does not include possible jurisdiction to conduct an investigation following incident

CDC=Center for Disease Control & Prevention, EPA=Environmental Protection Agency, FAA=Federal Aviation Administration, FBI=Federal Bureau of Investigation, FS=Flag-State maritime authority, MMS=Minerals Management Service, NOAA=National Oceanic and Atmospheric Administration, TSA=Transportation Security Administration, USCG=United States Coast Guard

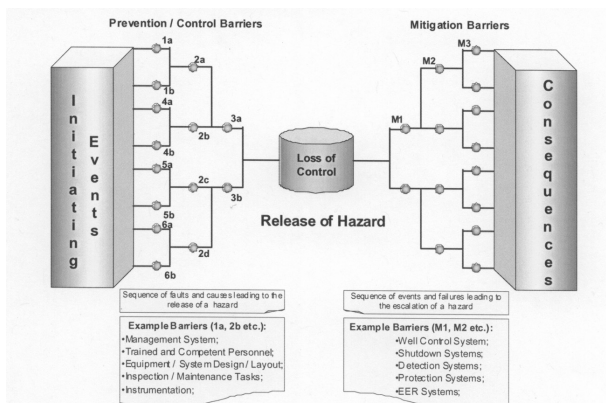
As illustrated above, in the U.S., there are a number of regulatory agencies whose activities affect MODU operations and whose exercise of jurisdiction, often with prescriptive regulatory requirements, must be considered in developing a HSE Case.

A similar situation exists internationally. This can be a particular frustration to MODU owners when, for example, a regulatory body demanding that risk reduction measures be introduced to control a particular hazard does not acknowledge that the application of that measure may be constrained by another agency.

To further complicate matters, there may be complex interrelationships between these hazards. This is illustrated in the following graphic.



A key element of risk management is a structured hazard identification and control process. The Guidelines recommend that this process be based upon international standards (ISO 17776). The following diagram provides an example representation of a hazard scenario evaluation, with the identification of the associated risk management barriers.



Having been so identified, the barriers can then be assessed for their criticality and effectiveness, responsibility assigned for their maintenance, and arrangements made for their verification, as appropriate. It can be appreciated that in a complex facility, such as an operating MODU, there will be thousands of barriers identified.

Regulatory bodies often impose prescriptive requirements with regard to certain barriers, for example, certified training of key personnel, testing of alarm systems, periodic inspections, etc.

Part 5 – Emergency Response describes the objectives for emergency response of incidents—to mitigate the consequences (severity) identified as part of the risk management process in Part 4 and the measures to recover.

Topics addressed in the Guideline include emergency response management for all contingencies, command and communication, training and evacuation and escape.

Many of the risk controls associated with emergency response, particularly with respect to incidents that cannot be controlled entirely on the MODU, rely on external resources. These are often provided by the client under the terms of the contract, and must be specific to the jurisdiction in which the operations are to take place. These are addressed in the bridging arrangements.

Once again, the residual risks associated with emergency response must be assessed in the risk management process under Part 4.

Part 6 – Performance Monitoring describes arrangements for monitoring to ensure that the risk management measures identified (Part 4) are implemented, maintained and effective at the workplace.

Topics addressed in the Guideline include: performance monitoring, incident reporting and analysis, behavior-based observation systems, health and environmental monitoring and measurement, audit and compliance, verification of critical activities and equipment, and the role of certification. The Guidelines generally encourage feedback into the management process in order to foster continuous improvement.

The Guidelines recognize that regulatory bodies have differing expectations with regard to performance monitoring and may impose specific requirements by prescriptive regulations, e.g., requirements for equipment certification, third-party verifications, or workplace drug testing.

Lessons from Past Experiences

In developing the Guidelines, and observing their implementation in several jurisdictions, IADC has learned several lessons:

Starting out:

- Start the discussion (and it must be a discussion, not a debate) with the risks, not the rules;
- Ensure that the regulatory body is truly empowered to implement the approach;
- Beware of other regulatory policies which may contradict or hinder the adoption of a risk-based approach; and

- Effectively communicate the goal of creating an effective risk-based dialog between industry and regulators, leading to improved safety and environmental performance.

During implementation:

- It will take time;
- There will be significant challenges; and
- Focus beyond the risk-assessment to the goal – It is achievable.

In the longer term:

- Be prepared to make adjustments;
- There will be a continual need for effective communication between industry and the regulator, both on a one-on-one basis addressing individual HSE Cases, and through workshops, conferences, etc.

Well Construction Interface Document

While the DOI Report indicates that there will be a requirement to produce a Well Construction Interfacing Document there is currently no guidance – either from industry or government regarding the appropriate content for such a document.

In IADC's view, the development of such a document would begin within the operating oil company's organization during the project development phase and would need to anticipate the project needs for overall management of project health, safety and environmental management. As project needs are finalized, and services and equipment are contracted, the finalized document would establish a basis for mutual understanding among project participants of individual and mutual roles and responsibilities to manage project-associated risks to personnel health, safety and environment, particularly with regard to equipment suitability and interface, standards for personnel competence and training, reporting responsibilities, the provision of logistical support and emergency response.

IADC is committed to working with other stakeholders to develop a mutual understanding of expectations with regard to the development of the Well Construction Interface Document and seeing that this understanding is reflected in industry guidance.

Challenges associated with implementation of a HSE Case in the United States

Jurisdictional Issues for MMS

Examining the provisions of the OCS Lands Act, IADC is concerned that inappropriate interpretation of the Act might hinder the effective development and implementation of the HSE Case.

(1) 43 USC 1347(c) provides:

The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the outer Continental Shelf.

It could be argued that responsibility for HSE Case regulations, as they address hazardous working conditions, should rest with the Coast Guard rather than the MMS.

While IADC does not subscribe to this view, IADC believes that it is imperative that the MMS work with the Coast Guard to develop an understanding of the numerous provisions of a HSE Case that are affected by Coast Guard regulations and the related maritime regulatory bodies of the various MODU flag-States. This is particularly critical with respect to risk management barriers which are prescribed by such regulations and subject to verification under those regulations – these are likely to be those with which the MMS has no prior experience, e.g., alarms required by maritime regulations for maritime risks.

(2) 43 USC 1348(c) provides:

The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—(1) scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this subchapter, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents;

In the past, the Coast Guard and the MMS have taken divergent views of this provision, with the Coast Guard conducting a general inspection of a facility and

the MMS undertaking a 'component inspection' looking at each control. If the MMS adopts an approach to verification of HSE Case risk control barriers that requires examination or inspection of each such control, it will be overwhelmed. Its inspectors would also require extensive education and training in order to effectively assess the numerous controls that are already subject to examination and verification by maritime regulatory bodies, e.g., controls on fire extinguishing systems on MODUs.

IADC would urge MMS to clearly articulate the scope of its interest in the HSE Case, particularly with regard to:

- Does it extend to areas under Coast Guard jurisdiction?
- Will it adopt a "major hazards" approach or an "all hazards" approach? If the former, what are the thresholds?
- Will it prescribe verification of risk control barriers? If so, by what criteria?

Resource Issues for Industry

While many of the MODUs operating in the deepwater regions of the U.S. OCS have HSE Cases to satisfy their managements' internal needs, these will need to be reassessed against any risk thresholds that MMS may impose through the emergency rule and modified as necessary. This, combined with the very high resource needs of developing the HSE Cases for those existing MODUs and floating facilities with drilling activity that do not already have HSE Cases will create a high demand for resources with the appropriate professional expertise.

Resource Issues for MMS

It is IADC's experience from other jurisdictions that it takes considerable time and effort for the regulator and the HSE Case developer to reach a mutual understanding of risk terminology and risk tolerance thresholds. MMS and those exercising oversight over MMS must understand that this will be a resource-intensive and time-consuming process.

MMS presently has few staff with the requisite competence to facilitate the necessary discussions. With the imposition of the HSE Case requirement by emergency rule, MMS will be directly competing for staff and/or consultants with the requisite specialized knowledge of MODUs, their safety equipment, and their operational procedures. There is also the potential for other jurisdictions that have not yet imposed Safety Case requirements to do so, creating further competition for these resources. MMS will need to be adequately staffed by persons with the requisite competence to both communicate its expectations to industry and review (if they are to be subject to review) the HSE Cases.

Similar concerns exist with the development of mandatory Safety and Environmental Management Systems (SEMS); however, this could be somewhat ameliorated if the MMS rulemaking process allows comments on its HSE Case regulations to be fully considered and prior to the SEMS final rule.

There will be a critical need for MMS to announce its expectations with regard to the content of the Well Construction Interfacing Document and to hold regulatory workshops or stakeholder meetings in order to move quickly toward mutual understanding with industry regarding the ultimate content of this essential document. This must be done in the very near term.

There are numerous other provisions of the DOI Report that require clarification before industry can fully mobilize to address the concerns. Industry is currently developing a list of these concerns for submission to DOI/MMS. A near term response will be urgently needed to sustain this industry's presence and viability in the United States.

NOTE: Attachments have been retained in the Committee's official files.

Mr. COSTA. Thank you very much, Mr. Spackman. During the question and answer period, I will want to get back to you on some of those slides, so whoever is doing those we may want to come back to them and explore a little more about what you consider best management practices.

Our next witness is Mr. Eric Milito?

Mr. MILITO. That is correct.

Mr. COSTA. Like the filter.

Mr. MILITO. Burrito, Milito, I have been called many things.

Mr. COSTA. Mr. Milito is from the American Petroleum Institute. Please begin your testimony.

**STATEMENT OF ERIK MILITO, GROUP DIRECTOR, UPSTREAM
AND INDUSTRY OPERATIONS, AMERICAN PETROLEUM
INSTITUTE**

Mr. MILITO. Thank you, Chairman Costa, and members of the Subcommittee for the opportunity to address the regulation of the offshore oil and natural gas industry.

My name is Erik Milito, and I am the Upstream Director for the American Petroleum Institute. API has about 400 member companies, which represent all sectors of America's oil and natural gas industry. Our industry supports 9.2 million American jobs, including over 170,000 jobs in the Gulf of Mexico related to the offshore development business, and our industry provides most of the energy we need to power our economy and our way of life.

The first thing I would like to say is our thoughts and prayers go out to those families who have lost their loved ones and to the workers who have been injured in this, and to our neighbors along the Gulf Coast who have been affected by this tragic, unprecedented accident. People of the oil and natural gas industry understand our responsibility to find out what happened and why, and we understand that we need to cooperate and work with the government and move forward so that we can improve equipment and the procedures and the offshore operations so we can prevent accidents like this happening again. Our industry's top priority has always been to provide energy in a safe, technologically sound, and environmentally responsible manner. This incident is a sobering reminder to remain focused on efforts to continuously improve operations so that we can safely and reliably provide American with the energy they need.

