

OIL SPILL LEGISLATION

HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

TO

HEAR TESTIMONY ON THE FOLLOWING BILLS: S. 3497, A BILL TO AMEND THE OUTER CONTINENTAL SHELF LANDS ACT TO REQUIRE LEASES ENTERED INTO UNDER THAT ACT TO INCLUDE A PLAN THAT DESCRIBES THE MEANS AND TIMELINE FOR CONTAINMENT AND TERMINATION OF AN ONGOING DISCHARGE OF OIL, AND FOR OTHER PURPOSES; S. 3431, A BILL TO IMPROVE THE ADMINISTRATION OF THE MINERALS MANAGEMENT SERVICE, AND FOR OTHER PURPOSES

JUNE 24, 2010



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OIL SPILL LEGISLATION

THURSDAY, JUNE 24, 2010

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. OK. Why don't we go ahead and get started here? The hearing will come to order.

Today, we will continue the committee's work on issues related to the disaster in the Gulf of Mexico. Today, we hear testimony on legislation that has been introduced related to the issue and to the management of the Outer Continental Shelf. These matters are urgent. I am hopeful that we can proceed quickly to consider legislation on these issues in the committee next week.

We continue our work with the backdrop of oil still gushing into the Gulf of Mexico more than 60 days after the initial explosion of the Deepwater Horizon rig. As the Congress formulates its overall response to the disaster, its first order of business must continue to be to care for the families of those who lost their lives in the rig explosion and those Gulf residents who are suffering every day through loss of livelihood and of places and wildlife.

At the same time, it also is essential we look to the future and to create a better structure and system within the regulatory agency with responsibility here. Creating this structure is the particular responsibility of this committee. Our goal must be, of course, to prevent future disasters. But we can and we must do more than that.

Congress should create organizational resources and a set of principles and requirements that will have safety, environmental protection, and innovation at its core, which require that both industry and agency employees have the expertise, experience, and commitment to quality that is necessary to handle the complex issues involved.

If we do this right, it is my hope that we can see tangible results on all of these fronts and a shift away from the cascade of failures that led to the Deepwater Horizon accident and toward work of a much higher quality.

It is with this in mind that we have introduced S. 3516, the Outer Continental Shelf Reform Act of 2010. Senator Murkowski,

Senator Dorgan, Senator Stabenow have joined me as cosponsors in that, and I appreciate their input and their hard work on these issues.

This bill clarifies the multiple responsibilities of the Department of Interior in managing the Outer Continental Shelf—appropriate energy and other economic development and the protection of human health and safety and the marine and coastal environment. It reforms the structure of the department consistent with these responsibilities. The bill increases the safety requirements for drilling wells, focuses on best available technology, a systems analysis, risk assessment, an evidentiary safety case, and a full engineering review.

In furtherance of the development of these standards and the evolution of new and better technology, it requires new research programs within the department, independent of the leasing program, whose data must be considered by the regulators. It provides dedicated funding for the highest priority research, including the areas of well control and spill response, and an independent science advisory board outside the agency to provide oversight.

It establishes new requirements for investigation of all accidents and the public sharing of data from these reviews so that all can learn from mistakes before they become major problems. It allows the National Transportation Safety Board to provide an independent and highly skilled investigation of any accident at the request of the Secretary.

In order to fully enforce the safety requirements, the bill imposes an inspection fee on industry participants to fully fund enough well-trained inspectors to perform real and meaningful inspections more often. It also increases sanctions on poor operators, including increased civil and criminal penalties applicable to those who violate the law, and the financial responsibility requirements to ensure that those who participate in development of the Outer Continental Shelf can afford to pay for any damage that they cause.

The bill provides the department with adequate time to carry out necessary reviews, clarifies the issues that need to be addressed, makes the input of other Federal agencies occur in a transparent way. The result should be better decisions that will be capable of being implemented with greater certainty.

I believe these principles and resources can set us on a new and constructive path forward in managing the incredible natural resources of the Outer Continental Shelf. I very much appreciate the work of other Senators on this committee whose work has been reflected in this legislation. I look forward to working with all members of the committee as we try to move forward here.

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA,
ON S. 3431

Chairman Bingaman, Ranking Member Murkowski, thank you for your consideration of legislation intended to restore integrity in the agency that regulates the oil industry.

Your leadership on this issue comes at a critical time. As we grapple with the results of loosely regulated drilling, we must look ahead to make sure a catastrophe like the Deepwater Horizon spill never happens again.

It was two years ago that I first warned publicly that we could not trust the oil companies seeking to drill in the waters off our most protected coastlines, nor could we trust the federal watchdogs charged with keeping a watchful eye over them.

I did so because the inspector general at the Department of the Interior was releasing a scathing report about the Mineral Management Service in the U.S. Department of the Interior and specifically an office that manages revenue from offshore oil drilling, and it concluded:

“We discovered a culture of substance abuse and promiscuity in . . . in concert with the industry. Several staff admitted to illegal drug use as well as illicit sexual encounters. Alcohol abuse appears to have been a problem when program staff socialized with the industry.”

Now, we see the Deepwater Horizon disaster. President Obama has ordered BP to pay for the cleanup. But Congress is the place where we need enact laws to clean up the mess in our government’s regulatory house, and the Energy Committee is the place to start.

The BP disaster has pulled back the curtain on something far more hidden than the oil on our beaches and in our marshlands: It’s shown the public how little control our drilling regulators exercised over Big Oil.

Someone wrote this week that the Gulf coast crisis is about many things—corruption, deregulation and our country’s addiction to fossil fuels. But behind it all, it’s about the unbelievable sloppiness on the part of our regulators and the willingness by too many to believe the bogus claims by the oil industry that it had mastered technology.

It has taken the biggest environmental disaster in U.S. history, it seems, but Congress is ready to crackdown on the government’s buddy-buddy relationship with the oil industry.

The legislation by Sen. Robert Menendez and I would prohibit employees of the Interior Department’s Minerals Management Service from taking oil industry jobs within two years of leaving their federal government posts. The goal is to limit the degree of influence that Big Oil has had on those hired to keep the drillers in line.

Besides closing the revolving door on jobs, our revived measure would also prohibit MMS regulators from receiving gifts or buying stocks in the oil industry.

And the teeth in the bill?

It would impose jail time up to 15 years for regulators found guilty of making fraudulent statements and misrepresentations.

As I said, we first introduced a similar proposal two years ago, after the inspector general found widespread corruption in MMS. It’s time we act to make sure our government agencies serve the public, instead of the oil industry.

Let me call on Senator Murkowski for her opening statement.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. Good morning.

Yesterday, in the appropriations hearing, we had an opportunity to have Secretary Salazar and Mr. Bromwich in front of us, and the purpose of the hearing was on the realignment within Minerals Management Services. We didn’t hear really very much about that realignment at that point in time.

I think Senator Dorgan was there with me. I think both of us have more questions today. So this is a very good hearing, very timely.

I want to recognize and thank Senator Brown for being here to testify on his bill. It is among a growing number of targeted pieces of legislation to address the various issues. We have a couple of members, Senator Udall and Senator Menendez, that will speak to theirs this morning as well.

But, Mr. Chairman, I want to thank you for reaching out to work toward a bipartisan effort to reform the MMS into its current division of two bureaus and one revenue office. It has become clear, I think, that our inspectors have been spread thin, both in terms of how many operations they must oversee, but perhaps more impor-

tantly in the amount of knowledge that they must maintain in order to know what to guard against as the technology advances so quickly, particularly in the deep water.

I strongly support giving the Secretary the tools of more people and more education to do their jobs, and I think that this bill advances that. Where I am perhaps most eager to hear feedback today is from our witnesses on the second panel, who can describe their views of how this new Bureau of Ocean Energy will truly balance this Nation's oil and natural gas requirements.

We recognize that these are just going to continue to increase over the years. But we need to balance it with very visible demand for environmental safeguards. This legislation does add several new elements of review and consultation, establishing stronger roles for scientists in the Department of the Interior and giving the department much more time to review exploration plans.

These are, in and of themselves, certainly not bad ideas, but I do want to get assurances that the details of this legislation and its likely interpretations will not result in even greater uncertainty for the Gulf economy and the Nation as a whole. I hope we are close to achieving that. So the point of this hearing is to perhaps obtain some perspective on how successful we have been at drafting this.

Mr. Chairman, we have had a hearing on the Deepwater Horizon spill all but two of the weeks since it occurred in April. The common denominator I think here in this committee is that all of us have a lot of questions, and this is certainly very much the case as we try to determine sound and reasonable policies on how to manage the OCS moving forward.

With that, Mr. Chairman, I thank you and look forward to the testimony this morning.

The CHAIRMAN. Thank you very much.

As Senator Murkowski indicated, in addition to the bill that I have described, S. 3431, the hearing today also will consider 3 other bills that are pending before the committee. Let us see, the one introduced by Senator Menendez is S. 3431, I gather. The one introduced by Senator Brown is S. 3509, or maybe I have got the numbers confused here?

Senator Udall—S. 3516 is the bill that I described. S. 3431 is Senator Menendez's bill. S. 3497 is Senator Brown's bill, and S. 3509 is Senator Udall's bill.

So, Senator Brown, why don't you go ahead and make whatever statements you would like in support of your bill, and then we will afford the same opportunity to Senator Menendez and then Senator Udall.

STATEMENT OF HON. SCOTT BROWN, U.S. SENATOR FROM MASSACHUSETTS

Senator BROWN. Thank you, Mr. Chairman. Through you to the members of the committee, I want to thank you all for your leadership in trying to get a handle on what is obviously very important issues affecting not only the Gulf, but obviously the oil industry and many other industries throughout the country. You have a very great responsibility.

Ranking Member Murkowski, thank you also for your guidance in a lot of what we have been working on.

I am here, obviously, to talk about the Oil Spill Prevention and Mitigation Improvement Act of 2010, and there are other colleagues that I have great respect for that are trying to do the same thing, and I am hopeful that between the 3 of us, we can potentially come up with a solid bill that will aid and assist not only the committee, but obviously address some of the very serious things that we are faced with today.

I am in cosponsorship with Senator Dianne Feinstein. Senator Stabenow obviously recently jumped on as well. As you know, for over 2 months, our country has watched as millions of gallons of oil have washed up in the Gulf of Mexico after the collapse of the Deepwater Horizon oil rig. Oil continues to wash up on beaches along the Gulf Coast, covering wildlife, destroying ecosystems, and further hurting the region's fragile economy.

Efforts to stop the leak continue to hit a snag. Significant roadblocks are common, and the oil keeps spewing from the ocean floor. Just yesterday, we learned that the undersea robot bumped a venting system, which forced BP to remove the cap. They have since replaced the cap, but it just shows how the leak isn't quite under control, as we are learning every day. There is a universal agreement that this is the worst man-made environmental disaster in our Nation's history.

Even more troubling are the startling details emerging that this all could have been avoided. BP was astonishingly unprepared and ill-equipped to deal with the leak. Worse yet, the Federal Government has acknowledged that oil companies have not been held to the highest standards that we demand when it comes to having a fail-safe response plan in place to deal with spills in deep water. I find that unacceptable, Mr. Chairman. I know you all do, too.

While everyone understands that accidents can certainly happen, Americans are rightly furious that there was neither a viable nor urgent response plan in place to stop the leak or begin mitigating the damages. While no one expects people to zip down there with a wetsuit to plug the leak, they do expect the emergency mitigation plans to be executed in a timely manner so they can protect the environmental impact that are affecting many of the Gulf States now.

To address this glaring error, not only me, but my colleagues have filed legislation that would require oil companies to have a viable, peer-reviewed plan, a response plan to respond to significant leaks. The objective outside scientists and experts should be vetting these plans as well to make sure that they are viable.

The fact that the Minerals Management Service approved the existing boilerplate plans written by BP and the other major oil companies—full of references to dead scientists and nonexistent Gulf walruses—rightfully undermines our faith in objective standards and proper regulation of this situation.

The act being proposed would require BP and other oil companies to do due diligence and provide a thorough, feasible, and peer-reviewed response plan before any new offshore drilling lease can be issued. Specifically, these response plans must also be certified by the Secretary of the Interior, who obviously has his hands full

right now, but he will have to prescribe the means and timeline for containment of a spill and be specifically tailored to depth and location where the drilling occurs. This is an essential step for preventing other types of disasters as we have seen here from happening in the future.

What I believe frustrates the American people the most has been the lack of a clear, concise response plan that utilizes all available resources. We should have had the best and most brilliant scientists and engineers, oil folks, citizens in the world—administration officials, military in the world together to stop this spill and figure out how to remedy the impacts of this extreme environmental disaster.

To address this need, this legislation, Mr. Chairman, would immediately use and redirect existing funds within the Department of Energy's deepwater program to build a team comprised of private sector engineers and experts from the National Academy of Sciences and others to stop the leak and mitigate the damage to wildlife, the environment, and businesses in the region and recommend best practices moving forward.

Obviously, we can't do—we have a problem. We have to stop it right now. But we have to move forward and make sure that this doesn't happen again. If it does, how do we deal with it quickly and effectively?

Most importantly—well, I shouldn't say most importantly. Finally, we should find out what went wrong. There has been much confusion about what existing authorities and resources the administration can and should be using to stop the spill and protect the environment in the Gulf. Our bill would require the GAO to investigate whether or not the administration has used all existing authorities and resources to respond to the spill and to make recommendations if new authorities are needed.

As you know, Mr. Chairman, the estimates show that at least 80 million gallons of crude oil have leaked into our waters so far, and the number keep climbing on a daily basis. We need to do something to stop this. Equally important, we must put a viable prevention and response plan in place to make sure that we can react quickly and decisively should the unthinkable ever happen again.

This Oil Spill Prevention and Mitigation Improvement Act, along with other suggestions from my colleagues and your efforts and those of the committee's, I am hopeful will take a common-sense approach to do just that. I would just ask, Mr. Chairman and members of the committee, that when you do so, you include us together in a bipartisan manner to just solve the problem. It is time to just move past the politics and just get down to business because the people need it. Our environment needs it. We can do better, and I am hopeful to be part of that process.

Thank you, Mr. Chairman and members of the committee.

[The prepared statement of Senator Brown follows:]

PREPARED STATEMENT OF HON. SCOTT BROWN, U.S. SENATOR FROM MASSACHUSETTS

Thank you Mr. Chairman and Ranking Member Murkowski for giving me the opportunity to be here today and testify in support of the Oil Spill Prevention and Mitigation Improvement Act of 2010, which I have introduced with Senator Dianne Feinstein.

Mr. Chairman, for well over 2 months now our country has watched millions of gallons of oil gush relentlessly into the Gulf of Mexico after the collapse of BP's Deepwater Horizon oil rig. Oil continues to wash up on beaches along the Gulf Coast, covering wildlife, destroying ecosystems, and further hurting the region's fragile, recovering economy. Efforts to stop the leak continue to hit significant roadblocks and oil keeps spewing from the ocean floor. Just yesterday, we learned that an undersea robot bumped a venting system, which forced BP to remove the cap that had been containing some of the oil. This morning we learned that the cap has been put back on but this incident serves as another reminder of how we are not yet in control of the leak. In total there is universal agreement that this is the worst manmade environmental disaster in our nation's history.

Even more troubling are the startling details emerging that this all could have been avoided. BP was astonishingly unprepared and ill-equipped to deal with their leak. Worse yet, the federal government has even acknowledged that oil companies have not been held to the highest standards when it comes to having a fail-safe response plan to deal with a spill in deepwater. While everyone understands that accidents can happen, Americans are rightly furious that there was neither a viable nor urgent response plan in place to stop the leak or to begin mitigating the damage. There should have been one on day one.

To address this glaring error, our legislation would require that oil companies have a viable, peer-reviewed response plan, to respond to a significant leak. Objective outside scientists and experts should be vetting these plans. The fact that the Mineral Management Service approved the existing "boiler plate" plans written by BP and the other major oil companies—full of references to dead scientists and non-existent Gulf walruses—rightfully undermines our faith in objective standards and proper regulation. The Oil Spill Prevention and Mitigation Improvement Act would require BP and other oil companies to do due diligence and provide a thorough, feasible, and peer-reviewed response plan before any new offshore drilling lease can be issued. Specifically, these response plans, which must also be certified by the Secretary of the Interior, will have to prescribe the means and timeline for containment of a spill and be specifically tailored to the depth and location where drilling will occur. This is an essential step to preventing another disaster like this in the future.

What I believe has frustrated the American people the most has been the lack of a clear, cohesive response effort that utilizes all available resources. We should have the best and most brilliant scientists and engineers in the world working to stop the spill and figure out how to remedy the impacts of this extreme environmental disaster. To address this need, our legislation would immediately re-direct existing funds within the Department of Energy's deepwater program to build a team, comprised of private sector engineers and experts from the National Academy of Sciences, to stop the leak and mitigate the damage to wildlife, the environment, and businesses in the region and to recommend best practices going forward.

Finally, we must find out what went wrong. There has been much confusion about what existing authorities and resources the Obama administration can and should be using to stop the spill and protect the environment in the Gulf of Mexico. Our bill would require the Government Accountability Office to investigate whether or not the administration has used all existing authorities and resources to respond to the Deepwater Horizon spill, and to make recommendations if new authorities are needed.

Mr. Chairman, estimates show that at least 80 million gallons of crude oil have leaked into our waters so far, and the numbers keep climbing. We must do something to stop this. And equally important, we must put viable prevention and response measures in place to react quickly and decisively should the unthinkable happen again, and we are faced with another oil spill of this magnitude in the future. The Oil Spill Prevention and Mitigation Improvement Act is a common-sense approach to do just that, and I am hopeful the Committee will take a close look at it.

Thank you, again, for inviting me here today to testify on our legislation. I applaud your efforts to take a serious look at this issue and try to work constructively to put forward legislative proposals to address the Deepwater Horizon disaster.

The CHAIRMAN. Thank you very much, Senator Brown, for your proposed legislation. We certainly will consider the various provisions in there in whatever work we are able to do.

Let me call on Senator Menendez to discuss his legislation, which is also the subject of today's hearing.

**STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR
FROM NEW JERSEY**

Senator MENENDEZ. Thank you, Mr. Chairman, for holding an important hearing.

I am grateful for the opportunity to discuss legislation that I have coauthored with Senator Nelson of Florida to put a halt to cozy relationships with big oil and fundamentally reform the way we regulate big oil.

I want to briefly call the committee's attention to the history of the creation of the Office of Thrift Supervision, which oversees AIG and other financial institutions involved in our current economic crisis, because I think the lessons learned there apply to the challenges we face in regulating these industries.

Back in the late 1980s, savings and loans institutions were collapsing. The agency then regulating this industry, the Federal Home Loan Bank Board, started getting a lot of attention. Under public pressure, President Bush announced the closure of the agency and the creation of a successor agency.

Attorneys from the office stepped out to watch the President speak. When they got back to the office, memos were waiting on their desks announcing the old agency had a new name, the Office of Thrift Supervision. Sure, some of the rules changed and some of the leadership got replaced, but the culture of lax oversight, *laissez faire*, let the market control itself attitude that helped contribute to our financial meltdown largely stayed the same.

I want to make sure that what we do to regulate these industries is more than just a name change. So, I think the committee well knows that I have real concerns about the expansion of offshore drilling as an inherently risky enterprise, as we are seeing all too clearly in the BP disaster in the Gulf. In my mind, expanded drilling means expanded risk.

But if we must drill, then I think we need real reform to address the problems we know exist. There are a multitude, as we have seen in several Interior Department Inspector General reports that revealed shocking behavior by officials at the Minerals Management Service during the last administration.

Beyond the sex and drug use that occurred, MMS employees accepted gifts like sporting event tickets, hunting trips from the very people they were supposed to oversee. One MMS inspector conducted 4 inspections on oil platforms belonging to a company that was attempting to and eventually did hire him. Some MMS employees held outside employment with oil and gas interests while on the job as regulators. As outrageous as it may sound, inspectors actually allowed oil and gas personnel to fill out platform inspection forms in pencil before the inspectors traced them over in pen.

These cozy relationships are summed up in the attitude displayed by the manager of MMS's Lake Charles, Louisiana, office, who said, "Obviously, we are all oil industry." "Obviously, we are all oil industry." I think you have to think about that statement, and you have to think that that simply has to change.

I am concerned, Mr. Chairman, that nothing seems to have been learned yet. The AP—the New York Times, I should say, reported yesterday that BP's Liberty project off the coast of Alaska is being exempted from the moratorium on Arctic drilling because the drill-

ing rig will sit on an artificial island connected to land by a causeway that BP built. That somehow makes it an “onshore project.”

But BP is going to drill under the Arctic Ocean, and it will do so using a risky drilling technique that MMS itself says is more prone to blowouts. That is bad enough. But then we also learned that MMS regulators back in 2007 allowed BP to write its own environmental review, which looks almost identical to the Federal environmental review.

My legislation increases the penalties for these sorts of false representations by regulators. How many of these sorts of incidents do we need to uncover to get serious about the integrity of how we regulate big oil?

The legislation I am proposing imposes tough, but obviously necessary sanctions to end these cozy relationships. It prohibits regulators from accepting gifts from industry, increases the penalty for doing so. It closes the revolving door by making it a felony for an oversight official to take an industry job within 2 years of leaving the agency. It stiffens the penalty for regulators making fraudulent statements or false statements. It cracks down on financial conflicts of interest by prohibiting regulators from working for industry at the same time. It requires financial disclosure by senior regulators. We think that those are all essential to create integrity and an opportunity to have the public’s confidence restored.

I ask, Mr. Chairman, consent to enter into the record a letter of the Project on Government Oversight that is supporting this legislation. It is one of our good government groups, and I appreciate that Senators Stabenow and Klobuchar have joined us as cosponsors.

Senator MENENDEZ. Finally, I know Secretary Salazar, from the start of his tenure as Interior Secretary, has been attempting to address ethics at MMS and continues to do so. I appreciate and commend his efforts. But it seems to me that we need to codify reform into law.

My concern is that a future administration may very well not be as interested in keeping an arm’s length relationship between itself and big oil. So I hope and look forward to working with the chairman as we incorporate some of these ideas as we move forward to make sure that we have the integrity that is necessary not just for integrity itself, but for the purposes of ensuring that we have a system that ultimately does not give us another situation as we have, another disaster as we have in the Gulf.

The CHAIRMAN. Thank you very much for your statement in support of the bill you have introduced.

Senator Udall, would you like to make a statement on your bill?

**STATEMENT OF HON. MARK UDALL, U.S. SENATOR
FROM COLORADO**

Senator UDALL. I would, Mr. Chairman. I am pleased that my bill, the Safer Oil and Gas Production Research and Development Act, is also going to be considered this morning. I want to thank the chairman and Senator Shaheen for working with me on this legislation.

The purpose of our bill is to prevent future disasters like the one we are seeing unfold in the Gulf of Mexico. It focuses existing Fed-

eral oil and gas research and development funds on well safety and accident prevention. This oil spill has highlighted many problems with the operation of the oil and gas industry and the threat that accidents POSE to our families, our economy, and of course, our environment.

While the industry has opened up new areas to oil and gas production, developments in well safety and well control technology have not always kept pace, and that is clearly unacceptable. As you mentioned, Mr. Chairman and others, 11 people lost their lives during this tragedy, and we do not yet know the full extent of the economic, health, and environmental damage that will be caused by this ongoing spill.

