

**MAKING THE GULF COAST WHOLE AGAIN: AS-  
SESSING THE RECOVERY EFFORTS OF BP AND  
THE OBAMA ADMINISTRATION AFTER THE OIL  
SPILL**

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**HEARING**

BEFORE THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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**MAKING THE GULF COAST WHOLE AGAIN: ASSESSING THE RECOVERY EFFORTS OF BP AND THE OBAMA ADMINISTRATION AFTER THE OIL SPILL**

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THURSDAY, JUNE 2, 2011

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:37 a.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Burton, Platts, McHenry, Jordan, Walberg, Lankford, Amash, Gosar, Labrador, Meehan, DesJarlais, Ross, Guinta, Farenthold, Kelly, Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Connolly, Quigley, and Davis.

Also present: Representative Palazzo.

Staff present: Ali Ahmad, deputy press secretary; Thomas A. Alexander, Peter Haller, and Kristina M. Moore, senior counsels; Will L. Boyington and Drew Colliatie, staff assistants; Molly Boyd, parliamentarian; Lawrence J. Brady, staff director; Joseph A. Brazauskas, counsel; Benjamin Stroud Cole, policy advisor and investigative analyst; John Cuaderes, deputy staff director; Adam P. Fromm, director of Member services and committee operations; Linda Good, chief clerk; Tyler Grimm and Ryan M. Hambleton, professional staff members; Frederick Hill, director of communications and senior policy advisor; Christopher Hixon, deputy chief counsel, oversight; Justin LoFranco, press assistant; Mark D. Marin, senior professional staff member; Tegan Millspaw, research analyst; Laura L. Rush, deputy chief clerk; Jeff Solsby, senior communications advisor; Becca Watkins, deputy press secretary; Peter Warren, legislative policy director; Krista Boyd, minority counsel; Lisa Cody, minority investigator; Kevin Corbin, minority staff assistant; Ashley Etienne, minority director of communications; Jennifer Hoffman, minority press secretary; Carla Hultberg, minority chief clerk; Chris Knauer, minority senior investigator; Dave Rapallo, minority staff director; and Susanne Sachsman Grooms, minority chief counsel.

Chairman ISSA. The committee will come to order.

The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to

protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We work tirelessly in partnership with citizen watchdogs to deliver facts to the American people and bring genuine reform to the Federal bureaucracy. This is our mission.

This morning we will review the enormous task confronted in the gulf as a result of the BP oil spill and the Obama administration's choices made then and to this day. It is clear that this was a man-made disaster that 11 people died in what should not have happened, but it is the choices after an initial event that we will focus on today.

That is not to take away BP's ultimate responsibility, but this committee reviews government actions, both prospectively and retrospectively. We cannot expect to do a better job next time if we do not focus on what was done right and what was done wrong in this disaster.

The government made several decisions under its authority. One of them was not to use the Stafford Act and, in fact, to leave the very entity that created this pollution in a position of authority and lead. There are many reasons this may have happened but we have to ask, should it happen again? Congress has the clear power and authority to change the rules of the road. We should not have to choose between holding a polluter responsible and empowering leaders at the Federal, State and Local level to do what they are responsible to do on behalf of their citizens.

The reimbursement for actions, directly and indirectly, belongs to British Petroleum. They have said they will meet that challenge and we will hold them to it. But as the days and weeks went on after an initial spill 40-some miles out at sea, it became obvious that we lacked the resources in place to do the job that was coming. The response was slow and chaotic.

Additionally, we will hear from testimony today that the secondary damage turned out to be in many cases far worse than the little or no oil that came to the shores of communities. That is part of what we have to do deal with here today.

Oil spills and other events are inevitable. In my hometown of Cleveland, more than 60 years ago, a liquefied natural gas container went bad and many died. It has not stopped us from resourcing and using natural gas in America. Three Mile Island is still in the memory of people my age. It has not stopped us from using nuclear fuel as a primary source for base load.

Coal miners, to our dismay, continue to die trying to harvest that fuel around the world. It is a necessary part of our society, that dangerous jobs are done by people who choose to do them and have a right to be protected in that process.

But this hearing is not about the riskiness of any of these fuel sources. It is in fact about whether the Federal Government knows better this time than they did before this event.

Additionally, it is important for us to understand that just as Hurricane Katrina told us that FEMA had problems working with States, FEMA was not necessarily ready for a loss of vast areas of response. We now know that even when the response capabilities were in place, even when it was a single event of a company that

did not do their job and did not play properly by the rules, we find secondary events throughout the area. We find oil coming ashore and not being responded to for a number of reasons.

We additionally find a loss of revenue in unrelated areas. We will hear from our second panel and from our first that the loss of tourism was needless and extreme in areas in which the water was clean, the shore was pristine, and in fact people were scared away. We need to make sure that does not happen again. We need to make sure that Governors and local officials are empowered to do what is in the best interests of their people and that the American people get a fair understanding of the scope of any problem or spill.

Last, we will hear today that as a result of one reckless action, we find countless billions of dollars of revenue lost, good hard-working Americans out of work, resources necessary to make us less oil-reliant on countries that often are not friendly to us, leaving for the very countries that in fact will now produce the oil that we are forced to buy.

In America today, both sides of the aisle talk about jobs. I for one am not an economist, but I can understand that if \$400 billion worth of purchased oil were produced here in America, there would be countless millions of direct and indirect jobs available to Americans. There are many things that we are not competitive on here in America. Certainly one of them we are competitive on is natural resource extraction from our coastal waters and onshore locations.

I look forward to hearing from my old friend and a considerably well-known figure to all of us and a great Governor, Governor Barbour. And with that I recognize the gentleman from Maryland for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and good morning.

Let me first welcome Governor Barbour, and I thank you very much for being with us today. I also want to take a moment to recognize Dick Gregory, who is a person who has fought hard for so many people for so long in our audience; and thank you, Mr. Gregory, for being part of this hearing today.

Governor Barbour, your State has been through a tremendous amount of difficulty, and I sincerely look forward to your testimony.

Let me also welcome Michael Bromwich from the Department of Interior. Mr. Bromwich, you agreed to be here with incredibly short notice. So we thank you very much for your testimony and for your expertise.

Finally, let me welcome the residents of the gulf who have traveled here today to share their views with the committee.

Earlier this year, the National Commission on the BP Deepwater Horizon oil spill issued a comprehensive report on the causes of the spill. The report found that this disaster was avoidable and that it resulted from clear mistakes made in the first instance by BP, Halliburton and Transocean, and by government officials. These were extremely difficult lessons to learn. I am encouraged that now more than a year later, officials in both the oil industry and our government appear to be heeding these lessons and retooling the way they do business.

First, we must never ever forget that 11 individuals lost their lives in an explosion on April 20th. To address deficiencies that

contributed to these deaths, the Interior Department issued an improved workplace safety rule that many, including industry, believe will significantly enhance worker safety.

The Department also completely reorganized the Minerals Management Service. MMS had been criticized because it oversaw the safety of drilling, the environmental impacts caused by drilling and the revenue generated from drilling. According to the National Commission, MMS had a built-in incentive to promote offshore drilling in sharp tension with its mandate to ensure safe drilling and environmental protection.

The Department also implemented a number of critical safety measures to ensure that a blowout like this would never happen again. For example, a new drilling safety rule strengthened standards for well control procedure, drilling equipment and well design, and it required independent and third-party inspections.

Finally, the Department issued a notice to lessees to require oil companies to demonstrate that they can actually cap a well, that they can actually cap a well and handle a deepwater blowout before any new drilling permits were issued.

These were responsible steps taken after it became clear to the Nation after 87 days that BP simply did not have the technology available. In other words, the technology was far outdistancing our ability to control it.

Mr. Chairman, I have to say that I am disappointed by your actions today. You stated that the committee investigations have interviewed investigators, have interviewed more than fifty government officials, scores of residents, business owners and whistleblowers as part of this investigation. That is news to everyone on this side of the aisle, because you completely excluded us from that effort. And you have not explained why. Unfortunately, this is the definition of partisanship and it undermines the integrity of this committee.

And by the way, this report that is being submitted this morning was submitted to the press before we even saw it.

Nevertheless, moving forward, it is our obligation as Members of the U.S. Congress to develop constructive ways to help people in the gulf rebuild their lives and their livelihoods.

In my former capacity as chairman of the Subcommittee on Coast Guard and Maritime Transportation, I visited the Gulf twice while oil was flowing from the Macondo well. I saw firsthand how this spill affected small businesses that rely on tourism, fishing, and other industries that were decimated by the spill.

I have offered several measures to provide real solutions to gulf residents. Last Congress, I offered a provision in the legislation that cut in half from 90 days to 45 days the amount of time responsible parties had to settle claims arising from the spill.

I also worked on provisions with Chairman Oberstar to strengthen the Coast Guard's oversight of an oil spill response plans.

This year, just recently, I offered an amendment to H.R. 1229 to require all oil and gas exploration development and production activities in the gulf to be conducted by U.S.-flagged vessels. Talking about jobs, that is jobs. This which would have immediately stimulated the gulf economy. Unfortunately, the Rules Committee did not allow a vote on my amendment.

My basic point is this. We have a tremendous opportunity in this committee to really help people, people who have undergone extreme hardship. As the goal for today's hearing if we can focus our efforts on identifying even one positive proactive solution that we can all agree on, then I think today's hearing will be a success.

And with that, Mr. Chairman, I thank you.

Chairman ISSA. I thank you.

I ask for 1 minute unanimous consent to respond. Without objection.

To my ranking member, just for your edification, this investigation began under your predecessor, Chairman Towns. We went down jointly and separately. He authorized minority trips when I was in the minority, in addition to the joint trips we did, including Members of both parties. When I took the chair, we continued that investigation. We have had joint trips, in addition to we have authorized minority trips down there. As a matter of fact we have never turned down a request by the minority to go on staff fact-finding. Every request has that has been asked for has been granted.

It is true that both your side and my side, under both the majority and minority, have gone both together and independently, but I certainly think that I don't—I will not belittle any effort that your side made to get at individual and independent facts. I hope you were not intending to do so by saying that you were surprised that we had made 50 trips when some of them were made together.

Mr. CUMMINGS. Mr. Chairman, may I have a minute?

Chairman ISSA. Of course.

Mr. CUMMINGS. Let me say this, Mr. Chairman. As I said from the very beginning, my No. 1 concern is helping the American people, and it is about the integrity of this committee. I do not belittle for 1 second the findings and the things that the majority has done. What I am saying is that we want to be a true partner in all of that. I have said to you privately and openly that we, too, care about government operating properly. We, too, care about making sure that every agency of government does what it is supposed to do. We, too, want to make sure that there is no agency that is caught up in a culture of mediocrity. We refuse to have that and we have said that to this administration and we would say it to any administration.

So I look forward—going forward, like I said, I want to move on, but I want to make it clear we, too, are partners. We, too, were elected by 700,000 people per district, and so we want to make sure our voices are heard too, and I appreciate your comments.

Chairman ISSA. I thank the gentleman.

With that, we are prepared to introduce our first panel. I am going to deny myself the honor of introducing Governor Barbour and instead go to the newest Member of the Mississippi delegation, Congressman Steven Palazzo for his introduction of his Governor. And I understand you were Governor when you were in the State house. The gentleman is recognized for an introduction.

Mr. PALAZZO. Good morning. Thank you, Chairman Issa, Ranking Member Cummings, and Members for allowing me the privilege of introducing someone who I believe will provide your committee with the most credible testimony today.

I have experienced his leadership firsthand after the devastation of Hurricane Katrina and, more recently, the Deepwater Horizon oil spill. Indeed, no other Governor has been as frequently challenged to rise to the occasion of leading a State during a time of crisis, whether man-made or natural, and each time Governor Barbour shouldered the burden of leadership in a manner that calmed tempers, mended broken hearts, and resulted in incredible efficient outcomes.

To accomplish this, he met each event with a balanced regimen of compassion and order, allaying fears and the sense of loss with hope in the prospect of swift recovery. I vividly remember the many times the Governor and his beautiful wife Marsha walked hand in hand with the victims, and in the aftermath of it all, assured them that everything was going to be all right.

More recently, he continues to guide our State through historical floods and a severe tornado season. He has not only led Mississippi through the country's worst natural and man-made disaster, but he challenged us to build back bigger and better. He is a great leader in every sense of the word and, of course, I am talking about Mississippi's 63rd Governor, Haley Barbour.

Mr. Chairman, as someone who represents a district devastated by the oil spill, I appreciate you directing the committee to assess the recovery efforts of BP and the Obama administration.

I would like to briefly mention that as someone who has worked offshore on drilling platforms, I have a particular concern on how the administration came to the decision to institute a moratorium without conducting a study of how it will impact the Gulf Coast economy. We know now that this thoughtless decision will decrease oil production by up to 250,000 barrels per day for the next 2 years. A loss of production of this magnitude will continue to have a negative impact on the Gulf Coast economy for years to come.

Studies conducted by Louisiana State University put potential estimated job loss by the moratorium and subsequent permatorium on the Gulf Coast region at around 24,000. The ripple effect of these lost jobs and high energy prices hurts our national economy. The majority of the jobs lost in Mississippi are from the Fourth Congressional District of Mississippi, the district I represent.

I have worked offshore. I know the value of the jobs that the offshore drilling industry provides. I look forward to further investigation into the economic impact of the administration's decisions and their motivations.

I applaud the committee for the extensive work on this critical issue and I look forward to hearing the testimony by the witnesses and the outcome of this important hearing. And thank you again, Chairman Issa and the Members, for allowing me the honor of introducing Governor Haley Barbour.

I yield back.

Chairman ISSA. I thank the gentleman.

Pursuant to the rules of the committee, Governor, would you rise to take the oath.

[Witness sworn.]

Chairman ISSA. Let the record reflect that the Governor answered in the affirmative.

Governor, you know this routine. You have seen it for years. Your entire statement will be placed in the record. We will not hold you to an exact 5 minutes, but come as close as you can.

**STATEMENT OF HALEY BARBOUR, GOVERNOR, STATE OF MISSISSIPPI**

Governor BARBOUR. Thank you, Mr. Chairman, and to the ranking member and all the members of the committee, thank you very much for having me here. I am going to not read my statement.

Let me start off by saying that this disaster is very different from other disasters. When Representative Palazzo talks about Katrina, we had utter obliteration on the coast. We had places where it looked like the hand of God had just wiped away the Gulf Coast for blocks and some places for miles. We had hurricane force winds 240 miles inland, and to get people where they got confident that the coast was going to come back, where they had hope for their families and their communities, where they were willing to return home, was an enormous part of the job.

In this case, keeping people calm, you know, you had an oil well to blow out a hundred-plus miles away from our coast, and I should say at this point, this experience for us was a little different than for Louisiana. Louisiana was closer to the well. They got wet brown oil into some of their areas. We didn't. We were about 108 miles from the wellhead to the city of Gulfport, and by the time oil got to us, A, it had been a long time since the well blew out; B, what got to us you would not recognize as oil. There was this orange mixture of water and the remnant of oil that the oil people call mousse, and then there were what we call tar balls and tar patties.

When I was a kid we used to go to the beach. We used to throw them at each other, tar balls, because the Gulf of Mexico seeps out somewhere as much as 1,400,000 barrels a year, according to the U.S. GIS, every year through the floor. So, you know, we were used to tar balls.

But when this happened, people were obviously very, very concerned, and one of the big jobs was to keep people calm, to keep people understanding we are going to prepare, we are going to have a good plan, we are going to have the resources to execute the plan, we are going to protect the coast, particularly the habitat, particularly the coastal marshlands where the shrimp and other important wildlife actually are born and start to grow. And we had to do that with a different set of rules.

And the first point I want to make is the Stafford Act. The decision was made that this disaster would be managed under the Oil Pollution Act, not the Stafford Act, as has been said to the committee by others. A disadvantage of that for us is we are used to the Stafford Act. Florida, Alabama, Mississippi, Louisiana, Texas, we have managed disasters under the Stafford Act because that's what hurricanes are managed under, that's what tornados are managed under, that's what floods like we have in Mississippi today. So, A, it was something we knew, but very important from a Governor's point of view, the Stafford Act expressly says that the Federal Government will supplement the work of the State, not supplant it.

One of the problems we had under the Oil Pollution Act early on, and lasted for several weeks, the Coast Guard who headed the unified command, and we are accustomed to unified command, we have unified command under Stafford Act disasters, they took the position that the National Guard worked for them. And this became a real issue which I'll talk about in a minute. But under the Stafford Act it's very clear, the National Guard works for the Governor unless the President Federalizes the National Guard. We are not mad at anybody about it, but it didn't work well when they tried to assume command over the National Guard.