We support the government's review of the systems that we have in place, and we will take the necessary steps to prevent accidents like this from occurring again. We believe a constructive cooperative relationship between government and industry is critical to promoting safe offshore operations while maintaining a strong offshore oil and gas program. Both are vitally important to producing the oil and natural gas the American consumers need and providing the energy and jobs crucial to the economy in the Gulf Region and the nation. Our goal is to understand the causes of this incident and to correct them.

We understand the concerns many people have about offshore drilling in the wake of this incident. That is why we are committed to meeting the public's expectations for safe and reliable production of our nation's critical energy needs. Access to affordable energy impacts every sector of our economy, every state in our nation, and every American family. We appreciate the opportunity to address the existing regulatory process affecting oil and natural gas development. To be clear, oil and natural gas operators on the Outer Continental Shelf are subject to significant regulatory requirements.

As Secretary Salazar testified last month, the offshore oil and natural gas industry is a very highly regulated industry. There are 27 statutory authorities that apply, 88 Code of Federal Regulation sections, and 24 significant approvals and permits. Furthermore, API and the industry through the standard setting process developed the technologies, best practices and programs needed to help

ensure that workplace safety and environmental stewardship are at the forefront of the offshore oil and gas development process.

Since 1924, API has developed industry standards and practices that promote reliability and safety through the use of proven engineering practices. API standards are developed through a collaborative effort among industry experts, technical experts from the government, and other interested stakeholders. The industry has helped create more than 500 standards, including some 240 exploration and production standards that address offshore operations. Seventy-eight of these standards have been adopted by the Minerals Management Service in their regulations.

As a result of the regulatory framework, industry standards and individual company's safety program offshore oil and natural gas development has been safely conducted for nearly 60 years in the Gulf of Mexico. Within that time more than 42,000 wells have been drilled, including more than 2,000 deepwater wells. But despite those safe operations we know we must now focus on making sure this kind of accident will never happen again.

The industry is committed to a goal of zero fatalities, zero injuries and zero incidents, and the industry has already taken steps to improve safety and environmental performance in the aftermath of the Gulf incident. We have already assembled the world's leading experts to conduct the top to bottom review of the offshore drilling procedures from operations to emergency response.

Two industry task forces that are addressing issues related to equipment and operating practices delivered recommendations to the Interior Department last month. API's commitment to learn from this experience and to make offshore oil and natural gas exploration and production safer will not stop. We intend to use any findings from the incident's investigations to continue to improve technologies and practices to achieve safe and environmentally sound operations. As part of this process, we will continue to develop new API standards and revise and adapt existing standards to raise the bar of performance to a higher level.

As Congress considers these important issues, thoughtful consideration must be given to harmonize the need to protect the environment and the taxpayers while allowing us to safely and reliably provide the energy our nation relies on for economic and energy security. Department of Energy projects that we will need much oil and natural gas to fuel our economy for decades to come. We have the opportunity to develop those resources here at home. We have the ability to do it in a safe and responsible manner.

The responsible path forward is to recognize the important role energy plays in fostering job growth and energy security. Those goals—job growth and energy security—can and should be met through responsible domestic oil and gas development. We look forward to providing constructive input as this Committee, the Congress and the Administration move forward with policy proposals.

This concludes my statement, Mr. Chairman, and I welcome questions from you and your colleagues. Thank you.

[The prepared statement of Mr. Milito follows:]

Statement of Erik Milito, Upstream Director, American Petroleum Institute

Good morning Chairman Costa, Ranking Member Lamborn, and members of the subcommittee. Thank you for the opportunity to address the regulation of the offshore oil and natural gas industry.

My name is Erik Milito. I am the upstream director for the American Petroleum Institute. API has about 400 member companies, which represent all sectors of America's oil and natural gas industry. Our industry supports 9.2 million American jobs – including 170,000 in the Gulf of Mexico related to the offshore development business – and provides most of the energy we need to power our economy and our way of life.

First, our thoughts and prayers go out to the families who lost loved ones, to the workers who were injured, and to all of our neighbors in the Gulf who are affected by this unprecedented and tragic accident. The people of the oil and gas industry understand our responsibility to find out what happened and why, and to work in cooperation with the government to come up with practice and equipment for improving the operational and regulatory process across the board.

Our industry's top priority has always been to provide energy in a safe, technologically sound and environmentally responsible manner. This incident is a sobering reminder to remain focused on efforts to continuously improve operations so that we can safely and reliably provide Americans with the energy they need. We support the government's review of the systems that we have in place and will take the necessary steps to prevent accidents like this from occurring again.

We understand the Administration's desire to restructure the agency overseeing the offshore activity and we are ready to work with MMS or other agencies under whatever system is put in place. We believe that the ultimate goal should be three-fold:

- To ensure that operations are conducted in a safe and environmentally responsible manner;
- To ensure that the oil and natural gas required to meet the nation's energy needs continue to be available for safe and reliable production; and
- To ensure that Americans receive fair value for these critical resources.

API supports thorough environmental analysis and welcomes government scrutiny and oversight of our operations. We support a robust inspection and enforcement program for offshore operations. However, we must ensure the regulatory bodies have the staffing, resources and processes in place to effectively and efficiently perform these functions.

We believe a constructive, cooperative relationship between government and industry is critical to promoting safe offshore operations, while maintaining a strong offshore oil and gas program. Both are vitally important to producing the oil and natural gas American consumers need – and providing the energy and jobs crucial to the economy of the Gulf region and the nation. Our goal is to understand the causes of this incident – and correct them.

We understand the concerns many people have about offshore drilling in the wake of this incident. That is why we are committed to meeting the public's expectations for safe and reliable production of our nation's critical energy needs. Access to affordable energy impacts every sector of our economy, every state in our nation and every American family.

We appreciate the opportunity to address the existing regulatory process affecting oil and natural gas development. To be clear, oil and natural gas operators on the Outer Continental Shelf are subject to significant federal regulatory requirements. As Secretary Salazar testified last month, the offshore oil and natural gas industry "is a very highly regulated industry." For example, there are 27 statutory authorities that apply to OCS oil and natural gas operations, 88 Code of Federal Regulations parts that implement these statutory authorities, and 24 significant approvals and permits that apply.

Furthermore, API and the industry, through the standards setting process, develop the technologies, best practices, and programs needed to help ensure that workplace safety and environmental stewardship are at the forefront of the offshore oil and gas development process.

Since 1924, API has developed industry standards and practices that promote reliability and safety through the use of proven engineering practices. The API standards program is accredited by the American National Standards Institute (ANSI), the authority on U.S. standard setting. It undergoes regular program audits to ensure it meets ANSI's essential requirements of openness, balance, consensus and due process.

API standards are developed through a collaborative effort among industry experts, technical experts from government, and other interested stakeholders. The

industry has helped create more than 500 standards, including some 240 exploration and production standards that address offshore operations. Seventy-eight of these standards are referenced in Minerals Management Service regulations.

As a result of the regulatory framework, industry standards, and individual company safety programs, offshore oil and natural gas development has been safely conducted for nearly 60 years in the Gulf of Mexico. Within that time, more than 42,000 wells have been drilled, including more than 2,000 deepwater wells. But despite those safe operations, we know we must now focus on making sure this kind of accident will never happen again.

The industry is committed to a goal of zero fatalities, zero injuries and zero incidents, and the industry has already taken steps to improve safety and environmental performance in the aftermath of the Gulf incident.

In fact, we have already assembled the world's leading experts to conduct a top-to-bottom review of offshore drilling procedures, from operations to emergency response. And our industry is providing data and expertise to the federal government to stop the flow of oil, clean up the environment, understand the causes and correct them. Two industry task forces that are addressing both short- and long-term issues related to offshore equipment and offshore operating practices delivered recommendations to the Interior Department last month.

While the task forces are not involved in the review of the incident, they did bring together industry experts to identify best practices in offshore drilling equipment and operations. Without the benefit of the final root-cause analysis of the incident, the task forces looked at current industry practices in an effort to immediately move industry standards to a higher level of safety and operational performance. The final report from the Interior Department, dated May 27, 2010 and submitted to the President, incorporated much of the input provided by the task forces.

And, just last week, the industry announced the creation of two additional task forces. API, along with other energy trade associations, has assembled experts to review oil spill and blowout response capabilities. One task force will focus on stopping and containing an oil leak at the wellhead, and one task force will focus on oil spill response at the surface and shoreline.

API's commitment to learn from this experience and to make offshore oil and natural gas exploration and production safer continues. In the long-term, we intend to use any findings from the incident investigations to continue to improve the technologies and practices to achieve safe and environmentally sound operations. As part of this process, we will continue to develop new API standards and revise and adapt existing API standards to raise the bar of performance to a higher level.

As Congress considers these important issues, thoughtful consideration must be given to harmonize the need to protect our environment and the taxpayers, while allowing us to safely and reliably provide the energy our nation relies on for our economic and energy security. The Department of Energy projects that we will need much oil and natural gas to fuel our economy for decades to come. We have the opportunity to develop those resources here at home, and we have the ability to do it in a safe and responsible manner. The responsible path forward is to ensure that any discussion of legislative or regulatory action recognizes the important role energy plays in fostering job growth and energy security. Those goals – job growth and energy security—can and should be met through responsible domestic oil and gas development. We look forward to providing constructive input as this committee, the Congress and the Administration move forward with policy proposals.

This concludes my statement, Mr. Chairman. I welcome questions from you and your colleagues. Thank you.

Mr. COSTA. Thank you, Mr. Milito, and we will move on to our next witness, Ms. Danielle Brian, the Executive Director of the Project on Government Oversight. Please begin.

**STATEMENT OF DANIELLE BRIAN, EXECUTIVE DIRECTOR,
PROJECT ON GOVERNMENT OVERSIGHT**

Ms. BRIAN. Thank you very much, Mr. Chairman. Thank you very much for inviting me to testify today, and I want to compliment the Committee for having structured the hearing with the panel for whistleblowers. I think that is a really important element of oversight, and other committees should be following your example.

Since 1995, POGO has issued five reports about MMS's failure to do its job, and the *Deepwater Horizon* disaster is a direct result of that failure. Splitting up MMS is an important step, but reducing these structural conflicts will not fix two primary dysfunctions: the revolving door between industry and MMS, and an overdependence on industry for expertise.

The revolving door between industry and MMS has been swinging wildly. An egregious example of this problem is that the last director of MMS under the previous administration, Randall Luthi, recently came before your Subcommittee as the president of an offshore driller's trade association, the National Oceans Industry Association. As a disturbing side note, his predecessor at that association, Tom Frye, was also a former MMS Director. These two cases are emblematic of what is wrong with MMS.

When the director of MMS joins a trade association whose explicit mission is to secure a favorable regulatory environment for offshore drillers, taxpayers have to question whose interests were actually being served when he was at MMS. In the case of Mr. Luthi, who joined the trade association only 14 months after leaving MMS, in other words, just after his cooling off period, it is unclear whether he was always ideologically opposed to MMS's mission.