Unfortunately, out of control wells are not a unique circumstance, whether onshore or offshore. Over the last month, two major onshore incidents also occurred—one in West Virginia and another in Pennsylvania. Now it is clear, and I think we are under no illusions, that oil is and will continue to be an important energy source for us for many years to come, especially for our transportation sector. But while we will continue to drill for oil and gas, we cannot repeat the mistakes, negligence, or recklessness that led to this disaster.

We must learn from this accident and aggressively develop better technology to stop these spills from happening in the first place, both onshore and offshore. My bill would change an existing oil and gas research and development program within the Department of Energy to refocus it specifically on technologies to improve the safety of exploration and production activities, including well integrity, well control, blowout prevention, and well plugging and abandonment.

In addition, the legislation requires that the Department of Energy publish an annual update of the program's work and outline recommendations for the implementation of its research findings. This oversight is important so that we can ensure this information is public, transparent, and readily available to entrepreneurs and others who could further develop these technologies.

I would also like to note, in addition to preventing future accidents, we need to make sure that we are better prepared to respond when they occur. In that spirit, I want to commend Senator Shaheen for her work on an oil spill response research and development measure. It is interesting—well, it is more than interesting. It seems like the technologies we are using are the same that we used back in the days of the Exxon Valdez.

So, to that end, she and the chairman and I have introduced companion legislation to my bill that focuses on oil spill containment, response, and cleanup. It is clear that the industry was totally unprepared to respond to the BP disaster once it happened, and we need to make sure that we have the technologies in place to respond to future deepwater spills if they happen. Senator Shaheen's bill would do just that.

This tragedy is a wakeup call that proves that we need to begin changing the way we generate and consume energy. But until we end our dependence on oil, we need to be smarter in how we drill for it, and the two bills I have outlined will take common-sense

steps to improve drilling safety, prevent accidents, and help ensure that if an accident does occur, we are better prepared to respond.

Mr. Chairman, again, thank you for holding this important hearing today.

The CHAIRMAN. Thank you. Thank you for putting your legislation forward. I think there are very good provisions in there, and I am glad to be a cosponsor.

Why don't we go ahead? Yes, Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Before we move to recognize the Secretary and Mr. Bromwich, I would like to recognize an individual in the audience today. Fran Ulmer is with us from the State of Alaska. Fran has been involved in our local governments for years, but she has just recently been appointed by the President to serve on the oil spill commission. So I appreciate her presence today and this fact-finding mission.

Thank you.

The CHAIRMAN. Thank you for making that introduction.

Secretary Salazar, we welcome you back before our committee and to this committee. Obviously, you are joined today by Michael Bromwich, the new head of the Bureau of Ocean Energy Management, Regulation, and Enforcement. We are anxious to hear your views on some of the legislative proposals that we have pending before the committee and get your input as to how we should proceed.

So go right ahead.

**STATEMENT OF HON. KEN SALAZAR, SECRETARY,
DEPARTMENT OF THE INTERIOR**

Secretary SALAZAR. Thank you very much, Chairman Bingaman and Senator Murkowski and Senator Udall and Senator Cantwell.

I am pleased to be joined here today by Mike Bromwich, who is the new Director of the Bureau of Ocean Energy Management, Regulation, and Enforcement. He obviously will be involved with us as we move forward with the new organization beyond MMS.

Let me say at the outset in front of the committee that our effort in the Gulf Coast continues. Our mission is simple. It is to protect the Gulf and its people and the ecological resources which are so important to our country and to the Gulf Coast.

It continues to be our hope that out of this crisis, we will see a catalyst for a safe program for Outer Continental Shelf production. It is our hope that we will see out of this crisis a catalyst for a Gulf Coast restoration program that will be effective and can be put on steroids. It is our hope that out of this crisis we will see a new conscience for conservation, which this committee has supported in the past, but which we need to move forward on in a major way in the 21st century.

I want to just briefly tell the committee in terms of a current update, the current leak containment levels are up somewhere at between 25,000 to 27,000 barrels a day. There was a short period yesterday where one of the recovery mechanisms was down, and so for the last 24 hours, the total amount of oil that was recovered was about 16,800 barrels. But the systems are up and running, and hopefully, today we will see somewhere 26,000, 27,000 barrels of production of oil actually captured from the Macondo well.

At the end of June, we are probably 4 or 5 days away from having a capacity of 40,000 to 53,000 barrels. Our hope is that when we get to that point, we will see whether we are starting to capture 90 percent or upwards of the oil pollution.

Mid July, we will be at a capacity of 60,000 to 80,000 barrels of oil captured from the well. We have additional capacity of another 10,000 that is being planned. Much of that additional capacity has been brought about by BP as a result of orders that we have issued, including work that Secretary Chu and I have been doing with BP to make sure that there are plans in place for redundancies, including plans in place that will deal with the upcoming hurricane season.

As you know, the ultimate kill here will be when the relief wells are drilled and the wells are killed, and those are on track.

Now let me turn to the legislation in front of us and also the re-organization effort. First, I am pleased with the people who we have running the new Bureau of Ocean Energy Management. We have moved beyond MMS. MMS is no more, and we will build on the reforms of the last year to make sure that we have an agency that has the capacity to provide the standards and enforcement so that we can have safety with respect to production in the OCS.

The personnel that will lead that effort and has been leading that effort include Wilma Lewis, the Assistant Secretary of Land and Minerals. She is a prosecutor, District of Columbia prosecutor as U.S. attorney for many years, also served as the Inspector General of the Department.

Today, we are joined by Mike Bromwich, appointed to run what was MMS, now the new bureau. He has his own credentials, including having served a number of years as Inspector General for the Department of Justice, having been special counsel on the Iran-Contra crisis, as well as having dealt with a number of internal investigations during his time in the private sector. He will be speaking a little bit more about his view of the organization.

What I have tasked the Assistant Secretary and Director Bromwich to work on is to build on the major reforms which we have been working on very hard and very tirelessly for the last year. Those reforms include ethics, making sure that we have the right standards in place and the right enforcement, which we started last January and have continued throughout the last year. Those reforms have included the new Outer Continental Shelf plan for oil and gas production, which we announced in March of last year, and those reforms include moving forward with standing up renewable energy in the Outer Continental Shelf.

In conclusion, Mr. Chairman, the legislation that you have in front of you, including the legislation which you have been drafting, is a great step forward in helping us move forward with an organization that addresses some of the difficult issues that have faced MMS in the past, including dealing with the separation of the parts of the agency that deals with leasing and revenue collection from the parts of the agency that deal with enforcement relative to both safety as well as to environmental compliance.

So, we look forward to working with you to have organic legislation for this agency, which carries on such important missions for the United States of America—principally, the oversight of energy

production in the Outer Continental Shelf in Federal waters and, second, the production of on average \$13 billion a year for the United States of America.

Mr. Chairman, I would like to have, with your permission, Mike Bromwich, on his first appearance before the committee, also talk a little bit about himself and about some of his vision for the new agency.

[The prepared statement of Secretary Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, SECRETARY, DEPARTMENT OF THE
INTERIOR

Chairman Bingaman, Ranking Member Murkowski, and Members of the Committee, I want to thank you for holding this hearing today as we continue to address the issues and challenges associated with the continuing reform of the Department of the Interior's offshore energy program.

Before we begin, I want to introduce Michael R. Bromwich, the new Director of the Bureau of Ocean Energy Management, Regulation, and Enforcement. His impressive background includes time as the Inspector General of the U.S. Department of Justice, as an Assistant U.S. Attorney, and since 1999, as an attorney in private practice. His extensive experience in government and the private sector in improving the way organizations work make him an ideal choice to lead the restructuring and reform of the Department's offshore energy program.

For the same reasons I chose Michael Bromwich for this position, I chose Wilma Lewis who oversees the Department's energy bureaus as the Assistant Secretary for Land and Minerals Management. A former U.S. Attorney for the District of Columbia and Inspector General at the Department, Wilma has played a central leadership role in some of the most significant reforms during my tenure as Secretary. She has helped shape reforms ranging from our new approach to offshore oil and gas leasing and a new emphasis on renewable energy development on the Outer Continental Shelf, to ethics reform, to the enhancement of leasing programs and the development of renewable energy programs onshore, to support for our study of policies designed to ensure fair return to American taxpayers for the development of public oil and gas resources. I have also appointed her to chair the Safety Oversight Board in the aftermath of the Deepwater Horizon oil spill, and to help spearhead the reorganization of MMS toward a new future.

Offshore Energy Reforms Completed

Although this unprecedented disaster, which resulted in the tragic loss of life and many injuries, is commanding our time and resources, it has also strengthened our resolve to continue reforming the OCS program.

The reforms we have embarked on over the last 17 months, and upon which we will continue to build, are substantive and systematic, not cosmetic. The kind of fundamental changes we are making do not come easily and many of the changes we have already made have raised the ire of industry. Our efforts at reform have been characterized by some as impediments and roadblocks to the development of domestic oil and gas resources. We believe, however, that they are crucial to ensuring that we carry out our responsibilities effectively, without compromise, and in a manner that facilitates the balanced, responsible, and sustainable development of the resources entrusted to us.

To review the reforms we have undertaken:

First, we focused our efforts on ethics and other concerns that had been raised in the revenue collection side of the MMS. We began changing the way the bureau does business and took concrete action to:

- upgrade and strengthen ethics standards throughout MMS and for all political and career employees;
- terminate the Royalty-in-Kind program to reduce the likelihood of fraud or collusion with industry in connection with the collection of royalties; and
- aggressively pursue continued implementation of the recommendations to improve the royalty collection program that came from the Department's Inspector General, the Government Accountability Office, and a committee chaired by former Senators Bob Kerrey and Jake Garn.

Second, we started reforms of the offshore oil and gas regulatory program, which included actions to:

- initiate in Fall 2009 an independent study by an arm of the National Academy of Engineering to examine how we could upgrade our inspection program for off-shore rigs;
- procure substantial increases in the MMS budget for FY 2010 and FY 2011, including a ten percent increase in the number of inspectors for offshore facilities; and
- develop a new approach to on-going oil and gas activities on the OCS aimed at promoting the responsible, environmentally sound, and scientifically grounded development of oil and gas resources on the Outer Continental Shelf.

In that effort, we cancelled the upcoming Beaufort and Chukchi lease sales, removed Bristol Bay altogether from leasing under the current 5 year plan, and removed the Pacific Coast and the Northeast entirely from any drilling under a new 5 year plan. We made clear that we will require full environmental analysis through an Environmental Impact Statement prior to any decision to lease in any additional areas, such as the mid and south Atlantic, and launched a scientific evaluation, led by the Director of USGS, to analyze issues associated with drilling in the Arctic.

Third, we laid the groundwork for expanding the mission of MMS beyond conventional oil and gas by devoting significant attention and infusing new resources into the renewable energy program, thereby providing for a more balanced energy portfolio that reflects the President's priorities for clean energy. Toward that end, we took action to:

- finalize long-stalled regulations that define a permitting process for off-shore wind—cutting through jurisdictional disputes with FERC in the process and ultimately approving the Cape Wind project;
- announce 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 Outer Continental Shelf; and
- commence discussions and enter into an MOU with governors of East Coast states, which formally established an Atlantic Offshore Wind Energy Consortium to promote the efficient, orderly, and responsible development of wind resources on the Outer Continental Shelf through increased Federal-State cooperation.

Offshore Energy Reforms and Related Activities Underway

Since the Deepwater Horizon explosion and oil spill, the reforms and associated efforts have continued with urgency, with particular focus on issues raised by, and lessons being learned from, the circumstances surrounding the event. We are aggressively pursuing actions on multiple fronts, including:

- inspecting all deepwater oil and gas drilling operations in the Gulf of Mexico and issuance of a safety notice to all rig operators;
- implementing the 30 day safety report to the President, including issuing notices to lessees on new safety requirements, and developing new rules for safety and environmental protection; defending the moratorium on new deepwater drilling, which is currently the subject of litigation; and
- implementing new requirements that operators submit information regarding blowout scenarios in their exploration plans—reversing a long standing exemption that resulted from too much reliance on industry to self-regulate.

Additional reforms will be influenced by several ongoing investigations and reviews, including the Deepwater Horizon Joint Investigation currently underway by the Bureau of Ocean Energy Management, Regulation and Enforcement, and the United States Coast Guard. In addition, at my request, a separate investigation is being undertaken by the National Academy of Engineering to conduct an independent, science-based analysis of the root causes of the oil spill. I also requested that the Inspector General's Office undertake an investigation to determine whether there was a failure of MMS personnel to adequately enforce standards or inspect the Deepwater Horizon.

Further, on April 30th I announced the formation of the Outer Continental Shelf Safety Oversight Board to identify, evaluate and implement new safety requirements. The Board, which consists of Assistant Secretary for Land and Minerals Management Wilma A. Lewis, who serves as Chair, Assistant Secretary for Policy, Management and Budget Rhea Suh, and Acting Inspector General Mary Kendall, will develop recommendations designed to strengthen safety, and improve overall management, regulation, and oversight of operations on the Outer Continental Shelf.

Finally, the President established the independent bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling tasked with providing options on how we can prevent and mitigate the impact of any future spills that result from offshore drilling. The Commission will be focused on the environmental and safety precautions we must build into our regulatory framework in order to ensure an accident like this never happens again, taking into account the other investigations concerning the causes of the spill.

Supplemental Legislation

The Administration will make sure that BP and other responsible parties are held accountable, that they will pay the costs of the government in responding to the spill, and compensation for loss or damages that arise from the spill. We will do everything in our power to make our affected communities whole. As a part of the response efforts, we expect to spend a total of \$27 million through June 30, 2010 for Interior's response activities.

As part of our reforms, we are also building on the efforts we undertook in the last sixteen months to strengthen the OCS budget. As I already mentioned, the 2011 budget includes a ten percent increase in the number of inspectors. Our restructuring of the OCS program will require additional resources to aggressively pursue the reforms I outlined earlier, to implement the 30 day report to the President, and to potentially address the results of ongoing investigations and the President's Commission. We are currently hiring an additional twelve inspectors, six more than we proposed in the 2011 budget, and we are taking other actions that are outlined in the 30 day report to the President. Over the course of the next several years, our restructuring of a more robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff.

The President's supplemental request of May 12, 2010 includes \$29 million that will fund the near term resources we need for these activities. I appreciate the Senate's prompt action in passing the supplemental on May 27. As you know, it is critically needed to support our full and relentless reforms—to bolster inspections of offshore oil and gas platforms, draft enforcement and safety regulations, and carry out environmental and engineering studies. The President's request included a proposal to extend the time allowed by statute for review and approve of oil and gas exploration plans from 30 to 90 days—this is also needed and I hope Congress will include it in the final version of the supplemental.

Reorganization of the Minerals Management Service

On June 15, I appointed Michael R. Bromwich as the Director, of the Bureau of Ocean Energy Management, Regulation and Enforcement. Michael will lead us through the reorganization—the foundation for the reforms we have underway. He will lead the changes in how the agency does business, implement the reforms that will raise the bar for safe and environmentally sound offshore oil and gas operations, and help our Nation transition to a clean energy future.

Michael will join the team that has been working out the details of the reorganization. In a May 19 Secretarial Order I tasked Rhea Suh, the Assistant Secretary for Policy, Management and Budget, Wilma Lewis, the Assistant Secretary for Land and Minerals Management, and Chris Henderson, one of my senior advisors to develop a reorganization plan in consultation with others within the Administration and with Congress. The report will provide the plan to restructure the Bureau of Ocean Energy Management, Regulation and Enforcement in order to responsibly address sustained development of the Outer Continent Shelf's conventional and renewable energy resources, including resource evaluation, planning, and other activities related to leasing; comprehensive oversight, safety, and environmental protection in all offshore energy activities; and royalty and revenue management including the collection and distribution of revenue, auditing and compliance, and asset management.

The Deepwater Horizon tragedy and the massive spill have made the importance and urgency of a reorganization of this nature ever more clear, particularly the creation of a separate and independent safety and environmental enforcement entity. We will responsibly and thoughtfully move to establish independence and separation for this critical mission so that the American people know they have a strong and independent organization ensuring that energy companies comply with their safety and environmental protection obligations.

The restructuring will also address any concerns about the incentives related to revenue collections. The OCS currently provides nearly 30 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production and is one of the largest sources of non-tax and non-trust revenue for the Treasury. The MMS collected an average of more than \$13 billion annually for the past 5

years. There will be clear separation between the entities that collect and manage revenue and those that are responsible for the management of the OCS exploration and leasing activities.

Sustained Response Efforts in the Gulf

Of utmost importance to us is the oil spill containment and clean up of the Gulf. I have returned to the Gulf Region numerous times to witness the work Departmental staff and volunteers are carrying out to protect the coasts, wetlands, and wildlife threatened by this spill. We have deployed approximately 1,000 employees to the Gulf and they are directing actions to contain the spill; cleaning up affected coastal and marine areas under our jurisdiction; and assisting Gulf Coast residents with information related to the claims process, health and safety information, volunteer opportunities, and general information on the efforts being carried out in the region.

Under the direction of National Incident Commander Admiral Thad Allen, the Flow Rate Technical Group, which is led by U. S. Geological Survey Director Dr. Marcia McNutt, and a scientific team led by Energy Secretary Steven Chu recently announced an improved estimate of how much oil is flowing from the leaking well. That estimate, suggests that the flow rate is at least 35,000 barrels per day, based on the improved quality and quantity of data that are now available.

The Department's senior staff continues to offer coordination and guidance to the effort. Deputy Secretary David J. Hayes is devoting his time to coordinating the many Gulf-related response activities we are undertaking. Assistant Secretary for Fish, Wildlife and Parks Tom Strickland has been leading the Department's efforts for onshore and near shore protection. National Park Service Director Jon Jarvis and Acting Director of the Fish and Wildlife Service Rowan Gould continue to supervise incident management personnel and activities that their bureaus are taking to respond to the spill and clean up oil impacts. To protect the eight national parks and 36 wildlife refuges and the numerous wildlife, birds, and historic structures they are responsible for in the Gulf of Mexico, the NPS and FWS dispatched approximately 590 employees.

Representatives from the FWS also participated with the U.S. Coast Guard, the Environmental Protection Agency, and state and local governments in a series of public meetings with local residents to answer questions and offer information on a variety of topics related to the spill and response activities.

Finally, there are many, many people in the Department who are devoting significant time and energy to this event; to the various investigations and inquiries, both within the Administration and in Congress, that are being carried out; and to the ongoing reorganization and reform. I want to acknowledge their work and let them know their efforts are appreciated and are not going unnoticed.

In the last 60 days we have also seen what the employees in the Bureau of Ocean Energy Management, Regulation and Enforcement are capable of, their professionalism, their dedication to the Department, and their enthusiasm for the reforms underway. With Michael's help we will be able to cast aside the shadow on the many dedicated employees that has been left by an errant few, and by previous policies that have prioritized production over ethics, safety, and environmental protection.

Legislative Efforts at Reform

All four of the bills before you today address reform of the Department's offshore energy and mineral resource development program. I would like to provide you some general comments on each of these bills and a few provisions in particular.

Your legislation, Mr. Chairman, S. 3516, the "Outer Continental Shelf Reform Act," would provide general organic authority for the restructuring of the offshore energy and minerals program in the Department and would make additional changes reforming some of the underlying laws governing management of these resources.

I have previously testified in support of organic legislation for the functions performed by MMS, noting that an organization with such important responsibilities should be governed by a thoughtfully considered organic act. It is important for organic legislation to provide the Secretary with the discretion to implement the details of a reorganization as complicated as this.

The provisions in S. 3516 authorizing the creation of the three new entities are consistent with the changes I have directed in my Secretarial Order. The report and schedule for implementation that I will receive on July 9th will provide a detailed roadmap for this reorganization and will greatly inform the process. The Administration would like to continue discussion with the Committee regarding the specifics

in this legislation of the appointment and confirmation of the new bureau and office directors.

A number of the changes contained in this bill highlight the need for increased safety of operations and consideration of the marine and coastal environment, including the need for integrated programs for both environmental research and technological research and development. In this same vein, S. 3509, the "Safer Oil and Gas Production Research and Development Act", would amend certain research and development provisions contained in the Energy Policy Act of 2005 to provide an additional focus on research and development on safety and reduced environmental impacts from development of these resources.

A focus on strengthened safety and oversight and the environmental impacts of offshore oil and gas operations are priorities of the Administration. These issues, and several others in the bills before you today, will require the Department to work closely with the Committee and other relevant federal agencies to ensure a coordinated approach to attaining these important objectives.

S. 3516 also includes new planning requirements, including a requirement for detailed descriptions of equipment and plans to address potential well blowouts. S. 3497, the "Oil Spill Prevention and Mitigation Improvement Act," includes a similar focus, amending the Outer Continental Shelf Lands Act to require that leases entered into under that Act include a plan for containment and termination of discharges of oil, and a timeline for accomplishing those actions.

Recognizing the importance of this information, on June 18, 2010, the Department issued a Notice to Lessees (NTL) requiring that new filings for drilling permits, exploration plans, or development plans to contain information specifically addressing the possibility of a blowout and the detailed steps that lessees or operators would take to prevent blowouts. This reverses a 2003 policy and a 2008 NTL that exempted many offshore oil and gas operations in the Gulf from submitting certain information about such a scenario and is consistent with the requirements contained in these bills.

S. 3516 would also extend the deadline for the Department to review and approve exploration plans; require that lessees obtain a drilling permit after approval of an exploration plan; and require that, prior to approval of such a permit, an engineering review of the well system be completed and reviewed. The Administration supports authority to provide for longer review time and for stronger reviews of exploration plans prior to drilling. We would like to work with the Committee on this important issue.

We are also supportive of the changes in S. 3516 intended to strengthen civil and criminal penalties contained in the OCSLA. These provisions are generally consistent with the support for increasing these penalties that Deputy Secretary Hayes expressed before this Committee on May 25th.

It is also important to provide the Department with the tools necessary to appropriately staff critical and hard-to-fill positions in these new entities. We look forward to continuing the dialog on this issue, as well.

Strengthening the Way We Do Business

Over the past several weeks I have talked about the many ways we have changed the direction of the MMS, both programmatically and structurally. S. 3431 would change laws governing ethical standards and fraudulent statements by MMS employees.

I have already mentioned the actions in this regard that I ordered last year. I am also pleased to have two former Inspectors General, in Michael Bromwich and Wilma Lewis, to help lead our reform efforts. But my interest in strengthened ethics standards isn't limited to employees of the MMS. President Obama made it clear from the earliest days of this Administration that ethical behavior, among both political and career employees, was to be held to a premium standard. On January 26, 2009, I issued a memorandum to all employees regarding the high ethical standards with which we were all expected to carry out our duties. I also directed the Department's Ethics Office to review Department-specific regulations and recommend areas where improvements could be made. On August 19, 2009, I issued a Secretarial Order laying out additional clarifications to enhance and promote a stronger ethical culture at the Department.

S. 3431 would codify portions of the new standards made applicable to MMS employees in January 2009. The Department's Ethics Office is currently preparing updates to statutory language, including updates to provisions applicable to Departmental offices and to lands and energy and mineral development programs. I look forward to working with you and the sponsor as we move to modernize these important obligations.

Conclusion

Much of my time as Secretary of the Interior has been spent working to promote reform of prior practices in the Minerals Management Service and to advance the President's vision of a new energy future that will help us to move away from spending hundreds of billions of dollars each year on imported oil. A balanced program of safe and environmentally responsible offshore energy development is a necessary part of that future. We are also involved in a multi-agency process to develop a new national ocean policy that is intended to look ahead in the long term to help the United States think comprehensively about how we make better informed management decisions regarding the use and conservation of ocean, coastal, and Great Lakes resources.