And I should say President Bush, after Katrina, talked about Federalizing the response, and I very loudly and publicly said no, that we don't want the Army coming into Mississippi or the Marines coming into Mississippi. They're not trained for that. They don't know the terrain. They don't know the people.

So Stafford Act, whether—and the Stafford Act, by the way, has a lot of improvement that it needs, but the Oil Pollution Act ought to be changed to say flatly, like the Stafford Act, it's supplemental to the States and it doesn't usurp the States' authority.

Where this came into play was in our plan to defend the State's shoreline against oil. We developed a layered defense plan, beginning outside the barrier islands, using the barrier islands to protect us, protecting the gaps between the barrier islands that oil had got through to the sound. That would be our principal place to try to pick it up, to keep it from getting to shore, steering it toward beaches, keep it out of marshlands.

As it turned out the Coast Guard approved that plan, never understood how to execute it; and after the second time that oil got to our barrier islands completely undetected, much less contested, undetected, we demanded that we be put in charge of this, and the Coast Guard agreed and we worked out a system that worked.

I will just tell you before that there was no command and control. In fact, unified command could not even speak to the hundreds of vessels of opportunity that we had gotten BP to hire, to form picket lines to spot the oil as far out where we could try to steer it and collect it. They didn't have any means of talking to them. So we had to set that up to get command and control as it should be.

Two other points I want to make. And I'll be glad to—I am trying not to get into too much detail. For us, this turned out to be primarily an economic disaster.

Now, it may be that there is something slushing beneath the sea or that is going to develop that becomes ecologically dangerous, and we are all over that, and not just Mississippi, all of the States, the Federal Government, all kind of scientists. But thus far, environmental damage for us—again we are different from Louisiana—has been very manageable.

We have on the coastline of Mississippi, we have 80 miles of coastline. We never closed 1 mile of beach except for one time in the whole experience. We had one 2-mile section of beach that we closed overnight because we had a high tide after a hurricane where some oil got across the highway and we couldn't clean it all up. Otherwise, we cleaned up the oil that got to the beaches every

day, the day it got there. So our environmental damage, unless there is something to come, is not our issue.

Our issue is a gigantic economic loss. Talked about tourism. Our tourism industry was clobbered. Our season starts when our schools get out, which are earlier than in the North. Our schools get out the middle of May. So that is when the tourist season starts. Of course, this happened late April.

So people saw on TV the same brown pelican coated with what looked like 3 inches of oil, I mean looked like a chocolate pelican, and they showed it every hour, every day, 24 hours a day, 7 days a week, for weeks and weeks and weeks and weeks. And the news media, particularly 24-hour cable TV, gave citizens the impression the whole Gulf Coast was coated in oil. People deduced from that it was unsafe, unpleasant, don't want to go there. They canceled their reservations. They canceled their contracts to buy condominiums, and not just in Mississippi but all across the Gulf Coast.

The President, to his credit actually, it got so bad that the President came to Mississippi, Alabama, and Florida, and held news conferences on the beach to say, Look, the beaches are clean, the water is clear, it's beautiful down here, come on down here. But that one news day can't compete with what was being seen every day, every hour for weeks. Huge economic problem and loss there.

And of course in the fishing side on seafood, huge losses because they closed our waters; and I should say to you right now, we have not since this oil spill had one sample of seafood in Mississippi waters that was tested that did not pass the test to meet every standard. The same is true for the Federal Government. We haven't had one, one sample of seafood that failed. Yet we have people that won't buy seafood from the Gulf Coast in New York and San Francisco and Chicago because of what they saw on television.

So the fishermen have some mitigation of their losses because they got hired to be vessels of opportunity. The processors were slammed. So seafood, a huge problem. The oil and gas industry, the moratorium for which there was no reason. In fact, the government appointed a panel to look at this and the panel disagreed with the announcement that was made, that you got the impression it was the panel's recommendation to have a moratorium; and the panel after said, Whoa, that wasn't in our recommendation, we are against that. That was added after the panel was through.

We drilled more than 31,000 oil wells in the Gulf of Mexico in the last 50 years, and this is the first time anything vaguely like this had happened. The moratorium hurt us financially; more important, hurt the country. Thirty percent of all the oil domestically produced in the United States is in the Gulf of Mexico and about 80 percent of that is deepwater. Yet, in the last year, the number of new—the number of permits for new deepwater drilling has decreased 85 percent. And that's a huge problem.

Let me close by saying this. For those of y'all that want to help the States that were hurt, understanding that this is an economic problem for us—and again, Louisiana's a little different from the rest of us—this was an economic problem. Remember, the natural resources damage assessments and the payments that can be made under that are largely limited to environmental. And while there

is some loss of use room there, largely these States cannot be compensated for their economic loss, except by getting part of the civil fines that are going to be assessed against BP and the responsible parties. And I would ask you to consider as Members of Congress, looking at this and understanding that this is, this is the best way to help these States recover, because it is economic recovery that they have to get, unless something really changes on the environment.

I apologize I went over, Mr. Chairman.

Chairman ISSA. No apology required.

[The prepared statement of Governor Barbour follows:]

**Testimony, Governor Haley Barbour**

**June 2, 2011**

**House Committee on Oversight and Government Reform**

Thank you Chairman Issa, Ranking Member Cummings, and Members of the committee, for inviting me to speak today regarding Mississippi's experience and continuing response to the Deepwater Horizon Oil Spill.

With Hurricane Katrina's utter devastation in Mississippi and each disaster since then, Mississippi has proven repeatedly that we can respond to disasters and the needs of our citizens in an expeditious, effective and compassionate manner. In 2010 and again this past April, when our state was struck by devastating tornados, state agencies were on-site within hours to assist the local responders and volunteers. Since the beginning of May, we have had eight state agencies embedded with our local responders assisting with the historic flooding of the Mississippi River and its tributaries. Our state's goal is to be prepared to save lives, prevent property loss, mitigate suffering and return impacted areas to normalcy as quickly as possible. When federal assistance is needed, it must be in concert with state and local officials. The Stafford Act states federal disaster assistance is to supplement the efforts of the state, not supplant them or the state's authority.

Mississippi's response to the BP Oil Spill was a team effort. Immediately after the leak was discovered on April 24, I ordered the Mississippi Departments of Environmental Quality (MDEQ) and Marine Resources (MDMR) to serve as the lead response agencies with Mississippi Emergency Management Agency (MEMA) and the Mississippi National Guard as

support and resource agencies. Local governments were included in planning and response. We joined a Unified Command with the federal government and BP.

The state immediately developed a layered defense plan, which was to (1) try to contain or pick up as much oil as far from Mississippi's coastline as possible; (2) if oil did approach, to skim it before it reached our barrier islands; (3) should oil reach our barrier islands, to try to contain it there by defending the relatively narrow gaps between the islands and letting the islands collect product on the sand beaches (nearly 180 miles of boom were deployed in Mississippi waters) (4) should oil make it through the passes, to try to skim it, steer it, or contain it in the Mississippi Sound; (5) should oil reach our mainland, to try to contain it with boom, steer it to our sand beaches, or skim it to prevent it from reaching our sensitive and critical marshes and wetlands, which serve as nursery areas for our marine species (shrimp, crabs, finfish, and plant species); and (6) to try to defend the critical marshes and wetlands and, if oil intrudes into them, to clean it up and remove it as soon as possible. Similarly, our plan was to clean up whatever oil product reached our beaches as soon as possible, hopefully the same day it was discovered.

Unified Command, led by the U.S. Coast Guard and BP and involving the National Oceanic and Atmospheric Association (NOAA) and the Environmental Protection Agency (EPA), set up the Florida, Alabama and Mississippi Command Center in Mobile, AL, and personnel from MDEQ, MDMR, and MEMA participated in that Command Center. Unified Command was responsible for securing boom and skimming vessels and

allocating these assets across the region. Unified Command reviewed Mississippi's plan and concurred that Mississippi, with its barrier island configuration, is uniquely set up to effectively defend itself against intruding oil if adequate defense assets are in place. In this case, oil skimming assets are the primary means of defense. Mississippi was assured that should oil approach Mississippi waters, adequate skimming assets would be made available.

When Mississippi was first impacted by oil in early June on Petit Bois Island, it was obvious the Unified Command surveillance and defense capabilities fell far short of meeting the Mississippi protection plan objectives. We found several major flaws with the multi-state response attempt out of Mobile – communications in the Gulf among vessels and between vessels and aerial assets was poor; the time it took to approve Mississippi National Guard mission requests for oil surveillance was as long as two weeks; and skimming assets for the area off the Mississippi Coast were woefully inadequate. One example of note: the Mississippi Air National Guard has a reconnaissance airplane capable of taking still photos and full-motion video. This plane became one of the most useful assets in the detection and subsequent skimming of oil. Rear Admiral Zukunft, the FOSC in New Orleans, called the aircraft “a game changer” and “worth its weight in gold” during his daily operations briefing on July 17. Yet, it took almost three weeks from the time we requested funding approval of the aircraft to the actual approval date of May 24.

Mississippi brought the command situation to a head in June after a series of events made it necessary. Our team and BP had been recruiting “Vessels of

Opportunity”, known as VOOs, to locate oil in Mississippi waters, beginning out beyond the barrier islands. By this time, we had hundreds of VOOs on patrol every day so we could execute our layered defense plan.

In early June, twice over a several day period, depleted oil product in significant amounts reached one or both of the eastern barrier islands, without having been reported, much less contested.

From these two instances we learned the Coast Guard had no way of communicating with the VOOs, as there was no command and control communications system for them.

At that point the Coast Guard acceded to our demand that a command center be set up in Biloxi, Miss., still reporting to Mobile, but with authority to act in Mississippi waters.

Working with the Coast Guard and the National Guard we set up a communications system for and with the VOOs, which were organized into manageable units or squads of several vessels, each with a Coast Guard or National Guard leader on the squad’s lead vessel. Every VOO was given a radio and was, therefore, under the command and control of Unified Command.

Multiple flying missions of National Guard fixed wing aircraft and helicopters were integrated into surface patrolling, and the state’s interoperable communications system allowed the aircraft to talk to not only

the Mobile and Biloxi command centers but also to the VOO squads in the water. This provided a quantum leap in the effectiveness of our picket lines and allowed quicker movement of skimmers to oil in the water, wherever it was found. This system worked well, particularly after we acquired enough skimming vessels to remove the oil product, especially in the passes and the Sound.

As oil entered Mississippi waters, Mississippi requested skimmers but few were found. We moved to secure our own skimming vessels, which we did.

The State of Mississippi, through funds made available by BP, purchased skimming vessels from two Mississippi ship yards. Only one yard fully delivered, but we were able to control the vessels and use them to skim oil material threatening our state.

Oil that reached Mississippi had traveled about 100 miles in warm water and was degraded to the point of being an emulsion of water and chemically and biologically degraded oil, as most of light cuts of the crude oil, the dangerous parts were gone, either evaporated or broken down by the microbes present in the spill area because of natural seeps of oil in the Gulf. These microorganisms had the ability to metabolize the oil as an energy source. It should be noted the Gulf of Mexico has large amounts of crude oil seep into it through the floor every year. The amount of seepage is estimated at 250,000 to more than 1 million barrels a year.

Oil that actually reached Mississippi's barrier islands and mainland beaches was degraded to the point of "tar balls" or "tar patties," more like asphalt

than crude oil. These materials were of little real danger to people or marine plants and animals. Relatively little of this material reached Mississippi beaches, and BP contractors cleaned it from Mississippi mainland beaches quickly.

Let me state here that our situation was very different from that of Louisiana. Louisiana was much nearer the well site, so wet, brown oil came ashore in their state. We had mousse and tar balls and patties, which are much easier to deal with and generally non-toxic. While some oil product reached Mississippi's shoreline, in every case but one, the product was cleaned up and removed from the beaches the same day. In only one instance was a beach closed, and that was for only two days because oil product got across the road through a culvert.

The Stafford Disaster Relief and Emergency Assistance Act defines a major disaster as, "any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby." A key part of this definition is that the Act mandates that all federal response activities are to supplement the efforts of the state and not to usurp the actions of the state. The sovereignty of the state is at all times respected as is the authority of the Governor. For any

major disaster, the tenets of the Stafford Act, as well as those of the National Response Framework, should be adhered to. The language of the Oil Pollution Act of 1990 and the National Contingency Plan for oil spills should be revised to be consistent with the National Response Framework.

The Oil Pollution Act of 1990 was written after the Exxon Valdez incident and probably would have worked well in any similar incident as seen in Prince William Sound, which involved one state. However, for an incident involving multiple states in two different FEMA regions, the OPA does not support disaster response operations adequately. All disasters are local. OPA should be reviewed accordingly.

BP hired numerous contractors to do clean up. They generally hired local (in-state) contractors, who did a good job. State and local officials worked with the contractors, and BP generally had their contractors do what state and local government officials requested.

All of the scientific data and information to date provides very compelling evidence that seafood from the Gulf is the same high quality it has always been. MDMR and MDEQ have collected and analyzed some 1,000 samples of fish tissue, shrimp and oysters from state waters and not a single sample has been found to contain any level of crude oil components anywhere near United States Food and Drug Administration (FDA) or EPA levels of concern. We are told the same results have been obtained in the thousands of samples collected by the federal agencies.

While we and many others will continue to monitor and analyze events and readings from the Gulf to learn if some currently unrecognized or future development changes the situation, it appears the Gulf has essentially digested the oil and other chemicals thus far. Further, in our state, on-shore impacts were quickly remediated, and there is no apparent residual environmental damage. Our barrier islands, managed by the National Park Service, have some oil remnants on the beaches of the islands because the Park Service chose to use different clean-up techniques than we did on shore.

The BP Oil Spill was an economic catastrophe for Mississippi. Its negative economic impacts were greatest in tourism (including hotels, restaurants, recreational fishing, water sports, etc), commercial fishing and processing, and oil field employment and services. Some of these damages were mitigated by BP clean-up efforts, the VOO program and maintenance on rigs kept from drilling in the Gulf. Additionally, real estate values and activity were greatly reduced as a result of the spill and the media coverage of it. Mississippi's summer season, the largest for tourism on the Gulf Coast, begins in early-to-mid-May and continues through Labor Day. The April 20 oil spill came at the worst possible time for tourism.

The damage to tourism came from the news coverage of the event, especially on 24-hour cable news television. Every hour of every day for weeks, television viewers were shown video of oily marshlands, oil-covered pelicans and other birds and wildlife, etc., and the viewers deduced that the beaches and waters of the entire Gulf Coast were coated in oil. They

inferred it would be unsafe and/or unpleasant to visit the Gulf Coast areas of Mississippi, as well as Alabama, Florida and Texas. It was so bad President Obama agreed to visit the beaches to show they were clean and the water clear. We appreciate his trying, but one news story can't compete with weeks of hourly depictions.

The other major economic impact resulted from the moratorium on drilling. It not only cost jobs in all the Gulf States, it hurt the economy nationally by reducing domestic oil production. We consider the shut-down of Gulf drilling a serious mistake for the country as well as our states.

Our country's energy security is at stake here. The Gulf of Mexico provides approximately 30 percent of U.S.-produced crude, with deep-water wells responsible of 80 percent of total Gulf production. In the 13 months following the spill, deep water permits are down 66 percent. This will have a lasting impact on an already out of balance oil trade deficit, great jobs are lost.

Mississippi did not look at the BP disaster as a windfall. Our goal has been to get the help the people of Mississippi needed and deserved to get their lives back in order. That included making sure that claims submitted from Mississippi were fair and accurate and were treated fairly by BP or the GCCF.

The Mississippi Department of Employment Security realized that not all citizens impacted by the oil spill were eligible for Unemployment Insurance (UI) benefits. Many small businesses including commercial fishermen are

self-employed and do not pay into the UI system. People who depend solely on summer employment may not have had enough wages to qualify for benefits, and they were affected when tourists stayed away from the Mississippi Gulf Coast. The goal of Mississippi was to ensure everyone who qualified, received UI benefits related to the oil spill and that the others filed claims with BP.

There actually was a spike in employment in Biloxi/Gulfport and Pascagoula for a couple of months after the spill, largely due to local workers being hired to do the clean-up efforts. Then a spike in the number of jobs lost followed for a couple of months after that. During the clean-up period, MDES referred 6,426 individuals for BP clean-up jobs through our online job portal, 1,370 of whom were placed in these temporary jobs. MDES worked closely with BP and its contractors to make sure that as many Mississippi residents as possible were selected for these jobs

The Tourism industry is vital in the economic well-being of the state:

**Fiscal Year 2010 numbers**

- Visitor Expenditures are **\$5.5 Billion**
- Travel and Tourism employment is more than **78,000**
  
- More than **\$415 million** are collected in Travel and Tourism state tax revenues/fees, which equates to Travel and Tourism contributing \$353 million to state's general fund.
- Mississippi's Gulf Coast tourism accounts for nearly one-third of those numbers.
- I share those numbers to reiterate the importance of the industry and how critical it is to sustain travel and tourism during natural and man-made disasters and crisis.