As we have been discussing all day, MMS has suffered from a conflict in its mission. Oversight and promotion of production should never be combined in one agency. The CLEAR Act tackles this conflict by separating out the auditing and regulatory functions and giving it to the IG. Secretary Salazar's proposed reorganization of MMS would also help to improve the agency by separating into three separate organizations, but this plan's success would depend on adequate fundings, staffing, and expertise, and we are concerned that there is a problem, perhaps, in letting the regulatory functions sink deeper into the bureaucracy. POGO really believes that particularly the auditing function that is responsible for collection of royalties should be moved out of Interior entirely and made part of an independent Federal contract audit agency.

We also believe it is essential to rebuild the government's technical capacity to challenge industry within the Department of the Interior. We heard Members of Congress, I believe it was Ranking Member Lamborn, who was talking about the groupthink, and also Congressman Sarbanes who was talking about the keys to the kingdom being turned over to industry, and those are both going to be resolved we believe. We can rebuild technical capacity within the Department of the Interior so they can challenge industry and have the intellectual security to fight back when there are questions.

The way to do this also is to ensure that there are enough inspectors and auditors, consider increasing pay on the GS scale for inspectors who are critical to rig safety, and also determine whether some of the functions of BLM should be incorporated into this reorganization, as the CLEAR Act also prescribes. Bringing all the inspectors of both onshore and offshore into the same division might help to focus that inspection mission. POGO is also very pleased about President Obama's recently announced nomination of Michael Bromwich to be the new head of MMS because of his rep-

utation as a tough investigator as a former inspector general, and the fact that he is not from the insular culture of the Department of the Interior, and also his lack of ties to the oil and gas industry could be a tremendous asset in changing the culture of coziness with industry.

Another factor that we think is important in terms of changing the culture is that MMS should be making better use of partners like state and tribe auditors. There is an incident that happened before the Committee a couple of years ago that I think is worth noting when a North Dakota state auditor told the Subcommittee that a high-ranking MMS official had advised him and other members of the state and tribal royalty committee not to testify before Congress because it was best to keep any problems with MMS in-house, and those are exactly the kinds of people that MMS should be seeing as partners rather than as silenced outsiders.

Additionally, there must be rigorous enforcement of existing rules and regulations. And when it comes to ethics enforcement, there is one piece of good news that came from the most recent IG investigation. The culture of accepting gifts from the oil and gas industry appears to be on the decline after one MMS regional supervisor was investigated and terminated after accepting gifts from an offshore drilling contractor. This example shows that a culture can change when people are held accountable for misconduct.

The CLEAR Act's language to increase fines and penalties could provide effective tools for improving royalty management. It is also important to note that as this has been going on for years with people from within MMS, particularly on the royalty side and auditors coming forward as whistleblowers, they have all suffered retaliation, reassignment, and job loss. The current whistleblower protection laws do not provide adequate protection for these people, and the bipartisan Whistleblower Protection Act would remedy this gaping hole in government accountability tools.

Last, no matter what reforms are put in place they must be accompanied by increased transparency about MMS's operations. Interior should be providing to the public and Congress easy access to information regarding leases, volume of production, production costs, audits, environmental impact statements, and safety assessments. It is notable that after the President's open government directive required all agencies to put three high-valued data sets on line that Interior gave no information about oil and gas leasing, but instead put up a database of national treasurers, which had already been online anyway.

Thank you again to the Committee for your oversight of MMS which has been going on for many years, and for asking me to testify. I look forward to answering any questions you may have and continuing to work with the Committee.

[The prepared statement of Ms. Brian follows:]

**Statement of Danielle Brian, Executive Director,
Project On Government Oversight (POGO)**

Thank you for inviting me to testify today. I am the Executive Director of the Project On Government Oversight, also known as POGO. Since 1995, POGO has issued five reports about the federal government's inadequate oversight of the major oil and gas companies, primarily with a focus on the Minerals Management Service

(MMS) and the loss of royalty revenue.¹ Most recently, we issued a report tracing the troubled history of the Department of the Interior's Royalty-In-Kind (RIK) program and recommending the abolition of the program. Investigations conducted by POGO, the Inspector General (IG), the press, and this and other congressional committees have long found that MMS is broken. The Deepwater Horizon disaster is a direct result of MMS's failure to do its job. It is important that Interior and Congress do what they can to learn from this catastrophe and make sure it never happens again.

The reforms proposed by the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2009 (H.R. 3534) to split some of the conflicted missions of MMS² anticipated many of the operational problems the Deepwater Horizon disaster has revealed. Interior Secretary Ken Salazar's ethics reforms³ and new proposal to split MMS⁴ could also help make Interior more effective. But reducing these structural conflicts will not fix the most significant conflict of interest at MMS: the agency's disturbingly close relationship with the industry they are entrusted to oversee. In a recent report, the Interior IG found that MMS's inappropriate relationship with industry—which included “gifts and gratuities”—compromised its objectivity.⁵ Secretary Salazar's ethics reforms should prevent this specific problem from recurring, and POGO applauds Chairman Rahall for pursuing information “regarding rotation practices designed to ensure that inspectors maintain arms-length relationships with offshore facility personnel.”⁶ But these actions do not fix the two primary causes of the inappropriate closeness: the revolving door and an over dependence on industry for expertise.

Revolving Door

One of the most problematic causes of the inappropriate closeness between MMS and industry is the number of the individuals who have gone through the revolving door. Several have been sentenced to prison for violations of conflict-of-interest laws or obstruction of justice.⁷ As long as the door continues to revolve between industry and Interior or MMS, the public cannot be sure their interests are being served.

The most egregious example of this problem is the last Director of MMS under the previous administration, Randall Luthi—who recently came before your committee as the president of an offshore drillers trade association, the National Oceans Industries Association.⁸ As a disturbing sidenote, his predecessor at the Association,

¹Project On Government Oversight, *Drilling the Taxpayer: Department of Interior's Royalty-In-Kind Program*, September 18, 2008, <http://www.pogo.org/pogo-files/reports/natural-resources/drilling-the-taxpayer/nr-rik-20080918.html>; *Drilling For The Truth: More Information Surfaces On Unpaid Oil Royalties*, January 1, 1997, <http://www.pogo.org/pogo-files/reports/natural-resources/drilling-for-the-truth-more-information-surfaces-on-unpaid-oil-royalties/nr-oil-1997.html>; *Wait! There Is More Money to Collect...Unpaid Oil Royalties Across the Nation*, January 1, 1996, <http://www.pogo.org/pogo-files/reports/natural-resources/wait-there-is-more-money-to-collect/nr-oil-1996.html>; *With A Wink And A Nod: How the Oil Industry and the Department of Interior Are Cheating the American Public and California School Children*, March 1, 1996, <http://www.pogo.org/pogo-files/reports/natural-resources/with-a-wink-and-a-nod/nr-oil-19960301.html>; *Department of Interior Looks The Other Way: The Government's Slick Deal for the Oil Industry*, January 1, 1995, <http://pogoarchives.org/m/ep/doi-looks-the-other-way-19950401.pdf>

²Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2009, H.R. 3534, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fh3534ih.txt.pdf (Downloaded June 15, 2010) (Hereinafter H.R. 3534)

³Department of the Interior, “Secretary Salazar Outlines High Ethical Standards for Interior Department in Memo to All Employees,” January 26, 2009, http://www.doi.gov/archive/news/09_News_Releases/012609a.html (Downloaded June 15, 2010)

⁴Department of the Interior, “Salazar Divides MMS's Three Conflicting Missions,” May 19, 2010, <http://www.doi.gov/news/pressreleases/Salazar-Divides-MMSs-Three-Conflicting-Missions.cfm> (Downloaded June 15, 2010)

⁵Department of the Interior, *Investigative Report: Island Operating Company et al*, March 31, 2010, <http://www.doi.gov/images/stories/reports/pdf/IslandOperatingCo.pdf>; See also: Department of the Interior, *Investigative Report: MMS Oil Marketing Group-Lakewood*, August 19, 2008, <http://www.doi.gov/images/stories/reports/pdf/RIKinvestigation.pdf> (All downloaded June 15, 2010)

⁶Letter from Nick J. Rahall, II, Chairman of the House Committee on Natural Resources, to Interior Secretary Ken Salazar, June 8, 2010, <http://www.pogoarchives.org/m/nr/doi/rahall-salazar-20100608.pdf> (Downloaded June 15, 2010)

⁷Project On Government Oversight, *Drilling the Taxpayer: The Department of Interior's Royalty-In-Kind Program*, September 18, 2008, pp. 12–14, <http://pogoarchives.org/m/nr/rik/report-20080918.pdf>

⁸National Ocean Industries Association, “Biography: Randall Luthi, President, National Ocean Industries Association.” <http://www.noia.org/website/download.asp?id=38559> (Downloaded June 15, 2010)

Tom Fry, was also a former MMS Director.⁹ These two cases are emblematic of what is wrong with MMS. When the Director of MMS joins a trade association whose explicit mission was to secure a “favorable regulatory and economic environment for the companies that develop the nation’s valuable offshore energy resources,”¹⁰ taxpayers have to question whose interests were actually being served when he was at MMS. In the case of Mr. Luthi—who joined the trade association approximately 14 months after leaving MMS—it’s unclear whether he was always ideologically opposed to the agency’s mission.

There have already been several improvements to ethics policies at Interior since our 2008 report. POGO applauds President Barack Obama’s Executive Order for Ethics Commitments by Executive Branch Personnel,¹¹ and Secretary Salazar’s Memorandum to Employees on their ethical responsibilities.¹² POGO particularly wants to praise Secretary Salazar for enhancing the ethical culture of the agency by urging employees to seek the assistance of bureau or office ethics officials for guidance to avoid even the appearance of impropriety. The CLEAR Act also offers meaningful solutions to combat this problem by requiring the Secretary of the Interior to annually certify that all employees involved in leasing activities are in full compliance with all federal employee ethics laws and regulations,¹³ and we hope that in the wake of this disaster this certification would extend to all employees involved in overseeing resource development.

We also recommend that Interior and Congress consider the following recommendations:

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

MMS’s Dependence on Industry

The second reason for MMS’s closeness to industry is that, as Tyler Priest, clinical professor of business history and director of global studies at the University of Houston’s C.T. Bauer College of Business, has pointed out, MMS has always been a “junior partner” to industry, dependent on industry for the technical knowledge MMS employees need to be able to do their jobs.¹⁴ President Obama has acknowledged that this dependence on industry has been a festering sore for MMS: “What’s also been made clear from this disaster is that for years the oil and gas industry has leveraged such power that they have effectively been allowed to regulate themselves.”¹⁵ POGO worries that MMS allowed industry to perform inherently governmental functions by allowing industry’s technical analysis to determine how to adapt or develop regulations.¹⁶

⁹National Ocean Industries Association, “Tom Fry Announces Retirement from the National Ocean Industries Association,” October 9, 2009. <http://www.noia.org/website/article.asp?id=35791> (Downloaded June 15, 2010)

¹⁰Project On Government Oversight, “Oil Drilling Trade Group Slips the F-Word into Its Mission Statement,” June 11, 2010. <http://pogoblog.typepad.com/pogo/2010/06/oil-drilling-trade-group-slips-the-fword-into-its-mission-statement.html>

¹¹The White House, “Ethics Commitment By Executive Branch Personnel,” January 21, 2009. http://www.whitehouse.gov/the_press_office/Ethics-Commitments-By-Executive-Branch-Personnel (Downloaded June 15, 2010)

¹²Department of the Interior, “Secretary Salazar Outlines High Ethical Standards for Interior Department in Memo to All Employees,” January 26, 2009. http://www.doi.gov/archive/news/09_News_Releases/012609a.html (Downloaded June 15, 2010)

¹³H.R. 3534, Section 103.