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. The findings of the Joint Investigation and the independent National Academy of Engineering will provide us with the facts and help us understand what happened on the Deepwater Horizon. Those findings, the work of the Outer Continental Shelf Safety Oversight Board, the OIG investigation and review, and the findings of the Presidential Commission will help inform the implementation of the Administration's comprehensive energy strategy for the OCS.

We are taking responsible action to address the safety of other offshore oil and gas operations, further tightening our oversight of industry's practices through a package of reforms, and taking a careful look at the questions this disaster is raising. We will also work with you on legislative reforms and the finalization of a reorganization that will ensure that the OCS program is effectively managed to achieve these goals.

Lastly, let me assure you this Administration will continue its relentless response to the Deepwater Horizon tragedy. Our team is committed to help the people and communities of the Gulf Coast region persevere through this disaster, to protect our important places and resources, and to take actions based on the valuable lessons that will help prevent similar spills in the future.

The CHAIRMAN. We are glad to have you here, Mr. Bromwich. Why don't you go right ahead? We are glad to hear from you.

STATEMENT OF MICHAEL R. BROMWICH, DIRECTOR, BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Mr. BROMWICH. Thank you very much, Chairman Bingaman and other distinguished members of this committee.

I will be very brief. There is a prepared statement that has been submitted that describes and summarizes my background and my credentials.

As I think you know, I was sworn in on Monday. So this is day 4 on the job for me. I am only beginning to understand the agency and the substantive issues that I will be having to deal with over the next weeks and months. It has been a quick immersion process. So I am getting there, but it will take a little while until I am the master of many of the substantive issues that I know you and other members of the committee care about.

I have been a lawyer for 30 years. As the Secretary mentioned, I was the Inspector General for the Department of Justice for 5 years. This is a set of challenges at the Department of the Interior that I look forward to embracing and meeting.

The truth is I knew comparatively little about the agency until I was asked to take this position a couple of weeks ago. But I am determined to learn fast. Let me very briefly mention a couple of the changes that have already been made. I think the Secretary mentioned the change of name. I think that is much more than cosmetic. That is substantive.

Regulation and enforcement have been added to the title of the agency because those elements, I think by consensus, have been lacking in the approach of the agency. I am determined to strengthen those functions, and I thought there was no better way to do it, in consultation with the Secretary, than to put those words in the name to underscore the point.

The second thing that I have done is to create a new unit, which was approved, I am thankful to say, incredibly rapidly by the Secretary to create an investigations and review unit in the front office of my agency that will enable me to use it as a SWAT team to investigate allegations that are made both against personnel in my agency, but also with respect to the companies that my agency regulates.

We are going to be hiring some of the top people available. In the meantime, I am hoping to get on detail people from the Department of Justice with whom I have worked in the past and perhaps other people in Government so that we will be able to get up and running immediately to address some of the very significant issues that are on my plate right now.

So I look forward to working with all of the members of this committee to deal with the challenges that my agency faces and look forward to answering any questions you may have.

[The prepared statement of Mr. Bromwich follows:]

STATEMENT OF MICHAEL R. BROMWICH, DIRECTOR, BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Thank you, Chairman Bingaman, Ranking Member Murkowski, and Members of the Committee for the opportunity to be here today with Secretary Salazar. I appreciate being included in this hearing and being part of the discussions about reorganization of the Outer Continental Shelf program.

Overview

My appointment as the new Director started on Monday, and therefore I have had only a short amount of time to begin to understand the Bureau's programs, operations, and challenges. I would like to take my time to introduce myself and give you an overview of my vision and goals.

When the President and Secretary Salazar asked me to take this assignment, I was a partner in the firm of Fried Frank. I headed the firm's Internal Investigations, Compliance and Monitoring practice group and concentrated on conducting internal investigations for private companies and other organizations; providing monitoring and oversight services in connection with public and private litigation and government enforcement actions; and representing institutions and individuals in white-collar criminal and regulatory matters. I also provided crisis management assistance and counseling.

Even while in private practice I have had significant experience with turning around troubled government agencies. I served for six years as the Independent Monitor for the District of Columbia's Metropolitan Police Department and had just begun performing the same role for the Virgin Islands Police Department, which involved overseeing sweeping reforms of those Departments' use of force programs. I also conducted a comprehensive investigation of the Houston Police Department's Crime Lab and provided HPD with extensive recommendations for reforming its Crime Lab, which had a long history of very serious problems.

In the private sector, I have conducted many major internal investigations for companies, including in the energy industry; reviewed the compliance programs and policies of major companies in a variety of industries, conducted extensive field reviews of such programs and made recommendations for their improvement; and represented companies and individuals in state and federal enforcement proceedings and criminal investigations.

From 1994 to 1999, I was the Inspector General for the Department of Justice. I conducted special investigations into allegations of misconduct, defective procedures and incompetence in the Federal Bureau of Investigation Laboratory; the

FBI's conduct and activities regarding the Aldrich Ames matter; the handling of classified information by the FBI and the Department of Justice in the campaign finance investigation; the alleged deception of a Congressional delegation by high-ranking officials of the Immigration and Naturalization Service; and the Justice Department's role in the CIA crack cocaine controversy.

From 1987 through 1989, I served as Associate Counsel in the Office of Independent Counsel for Iran-Contra. In January through May 1989, I was one of three courtroom lawyers for the government in the case of *United States v. Oliver L. North*. I supervised a team of prosecutors and law enforcement agents that investigated allegations of criminal misconduct against government officials and private citizens in connection with provision of aid to the Contras in Nicaragua and serving as overall coordinator of the Iran-Contra grand jury.

From 1983 to 1987, I served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Southern District of New York. During my tenure, I tried many lengthy and complex cases and argued many appellate matters before the Second Circuit. I served as Deputy Chief and Chief of the Office's Narcotics Unit.

From those experiences dealing with many organizations and institutions, I have accumulated substantial experience in seeing what works and what does not in organizations. I have had experience leading government agencies, as well as reviewing the leadership styles in many agencies. Based on that experience, I am confident that I can lead this organization and implement the changes that are necessary.

Bureau of Ocean Energy Management, Regulation and Enforcement

As I said, I began my service as the Director, Bureau of Ocean Energy Management, Regulation and Enforcement on June 21, 2010. So far, my understanding of the events surrounding the Deepwater Horizon catastrophe are primarily based on the news coverage, what I have read, and initial conversations with Department of the Interior personnel. Therefore, my knowledge of the Bureau, its employees and its programs is at a very early stage.

I look forward to becoming well-versed in the complex regulatory regime governing offshore oil and gas exploration and drilling and the nation's emerging and promising offshore renewable programs. It already is apparent that the programs that this Bureau manages are technologically complex and involve a highly specialized workforce. As an agency, we will be thinking carefully about, and proceeding quickly with, reforming the way the Bureau does business and oversees energy exploration and development.

My goal is to develop a set of recommendations for the Secretary and the President that will improve the way the organization works. I am committed to eliminating improper incentives and influences, creating a culture for the OCS program that is devoted to vigorous and effective regulation and enforcement, and establishing the Bureau as an agency that is focused on safety and environmental protections. To provide us with the capacity to meet these commitments, I announced yesterday the establishment of an investigations and review unit within the Bureau that can act quickly and will report directly to me.

I understand that the Department has been conducting an extensive analysis of the organization, its programs, and best practices in other countries and other agencies. I will take advantage of the work that has already been done. We expect to release a plan in the coming weeks that will guide the reorganization. I look forward to talking with you and getting your input to educate this process.

These are important issues for the President, the Congress and the Nation. Under Interior's management, the Outer Continental Shelf currently provides 30 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production. The Nation currently relies on the OCS program to continue to make available the energy resources that we and our economy need. I look forward to the challenges ahead, and to ensuring that we manage the development of the Nation's energy resources, while at the same time enforcing the law and aggressively regulating oil and gas exploration and drilling to ensure that this activity is conducted in a manner that is safe for workers and the environment.

The CHAIRMAN. Thank you very much.

Let me start with some questions, Secretary Salazar and Mr. Bromwich. First, let me just comment I think it is refreshing to have a witness before the committee acknowledging his need to learn. We don't have a lot of those witnesses, and I appreciate that attitude.

Let me focus on the legislation that we have put forward, Senator Murkowski and I and Senator Dorgan, Senator Stabenow here,

that we are considering today. I think that I appreciate your statement that it is moving in the right direction and will strengthen the ability of the department to carry out its responsibilities.

I guess that one obvious question relates to the level of resources needed to really ensure safety in the Outer Continental Shelf and to make the kind of systemic change that we are trying to bring about, that you are trying to bring about, and we are trying to support bringing about through this legislation. How many inspectors does the department now have working on this set of issues, and how many do you think we will need? Or is that something that is still being determined?

Secretary SALAZAR. Chairman Bingaman, we are in the process of looking at exactly what the new organization will look like and the number of inspectors. But let me just say that over the last 2 years, we essentially changed the budgets for MMS to try to bring in additional people to help us with inspection and enforcement and have had about a 10 percent growth relative to the inspection and enforcement capacity of MMS.

Having said that, in my view, it is insufficient. Today, there are authorized some 62 inspectors to essentially provide the inspection capacity for nearly 4,000 production facilities and all the other activities in the Gulf of Mexico. It is extraordinarily and woefully inadequate. Our view, preliminarily, having taken a look at the matter, is that we will need an additional approximately 330 FTE in the areas of inspection and enforcement and environmental compliance.

We had a hearing yesterday in front of Senator Feinstein's committee, the Subcommittee in Appropriations on Interior, and had a conversation about the need to have these additional resources. My conclusion is that without a doubt, the need to have a robust agency that can go out and do the proper level of inspections and the proper level of enforcement cannot be done with the resource levels that MMS has today.

The CHAIRMAN. Let me ask the circumstance of this particular disaster are that BP has the financial wherewithal to come forward and pledge \$20 billion to address the effects of this accident. Obviously, there are other companies that operate in the OCS who may not have been in a position to do this.

Our bill increases your authority as Secretary to require demonstration of financial responsibility by companies that operate in the OCS. Do you think that the authority we are proposing in this legislation is adequate to ensure that all of the operators that are permitted can, in fact, cover whatever damages they cause?

Secretary SALAZAR. I believe the legislation, Senator Bingaman, is moving in the right direction. Obviously, BP is one of the largest companies in the world, third and fourth by most measures that I have seen, last year with a profit of \$16 billion.

So, this herculean effort that is underway in the Gulf today, which includes over 30,000 personnel, over 6,000 vessels responding to the oil spill, and the major technological and engineering effort, which we have likened to that of Apollo 13, which is taking place subsea, would not be happening, frankly, if they did not have the kinds of resources that they have.

So I think the demonstration of financial ability to be able to respond to this kind of a circumstance is something that we need to have. So I think the legislation is correct on that point.

The CHAIRMAN. Let me ask one other question on coastal restoration, which I know is an issue that Senator Landrieu is very focused on and so are others here in the Senate. What structure does the administration plan to put in place to accomplish coastal restoration? Would the effort be structured along the lines of Everglades restoration, or is this a very different circumstance which requires a very different structure? Or has that decision been made?

Secretary SALAZAR. Chairman Bingaman, the decision has not yet been made. We have had meetings with Secretary Mabus. The President has made it very clear that our end goal here is to have a better Gulf, that it will be restored to a condition that was better than it was before April 20th. We are very committed to doing that.

The exact mechanism by which that will be done is something that we are still working on. I will say this, that when you look at all of the ecosystem restoration projects that are underway all across this country, many of them now 20 or 30 years old, probably the only one that we can herald as a major success has really been the Everglades, where we are truly restoring the river of grass. There are some in Washington as well, Senator Cantwell, and a few others around the country.

So that is the kind of template that I think should be considered, and we may want to come and work with this committee and to work with the Senate to see how it is that we might be able to create a Gulf Coast restoration authority so that we don't end up essentially being caught up in the kind of paralysis that sometimes affects restoration projects where you simply are not able to move with the kind of speed to achieve what the President's goals are here.

The President is clear. He wants action, and he wants to have the Gulf Coast left in a better place than it was on April the 20th. In order to do that, one has to be cognizant of the history.

Senator Landrieu and I spent time flying over the marshlands and wetlands of Louisiana long before this event happened, and you can see the degradation that has occurred there, decade after decade after decade. Frankly, many plans have been put forward on how you restore the Gulf Coast, but at the end of the day, little action has been taken.

So Secretary Mabus, at the direction of the President, working with me and with Administrator Jackson and others, will put together a plan that ultimately will deliver to make the Gulf Coast better.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Welcome, and good morning, Secretary.

I appreciate your comments about the legislation that we have been working on. In your opinion, is there any reason that we would hold off in advancing a bill like this restructuring as we await the outcomes of the investigation of the Presidential commission?

Secretary SALAZAR. No, Senator Murkowski. I think this kind of legislation has been long in coming, and it should have come long ago. An agency that has such a herculean mission for the American people is one that should have organic legislation. So, it is absolutely the right thing to do. It is the right time to do it, and it ought to be done.

I would ask the chairman and the ranking member and members of the committee to work with us, and I know the chairman wants to do a markup on this bill I think next week. As I work with Michael and I work with the team that has been working on this—Rhea Suh, who is the Assistant Secretary of Policy, Management, and Budget, and Chris Henderson in my office—to try to pull this together in a way that ultimately will make sense, what you have in front of you in your bill is a very good bill. But I want to make sure that Mike Bromwich has an opportunity also to provide his input so that we have an agency at the end of the day that you have legislated, that will have the organic legislation to enable it do the job we all want it to do.

Senator MURKOWSKI. Let me ask you this, Mr. Bromwich. It came up in the Appropriations hearing yesterday. I believe it was Senator Alexander that noted that as we are dealing with the crisis in the Gulf, we are all learning that there is an awful lot of players that have a piece of jurisdiction and oversight. It is not just MMS. It is the Coast Guard. It is the alphabet soup of all the agencies.

I think it is my understanding you have got at least 8. You are going to have a split within the current MMS. So you are just, again, expanding the entities that are involved. One of the concerns I think has been—and we are seeing this play out in the Gulf—is who is in charge? Who is really running things?

Can you—and I appreciate that this is day 4, but you said you are a quick learner. Yesterday was day 3. So we are going to expect real answers today.

[Laughter.]

Senator MURKOWSKI. But from where you are sitting and looking at just this organizational structure within the new Bureau of Ocean Management, how do you integrate all of these players? How do you integrate this in a way that is transparent, in a way that allows for a level of efficiency? Because what I am hearing from those that are the consumers, if you will, it is a very complex, a very complicated process that leads to inefficiencies and delays and perhaps just oversight.

So can you speak to that, about how we do this? I know we are trying to make separations within an agency where you had either conflict or certainly the appearance of conflict. But how do we better integrate this, this new bureau?

Mr. BROMWICH. It is a very, very good question, and I think certainly I have been in Government long enough to have seen the kind of inefficiencies that you are talking about. I think you know more than I do about the specific inefficiencies that have been displayed here. I need to learn about those because I think in a lot of instances, it is a matter of leadership. It is a matter of clearly delineated responsibilities. It is a matter of communication.

I am not sure you can legislate the cooperation and communication that is necessary. But I think those are absolutely key.

I agree with you and understand the reluctance to think that creating yet more pieces is a cure-all. One of the things that the Secretary has been consistently supportive about is my ability to look at all the hard and I think good work that has been done and to provide my perspective and advice on that because I don't have a reflexive view that multiplying agencies is necessarily a good thing.

I remember when I was at the Justice Department back in the late 1990s, and there was a proposal to divide up the Immigration and Naturalization Service, as it was then called, into two pieces. I testified at a hearing that I didn't know whether that was a good solution. It might create two bad agencies instead of one bad agency.

Senator MURKOWSKI. That is clearly what we want to try to avoid.

Mr. BROMWICH. But I have been very impressed with the work that has been done so far. I have had, unfortunately, a limited amount of time to sit down and hear about the rationale behind the specific proposal in the kind of detail that I will need to. Hopefully, this can happen in the next few days or week or week and a half so that either I am quite comfortable with it or I am not comfortable with it.

So, that is the best answer I can provide at this time.

Senator MURKOWSKI. I appreciate that.

Secretary, just one last question for you. Yesterday, we had an opportunity to talk about the moratoria and the effect just on the economy there in the Gulf and really around the country the effect of that moratoria. I think we are starting to see what I am calling this flight of investment from the Gulf not only because of the moratoria, but I think offshore companies are—I don't know that it is concern, but there are signals coming that this regulatory pendulum that they deal with is really going to swing very far and introduce a level of even greater complexity that leads to even greater inefficiencies, time consumption.

As you are assessing what needs to happen within the new bureau, are you concerned about this flight of investment? Is that calculated into some of the discussions here?

Secretary SALAZAR. Senator Murkowski, it is a very good question and a very honest question because it has impacts on the lives of people and jobs of people not only in the Gulf area, but really around the country and, indeed, in Alaska, as you so well know. So we are looking at all of the issues relating to the moratorium.

The President and I have been very clear that we want to keep the moratorium in place until we get to a level where we can provide a sense of safety to the American people that drilling can, in fact, continue. How that will all come together is something that we are working on, and I don't have a specific answer for you today, other than to tell you that it is a high-priority issue for me right now.

Senator MURKOWSKI. I would hope, as we are figuring the direction from the regulatory perspective, we also keep in mind that it is important that we put in place processes that work, that allow for a level of efficiency and effectiveness and soundness and safety. That is obviously first. But not something that chases everybody away.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Udall.

Senator UDALL. Thank you, Mr. Chairman.

Good morning, Mr. Secretary. We are pleased you are here.

Let me talk initially about the blowout preventer situation. It stunned me that the emergency response plan, as I understand it, didn't include plans for the blowout preventer to fail, and it seemed unrealistic, obviously, in hindsight since blowout preventers have failed even in shallower water.

I think we are all disappointed in the fact that the industry itself and MMS couldn't peer over the horizon and plan for scenarios like the one that has unfolded tragically. What are you going to instruct MMS to do in this reconfigured form that it will have to make sure that something like this never happens again? How do we push on the regulators in the industry to think about the unthinkable?

Secretary SALAZAR. Senator Udall, first, let me say that there has been a track record, which is I think well publicized about the safety record of oil and gas production, including drilling, including in the deep waters of the Gulf of Mexico. In the context of a four-decade history where more than 40,000 wells have been drilled in the Gulf of Mexico, no incident like this had ever been seen before. So, the essence of what that empirical evidence tells you is that in most cases, you have safe operations that have actually been operating in the Gulf.

Now, having said that, this horrific disaster, which is happening, is still under investigation. From some of the initial reports that I have seen, there were actions that were taken 10 days before April 20 which might have ended up creating this disaster, and perhaps no level of enforcement or regulation could ever have prevented that because of the recklessness that occurred here.

Now, having said that, I will tell you that it is my view, having reviewed the rules and the orders with respect to blowout preventers, that a lot more can be done. There has to be a requirement, for example, that you have multiple shears in the blowout preventers. You ought not to simply require a blowout preventer, but then allow the industry to go ahead and decide for economic reasons that it is not going to put in the levels of redundancies to really make this a fail-safe system.

So those are some of the things that are already included in the 30-day safety report, which I prepared and submitted to the President in May. We are continuing to work on additional safety measures. It will be part of what the President's Deepwater Horizon commission will also take a look at, and it obviously will be part of what I will direct Mike Bromwich and his team to address.

Senator UDALL. Thank you for that, and I think that also speaks to the importance of the legislation I have introduced, which would give us more research. I know everybody is going to want to—when the well is capped. I am going to be optimistic here. When that well is capped, when it is killed, we are going to get a hold of that blowout preventer and find out what happened, get into the guts of that particular technology.

Let me turn to the moratorium in the remaining time I have left, and I know there are some on the dais who may have a different

point of view than I do, and I think this will be an important discussion today. But I was disappointed to read and hear about the judge's ruling. I support the President and your decision to immediately appeal the decision of the District Court.

The well bore is spilling, and you know well, thousands of barrels of oil a day. We still don't know what happened. It seems to me to be common sense to just understand, particularly when we are developing these wells, not when they are producing, but what is going on.

I challenged, hopefully in the right tone, the oil companies that are operating in the Gulf to bring forward what they know to prove that what they are doing is safe. We cannot afford another spill of this magnitude, obviously.

Have you seen anything, Mr. Secretary, that convinces you that the companies that are out there are safely operating and should resume drilling?

Secretary SALAZAR. Senator Udall, first, production continues in the Gulf of Mexico. There has been very little effect from this blow-out on the production of both oil and natural gas in the Gulf of Mexico. So that continues in its robust contribution to the national need for oil and gas. So that has continued.

Second, in terms of the moratorium, the fact is that the moratorium was right when it was imposed. The moratorium is right today. We are in a dynamic situation and in a crisis, and much is being learned.

I will give you one example, Senator Udall, of something that is being learned, and that is the testing of blowout preventers in the subsea. There was a thought that it could not be done. Yet, with respect to the relief wells that are being drilled to come in on the ultimate kill on the Macondo well, the subsea tests have actually occurred.

So, there is tremendous learning that is actually occurring as we deal with this dynamic crisis, which, in my view, is further evidence of the need to have this moratorium in place.

Senator UDALL. Mr. Chairman, my time has run out. But if I can ask an additional question for the record and perhaps make a statement in the process?

As I understand it, Mr. Secretary, as you have just pointed out, there are many, many, many wells producing right now. This moratorium would apply to those wells that are being drilled now, like the Deepwater Horizon situation. That is where we face the most dangerous time. It is where wells can get away from us and where we can have incidents like the one that occurred.

But how many wells are affected by this moratoria? I understand it is just in the tens of wells. This is not hundreds of wells, and we are not shutting down production in the Gulf.

Secretary SALAZAR. There are 33 of what they call mobile drilling units in the Gulf of Mexico that essentially are rigs that were involved in drilling deepwater wells. Some of the wells that were being drilled and had permits to drill actually would go to depths far below the mile below the sea that the Macondo well was drilled at.

So, when you are looking at wells that are going to be drilled at 7,000 or 8,000 feet, it introduces a whole set of technological chal-

lenges that would make it perhaps even more difficult than the level at which the Macondo well exists. So, that is part of the learning that we have to take.

The President has been very clear. We need to fix the problem, and we need to learn the lessons. That is the job. That is the job of Congress. That is the job of everybody who is involved in this issue. Right now, we don't yet know enough to be able to say that it is time to lift the pause button. So, the moratorium will continue until we can have that level of safety assuredness.

Senator UDALL. Thank you.

The CHAIRMAN. Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

Mr. Secretary, thanks so much for being here to testify again today. Improving management of our offshore energy resources is critical. We are now day 66 of the spill, day 66 of an economic and environmental catastrophe in the Gulf, which is affecting not just the Gulf region, but our entire country.

One thing that the American people know for certain right now is that neither BP nor the administration have any idea of how to stop the leak today. That is why today's hearing is so important. We need to improve offshore exploration, and that requires an honest and a thoughtful response and approach.

We have to get to the issues of preventing future spills, of protecting coastal businesses, whether it is the shrimpers or the drilling rig workers, to ensure responsible exploration for American offshore oil and natural gas in the short run as well as the long run, and to improve the Government's ability to respond. It is a response that has been called delayed, sluggish, bureaucratic, and ineffective.

The administration, it seems to me, is now putting ideology over scientific integrity. The administration put together a group of experts to review safety recommendations for offshore oil and gas exploration. The administration proudly stated that the safety recommendations were peer reviewed.

Afterwards, the American people found out that the most significant recommendation, which was the moratorium, was not actually peer reviewed. The moratorium was added after the experts had been consulted. The majority of the experts consulted say that their names were used to justify a political decision made by the administration.