The Mississippi Coast was negatively impacted economically particularly right at our key summer season 2010. There are certain industry sectors and tourism employees such as charter fishing, beach related vendors, the seafood industry and water-related businesses (like Captain Skermetta's – Ship Island Excursions) that took the brunt of the oil spill disaster's effect on tourism and have been hurt economically worse than other industry sectors.

The overall tourism numbers have been better than we initially feared they would be because of the oil spill. Reality though is – the question is – what would the numbers have been if we hadn't had this disaster. The first quarter of 2010 indicated a promising comeback. We don't know that we will ever be able to quantify what would have been.

In order to combat the loss of visitors, the Visit Mississippi Coast campaign, funded by BP, was a multi-platform integrated campaign that provided many different components to share with the consumer the diversity of the travel experiences offered on the Mississippi Gulf Coast. It was the goal of the campaign to highlight from one end of the Coast to the other the many offerings from gaming, golf, shopping, dining, entertainment and cultural heritage attractions. The Mississippi Coast has this diversity and isn't solely dependent on the beach vacationer who wants to spend four-to-six days focused on beach activities.

We are approaching the summer season with a bit of uncertainty because of lingering negative perceptions of the spill, rising gas prices and now the

floods at our Mississippi River destinations but are looking at extended campaigns in 2011 and 2012 due to a recent three-year grant provided by BP. We are counting on the marketing campaigns to be effective and bring Coast tourism back and growing.

We continue to work with our neighboring states to obtain funds to aid in our recovery through Clean Water Act fines. Such funds would be provided by BP and any other responsible parties through a settlement between the federal government and BP. The funds negotiated through the National Resource Damage Assessment, or NRDA, may only be used for environmental and loss-of-use impacts. While we appreciate those funds, our main damage from the oil spill was economic. I'm not here to speak for the other states, but – with the possible exception of Louisiana – I expect that's true for them, too. Recovery of our economic damages can be addressed by the fines to be paid by BP and any other responsible parties as provided for in the Clean Water Act. I urge you to support our states' delegations and others to draft a legislative solution to allow the damaged Gulf States to be made whole by an appropriate division of these fines among the affected states and sufficient flexibility to the individual states to expend these monies in the most effective ways to rebuild their coastal economies.

Chairman ISSA. I now ask unanimous consent that the staff report entitled, "The BP Oil Spill Recovery Effort: The Legacy of Choices Made by the Obama Administration" be entered in the record. Without objection, so ordered.

[The information referred to follows:]

**U.S. House of Representatives**  
**Committee on Oversight and Government Reform**  
Darrell Issa (CA-49), Chairman



**The BP Oil Spill Recovery Effort: The Legacy of Choices  
Made by the Obama Administration**

STAFF REPORT  
U.S. HOUSE OF REPRESENTATIVES  
112<sup>TH</sup> CONGRESS  
JUNE 2, 2011

## EXECUTIVE SUMMARY

The Oversight and Government Reform Committee has conducted a yearlong investigation into the efficiency, adequacy, and accuracy of the federal response to the Gulf Oil Spill. This on-going investigative effort included three separate fact finding trips to southern Louisiana, Mississippi, and Florida, careful examinations of accounts provided by the Administration that directly conflict with the experience of federal and local officials on the ground, as well as a Congressional hearing. Investigators have interviewed over 50 federal, state, and local officials, as well as more than 50 residents of the affected region. The results of the investigation are documented in this report as well as a staff report issued by Ranking Member Issa on July 1, 2010, entitled *How the White House Public Relations Campaign on the Oil Spill is Harming the Actual Clean-Up*.

In his response to the disaster in the Gulf, the President faced three crucial decisions, the consequence of which will have long term ramifications for residents of the Gulf and for the United States. The first decision was whether to federalize the response through the Stafford Act or act under the Oil Pollution Act; the second concerned how to reform the failed Minerals and Management Service (MMS); and the third was whether to impose a limited ban on the most risky drilling practices or to impose a broader based moratorium. Each of these critical decisions have had far reaching consequences for the people of the Gulf Coast.

The report makes the following key findings:

➤ **The Administration ceded leadership and management responsibilities for addressing the suffering of oil spill victims to BP.**

*President Obama had to choose between federalizing the response to the oil spill under the Stafford Act or allowing BP to lead the effort under federal oversight under the authorities of the Oil Spill Act. While BP would have been financially responsible for clean-up costs under either scenario, President Obama chose the option of letting BP lead and make critical decisions on recovery efforts under the authority of the Oil Spill Act.*

➤ **Many Gulf Residents and Local Leaders Believe BP is not Meeting its Obligations**

*Failure to fund removal of clean-up equipment debris, uncertainty surrounding mental health services, and frustration associated with the compensation process are among the concerns of affected Gulf Coast residents. Many believe BP is not meeting its obligations and the federal government has abdicated its responsibility to intervene.*

➤ **Concerns Persist that the BP Oil Spill Liability Trust Fund is Stripping Victims of their Rights**

*President Obama pledged that the oil spill fund "will not be controlled by either BP or by the government." A Federal judge, however, has ruled that Kenneth Feinberg, who administers the fund, is not a "true third-party neutral" administrator and is not*

*independent from BP. Concerns exist about excessive compensation delays, inconsistent judgments, requirements that victims relinquish further claims against BP as a condition of compensation, and efforts to dissuade victims from obtaining legal representation.*

➤ **After the Spill, The Administration's Reorganization of the Agency that Regulates Drilling Ignored Critical Input**

*Upon entering office Interior Secretary Ken Salazar was aware of systemic problems at the agency that regulates drilling (MMS) and indicated an early commitment to meaningful reform. In January 2009, he told employees "[w]e will make sure you have the tools you need to hold special interests accountable, to protect taxpayers from getting fleeced, and to ensure that those who develop our natural resources follow the law of the land." Little occurred, however, until efforts were put in motion after the oil spill to radically restructure and spilt the agency. The reorganization of MMS was announced less than one month after the oil spill. Furthermore, it did not address important recommendations made by MMS employees, Government Accountability Office studies, and investigations by the Department of Interior Inspector General.*

➤ **Before Implementing the Drilling Moratorium, Administration Documents Indicate Officials Made False Assumptions about Effects and Job Losses**

*In examining the economic impact of imposing a drilling moratorium, the Administration relied on numerous false assumptions. In one internal analysis, the Administration assumed that "drilling could re-start on January 1, 2011." In reality, the first new drilling permit was not issued until months later. Alarmingly, in dismissing larger projections of unemployment the document also noted, "we are comfortable with our conservative approach because the loss in employment is not long term, so the full effects of the indirect and induced employment may not be fully felt as some businesses may be willing to sustain short term losses to avoid having to lay off and subsequently rehire workers." As oil rigs leave the Gulf, layoffs continue, and the economic consequences of the moratorium continue these assumptions have been exposed as deeply flawed.*

➤ **The Formal Moratorium on Drilling was Replaced by a "Permitorium"**

*Secretary Salazar announced the end of the moratorium on October 13, 2010. According to many in the industry, this declaration provided little relief. The moratorium in the Gulf of Mexico was replaced by a "permitorium" – whereby drilling activity remained at a standstill not by operation of law – but because of inaction processing permits. Prior to the disaster, permits to drill usually took two weeks to process. However, not a single new deepwater permit was issued until a U.S. District Judge ordered the agency to take action on five permits by March 19, 2011 and by March 31 on two additional permits.*

➤ **Some Post-Oil Spill Drilling Regulations are Extremely Burdensome but Have No Relevance to Safety**

*One of the most perplexing examples of a new regulation is the requirement that operators perform an Archaeological Assessment Report. Under this new rule, any new applicant to drill must demonstrate that their proposed activity will not harm shipwrecks or other archaeological resources. Operators must conduct ocean floor analyses with specialized equipment to determine if certain spotted anomalies are actually shipwrecks with the potential to be impacted by exploration or drilling. Furthermore, operators will be required to employ an underwater archaeologist to assist in the analysis of this data and to provide regulators with survey data. When operators asked about how to implement this new rule; and more specifically, if operators would need to hire an underwater archaeologist, regulators responded affirmatively that they would have to bring a marine archeologist on staff.*

➤ **Small Businesses and Local Governments are Still Suffering the Effects of the Moratorium**

*Multiple business owners and local government officials continued to express concern and even despair about the long-term effects of the moratorium and crack down on deep-water drilling. Future bankruptcies and layoffs remain likely due to the continued scarcity of new permits being issued. One business owner told committee staff, "I've been in the oil service for 35 years ... After all we went through and saw with the moratorium I won't expose myself and my employees to the risk of doing business in the U.S. ever again." Localities are also facing severe revenue shortages due to the loss of tax income from offshore drilling operations.*

On April 20, 2010, an explosion rocked the Deepwater Horizon, which was under contract with British Petroleum (BP) to drill an exploratory well at the Macondo site, in federal waters, 48 miles off the coast of Louisiana.<sup>1</sup> This explosion took the lives of 11 crew members and triggered one of the largest ecological and economic disasters in U.S. history. The explosion triggered a sequence of events that led to 4.9 million barrels of oil being spilled into the Gulf of Mexico<sup>2</sup> and caused untold economic damages. However, not all of the suffering experienced by Gulf Coast residents necessarily stemmed from the explosion. Much of the suffering and loss was made worse by poor decisions by the Obama Administration. These decisions relate to the legal framework guiding the response; the reorganization of a failed federal agency; and the banning of virtually all drilling activity in the Gulf of Mexico. This report will examine each decision and explore the known consequences of that decision.

### Administration's Choice: OPA vs. Stafford Act

#### The Choice

The Obama Administration had the choice to act under one of two legal frameworks to respond to the crisis: the Oil Pollution Act (OPA) or the Stafford Act. OPA is primarily a statute that sorts out liability in the event of an oil spill, while the Stafford Act is a broader framework for the federal government to respond to a disaster, such as a hurricane or earthquake.

The Stafford Act provides the government with a framework for proactive federal assistance. It authorizes the President to issue a major disaster declaration, either unilaterally or in response to requests from affected states.<sup>3</sup> A gubernatorial request is usually required to trigger a Major Disaster declaration, however the President has the authority to make an emergency declaration without a request from a state under circumstances where "the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority."<sup>4</sup> In the case of the *Deepwater Horizon*, an explosion in federal waters caused the subsequent oil spill. Accordingly, President Obama could have made a disaster declaration on his own or at the request of a state.

A major disaster declaration provides states access to the most advantageous federal assistance, especially as focus turns to long term recovery. Such assistance includes temporary housing, crisis counseling, infrastructure repair and replacement, emergency protective measures, and community disaster loans, among other provisions. A response under the Stafford Act would follow the National Disaster Recovery Framework and would speed a wide range of

<sup>1</sup> Maureen Hoch, *New Estimate Puts Gulf Oil Leak at 205 Million Gallons*, PBS News Hour, available at <http://www.pbs.org/newshour/rundown/2010/08/new-estimate-puts-oil-leak-at-49-million-barrels.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Francis X. McCarthy, *Potential Stafford Act Declarations for the Gulf Coast Oil Spill: Issues for Congress*, CRS REPORT TO CONGRESS, July 23 2010, available at <http://www.fas.org/sgp/crs/misc/R41234.pdf>. [hereinafter CRS GULF COAST SPILL].

<sup>4</sup> 42 U.S.C. § 5192

federal aid to states determined to be overwhelmed by the catastrophe. While typically the Stafford Act imposes liability on third parties in cases where the entity causing the incident acted intentionally to cause the harm<sup>5</sup> a separate provision under the Act governs instances where negligence caused the harm. Under the “Duplication of Benefit” provision, non Stafford Act resources, such as funds from responsible parties under OPA, are available to reimburse Stafford Act expenditures.<sup>6</sup>

However, the Administration chose to manage the federal response under the framework provided by the OPA, which relies heavily on the “responsible parties” to respond to an oil spill. Under OPA, the responsible parties are strictly liable for all costs associated with the cleanup efforts, although their liability for economic damages is capped at \$75 million per incident.<sup>7</sup> Under this framework, the Federal Government, via the Coast Guard, plays largely a secondary, oversight role in response activities. According to Coast Guard Rear Adm. Sally Brice-O’Hara, in this case BP is in the lead, and the Coast Guard oversaw the operation.<sup>8</sup> In April 2010, administration officials referred to BP as their “partners” in the response.<sup>9</sup>

While there was a broad national consensus that BP should be held accountable for the damage caused by the spill, there was no consensus that the federal government should abdicate its role in the response. According to statements and press accounts at the time, it appears that a primary consideration for President Obama’s use of OPA rather than the Stafford Act to respond to the oil spill was his strong desire to hold BP responsible for the cost of the cleanup and recovery.<sup>10</sup> President Obama stated:

As far as I’m concerned, BP is responsible for this horrific disaster, and we will hold them fully accountable on behalf of the United States as well as the people and communities victimized by this tragedy. We will demand that they pay every dime they owe for the damage they’ve done and the painful losses that they’ve caused.<sup>11</sup>

Given this rationale, the OPA appeared to have the benefit of legal clarity with regard to BP’s responsibility to pay for the clean-up. However, the Administration could have relied on the “Duplication of Benefit” provision of the Stafford Act, and held BP financially accountable, while at the same time maintaining control over the response. Under the Stafford Act, the Federal Government, in conjunction with the states and localities, would have decided what they needed in order to manage the disaster. Under OPA, BP had a significant amount of influence in determining the nature and extent of the response. This difference turned out to be critical as local governments struggled to respond to the crisis.

<sup>5</sup> See, CRS GULF COAST SPILL, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Jeffrey Brown, *Coast Guard Cleanup is ‘Team Effort,’* PBS News Hour (April 29, 2010).

<sup>9</sup> Robert Gibbs, Press Secretary, White House Press Briefing on the BP Oil Spill in the Gulf Coast, (Apr. 29, 2010), available at <http://www.whitehouse.gov/the-press-office/press-briefing-bp-oil-spill-gulf-coast>.

<sup>10</sup> Salazar: BP “On the Hook” for Gulf Oil Crisis, CBS NEWS, May 20, 2010, available at <http://www.cbsnews.com/stories/2010/05/20/earlyshow/main6502199.shtml>.

<sup>11</sup> President Barack Obama, Remarks by the President to the Nation on the BP Oil Spill (May 27, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill>.

### The Consequences

There are two key problems associated with President Obama's reliance on BP to organize and execute the response. The first is that BP, while responsible, is not primarily in the business of responding to large scale emergency and relief efforts and accordingly was poorly equipped to do so. The second is that BP owes a fiduciary duty to its shareholders, not to the American public. This stands in marked contrast to the Federal Government – which has a federal agency dedicated to responding to emergencies (Federal Emergency Management Agency, FEMA) and has a primary obligation to citizens of the Gulf Coast. Accordingly, the Federal Government was in a much better position to lead the response efforts, and have BP follow, rather than the other way around.

Almost immediately, state officials raised concerns that the federal government was relying too heavily on a private company that seemed to be overwhelmed, compromising the quality of the response. On April 30, 2010, Governor Bobby Jindal of Louisiana said “We're concerned that BP's current resources are not adequate to the challenge.”<sup>12</sup> He went on to say “We have encouraged BP strongly to seek even more assistance from the federal government because I do think this response could overwhelm their capabilities.”<sup>13</sup> On May 6, 2010, former Florida Governor, Charlie Crist, requested the Administration make available federal resources to states under authority from the Stafford Act. In the letter, Crist stated, “Florida and other states have in the past benefited from the application of the Stafford Act, the engagement of FEMA and the availability of National Emergency Grants and Disaster Unemployment Grants and payment of Disaster Unemployment Assistance.”<sup>14</sup>

Other consequences of acting under the OPA, as opposed to the Stafford Act, include: confusion over command and control; mismanagement of claims processing; and inadequate attention to health impacts of the spill.

### Command and Control

As this Committee outlined in its July 2010 report<sup>15</sup> on issues affecting the Gulf, the BP-Coast Guard partnership led to substantial confusion as to who was really in control and deciding the fate of the region. As the report stated, federal and local officials were concerned about the arrangement. Rear Admiral Jim Watson, the senior-most official at the Unified Area Command

<sup>12</sup> Ned Potter, et al. *BP 'Overwhelmed' by Gulf of Mexico Oil Spill*, ABC NEWS, Apr. 30, 2010, available at <http://abcnews.go.com/WN/Eco/oil-spill-hits-louisiana-shore-obama-orders-offshore/story?id=10519296>.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from the Honorable Charlie Crist, Governor, to the Honorable Barack Obama, President of the U.S. (May 6, 2010).