¹⁴Tyler Priest, “The Ties that Bind MMS and Big Oil,” *Politico*, June 9, 2010. <http://www.politico.com/news/stories/0610/38270.html> (Downloaded June 15, 2010)

¹⁵The White House, Office of the Press Secretary, “Remarks by the President on the Gulf Oil Spill,” May 27, 2010. <http://www.whitehouse.gov/the-press-office/remarks-president-gulf-oil-spill> (Downloaded June 15, 2010)

¹⁶FAR 7.503(c)(5) (inherently governmental functions include “the determination of agency policy, such as determining the content and application of regulations, among other things”).

In our own investigations, we found that industry's promotion of the Royalty-In-Kind program facilitated the program's expansion against the significant concerns of independent government auditors. The revolving door between MMS and industry has been tolerated, if not encouraged, based on the belief that industry knows best. As a result, MMS has not been an effective enforcer of regulations, but instead has allowed industry to operate largely on an honor system. Billions of dollars in royalty underpayments by industry, and the oil disaster in the Gulf, have demonstrated that this honor system doesn't work.

Separating Missions and Increasing Independence

In addition to its inappropriate coziness to industry, there are a few other factors that have contributed to MMS's failure. POGO has long believed MMS suffers from a conflict of mission. For example, the sole mission of a federal royalty management and collection program should be determining and enforcing revenue obligations of private companies operating on public and Indian lands. Prior to the proposed split, auditors and other compliance and enforcement personnel reported to officials within MMS whose responsibilities also include leasing and development, and who may be more inclined to make the royalty management program *look* successful rather than *be* successful. As POGO discovered, in some instances MMS told their professional auditors to stop auditing, even when the auditors had discovered evidence that companies were underpaying royalties. The Deepwater Horizon disaster has demonstrated that similar pressures may have undermined the effectiveness of MMS inspectors.

The CLEAR Act tackles this conflict by separating out the auditing function and giving it to the IG¹⁷; we would still like to see this function moved out of Interior entirely and made part of an independent federal contract audit agency. Secretary Salazar's proposed reorganization of MMS could also help to improve the agency by separating out these missions and increasing its independence, but this plan's success will depend upon implementation. For one, these bureaus cannot be allowed to suffer from the lack of resources that crippled MMS—they must have the funding, staff, and expertise they need to be effective. Proposals to augment the inspectors for both MMS and the Bureau of Land Management (BLM) have been quashed in the past. Congress and Interior should:

- Ensure that there will be enough inspectors
- Consider increasing the pay and GS scale for inspectors to be comparable to MMS auditors and IG evaluators and criminal investigators. The disaster in the Gulf has demonstrated that rig inspectors perform equally important functions for Interior, and they should be adequately compensated for it.
- Determine whether some functions of the BLM should be incorporated into this reorganization, as the CLEAR Act prescribed.¹⁸ For example, putting all of the inspectors for both onshore and offshore in the same division might focus Interior's inspection mission.

POGO has seen this kind of split improve effectiveness before: in 1974, the Atomic Energy Commission was abolished and divided into two agencies because its dual missions of promotion and regulation of nuclear power was recognized as an inherent conflict of interest.¹⁹ As a result, the Department of Energy (DOE) was given the role of promoting nuclear power, while the Nuclear Regulatory Commission (NRC) was created to regulate, inspect, and enforce regulations of the nuclear power industry. While NRC still faces some challenges to being successful, it has been a more effective regulator than the Atomic Energy Commission.

A large hurdle facing MMS is cultural: this is an agency that has been subservient and dependent on industry for too long. Changing this requires more than reorganization; it requires new leadership. POGO worries that Secretary Salazar's well-intentioned split, creating smaller offices, could also diminish the effectiveness of auditing and inspections, and make it difficult to attract high quality people needed to really create change. But Interior can get the qualified officials it needs if they look beyond industry, the solicitor's office, and MMS. For example, Secretary Salazar could appoint one of the state or tribe auditors who have been frustrated with MMS's lax royalty auditing to head up the new auditing bureau. Someone from the Government Accountability Office or the IG office could be an effective head of the bureau charged with inspections. These critics care about MMS's mission and want

https://www.acquisition.gov/far/current/html/Subpart%207_5.html#wp1078196 (Downloaded June 15, 2010)

¹⁷H.R. 3534, Section 101(h).

¹⁸H.R. 3534, Section 101.

¹⁹Nuclear Regulatory Commission, "A Short History of Nuclear Regulation, 1946–1999." <http://www.nrc.gov/about-nrc/short-history.html#end> (Downloaded June 15, 2010)

it to succeed, and are exactly the kind of people MMS employees and industry need to see in the lead.

Additionally, there must be rigorous enforcement of existing rules and regulations. When it comes to ethics enforcement, the one piece of good news in the most recent IG investigation is that the culture of accepting gifts from the oil and gas industry appeared to decline after one MMS regional supervisor was investigated and terminated for accepting gifts from an offshore drilling contractor. This example demonstrates that a culture can change when people are held accountable for misconduct. Additionally, Congress should consider whether:

- The CLEAR Act's language to increase fines and penalties²⁰ could provide effective tools for improving royalty management.
- Bonuses for MMS employees could improve inspections or royalty collections.

Even without these changes, perhaps we would have had more warning about the looming disaster and the problems at MMS if federal workers and contractors knew they would be protected and have recourse if they faced retaliation for coming forward. A few did come forward about royalty underpayments by oil companies, and when they did, the MMS employees who came forward alleged retaliation including reassignment and job loss.²¹ The current whistleblower protection law does not provide adequate protections for pursuing their claims. The bipartisan Whistleblower Protection Enhancement Act, H.R. 1507, would strengthen existing whistleblower protections for all federal employees and extend protections to federal government contractor employees who disclose wrongdoing.²² This bill is critical to ensuring more warning of wrongdoing and more accountability at Interior and throughout the government.

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

- Congress and the public easy access to non-proprietary information regarding leases, volumes of production, production costs, audits, Environmental Impact Statements, and safety assessments.
- Quarterly public reviews of inspection activities by MMS that would be sent to the Secretary, the IG, and Congress. It is important to note that Interior has not released information about oil and gas leases, despite being given several opportunities to do so by measures outlined in the Open Government Directive.²³ Interior's willingness to increase its openness in the wake of the Gulf disaster should be considered a real acid test as to how committed the Administration is to the kind of transparency measures that will help citizens hold the federal government and industry accountable.

We are happy that Congress and the Administration are taking a serious look at MMS's problems, but it shouldn't have taken a disaster of this magnitude to fix the obvious and well-known problems at this agency. I think that this, above all, is the most important lesson to take away from the Gulf Coast disaster.

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

Mr. COSTA. Thank you. We will get to that in a moment. Our last witness for this panel, the last panel but certainly not the least, wow, we have a spill here but not an oil spill. I think this one we can handle.

Mr. Steve Maley, the Operations Manager for Badger Oil Corporation. Mr. Maley, thank you for your patience.

²⁰ H.R. 3534, Section 205.

²¹ Department of the Interior Office of Inspector General, *Investigative Report: Minerals Management Service, False Claims Allegations*, September 7, 2007, pp. 86–131. <http://www.doiig.gov/images/stories/reports/pdf/Qui%20tam.pdf> (Downloaded June 15, 2010)

²² Whistleblower Protection Enhancement Act of 2009, H.R. 1507. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1507ih.txt.pdf (Downloaded June 15, 2010)

²³ The White House, "Open Government Directive," December 8, 2009. <http://www.whitehouse.gov/open/documents/open-government-directive> (Downloaded June 15, 2010)

**STATEMENT OF STEVE MALEY, OPERATIONS MANAGER,
BADGER OIL CORPORATION**

Mr. MALEY. Thank you, Mr. Chairman, and members of the Subcommittee. I am Steve Maley Operations Manager for Badger Oil in Lafayette. We have a small production office in Houma, Louisiana, as well.

I come here today representing not just Badger but also the citizens of my adopted home state.

Mr. COSTA. How many people do you employ?

Mr. MALEY. About 24.

Mr. COSTA. OK.

Mr. MALEY. Badger is an independent, meaning we don't own pipelines, refineries or gas stations. Rather, Badger operates a handful of shallow-water gas platforms on the Shelf in the Gulf of Mexico like this one 100 miles offshore. One of the points I have noticed sitting here today is the confusion between rigs and platforms. A platform is a fixed structure, especially on the Shelf, it is in place with a production facility, and our plan is to—

Mr. COSTA. I am glad you pointed that out.

Mr. MALEY. And it is why the confusion about 4,000 rigs and platforms. Some of those structures you are talking about are single-well structures in very shallow water, so the number is high. It skews the ratio and makes it not comparable with California.

This particular platform is one we installed in 2007, and we had applied for and had been granted permits to work over three of the four weeks with a drilling rig which will come up next to the platform, jack up, and service the wells.

We have no interest in playing in deep water. Our operation bears little resemblance to BP's, but the deepwater moratorium has shut us down. As documented in last Sunday's Washington Post, the deepwater moratorium has now spilled over, causing regulatory confusion and slowed activity in the shallow waters of the Shelf. I mentioned the permits we had in hand to work on three wells that have been verbally rescinded. That is probably 300 jobs between the direct people that would work on the rig for the contractor and suppliers, plus the support jobs that that would entail.

In the case of our platform, the wellheads and hence the BOPs will be high and dry. You can't really see them in the picture, but they are right above that first deck. The water depth is 200 feet so divers can access anything that went wrong in the water. The wells are shallow and low pressure. The wells are gas condensate wells, not oil wells, so that the environmental threat is much less.

We are not in the same league as deepwater, high pressure oil, but the shallow water shelf has a 40-year history, still intact of increasingly safe and clean operations comparable to or better than other industries that don't operate in the marine environment.

I am lazy. I used MMS's own slides. This is from a PDF that they have online that shows their drilling recordable incident rate, OSHA recordables, and lost time accidents for a 13-year period ending in 2008. That is a pretty impressive trend. Next slide, please.

Same thing for combined operations. Drilling, production, construction. Next slide.