So here I am looking at a moratorium that, to me, is causing additional unnecessary economic harm to a region that is already suffering. Now, according to the Interior Department's own report, the OCS oil and gas industry provides relatively high-paying jobs in drilling and production activities. It goes on to say offshore operations provide direct employment estimated at 150,000 jobs.

We know that the Federal judge overturned the moratorium on Tuesday, saying the court is unable to divine or fathom a relationship between the findings and the immense scope of the moratorium. To make matters worse, Mr. Secretary, the President's newly appointed 7-member oil spill commission, it seems to me to be stacked with people who philosophically oppose offshore exploration.

The President said he wanted an objective look. The commission's background and expertise doesn't really include an oil or a drilling expert. So people in the Gulf, people across the country are wondering about the administration's goals. Is it really about making offshore energy exploration safer, or is it shutting down our offshore and American oil and gas?

When they see that the president of the Natural Resource Defense Council is one of the 7 members of the committee, and this group has just intervened as a defendant in the court case wanting to continue the moratorium, it is no surprise that the American people are asking questions. So I want to applaud the members of this committee for taking a less political approach, including our chair and our vice chairman, and the thoughtful bills that are under consideration today.

I wanted to ask about the Jones Act. More than a dozen foreign countries have offered to help. BP and the administration have been slow to accept the assistance is what I am hearing from Senators who represent the States in that area. Apparently, we heard from the Coast Guard captain that we have exhausted all of our east coast supply of skimming vessels. We are now looking at Norway, France, Spain, and other European vessels.

Under the Jones Act, foreign skimmers are prohibited from skimming within 3 miles of the U.S. coast. No. 1 is do we have enough skimmers in the Gulf, and are there currently any outstanding offers that have been rejected that we really ought to reconsider and accept?

Secretary SALAZAR. Senator Barrasso, let me make 4 quick points. First, with respect to the Jones Act, I will get that information back to you from Admiral Allen, who has been in charge of the effort in terms of skimmers. I can tell you no resource has been spared in terms of getting vessels out there to do the job.

Second, let me say that there is nothing political about this. This is not a Republican or a Democratic issue, and frankly, I would believe that it is the President who has transcended partisan politics. This is not an ideological issue. It is an issue about safety and making sure that we are protecting the environment and the people of the Gulf Coast and the economy of the United States. Those are the marching orders, which the President has articulated for all of us.

Third, with respect to your point on the engineers and their point of view, I have put together, at my request, the group that developed the 30-day safety report to the President of the United States. I called the National Academy of Sciences to get those engineers involved.

Their charge, as I articulated in the letter that I gave to the President, was to come up with safety recommendations. Their charge was not to come up with a decision on the moratorium. The decision on the moratorium was separate from what I had the engineers and the peer review group do. The moratorium was the President's decision and my decision.

The final point I would make is the Presidential commission on the Deepwater Horizon is headed by very distinguished people. Bill Reilly, former head of EPA, served in a Republican administration, and he is known for his problem-solving approach to issues. Sen-

ator Bob Graham was a colleague of many of you who are still here. Maybe some of you were younger at the time he left. But in any event, he also is a person who understands the Gulf Coast and the Gulf of Mexico very well.

So we are confident that this commission will do the job, and they will get to the root causes of what happened here and make recommendations that will help guide the future energy program in the Outer Continental Shelf.

Senator BARRASSO. Thank you, Mr. Chairman.

I would like to ask consent to put two articles* into the record, one from the Wall Street Journal, June 17, called "Crude Politics: The Drilling Experts Speak Out on the Obama Deepwater Moratorium," and the second from Wall Street Journal, June 22, called "The Anti-Drilling Commission: The White House Choices Seem To Have Already Made Up Their Minds."

The CHAIRMAN. Are these articles, or are these opinion pieces?

Senator BARRASSO. They are editorials from the Wall Street Journal.

The CHAIRMAN. We will include them in the record.

Senator BARRASSO. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Landrieu.

Senator LANDRIEU. Thank you, Mr. Chairman.

Welcome again, Mr. Secretary, Mr. Bromwich. I look forward to working with you as we reshape this important agency to find the right path forward for both the environment and our economy and the great need that our country has for us to get this right.

I want to begin, Senator Barrasso, just responding to something that you said, if I might? You and I generally agree on the importance of drilling in the country. But respectfully, I want to take issue with what you said in your statement when you said the President and Secretary Salazar, I believe, can't seem to find a way to plug this well.

When your team was in charge, which would be under the previous administration, you all didn't leave a very clear instruction book as to how to do this. In defense of this administration, as the Secretary said, the President is trying to rise above partisanship, and I think we all have to make our best effort to do this. This is not a time to try to take what I would consider a cheap shot.

No. 2, to Senator Udall, it is true that the entire Gulf has not been shut down. But what is true from any map that you would look at in the Gulf is that this administration's decision, which I fiercely disagree with, to stop all activity with the 33 deepwater rigs as defined by these major floating vessels. There are only 33 of them in the deep water. According to the economic analysis of my State, each one of these rigs has 1,400 workers onshore and offshore.

This moratoria will affect as many as 46,200 jobs may be idled. Lost wages reach from \$5 million to \$10 million per month per rig, or \$330 million a month in lost wages. Long-term job losses, if we don't find a way to get this right, could reach 120,000 jobs by 2014.

While Senator Stabenow, my good friend, has been on the floor righting for jobs, if we don't get this right, we are going to elimi-

*See Appendix II.

nate every job that we are trying to create by putting people out of work in the Gulf. This isn't going to even cover the hundreds of businesses that are not big oil, but that support the efforts of this country to produce the 20 million barrels that we continue to use today.

Secretary Salazar, let me ask you and let me say there are 25 shallow wells drilling. They have been—under the Secretary's leadership, he is trying to get them back to work. There is some permitting difficulties we are working through, but they have not been working full bore.

There are 4,000 producing wells. They are still producing, let me say, sending oil to every one of your States. Those have not been shut down. That oil is flowing through pipelines, and every single one that showed up at this committee this morning pumped some gas into their automobile to get here. Those are producing.

What is not working are the rigs drilling with the people along the Gulf Coast. Half of them can't work because now their fishing waters are polluted. The other half of them can't work because the administration has laid down a blanket inappropriate, in my view, 6-month moratoria with no end in sight.

I thank you, Secretary Salazar, for your words lately about trying to find, since the judge ruled pretty strongly against the administration, trying to find a way to modify our approach so that we can provide the safety that we all want, but also not cause an economic meltdown.

So let me ask you, one of the recommendations that I sent to you to allow the 33 wells to try to resume without any risk would be what we call top-hole section drilling. It would allow them to drill, but before they can penetrate any hydrocarbons, which would cause actual pressure. Have you considered that, or are you thinking through some ways that we might either shorten the 6-month time, not compromise our safety, but try to reach our safety in a different way? Is that a possibility?

Secretary SALAZAR. The answer, Senator Landrieu, is we are looking at everything. We looked, for example, on the shallow water drilling, I drew the demarcation at 500 feet because the shallow water drillers and others gave us the information that essentially gave us a sense of comfort that that could, in fact, continue. We have additional requirements, safety requirements on blowout preventers and the like that we also have instituted. But that was a demarcation that to us made some sense.

As we move forward, looking at the moratorium across the Gulf Coast, we are going to look at a number of different factors, and we will have some additional information to you on that in the days ahead.

Senator LANDRIEU. Thank you.

Just for the record, Mr. Chairman, I found this very disturbing, and I think the members of the committee would like to have it, particularly you. You have been a strong advocate for the environment and the industry. The title is—it is very disturbing—"Far from the Gulf, a Spill Scourge Five Decades Old."

This is about what is happening in the Delta of Niger, and it is hard to read. So if any of you are a little emotional this morning, you might want to wait until tomorrow.

I just want to say "small children swim in the polluted estuary here. Fishermen take their skiffs out even further. There is nothing we can catch here. Perched anxiously over his boat, and market women trudge through oily streams."

Senator LANDRIEU. They are shocked that the world is tuned in to what is happening in the Gulf because they live with it every day. My point being if our Government drives our production off of our shores, all we do is increase misery in places that we have no control of. I caution us before we move forward.

Thank you.

The CHAIRMAN. Thank you very much.

Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

Again, welcome, Mr. Secretary.

I continue to have sympathy for the challenges you face here, not the kind of thing that any Secretary of the Interior looks forward to or expects when he puts his hand on the Bible and, in that one guaranteed good moment of your tenure, gets sworn in. That is the good day that occurs with Federal service.

I want to follow up a little on what Senator Barrasso had to say and Senator Landrieu's comments about it. I understand how difficult a challenge this is, but I have reviewed what the judge had to say, and it was pretty tough language. The judge was not particularly in doubt, shall we say, as to his view of the administration's position with respect to the moratorium or the administration's reasoning in support of it.

Without rehashing some of the things that Senator Barrasso raised, I would like to talk just a little bit about the oil spill commission. Now you have talked about Senator Graham, and I have respect for Senator Graham. We served with him, know him well.

But this is a commission that has a particular assignment to review this whole thing, and as you said in your own comments just a few minutes ago, these are really technical challenges. As I look at the membership of the commission, I don't find any technical people on it. Senator Graham has broad wisdom and ideas and a view or understanding of the Gulf, but he doesn't have an engineering background that can address the technical side of it.

As nearly as I can tell, there are only two members of the commission who have a scientific background, and neither one is a petroleum or environmental engineer. The most troubling appointment there, of course, is Frances Beinecke, who has an ideological position with respect to drilling and, indeed, heads an organization that has filed a lawsuit on this area.

Now let us just turn it around for a minute and say how would you feel if the Congress, because the President wouldn't do this, I am sure, this President wouldn't. But let us say that the Congress insisted that one of the members of the commission be an executive in an oil company, be an executive of the company that was involved in the actual drilling experience so that that experience would be represented.

I think the outcry would be very, very strong. There is a huge conflict of interest here, and such an individual should not be included. If we are going to have a technician that understands environmental engineers, it ought to be somebody who comes more out

of an academic kind of background, but this was his or her specialty.

I see a serious similarity between the president of the National Resource Defense Council on one side of the ideological argument and an executive from an oil company on the other side of the ideological argument. I don't mean she shouldn't be listened to, just as I don't think the oil executive shouldn't be listened to. But you have made a special effort to address ethics issues within the department. Doesn't this strike you as a conflict of interest that comes under the purview of an ethics examination?

Secretary SALAZAR. Senator Bennett, with all due respect, the President, in choosing the members for this commission, chose the kinds of statesmen who I believe will transcend partisan politics and ideology. Their charge is to get to the root causes of what happened here, to provide the results of that investigation and to provide recommendations on how to move forward.

I will note that the Graham-Reilly commission, that Bill Reilly, he was a member, as I understand it, of one of the boards of the oil and gas companies. So, we will have an opportunity as this commission goes forward to make sure that all the points of view are heard.

The commission will have a staff, and that staff will be able to make sure that all of the expertise is being provided to the commission so that they can make considered judgments. You have to understand, too, Senator Bennett, that there are a number of different investigations that are already underway.

There is an investigation which is being conducted by the marine board, and the results of that investigation will be known. There are investigations that are going on which are congressional investigations. There are other investigations. They all have to come together in one place.

That effort is what the President has assigned to the Deepwater Horizon commission, and we are confident that they will produce a good report for the American people.

Senator BENNETT. Thank you for that. I appreciate your point of view. I am not sure I am completely convinced. But I understand you are acting in good faith, and I acknowledge that.

The only other comment I would make in support of what Senator Landrieu had to say, I can understand the impulse for a moratorium. I am not at all sure that a blanket moratorium as broad as this one will produce any higher degree of safety than a more targeted kind of thing. As I read the judge's decision, I think that is where the judge is.

I don't think the judge says you can't have a moratorium, but as I say, some of his language is pretty tough language. He takes on the comments of people in the administration very directly and says he sees no connection whatsoever.

So, as you wrestle with this very difficult problem, I would just ask that you see if you can't fashion something that is a little more targeted and a little less broad than the one you have here.

Thank you, Mr. Chairman.

Secretary SALAZAR. I appreciate that, Senator Bennett. I will only say that from our point of view, the judge is wrong in his decision.

But I will also say, as I have said to Senator Landrieu, this is a complicated issue, and we are looking at a number of different factors related to the moratorium. So we will have some more to say on that in the coming days.

Senator BENNETT. Thank you.

The CHAIRMAN. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Secretary, it is good to see you. But I am more interested in talking to Mr. Bromwich. We are glad you are here, and let me just say that I have a very healthy respect for the role that Inspector Generals play in our Government.

Oftentimes, we have agencies that don't do their job or are negligent, and it is very frustrating to the American people. Whether that is the CFTC or the FERC or the Federal minerals management agency, oftentimes the only true way that we can get at these problems is to have an Inspector General show the bright light of day onto these what can be somewhat agencies in the dark, as it relates to their uniqueness and the lack of oversight that they sometimes get.

So I thank you for that service in that role. But now you are the Inspector General in charge of reorganization of an agency in great trouble, in my perspective. Or I should say I am a firm believer it is time to think about of the box. This is not a simple reorg, but a time to be bold in this particular problem with MMS.

So could you tell me what your top 3 priorities are going to be as it relates to the restructuring and focus of MMS?

Mr. BROMWICH. My first priority is to examine carefully the proposal that is currently on the table and, based on the information that I gather over the next couple of weeks, to make a judgment so I can advise the Secretary whether I think that the proposed reorganization makes sense. So that is first.

No. 2 is to create and stand up a capability within the organization so that we can begin to police ourselves. The history of problems in the agency are well known. They have been the subject of multiple Inspector General reports.

I have been involved in a number of organizations over the last few years. I monitored the D.C. police department, did an investigation of the Houston police department crime lab, worked in the Department of Correction for the State of Delaware. In almost every case where those institutions had grave problems, it was at least in part because they did not have an internal investigations and an internal audit and an internal review capacity.

So, I made that recommendation to the Secretary on Monday. He approved it on Tuesday, and we announced it yesterday. I think that is critical—

Senator CANTWELL. What do you hope to get—what problem do you think at MMS would that solve by having that internal investigation?

Mr. BROMWICH. You are not the hostage of waiting for another entity—in this case, the IG—to look at problems that you have. You are able, as managers of an agency, to jump on those problems yourself and try to fix them. The delicate balance is not to in any way usurp the jurisdiction or the purview of the Inspector General.

So, I spoke specifically with her about what I envisioned in creating this unit, and she immediately felt very comfortable with my building that capacity and, in fact, said we are glad you are doing it. We think it will actually help us and it will lead to the agency being better run.

No. 3, and this is related to standing up the new entity, we need to be able, the agency needs to be able to respond rapidly not only to allegations of misconduct, but to important issues that emerge within the agency and to put really smart and good people quickly on a problem to address them and to provide answers both to me and to the Secretary.

We need—any organization needs the capacity to do that, and I am sure there are good people in the agency that can contribute to that effort, but I need an entity in my front office that reports directly to me whose charge is to do precisely that.

Senator CANTWELL. One of the accusations and obviously concerns—I shouldn't say accusation—I guess it has probably been founded and people probably have lost jobs over it is the notion of the cozy relationship between the agency and the entity it is supposed to regulate. One of the questions I have is the use of more third-party validators from the private sector on whether things are functioning or operating.

I mean, the American Bureau of Shipping, for example, to play a larger role on whether the blowout preventers work systematically, and having that, as opposed to having the industry just say, yes, they work. So what are your recommendations in the area of having more oversight?

Mr. BROMWICH. It sounds like you have thought about this issue, that specific issue more than I have. I agree that certainly I have heard and I have seen enough evidence so far in the IG reports that I have reviewed that there has been, in many instances, a too cozy relationship between industry and the people in my agency. So, I think there is a very significant role that third-party validators can play in making sure and imposing a check, if you will, a check and balance to make sure that that is not shaping judgments.

But beyond that, I think it is in some ways even more important for me to send a message, which I think I have already begun to do, that is the responsibility of people in my agency to behave properly and to regulate aggressively and to enforce aggressively. That can't come from outside validators. That has to come internally, and I am committed to making that happen.

Senator CANTWELL. Good luck on instilling that culture.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Secretary, good to see. Let me ask you a question. A whole host of the 33 drilling companies that are covered by the moratorium, several of them are worth less than a billion dollars. So if, in fact, God forbid, one of them would spill, their liability right now would be \$75 million—not the cleanup, but the liability.

Now, what would happen if that was still the law?

Secretary SALAZAR. As you know, Senator Menendez, the President and the administration have supported a change in the law. In addition, I know that you are considering legislation with respect to additional financial assurances for these companies to be able to make sure that problems that they create are, in fact, dealt with, and that is something that—

Senator MENENDEZ. I appreciate that. But my point simply is wouldn't it be a true statement that but for your moratorium, if one of those entities worth less than a billion dollars had a spill and the law had not been changed, right now, they would be subject only to a \$75 million liability cap?

Secretary SALAZAR. That is correct.

Senator MENENDEZ. So, therefore, your moratorium not only figures out how to move forward in a way that is safer, because I know that the administration still has a view that we have to have drilling. But the bottom line is until we either change the liability cap or have a safer process, we run the risk if we were to lift this moratorium tomorrow and one of these entities would spill, they would only have a \$75 million liability cap, and they are not a BP. The risk would be equally as high.

So I think it is something for all of us to think about how important it is what is going on here. It is great to know that BP can pay for its massive mess, but there are other entities that clearly could not.

The New York Times reported yesterday that BP's Liberty project off the coast of Alaska is being exempted from the moratorium on Arctic drilling because the drilling rig is going to sit on an artificial island connected to land by a causeway that BP built. That somehow makes it an "onshore project."

But BP is going to drill under the Arctic Ocean. It will do so using a risky drilling technique that MMS itself says is more prone to blowouts, which seems to me to be bad enough. But then we learned that MMS regulators back in 2007, before you took office, allowed BP to write its own environmental review, which looks almost identical to the Federal environmental review. Isn't this something we should be looking at? Isn't this the very essence of what we want to change at MMS?

Secretary SALAZAR. Senator Menendez, we are looking at that issue right now. In fact, I have asked Mike Bromwich to take a look at it. Even though he is new on the job, I am going to ask him to comment on the issue that you raise in Alaska.

Mr. BROMWICH. Senator—

Senator MENENDEZ. Yes, please. Go ahead.

Mr. BROMWICH. I was first made aware of this issue when I looked at the article at 5 this morning. I don't know that much about the specifics there. I can tell you that we have already called out to our regional office in Alaska, and we will get to the bottom of it very quickly.

Now my understanding is that companies, in this case, BP, submit their own environmental analysis, and that is as it should be. But the responsibility for doing the NEPA reviews belongs to my agency, which is supposed to do an independent review, which can certainly take account of and include the environmental analysis that a company submits, but it is not bound by it. It is required

to do its own independent work and make its own independent judgments.

I am troubled by the suggestion that that was not done here. That is what I am going to get to the bottom of. But right now, I don't have the answers for you.

Senator MENENDEZ. I will look forward to the answers because, you know, we have a history of MMS allowing, for example, on inspections, the Inspector General, where they let the company go ahead, in pencil do the inspection report, and then the MMS inspectors just filled it in, you know, in ink over the penciled part. That is why we have to change the nature.

I know the Secretary has been doing a whole host of things. I hope that we will look at some of the elements that are all being offered here, my legislation, to close the revolving door. Right now, between regulators and big oil, what prohibits an inspector from signing off BP's exploratory plan today and accepting a job with BP tomorrow? Nothing.

Under existing rules, if an inspector was inspecting a Transocean rig, would they be prohibited from negotiating for a job with Shell? No. These are the sort of things that I think that were pointed out in the IG report and that we need to respond to, but I particularly want to look forward to hearing your results on this.

Thank you, Mr. Secretary, for what you have begun to do in this whole respect with MMS. It is critical in order to both have safety for whatever drilling is going to take place. You know my views on drilling, which are quite different than the majority of this committee. But nonetheless, we have to have a process that is safe, and we have to have integrity of the system at the end of the day.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Shaheen.

Senator SHAHEEN. Thank you.

Thank you both for being here.

I was pleased, Director Bromwich, to hear your announcement about setting up an independent investigative unit, and I wondered if this unit is going to be looking only prospectively at future allegations of misconduct and violations of regulations or if it is also going to look back at what contributed to the culture that developed within MMS?

Mr. BROMWICH. I haven't really considered that, Senator Shaheen. I think we will have our hands full dealing with new issues that arise. I think that just as a manager of this organization, I will develop a sense over time as to what elements led to the creation of a culture that has troubled so many people and I know troubles many of you.

So I don't know that a formal investigation or review is necessary or appropriate. But in order to change the culture, I need to understand the culture, and I am determined to do that.

Senator SHAHEEN. I don't know if this question is for you or for the Secretary, but do you feel like you have the authority right now to remove people within the agency who may be acting inappropriately? By that, I don't mean somebody who has violated the regulations and has clearly done something unlawful.

But I guess my question goes to if we can't change the people within the agency who have contributed to this kind of a culture

developing, then how do we do that, and can you change some of the people who may have contributed to that culture developing?

Secretary SALAZAR. Let me answer that, and then Mike can supplement in whatever way he wants. First, Senator Shaheen, you should recognize that the efforts that we have undertaken over the last year essentially were efforts intended to try to root out this culture of corruption. The sex and drugs scandal in Lakewood, which was related to the royalty-in-kind program, was something which was hugely troublesome, and there were people who were prosecuted, people who were let go, and that was an initial part of our effort at dealing with that issue.

There was a more recent report by the Inspector General also covering periods back in 2004 and 2005, and appropriate personnel action has, in fact, been taken. There are ethics standards that are, in fact, in place.

My view from the beginning was that we had a problem that we were inheriting from what had been a Department that essentially was issuing out oil and gas leases and conducting an oil and gas production program for the country without paying much attention to environmental safeguards or other requirements of the law. So, it is an issue that goes beyond MMS and deals with other parts of the Department of the Interior.

Now we have more work, obviously, to do. Sometimes when I hear about someone at MMS who has been conducting some kind of effort that is problematic, yes, we take appropriate action. But we are also bound by personnel rules that sometimes keeps us from moving those people out, and Michael and I actually had a conversation about this yesterday. So let me have him also respond.

Mr. BROMWICH. There are really 2 related issues here. One is the issue of employees engaging in misconduct. The other is people who, although not engaging in misconduct, are not doing their jobs the way they should.

As to misconduct, we will work jointly with the Inspector General's Office in the face of allegations of misconduct against individuals or groups of people. When permitted by the Inspector General, we will investigate them. If she wants to assert jurisdiction over them, she will investigate them. But it is my responsibility as a manager, once those investigations are complete, to make decisions about what sanctions are appropriate.

Now there are limits, as the Secretary said, and you can't go totally outside the box of precedent that has been created. The civil service rules prohibit it. But there is always a range of permissible punishments under the law, and I will be at the very top end of what is permitted.

As for performance, non-misconduct performance-related issues, this is obviously a group of people, a group of executives in the organization that I am just getting to know. I am going to assume that there are many who know their jobs and do their jobs well. The Secretary and others who have had substantial contact with them have said nice things about certain people.

So just because there have been problems with the agency doesn't mean that I am going to order collective beheadings.

Senator SHAHEEN. Sure.

Mr. BROMWICH. Not everybody in the organization is guilty. Not everybody in the organization has done bad things. It is important to stop and recognize that so that we don't throw the baby out with the bath water and we don't lose very good people who are mission-critical people.