<sup>15</sup> Ranking Member Darrell Issa, *How the White House Public Relations Campaign on the Oil Spill is Harming The Actual Cleanup*, Dec. 14, 2010, available at [http://oversight.house.gov/images/stories/Reports/7-1-10\\_OGR\\_Report\\_-\\_How\\_the\\_White\\_House\\_Public\\_Relations\\_Campaign\\_on\\_the\\_Oil\\_Spill\\_is\\_Harming\\_the\\_Actual\\_Cleanup.pdf](http://oversight.house.gov/images/stories/Reports/7-1-10_OGR_Report_-_How_the_White_House_Public_Relations_Campaign_on_the_Oil_Spill_is_Harming_the_Actual_Cleanup.pdf).

in Robert, LA, said that “The framework probably isn’t up to the task.”<sup>16</sup> Also, Parish officials maintain that the federal government has not been in control since day one. In four separate interviews, senior-ranking Parish officials described how, until the President’s visit on May 28, 2010, BP was in charge. According to one official, “until two weeks ago [after the President’s May 28, 2010, visit], BP was in charge and the Coast Guard looked to them for direction.” Furthermore, “Coast Guard asks BP,” not vice-versa.<sup>17</sup> When specifically asked to agree or disagree with the assertion that the federal government had been in control since day one, another official firmly disagreed.

Interviews with state and local leaders in Mississippi and Florida further demonstrate the inverted relationship between BP and the Coast Guard. Colonel Lee Smithson, Director of Military Support at the Mississippi National Guard spoke of both BP and the Coast Guard pushing the National Guard to demobilize before they were ready.<sup>18</sup> He said: “The coast guard maintained that public announcement saying ‘we are very optimistic, but we are not ready to go home,’ but behind the scenes, they are going ‘ya’ll need to pack your bags and go home.’”<sup>19</sup> Col. Smithson told them he would not order his Guardsmen off the spill response until he received orders from his commander-in-chief, Governor Haley Barbour, or one of his designees.<sup>20</sup>

#### *Anchor Removal and the OPA*

A major concern for Parish presidents, fishermen, and residents during the recovery phase of the response is determining who is responsible for removing thousands of anchors that sit on the bottom of the Gulf. The anchors are the remains of thousands of booms put in place by BP to protect the marshy coasts from the oil spill. Craig Taffaro, President of St. Bernard’s Parish, estimates that up to 3,500 anchors sit on the Gulf floor in his Parish alone.<sup>21</sup> When BP removed the booms from Gulf waters, it appears that BP left the anchors holding the booms in place on the sea floor, which creates problems for the environment, tourists, and fishermen alike. For example, an anchor that remains in shallow waters could cause significant damage to an unsuspecting boater. Moreover, the anchors may eventually wash ashore, damaging vulnerable marshland.<sup>22</sup> Upon the urging of President Taffaro and the presidents of Jefferson and Plaquemines Parishes, BP agreed in late 2010 to examine how to locate the anchors in the water; however, they never agreed to their full removal from the Gulf.<sup>23</sup> BP objects to the removal of the anchors because they insist that the contractors hired to place the booms removed all of the

<sup>16</sup> *Id.*

<sup>17</sup> Interview with Craig Taffaro, President, St. Bernard’s Parish (Mar. 24, 2011) [hereinafter INTERVIEW CRAIG TAFFARO].

<sup>18</sup> Interview with Col. Lee Smithson, Director of Military Support, Mississippi National Guard (Mar. 23, 2011).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Benjamin Alexander-Bloch, *BP to Look Into Locating Anchors Left Over After Oil Spill Boom was Removed*, THE TIMES-PICAYUNE, Dec. 25, 2010.

<sup>22</sup> See, INTERVIEW CRAIG TAFFARO, *supra* note 17.

<sup>23</sup> Benjamin Alexander-Bloch, *BP to Look Into Locating Anchors Left Over After Oil Spill Boom was Removed*, THE TIMES-PICAYUNE, Dec. 25, 2010.

anchors and that if anchors were on the Gulf floor they would have collapsed below the sediment.<sup>24</sup>

In response to the request of the Parish Presidents, BP agreed to consider the removal of the anchors, contingent upon the completion of a study to determine how to locate and remove them. This study included an analysis to determine if it was economically feasible for BP to carry out this process and included an experiment to determine the best method for locating the anchors already in the water – by dropping more anchors in the water.<sup>25</sup> Capt. Lincoln Stroh of Unified Command stated “the response is committed to ensuring that BP uses a safe and proven method to find and remove orphan anchors so that teams do not break submerged pipelines or further harm fragile ecosystems by causing erosion.”<sup>26</sup> As of May 2011 the anchors remain in the water.

Under the OPA, BP, as the responsible party, faces unlimited liability for the cost of cleanup related to the spill. This would include removal of anchors used during the response to the spill. Yet under the arrangement between BP and this Administration, it appears that BP has significant say in how they will fulfill their legal obligation.

#### Mismanagement of claims processing

##### *Creation of the Oil Spill Liability Trust Fund*

The oil spill, which threatened to severely damage miles of coastline, has also wreaked havoc on the Gulf Coast economy. In response to the spill, the National Oceanic Atmospheric Agency (NOAA) shut down all commercial fishing activity in the Gulf.<sup>27</sup> The perceived threat of oil washing up on the Mississippi, Alabama, and Florida beaches scared away potential tourists and devastated the travel/tourism industry in these states.<sup>28</sup> Accordingly, the BP oil spill eliminated a significant amount of economic activity that the states and residents count on. As discussed earlier, under the OPA, BP was legally liable for damages relating to clean up efforts, but had limited liability with respect to economic damages. This limited liability was contingent upon the accident being the result of negligence, rather than gross negligence or willful misconduct.<sup>29</sup> Moreover, the OPA expressly does not preempt claims under state law or common law. Accordingly, if a plaintiff could demonstrate that BP’s negligence caused economic harm, then there would be no cap on damages.<sup>30</sup>

Gulf Coast residents immediately felt the impact of the oil spill in their pocket book and accordingly BP initiated an ad hoc system of claims processing. Prior to the creation of the Gulf

<sup>24</sup> Benjamin Alexander-Bloch, *BP Will Launch Test to Find Boom Anchors Left in Gulf After Oil Spill*, THE TIMES-PICAYUNE, Jan. 20, 2011.

<sup>25</sup> See, INTERVIEW CRAIG TAFFARO, *supra* note 17.

<sup>26</sup> *Id.*

<sup>27</sup> *Oil Fallout: Feds Expand Gulf Fishing Ban*, MSNBC, May 18, 2010, available at [http://www.msnbc.msn.com/id/37212911/ns/disaster\\_in\\_the\\_gulf/t/oil-fallout-feds-expand-gulf-fishing-ban/](http://www.msnbc.msn.com/id/37212911/ns/disaster_in_the_gulf/t/oil-fallout-feds-expand-gulf-fishing-ban/).

<sup>28</sup> *Id.*

<sup>29</sup> 33 U.S.C. §§ 2704(c)(1)(A) and (B).

<sup>30</sup> Posting of David Pettit to Natural Resources Defense Council Staff Blog, [http://switchboard.nrdc.org/blogs/dpettit/what\\_bp\\_oil\\_catastrophe\\_legal.html](http://switchboard.nrdc.org/blogs/dpettit/what_bp_oil_catastrophe_legal.html) (May 4, 2010).

Coast Claims Facility (GCCF) on August 23, 2010, BP had been making initial payments for interim, short-term damages, as required by OPA.<sup>31</sup> BP indicated that during this time, it had paid \$399 million in damages.<sup>32</sup> Of this, \$157 million is listed as “Wage Loss – Undefined.”<sup>33</sup>

In the summer of 2010, President Obama was facing heavy criticism<sup>34</sup> and slipping poll numbers<sup>35</sup> over how the spill was being handled. BP was facing incredible uncertainty as to the overall cost of the recovery and response.<sup>36</sup> In June of 2010, amidst much publicity, President Obama announced that he had reached a deal with BP where the company would provide \$20 billion for a fund that he said “will not be controlled by either BP or by the government – the “Oil Spill Liability Trust Fund” (“Fund”).

According to President Obama, the Fund was established to provide “substantial assurance that the claims people and businesses have will be honored.”<sup>37</sup> By the terms of the agreement, BP is required to make quarterly installment payments into the fund, which is available to address legitimate claims against BP for damages relating to the oil spill. According to the GCCF the following are eligible claimants: “Individuals and Businesses that have incurred damages as a result of the Spill may submit a claim to the GCCF for Removal and Clean Up Costs, Damage to Real or Personal Property, Lost Earnings or Profits, Loss of Subsistence Use of Natural Resources, or Physical Injury or Death.”<sup>38</sup> The White House touted Kenneth Feinberg’s appointment as claims administrator as the vital showing that the liability fund was in and of itself independent from BP.<sup>39</sup> President Obama stated the “fund will not be controlled by either BP or by the government”<sup>40</sup> and went on to say that the funds would “be put in a [*sic*] escrow account, administered by an impartial, independent third party.”<sup>41</sup> Subsequent to Mr. Feinberg’s appointment, Mr. Feinberg and the Gulf Coast Claims Facility (GCCF) became the primary mechanism for performing BP’s obligations under the Oil Pollution Act of 1990 (OPA).<sup>42</sup>

This arrangement seemed to provide advantages to both the Obama Administration and BP. By obtaining a \$20 billion promise from BP, the Administration appeared to be taking

<sup>31</sup> 33 U.S.C. § 2705 (a).

<sup>32</sup> Press Release, BP, BP Reports Nearly \$400 Million in Claims Payments as Program Transitions to GCCF (Aug. 23, 2010) available at <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7064597>.

<sup>33</sup> *Id.*

<sup>34</sup> Laura Bassett, *James Carville Takes On Obama On Oil Spill : He’s ‘Risking Everything’ with ‘Go Along with BP Strategy.’* HUFFINGTON POST, May 22, 2010, [http://www.huffingtonpost.com/2010/05/21/obama-faces-new-wave-of-c\\_n\\_585620.html](http://www.huffingtonpost.com/2010/05/21/obama-faces-new-wave-of-c_n_585620.html).

<sup>35</sup> Holly Bailey, *Public Opinion Turning Against Obama on Oil Spill*, YAHOO! NEWS, May 26, 2010, available at [http://news.yahoo.com/s/ynews/ynews\\_pl2270](http://news.yahoo.com/s/ynews/ynews_pl2270).

<sup>36</sup> Steve Hargreaves, *Oil Spill Costs: What Will BP Really Pay?*, CNN MONEY, May 6, 2010, available at [http://money.cnn.com/2010/05/06/news/economy/BP\\_liability/](http://money.cnn.com/2010/05/06/news/economy/BP_liability/).

<sup>37</sup> Posting of Jesse Lee to White House Blog, <http://www.whitehouse.gov/blog/> (Jun. 17, 2010 2:35 PM EST).

<sup>38</sup> Gulf Coast Claims Facility, *Frequently Asked Questions*, last visited May 30, 2011, available at <http://www.gulfcoastclaimsfacility.com/faq#Q7>.

<sup>39</sup> Posting of Jesse Lee to White House Blog, <http://www.whitehouse.gov/blog/> (Jun. 17, 2010 2:35 PM EST).

<sup>40</sup> Barack Obama, President of U.S., Statement by the President After Meeting with BP Executives, (Jun. 16, 2010) available at <http://www.whitehouse.gov/the-press-office/statement-president-after-meeting-with-bp-executives>.

<sup>41</sup> *Id.*

<sup>42</sup> Times Topics, *Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico*, NYT, Apr. 20, 2010, available at [http://topics.nytimes.com/top/reference/timestopics/subjects/o/oil\\_spills/gulf\\_of\\_mexico\\_2010/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/o/oil_spills/gulf_of_mexico_2010/index.html).

charge of the situation. For BP, the settlement provided a measure of certainty with regard to their liability for damages. If the federal government decided to sue under the Oil Pollution Act, and the courts found that the accident was the result of gross negligence, willful misconduct, or violation of federal safety, construction, or operating regulations, then BP would not be protected by any liability limitations and would be exposed to indefinite damage amounts. It also appears that the arrangement has allowed BP to maintain some measure of control over the adjudication of claims.

*Status of the Claims Fund*

It was not long before the shortcomings of the GCCF rose to the surface. There are two issues that stand out as being particularly problematic. First, it appears that the much touted independence of the GCCF was illusory, and that BP may have retained influence over the administration of the Fund. In the second, it appears that the White House, which created the fund, has done very little to ensure the proper administration of claims.

*Concerns the GCCF is Undermining the Rights of Potential Claimants*

There are wide-spread concerns that the GFFC is mismanaging the fund and creating unnecessary confusion among potential claimants in the Gulf States. In the first instance, a Federal judge determined that Mr. Feinberg, as the Head of the BP Claims Fund, was not independent from BP, as was promised by the Obama Administration.<sup>43</sup> This determination was in response to complaints made by attorneys for spill victims who were suing BP. Judge Carl J. Barbier of Federal District Court in New Orleans ruled that Mr. Feinberg is not a “true third-party neutral” because BP pays his salary directly, an arrangement that is governed by a contract. This same contract also includes provisions requiring him to turn over all information to BP at the termination of the fund.<sup>44</sup> Moreover, BP maintains the ability to audit Feinberg Rozen LLP (Mr. Feinberg’s law firm). Finally, the court determined that both the GCCF and Feinberg are in reality serving the interest of BP because at the time a claim is settled, the GCCF requires claimants release and assign all rights or claims against BP and any liable parties.<sup>45</sup> The Court ordered the Fund to fully disclose the relationship between Mr. Feinberg, the GCCF, and BP, in order to make it clear that the GCCF is primarily promoting the interests of BP.<sup>46</sup>

In addition to the above referenced litigation, attorneys general of Louisiana, Mississippi, Alabama, and Florida have asked a federal judge to monitor Mr. Feinberg’s actions to “ensure fair and prompt payment” of claims.<sup>47</sup> Mississippi Attorney General Jim Hood claims that the fund administered by Feinberg has paid only “3 percent of interim business claims and 9 percent of individual interim claims” and that the facility required “unreasonable” documentation and determined that the inability of claimants to provide documentation as a grounds to deny claims.<sup>48</sup> Attorney General Hood also claims that Mr. Feinberg’s claims facility pressures claimants to use the Quick Pay Option.<sup>49</sup> The Quick Pay Option gives individuals \$5,000 and

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Laurel Brubaker Calkins, *Feinberg Says Judge Should Stay Out of BP Oil Spill Claims Fund*, BLOOMBERG, Apr. 13, 2011, available at <http://www.bloomberg.com/news/2011-04-12/feinberg-tells-judge-to-stay-out-of-bp-oil-spill-claims-process.html>.

<sup>48</sup> *Id.*

<sup>49</sup> Holbrook Mohr, *Dispute Heats Up Over BP’s \$20 Billion Oil Spill Fund*, MIAMI HERALD, Apr. 13, 2011.

businesses \$25,000 if they sign a waiver affirming that they will not sue and will not seek more money from the claims facility. Alabama Attorney General Luther Strange reports that almost all of the claims processed for his state, 98.9 percent, used the quick-pay option.<sup>50</sup> Moreover, Strange raises concerns about the transparency of a process that he contends is “frustrating and inadequate.”<sup>51</sup>

The concerns expressed by the attorneys general are echoed by the individuals interviewed by Committee staff. For example, interviews with local officials in Lafourche Parish revealed that many of their constituents complained that the GCCF was pushing claimants to settle their claims quickly and to forfeit future compensation rights.<sup>52</sup> This concern was also raised by a group of Louisiana fishermen, who told Committee staff that the GCCF is just pushing people into the Quick Claim process, which forfeits further legal rights, in order to make it look like they are making progress on settling claims.<sup>53</sup>

Somewhat more alarming is the fact that Mr. Feinberg, who is not independent from BP, has said publically that people filing claims will not need a lawyer.<sup>54</sup> In interviews with Committee staff, Louisiana fishermen spoke of how initially GCCF representatives said they would not need a lawyer to file a claim. These same representatives later reversed themselves and advised the fisherman to get attorneys.<sup>55</sup> The later advice seems to be common sense as many observed that friends who hired attorneys were “getting further through the line”—their claims were being processed faster.<sup>56</sup> In cases where a claimant requested a lawyer, GCCF would refer the claimant to an attorney, but these attorneys were hired by BP.<sup>57</sup> In expressing frustration over this situation, one fisherman wondered “Why do I need to tell them my problem, if my problem is with them?”<sup>58</sup>

There is also a concern that the amounts paid by the Fund are just a fraction of the amounts that claimants are requesting from BP. Alabama’s AG Strange maintains that Mr. Feinberg and the GCCF refuse to provide the requesting attorneys general with information relating to the ratio of claims paid vs. made.<sup>59</sup> In a letter to Mr. Feinberg, AG Strange writes:

Along the lines of transparency, why doesn’t the GCCF release the data that would reflect the ratio of what is being paid versus what is being claimed? Paying

<sup>50</sup> Press Release, Attorney General Luther Strange, Local Officials Deplore Human, Economic Effects of Gulf Coast Oil Spill as Well as Delay in Processing Claims (Mar. 21, 2011) *available at* [http://www.ago.state.al.us/news/03212011\\_134757916.pdf](http://www.ago.state.al.us/news/03212011_134757916.pdf).