Blowout incident rate, and I think everyone can see in 2006 and 2007 for the entire Gulf of Mexico zero blowouts. With hundreds of platforms down in the storm since 2005, subsurface safety valves prevented production well blowouts and any substantial environmental impact from spills. Those came about after a production platform spill in 1970, way before the MMS was instituted. Industry learned from that experience and MMS enforced it, evidence that together we can and do learn from our mistakes.

In answering the question what went wrong it is important to recognize that someone is doing something right. As I state in my testimony, the cozy relationship, as described, is not consistent with my experience with MMS. In fact, if you had asked me a year ago would I be here today defending MMS, I would say you have got to be kidding.

To answer what went wrong, I have suggested in my testimony that the regulatory structure for drilling rigs and production platforms be distinct because the separate processes are so different between them. I have also suggested that the focus needs to be redirected—of the agency needs to be redirected back to oil and gas, not wind energy. All industrial processes involve risk. Mine safety folks can't guarantee safe coal mines. The FAA cannot put me on a perfectly safe plane to go home. OSHA cannot guarantee perfectly safe factories.

Offshore oil has its risks but the alternatives have great risks as well. If we don't produce oil and gas here, we have to bring it in in boats. It is a terrible way to move oil around. If you look at a list of the worst oil spills in history, it is dominated by large tanker spills. Those tend to happen in our rivers and bays, not 50 miles offshore.

Natural gas, that would be a good bridge to the future but we are planning to shoot it in the head along with the oil industry because both things tend to run together. Ethanol creates a dead zone in the Gulf of Mexico every summer from the fertilizer runoff from the Midwest. I am waiting to see which northeastern state they will compare the size of it to—Delaware, New Jersey, Connecticut—it is usually one of those.

Wind energy doesn't replace petroleum as a transportation fuel, and if you look at it closely, it has its safety and environmental risks, too.

Last, I would like to say that Louisiana is the birthplace of offshore technology. Louisiana did not share in a big way in the royalties. We never got much out of the deal except jobs. Louisianans developed much of the technology and provided the people who made the global offshore industry possible. On a rig in the North Sea, Angola, or the Middle East, you might be served as good a gumbo as you find downtown Mamou.

Louisiana is family. As much as we are affected by the oil in the marsh, everyone in the state is only one or two degrees of separation removed from someone whose job depends on oil and gas, and everyone knows that when, not if, the deepwater rigs leave, they have left for good. In that context a \$100 million fund for laid-off workers is nothing. I have seen estimates as high as \$330 million a month. We are talking permanent crippling structural damage to the economy, especially in Louisiana, but to the rest of the Gulf

states as well. These men and women that work on the deepwater rigs and support that activity live in Louisiana but also in Mississippi, Alabama, Texas, Oklahoma and Arkansas, and probably every other state. They work 14 and 14 and can come from far away.

Mr. COSTA. Mr. Maley, we need you to——

Mr. MALEY. Two sentences?

Mr. COSTA. Two sentences.

Mr. MALEY. This regulatory impasse must be solved. Louisiana doesn't want to be on the government dole or BP's dole. We don't need another panel or commission. The regs currently on the books vigorously enforce to reflect the relative risk of deepwater oil can do the job but we must end the moratorium. Thank you.

[The prepared statement of Mr. Maley follows:]

Statement of Steve Maley, Operations Manager, Badger Oil Corporation

BACKGROUND

My name is Steve Maley. I am a petroleum engineer with 32 years of industry experience. I serve Badger Oil Corporation as its Operations Manager. Badger is headquartered in Lafayette, Louisiana, with a satellite office in Houma, Louisiana.

Badger doesn't own pipelines, refineries or gas stations; rather, we are an "independent" explorer and producer. Badger operates a total of 10 active wells on 6 platforms, in waters no deeper than about 200 feet, all in the Western Gulf of Mexico. Most of our production is gas. In addition, we have interests in 6 producing leases on the Outer Continental Shelf that are operated by industry partners. We don't have deepwater leases, and have no interest in becoming a deepwater company. Badger drilled its first well in the Gulf in 2003, but our key engineering and operations staff of seven—the folks responsible for keeping our operations safe, clean and efficient—averages some 35 years of industry experience, much of that in the Gulf of Mexico.

INTERACTION WITH MMS

Badger has interacted on multiple occasions with MMS staff from several of the District offices, as well as the Gulf of Mexico Region office in New Orleans. We usually have weekly contact by telephone or email with MMS, or more frequently when we're busy.

In 2008, Badger was honored to be a finalist for the MMS SAFE Award, in the moderate size operator category.

Generally, the relationship between the operators/lessees and the MMS is one of mutual respect for the stewardship roles that each of us has to carry out.

The alleged "cozy relationship" with lessees is at odds with my day-to-day experience. Our company's dealings with MMS office staff have been professional and conducted at arm's-length. MMS has a cadre of middle management professionals that impress me as dedicated and capable public servants who do their best to deliver regulatory technical oversight in an arena that has become increasingly political.

At no time have we found that our status as a remitter of royalty made any difference in our dealings with MMS staff who deal with safety or permitting.

OFFSHORE REGULATION: WHAT'S WORKING?

Fifty thousand wells have been drilled on the Outer Continental Shelf. From 1970 until March, 2010, the total volume of oil spilled due to blowouts was 1,500 barrels.

Figures 1 and 2 in the attachment show the reported incident rates (OSHA recordable incidents and Lost Time Accidents) for Drilling Operations, and for Combined Drilling-Construction-Production Operations for the 13-year period from 1996–2008. Industry has worked hard to make continuous improvement. Figure 3 shows the drilling well blowout rate for the same period.

These graphs are evidence that somebody's doing something right. Incident rates like these compare very favorably with any heavy industry you care to name.

The industry's performance is all the more impressive when you consider that oil and gas operations are conducted in a hostile marine environment and often in extreme weather conditions.

As a taxpayer and a citizen of Louisiana, I'm glad that the MMS has undertaken positive initiatives for safety and the environment, including:

- Subsurface safety valves, which prevented blowouts on hundred of hurricane-topped platforms
- The “Idle Iron” initiative
- Promotion of “Stop Work” policies
- Safe Lifting Workshops for the use of offshore cranes

There have been a number of occasions when Badger has complied with a request from MMS staff or inspectors to make specific modifications to our facilities in the interest of safety, sometimes at considerable cost. These were not modifications that are specified by any regulations. We made a judgment that to comply was in the interest of building a better relationship with our regulator.

WHAT’S NOT WORKING?

In attempting to answer the question “The Deepwater Horizon Incident: Are the MMS Regulations Doing the Job?”, as an engineer, my first question is, “What went wrong?” I’ve heard all kinds of theories: Was it improper well design? Equipment failure? Human error? Any or all three may have played a role in this unprecedented disaster.

Without knowing what went wrong, there is no way to make a reasoned judgment on whether existing regulations were adequate and not followed, or if some gap in current regulations set the stage for the failure.

In its approach to safety management, MMS attempts to meld two processes that are fundamentally distinct from the operator’s perspective: Drilling and Production. My basis for making this statement is the 2009 Notice of Proposed Rulemaking regarding Safety and Environmental Management Systems (SEMS). I commented then, and I still believe, that Drilling and Production are so different that it is a mistake to attempt to manage their safety processes in the same way.

Production processes take place at fixed installations that are always under the control of the operator. Drilling processes take place on MODUs – mobile offshore drilling units – that are contracted by the operator (the lessee) only temporarily. Not only does the drilling rig owner, the contractor, have superior knowledge of his equipment and crew, the rig’s OIM (Offshore Installation Manager) is effectively the captain of the ship.

Ultimately, though, MMS holds the operator responsible for safety compliance. That’s because the MMS only has a contractual relationship (via the oil and gas lease) with its lessee, the operator.

As detailed in Sunday’s Washington Post (“Aboard a shallow-water gas rig, regulatory confusion keeps crew waiting”, 6/13), the deepwater drilling moratorium has spilled over to affect the shallow water operators. Badger is one of those firms in “permit limbo”; three workover permits we once had have been verbally rescinded, with no clear read on what will resolve the situation. There is no way that this situation accrues to anyone’s benefit. It can even be argued that it is detrimental to safety by deferring work that could have been done in ideal weather (May/June) into the heart of hurricane season.

Another area of concern is the organizational focus of the MMS. Less than a year ago, while in the Region office in New Orleans for a meeting, I happened to overhear two staffers commenting about their changing career opportunities as the focus shifted away from oil and gas and toward renewable energy programs, specifically wind. The change was apparent on the MMS website, and was even highlighted by Secretary Salazar on his nationwide series of public forums on the Five Year Plan.

GOALS

Within days of the Deepwater Horizon explosion, I saw an Associated Press report which stated that “The U.S. Minerals **and** Management Service [sic] ... [is] developing regulations aimed at preventing human error” I was struck with the irony of that statement.

Neither the MMS, nor the U.S. Congress will ever come up with regulations that can “prevent human error”, any more than we can prevent gravity. The goal must be to minimize human error to the extent possible.

To support that goal, regulations need to be well-crafted, easy to follow and easy to communicate. Complex regulations, and too many of them, get in the way of good communication and can lead to the human error that they try to prevent.

ETHICAL ISSUES

MMS’s critics point to recent investigations as evidence of the “cozy relationship” between the Service and its regulated community.

Personnel from the Royalty-in-Kind Office in Denver did behave inappropriately with oil industry personnel, but their relationship was not of a regulatory nature. The episode resulted from a management failing, but certainly does not reflect on the relationship of MMS with operators in the Gulf.

Two DOI Inspector General Reports issued 5/25/2010 detail ethical lapses of the former Gulf of Mexico Regional Supervisor, and an audit of the Lake Charles District Office. A few facts are worth noting for the record:

- The investigation and subsequent conviction of the Regional Supervisor resulted from an internal tip.
- The IG notes that subsequent to the Regional Supervisor's termination in 2007, MMS clarified its ethical expectations, and the relatively minor abuses in the Lake Charles office ceased.
- Neither of the two reports documented any unethical behavior involving an operator/lessee.

IN CONCLUSION

Offshore energy plays a vital role in the energy security of the United States, and in the economy of the entire Gulf South. The moratorium on deepwater drilling is particularly disastrous for Louisiana.

In the Gulf of Mexico, a forty-year record of improving safety and environmental performance proves that the industry and government can work together toward a safe, clean and secure supply of energy.

The near-term alternative to domestic oil production is to haul the stuff in from overseas in boats, historically the largest source of damaging spills. Tanker spills tend to happen in our rivers, bays, and estuaries, not fifty miles offshore.

No process in any industry can be made entirely risk-free. We can, however, learn from our mistakes. The regulatory process is already changing to accommodate the recommendations of the panel from the National Academy of Engineering.

It's time to get back to work.

[NOTE: Mr. Maley's PowerPoint presentation has been retained in the Committee's official files.]

Mr. COSTA. Thank you. You were able to get your five-minute testimony in seven minutes and 40 seconds, so the Chair obviously is in a good mood this afternoon.