But I am going to be looking both at misconduct issues and at performance issues as we try to move this agency forward.

Senator SHAHEEN. Thank you.

The CHAIRMAN. Senator Stabenow.

Senator STABENOW. Thank you very much, Mr. Chairman.

Welcome again, Secretary Salazar. Welcome, Director Bromwich.

First, Secretary, I want to thank you for what I know is around-the-clock effort. Anyone that knows you knows that you are doing everything humanly possible in a horrendous situation. As I said many, many times, both you and the President really inherited a perfect storm of an oil company with more violations, safety violations than any other in the industry. Most of them, I think 97 percent, being given the go-ahead to drill a mile down in the Gulf, and unfortunately, an agency that you inherited that I believe has more than just some individual problems.

It really was given—it was under the umbrella of a philosophy or a belief that oil companies should police themselves and I think a general belief that was there at the time that industry should police themselves that we have seen some horrendous effects from.

But, and I know that that is changing. I know that while the individual issues, Mr. Bromwich, that you are having to deal with in the agency will take time and certainly not everyone has the same culpability and so on, but the philosophy has changed. For that, I at least am reassured that you are focused in a very different way in terms of public accountability and responsibility.

The question that I have is that the lack of preparation by an industrial corporation for dealing with a significant pollution problem really isn't new in this country. Unfortunately, we have seen this in other industries as well. We have learned, unfortunately, from experiences in Michigan around brownfields, where this has been another kind of—brownfield sites, another kind of example of poor regulatory oversight in the past with industrial companies not requiring them to prevent contamination and contain contamination of pollutants if they are leaked into the environment.

This lack of regulation to ensure planning, corporate planning and adequate resources leaves, as you know, taxpayers on the hook in terms of incredible economic and health burdens. So the spill in the Gulf is another sign, in my mind, that we have to require more upfront preparation, upfront planning, resources be set aside to prevent pollution, to prevent the kind of catastrophes that we have seen.

Last week, we heard through a House hearing that the oil company executives basically all had the same response plan, literally the same words, despite the individual differences in rigs and areas where they were drilling and so on. So I am wondering, a number of us have sponsored legislation—Senator Brown, Senator Feinstein are the leaders on—that would ensure that each lease holder includes a peer-reviewed oil spill management plan in their application materials.

This would help stop, in our judgment, the inaccuracies or blatant false statements within applications that have gone on and ensure that before any drilling starts that there is an adequate response for emergencies. So my question would be could you discuss how you will incorporate or might incorporate this idea into the changes that you are making at MMS, and how requiring companies to prove on the front end that they are technically and financially able to manage a spill would ensure the safety of our offshore oil and gas operations?

Secretary SALAZAR. Thank you very much, Senator Stabenow.

The obvious conclusion when one looks at what is happening in the Gulf today is that the several hundred thousand barrel a day spill capacity which was represented to be there on behalf of BP simply has not worked. So, there will be a review of a number of issues relating to oil and gas production, and the issue of oil spill response will be one of those key issues that will be looked at and so will be central to the reforms that we will be working at Interior, working closely with others who can provide some input to us on how we move forward with that agenda.

Senator STABENOW. So, as you do that then, I guess our legislation would require on the front end that those plans be in place so that—is that what you are planning on including?

Secretary SALAZAR. I think that is a concept that makes tremendous sense, and it is part of what we have been moving forward on already with respect to Notice to Lessees on several different fronts of reform that have to take place, including new requirements with respect to blowout preventers and other kinds of things. So the reform that has to be undertaken is not something that is going to happen overnight with the waving of a wand.

But I will tell you this, when you look at the people who I have placed in charge of this effort—I have Wilma Lewis, who was the prosecutor for the District of Columbia and who was a former Inspector General of the Department of the Interior, and Mike Bromwich, Inspector General and his long history in terms of working on these kinds of issues—I am confident that we will get the job done.

Senator STABENOW. Thank you.

The CHAIRMAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Once again, we have a Secretary that I am very fond of and an individual who is offering proposals that I am not yet convinced are going to get the job done, particularly on this question of moving the organizational boxes around at Minerals Management. Let me be very specific about it.

As you know, I am particularly concerned about the overly cozy relationship between the industry and the Government. We are seeing all this back-scratching and all these deals we heard about in the previous period, people out talking to folks about jobs they were supposed to be regulating.

Your response, I know, is you are bringing Mr. Bromwich in to be a tough cop on the beat, and there is no question he is a good man. But what I want to do is I want to see the rules changed and the law changed. Let me give you an example that touches on what we talked about before.

At the beginning of the administration, an individual who was the previous Director of Minerals Management went to become president of the National Ocean Industries Association. That is a trade group that represents the oil and gas folks that he used to regulate. On June 7 of this year, this individual wrote a letter to Bob Abbey saying that the President was pretty much off base in implementing his proposal for the moratorium on deepwater drilling.

I think there ought to be some ground rules on this stuff, some ground rules that have real teeth, Mr. Secretary. So my first question is I am going to, at a minimum, if I support this proposal—and I am not yet there, and I am going to ask you one other question to get your views with respect to issues I care about before I support it. I want to see strict limits on MMS employees going to work for companies that he or she regulated in the year before leaving MMS. Will you support that?

Because that, to me, closing this revolving door, ending these sweetheart relationships between industry and Government is a prerequisite to regaining some credibility here. That is not in the proposal now. We have talked about it, and I want to hear if you will support that at this time.

Secretary SALAZAR. Senator Wyden, the answer is that, yes, I do believe that we need to put into place a revolving door ban, and my own view, it ought to be a 2-year revolving door ban so you don't have people essentially moving from MMS and going over to the industry. It is something that we will work on closely in terms of what we will do as an executive agency, but also would look forward to working with you on how those rules are changed.

Let me add one other thing—

Senator WYDEN. Mr. Secretary, just on that point, you would favor a 2-year ban?

Secretary SALAZAR. It may be a lifetime ban, depending on where you are, the level of the agency. If you are an administrative assistant within MMS—that is, it is a central issue that needs to be dealt with in terms of the revolving door, and the specifics of how we ultimately put it together will be something that I will work closely with Wilma Lewis and with Mike Bromwich on.

Senator WYDEN. We will get you the amendment I am going to offer on that. But certainly, unless there is a tough, enforceable ban on this revolving door, there is no way I am going to support this proposal next week when we vote.

Second point, you have got a new director for enforcement and inspection. That is certainly constructive. But I am still concerned about whether some of these problems are going to just disappear into the bureaucracy at Interior.

Now the 2 areas that I am especially concerned about are how we are going to make sure that folks doing the leasing and the folks collecting the royalties are going to be doing a better job? So those are two important areas, in addition to this question of enforcement and inspection.

Can you tell me how you see the reorganization proposal making sure that we make these additional changes so that the problems don't just kind of disappear into the bureaucracy, but we really get

it right in leasing, we get it right in royalty collection because I am not yet convinced we are there in those subjects.

Secretary SALAZAR. Senator Wyden, I have no interest in cosmetic changes. I have zero interest in cosmetic changes.

Senator WYDEN. We know that. That is your desire.

Secretary SALAZAR. This is the real deal, and the people that I brought in to help me get this done will get it done. We have been doing a lot of it in the last 16 months. Part of the proposal that is included in Senator Bingaman's legislation would essentially move the revenue collectors over to the Assistant Secretary of Policy Management and Budget so it would be totally out of this part of the agency, to create that kind of separation.

You raised last year the issue of corruption and the royalty-in-kind program in one of the conversations that I had with you at some point. Frankly, that was an issue, which we took on, and we eliminated the royalty-in-kind program because, in my view, it created the kind of opportunity for the kind of corruption which you have been fighting against, which I very much agree with.

So we will work with you to make sure that at the end of the day, what we have in here is a reformed agency capable of doing the job. That these changes that we are making through organic legislation, that you will be making through organic legislation are not cosmetic in nature.

Senator WYDEN. My time has expired. Mr. Secretary, let us dig in, your staff folks and mine, between now and Wednesday because I want to make sure that we don't just move folks doing leasing and royalties, you know, somewhere else and just have the same kinds of problems.

As far as I can tell, it appears there are going to be the same people. Maybe they are going to report to somebody different, but I need more detail about how we are actually going to get these changes, start with the revolving door because that is a prerequisite to credibility.

Mr. Bromwich is a good man. We are glad that he is there. I want to see the revolving door restrictions written into the law, and then I want to make sure that people who are going to report to somebody different are actually going to be doing something different other than just kind of punching in with a different individual.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

All Senators have had a chance to ask the Secretary questions, and we have gone through one round. We have a second panel of two distinguished witnesses, which I would like to go to at this time, unless some member has a burning question they want to ask.

If not, Mr. Secretary, thank you, and Mr. Bromwich, thank you very much for being here. We will continue to work closely with you to try to get whatever legislation this committee considers to address the problems that you have identified.

Secretary SALAZAR. Thank you very much, Mr. Chairman.

If I may, while I know Director Bromwich is new on the job, the work that has been going on with respect to the organizations reflected in your legislation, we will look forward to working with

you. I will direct Mike to work with Wilma Lewis and the other members of the team and your staff and Senator Wyden and others on this committee to move forward with legislation that gives us a framework that can give the American people comfort that they have an agency that can do the job.

The CHAIRMAN. I hope that can happen in the next few days. We hope to mark this legislation up on Wednesday of next week, just so that everyone has got that on their schedule.

Thank you very much.

Secretary SALAZAR. Thank you.

The CHAIRMAN. We will excuse both of you and call the other panel to the witness table.

Ms. Marilyn Heiman is the Director of the U.S. Arctic Program, an offshore energy reform project with the Pew Environment Group from Seattle, Washington. Mr. David Welch is the president and chief executive officer with Stone Energy Corporation in Lafayette, Louisiana, and we appreciate both of them being here.

Why don't we—our normal practice is we will take your full statement and include it in the record as if read, but if you could take about 5 minutes each and summarize the main points you think we need to understand, then we will have some questions.

Ms. Heiman, why don't you go right ahead?

STATEMENT OF MARILYN HEIMAN, DIRECTOR, OFFSHORE ENERGY REFORM PROJECT, PEW ENVIRONMENT GROUP, SEATTLE, WA

Ms. HEIMAN. Chairman Bingaman, Ranking Member Murkowski, and members of the committee, thank you for the opportunity to testify and comment on the oil and gas legislation that you have before you today.

I will focus most of my comments on the Outer Continental Shelf Reform Act of 2010. Our comments today were developed in coordination with the Ocean Conservancy.

I just want to give a little bit of information about myself. I have worked on oil and gas policy for about 27 years now and both in a State government and working for the Federal Government for a former Secretary of Interior. During the Exxon Valdez oil spill, I served as staff to the oil spill commission.

Before I begin, I want to extend my condolences to the families who lost their lives in the Deepwater Horizon and those whose livelihood and beautiful coastline are being so negatively affected.

As with the Exxon Valdez oil spill, complacency by the Government, industry, and citizens is central to the BP Deepwater Horizon disaster. Regulators accepted assurances that offshore drilling technology had become so advanced that a blowout was virtually impossible, and citizens have few tools to question any of those statements. We didn't do what was necessary to prevent a catastrophic oil spill, and the Gulf and its communities will suffer for decades to come.

Congress has not made amendments to OCSLA in over 30 years, and since then, there has been a lot of change in the industry, as we have heard, and that we have also heard that the technology to drill has far outstripped the technology of spill response and containment.

Just OPA 1990, although is more recent, only dealt with—or basically dealt with tanker safety and oversight. So it is time for change in the legislation that oversees these issues.

The structural reforms by the Department of Interior are a first good step, but reforming the way we regulate the industry is a very complicated and difficult task. Unless we have a change in culture and unless we have a change in the laws that have clear standards, we will not be able to change the way business is done and that we will continue to experience the disasters like the Deepwater Horizon.

We support several of the improvements to OCSLA that are in this bill. We want to thank you very much for introducing the bill, and what I want to talk about are ways that the bill could be strengthened.

Section 4 should be amended so that the environmental concerns of the marine environment are not just considered or balanced but are actually protected through standards. Language about protecting the marine environment should not be discretionary in any way.

Section 6 of the bill should require that the Secretary adopt regulations to identify important ecological areas and assure adequate collection of baseline data before leasing can occur.

Additional changes should be made to ensure adequate time for environmental analyses, and the legislation should be changed to remove compensation for disapproval of an exploration plan. In frontier areas, such as the Arctic, the Secretary should be given more discretion to extend the time to conduct a full EIS.

We would also like to see changes that will allow NOAA to play a greater role. One way to do this would be to require joint oversight of the preparation of the 5-year plans. Another way would be to require concurrence on the part of the Secretary of Commerce before a 5-year plan is finalized.

We really would like to see more of a strengthened role with authority by agencies such as U.S. Fish and Wildlife Service, U.S. Coast Guard, NOAA, EPA, and USGS in the areas where they have jurisdiction, and we would like to see more—or see it required that the Secretary have to take into account traditional knowledge and concerns of affected communities.

Over the last several decades, MMS has defined the geographic scope of the 5-year leasing schedule far too broadly. Some of the areas offered for lease are tens of millions of acres. Because of the enormous size of these planning areas, environmental analyses are far too generalized to support informed decisions about where, when, and how to authorize responsible development.

The size of planning areas should be smaller and more carefully defined, and alternatively, the Secretary could—the bill should be amended to require the Secretary to focus lease sales on specific tracks.

Finally, I would like to say that we support the idea of regional citizens advisory councils, and we feel that they should be modeled after the model in the Oil Pollution Act of 1990, which set up the Prince William Sound Regional Citizens Advisory Council. We believe that will maintain vigilance that is necessary, and we have

seen great improvements and good oversight of the industry since we have had that.

I want to commend Chairman Bingaman and Senator Murkowski for introducing the bill and the members of the committee that have now signed on, and I do believe this bill goes a long way toward improving the OCS Leasing Lands Act, and we look forward to working with you on the bill.

Thank you.

[The prepared statement of Ms. Heiman follows:]

PREPARED STATEMENT OF MARILYN HEIMAN, DIRECTOR, OFFSHORE ENERGY REFORM PROJECT, PEW ENVIRONMENT GROUP, SEATTLE, WA

Chairman Bingaman, Ranking Member Murkowski and Members of the Committee, thank you for the opportunity to testify and comment on the legislation you have before you today. I will focus most of my testimony on S. 3516, the "Outer Continental Shelf Reform Act of 2010" and provide more general recommendations for Outer Continental Shelf (OCS) reform, many of which are relevant to the other bills under consideration by the Committee.

My name is Marilyn Heiman and I direct the Offshore Energy Reform Project and the US Arctic Program at the Pew Environment Group. I have 27 years of experience working on oil and gas policy issues. I served as Natural Resources Special Assistant to the Governor of Alaska and later as the Senior Advisor to the Secretary of Interior for Alaska, during the Clinton Administration. I also served as staff to the Exxon Valdez Oil Spill Commission.

As with the Exxon Valdez oil spill complacency by the government, industry and citizens appears to be one of the central causes of the BP Deep Water Horizon disaster. There has been a systematic breakdown in the safety and management by industry of offshore drilling operations and a breakdown in the government's oversight of these operations. Regulators accepted assurances that offshore drilling technology had become so advanced that a blowout was highly unlikely, if not impossible, and citizens had few tools with which to verify those assurances. We did not do what was necessary to prevent a catastrophic oil spill, and the Gulf and its communities will suffer for decades as a result.

For all these reasons, the President's decision to suspend offshore drilling in deep water and the Arctic show a great deal of leadership. New problems and shortcuts associated with the BP Deep Water Horizon operation are emerging daily. It is very responsible to wait for the Presidential Commission to make their recommendations prior to proceeding with any more drilling in deep water, the Arctic Ocean or any new areas of the OCS.

Congress has not enacted significant amendments to Outer Continental Shelf Lands Act (OCSLA) since 1978. In the 32 intervening years, advancements in technology have allowed extraction of oil and gas from ever-deeper waters. However, the technology for extraction appears to have far outstripped the quality of oil spill prevention and response capabilities. The Oil Pollution Act (OPA '90)-enacted in response to the Exxon Valdez oil spill-focused primarily on the direct cause of that spill: tanker accidents. This time we should not limit our attention only to the current disaster. It is time for a comprehensive updating and modernization of OCSLA and OPA—90, the laws that govern mineral extraction from our oceans, and oil spill liability, response, and recovery. In our view there is little doubt that the flaws in these two statutes opened the door for a process that enabled the Gulf disaster to occur.

The structural reforms within the Department of Interior proposed by the Administration are an important step toward providing competent and independent oversight of oil and gas development but they are not sufficient to ensure that oil and gas development in ocean waters is safe and conducted in the nation's best interest. Congress must amend OCSLA to establish a new approach that fully and accurately assesses and manages the risks of offshore energy development.

The Pew Environment Group commends the Committee for taking a holistic look at the Outer Continental Shelf Lands Act and proposing important substantive changes.

We appreciate the opportunity to provide comments on S.3516, the "Outer Continental Shelf Reform Act of 2010". These comments were developed in coordination

with the Ocean Conservancy. You will also find our general recommendations on OCS reform in Attachment A*.

We support key concepts in the bill including:

- 1) Recognizing the need for protection of the marine environment;
- 2) Requiring the Secretary to acknowledge comments of other agencies such as the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (USFWS) the U.S. Geological Survey (USGS), the Environmental Protection Agency (EPA), and the U.S. Coast Guard (USCG) in the development of the 5-year oil and gas leasing program;
- 3) Establishing new, independent science bodies charged with collecting baseline data before leasing, undertaking ecosystem research and addressing risk; and
- 4) Extending the time to allotted to review exploration plans; and
- 5) Requiring a complete description of a response plan to control any blowout and to manage the accompanying discharge of hydrocarbons including the timeline for regaining control of the well.

These steps will begin to address the causes of and help to prevent future spills like the BP Deepwater Horizon. However, Congress can and should do more. The following comments contain a series of recommendations on how this legislation should be strengthened. They also address some issues, including spill prevention and response that may fall outside the jurisdiction of this Committee but should be addressed in any comprehensive reform package.

I. Policy Statement and Substantive Standards

The nation's current OCS policy-set forth in OCSLA Section 3, 43 U.S.C. § 1332- does not place sufficient emphasis on protection of coastal and ocean ecosystem health. S. 3516 includes positive steps to address this problem, but the proposed changes do not go far enough. Congress should clarify OCS policy to underscore and prioritize protection of ecosystem health. We recommend the following changes:

A. Clarify OCS policy by adding Congressional findings and strengthening Section 4 of S.3516

(1) Add Congressional Findings:

Before setting forth a national policy for the OCS, Congress should articulate findings that place OCS oil and gas activities in a broader context. Congress should find that:

- OCS lands are part of a complex and dynamic marine ecosystem that includes numerous resources that are of national importance including: fish species that support economically valuable commercial and sport fisheries as well as provide a critical source of food for the nation; marine mammals that provide subsistence food for certain coastal communities and support recreational businesses in other communities; and corals and other living organisms that are an essential part of a healthy, functioning marine ecosystem;
- substantial questions exist regarding the complex nature of and functioning of marine ecosystems; and
- development of OCS oil and gas resources must be undertaken with full recognition of the complexity and value of marine ecosystems and can proceed only when and where it can occur with the least possible risk of adverse impact on living marine and coastal resources.

(2) Strengthen Section 4 of S. 3516 to emphasize protection of the marine environment.

Although Section 4 of S. 3516 suggests positive changes to OCSLA's declaration of national OCS policy, additional changes are necessary to strengthen the protection of marine and coastal ecosystems in any oil and gas development.

- OCSLA Section 3, paragraph 3, subparagraph (B) should be further amended to require that the OCS be managed in a way that minimizes-not just recognizes-the potential impacts associated with developing OCS resources. We recommend the following language:

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be managed in a manner that—

* Attachment has been retained in committee files.

(A) recognizes the need of the United States for domestic sources of energy, food, minerals, and other resources;

(B) minimizes the potential impacts of develop of those resources on the marine and coastal environments and on human health and safety; and

(C) acknowledges the long-term economic value to the United States of the balanced and orderly management of those resources that safeguards the environment and respects the multiple values and uses of the outer Continental Shelf.

- OCSLA Section 3, redesignated paragraph 6 should be further amended to provide that “exploration, development, and production of energy and minerals on the outer Continental Shelf shall be allowed only when those activities can be accomplished in a manner that protects life, health, the marine and coastal environment, property, or other users of the waters, seabed, or subsoil; and
- OCSLA Section 3, redesignated paragraph 7 should be further changed by striking the words “or minimize the likelihood of.”

B. Incorporate substantive standards to ensure protection of marine and coastal ecosystems

As currently written, OCSLA lacks 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). OCSLA should be amended so that environmental concerns and marine resources are not just “considered” or “balanced,” but are protected pursuant to a discernable, enforceable standard.

- (1) Make additional changes to OCSLA Section 6, 43 U.S.C. 1334(a), to require the Secretary to promulgate specific regulations designed to safeguard the marine environment.

The amended section 6 should require the Secretary to promulgate regulations to:

- establish procedures for participation in and compliance with any coastal and marine spatial planning process established by the President and/or Congress;
- identify (a) important ecological areas that will be excluded from oil and gas leasing and exploration and (b) measures necessary to preserve the integrity and function of important ecological areas;
- establish procedures for collecting baseline data concerning ocean water characteristics, wildlife, and the benthic environment that will be required before leasing can proceed in an area;
- establish procedures for involving other expert agencies in decision making concerning oil and gas leasing; and
- identify the most effective safety technology to be used for exploration and development

- (2) Make additional changes to OCSLA Section 8, 43 U.S.C. § 1337, to ensure that OCS oil and gas leases are sold only when lessees can meet environmental standards. Congress should amend OCSLA to require potential lessees to meet environmental standards before leases are sold. This will ensure that potential lessees do not acquire rights until they have demonstrated their ability to operate safely. Section III in Attachment A of this document, below, describes realistic response standards.

- (3) Make additional changes to OCSLA Section 11, 43 U.S.C. § 1340, to ensure adequate time for environmental analyses and to remove compensation for disapproval of an exploration plan.

S. 3516 includes a number of amendments to OCSLA Section 11, subsection (e). While these changes are primarily positive, additional changes are necessary. Section 6(e) of the S. 3516 extends the deadline by which the Secretary must approve an exploration plan. In this section, the description of redesignated paragraph (5)(A)(ii) should be changed to read “(ii) if the Secretary makes a finding that additional time is necessary to complete any environmental, safety, or other reviews, a date not later than 30 days after the completion of the last such review.” This will ensure that the Secretary has adequate time to complete the necessary reviews.

S. 3516 changes the circumstances under which the Secretary may disapprove an exploration plan. The proposed bill sets the bar much too high. The language should be changed to strike all three instances of the word “exceptional” from redesignated subsection (e)(1). In redesignated subsection (e)(1)(A), the words “would probably” should be changed to “could.”

S. 3516 contains language that would compensate lessees in the event that their exploration plans are disapproved. This section should be deleted. An OCS lease is not a conditional right to conduct exploration and compensation is not due if the Secretary determines that exploration is inappropriate.

(4) Make additional changes to OCSLA Section 18, 43 U.S.C. § 1344, to incorporate substantive standards for environmental protection.