<sup>51</sup> *Id.*

<sup>52</sup> Interview with Lafourche Officials, Lafourche Parish (Mar. 24, 2011) [hereinafter INTERVIEW LAFOURCHE OFFICIALS].

<sup>53</sup> Interview with Fishermen, St. Bernard’s Parish (Mar. 24, 2011) [hereinafter INTERVIEW ST. BERNARDS FISHERMEN].

<sup>54</sup> Frederic J. Frommer, *Feinberg Sells Compensation Fund to Spill Victims*, ABC NEWS, Jul. 19, 2010, *available at* <http://abcnews.go.com/Business/wireStory?id=11197009&page=1>.

<sup>55</sup> *Id.*

<sup>56</sup> *See*, INTERVIEW ST. BERNARDS FISHERMEN, *supra* note 53.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Sabrina Canfield, *AGs Claim BP Pass Given to ‘Distort & Subvert,’* COURTHOUSE NEWS SERVICE, April 11, 2011, *available at* <http://www.courthousenews.com/2011/04/11/35663.htm>.

\$3.5 billion when claimed losses are many billions more is hardly a reason to claim success. Providing the complete picture of claims versus payment is essential for an accurate and fair evaluation of the GCCF process.<sup>60</sup>

Jennifer Belsom, an employee of St. Bernard's Parish, explained to Committee staff that she had frequently observed instances where the GCCF requested potential claimants to fill out long forms and produce multiple sources of documentation, only to later determine that the paperwork was not needed. For example, she told the story of a Louisiana bartender who had gathered sixty-four pages of documents attempting to verify her loss. After submitting the paperwork GCCF had instructed her to gather, she was informed that the tips she made in the first quarter of 2010, pre-oil spill, will not be considered as a comparative measure of lost wages post-oil spill.<sup>61</sup> According to one Parish employee, "[GCCF] is a complete and utter joke; it's a pack of lies. It's just stalling—stalling techniques until they'll just give up and just take that Quick Payment."<sup>62</sup>

#### *Oversight of the Fund*

In addition to concerns over the independence of the GCCF, it appears that the claims processing mechanism is not operating in an efficient or predictable manner. Attorney General Strange, of Alabama, has criticized the Obama Administration's lack of oversight over Mr. Feinberg's administration of the GCCF, suggesting that the President "could do a much better job in holding his feet to the fire."<sup>63</sup> The Administration, however, has not given any indication as to whether or not it thinks the GCCF is getting the job done. In fact, when reporters asked White House spokesman Jay Carney the simple question of whether or not the Administration thought that Ken Feinberg was doing a good job, he would not answer the question and merely noted that the Department of Justice has made suggestions to the GCCF about the claims process.<sup>64</sup>

#### *Problems Regarding the Claims Fund*

While a lack of transparency makes it hard to know exactly how well the GCCF fund is actually working, interviews conducted by Committee staff reveal many instances of breakdowns in the claims process.

One of the fundamental problems with the claims process is the unpredictability and inconsistency in the processing of claims. One Lafourche Parish fisherman informed staff that while he and another fisherman filled out very similar claims and had similar incomes, he

<sup>60</sup> Press Release, Attorney General Luther Strange, Local Officials Deplore Human, Economic Effects of Gulf Coast Oil Spill as Well as Delay in Processing Claims (Mar. 21, 2011), *available at* [http://www.ago.state.al.us/news/03212011\\_134757916.pdf](http://www.ago.state.al.us/news/03212011_134757916.pdf).

<sup>61</sup> See, INTERVIEW ST. BERNARDS FISHERMEN, *supra* note 53.

<sup>62</sup> *Id.*

<sup>63</sup> Posting of George Altman to al.com, [http://blog.al.com/live/2011/02/white\\_house\\_wont\\_grade\\_feinber.html](http://blog.al.com/live/2011/02/white_house_wont_grade_feinber.html) (Feb. 24, 2011, 1:06 PM).

<sup>64</sup> Jay Carney, Press Secretary, White House Briefing, (Feb. 23, 2011) *available at* <http://www.whitehouse.gov/the-press-office/2011/02/23/press-briefing-press-secretary-jay-carney-2232011>.

received \$100,000 more.<sup>65</sup> While not complaining, he suspects that the difference is attributable to different officials processing similar claims. This lack of uniformity in claims administration leaves claimants feeling like the decision-making process is arbitrary. Other fishermen complain that the claims process takes too long. One reason for the delay is the fact that after a claim has been filed, it takes 90 days before the GCCF responds, and that if the applicant makes a minor mistake in the application, their claim goes to the back of the line, and starts a new 90 period of GCCF review.<sup>66</sup> Several Louisiana oystermen reported meeting with GCCF officials in October 2010, to request emergency funds to help ensure the productivity of damaged oyster beds. However, they never received a response.<sup>67</sup>

Louisiana business owners interviewed by Committee staff also expressed their frustration with the GCCF, saying that it needs to do more and the federal government needs to make them do it. According to Lori Davis, President of Rig Chem, a small business that services the drilling industry, “It is not anybody else’s fault but BP’s fault...they need to pay for what has happened. The federal government needs to support making that happen in a way that people don’t have to suffer.”<sup>68</sup> She observed that “Feinberg comes down here, he makes his appearances—he flies in, and he flies out. He says what he wants to say, he listens to people complain, he never really does anything.”<sup>69</sup>

#### Treatment of health impacts

One of the more troubling consequences of the President’s choice to operate under the OPA is the impact it has had on the treatment of mental and physical health effects of the oil spill. The Stafford Act would have provided mental health services to those affected by disasters. Section 316 of the Stafford Act authorizes crisis counseling so long as the governor of the affected state requests this relief. Contingent on a Health and Human Services (HHS) review of the state program, the state mental health program receives a grant to identify and treat related mental health effects. Crisis counseling under the Stafford Act usually lasts for a year.<sup>70</sup> In cases of extreme disasters, such as Hurricane Katrina, the Oklahoma City Bombing, and the 9/11 Attacks, all of which invoked the Stafford Act, crisis counseling went on for longer than two years.<sup>71</sup>

In an interview with staff, Dr. Howard Osofsky, the Kathleen and John Bricker Chair and Professor of Psychiatry at Louisiana State University School of Medicine, explained that “the real concern is that there will be a premature pull back...we are not at a point to wind-down.”<sup>72</sup> The BP and Coast Guard implemented funds for mental health services run out in December

<sup>65</sup> Interview with Rodney Dufrene, Lafource Parish fisherman (Mar. 24, 2011).

<sup>66</sup> See, INTERVIEW ST. BERNARDS FISHERMEN, *supra* note 53.

<sup>67</sup> *Id.*

<sup>68</sup> Interview with Lori Davis, President, Rig Chem, (Mar. 24, 2011), [hereinafter LORI DAVIS INTERVIEW].

<sup>69</sup> *Id.*

<sup>70</sup> Interview with Francis McCarthy, Analyst Emergency Management Policy, Congressional Research Service (May 18, 2011).

<sup>71</sup> *Id.*

<sup>72</sup> Interview with Dr. Howard Osofsky, Professor of Psychiatry, Louisiana State University School of Medicine (May 10, 2011) [hereinafter INTERVIEW HOWARD OSOFSKY].

2011.<sup>73</sup> Using the Stafford Act would have allowed the state to make determinations on the length of time necessary to provide funding for mental health relief programs; instead, BP is in control of the money that pays for mental health programs.

Louisiana Parish officials and doctors alike have expressed concern about mental health declines within their communities.<sup>74</sup> Domestic abuse claims have risen since the BP Oil Spill – Plaquemines Parish reports a doubling of claims from before to after the oil spill, and Mayor Stan Wright of Bayou La Batre, Alabama claims domestic abuse complaints have risen 320 percent since the BP Oil Spill.<sup>75</sup> In an interview with Committee staff, Dr. Osofsky, confirmed these reports. Dr. Osofsky also reported increases in instances of depression, anxiety, and posttraumatic stress disorder (PTSD) in patients in the months after the oil spill. Dr. Osofsky attributed these symptoms to the disruption the spill has imposed on the economic, family, and social life of Gulf Coast residents.<sup>76</sup> In addition to mental health effects, Dr. Mike Robichaux, a local doctor practicing in Raceland, LA., has treated oil spill cleanup workers and others experiencing physical health effects that may be related to the spill. He reports that his patients have dizziness, seizures, and extreme stomach pain – ailments that have yet to have a causal determination.<sup>77</sup>

Dr. Osofsky explained that the one constant feeling amongst Gulf residents is fear and uncertainty. From the rising incidents of mental health effects to the physical symptoms experienced by those who worked most closely with the spilled oil and the dispersants, there is a real fear amongst Gulf citizens about the long term impact of the spill. Diagnosis is complicated by the fact that the most frequently reported health complaints could be caused by either physical or mental problems. Therefore it is difficult to determine whether the cause of physical symptoms experienced by cleanup workers are evidence of a larger problem associated with exposure to dangerous chemicals.

Since the Hurricane Katrina disaster, Gulf residents are one of the most studied populations in America regarding the impacts of disasters. In the wake of the BP Oil Spill, the National Institute of Environmental Health Sciences is producing an epidemiological study of the long-term health effects on those who did oil spill cleanup in the Gulf.<sup>78</sup> The National Institute of Health sponsored the study, funded in part by a \$20 million grant made by BP.<sup>79</sup> Long-term epidemiological studies are necessary for understanding the overall impact of the BP Oil Spill on clean-up workers in the Gulf, but immediate action is necessary to determine why people in the Gulf are currently experiencing increased incidence of mental and possibly physical health

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Jacqui Patterson, *Gulf Oil Drilling Disaster: Gendered Layers of Impact*, TRUTHOUT.ORG, <http://www.truth-out.org/gulf-oil-drilling-disaster-gendered-layers-impact/1304696115>; Video: Bayou Mayor: Domestic Violence Up '320%' Since Oil Spill (BBC America) available at [http://news.bbc.co.uk/2/hi/programmes/world\\_news\\_america/8740073.stm](http://news.bbc.co.uk/2/hi/programmes/world_news_america/8740073.stm).

<sup>76</sup> See, INTERVIEW HOWARD OSOFSKY, *supra* note 72.

<sup>77</sup> Interview with Dr. Mike Robichaux, Physician (Apr. 26, 2011).

<sup>78</sup> *The Gulf Long Term Follow-Up Study (GULF STUDY)*, available at <http://nihgulfstudy.org/>.

<sup>79</sup> Interview with Dr. Judy Salerno, Executive Officer of the Institute of Medicine (May 13, 2011).

impacts. Failure to do so will only feed into the fear and uncertainty plaguing the victims of the spill.

### **Administration's Choice: Hasty Re-organization of MMS**

#### Republican Oversight of the Minerals Management Service

Since February of 2006, Committee Republicans have investigated numerous allegations of waste, fraud, and abuse at the hands of the Minerals Management Service (MMS). In the years leading up to the *Deepwater Horizon* disaster, the Committee's oversight efforts demonstrated a substantial need to reform MMS, in particular the collection of offshore royalty revenue, which amounts to nearly \$12 billion in annual income to the federal government. Working in conjunction with GAO and the DOI Inspector General, staff has found that flawed data and collection practices, inadequate accountability procedures, ethical lapses, and outright corruption have led to billions of dollars of lost revenue to the federal treasury over the past ten years. The fact that MMS cannot account for oil and gas production and cannot, therefore, accurately collect royalty revenue, represents a massive breach of a fiduciary duty owed to the American people.

These findings, corroborated by 10 GAO and 10 IG reports, are detailed in an October 7, 2009 staff report issued by then-Ranking Member Issa entitled, *Teapot Dome Revisited: Dereliction of Fiduciary Duty at the Interior Department*. This report also served as the foundation for H.R. 3736, the Minerals Management Service Reform Act, introduced by then-Ranking Member Issa on October 7, 2009. This legislation, sought to divorce MMS from the Interior Department and establish it as an independent agency.

Despite six hearings held by Committee Republicans on the failures within MMS in 2006, as well as repeated requests by then-Ranking Member Issa in 2007, 2008, and 2009, Democrats held no hearings on the troubles facing the agency until after the explosion. As a result, factors that likely contributed to, or at a minimum exacerbated one of the worst environmental and economic disasters in American history escaped rigorous oversight for nearly four years.

#### Obama Administration Failed to Reform the Minerals Management Service

Upon entering office, Secretary Salazar was aware of systematic problems at MMS and indicated an early commitment to initiate meaningful reform at the agency. In January 2009, he told MMS employees that "[w]e will make sure you have the tools you need to hold special interests accountable, to protect taxpayers from getting fleeced, and to ensure that those who develop our natural resources follow the law of the land."<sup>80</sup> Despite this pledge, there is little to suggest what, if anything, the Secretary did over the past year to address the ongoing failures

<sup>80</sup> Ken Salazar, Secretary, Dep't of the Interior, Remarks to Employees at MMS Office in Denver, CO (Jan. 29, 2009) available at, [http://www.doi.gov/news/speeches/2009\\_01\\_29\\_speech.cfm](http://www.doi.gov/news/speeches/2009_01_29_speech.cfm).

within MMS. Even President Obama noted in May 2010 that “there wasn’t sufficient urgency in terms of the pace of how those changes [at MMS] needed to take place.”<sup>81</sup>

This early commitment to reform lost momentum as competing priorities, such as the development of alternative energy resources, monopolized the focus of MMS management. For example, a recently retired MMS official who was responsible for managing all offshore programs noted that the majority of his time was devoted to development of alternative energy programs.<sup>82</sup> Further, in June 2009, Secretary Salazar appointed Elizabeth Birnbaum to serve as Director of MMS. At the time, the Secretary praised her “in-depth knowledge of energy issues, natural resource policy and environmental law as well as her managerial expertise and work in coalition building... [these qualities] will be especially important as we advance President Obama’s new energy frontier and lay the foundation for a clean energy economy.”<sup>83</sup> However, when the accident in the Gulf reignited calls for reform, Ms. Birnbaum, lacking the necessary skill set to respond to the disaster, abruptly resigned from her position. As one supporter pointed out, “she had not been ordered to clean house at the scandal stained agency, but to promote renewable energy.”<sup>84</sup>

#### The Choice: Secretary Salazar’s Misguided Attempt to Reform the Minerals Management Service

In the wake of the April 20, 2010, accident aboard the *Deepwater Horizon*, the acute public scrutiny of MMS – and its historic shortcomings – drove Secretary Salazar to launch a hasty and massive reorganization of the United States’ offshore oil and gas operations. In a May 11, 2010, announcement, Secretary Salazar renewed calls to reorganize MMS operations, emphasizing the need to establish an independent safety and enforcement function.<sup>85</sup> Two days later, on May 13, 2010, he tasked two political appointees – both with just approximately one year of experience at DOI – to build on his May 11, 2010, announcement and develop and oversee a plan to restructure MMS.<sup>86</sup> It took just under one week for this handful of political appointees to evaluate and recommend a complete restructuring of offshore oil and gas management. On May 19, 2010, Secretary Salazar issued Secretarial Order 3299, eliminating MMS and transferring offshore oversight responsibilities to the established Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) and revenue collection to a new Office of Natural Resources Revenue. BOEMRE is further divided into the Bureau of Ocean

<sup>81</sup> President Barack Obama, Remarks by the President to the Nation on the BP Oil Spill (May 27, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill>.

<sup>82</sup> Interview with Chris Oynes, Former Associate Director of OMM, Department of the Interior, in Washington, DC (July 13, 2010).

<sup>83</sup> News Release, Secretary Ken Salazar, Department of the Interior, *Secretary Salazar Names Liz Birnbaum Director of the Minerals Management Service*, June 25, 2009, available at [http://www.doi.gov/news/pressreleases/2009\\_06\\_25\\_release.cfm](http://www.doi.gov/news/pressreleases/2009_06_25_release.cfm).