Mr. MALEY. Thank you.

Mr. COSTA. Mr. Mann, you mentioned the ability to demonstrate or mount an effective response to accidents. Clearly, we have learned, if nothing else, that the responsibility in this disaster was totally and completely inadequate, and we have also learned when we compare the response to other plans that have been submitted that they tend to be, I would suggest, deficient as well, if they were ever tested and we pray to God they will not be tested.

Can we, should we, well, I think we should, but is it possible in terms of the technology and the science and the ability to produce this oil and gas, it has been quoted many times over the last two months that our ability to respond to such catastrophe has not kept up with the technology to do the production? Can we develop it? Is it there?

Mr. MANN. Yes, it is an excellent question, Mr. Chairman. I mean, I would like to believe that we certainly can improve the technology. You know, I think the investment in spill response removal and recovery technology is just, of course, a fraction of what has been invested in the technology to get the oil out of the ground. So certainly some additional resources there through the Oil Spill Liability Trust Fund or another mechanism would be appropriate.

At the same time, I think we have to be honest, that I am not sure that any amount of preparation would have prepared us to contain a spill like this, which is why I say prevention is really the name of the game. So I would include in that not just response technology, but safety and blowout prevention.

Mr. COSTA. So on the risk management and the risk assessment, do you think that the focus on the assessment of the risk has to

be on trying to prevent the blowout from ever taking place because once that happens, a spill of this proportion is very, very difficult to handle?

Mr. MANN. Yes. I think there are two components of the risk assessment. One is what is the risk of the blowout occurring, and the second is once the blowout occurs what is the likely damage from that spill, and to make sure that we have, based on not just a process-based, we have all heard reports of statements put into assessments of proven technology that clearly was not proven.

Mr. COSTA. No, I think you have made your point.

Mr. MANN. Yes.

Mr. COSTA. I just have a lot of questions.

Mr. MANN. Sure.

Mr. COSTA. Oh, and I have other witnesses. You talk about categorical exclusions must not be allowed for any offshore activity. Some would view that as extreme. What if an exploration plan gets a full EIS, environmental impact statement, and immediately after the approval of the plan, a company applies for a permit to drill, an API. Do you suggest that then at that point a new NEPA process begin?

Mr. MANN. I would distinguish between categorical exclusions and other steps that are available under NEPA, but are less than a full EIS. I mean, we feel that what has not been lacking is the quantity of environmental review. It is the quality, and that the problem is that when the environmental review is broad and fairly cursory at a macroscopic level, at a five-year plan level.

Mr. COSTA. Yes, I think everybody feels at this point that the oversight in MMS is insufficient, clearly on that point.

Mr. Spackman, do you think the industry underestimated or even downplayed the risk of an offshore blowout given the response we have seen? You know, there has been a preponderance of testimony to indicate that possibly, although as I stated this morning, a culture of complacency and overconfidence in systems, and a series of steps that led to this accident, just as you could document with the Challenger accident or with a plane crash. But, clearly, the finger seems to be pointing at one company in particular, that has had a history more than other companies. Do you care to comment?

Mr. SPACKMAN. Thank you, Mr. Chairman.

I would say that, from a drilling contractor's perspective, there has not been an underestimation of the likelihood of a blowout. It is something that a contractor lives with every day, and is certainly trying his best to control. It is his assets and it is his people that are the first ones to feel the brunt of the unintended event.

Mr. COSTA. What is your policy under best management practices?

I have been out there. Some companies indicate that one person on a rig says, hey, shut her down, that that is considered best practices, and that happens, you know. Clearly, when you look at the testimony that was given in those 24 hours prior to the blowout of the *Deepwater Horizon*, there were certainly indicators that something wasn't right. Could you please tell me what you think "best management practices" are?

Mr. SPACKMAN. Well, certainly most of our members, at least those that are participating in our HSE conferences, in the conferences that SPE conducts, indicate that in their behavior-based safety programs, they are giving “stop work” authority to anybody on the rig that identifies an unsafe act.

Mr. COSTA. Do you know if that stop work authority existed within the—oh, the name of the company that—Transocean?

Mr. SPACKMAN. I do not know the specifics of the Transocean rig or the management level stop work authority on that rig.

Mr. COSTA. Mr. Milito, do you want to comment on those two questions?

Mr. MILITO. Yes, I think it is important that we kind of hold off on any ultimate conclusions until we have the final root cause analysis of this incident.

Mr. COSTA. No, we are doing our due diligence, but I am using that in a reference to get an understanding of what normal practices are.

Mr. MILITO. No, but in terms of the industry’s position and perspective on whether or not safety is being taken for granted, I don’t believe that is the case, and what I would—

Mr. COSTA. You don’t think there has been a—I mean, certainly 60 days later that is not the case but just as we launched a lot of shuttles, a culture of complacency, overconfidence—overconfidence and redundancy in systems that are designed to create redundancy to be fail safe.

Mr. MILITO. If you look at the record in the Gulf, over 16 billion barrels have been produced, and you have less than one/one-thousandth of a percent of the oil spill from that. You have also over 42,000 wells drilled, over 2,000 in deepwater. This is an unprecedented tragic accident that we would hope would never have occurred at all, but there are regulations in place and there are redundancies in place, and it starts with a company and their own safety and environmental management program.

The government currently does not have a requirement that a operator have a safety and environmental management program, but API back in 1993—

Mr. COSTA. You say that should be part of a—

Mr. MILITO. Yes, it should be. Yes, it should be. But companies do that already. Through API, the industry put out in 1993 its own safety and environmental management guidance document. So for the past 20 years API and the industry have been following a document on how to put together safety and environmental management program.

In addition to that, you have to go through the risk management up front, all the way through to the drilling of the well when you have the well design, the well construction, the well operations, the blowout preventer. If you look at each phase of the operations you are going to see many redundancies built in. We don’t even want to get to the blowout preventer. We want to have the design in place, we want to have the construction in place, we want to have the operations in place so that you don’t even get to the BOP, and ultimately, if you look at the regs and if you look at where industry has gone, they have created the procedures and the design and the practices to make sure that we don’t get to that point.

But I guess my ultimate point is we have to go back and really see what happened here. The industry, yes, put together task forces that have already put together recommendations to improve performance. We are continuously looking for ways to improve poor performance, and the Department of the Interior actually accepted a lot of the recommendations and included them in their latest notice to lessees.

So we are already seeing measures taken to raise the bar of performance, but a lot of that stuff has already been done and is being done by the industry.

Mr. COSTA. Does the American Petroleum Association subscribe to a stop work concept that should be the order of the day on any platform?

Mr. MILITO. I don't believe that is something within our recommended practices at this point. It is something we can go back and look at, but I do understand a lot of our members and a lot of the operators have that as part of their internal programs. We at API create recommended practices. We bring the experts together and—

Mr. COSTA. Well, but part of your association is to establish best management practices, right?

Mr. MILITO. That is correct, and that is something we can look at and go back and take a review of our safety and environmental performance documents to see if that is something we need to improve.

Mr. COSTA. I have more questions, but I have way exceeded my time. I will recognize the gentlewoman from Wyoming, Ms. Lummis.

Ms. LUMMIS. Thank you, Mr. Chairman. Mr. Maley, did I pronounce that right?

Mr. MALEY. Yes.

Ms. LUMMIS. Have you, in your experience, had direct contact with MMS regulators?

Mr. MALEY. Yes.

Ms. LUMMIS. Could you tell me your general reaction to their qualifications, their training, their professionalism, in your experience?

Mr. MALEY. Most of my dealing has been with engineers at the district and region level. I haven't dealt much with the inspectors. I would say in general they are competent, qualified, dedicated public servants. There is a tier there of middle managers I am very impressed with.

Ms. LUMMIS. Have you ever been concerned about the culture at the MMS as being somehow corrupt in a way that gave industry some sort of free rein?

Mr. MALEY. No.

Ms. LUMMIS. OK, thank you.

Question for Ms. Brian. Are you equally concerned about where people come from when they enter in an administrative capacity as where they go to after they leave?

Ms. BRIAN. Absolutely. We call that the reverse revolving door, and we think that is a very important part of any reforms would be to ensure that we are looking at making sure that people coming

into the government aren't regulating their former employer, for example.

Ms. LUMMIS. OK. So does it disturb you that Mr. Luthi before he was MMS Director was the Deputy Director of the U.S. Fish and Wildlife Service? Do you think that somehow that created a bias going into the MMS that should be somehow regulated or curtailed?

Ms. BRIAN. Not at all because that would have been a public service. He was working for the government. Our concern is when there is a financial interest, and I don't see that he would have had one at the Fish and Wildlife Service.

Ms. LUMMIS. OK. How far back should a person coming into an administration be separated from the industry they are regulating, and how long after they leave should they be unable to go back to work?

Ms. BRIAN. That depends in part on the particular position of the person. This is a subject of a lot of conversation and I do think that in general most people think two years really is helping to at least ensure that there is some distance from relationships and, sort of, too coziness with the people they are actually just coming from in terms of their colleagues, but it depends on how high up in the structure of the bureaucracy, and their relationship with particular contracts or leases.

So, for example, if someone is an inspector there would be a different standard, I think, for a revolving door than for someone who is the head of MMS. I would argue that there should be a permanent ban from someone who is the director of MMS from going to turn and work for industry.

Ms. LUMMIS. Have you written a proposal that looks at all these different levels and how you recommend that they be regulated, and does it concern you that you could end up with someone who is the director of MMS who is not terribly qualified because they don't have previous knowledge?

They come in as a blank slate in terms of having a bias but that blank slate also may mean they don't have any knowledge of an industry they are trying to regulate.

Ms. BRIAN. We have spent a lot of time looking a revolving door, primarily with the Department of Defense and our history in that work, so we certainly have written a lot on the subject of the revolving door and have worked mostly in the Senate who has done a lot of work in that arena.

In terms of management of agencies what we found is that the head of an agency is not the person who needs to have the technical expertise. They need to have that expertise from within their departments and have advisors who can give them the advice, but we are not as concerned that the head of an agency have that technical background.

One of the things that I have thought was one of my best examples of how you don't have to be going through the revolving doors, actually the Deputy Secretary of Energy in the Bush Administration, Kyle McSlarrow. As the Deputy Secretary of Energy one would have thought there are many industries he could have gone to the revolving door from industries they were regulating, but instead he went to the K1 Broadcasters Association, which had noth-

ing to do substantively with the work he had done because his work as a manager in running an organization, and that was his strength, and I think that is an example of someone who can go on into the private sector and do very well for himself but not trade into those relationship that he had been overseeing when he was in the government.

Ms. LUMMIS. What about an environmental organization? Let us say someone goes from the Fish and Wildlife Service, had this same gentleman, Mr. Luthi, gone instead from the U.S. Fish and Wildlife Service into an environmental organization as, for example, Secretary Babbitt did. Is that problematic?