Currently, OCSLA gives the Secretary of the Interior broad discretion to develop five-year oil and gas leasing programs. In addition to the S.3516 amendments, Congress should amend OCSLA Section 18 to incorporate substantive, discernable standards that will guide the Secretary's decision-making and ensure that oil and gas activities will not adversely affect ecosystem health. These amendments should:

- guide the development of the five-year plan by stating that “management of the OCS shall be conducted in a manner that protects economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS and restricts to the greatest extent possible the potential impact of oil and gas exploration on other resource values of the OCS and the marine and coastal environments.”
- require the identification of any important ecological areas (IEAs) within the areas proposed for inclusion in the program. Areas identified as IEAs should be excluded from the five-year leasing program or-at the least-IEAs should be subject to specific, stringent precautions that must be satisfied before the sale of any leases wholly or partially within IEAs;
- require the collection of specific types of baseline science 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 at least three 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 is compiled for a given area of the OCS, that area should not be eligible for inclusion in a five-year program. In addition, Congress include specific requirements designed to ensure a more rigorous and meaningful evaluation of environmental sensitivity and marine productivity. This requirement should be integrated into and coordinated with baseline science information;
- require that the Secretary select a leasing schedule that best protects marine and coastal environments while helping to meet national energy needs from a range of alternatives.

II. Expert resource and safety agencies should have a much greater role in decisions about and preparation of environmental analyses for OCS oil and gas activities

S.3516's requirement that the Secretary of the Interior respond to the concerns of the “heads of interested federal agencies” is a positive first step but not sufficient to address the inadequacies in the science and environmental review.

Congress should amend Section 18 of OCSLA to give 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, a greater role in making initial decisions about if, when, where, and how to allow oil and gas leasing, exploration, and development on the OCS. For example, Congress could amend Section 18 so that the Secretaries of Commerce and of the Interior have joint and equal responsibility for preparing five-year oil and gas leasing programs. Alternatively, Congress could amend Section 18 to require the concurrence of the Secretary of Commerce before any five-year leasing program is finalized and implemented.

To ensure that environmental analyses for OCS oil and gas actions are sufficiently comprehensive, Congress should amend OCSLA to require that NOAA play a more significant role in the National Environmental Policy Act (NEPA) process for OCS oil and gas decisions. Congress could accomplish this by requiring MMS and NOAA to jointly prepare NEPA documents for OCS oil and gas activities. Or, Congress could require MMS to obtain the concurrence of NOAA before MMS issues any record of decision or finding of no significant impact concerning any OCS oil and gas action. With NOAA's broad ocean expertise and its role as a natural resource trustee, greater involvement by NOAA 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 also specify that other administrative agencies with relevant expertise, including USFWS, USGS, EPA, USCG, and others, contribute to the NEPA process, at a minimum, as cooperating agencies. The statute should also require

that the Secretary solicit and take into account local and traditional knowledge from affected communities. This would ensure that expert concerns are heard from the outset, and could help avoid complications later in the process. Affected local governments and tribes must also be partners in preparation of the NEPA analyses.

III. Narrowing the Area for Lease Sales

As a matter of policy, over the past several decades, the Secretary of Interior has defined the scope of the five-year leasing schedule far too broadly. Rather than narrowly targeting leasing on areas with the highest potential for oil and gas production coupled with the least risk to the marine environment, the Secretary's plans define "planning areas" that encompass tens or even hundreds of millions of acres. Because of the enormous scope of these planning areas, environmental analyses are too generalized to support informed decisions about where to authorize oil and gas development. S. 3516 should address this issue by amending OCSLA to require that five-year programs identify, with greater precision, the portions of planning areas that will be open to oil and gas leasing.

In order to narrow the scope of planning areas, the Secretary should be required to seek information and defer to the recommendations of agencies, with expertise in marine resources and safety including as NOAA, USFWS and the USCG as to which areas should be excluded from the planning process due to their importance to marine or coastal resources or because of the safety risks involved in developing those areas. Narrowly tailoring planning and leasing decisions will lead to smaller areas being offered for lease and will enable environmental analyses to be more targeted, specific and capable of reasonably supporting decisions as to where development should occur. OCSLA should include standards that place an upper limit on the percentage of a planning area that may be included in any one five-year leasing program. Alternatively, OCSLA could be amended to require the Secretary to focus individual lease sales on specific lease tracts, rather than offering enormous portions of planning areas.

IV. Independent Science

One of the principal challenges confronting managers and decision-makers is the lack of information about the composition, structure, and functioning of marine ecosystems. Decisions regarding oil and gas development in the outer continental shelf should be part of a comprehensive, ecosystem-based management plan that ensure the health of the marine ecosystem, coastal economies and opportunities for a subsistence way of life.

We are pleased that S.3516 directs the Secretary to develop and carry out a comprehensive research program that includes the collection of baseline data and monitoring. To ensure that the program meets its stated goals and is truly independent and programmatically separate and distinct from the leasing program, we believe that it should be housed under the USGS biological services division.

Membership of the safety and environmental advisory board created by S. 3516 should include not only Department of Interior employees from USGS and USFWS but also employees from NOAA and the EPA, as well as members from academia. The board should also be charged with reviewing research and other scientific work of the comprehensive and independent studies program. In addition the board should review the science included in NEPA analyses associated with oil and gas activities to ensure analyses are complete, accurate and do not contain information gaps that preclude an accurate assessment of the risk and scope of harm to the environment from any oil and gas activities. Any deficiencies in the NEPA analyses identified by the board must be resolved before those analyses are finalized.

V. Best Available Technology

Section 6(h) of S. 3516 rewrites OCSLA's best available technology standard. While the new language is a step forward, it still falls short of that what is necessary to ensure that offshore oil and gas operations are as safe as possible. S.3516 should be further amended to describe a more rigorous standard as follows:

(b) BEST AVAILABLE TECHNOLOGIES AND PRACTICES—

(1) IN GENERAL.—

(A) In exercising respective responsibilities under this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require

(i) the use of the best available and safest technologies and practices whenever equipment failure may have an effect on safety, health, or the environment; and

(ii) the use of technologies and practices that have been proven safe and effective under the site-specific conditions in which they will be used.

(B) For all new drilling and production operations, the requirements described in subparagraph (A) apply as of the date this bill takes effect.

(C) For drilling and production operations already in existence on the date this bill takes effect, the requirements described in subparagraph (A) will apply not later than September 1, 2015 unless

(i) the operator of the existing drilling or production operation submits to the Secretary documentation showing that converting the operation to comply the requirements of subparagraph (A) is impossible or dangerous; and

(ii) the Secretary issues a written determination that converting the operation to comply with the requirements of subparagraph (A) is in fact impossible or dangerous.

VI. Regional Citizens Advisory Councils

Congress could help prevent future oil spills by authorizing and funding citizens' oversight councils for all areas of the country with existing or proposed oil and gas development. These councils should follow the model of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC). In Prince William Sound, the RCAC has proven to be effective at ensuring the best spill response and prevention capabilities have stayed in place since the Exxon Valdez oil spill. Preventing complacency and maintaining vigilance by citizens has proven to be one of the most important methods for preventing oil spills and ensuring that proven, well-maintained response capability is in place should a major spill occur.

In the aftermath of the 1989 Exxon Valdez oil spill in Prince William Sound, Congress established citizens' councils as part of OPA—90 to help combat the complacency in industry oversight that was identified as a major factor in the 1989 spill, and to provide a needed layer of scrutiny to increase public confidence in the safety of the Alaska oil transportation system. The PWS RCAC has kept in place key requirements for spill prevention since the Exxon Valdez oil spill including the stationing/escort of 2 powerful tractor tugs in Prince William Sound and an emergency response/firefighting vessel that escorts all tankers to open water. The RCAC also performs an important independent oversight function by reviewing oil spill contingency plans.

In areas where oil and gas development exists or is proposed, RCACs could provide advice and recommendations to the Secretary of Interior and the industry on development activity as well as associated pipelines and tankers in the region. They would also provide advice to the Department of Interior regarding the 5 year leasing schedule, lease sales, and exploration and production in the region.

VII. 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. 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.

VIII. Conclusion

The Committee should be commended for introducing S. 3516. This legislation goes a long way toward improving oversight of activities in the Outer Continental Shelf. S. 3516's amendments to OCSLA in addition to our recommendations detailed in this document will help minimize to the maximum extent practicable the threat of future catastrophic spills. We are more than happy to work with the Committee to assist in any way possible to ensure the necessary improvements to OCSLA are made. Thank you again for the opportunity to testify.

Please see Attachment A for more specific recommendations regarding changes to OCSLA and OPA 90.

The CHAIRMAN. Thank you very much.
Mr. Welch, go right ahead.

**STATEMENT OF DAVID H. WELCH, PRESIDENT & CEO, STONE
ENERGY CORPORATION, LAFAYETTE, LA**

Mr. WELCH. Thank you, Chairman Bingaman and Ranking Member Murkowski, for the opportunity to testify. It is nice to see you again.

I would like to also acknowledge the 11 people. The families of these people are mostly from my home State, and they left behind wives and children. That is, indeed, a tragedy. But I would also like to point out that our region has suffered two tragedies. First, the spill and now the loss of our primary industry.

I will provide the committee with some general thoughts on the legislation before you but would caveat my comments, given the fact that I have not had an opportunity to analyze the legislation in full detail.

My name is David Welch, and I am the president and CEO of Stone Energy Corporation. I am an engineer and economist by education and have been in the oil and gas industry for 38 years. This includes a stint as an adjunct professor at Tulane University and 5 years working as a petroleum engineer at the U.S. Geological Survey. I followed that with 26 years at Amoco and was absorbed into BP Amoco for a time and then went on to Stone Energy about 6 years ago.

Stone is an independent oil and natural gas exploration and production company headquartered in Lafayette, Louisiana, with additional offices in Houston, Morgantown, and soon to be New Orleans, Louisiana. We employ about 300 people with an equal number of contractors and an equal number of companies that we do business with as suppliers.

Stone employs people who have dedicated their lives to providing energy to a needful world. We employ people like Jerry Wenzel, a mechanical engineer by training and who has overseen the safe and efficient development of multiple deepwater development projects, as well as deepwater pipelines. We employ people like John Pantaleo and Jimmy Reed, our drilling manager who actually helped design the dynamically positioned drill ship that is now collecting the oil on the Horizon incident. So these are very experienced people. Jimmy Reed, our superintendent, who has held just about every company position there is on an offshore rig.

As you are aware, on Monday, the Secretary officially reorganized the previous MMS. From our perspective, the Government has the best understanding of how it should be organized, and the administrative changes sound reasonable. From an industry perspective, I am less concerned about the acronym for the agency, but more concerned with the people that are competent and professional.

If you charge the Government with new functions and responsibilities, please also ensure they have the funding to carry those out. These changes are going to be judged by the results they are able to achieve.

One concern the committee should consider is the use of ambiguous words that give too much discretion, too much latitude in terms of interpreting what you really mean. Things like "reasonable," "acceptable," "relevant," "other exceptional circumstances," "would probably cause." These words can tend to lead to an ambig-

uous meaning that will just lead to years of litigation. Providing clarity should be an outcome of your committee.

The reorganization is one that may have been necessary regardless of the Deepwater Horizon accident. However, efforts to significantly change the environment without a full understanding of the facts could also likely lead to unintended consequences, just as the drilling in the Horizon has led to the unintended consequences of this spill.

Therefore, I would encourage you to be as deliberate as you can under your time constraints to try to understand the far-reaching consequences of your actions. The Presidential commission hasn't even conducted its initial organizational meeting yet.

While the regulatory environment is getting plenty of attention, my understanding is the largest cause of the Deepwater Horizon appears to be critical errors made during operations. For the thousands of workers in the Gulf, whatever changes you are considering, we are counting on Congress to get it right, not just right now. Economically, we can't afford decisions that are going to result in rigs leaving the Gulf and the inability to produce energy here in the United States.

The problem that we have with the shutdown of drilling is that the Gulf of Mexico has very high-porosity rocks, high permeability, and the decline rate is very large, 33 percent per year. So even a 1-year loss of production represents potentially losing up to 30 percent of our production. It is required to have continuous drilling to be able to make that amount of production up.

I definitely don't want to try to minimize the disaster playing out in the Gulf, but I do hope that you will examine the safety record of our industry. It has been 40 years since we had a blowout in the Gulf of Mexico, and out of that blowout came the subsurface safety valve, which has prevented many, many blowouts from happening during that 40 years.

I am convinced that what you have learned through this investigation, you will be able to enact regulations that will prevent us from having accidents for many, many decades to come, hopefully never.

Also, over the last 60 days or so, we have seen the development of a new technology, which is the development of a containment technology. Imagine the mitigation had one of those been ready at Port Fourchon ready to deploy in 2 days instead of in 60 days. That is the technology now available to us to mitigate the circumstances.

So I would just like to close by saying Louisiana is my home. I was raised in New Orleans. My family has a place in Grand Isle, where you have seen the oil coming ashore, for 50 years. I presently live in Lafayette, and it is important that we protect not only our people and our environment, but also our major industry.

So the regulatory reforms will achieve the safety that you are looking for. We just need to get back to work as soon as we can. So thank you very much for your time.

[The prepared statement of Mr. Welch follows:]

PREPARED STATEMENT OF DAVID H. WELCH, PRESIDENT & CEO, STONE ENERGY CORPORATION, LAFAYETTE, LA

Thank you Chairman Bingaman and Ranking Member Murkowski for the opportunity to testify. I will provide the Committee with some general thoughts on the legislation before you but would caveat my comments given the fact that I have not had an opportunity to fully analyze the legislation.

My name is David Welch and I am the President & CEO of Stone Energy Corporation. I am an engineer and economist by education and have been working in the oil and gas industry for thirty eight years. This includes a stint as an adjunct professor at Tulane University and five years working as a petroleum engineer and economist at the United States Geological Survey. In addition, I worked for 26 years at Amoco, and was absorbed into the merged BP Amoco for a short time, after which I went on to Stone Energy where I have been for the last six years.

Stone Energy is an independent oil and natural gas exploration and production company headquartered in Lafayette, Louisiana with additional offices in Houston, Texas and Morgantown, West Virginia and a soon to be opened office in New Orleans, Louisiana. We employ about 300 people and have a similar number of contract employees.

Stone employs people who have dedicated their lives to providing energy to a needful world. We employ people like Jerry Wenzel, a mechanical engineer by training who has overseen the safe and efficient development of multiple deepwater development projects as well as deepwater pipelines. We employ people like John Pantaleo and Jimmy Reed. John is our drilling manager who helped design the dynamically positioned dual derrick drill ship with storage capacity now being used to capture oil from the spill. Jimmy Reed is our deepwater superintendent that has held just about every job there is on an offshore drilling rig. These are sincere, conscientious men with the sole aim of safely and effectively drilling and completing the wells which produce the product that allow all of us to drive and fly and to heat and light our homes.

As you are aware, on Monday, Secretary Salazar officially re-organized the previous Minerals Management Service. From my perspective, the government has the best understanding as to how it should be organized and the administrative changes sound reasonable. From an industry perspective, I am less concerned with the acronym associated with the agencies than I am getting a timely response and working with people that are competent and professional. If you charge the Government with new functions and responsibilities, ensure that those people are funded and trained to meet those responsibilities in a timely manner. These organizational changes will be judged by the results and the answer to the question of whether people were placed in the best position to succeed.

One concern the Committee should look at is the use of ambiguous words that give so much discretion in making certain decisions which can lead to administrative and judicial wrangling over what they mean. Examples include "reasonable," "acceptable," "relevant," "other exceptional circumstances," and "would probably cause." These words and their ambiguous meaning may result in more litigation. Instead, providing clarity should be a goal.

The reorganization of the Minerals Management Service is one that may have been necessary regardless of the Deepwater Horizon accident. However, efforts to significantly change the regulatory environment without a full understanding of facts could likely lead to unintended consequences that are difficult to undue. Therefore, I would encourage you all to be deliberative and understand the consequences of your actions. I would also point out that the Presidential Commission hasn't even conducted their initial organizational meeting.

While the regulatory environment is getting plenty of attention, based on what I have been able to understand the largest cause of the Deepwater Horizon appears to be critical errors made during operations. For the thousands of workers within the Gulf, whatever changes you are looking at, we are counting on Congress to get this right, not just right now. Economically, we can't afford decisions that are going to result in rigs leaving and the inability to produce energy here in the United States.

While I don't want to try to minimize the disaster playing out in the Gulf, Congress will hopefully examine the safety record of the last forty years before making wholesale changes. I believe that with a few additional requirements such as independent verifications of blow out preventers and safety system functions, plus increasing the number of inspectors will significantly reduce the likelihood of a future disaster. Also, we have seen over the last 60 or so days development of a deepwater containment technology that did not really exist to my knowledge before this spill. Going forward think of the mitigation if one of those devices was already built and

sitting at Port Fourchon ready to deploy in 2 days instead of 2 months. The size of the spill would be materially smaller with much less impact to our environment.

There is geology throughout the world that is easier to access the resource. There is water that is shallower to access. There are regulatory regimes that are not as stringent as the U.S. What the Gulf of Mexico has always offered was a legal and regulatory climate that offered certainty. Louisiana is my home and it is important that we have an environment that keeps jobs in Louisiana. It is also important that the country maintain its own resources and the Gulf is a very important part of that resource.

While I am certain measured regulatory reforms can help make the offshore safer, I ask the committee to consider whether the proposals before us today will lead to more or less energy. Energy demand won't go down as a result of the spill. The only thing that will happen with drilling being shut down or reduced in the Gulf is an increased transfer of wealth out of our country into the oil exporting countries. Given the current tenuous state of our economy that does not make sense.

Most of us took transportation to work today that was either petroleum powered or petroleum manufactured. According to the Energy Information Agency, the United States will still need oil and natural gas for the foreseeable future. Companies like Stone Energy are ready to meet these challenges safely and responsibly but we need a regulatory environment that allows us to operate in the Outer Continental Shelf safely and economically.

Thank you and I look forward to answering your questions.

The CHAIRMAN. Thank you very much. Thank you both for your testimony.

Let me ask a few questions here. Ms. Heiman, let me ask you about these regional citizens advisory councils. How do these councils work? What role do they have with respect to agency decision-making? I am just unclear on that.

Ms. HEIMAN. Mr. Chairman, the Prince William Sound Regional Citizens Advisory Council is—there are 2 councils. One was created in Cook Inlet, and one was created in Prince William Sound. The way they work is they have citizens from each community who are represented that actually really get trained and become very knowledgeable about the industry.

They provide recommendations to the industry, actually, directly through an association. But they also play a role in guiding legislation and policy, and I can give an example if you would like?

The CHAIRMAN. Yes. I am mainly interested in knowing how they would affect or impact on decisionmaking by the agency with responsibility.

Ms. HEIMAN. For example, when I worked for the Governor of Alaska, the regional citizens advisory council came to us and said we believe there should be tractor tugs that would be stationed in the sound and also have—there were already escort vessels. But they needed really high-powered tractor tugs to be able to move and push a tanker or pull a tanker if it were to head for the rocks.

They brought that to our attention, and we were able to make some decisions, and the Governor was able to talk to the president of BP and get those changes made.

The CHAIRMAN. OK. Let me ask, you suggest that the Secretary of Commerce, because of the location of NOAA in the Department of Commerce, that the Secretary of Commerce have joint and equal responsibility with the Secretary of Interior for preparing 5-year plans. How would that work? That sounds like a recipe for inaction to me.

Ms. HEIMAN. The way our Government is set up right now, we divide up how we manage our oceans, and it is challenging. The way that MMS has handled issues in the past that I have seen is

that when they are making decisions about a 5-year schedule or a lease sale or exploration plan, they can listen to the other agencies, or they don't have to unless there is an endangered species involved.

We think that there is a way—I know it might be challenging, but there is a way to make sure that the agency that is responsible for the oceans and the protection of the oceans, including not just NOAA, but U.S. Fish and Wildlife Service and USGS and some of the other agencies, would actually have more authority in the approvals of those plans.

They have been up to now, and I have witnessed them being dismissed in their comments and their——

The CHAIRMAN. Obviously, I think they should have an opportunity to make input and have that input considered. I don't know if I think having joint and equal authority between the two Secretaries is something that is going to work too well in practice. That is my concern.

Mr. Welch, did you have any thought either about this idea of giving the Secretary of Commerce more of a role here or about this idea of these advisory committees, these citizens advisory committees?

Mr. WELCH. Obviously, that is for you to consider, Senator. But we would be in favor of something that gets input from all the stakeholders but has a single point of accountability so that decisions don't get bound up in red tape. In the Gulf of Mexico particularly, it is one of the few places where we can actually explore in this country. To put more delays, et cetera, into the program would be very difficult.

We are trying, we are scrambling right now trying to figure out how to stay alive as a company as a result of this moratorium. There are hundreds of companies like mine that are in the similar position right now.

The CHAIRMAN. All right. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I appreciate you bringing up the issue of the regional advisory councils. This stemmed, of course, from the Exxon Valdez, and it was actually my father who went over to Scotland, looked to see what they were doing over there, took that idea and incorporated that into the RACs, the regional advisory councils. I do think that they have worked well. I think that they have been a good guide. It allows for a level of not only community participation, but doing it upfront.

Right now, what you are facing in the Gulf is a lot of scrambling, trying to figure out who knows what. The way it has been set up in Alaska is those who are familiar with the waters, those that make their living off it, they are standing by in the event that their vessels are needed to operate or to haul boom. They know that you can't put boom in front of a certain area because the tides don't work.

So it takes a plan that might look good on paper, but it incorporates those that live and breathe in the area, and it is a model that we think has worked well. I have incorporated the concept in a draft that I am working on now, the Oil Spill Compensation Act of 2010. We establish a council, a 2-member council, nonbinding

authority to make recommendations for Government and industry practices.

There is voting representation from all of the stakeholder groups—the industries, the local governments—and then we have nonvoting reps that come from the stakeholder States, the Federal agencies. But what we have done in our legislation is pattern it off the Alaska model, and I would be curious to get the input from both of you as to the direction that we are taking with this.

I don't know that you can always transfer what we have done in Alaska to other parts of the country, but it is a model that I think is certainly worth looking at, and I am going to encourage my colleagues to do so.

Ms. Heiman, I want to ask you a question based on I appreciate your perspective from the Alaska view. In your testimony, you indicate that current law should mandate that the Interior Department prepare full and comprehensive analysis at both the programmatic and the site-specific project stage. So what I am curious about is whether it is your position or Pew's opinion that every single new operation that we have in the Gulf moving forward should undergo its own full-scale EIS?

I will just let you answer that question then.

Ms. HEIMAN. We have not taken a position on that, and just to be clear, the Pew Environment Group does not oppose all offshore drilling. What I think and we have said in our testimony is that in new frontier areas, where there is no existing major response capability or challenges that haven't been foreseen, in those cases, full EIS, I believe, should be conducted.

In the Gulf, I understand there are a lot of rigs that operate in similar areas, and so it may not make sense in all cases. I think it really should be based on what the environmental conditions are and what the safety conditions are.

Senator MURKOWSKI. So there is a recognition there that at some point you can be duplicating efforts, essentially, that may or may not be constructive.

Let me ask you this, Mr. Welch, and I suggested this in my comments to the Secretary. This is the concern that I have about this investment flight and whether it is the action of the administration in imposing this blanket moratoria or whether it is the discussion that is at hand as we revamp MMS and look to different, a different regulatory approach.

Certainly, we heard from Mr. Bromwich that it is going to be a SWAT team type of approach in terms of not only enforcement within the department, within the agency itself, but among the operators out there. Can you tell me what is going on from your perspective as an operator out there? Are we seeing companies and operators in the Gulf looking at what is going on here in Washington, D.C., and some of the policies or the hinted direction toward policy and having them make decisions that take them out of the Gulf?