<sup>84</sup> Mike Soraghan, *Interior: Birnbaum’s Game of Telephone Ends in Firing*, ENERGY AND ENVIRONMENT DAILY, (May 28, 2010), available at <http://www.eenews.net/public/EEDaily/2010/05/28/2>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE).<sup>87</sup>

In interviews with Committee staff, political appointees from DOI charged with restructuring MMS professed that the only impetus for the reorganization was the April 20, 2010 accident on the *Deepwater Horizon*.<sup>88</sup> Additionally, they stated that the public perception of an ongoing conflict of interest at MMS played an important role in their decision to split the agency into three entities.<sup>89</sup> Only after the Secretary announced the new agency structure did DOI begin to assess how they would implement the reorganization, including, for the first time, outreach to current MMS employees. Even then, those who were afforded an opportunity to meet with the DOI team after the initial announcement noted that their meetings were limited to about one hour and they remained uncertain whether their concerns would be addressed.<sup>90</sup>

### The Consequences

The massive reorganization of the MMS at a time when the agency is facing significant challenges associated with the cause of the BP oil spill, as well as chronic management challenges, may have created more problems than it solved. According to the Government Accountability Office (GAO):

Interior may lack the resources and skills it needs to simultaneously address significant changes in its practice and effectively meet routine responsibilities while reorganizing the agency responsible for offshore oil and gas activities.<sup>91</sup>

Accordingly, GAO designated Management of Federal Oil and Gas Resources, including production and revenue collection, as high risk because of “(1) shortcomings with Interior’s revenue collection policies. (2) weaknesses in Interior’s human capital management, and (3) inherent challenges Interior faces in reorganizing its offshore and revenue collection functions.”<sup>92</sup> (emphasis added)

In interviews with Committee staff, career MMS officials from across the country also raised concerns that this hastily conceived reorganization placed political expediency over meaningful reform. These employees specifically cautioned that splitting MMS into three separate entities, a decision made in Washington without substantial input from current MMS

<sup>87</sup> Ken Salazar, Secretary, Department of the Interior, ORDER NO. 3299, Establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resource Revenue (May 19, 2010).

<sup>88</sup> Interview with Chris Henderson and Rhea Suh, Department of the Interior (July 15, 2010).

<sup>89</sup> *Id.*

<sup>90</sup> Interview with Lars Herbst, MMS Regional Director, Robert, in Louisiana (Jun. 16, 2010); Interview with John Goll, MMS Regional Director – Alaska, Telephone Interview from Washington, D.C. (Jul. 12, 2010); Interview with Chris Oynes, Former Associate Director of OMM, MMS, Department of the Interior, in Washington, DC (Jul. 13, 2010); and Interview with Ellen Aronson, MMS Regional Director – Pacific, Telephone Interview from Washington, D.C. (Jul. 14, 2010).

<sup>91</sup> Government Accountability Office, *Why It’s High Risk*, available at [http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management\\_federal\\_oil\\_gas.php](http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management_federal_oil_gas.php).

<sup>92</sup> *Id.*

officials, lacked an adequate understanding or appreciation of the daily operations and challenges of MMS.<sup>93</sup> As a result, officials warned that the proposed reorganization will not address the chronic failures that have plagued MMS, but it may have the unintended consequence of hampering the agency's ability to fulfill its responsibilities.<sup>94</sup> This concern is echoed by GAO who reported that:

GAO and others – including the Department of the Interior's Office of the Inspector General and Interior's Royalty Policy Committee – have identified significant problems with Interior's management of federal oil and gas resources, which provide an important source of energy for the United States, create jobs in oil and gas industry, and generate billions of dollars annually in revenues.... These [failures] include human capital and other challenges that jeopardize Interior's management of federal oil and gas resources.

As of December 2010, many recommendations remain unimplemented and ongoing GAO work and other studies will likely identify additional challenges and recommendations. Interior will be challenged to successfully implement existing and future recommendations and undertake a major reorganization....<sup>95</sup> (emphasis added)

In order to execute this messy divorce between BOEM and BSEE, BOEMRE hired a high-priced consulting firm – McKinsey & Company – for the price of \$7.9 million to advise the agency on how to proceed.<sup>96</sup> According to an interview with Tommy Beaudreau, Senior Advisor to Director Bromwich, and a former Bromwich law partner, BOEMRE will spend every penny of that amount to complete the transition.<sup>97</sup> In exchange for nearly \$8 million, McKinsey will: (1) develop the implementation plan and assessment of the organizational effectiveness of the Office of Natural Resource Revenue; (2) develop a concept of operations for BOEM and BSEE (3) implement a plan for BOEM and BSEE; and (4) execute the implementation plan for all three offices.<sup>98</sup> According to Mr. Beaudreau, McKinsey was also paid to review the effectiveness and wisdom of executing Secretary Salazar's May 19, 2010, Order 3299, to split MMS into three operational divisions.<sup>99</sup> In other words, Secretary Salazar ordered the division of MMS in great haste without consulting the appropriate experts, and it was left to Administrator Bromwich to ask questions later.

<sup>93</sup> Interview with MMS District and Regional Office Employees – Gulf of Mexico, Louisiana, (Jun. 15- 16, 2010); Interview with John Goll, MMS Regional Director – Alaska, Telephone Interview from Washington, D.C. (Jul. 12, 2010); Interview with Chris Oynes, Former Associate Director of OMM, MMS, Department of the Interior, Washington, DC (Jul. 13, 2010); and Interview with Ellen Aronson, MMS Regional Director – Pacific, Telephone Interview from Washington, DC (Jul. 14, 2010).

<sup>94</sup> *Id.*

<sup>95</sup> Government Accountability Office, *Why It's High Risk*, available at [http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management\\_federal\\_oil\\_gas.php](http://www.gao.gov/highrisk/risks/efficiency-effectiveness/management_federal_oil_gas.php).

<sup>96</sup> BOEMRE Task order/Contract with McKinsey (Aug. 13, 2010).

<sup>97</sup> Interview with Tommy Beaudreau, Senior Advisor to Director Bromwich, BOEMRE (May 19, 2011) [hereinafter TOMMY BEAUDREAU INTERVIEW].

<sup>98</sup> BOEMRE Request for Quote # M10PS00217, *MMS Reorganization Support Services* (June 3, 2011).

<sup>99</sup> See, TOMMY BEAUDREAU INTERVIEW, *supra* note 97.

Had Secretary Salazar consulted with career employees before making his decision, he would have learned that the proposed reorganization, which splits the functions of the Offshore Energy and Minerals Management (OEMM) into two separate entities - BOEM and BSEE - was problematic. As a result of this rushed division, certain functions, such as pre- and post - lease environmental compliance review, would be separated. When interviewed by Committee staff, career employees stated that the effective execution of these responsibilities depends on their ability to work and communicate seamlessly and that these new layers of bureaucracy could hinder their ability to effectively operate.<sup>100</sup>

Employees also noted that opting for wholesale change without a careful assessment of the operational realities not only ignores underlying challenges, but it can also hinder existing responsibilities – a concern echoed by GAO. Responding to then-Ranking Member Issa’s question as to whether the reorganization inherently delays the agency from making necessary changes that need to be made, Frank Rusco, Director of Natural Resources and the Environment at GAO, responded that “organizational change is difficult and disruptive and takes a lot of the agency’s resources. At the same time the agency is trying to respond to the oil crisis and do the work needed to lift the moratorium and it still has a backlog of recommendations to deal with. It is a concern.”<sup>101</sup> Indeed, according to senior DOI staff, many of the critical reforms GAO and others have recommended will not be implemented until sometime in 2011, after the restructuring is complete.<sup>102</sup>

MMS officials also stated that the proposal would require a large influx of new employees, presenting significant human resource challenges.<sup>103</sup> For example, Secretary Salazar has expressed his desire to hire hundreds of new inspectors. However, recruitment and retention efforts are already extremely challenging, and are particularly difficult for inspectors. Qualified candidates - many of whom come from industry<sup>104</sup> - must agree to take up to a 50% pay cut to join the agency; and once hired require up to two years of training depending on their background. These are just a few of the many issues raised by MMS employees, highlighting the challenges presented by DOI’s hurried top-down approach to reforming the agency.

In addition to its hasty and haphazard reorganization of MMS, which ignored concerns raised by GAO, the DOI IG and others, DOI also moved forward without understanding the role the agency played in creating the circumstances which contributed to the accident. At the time the reorganization was announced, there were at least five separate official investigations and/or studies related to offshore oil and gas operations in the United States – many of which were launched in response to the incident.<sup>105</sup> Even so, Secretary Salazar and DOI pushed an

<sup>100</sup> *Id.*

<sup>101</sup> *Offshore Drilling: Will Interior’s Reforms Change Its History of Failed Oversight? H. Comm on Oversight and Gov’t Ref.*, 111<sup>th</sup> Cong. (2010) (statement of Frank Rusco, Director, Natural Resources and the Environment, GAO).

<sup>102</sup> Interview with Chris Henderson and Rhea Suh, Department of the Interior, Washington, DC (July 15, 2010).

<sup>103</sup> *Id.*

<sup>104</sup> MMS officials were adamant that presently, working for the oil and gas industry is the only place where potential candidates can gain the experience necessary for certain functions, especially inspections.

<sup>105</sup> See e.g., The National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling; BP’s Deepwater Horizon Accident Investigation Report; The U.S. Coast Guard Deepwater Horizon Joint Investigation Team.

aggressive top-down approach to reforming MMS at the worst possible time—in the middle of a crisis and before obtaining key facts about what actually caused of the incident.

#### **Administration's Choice: Moratorium in the Gulf**

In the aftermath of the explosion aboard the *Deepwater Horizon*, Department of Interior Secretary Ken Salazar twice ordered a six month moratorium on deepwater drilling in U.S. waters. The Secretary's orders effectively banned much of the economic activity that sustains the Gulf states, particularly Louisiana. At that time, many residents of Louisiana expressed their fear that the moratorium had the potential to inflict more pain on the region than the spill itself, and it was imposed over the vehement objections of local leaders and their constituents.<sup>106</sup> Moreover, the Department of Interior executed this sweeping decision without making any effort to consult with safety experts on the wisdom of imposing an outright ban on all drilling activity in the Gulf, and without conducting a thorough economic analysis of the impact a moratorium would have on the local or national economy prior to making the decision.<sup>107</sup> However, despite DOI's failure to conduct a comprehensive cost benefit analysis, internal documents obtained by the Committee, reveal that Secretary Salazar did understand the potential blow that he moratorium could be to the region. In a memorandum authored by Secretary Salazar to Director Bromwich stated:

In reaching this decision [the moratorium], I am aware that the suspension of deepwater drilling over the next few months will have a serious, negative impact on rig workers and those who support them. I am also aware that, as a general matter, the safety record for deepwater drilling has been good.<sup>108</sup>

Moreover, Secretary Salazar and Director Bromwich were on notice that the moratorium could increase oil prices in the short term by \$.47 a barrel and decrease GDP in 2010 by \$10.2 billion (.070 percent of the total), and \$3.3 billion in 2011 (.02 percent of the total).<sup>109</sup>

#### First Moratorium

On June 15, 2010, President Obama announced a far reaching six-month moratorium on nearly all drilling in the Gulf.<sup>110</sup> The moratorium applied to new drilling in water depths greater than 500 feet, and suspended drilling on 33 wells currently under construction.<sup>111</sup> The President's action was recommended by Secretary Salazar, in a May 27, 2010, report entitled,

<sup>106</sup> RANKING MEMBER DARRELL ISSA, OVERSIGHT & GOV'T REFORM COMM., *How the White House Public Relations Campaign on the Oil Spill is Harming the Actual Cleanup*, Dec. 14, 2010, available at [http://oversight.house.gov/images/stories/Reports/7-1-10\\_OGR\\_Report\\_-How\\_the\\_White\\_House\\_Public\\_Relations\\_Campaign\\_on\\_the\\_Oil\\_Spill\\_is\\_Harming\\_the\\_Actual\\_Clean-up.pdf](http://oversight.house.gov/images/stories/Reports/7-1-10_OGR_Report_-How_the_White_House_Public_Relations_Campaign_on_the_Oil_Spill_is_Harming_the_Actual_Clean-up.pdf).

<sup>107</sup> *The Economic Effects of the Offshore Drilling Moratorium: S. Comm. on Small Business*, 111<sup>th</sup> Cong. (2010) (statement of the Honorable Rebecca M. Blank, Under Secretary for U.S. Economic Affairs, Department of Commerce).

<sup>108</sup> Memorandum to Michael R. Bromwich, Director of BOEMRE, from Secretary Ken Salazar DOI Jul. 12, 2010.

<sup>109</sup> MMS Economic Impact Assessment Jun. 10, 2010.

<sup>110</sup> President Barack Obama, Remarks by the President to the Nation on the BP Oil Spill (June 15, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill>.

<sup>111</sup> Memorandum from Upstream Insight on Moratorium Halts US Deepwater Drilling For Six Months (June 3, 2010).

“Increased Safety Measures for Energy Development on the Outer Continental Shelf.”<sup>112</sup> According to a report issued by the Inspector General for the Department of Interior, the Secretary’s recommendation to impose a moratorium was not peer reviewed and was not supported by the scientists and industry experts who had otherwise been cooperating with the Administration.<sup>113</sup>

The moratorium was immediately challenged by providers of support services to offshore oil and gas operations, who argued the decision to impose a moratorium was arbitrary and capricious.<sup>114</sup> On June 22, 2010, a federal court ruled that the plaintiffs were likely to succeed on their claim and preliminarily enjoined enforcement of the suspension.<sup>115</sup> This decision was affirmed by the 5<sup>th</sup> Circuit Court of Appeals.<sup>116</sup>

In the order blocking the Department of Interior from enforcing the moratorium, Judge Martin Feldman specifically cited his belief that the Department actively sought to distort the opinions and advice of “five of the National Academy experts and three of the other experts,” which publically stated that they do not agree with the six month moratorium on drilling, because the moratorium actually increases risk of an oil spill once drilling is resumed.<sup>117</sup> Moreover, the Judge pointed to the adverse economic impact of a broad based moratorium, stating that:

“It is only a matter of time before more business and jobs and livelihoods will be lost. The defendants trivialize such losses by characterizing them as merely a small percentage of the drilling rigs affected, but it does not follow that this will somehow reduce the convincing harm suffered. The effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the plaintiffs (and other suppliers, and the rigs themselves) lose business and the movement of the rigs to other sites around the world will clearly ripple throughout the economy in this region.”<sup>118</sup>

Even senior career officials at MMS disagreed with a blanket six month moratorium scheme on drilling. In an email obtained by the Committee, William Hauser, Chief, Branch of Regulations and Standards, expressed his frustration with the moratorium stating, “The more I write this stuff the more I believe we can/should/could regulate/stop activities through a prudent management process versus a moratoria scheme.”<sup>119</sup>

### Second Moratorium

<sup>112</sup> DEPT. OF INTERIOR, *Increased Safety Measures for Energy Development on the Outer Continental Shelf*, May 27, 2010, available at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598>.

<sup>113</sup> OFFICE OF THE INSPECTOR GENERAL, DEPT. OF INTERIOR, *Federal Moratorium on Deepwater Drilling*, May 27, 2010, available at <http://www.doi.ig.gov/images/stories/reports/pdf/DeepwaterMoratoriumPublic.pdf>.

<sup>114</sup> *Hornbeck Offshore Servs., L.L.C. v. Salazar*, No. 10-1663 (E.D.La, 2010).

<sup>115</sup> *Id.*

<sup>116</sup> *Hornbeck Offshore Servs., L.L.C. v. Salazar*, No. 10-30585 (5<sup>th</sup> Cir., 2011).

<sup>117</sup> *Hornbeck Offshore Servs., L.L.C. v. Salazar*, No. 10-1663 (E.D.La, 2010).

<sup>118</sup> *Id.* at 22.

<sup>119</sup> W. Hauser, Chief of Regulations and Standards, MMS (email, date redacted).