Ms. BRIAN. I really don't see it as comparable because for us the concern is the financial interests of the entities that are being regulated.

Ms. LUMMIS. And what if they have a financial interest, then does that change your—

Ms. BRIAN. It would if there is a financial interest. I am not sure that I am aware of any in Secretary Babbitt's case, but that to us is really what matters.

Ms. LUMMIS. Thank you, Mr. Chairman.

Mr. COSTA. Thank you. The gentleman from Louisiana, Mr. Cassidy. I think he has gotten his spill corrected, so glad to have you back on board.

Mr. CASSIDY. Thank you.

Mr. Mann, are you against all offshore drilling, even the near-shore non-deepwater drilling that Mr. Maley speaks of?

Mr. MANN. No, sir. We are not opposed to offshore drilling but we believe—

Mr. CASSIDY. Do you think there should be a moratorium for the near-shore as well as the OCS?

Mr. MANN. Yes, until this spill is—

Mr. CASSIDY. Let me ask you because I thought Mr. Maley spoke eloquently of how they are really different animals. The engineers that the Secretary for National Academy of Engineering asked to review his plan, eight of them, I think, and made a statement, and they said that the more—and after the Secretary, of course, implied that they endorsed the moratorium, the eight of them who were from academia sent out a rather scathing rebuttal of that, and among the quotes are, "A blanket moratorium is not the answer. It will not measurably reduce risk further, and it will have a lasting impact on the nation's economy which may be greater than that of the oil spill."

So, let me—"It will not measurably reduce risk further, and have a lasting impact on the nation's economy." I don't mean to be cheeky, but I am just asking. What would you know that they don't know that would imply that they are wrong that the blanket moratorium is not going to be helpful?

Mr. MANN. Well, I would have to review their comments and I have not done that. What I would say is that they may have more standing to comment on the engineering aspects than the economic aspects, and I mean, we are certainly sensitive to the economic hardship.—

Mr. CASSIDY. Let me tell you. From Louisiana, you don't need a study to know that this is going to be a stake in the heart of Louisiana's coastal economy.

Mr. MANN. As is the oil spill, sir.

Mr. CASSIDY. It turns out again in Louisiana we know, oh, my heart bleeds. I think Mr. Maley was getting emotional—as he was, so was I—for the fisherman, for the tourist industry it is awful, but it is interesting, we have the director of the Oyster Association, who likewise got emotional because he said that he was adamantly opposed to the moratorium because he said in times past when fishing was bad people worked on the rigs, and when rigs were down they worked in fishing, and this takes care of both.

So, again, what do you know that these guys don't know as regards—again, the moratorium will not measurably reduce risks further and will have a lasting impact, et cetera?

Mr. MANN. Well, I just don't agree with that statement that it—

Mr. CASSIDY. But is there a fact here? Let me just ask. I am a teacher so when I speak to my medical students, I say, is that a belief system or do you have a fact upon which you base this?

Mr. MANN. The fact that we are basing this on is that this is the worst environmental catastrophe that this country has ever endured.

Mr. CASSIDY. Let me just pause—

Mr. MANN. We think it is appropriate—

Mr. CASSIDY.—for a second because I have limited time, and actually I am going to address the Chairman very respectfully. The Chairman's questions implied, Mr. Milito, that BP's actions—I don't think we can ever guarantee that when somebody cuts corners and makes decisions which everyone else would condemn, that we can avoid an accident. As a physician, I can tell you if somebody practices unsafe medicine, we end up with a bad outcome. That is not an indictment of safe practices. It is an indictment of that person's particular practice.

So that said we do have an oil spill but we also have clearly identified already factors which if any one of which would have been done correctly it probably would not have happened. So are we going to indict all those folks who are doing it safely, according to protocols, best practices, because of the actions of someone who, or an entity which did not do so?

Mr. MANN. Well, this is not an action that the Pew Environment Group is taking. This is an action taken by the Administration, but I do think it is appropriate after such a calamity to take—

Mr. CASSIDY. I guess I am not—

Mr. MANN.—action and examine the causes.

Mr. CASSIDY. I guess I am not getting the answer to my question why these—

Mr. MANN. They would not have put the space shuttle back up in the air within three or six months of that first disaster.

Mr. CASSIDY. Fair statement, but we certainly still fly airplanes after there is a bad accident.

Ms. Brian, I have just got to ask this. Did you deliberately name POGO after the cartoon character?

Ms. BRIAN. It was in our minds when we came up with the acronym, yes.

Mr. CASSIDY. I actually thought that was fairly good.

Ms. BRIAN. I am glad you enjoy that.

Mr. CASSIDY. And by the way, I applaud your statements regarding transparency. I think that would be wonderful.

Mr. Maley, we have a dispute as to the economic impact of the terrible effect upon jobs in Louisiana. You are in Lafayette, Louisiana and Houma, kind of a small player if I may say.

Mr. MALEY. Yes.

Mr. CASSIDY. Any comment though that Mr. Mann is kind of maybe jobs would be lost, maybe not?

Mr. MALEY. Well, I think the difference is between a transient impact and a permanent impact. From day one of the spill I have seen journalists trying to compare it, trying to force it into an Exxon Valdez template. This is not a Valdez spill. It is a much lighter grade crude. It is 50 miles offshore. It took it a month to make it to shore, and once it is in the marsh it is a terrible thing, and I am not trying to minimize it, but Mother Nature has ways to take care of it, and my expectation would be that in a few months you would be able to find some impact; in a year, possibly; after a few years—I am not an environmental specialist, but my thinking would be that Mother Nature is going to take care of it.

When these rigs move, those jobs will go with them. The people will go off to other things. The industry barely survived what we went through in 1986 just because of low oil prices, but when these rigs go overseas to other markets it costs so much to move them back that they may just be gone for good.

Mr. CASSIDY. OK. I yield back. Thank you.

Mr. COSTA. The Chair intends to adjourn the Committee here shortly, but I have a few more questions I would like to ask.

Mr. Maley, I believe you were here this morning when I asked a question to the Interim Director or whatever his title is as to the confusion that existed with regards to the moratorium on wells of 500 feet or less. He acknowledged that there had been some confusion related to the moratorium, and he indicated that there was a meeting last week and he thought that they had created a better understanding of what was intended with regards to the kinds of well activity that you are engaged in.

Do you concur with his statement this morning?

Mr. MALEY. I was a little confused about what he was talking about. I may be speaking out of school, but I think there was a meeting up here with a group of the rig contractors, the shallow water rig contractors, and they may have achieved some clarity, and MMS has put out an NTL.

Mr. COSTA. NTL, come on.

Mr. MALEY. Notice to Lessees.

Mr. COSTA. I am just a farm boy from California.

Mr. MALEY. We live with the government's—

Mr. COSTA. No, I understand. NTL is what?

Mr. MALEY. NTL is Notice to Lessees.

Mr. COSTA. OK.

Mr. MALEY. That is how MMS communicates.

Mr. COSTA. No, I understand. I just wanted to make sure we are clear to everybody. We have a public out there that is listening.

Mr. MALEY. Good. And there was a lot of things that dealt strictly with subsea BOPs in 500 plus feet of water, and requirements on those and other requirements on all—

Mr. COSTA. So what you are saying is that as far as production wells, which you are engaged in if I am correct, it is not clear?

Mr. MALEY. We are continuing to produce. That is not a problem.

Mr. COSTA. Right.

Mr. MALEY. The problem is the planning and the logistics of picking up a rig to go work on our wells, and at one point we had a permit, it was verbally rescinded, and we are kind of in limbo right now. We think we have satisfied what Mr. Abbey said the requirements were to have a permit approved but we don't have it in hand as far as I know.

Mr. COSTA. All right. I want to get to another one, but Ms. Brian, the Secretary, obviously, has made a significant effort here, we are vetting it, and we will make our own changes, and you more or less kind of indicated some additional thoughts, but do you think that he has gone far enough, or is this a first good step?

I referenced a couple of times today that the Linowes Commission work in the early 1980, parts of these recommendations that are being implemented actually come from the Commission's report, but there are other elements in the report that have not been stated. Do you want to quickly add, because I want to make my—I have a couple more questions.

Ms. BRIAN. It is clear that the Committee had studied the Linowes Commission work in the drafting of the CLEAR bill because much of what was recommended is incorporated into that bill. I would say if there is one thing that is really still out there and not dealt with is the revolving-door question.

While President Obama issued an Executive Order at the beginning of his administration that, at the moment, is addressing the concerns we have, it is only an Executive Order. It is not law. And when President Clinton came into power, he also issued a similar revolving-door restriction, which at the end of the his administration he lifted. So, our concern is that this is only an Executive Order and is only good as long as the President likes it. We really would encourage the Committee to consider incorporating revolving-door legislation—

Mr. COSTA. Yes, on that revolving door thing, clearly one of the outcomes of that, if you want to stop that, is to pay people an appropriate sum of money so that they can do that. I mean, obviously a person that worked on a rig would have a lot of experience in terms of what is done there. Now if they are a rig inspector, if they were paid—I mean, you have to obviously have the restrictions and the firewall and all that stuff. You cannot be going to sporting events together, and that kind of stuff. But what should be an appropriate salary?

Ms. BRIAN. I don't know that I can give a specific amount but I do think looking at the GS levels, for example, making the inspectors' levels more commensurate with the auditors' levels of GS would be a good start.

Mr. COSTA. All right. Mr. Spackman, do the inspection forces differ in other countries versus the United States? What are the skills needed for inspections in countries with HSE cases, and how does that differ from skills necessary to be an inspector in our country? And is there anything we can learn from other countries in trying to improve or reform our efforts? I am thinking off the Scandinavian coast, Norway, the North Sea. Do you have any sort of comparative analysis that you could speak to?

Mr. SPACKMAN. I would begin by saying that the underlying cultures in these countries are different than they are in the United States for a large part. In Norway, for example, there is a much different view of the role of government, industry and the worker. There is a more shared view of responsibility, and this leads to a more cooperative effort to address concerns when they arise.

I know from experience in Norway that there is a fairly consistent movement of people between mid-management levels within the industry to mid-management levels in government to instill expertise in both directions.

Mr. COSTA. When it comes to the issue of prescriptive regulations versus performance-based regulations, where are other countries relative to the United States?

Mr. SPACKMAN. Again, there are cultural differences and there is a difference in how—

Mr. COSTA. We will stipulate that for the record.

Mr. SPACKMAN. A term “regulation” is used, but there has to be a balance between prescription and performance. Things like couplings on fire hoses have to be standardized, but the approach to risk management in the countries that have an effective safety case seems to be working. The North Sea countries are seeing a reduction in their major incidents and safety incidents levels.

Mr. COSTA. Certainly the North Sea is a very difficult places throughout the world to do this kind of activity. They have a long track record.