Mr. WELCH. Yes, actually, that is a very important question. Let me just clarify one thing. The moratorium, of course, is 500 feet or deeper, but all permits in the Gulf have been rescinded and have to be reapplied. So there are very little, if any, drilling.

Senator MURKOWSKI. What does that mean to you as a company?

Mr. WELCH. What it means to me as a company is I have a rig sitting on a platform. It is not in deep water. It is in greater than 500 feet of water. It is in about 1,000 feet of water. It is a platform rig, not a floating rig like the moratorium describes.

But that rig is actually just sitting there, shut down. I am paying standby costs every day. The rig is doing nothing.

Senator MURKOWSKI. What does it cost—

Mr. WELCH. We had to cement the well that it was drilling, and it is sitting there doing nothing until we get to the point. So I would very much support the idea of not just having a blanket moratorium.

As facts become available, there are ways to minimize any threat of any further pollution right now. The idea that Senator Landrieu put through of allowing even the floater rigs to drill down to the point, or top drill where you are not actually drilling in the zones that have hydrocarbons—generally, you have to drill 10,000, 20,000 feet before you get to the objective zone. You could drill a lot of that, case off the well, and those rigs could be busy doing something that is valuable work during the time the moratoria on hydrocarbon drilling is imposed.

But we are already starting to see deepwater rigs leaving the Gulf. We were a 15 percent partner in a prospect that now looks like that rig is going to leave and be gone from the Gulf of Mexico. When these rigs leave, they don't just go for one well and come back. They go for a fairly extended period of time, 3 to 5 years typically.

If we start losing those rigs, the ability to recover the moratorium may not just be a 6-month ordeal, it may actually have impacts for years and years to come, which would be very difficult. Because as these rigs move, they are developing oil in countries other than ours.

Our demand isn't going down. We are still buying the oil. But the money that we are paying for that oil, instead of going to people that are in the U.S., is now going overseas to exporting countries. I think that is tragic, given the tenuous state of our economy right now.

Senator MURKOWSKI. I think it is an important statement that needs to be made, and I think people need to understand that when we talk about a 6-month moratoria, what has happened as a consequence of that 6 months extends well beyond the 6 months. As you say, whether it is the cost of or the commitment of a rig in another country, that is one thing. But being able to just hit the play button now that the pause button is off, I think we recognize is not necessarily realistic.

I suggested to the Secretary yesterday that in the 33 deepwater wells that have been shut down with this moratoria, that of the 33, 28 of them are not necessarily in that active exploration stage. They are in the development appraisal stage, which is different from a risk perspective, and is it possible that they could consider looking at those types of distinctions?

I remain hopeful that there will be that type of an assessment that will allow decisions to be made in the Gulf that, again, ensures the soundness and the safety of the operations, but doesn't encourage this investment flight that I am really quite concerned

is not going to be short term and the economic impact is going to be quite considerable.

Mr. WELCH. Correct.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Thank you both for being here and your excellent testimony, and we will take it into consideration as we try to move ahead with some legislation.

That will conclude our hearing. Thank you.

[Whereupon, at 11:52 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSE OF MS. MARILYN HEIMAN TO QUESTION FROM SENATOR MURKOWSKI

Question 1. Ms. Heiman, your written testimony advocates several areas in which legislation must minimize any adverse risks or impacts to the ocean before development can move forward. It's obviously small comfort now, but the risk of one major incident like Deepwater Horizon in over 40,000 wells drilled in over 30 years is at least statistically a small fraction of a percentage of a risk. Again, that's small comfort when the consequence of a risk is now obviously so high. The debate is obviously over the definition of minimizing a risk—because as we all know it is impossible to eliminate a risk without simply forgoing the underlying activity. Can you talk more about your definition of “minimizing” a risk?

Answer. Minimizing risk means undertaking oil and gas exploration and development activities in a manner that will result in either no harm or the least possible harm to marine and coastal resources. Under current law, too much focus is on promoting oil and gas development and there is far too little attention on the consequences of that development on our other valuable marine and coastal resources. Minimizing risk will occur only with a more rigorous, transparent and multi-agency process for approving oil and gas exploration and development activities. OCS planning, exploration and development must be subjected to full and meaningful environmental disclosure and analysis which must be conducted with the participation of those agencies with expertise in marine and coastal resources and safety: NOAA, USFWS, and USCG. In addition, requiring that specific standards for resource protection and safety be met before oil and gas activities can occur will serve as an incentive to drive technological and operational developments and will lead to safer and less harmful oil and gas development. After the Timor Sea and Deepwater Horizon Spills we no longer have the luxury of believing that oil and gas development is without risk. However with specific operational and safety standards and a process in which expert agencies can participate in assessing the potential harm to marine and coastal resources, oil and gas development can be targeted to those areas and in the manner that will minimize risk.

The risk assessments that underlie our offshore exploration planning and permitting seem to be overly focused on the probability of a spill, and not on the consequences of a spill, however unlikely. Future policy decisions on oil and gas development should be based on both the chance of a catastrophic spill and the damage that can be caused if a catastrophic spill occurs. An independent third party should be involved in reviewing risk assessment methodologies and certifying the results for accuracy and scientific vigor. Industry and government oil spill plans must adequately prepare for activities where the probability is low but the consequences high, like a catastrophic blowout. Industry must be required to demonstrate that they have the capacity to respond to a catastrophic spill and that the response can be sustained the full time it takes to get a blowout under control. There must also be an assessment of the percentage of time that a response is possible in the area where the activity is to occur. Even if another thirty years and 40,000 wells elapse before another, an even worse spill occurs—we have no choice but to plan for the inevitable.

Minimizing risks will require making changes in decision making at every stage of oil and gas development—planning, leasing, exploration, production, safety and prevention and spill response preparedness.

Planning and Leasing/Exploration and Production

Risks can be minimized beginning at the planning and leasing stages of oil and gas development. The 5-year planning process is the place to ensure that exploration and development will not occur in places where the risk of harm to marine and coastal resources is determined to be unacceptable by expert resource agencies. It should also not be conducted where effective spill response is not possible. Areas identified for leasing should be small enough so that environmental analyses are meaningful and can effectively gauge the extent to which resources can be protected.

Expert resource agencies including NOAA, U.S. Fish and Wildlife Service and U.S. Coast Guard should be consulted in all decisions regarding the location, timing and scope of oil and gas activities on the OCS. NEPA analyses must be conducted as early as possible and fully assess the impacts, including the cumulative impacts, of exploration and development. Again, expert agencies must be consulted in the NEPA process and their recommendations must be accepted by the Bureau of Oceans and Energy Management. Full NEPA compliance at every stage of activity must be mandated; categorical exemptions or any other means to short circuit a full assessment of the environmental and safety impacts of oil and gas activities should be prohibited.

Safety and Prevention

Oversight of safety and operational practices is also important to minimize spill risks. Requirements should be added to current law to mandate that:

- 1) All drill ships that operate in American waters meet the same regulatory review whether they are foreign or American flagged.
- 2) Federal inspectors are required to be present on drill rigs at all times to ensure safety standards are being met and risks are minimized.
- 3) Adequate funding exists to ensure there are enough regulators and inspectors to cover all offshore operations and ensure they are adequately paid and trained to a level commensurate with the technology they are overseeing. One model for this is the Oil Companies International Marine Forum (OCIMF) SIRE (ship inspection report) inspection program, which is based on very strong inspector training and knowledge requirements and standardized inspection criteria that would help agencies to identify risky operating practices or conditions, and possibly prevent incidents like the Deepwater blowout.

Spill Response Planning

As we have seen with the Deepwater response, MMS has had a practice of rubber-stamping contingency plans that made claims about response capability that were never tested and thus could not be backed up. The responsible federal agency should ensure that the owners and operators demonstrate that they have the equipment, vessels, personnel, and planning in place to respond to a blowout and stop the oil flow in the shortest possible time. This information should be required in a separate blowout plan that must be in place before any drilling is allowed.

The spill response plan must include enough effective spill response equipment, such as skimmers and boom, and adequate trained personnel to remove the oil from the water and protect sensitive areas that are important fish or wildlife habitat. These plans need to include a process for sustaining a major response for weeks or months. The requirements need to be concrete and strictly enforced. A company must be required to demonstrate that they have enough equipment and personnel to clean up a 60,000 barrel a day spill and show how they plan to sustain it for 90 days or the time it will take to drill a relief well, whichever is shorter. The owner and operator of wells that have less pressure or are not as deep should have to certify through an independent 3rd party that the pressure is less and the time to drill a relief well shorter if they want their response planning standard to be lower.

Without a specific standard there is no incentive to purchase the boom, train the workers and deploy the necessary equipment. For example, in Prince William Sound 300 fishermen are on contract and are trained at least annually to respond. This is due to a specific standard in state law that requires the plan holder—Alyeska—to demonstrate they have the capacity to respond to a 300,000 barrel spill in 72 hours. Currently there is no such standard in federal law.

A specific quantity of oil to be cleaned up in a specific time frame must be set out in federal law or regulation for facilities including offshore drilling rigs in federal waters. This should include a realistic timeframe for drilling a relief well. These standards would give industry specific requirements regarding what they need to have in place to adequately respond to a spill, and it would give regulators specific mandates they would need to follow to approve a spill contingency plan. The determination of how much spill prevention and response equipment is necessary would no longer be discretionary or subjective. Rigs at different water depths and drilling

depths and in different operating environments could have different standards. Areas with extreme conditions where spill response is challenging or near impossible should require additional prevention measures in addition to the assurance of response capacity. We cannot continue to ignore or dismiss the risks of a catastrophic spill.

To summarize, we can minimize risks by improving full understanding of the consequences of a catastrophic spill, and then requiring that operators demonstrate that they are prepared to respond to such a spill with sufficient, appropriate equipment, personnel, vessels, logistics, and planning. We need to enhance our safety inspections to verify operator preparedness and thorough audit operating practices. Our lease sale process must reflect a more comprehensive consideration of risk, both probability and potential consequences. We should then be prepared to make informed decisions for cases where there are risks of an uncontrolled blowout that exceeds our existing response technologies.

RESPONSE OF MS. MARILYN HEIMAN TO QUESTION FROM SENATOR LINCOLN

Question 1. In your testimony, you stated that advancements in technology for extraction of oil and gas in deeper and deeper waters have far outpaced the technology available in spill prevention and response. In addition to structural reforms within the Department of Interior, how can we begin to change this divergence in technology, given the ongoing disaster in the Gulf?

Answer. Improvements in spill response efficacy and capacity (in addition to prevention) will occur only if specific requirements are added to governing statutes. Without statutory directives making effective spill response a precondition to development, industry has no incentive to invest in technological improvements in spill response.

To ensure that spill response technology keeps pace with drilling technology;

- 1) Industry should be required to clean up or remove oil at a higher percentage of spilled oil than the current norm of 20%. Instead of allowing industry to rely on a 20% or less removal rate, the government should phase in a requirement for owners and operators to clean up or remove 100% of the spilled volume. This will drive research into improved technology and will require proof that sufficient equipment is readily available; and

- 2) Incentives need to be included in law in order to encourage advances in spill response technologies. We have seen more novel technologies emerge during the Deepwater response than we have in the last 20 years. Technological advances should occur at times other than during catastrophic spills. Incentives to encourage technological advances should be considered, perhaps in the form of tax relief such as has been provided to promote drilling in deeper waters. In addition, funding from the Oil Spill Liability Trust Fund should be increased to ensure adequate funding for spill response, particularly in Arctic conditions.

In addition to spill response technology not keeping pace with drilling technology there is also a major gap in the adequacy and quantity of equipment in place if a catastrophic spill occurs. As I mentioned in my answer to Senator Murkowski's question, one of the keys to improving response capability is to shift from our current system under which spill response plans merely describe response capabilities, to a system in which spill response technology is tested and operators demonstrate that sufficient equipment is readily available to manage a catastrophic blowout. Drills and exercises should be used to show how quickly this equipment can be transported and operational on-scene. Operators should be required to foresee the possibility of having to carry on a response for 90 days or longer, and they must demonstrate that they have enough equipment and capacity to do so.

I also mentioned that the State of Alaska has established response planning standards that set out a requirement to clean up a certain quantity of oil within the first 72 hours of a spill, based on the type of operation. We need to look at similar federal standards. One possibility is to adopt a tiered approach to requiring that a certain quantity of oil be cleaned up in within 72 hours, one week, and over the duration of the spill. The requirement for offshore drilling rigs in federal waters should reflect a 90-day worst case blowout. These standards would give industry specific requirements regarding what they need to have in place to adequately respond to a spill, and they would give regulators specific mandates to approve a spill contingency plan. Without a specific standard there is no incentive to purchase the boom, train the workers and deploy the necessary equipment. This type of standard must be set out in federal law for facilities including offshore drilling rigs in federal waters. It would ensure far more equipment is in place in the event of the next catastrophic spill.

After the passage of OPA-90, new spill federal response standards were established for tank vessels based on the vessels worst case scenario.¹ These standards were relaxed or temporally capped based solely on the amount of equipment that was available to the industry at that time. Promised 5-year increases in the caps to ramp-up capability as the spill response equipment capabilities improved never materialized. Today, almost 20 years after the standards were established, tank vessels still do not have to meet those standards because these temporary caps are still in place. We cannot let new standards be based solely on the technology available today, because that technology is clearly not adequate.

RESPONSES OF DAVID H. WELCH TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Mr. Welch, you have dealt with the Interior Department and several other government agencies for decades. Is it your opinion that they have grown more lax in terms of regulating or more stringent over that time period?

Answer. During my almost four decades of experience, the regulatory agencies have actually grown more stringent in their enforcement over time. The last U.S. well blowout in the Gulf of Mexico to my knowledge occurred in 1971 and out of that incident came the sub surface safety valve technology and requirements by the regulators for its deployment, and there has not been a producing well blowout since then. Other examples of more stringent regulations are:

- a. added requirements for training of personnel and auditing of same
- b. more frequent emergency response drills initiated by regulators
- c. regular annual performance reviews
- d. more frequent inspections and issuance of non-compliance incidents
- e. added numerous requirements and rules based upon hurricane events ie, platform inspection requirements, storm survival capabilities, rig mooring requirements, etc.

As a result of this, the offshore exploration and production industry has a safety record according to U. S. Government reports that ranks at or near the top of American industries.

Question 2. Mr. Welch, one of the proposals in the legislation is to provide that the Secretary promulgate regulations requiring a safety plan to be submitted along with each new application for a permit to drill. Does this sound like a reasonable addition to an APD?

Answer. Regarding a safety plan submission with each APD, I believe it is redundant. Requiring a universal Safety Management System for each company and a specific plan for each broad type of activity such as Outer Continental Shelf drilling and Deepwater drilling, similar to a Regional Oil Spill Response Plan seems to make more sense. This is something each operator should be required to have in place. This would help ensure safety of operations equally as well as including it in the APD and would also save the taxpayers from paying for additional regulation that does not improve the safety of operations. Any significant variances to these plans, however, should be required in an APD.

RESPONSES OF DAVID H. WELCH TO QUESTIONS FROM SENATOR MENENDEZ

Question 1. Your company, Stone Energy, has a market cap of less than \$700 million dollars and has been drilling in over 1,000 feet of water in the Gulf. One of your competitors, ATP Oil & Gas Corporation, is also worth less than \$700 million and is drilling in almost 7,000 feet of water.

Answer. It is true that many smaller independents operate in the Gulf of Mexico, in both shallow and deepwater. Individually, no single independent company may be nationally important, but in aggregate the independents comprise the vast majority of the 163 companies that are qualified designated operators in the Gulf of Mexico. These represent a large and very important component of our nations energy supply and must be respected as such.

Our company has an excellent safety record and even won the Department of Interior National Safe Award within the last few years. We have reduced our OSHA recordable incident rate from 1 accident per 200,000 hours worked 5 years ago to 0.38 last year as a concerted emphasis on safe, environmentally responsible continues.

Some might argue that only the major companies should be operating in the Gulf of Mexico. However, we all use the same drilling contractors and service companies

¹ 33 CFR Part 155.2230 Appendix B

and thus have similar equipment and technology. I would also argue that because of our size each individual well gets more and higher levels of attention within independents and thus we are as safe or safer than the majors, not despite of, but because of our size.

Unlike what we have heard in the testimony of at least one of the major companies, when we have a well issue, our senior management, up to and including myself as CEO, become engaged in the solution and decision making. Our management team has worked together for over 30 years, successfully and safely drilling and completing well after well in the Gulf of Mexico. Ninety seven percent of our production comes from the gulf, and each well gets full, high level and careful attention.

There are creative ways the Senate can use to protect the environment and the taxpayers as well as foster the entrepreneurship of smaller businesses that have made our nation great. Some details are discussed in answer to your second question below.

Question 2. According to a recent analysis by Credit Suisse, BP's clean-up costs, economic damages, and other costs could total \$37 billion dollars. If this spill had happened at your well or at ATP's well, wouldn't taxpayers be on the hook for tens of billions of dollars in estimated damages?

Answer. Your question is an excellent one and raises the greater liability concerns that I know the Senate is grappling with right now. As you know, with the current spill, BP has waived the liability cap. The current fund, which has been paid for by the oil and gas industry currently stands at approximately \$1.6 billion and it does not appear that it will be needed for the Macondo incident.

However, the Senate is in an excellent position to create a new and significantly better industry funded system that would take the burden off of the taxpayer, protect the environment and maintain a broad and healthy industry that is good for our security, our balance of payments, our jobs, our economy and our people.,

This system could be called "Cap and Trust". Under this method a reasonable liability cap would be set and the cap would proportionately apply to the owners of a well. This would be the punitive portion charged directly to the owners according to their ownership percentage of the well. This is a critical feature to enable the independent companies to stay in business as we manage our financial exposure by taking ownership percentages in deepwater prospects commensurate with the amount of risk we can afford.

The second portion of the plan would be to use the trust fund or some similar mutual insurance type mechanism as the industry's financial assurance that it could fund payment for any expenses related to a potential incident regardless of the size of the operator. The present trust fund of \$1.7B was generated using an 8 cents per barrel contribution for each barrel produced; that figure has been proposed to rise to 49 cents per barrel. At this level, the fund will build up an amount far beyond what will likely ever be needed.

It is also important to remember that the independents do not have retail customers, whatever the per barrel fee is charged comes directly out of our revenue. There is little doubt in my mind that this funding fee will come directly out of the profitability of the independent producers. Since the retail market is a competitive environment with no one retailer having a dominant market share, the fee will also likely come out of the profitability of the integrated companies as well.

Under the "Cap and Trust" system the resources would be able to deal with an unlikely future event no matter who is the operator. The resources of the entire industry would be available to each operator.

It is also very important to note that with the structural changes already made in the BOEMRE and a very few regulatory modifications, prevention of future incidents is greatly enhanced and the likelihood of another blowout is very remote.

Finally, since the Macondo blowout, an entirely new deepwater spill containment technology has been invented and has now proven to be able to capture most of the deepwater oil presently spilling.

Once again, the Senate is in a unique position to ensure that such a system be built and maintained in Port Fourchon or some other accessible location along the coast where the technology can then be deployed in days and not months. Then the amount of oil spilled from any highly unlikely future event would be a very small fraction of the size of the Macondo spill. Thus this new technology with rapid deployment could protect our sensitive coastal environment and beaches from future harm.

Question 3. I noticed that you worked for BP earlier in your career. What is so dramatically different about your company's exploration risk assessment and drilling operations? Why should we believe that it is safe, and that residents of the Gulf are protected?

Answer. Yes, I worked for the Department of Interior, Amoco and BP Amoco for over 30 years before joining Stone where I have been for the last 6 years. For many years I was involved with, or in charge of, operations in the Gulf of Mexico and my safety and environmental record there stands for itself; but more importantly during this time, my teams and I learned the importance of instilling a safety culture and the folly and false economy of taking shortcuts.

There are many unknowns to be managed during planning and throughout the implementation of drilling projects. There are risks that raise the element of safe practices and safety assurance. As an industry, for over 40 years, these risks have been managed successfully without catastrophic consequences. From what we presently know about the Macondo incident, neither new technology, a better exploration risk assessment, or even more frequent regulatory inspections would have prevented its occurrence.

However, the solutions to eliminate this tragedy already exist and are routinely implemented in the industry. Why these specific solutions were not chosen by BP on the Macondo well is for the investigation to determine.

What is in place at Stone and many other independents as well, is a safety culture. We have a habit of safety and of stopping the job and changing our operating plan when situations in the well bore change. We foster a culture of open communication and of management of changes to the plan; our culture is one of team work and mutual participation by Stone and its Contractor companies as equals and not as servants.

It is also worthwhile to note that a deepwater well is a much bigger event to an independent than it is to a major integrated company. Inside of Stone, the day to day operations of such wells gain the attention of not only field, engineering and drilling management; they gain the attention of senior executives. At Stone, the CEO, Sr. V.P. of Operations, Drilling Manager and Drilling Superintendent have worked together for over 30 years. This type of continuity is found at many if not most independents in the Gulf of Mexico and is a best line of defense against errors in judgment on safety matters. We all know safety and integrity of operations is paramount and we practice it daily.

RESPONSE OF DAVID H. WELCH TO QUESTION FROM SENATOR LINCOLN

Question 1. I am interested in the statement in your testimony that additional requirements may be needed such as independent verifications of blow out preventers and safety system functions, and an increase in the number of inspectors in order to prevent a future disaster. You also stated that it is clear in the Gulf disaster that the development of a deepwater containment technology did not exist before this spill, but if it had, could have made a huge difference.

Could you elaborate on the need for independent verifications of blow out preventers? Also, how far do you think we are from such spill containment devices that could be ready to deploy in the case of another disaster?

Answer. Failure of BOPs to perform as intended is extremely rare, but a dire consequence is attached to this outcome. For this reason, independent 3rd party verifications of blow out preventer equipment could provide an additional level of quality control assurance and provide an intermediary between Operator and Contractor for acceptance of this key equipment. A 3rd Party verification is not needed on every job performed, but on an appropriate reoccurring basis could play a role in a qualifying equipment to a common standard.

The spill containment system designed, developed and deployed during the course of the Macondo spill response is proving to be extremely effective in capturing a significant volume of the blow out fluids. With the learnings from the Macondo spill, and with containment equipment already constructed and readily stationed at Port Fourchon or elsewhere along the coast, the industry will be capable of deploying a containment device of this nature in a matter of days instead of a number of weeks if ever faced with a similar event.

A Joint industry task force on subsea well control and containment has been formed to review current containment options and determine gaps if any in equipment design, evaluate testing protocols, R&D, regulations and documentation to determine any improvements needed. As this event has proven, even though this tragedy had only one operator, it affects the entire industry and it is incumbent upon the industry to learn and improve so that we can mitigate the risks associated with developing our natural resources.

There is little doubt that containment technology will get better and better over time. However, the successful systems deployed by BP over the last few months should be available to the industry to use as soon as the mandate to share the technology and the framework for readiness are issued.

RESPONSES OF HON. KEN SALAZAR TO QUESTIONS FROM SENATOR MENENDEZ

Question 1. How can we be certain that the reforms you are doing will not be rolled back or ignored by a future Administration?

Answer. We discussed at this hearing the reforms you mention in your question. Some of these reforms stem from recommendations made by the Department's Inspector General, the Government Accountability Office, and a committee chaired by former Senators Bob Kerrey and Jake Garn. Others we have made, and will doubtless make in the future, are based on the results of studies and investigations being carried by the National Academy of Engineering, which is examining how we might upgrade our offshore inspection program, and the several ongoing investigations and reviews in response to this explosion and spill, including the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, established by President Obama on May 22, 2010. This tragedy has shown us that the American people want a strong and independent organization ensuring that energy companies comply with applicable safety and environmental protection obligations, and we are aggressively pursuing this course.