Despite the judicial decision to invalidate the original moratorium, Secretary Salazar announced a nearly identical moratorium on July 12, 2010.<sup>120</sup> Billed as “a temporary pause on deepwater drilling to provide time to implement safety reforms,”<sup>121</sup> the second moratorium appears to merely be a post hoc rationalization of the original moratorium. The new moratorium did nothing to address the economic concerns of the community or the safety concerns raised by experts. In fact, a *New York Times* editorial stated that the second ban is “as strong as the first ban.”<sup>122</sup> According to Dan Juneau, President of the Louisiana Association of Business and Industry:

“[The new moratorium] seems to be geared toward rigs with blowout preventers which everyone in the deep waters have and many in the shallow waters do as well. It is a reaffirmation that the Obama administration is going to keep things shut down, in spite of the 5<sup>th</sup> Circuit’s ruling.”<sup>123</sup>

It appears that the economic impact of the moratorium was never a significant factor considered by the Administration prior to imposing the moratorium. In a decision memorandum authored by BOEMRE Director Michael Bromwich to Secretary Salazar, it states that “economic effects may be considered in determining the scope of any suspension of drilling activity.”<sup>124</sup> However, according to testimony of Rebecca M. Blank, Under Secretary for U.S. Economic Affairs at the Department of Commerce, the Administration never once conducted a study of the economic impact the moratorium would have on the Gulf Coast economy and on oil production before instituting the moratorium.<sup>125</sup>

Former Senator Bob Graham and William K. Reilly, who were appointed to head the President’s Commission to investigate the BP oil spill, have expressed criticism over the nature and duration of the moratorium. After hearing testimony from a variety of local officials, Mr. Reilly stated that, “It’s not clear to me why it should take so long.”<sup>126</sup> Former Senator Graham echoed these concerns, reportedly saying that the moratorium was a burden on the economic life of the Gulf Coast.<sup>127</sup> He said the federal government has had nearly three months to inspect the rigs in the Gulf and wondered why it was taking so long to determine whether they can safely restart operations.<sup>128</sup>

<sup>120</sup> David Jackson, *Obama Team Lifts Gulf Coast Oil Drilling Moratorium*, USATODAY, Oct. 13, 2010.

<sup>121</sup> Press Release, Department of the Interior, Sec. Salazar Issues New Suspensions to Guide Safe Pause on Deepwater Drilling (July 12, 2010) (available at <http://www.doi.gov/news/doinews/Secretary-Salazar-Issues-New-Suspensions-to-Guide-Safe-Pause-on-Deepwater-Drilling.cfm>).

<sup>122</sup> Editorial, *A New, and Necessary, Moratorium*, NY TIMES, July 13, 2010, available at <http://www.nytimes.com/2010/07/14/opinion/14wed1.html>.

<sup>123</sup> Email from Dan Juneau, President, La Assoc. of Bus. & Indus. to Committee Staff (July 15, 2010).

<sup>124</sup> Memorandum from Director Bromwich on Options Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Continental Shelf (July 10, 2010).

<sup>125</sup> *The Economic Effects of the Offshore Drilling Moratorium*, S. Comm. On Small Business, 111<sup>th</sup> Cong (2010) (testimony of the Honorable Rebecca M. Blank, Under Secretary for U.S. Economic Affairs, Department of Commerce).

<sup>126</sup> John M. Broder, *Offshore Drilling: To Pause or Not to Pause*, NYTIMES, July 13, 2010, available at <http://green.blogs.nytimes.com/2010/07/13/offshore-drilling-to-pause-or-not-to-pause/>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

### The Peritorium

Secretary Salazar announced the end of the moratorium on October 13, 2010. According to many in the industry, this declaration provided little relief. The moratorium in the Gulf of Mexico was replaced by a “peritorium” – whereby drilling activity remained at a standstill not by operation of law – but because of inaction on the part of BOEMRE. Prior to the disaster, Mineral Management Service (MMS) processed and issued permits to drill in two weeks, on average.<sup>129</sup> However, not a single deepwater permit was issued by BOEMRE until U.S. District Judge Martin Feldman ordered the agency to take action on five permits by March 19, 2011, and by March 31 on two additional permits.<sup>130</sup>

On February 28, 2011, BOEMRE finally issued the first deepwater drilling permit since the explosion aboard the *Deepwater Horizon*.<sup>131</sup> The permit was issued to Noble Energy, and allows them to resume drilling they had started before April 20, 2010. Specifically, the permit allows Noble Energy to drill a by-pass well in Mississippi Canyon Block 519, approximately 70 miles south east of Venice, La. An operator drills a bypass well in order to drill around a mechanical problem in the original hole to the original target from the existing wellbore. In this case, Noble Energy will be drilling around the plugs set in the original well when drilling was suspended in order to complete the long delayed project.

Since February, BOEMRE has approved 15 additional deepwater permits – 13 of which simply allow operations to resume on a previously approved well. Only one permit has been issued for a well that had not been previously approved.<sup>132</sup> On May 10, 2011, Judge Feldman issued an additional order requiring BOEMRE to act on six additional applications within 30 days. In his decision Judge Feldman determined that, “the government has presented no credible assurances that the permitting process will return to one marked by predictability and certainty.”<sup>133</sup> (emphasis added) He went on to say that “Processing a scant few applications is at best a tactical ploy in a real world setting.”<sup>134</sup> Moreover, it has severe implications for the future productivity of the region. It generally takes five to ten years once a permit is issued to bring the oil to market.<sup>135</sup> According to internal BOEMRE documents obtained by the Committee, 100 new wells would have been drilled by December 10, 2010 but for the moratorium.<sup>136</sup>

<sup>129</sup> Laurel Brubaker Calkins & Allen Johnson Jr., *U.S. Appeals for Delay in 30-Day Order on Drill Permits*, BLOOMBERG BUSINESS WEEK, Mar. 10, 2011, available at <http://www.bloomberg.com/news/2011-03-10/u-s-asks-appeals-court-to-delay-30-day-order-on-drill-permits.html>.

<sup>130</sup> *Enesco Offshore Co. v. Salazar*, 2011 WL 692029 (E.D. La. 2011).

<sup>131</sup> Press Release, Bureau of Ocean Energy Management, Regulation and Enforcement, BOEMRE Approves First Deepwater Drilling Permit To Meet Important New Safety Standards in Gulf of Mexico (Feb. 28, 2011) (available at <http://www.boemre.gov/oc/press/2011/press0228.htm>).

<sup>132</sup> Status of Drilling Permits & Plans Subject to Enhanced Safety and Environmental Requirements in the Gulf of Mexico, Bureau of Ocean Energy Management, Regulation and Enforcement (last visited May 19, 2011), available at [http://www.gomr.boemre.gov/homepg/offshore/safety/well\\_permits.html](http://www.gomr.boemre.gov/homepg/offshore/safety/well_permits.html).

<sup>133</sup> *Enesco Offshore Co. v. Salazar*, 2011 WL 692029 (E.D. La. 2011).

<sup>134</sup> *Id.*

<sup>135</sup> Ayesha Rascoe, *U.S. Set to 'Reopen' Offshore Drilling Sector*, NATIONAL POST, Mar. 3, 2011, available at <http://www.nationalpost.com/todays-paper/setto+reopen+offshore+drilling+sector/4375547/story.html>.

<sup>136</sup> Minerals Management Service Economic Impact Assessment June 10, 2010.

In addition to the immediate impact on the residents of the Gulf Coast, the year long pause in drilling operations will also mean a decline in domestic output of crude oil.<sup>137</sup> Deep-water drilling in the Gulf accounts for about 1.25 million barrels of oil a day – or about one-quarter of America's domestic crude oil production. The Gulf contribution is expected to drop by about 250,000 barrels a day over the next few years according to the U.S. Energy Information Administration.<sup>138</sup> According to an internal MMS memorandum, the future outlook for production is even dimmer. Mary Katherine Ishee, Deputy Director of BOEMRE, stated that:

Once the Moratorium is lifted, drilling, construction, and production schedules will have to be renegotiated and there will be backlog of work, so drilling, construction and production may not resume at all of the halted locations simultaneously. This will slow re-hiring of previous workers, and make the economic recovery lesser rapid.<sup>139</sup>

#### Regulations Following the Spill

While the moratorium was wreaking economic havoc across Gulf Coast communities, BOEMRE was busy drafting new rules and regulations that were ostensibly designed to enhance the safety of future drilling operations. After the *Deepwater Horizon* disaster, it is clear that a new, safer system is necessary for drilling in the Gulf of Mexico; however, the focus of any regulatory changes must be on *continuing* safe drilling. A regulatory system that merely places roadblocks in the way of new exploration will only prolong the economic pain first imposed by the illegal moratorium. Yet, many of the latest regulations promulgated by BOEMRE are not designed to get the industry back up and running again. Rather, it appears they have created, and will continue to create, a significant amount of uncertainty and confusion within the offshore oil and gas community.

New regulations promulgated by BOEMRE are some of the most aggressive changes to offshore oil and gas production in U.S. history. These rules range from new regulations covering safety, oversight, and environmental protection to permitting, drilling, and development processes for oil and gas operations. In some cases, these new regulations apply to both offshore operations themselves, as well as the businesses that supply offshore rigs, many of which are small businesses. The regulated community as well as state officials has raised concerns about the feasibility and practicality of these new regulations.

#### *Archaeological Requirements on Operators*

One of the most perplexing regulations promulgated by BOEMRE is the requirement that operators perform an Archaeological Assessment Report as part of National Environmental

<sup>137</sup> Mark Guarino, *On Gulf Coast, nail-biting over future of domestic oil drilling*, CHRISTIAN SCIENCE MONITOR, Jan. 11, 2011, available at <http://www.csmonitor.com/USA/2011/0111/On-Gulf-Coast-nail-biting-over-future-of-domestic-oil-drilling>.

<sup>138</sup> The US Energy Information Administration, *Short-Term Energy Outlook*, March 8, 2011, available at <http://www.eia.gov/emeu/steo/pub/contents.html>

<sup>139</sup> Information Memorandum from Mary Katherine Ishee, Deputy Director, BOEMRE to Wilma A. Lewis Assistant Secretary Land and Minerals Management Jun. 21, 2010.

Policy Act (NEPA) analysis and in conjunction with the National Historic Preservation Act.<sup>140</sup> Under this new rule, any new applicant to drill will have to demonstrate that their proposed activity will not harm shipwrecks or other archaeological resources.<sup>141</sup>

The application of this rule requires that operators literally become underwater archaeologists, entering a field where they have little experience. Operators must conduct ocean floor analyses with specialized equipment to determine if certain spotted anomalies are actually shipwrecks with the potential to be impacted by exploration or drilling.<sup>142</sup> Furthermore, operators will be required to employ an underwater archaeologist to assist in the analysis of this data and to provide BOEMRE with survey data. When operators asked about how to implement this new rule; and more specifically, if operators would need to hire an underwater archaeologist, BOEMRE representatives responded affirmatively that they would have to bring a marine archeologist on staff.<sup>143</sup> The archaeological assessment requirements are a prime example of the seemingly absurd and capricious nature of the new regulations placed on offshore drilling operations.

#### *SEMS*

Many small businesses are concerned with the implementation of Safety and Environmental Management System (“SEMS”) Workplace Rules. BOEMRE points out in its Workplace Safety Rule Fact Sheet that many large operators have already established SEMS programs; however, it does not mention the smaller operators or those businesses who work closely with operators. Small businesses that have contacts with operators’ rigs will also be required to establish their own SEMS programs at the request of the large operators.<sup>144</sup> Small businesses are not situated to perform the same level of SEMS analysis that large-multinational corporations can. Accordingly, many of these small businesses that service large operators may be forced out of business if they cannot implement a SEMS program.<sup>145</sup> BOEMRE has not addressed the concerns of small business owners who work closely with large operators on the SEMS issue.

Committee staff interviewed Lori Davis, President of RigChem and Cori Kief, President of Offshore Towing, Inc. on March 24, 2011. Ms. Davis is a small business owner of a specialty chemical business, who at the time of the interview already had to downsize her business as a result of the BP Oil Spill and the subsequent moratorium on drilling.<sup>146</sup> According to Ms. Davis, new SEMS regulations may seriously jeopardize the ability of small businesses, like her own, to

<sup>140</sup> Bureau of Ocean Energy Management, Regulation and Enforcement, *Gulf of Mexico Archaeological Information*, (last visited May 20, 2011), available at <http://www.gomr.boemre.gov/homepg/regulate/environ/archaeological/introduction.html>.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Bureau of Ocean Energy Management, Regulation and Enforcement Industry Workshop (March 23, 2011).

<sup>144</sup> Bureau of Ocean Energy Management, Regulation and Enforcement, *The Workplace Safety Rule on Safety and Environmental Management Systems (SEMS)*, (last visited May 30, 2011) available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45791> [hereinafter BOEMRE WORKPLACE SAFETY].

<sup>145</sup> See, LORI DAVIS INTERVIEW, *supra* note 68.

<sup>146</sup> *Id.*

sustain themselves because they simply cannot afford to keep up with all the change. Moreover, she is not sure that she can complete the SEMS program as quickly as necessary to comply with the new mandate, passed down from large operators. Cory Kief informed Committee staff that while his company has already obtained a similar safety certification, it took his company five years to complete the International Organization of Standards and the International Safety Management Code (ISO/ISM) process.<sup>147</sup> In addition, the SEMS program requires the employment of workers who can undergo the training and are willing to have the mentality and attitudes to implement it.<sup>148</sup> Unfortunately for Lori, she has already lost over 70 percent of her business as a result of the moratorium and finds it hard to hire technical and skilled employees.<sup>149</sup> Regulations such as the SEMS program may leave many small businesses with little choice but to shutter their business.

*“Should-to-Must” Requirements*

The new Workplace Safety Rule is another BOEMRE regulation intended to improve safety practices for offshore drilling operations. Unfortunately, its implementation has proven to be challenging in practice. The thrust of the Workplace Safety Rule is to make mandatory the practices in the American Petroleum Institute’s (API) Recommended Practice 75 (API RP 75).<sup>150</sup> The API RP 75 is a collection of best practices designed to improve the safety of a wide variety of operations and the specific recommendations vary depending on the type of operation. They were not designed to be mandatory directives, and certainly not designed to be executed all at once. These facts were lost on BOEMRE as the agency changed all “should” best practice recommendations to “must.”

Failing to understand the purpose of the API guidelines, BOEMRE chose to implement the “should-to-must” requirement through a direct final rule.<sup>151</sup> By issuing mandate as a “direct final rule” BOEMRE skipped the normal process of notice and comment, where presumably the agency would have been notified of its error.

After the private sector and the affected Gulf states voiced strong objections based on the infeasibility of the rules, BOEMRE published a guidance document entitled “Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility (Should-to-Must Guidance),” with the goal of ameliorating fear caused by the careless “should-to-must” direct final rule.<sup>152</sup> In the Should-to-Must Guidance, BOEMRE acknowledged industry’s argument that the incorporation of the API documents required that any “should” is to be interpreted as “must” for

<sup>147</sup> Interview with Cory Kief, President, Offshore Towing, (Mar. 24, 2011), [hereinafter CORI KIEF INTERVIEW].

<sup>148</sup> *Id.*

<sup>149</sup> LORI DAVIS INTERVIEW *supra* note 68.

<sup>150</sup> *Id.*

<sup>151</sup> Bureau of Ocean Energy, Management, Regulation and Enforcement, *Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility*, (last visited May 20, 2011), available at <http://www.boemre.gov/ooc/pdfs/DeepwaterGuidanceSupplement.pdf> [hereinafter BOEMRE APPROVAL REPORT].

<sup>152</sup> “Oil and Gas and Sulphur Operations in the Outer Continental Shelf – Increased Safety Measures for Energy Development on the Outer Continental Shelf,” part III, Final Rule, Federal Register 75:198 (October 14, 2010) p. 63351.

purposes of the Code of Federal Regulations.<sup>153</sup> Accordingly, BOEMRE conceded that some degree of flexibility is important for the feasible and practical implementation of the API incorporated documents. To this end, BOEMRE is now willing to consider, based on agency approval, other practices that may accomplish similar goals as those contained in the API document.<sup>154</sup>

While this report acknowledges BOEMRE efforts to clarify operators' obligations, it appears that a significant amount of uncertainty remains regarding the "should- to-must" regulations. The guidance document may not go far enough in relieving the uncertainty of the direct final rule. Due to the vague nature of the guidance document, the drilling community's uncertainty is augmented because of concerns about whether BOEMRE will actually back-off the "should-to-must" requirement or if these issues will linger on as industry attempts to follow still ambiguous guidance.<sup>155</sup>

#### NEPA

On August 16, 2010, Michael R. Bromwich, Director of BOEMRE, ordered a full review of the agency's use of "categorical exclusions" under the National Environmental Policy Act (NEPA).<sup>156</sup> The result of this review was a decision to limit the use of categorical exclusions for deepwater drilling projects. A categorical exclusion is a NEPA designation that is in essence a "previously determined" finding that there is no environmental impact from a proposed action.<sup>157</sup> Upon receiving a categorical exclusion, an operator is relieved from the obligation of performing additional environmental review such as an environmental assessment or an environmental impact statement, both of which require time-consuming analysis and subject the project to legal challenge. MMS had frequently relied on this exception when issuing exploratory permits. However, for the remaining permitting steps, MMS typically required operators to perform either environmental assessments or environmental impact statements.<sup>158</sup>

BOEMRE now requires that each new exploration plan approval undergo a well-by-well environmental review, which effectively curtails the long standing bi-partisan support of categorical exclusions. Louisiana Secretary of the Department of Natural Resources Scott Angelle, who at the time of the BP Oil Spill was acting Lieutenant Governor, noted that this well-by-well environmental assessment as required by BOEMRE is one of the biggest issues facing the return of the oil and gas industry because it draws out the permitting process and is unnecessarily repetitive, since a robust Environmental Impact Statement (EIS) is conducted by the federal government, prior to a lease sale, of which said EIS's contemplate this type of

<sup>153</sup> See, BOEMRE APPROVAL REPORT, *supra* note 150.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Press Release, Dept. of Interior, *Categorical Exclusions for Gulf Offshore Activity to be Limited While Interior Reviews NEPA Process and Develops Revised Policy*, (Aug. 16, 2010) (available at <http://www.doi.gov/news/doinews/Categorical-Exclusions-for-Gulf-Offshore-Activity-to-be-Limited-While-Interior-Reviews-NEPA-Process-and-Develops-Revised-Policy.cfm>).