Let me ask you, I mean, I mentioned in my opening statement that it is understandable given our culture that we are kind of in a mode as we try to address this horrific accident, but it is human nature to point fingers and engage in the blame game. The press certainly is involved in that since this incident has taken place. It sometimes, I think, creates a perception that the governments allow the industry to take the reins and effectively regulate itself.

Based on the questions I have asked you, how would you compare the United States regulatory scheme? Is it one of the more prescriptive regulatory schemes in the developed world? In other words, are we as tough? Are we tougher? Are we more lax than areas of the developed world where this has been done for a long time?

I am not talking about Nigeria or some of these other places in the Third World where I understand the standards are much weaker.

Mr. SPACKMAN. Again, it depends upon how you are going to define what you are regulating. MMS’s regulations are voluminous. If you look at them in comparison to the regulations in either the U.K. or Norway, they are probably 15 to 20 times thicker, and that is all due to prescription.

Does the prescription actually lead to an improved safety result? I am not convinced that it does given the experience in those countries.

Mr. COSTA. Do you think there is a role for OSHA on offshore rig safety practices?

Mr. SPACKMAN. Here I would say emphatically no. If you have a problem now in expertise level within the Minerals Management Service, take an agency that has no experience in either maritime issues or in oil and gas production offshore, and ask it to insert itself into the offshore workplace, I just don't think it would be effective.

Mr. COSTA. No, my sense is it would not work either. I don't even have any helicopters. I guess they could charter one.

So could you—well, with the American Petroleum Institute, I expect most of your experience is confined to the U.S. and so maybe you are not well placed to ask this question.

Mr. Spackman, let me get back to the question I was trying to ask. Compared to other developed nations when it compares to comparing safety performances, I know there are cultural differences, but I mean at the end of the day you compare safety performances based upon whether there are accidents like this happen, and on that basis how would you rate the U.S. safety record?

Mr. SPACKMAN. Well, you have just said "accidents like this". This is a unique incident. It happened only in the United States.

Mr. COSTA. Well, but there has been other major spills. There was one off the coast of Mexico a number of years ago that up until recently indicated that it was larger than this one. I don't know, but I guess we have now surpassed it.

Mr. SPACKMAN. Yes, but there is no comparison between the current safety culture in Mexico and the culture that existed then. There is no comparison between the safety culture in Mexico and the United States.

Mr. COSTA. Well, under best management practices are we doing as good as we should?

Mr. SPACKMAN. In my opinion, sir, no.

Mr. COSTA. OK.

Mr. SPACKMAN. We need to provide a tool to the regulator that allows him to assess from the get-go the risk associated with a particular activity, and that starts with the geologist who interprets the data to design the well.

Mr. COSTA. Would you concur with that, Mr. Milito?

Mr. MILITO. I would. I think that this industry is dedicated to continually improving operations. We understand based upon this incident that we have a long way to go and we are doing that right now. We have already taken steps to improve—

Mr. COSTA. Yes, you made the comment in your testimony about zero risk. I don't know that that is ever possible. I have just great difficulty—everything we do in life has a risk.

Mr. MILITO. The goal was zero.

Mr. COSTA. Yes, I know but from the time we get up in the morning and we get in our car, and we back out the driveway, I mean, there is no zero risk that you are going to get to work safely.

Mr. MILITO. But we don't want to back off the goal of zero injury, zero environmental—

Mr. COSTA. No, I understand. I mean, that ought to be the standard, but we also ought to realize the—you know, the reality of life.

How could the industry better, Mr. Milito, prepare to have this low risk, high impact events like the *Deepwater Horizon*? I mean, so far, and this will be a question that I will come back to you with in the months ahead, what are the lessons to be learned here?

Mr. MILITO. There are a lot of lessons that are being learned and it has already started with discussions among the industry experts on what is being done across the board.

Mr. COSTA. So internally what is the API doing to sit down and developing your own in-house operation to say, look, this is a big, big problem for us, and the American public has little confidence in our ability to deal with this today, and how are we going to address it?

I mean, I have to assume you have had that meeting.

Mr. MILITO. Yes, and it is not just API. We are reaching all across industry, working with IADC, NOIA, PAA, but there is a task force that is working on equipment, looking specifically at BOPs and ROVs, how to improve those capabilities. There are already recommendations to incorporate into our API specifications for BOPs and ROVs, so that—

Mr. COSTA. Hold on. The API, I think everybody gets, American Petroleum Institute.

Mr. MILITO. Yes.

Mr. COSTA. You were going a little fast there.

Mr. MILITO. API is the standards developing organization, and we have specifications which deal with how to manufacture a piece of equipment, and the equipment task force has already come out and said we need to go take a look at the BOP specifications for blowout preventers, and the ROV for remotely operated vehicles to make sure that they have the capabilities to operate at these depths and can shut down a BOP, and so that the BOP can effectively shut off under these conditions.

There is also a task force on operating procedures, and they have decided and recommended to the Interior Department that two barriers are needed below the wellhead in place so that you have the obstacles that will prevent or the barriers that will prevent hydrocarbons from breaching the well and getting into the surface, and they have made a number of other recommendations. They have already been hard at work. There has already been a task force put together on how to deal with stopping and containing a wild well, essentially what you have here, a blowout at the wellhead which is an area that we really need to see improvement and we need to see processes in place as to what measures should be used, what order, when you do them, is it a top kill, is it a coffer dam, so you can look at all those and have the processes in place and have the resources in the Gulf so that you can stage those and have them in place.

Another area where we put a task force together is on surface and shoreline response. There has been a lot of talk about this spill not having—the reaction to this spill not being adequate. We are going to look at plans. We are going to look at the resources and the research that is necessary to improve that.

And another area there has been a lot of discussion is with the Oil Spill Liability Trust Fund. We support the Oil Spill Liability Trust Fund. We think it is an important component to make sure the taxpayer does not foot any of the bill for this, and we are looking to figure out a way to make sure the Trust Fund is in place as an insurance element to the taxpayer so that the taxpayer does not foot the bill to improve upon the current system.

So all these task forces are moving forward. They are working. They are short term and they are long term, and we have recently come out with a recommended practice, 65-2, on it is isolating flow zones during well construction, and so this is avoiding getting to the point where you have pressure building up. What practices do you have in place with the cementing and the casing so that you don't have the pressure building up so you don't get to a point where you have a blowout? And we are pushing to have this adopted by the government.

Mr. COSTA. Well, let me make a recommendation to you and then ask one final question and we will close the meeting. My recommendation is that as you deal with this internal reassessment of what should be the best management practices, realizing that the old days are gone, and if we want to—for one of the Members of Congress that does support using all the energy tools in the energy toolbox that includes offshore utilization of oil and gas, that we are going to have to do a heck of a lot better than we are doing today.

And so I think these recommendations need to be put forth in all of your testimony, and with milestones that are probably sooner than you would like because I suspect the CLEAR Act of Chairman Rahall's is going to be marked up probably in July, and obviously this effort will continue through the August break, and I suspect in September or October we will be looking at some sort of a comprehensive bill to change the way we deal with this issue, so that hopefully it will never ever happen again. I mean, I think that is what we owe the American public if we are ever going to restore faith and confidence in your industry's ability to do this, which I think most people agree is necessary for our economy and for a long-term comprehensive energy package.

But you better be moving and getting this information to Members of Congress.

Mr. MILITO. Yes, sir.

Mr. COSTA. Realizing that it is going to cost more and realizing that we are not going to all agree at the end of the day.

So my final question to you is this. I would just think, but I have not talked to any of the various other energy companies since this horrific accident has taken place, but I would think that, and I would like to know if you can answer the question, that the major energy companies that are engaged in deepwater as a result of this in the last month or so have taken upon themselves to do their own internal safety audit thinking, you know, we think we are pretty good but you know, who knows. And so is that taking place? Do you know?

Mr. MILITO. Yes, I can assure you that is happening and part of that process is—

Mr. COSTA. I mean, if I was an executive of one of these companies that is what I would be doing.

Mr. MILITO. No, the companies are doing that. Not only are they doing that but they are coming together to talk together as an industry, not just API members and not just operators. It is equipment manufacturers, it is the drillers, it is the service and supply companies, so that the lessons can be shared across the board as to what individual companies are doing so that everybody can share and improve across and have consistent improvement across the board for the industry. That is happening, and we are moving quickly, and we can provide to you the recommendations that have been provided to Interior, and we can get that information to you.

Mr. COSTA. I appreciate that. I appreciate all the testimony provided by the witnesses on this panel and the previous two panels. I want to thank you all for your patience and your time. Obviously, this is a work in progress but we must work together on behalf of all of those in the Gulf who have suffered this tragedy, the families who have lost their loved ones, the communities that have been devastated economically, and a way of life that, Mr. Maley, you conveyed, I think, quite well to all of us in terms of the importance that we all view that part of America.

So, clearly we have our work cut out for us, and I hope that we can continue to work together in a bipartisan fashion so that we can cap this well, clean up the mess, and learn the lessons that are critical to ensure that in the future this never happens again.

The hearing is now adjourned.

[Whereupon, at 4:36 p.m., the Subcommittee was adjourned.]

[NOTE: The documents listed below have been retained in the Committee's official files.]

- Abbott, Kenneth, Former Contractor, BP Atlantis, submitted for the record
 - Exhibit B – E-mail entitled “FW: P&IDs for Operations” between Kenneth Abbott, Barry C. Duff, Bill Naseman, and William Broman, September 2, 2008
 - Exhibit C – Chart entitled, “Subsea Systems (DC-1 Only)”
 - Exhibit D – Letter from David L. Perry (Kenneth Abbott’s Attorney) to Attorney General Eric H. Holder and Acting U.S. Attorney Tim Johnson entitled, “Re: Kenneth W. Abbott – BP Atlantis Project,” April 9, 2009
 - Exhibit E—from David L. Perry (Kenneth Abbott’s Attorney) to Silvia Murphy, Attorney-Advisor to the Dept. of the Interior’s Division of Mineral Resources, entitled, “Kenneth Abbott/BP Atlantis Threat to GOM Environment,” March 27, 2009
 - Exhibit F – Letter from BP Deputy Ombudsman Billie Pirner Garde, April 13, 2010
 - Exhibit G – AP News article—“BP’s Own Probe Finds Safety Issue on Atlantis Rig,” by Ramit Plushnick-Masti and Naoki Schwartz, May 15, 2010
 - Exhibit H – E-mail entitled, “Follow up questions from January 22 meeting” between William Hauser and Zach Corrigan, February 17, 2010
 - Exhibit I – Letter from Robert G. Zainey, Chief, Information Resources, Freedom of Information Act Officer, Department of the Interior and Zach Corrigan, October 30, 2009
- Maley, Steve, Operations Manager of Badger Oil Corporation submitted for the record
 - PowerPoint Presentation, prepared for the hearing
- Spackman, Alan, Vice President, Offshore & Regulatory Affairs, International Association of Drilling Contractors, submitted for the record
 - PowerPoint Presentation entitled, “Restructuring the MMS Implementation of the HSE Case,” prepared for the hearing