Congress also plays a key role in the reform process. We have supported the enactment of organic legislation to guide the offshore program, the foundation of the reforms we have underway. Moreover, the Committee's legislation, S.3516, the "Outer Continental Shelf Reform Act of 2010," makes many important changes to the authorities under which the program operates. For example, it extends the deadline for the Department to review and approve exploration plans; requires that lessees obtain a drilling permit after approval of an exploration plan; and requires that, prior to approval of such a permit, an engineering review of the well system be completed and reviewed. The Administration has supported authority to provide for longer review time and for stronger reviews of exploration plans prior to drilling. We have also supported statutory changes that strengthen civil and criminal penalties contained in the Outer Continental Shelf Lands Act.

Question 2. I appreciate that Chris Oynes, the associate director for offshore energy, has stepped down, as well as former MMS director Elizabeth Birnbaum. But doesn't there need to be more accountability than that? Have others been asked to leave? What have you and the new leadership done to weed out the worst offenders?

Answer. The vast majority of people in the Department, including in the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), do their work every day and do it well. Many have been working long hours as we have moved through this crisis, and have devoted significant time and energy to various investigations and inquiries that are and have been carried out, and to the ongoing reorganization and reform. I want to acknowledge their work and let them know their efforts are appreciated and are not going unnoticed.

Since the beginning of this Administration, the reform agenda of the Department has been a high priority. Specifically, with respect to the former Minerals Management Service, we moved forward with an ethics reform program in the Department to address the irresponsible/ unethical behavior that had previously occurred. Most of the activity that has been uncovered by the Inspector General has been either referred for prosecution or other appropriate actions have been taken, such as firings, suspensions, or other disciplinary actions. We also moved forward with the reform agenda by terminating the royalty-in-kind program, which had attracted unacceptable behavior. BOEMRE Director Michael Bromwich is committed to the agency's integrity, and to implementing policies that prioritize ethics, safety, and the environment. Director Bromwich has established an Investigations and Review Unit (IRU), a team of professionals with law enforcement backgrounds or technical expertise whose mission is to: promptly and credibly respond to allegations or evidence of misconduct and unethical behavior by Bureau employees; pursue allegations of misconduct by oil and gas companies involved in offshore energy projects; and assure the Bureau's ability to respond swiftly to emerging issues and crises, including significant incidents such as spills and accidents.

RESPONSES OF HON. KEN SALAZAR TO QUESTIONS FROM SENATOR LINCOLN

Question 1. As you may know, government inspection reports show BP's Deepwater Horizon oil rig was only inspected six times in 2008 even though drilling rigs are required to be inspected every month. The report also showed that the rig missed 16 inspections since 2005.

Question 2. In addition to the planned increase in the number of inspectors, how can we ensure that inspections are conducted according to regulation, and conducted thoroughly? Can and should the number of inspections of these rigs be increased?

Answer. Over the course of the next several years, the restructuring of the Department's Outer Continental Shelf (OCS) programs will dictate the need for engi-

neering, technical, and other specialized staff, particularly in the regulatory and enforcement program. This is an important issue and one the Department and Administration are already addressing.

Our reform actions include strengthening the OCS program budget. The President's 2011 budget amendment, released on September 13, 2010, includes an additional \$100 million for BOEMRE reform efforts, including funding for more inspectors. The amendment also proposes raising inspections fees from \$10 million to \$45 million to partially offset these added costs. We are in the process of hiring additional inspectors and are taking other actions that are outlined in the 30-day report to the President. Our restructuring of a more robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff. The President's enacted supplemental request includes \$27 million to fund near term resources for these activities.

These funds are critically needed to bolster inspections of offshore oil and gas platforms, draft health, safety, and environmental protection regulations, develop the required enforcement measures for these new regulations and carry out environmental and engineering studies. And the legislation supported by the Administration at this hearing contains provisions that will help advance this effort.

Question 3. It is clear to me, and many others, that BP did not have the appropriate contingency plans in place to respond to a catastrophic event. BP has been criticized, along with other oil companies, of providing "cookie-cutter" response plans to MMS that, at least in the case of Deepwater Horizon, are not practicable.

Question 4. Do you believe, whether through legislation or regulation, that specific backup plans need to be required for each rig? Should additional requirements be put in place particularly for deepwater rigs?

Answer. In response to the Deepwater Horizon oil spill in the Gulf of Mexico, the Administration has launched the most aggressive and comprehensive reforms to offshore oil and gas regulation and oversight in U.S. history. Those reforms are raising the bar for safety, oversight, and environmental protection at every stage of the review, permitting, drilling, and development process for offshore oil and gas operations.

Following the Deepwater Horizon explosion and spill, the Department issued several important documents, including the 30-day safety report requested by the President, and new Notices to Lessees addressing safety and blowout response efforts. The latest NTL clarifies the information that operators, when filing for a new drilling permit, exploration plan, or development plan, need to submit to address the possibility of a blowout and to detail steps they are taking to prevent blowouts. It reverses a policy adopted in 2003 and included in a 2008 NTL under the previous Administration that exempted many offshore oil and gas operations in the Gulf of Mexico from submitting certain information—to accompany exploration or development plans—about a blowout scenario and worst-case discharge. The required information includes:

- An estimated flow rate, total volume, and maximum duration of the potential blowout;
- A discussion of the potential for the well to bridge over, the likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, and rig package constraints;
- Estimates of the time it would take to contract for a rig, move it onsite, and drill a relief well; and
- A description of the assumption and calculations used to determine the volume of a worst case discharge scenario.

In addition, the BOEMRE submitted to the Federal Register the interim final Drilling Safety Rule. The Drilling Safety Rule became effective immediately upon publication in the Federal Register, on October 7, 2010. The Drilling Safety Rule imposes requirements that will enhance the safety of oil and gas drilling operations on the Outer Continental Shelf (OCS). It addresses both well bore integrity and well control equipment and procedures.

Well bore integrity provides the first line of defense against a blowout by preventing a loss of well control. It includes the appropriate use of drilling fluids and the well bore casing and cementing program. Provisions in the rule addressing well bore integrity are:

- Making mandatory the currently voluntary practices recommended in the American Petroleum Institute's (API) standard, RP 65—Part 2, Isolating Potential Flow Zones During Well Construction (an industry standard program);

- Requiring submittal of certification by a professional engineer that the casing and cementing program is appropriate for the purposes for which it is intended under expected wellbore pressure;
- Requiring two independent test barriers across each flow path during well completion activities (certified by a professional engineer);
- Ensuring proper installation, sealing and locking of the casing or liner;
- Requiring approval from the BOEM District Manager before replacing a heavier drilling fluid with a lighter fluid; and
- Requiring enhanced deepwater well control training for rig personnel.

Well control equipment includes the Blowout Preventer (BOP) and control systems that activate the BOP. Provisions in the rule on well control equipment include: Submittal of documentation and schematics for all control systems;

- Requirements for independent third party verification that the blind-shear rams are capable of cutting any drill pipe in the hole under maximum anticipated surface pressure;
- Requirement for a subsea BOP stack equipped with Remotely Operated Vehicle (ROV) intervention capability (at a minimum the ROV must be capable of closing one set of pipe rams, closing one set of blind-shear rams, and unlatching the Lower Marine Riser Package);
- Requirement for maintaining a ROV and having a trained ROV crew on each floating drilling rig on a continuous basis;
- Requirement for auto shear and deadman systems for dynamically positioned rigs;
- Establishment of minimum requirements for personnel authorized to operate critical BOP equipment;
- Requirement for documentation of subsea BOP inspections and maintenance according to API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells;
- Require testing of all ROV intervention functions on subsea BOP stack during stump test and testing at least one set of rams in initial seafloor test;
- Require function testing auto shear and deadman systems on the subsea BOP stack during the stump test and testing the deadman system during the initial test on the seafloor; and
- Require pressure testing if any shear rams are used in an emergency.

RESPONSES OF MICHAEL R. BROMWICH TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Mr. Bromwich, your written testimony states “The Outer Continental Shelf currently provides 30 percent of the Nation’s domestic oil production and almost 11 percent of its domestic natural gas production. The Nation relies on this Bureau and its employees to continue to make available the energy resources that we and our economy need.”

Of course, if deepwater exploration is frustrated due to either loss of investment under the current moratorium or due to a new regulatory regime that proves too heavy handed, the nation could strand 80% of its offshore production—or about 25% of our total production. Concurrent with your priorities in reforming the minerals agency, how are you as actively guarding against the risk of all this production falling off?

Answer. The suspension had a termination date from the beginning. Originally to be effective until no later than November 30, 2010, it allowed the Department time for investigation and implementation of needed new safety, containment and oil spill response capability measures. The suspension never included shallow water drilling, nor did it affect production in either deep or shallow waters.

Following the review of the October 1, 2010 BOEMRE report to the Secretary on safety measures put in place since the Deepwater Horizon spill, Secretary Salazar determined it was appropriate that deepwater oil and gas drilling resume, provided that operators certify compliance with all existing rules and requirements, including those that recently went into effect, and demonstrate the availability of adequate blowout containment resources. The suspension was lifted on October 12.

Question 2. Mr. Bromwich, it is clear that if there are bad actors or bad behavior still pervading MMS, you will correct that. But we have heard testimony in the Energy and Natural Resources Committee that the vast and overwhelming majority of MMS employees are perfectly ethical people with excellent records in terms of enforcement and integrity. Can you describe how your work to root out problems will avoid a chilling effect on good people doing their jobs so that the new agency moves efficiently ahead with permitting and seeing through major energy projects?

Answer. Secretary Salazar has put into place many reforms over the past 17 months that have provided changes to the management and oversight of the nation's OCS energy and mineral revenue programs, including permitting and major energy projects. I will continue to build on those reforms and look forward to working with the men and women of BOEMRE to establish this Bureau as a preeminent manager and regulator of a safe and environmentally responsible offshore oil and gas and renewable energy program.

We have attempted to send a consistent message: ethical employees doing their jobs with dedication and integrity will be supported, and indeed will be recognized for their service. We will further emphasize that message both in our communications and in our actions.

Question 3. Mr. Bromwich, in hearings you have categorized your internal investigative teams, which you'll use to clean up the Interior Department's new bureaus, as a "SWAT team." Within the criminal justice world you've been dealing with that may be an appropriate metaphor, but in your experience as a crisis counselor do you have any concern with inserting the image of a SWAT team into a civilian government agency that is a currently perhaps a bit de-stabilized?

Answer. While my knowledge of the Bureau and its employees is increasing with each day, I have learned that the programs BOEMRE manages are complex and involve a highly specialized workforce. I agree with your concern that every effort needs to be made to ensure communication with the employees is open and clear as we implement the reorganization that lies before us. On June 29, 2010, the Secretary issued Secretarial Order No. 3304 to establish the Investigations and Review Unit (IRU) within the BOEMRE.

A key component to reforming the Bureau is establishing the ability to promptly and credibly respond to allegations or evidence of misconduct or unethical conduct by Bureau employees as well as by members of regulated industry, consistent with BOEMRE's authority. This capacity is intended, and will be designed, as a complement to the work of the Department's Office of Inspector General (OIG) and the Departmental Ethics Office.

I believe the work of the IRU, which will report directly to me, will serve the Bureau and all employees well through their efforts to ensure that we are conducting the work of the Bureau ethically, efficiently, and with appropriate planning and oversight.

APPENDIX II

Additional Material Submitted for the Record

ARTICLE FROM THE WALL STREET JOURNAL, JUNE 17, 2010

CRUDE POLITICS

THE DRILLING EXPERTS SPEAK OUT ON THE OBAMA DEEPWATER MORATORIUM

Before the Obama Administration sweeps under the carpet the controversy over the drilling experts it falsely used to justify its moratorium, the incident bears another look. Not least because it underlines the purely political nature of a drilling ban that now threatens the Gulf Coast economy and drilling safety.

When President Obama last month announced his six-month deepwater moratorium, he pointed to an Interior Department report of new “safety” recommendations. That report prominently noted that the recommendations it contained—including the six-month drilling ban—had been “peer-reviewed” by “experts identified by the National Academy of Engineering.” It also boasted that Interior “consulted with a wide range” of other experts. The clear implication was that the nation’s drilling brain trust agreed a moratorium was necessary.

As these columns reported last week, the opposite is true. In a scathing document, eight of the “experts” the Administration listed in its report said their names had been “used” to “justify” a “political decision.” The draft they reviewed had not included a six-month drilling moratorium. The Administration added that provision only after it had secured sign-off. In their document, the eight forcefully rejected a moratorium, which they argued could prove more economically devastating than the oil spill itself and “counterproductive” to “safety.”

The Administration insisted this was much ado about nothing. An Interior spokesman claimed the experts clearly had been called to review the report on a “technical basis,” whereas the moratorium was a “comprehensive” question. Obama environment czar Carol Browner declared: “No one’s been deceived or misrepresented.” Really? We can only imagine the uproar if a group of climate scientists had claimed the Bush Administration misappropriated their views.

We decided to call some of these experts ourselves. Their information, and concerns, are revealing.

The experts were certainly under the impression they were reviewing a comprehensive document, as some of the recommendations would take six months or even a year to implement. And the report they agreed to did address moratoria: It recommended a six-month ban on new deepwater permits. Yet Benton Baugh, president of Radoil, said that in at least two separate hour-and-a-half phone calls among Interior and the experts, there was no discussion of a moratorium on existing drilling. “Because if anybody had [made that suggestion], we’d have said ‘that’s crazy.’”

Ken Arnold, an engineer and consultant, said the changes went beyond just the drilling moratorium. The Interior draft he looked at included timelines for each safety recommendation. The “bulk” of those recommendations, he explained, were all ones that could be done within 30 days. And most of the longer-term provisions would result in only “marginal increases in safety.”

Yet when the final report came out, the timelines he saw had been removed, no doubt because they argued against the necessity of a six-month moratorium. Mr. Arnold adds that the Administration’s decision to allow industry to continue drilling “gas injection wells”—which, he says, are no more risky than production wells—only shows the moratorium makes “no sense.”

“This was a political call; this was not a technical call,” says Mr. Arnold. Interior Secretary Ken Salazar has since testified that the call was his. But Robert Bea, from the University of California at Berkeley, who also reviewed the report, told us Interior had sent him a letter that “stated clearly that [the moratorium] had been

inserted at the request of the White House.” Mr. Bea pointed out that the Department of Interior is more than equipped to target and shut down specific Gulf operations that might offer safety concerns. There was no call for a moratorium “for industry as a whole.”

Ford Brett, managing director of Petroskills and also a reviewer, notes that the experts first went to the Interior Department with their concerns. “All they had to do was put out another press release—one sentence long—clarifying that we hadn’t reviewed the drilling moratorium . . . That didn’t happen.” Only then did the experts go public.

As for Ms. Browner’s claim that no one was “misrepresented,” Mr. Brett disputes that. Several reviewers said they had, in fact, received “apology” notes from the Interior Department acknowledging the misrepresentation. “We did not mean to imply that you also agreed with the decision to impose a moratorium on all new deepwater drilling,” read one.

All of this matters because it offers proof the moratorium was driven by politics, not safety. The drilling ban was not reviewed by experts, and was not necessary to satisfy most of the safety recommendations in Mr. Salazar’s report. It was authored by political actors so Mr. Obama could look tough. A cynic might argue the ban was only added after review precisely because the Administration knew experts would refuse to endorse it.

A big reason why those experts would have balked is because they recognize that the moratorium is indeed a threat to safety. Mr. Arnold offers at least four reasons why.

The ban requires oil companies to abandon uncompleted wells. The process of discontinuing a well, and then later re-entering it, introduces unnecessary risk. He notes BP was in the process of abandoning its well when the blowout happened.

The ban is going to push drilling rigs to take jobs in other countries. “The ones that go first will be the newest, biggest, safest rigs, because they are most in demand. The ones that go last and come back first are the ones that aren’t as modern,” says Mr. Arnold.

The indeterminate nature of this ban will encourage experienced crew members to seek other lines of work—perhaps permanently. Restarting after a ban will bring with it a “greater mix of new people who will need to be trained.” The BP event is already pointing, in part, to human error, and the risk of that will increase with a less experienced crew base. Finally, a ban will result in more oil being imported on tankers, which are “more likely” to spill oil than local production.

All this is even before raising ban’s economic consequences, which already threaten tens of thousands of jobs. This is why Louisiana politicians are now pleading with the Administration to back off a ban that is sending the Gulf’s biggest industry to its grave.

“Mr. President, you were looking for someone’s butt to kick,” said Lafourche Parish President Charlotte Randolph, recently. “You’re kicking ours.” The sooner the Administration climbs down from this pointless exercise, the better for a Gulf that needs real help.

ARTICLE FROM THE WALL STREET JOURNAL, JUNE 22, 2010

THE ANTIDRILLING COMMISSION

THE WHITE HOUSE CHOICES SEEM TO HAVE MADE UP THEIR MINDS

Under my Administration, the days of science taking a back seat to ideology are over . . . To undermine scientific integrity is to undermine our democracy . . . I want to be sure that facts are driving scientific decisions, and not the other way around.

—President Obama, April 27, 2009

The President has appointed a seven-person commission to take what he says will be an objective look at what caused the Gulf spill and the steps to make offshore drilling safe. But judging from the pedigree of his commissioners, we’re beginning to wonder if his real goal is to turn drilling into a partisan election issue.

Mr. Obama filled out his commission last week, and the news is that there’s neither an oil nor drilling expert in the bunch. Instead, he’s loaded up on politicians and environmental activists.

One co-chair is former Democratic Senator Bob Graham, who fought drilling off Florida throughout his career. The other is William Reilly, who ran the Environmental Protection Agency under President George H.W. Bush but is best known as

a former president and former chairman of the World Wildlife Fund, one of the big environmental lobbies. The others:

- Donald Boesch, a University of Maryland “biological oceanographer,” who has opposed drilling off the Virginia coast and who argued that “the impacts of the oil and gas extraction industry . . . on Gulf Coast wetlands represent an environmental catastrophe of massive and underappreciated proportions.”
- Terry Garcia, an executive vice president at the National Geographic Society, who directed coastal programs in the Clinton Administration, in particular “recovery of endangered species, habitat conservation planning,” and “Clean Water Act implementation,” according to the White House press release.
- Fran Ulmer, Chancellor of the University of Alaska Anchorage, who is a member of the Aspen Institute’s Commission on Arctic Climate Change. She’s also on the board of the Union of Concerned Scientists, which opposes nuclear power and more offshore drilling and wants government policies “that reduce vehicle miles traveled” (i.e., driving in cars).
- Frances Beinecke, president of the Natural Resources Defense Council, who prior to her appointment blogged about the spill this way: “We can blame BP for the disaster and we should. We can blame lack of adequate government oversight for the disaster and we should. But in the end, we also must place blame where it originated: America’s addiction to oil.”

On at least five occasions since the accident, Ms. Beinecke has called for bans on offshore and Arctic drilling.

- Rounding out the panel is its lone member with an engineering background, Harvard’s Cherry A. Murray, though her specialties are physics and optics.

Whatever their other expertise, none of these worthies knows much if anything about petroleum engineering. Where is the expert on modern drilling techniques, or rig safety, or even blowout preventers?

The choice of men and women who are long opposed to more drilling suggests not a fair technical inquiry but an antidrilling political agenda. With the elections approaching and Democrats down in the polls, the White House is looking to change the subject from health care, the lack of jobs and runaway deficits. Could the plan be to try to wrap drilling around the necks of Republicans, arguing that it was years of GOP coziness with Big Oil that led to the spill?

White House Chief of Staff Rahm Emanuel took this theme for a test drive on Sunday when he said that Republicans think “the aggrieved party here is BP, not the fisherman.” He added that this ought to remind Americans “what Republican governance is like.” The antidrilling commission could feed into this campaign narrative with a mid-September, pre-election report that blames the disaster on the industry and Bush-era regulators and recommends a ban on most offshore exploration. The media would duly salute, while Democrats could then take the handoff and force antidrilling votes on Capitol Hill.

Even as this commission moves forward, engineering experts across the country have agreed that there is no scientific reason for a blanket drilling ban. The Interior Department invited experts to consult on drilling practices, but as we wrote last week eight of them have since said their advice was distorted to justify the Administration’s six-month drilling moratorium.

Judging from that decision and now from Mr. Obama’s drilling commission, the days of “science taking a back seat to ideology” are very much with us.

PROJECT ON GOVERNMENT OVERSIGHT,
Washington, DC, June 22, 2010.

Hon. JEFF BINGAMAN,
Ranking, Senate Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington DC.

Hon. LISA MURKOWSKI,
Ranking, Senate Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington DC.

Re: Stop Cozy Relationships with Big Oil Act of 2010, S. 3431

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI: The Project On Government Oversight (POGO) strongly supports every effort to promote ethical conduct and accountability in the management of the taxpayers’ natural resources, which is why we wish to express our strong support for the Stop Cozy Relationships with Big Oil Act of 2010, (S. 3431). We applaud Senators Menendez, Nelson, and Klobuchar for their leadership in co-sponsoring this legislation that provides impor-

tant and necessary steps towards creating a more ethical culture at the agencies that oversee offshore drilling.

Investigations conducted by the Department of the Interior's Inspector General and POGO revealed gross misconduct at multiple Minerals Management Service (MMS) offices. Instances of misconduct included reports of MMS personnel receiving inappropriate gifts from industry, performing outside work that clearly conflicted with the ethical performance of their duties, and in at least one instance, negotiating for a job with a company that they were inspecting.¹ These findings are all indicative of an agency that is inappropriately close to industry.

POGO is pleased that S. 3431 addresses these longstanding problems by extending existing ethics provisions by prohibiting regulators from simultaneously working for the government and for the oil and gas industry, requiring financial disclosure for senior oil and gas regulators, prohibiting government regulators from accepting gifts, and slowing the revolving door between MMS and the industry it regulates.

One of the most fundamental issues fueling the inappropriate closeness between MMS and industry is the frequency with which individuals go through the revolving door. Several individuals have been sentenced to prison for violations of conflict-of-interest laws or obstruction of justice. An egregious example of this problem is the last Director of MMS under the previous administration, Randall Luthi. Luthi now serves as the president of an offshore drillers trade association, the National Oceans Industries Association. When the Director of MMS goes to direct 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,"² taxpayers have to question whose interests were actually being served when he was at MMS. S. 3431 addresses this problem by placing a two-year ban on regulators going to work for the industries they oversaw.

The Deepwater Horizon disaster dramatically illustrates that the government needs stronger tools and enforcement mechanisms to protect the public's interest. By making violations of the gifts provision and the revolving door provision a felony, this bill will clearly establish consequences for the kinds of ethical violations found by POGO and the Inspector General.

POGO urges the members of the Senate Committee on Energy and Natural Resources to enact S. 3431 to restore accountability and ethics to natural resource development, and the members of the House Committee on Natural Resources to adopt a similar measure. In addition, the Committees should apply these common-sense ethics reforms not just to MMS, but to all of the Department of Interior. Indeed, similar reforms are needed throughout the federal government.

Thank you again for your leadership on this issue. If you have any questions, please contact me at (202) 347-1122.

Sincerely,

DANIELLE BRIAN,
Executive Director.

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¹Department of the Interior Inspector General, "Investigative Report—Island Operating Company, et. al." May 24, 2010, p. 1.

²Project 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>