<sup>157</sup> Kristina Alexander, *The 2010 Oil Spill: MMS/BOEMRE and NEPA*, CRS Report, Mar. 2, 2011, available at <http://www.fas.org/sgp/crs/misc/R41265.pdf>.

<sup>158</sup> *Id.*

exploration activity.<sup>159</sup> Secretary Angelle maintains that the effect of the new environmental process on leasing and drilling could slow the return of the energy industry to the region even more.<sup>160</sup>

Another example of the bureaucratic nature of the new NEPA requirements is the change in operator standards. It is not uncommon that after one well operator has successfully completed the permitting process, including the environmental impact requirements of NEPA, that another operator may take over the production capabilities of the well. When this occurs, no environmental changes are made concerning the well; the only change is the company who operates the well. However, BOEMRE will now require that the new operator conduct another complete NEPA analysis on the well operation.<sup>161</sup> This requirement provides no practical benefit. If a valid environmental analysis has already been undertaken, this new regulation only adds on unnecessary layers of red tape, and inhibits a long standing industry practice that has no effect on safety.

#### The Consequences

At the outset, experts predicted that the policy would idle as many as 46,200 jobs and long term job losses could reach 120,000 by 2014.<sup>162</sup> According to the Administration's own modest calculations, 9,450 workers would lose their jobs due to the direct affect of the moratorium, and an additional 13,797 workers would lose their jobs because of the moratorium's indirect effects.<sup>163</sup> Moreover, Director Bromwich was aware that the moratorium would disproportionately harm small operators. An internal memorandum circulated at DOI on June 21, 2010, states, "Smaller companies and those drill rigs that cannot find work in shallow water or conducting allowed activities in deepwater or be transported across open oceans may face losses that are insurmountable. These companies may no longer be open after the moratorium ends."<sup>164</sup> Based on interviews conducted by Committee staff, it appears that the dismal predictions about the economic fallout from the spill are being realized across the region.

#### *Rigs Leaving the Gulf*

Since the imposition of the moratorium, 12 drilling rigs (seven deep-water and five shallow water) have left the Gulf for operations in other countries.<sup>165</sup> Five of these deepwater rigs went to Africa – headed to such nations as Nigeria, Egypt and Congo.<sup>166</sup> Two other

<sup>159</sup> Interview with Scott Angelle, Secretary, Louisiana Dept. of Natural Resources (Mar. 23, 2011).

<sup>160</sup> *Id.*

<sup>161</sup> Bureau of Ocean Energy, Management, Regulation and Enforcement, *Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility*, (last visited May 20, 2011), available at <http://www.boemre.gov/ooc/pdfs/DeepwaterGuidanceSupplement.pdf>.

<sup>162</sup> *Id.*

<sup>163</sup> Memorandum from Director Bromwich on Options Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Continental Shelf (July 10, 2010). Memorandum from Mary Katherine Ishee, Deputy Director, BOEMRE on Background on Shallow and Deepwater policy Issues (June 21, 2010).

<sup>165</sup> Fact Sheet: Impacts of the Obama Administration's *De Facto* Moratorium, U.S. House of Representatives Natural Resources Committee Chairman Doc Hastings.

<sup>166</sup> *Id.*

deepwater rigs moved to South America – Brazil and French Guiana.<sup>167</sup> Diamond Offshore Drilling Inc.'s rigs *Ocean Endeavor* and *Ocean Confidence* signed contracts to work in Africa after operators in the Gulf of Mexico declared *force majeure* on the rigs due specifically to the moratorium implemented by the Obama administration and BOEMRE.<sup>168</sup> Larry Dickerson, President and CEO of Diamond Offshore, lamented the loss of American jobs but said, "With new contracting severely restricted in the Gulf of Mexico as a result of uncertainties surrounding the offshore drilling moratorium, we are actively seeking international opportunities to keep our rigs fully employed."<sup>169</sup> When rigs leave the Gulf due to the uncertainties created by this Administration they rarely return to their point of origin. Accordingly, these seven deepwater rigs will likely never return to the Gulf of Mexico to produce American oil, generate American revenue, and create American jobs. Instead, they will promote and expand economic growth in foreign countries.

With drilling rigs moving to other countries and a sustained lack of drilling, companies both large and small are seeing real economic effects from the moratorium. For example, the Loews Corp., a conglomerate whose holdings include Diamond Offshore, had lower 2011 Q1 earnings because of the lack of revenue generated as a result of the moratorium on drilling.<sup>170</sup> Small businesses have been hurt even more. Throughout Louisiana, Mississippi, and other Gulf states, there are many small businesses whose primary customers are the rigs and operators now silenced by the moratorium and permitiorium. These businesses have more to worry about than just lost quarterly profits. Cory Kief, president of Offshore Towing, Inc. a rig moving and ocean towing company, shared with Committee staff that, "If things in the Gulf don't return to normal my business will be closed by December."<sup>171</sup> Small businesses, like Cory Kief's, are fighting for their lives under the moratorium, and see only sparse relief with the modest number of permits issued by BOEMRE.

#### *The Moratorium's Impact on Small Business*

As small business owners, both Lori Davis and Cory Kief have felt the devastating effects of the moratorium in the form of the regulations promulgated by BOEMRE and by the lack of drilling in the Gulf. At the outset of the moratorium, Offshore Towing, Inc., held meetings with its employees where they agreed that they would forsake their benefits so that no one would lose their jobs.<sup>172</sup> Like RigChem and Offshore Towing, small businesses in the Gulf are doing everything they can to survive. Given all of the hardship they have already endured, many small businesses are on the brink of failure through no fault of their own.

Before the moratorium, neither Rig Chem nor Offshore Towing had any debt. In 2011, both companies felt such harsh economic pressure that they were forced to apply for loans in

<sup>167</sup> *Id.*

<sup>168</sup> *US Drilling Ban Sends Rig to Offshore Egypt*, Petroleum Africa, Jul. 12, 2010, available at <http://www.petroleumafrika.com/en/newsarticle.php?NewsID=9945> (last visited May 18, 2011).

<sup>169</sup> *Id.*

<sup>170</sup> *Loews' Profit Slips as Diamond Offshore Hurts*, Reuters, May 2, 2011, available at <http://www.reuters.com/article/2011/05/02/loews-idUKL3E7G21AH20110502?type=companyNews>

<sup>171</sup> See, CORI KIEF INTERVIEW, *supra* note 146.

<sup>172</sup> *Id.*

order to forestall laying off their employees, whom they consider to be like family.<sup>173</sup> Sadly, Cori expects that he will have to fire two to three people from his sales department if work does not pick up for him.<sup>174</sup> In addition to their own troubles, both companies are running into a cash flow problem because many independent operators that are still attempting to operate in the Gulf cannot afford to pay for services rendered as soon as they are performed. Rather, RigChem and Offshore find that they must accept slower and smaller payments for already completed work.<sup>175</sup> The independent operators struggle to stay afloat because of the uncertainty that surrounds the future of their businesses, a consequence of the moratorium and subsequent permitiorium.<sup>176</sup> Unfortunately, Cory and Lori are the rule, not the exception.

The pain inflicted on the community is not limited to those involved in the oil and gas business. Many of the small business owners who live in Parishes heavily populated with those with ties to oil and gas also feel the pain. Business owners ranging from dentists to contractors feel the pressure from both the layoffs and the reduced wages that the moratorium brought to the Gulf. Dr. Michael Peneguy, DDS, noticed a 20 percent decrease in business. He remarked, “I know five patients who have been laid off and two have transferred. One relocated to Texas and another to Egypt.”<sup>177</sup> Realtors and contractors have similar stories. Sales have come to a “screeching halt” and home vacancies are common.<sup>178</sup> General Contractor Lester Benoit aptly summed up the feeling of many in the Gulf: “Everyone seems to be scared and banks cautious.”<sup>179</sup>

In late-March 2011, Seahawk Drilling, a driller in the Gulf of Mexico with 20 jackup rigs, declared Chapter 11 bankruptcy.<sup>180</sup> Seahawk CEO Randy Stilley attributed the bankruptcy to his company’s inability to secure permits due to the moratorium and the subsequent permitiorium hindering the expansion of drilling.<sup>181</sup> Seahawk faced initial financial trouble at the beginning of the BP Oil Spill, and was forced to cut 50 percent of its work force as a result of the moratorium.<sup>182</sup> Mr. Stilley stated: “In the 11 months after the Deepwater Horizon accident, it became clear that Seahawk’s greatest rival was no longer our industry competitors, but the U.S. government.”<sup>183</sup> This sentiment is one that pervades the oil and gas community in the Gulf – everyone understands the need for safety but above all, Gulf residents want to go back to work to provide for their families and their communities doing the work that they have done their whole lives.

<sup>173</sup> See e.g., CORI KIEF INTERVIEW, *supra* note 146; LORI DAVIS INTERVIEW *supra* note 68.

<sup>174</sup> See, CORI KIEF INTERVIEW, *supra* note 146.

<sup>175</sup> See e.g., CORI KIEF INTERVIEW, *supra* note 146; LORI DAVIS INTERVIEW *supra* note 68.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> Editorial, Randy Stilley, *A Preventable Bankruptcy in the Gulf of Mexico*, Washington Post, Mar. 23, 2011, available at [http://www.washingtonpost.com/opinions/a-preventable-bankruptcy-in-the-gulf-of-mexico/2011/03/19/ABnGs3KB\\_story.html](http://www.washingtonpost.com/opinions/a-preventable-bankruptcy-in-the-gulf-of-mexico/2011/03/19/ABnGs3KB_story.html).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

At its peak, Seahawk had 1100 employees— a purely American company whose shallow water rigs operated only in the Gulf.<sup>184</sup> When the BP Oil Spill occurred their stock suffered, and compounded with the souring of an international deal, they ran out of cash. During the moratorium, Seahawk had as few as two rigs working out of a total of 20, an unsustainable level of activity. Mr. Stilley has begun new ventures; however, the distinct difference is that his new ventures are *all* overseas. In an interview with Committee staff, he stated: “I’ve been in the oil service business for 35 years.... After all we went through and saw with the moratorium I won’t expose myself and my employees to the risk of doing business in the U.S. ever again.”<sup>185</sup> Although he would rather be working at home, Mr. Stilley now prefers to do business in politically volatile regions of the world rather than the United States because of the constantly changing regulatory atmosphere.

People up and down the Gulf coast share similar stories. Charlotte Randolph, President of Lafourche Parish expressed her concern to Committee staff that “nine out of her top ten” taxpayers are employed in the oil and gas industry, which will be directly impacted by the moratorium.<sup>186</sup> In Louisiana coastal communities such as Houma, Morgan City and Lafayette, one out of every three jobs is related to the oil and gas industry; these jobs are now in jeopardy along with the \$12.7 billion in total wages earned by employees working in the Gulf Coast oil and gas industry. Their unemployment would result in decreased tax receipts and additional budget restrictions for a Parish that is already experiencing a very lean year. According to an analysis performed by the Gulf Economic Survival Team, Louisiana and its Parishes stand to lose between \$150 million and \$700 million in state and local sales tax revenue due to the moratorium, thereby negatively impacting all government services, from police and fire protection, to schools and hospitals.

More specifically, data from Lafourche Parish shows a significant decrease in ad valorem taxes at the local level. Ad valorem taxes are real and personal property taxes collected by the local parishes and directly reflect the amount of economic activity that has been halted in the Gulf. According to Ryan Friedlander, Director of Finance for Lafourche Parish, the tax assessor estimates a decrease of 2012 ad valorem collections of 8-10 percent for both inventory and equipment based on based on a drop in inventory and water craft days worked in 2010 along with 2011 data for consumer property.<sup>187</sup> This would represent a total decrease in ad valorem taxes of 16-18 percent since the BP Oil Spill began.<sup>188</sup> This represents a loss of nearly \$6 million dollars in parish-wide ad valorem tax dollars.<sup>189</sup> Although more difficult to analyze and calculate, sales tax dollars are expected to decrease in the Parish by five to six percent.<sup>190</sup>

This data shows that local governments are suffering immensely because of the Obama Administration’s moratorium and subsequent permitiorium on drilling. This has real consequences for the residents of the Gulf Coast because declining tax revenue translates into declining services available to the residents of southern Louisiana. Due to the system of

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Interview with Charlotte Randolph, President, Lafourche Parish (June 15, 2010).

<sup>187</sup> Interview with Ryan Friedlander, Director of Finance, Lafourche Parish (Mar. 24, 2011).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

calculating ad valorem taxes, 2012 collections are already negatively impacted. Even if property use were to return to pre-BP Oil Spill levels, the positive tax implications from an ad valorem standpoint would not be seen for a few years down the road. Clearly, the moratorium has done more than just affect “big oil”. The Parishes will feel the tax implications for years to come and lag any recovery that comes to other sectors.

In examining the likely economic impact of imposing a drilling moratorium, the Administration relied on numerous false assumptions. In one internal analysis, the Administration assumed that “drilling could re-start on January 1, 2011.”<sup>191</sup> In reality, the first new drilling permit was not issued until months later.<sup>192</sup> Alarming, in dismissing larger projections of unemployment the document also noted, “we are comfortable with our conservative approach because the loss in employment is not long term, so the full effects of the indirect and induced employment may not be fully felt as some businesses may be willing to sustain short term losses to avoid having to lay off and subsequently rehire workers.”<sup>193</sup> As oil rigs leave the Gulf, layoffs continue, and the economic consequences of the moratorium continue these assumptions have been exposed as deeply flawed.

#### *Industry Strives to Make Drilling Safer*

The explosion aboard the Deepwater Horizon and the confusion in the subsequent days and months clearly demonstrated that MMS and BP had failed to implement rigorous safety standards. Moreover, there is agreement that changes needed to be made to the flawed system that allowed the disaster to occur. However, evidence suggests the regulations promulgated by BOEMRE do not promote the revitalization of a safe oil and gas industry in the Gulf; instead, they hinder production even when operators have made significant strides to become safer. For example, the oil industry made a substantial investment in safety by creating a rapid-response system to prevent another disaster like the BP Oil Spill.<sup>194</sup> BOEMRE’s regulations do not appear to take this into account.

The extraordinary difficulties and costs associated with the cleanup of the Gulf oil spill have not been lost on other companies in the oil and gas industry. It is abundantly clear that private industry is strongly incentivized to adhere to the strongest safety practices in order to protect both the environment as well as their own private interests. Accordingly, four of the largest oil companies, Exxon-Mobil, Shell, Chevron, and Conoco Phillips, committed \$1 billion to create a rapid-response system to deal with future potential oil spills.<sup>195</sup> This rapid response system includes the creation of modular containment equipment that would be available for use

<sup>191</sup> Minerals Management Services (MMS), *Economic Impact Assessment: Effects of Drilling Pause for 6 Months*, June 10, 2010 [hereinafter MMS ECONOMIC IMPACT ASSESSMENT].

<sup>192</sup><sup>192</sup> David Hammer, *U.S. approves first deepwater oil drilling permit since BP spill*, THE TIMES-PICAYUNE, Feb. 28, 2011, available at [http://www.nola.com/news/gulf-oil-spill/index.ssf/2011/02/us\\_approves\\_first\\_deepwater\\_oil.html](http://www.nola.com/news/gulf-oil-spill/index.ssf/2011/02/us_approves_first_deepwater_oil.html).

<sup>193</sup> See, MMS ECONOMIC IMPACT ASSESSMENT, *supra* note 194.

<sup>194</sup> Jad Mouawad, *3 Oil Firms Commit \$1 Billion for Gulf Rapid-Response Plan*, N.Y. TIMES, Jul. 21, 2010, available at <http://www.nytimes.com/2010/07/22/business/energy-environment/22response.html>.

<sup>195</sup> *Id.*

and could contain spills as deep as 10,000 feet and capture up to 100,000 barrels of oil a day.<sup>196</sup> A nonprofit organization known as the Marine Well Containment Company operates and maintains the emergency capability mechanism. Industry executives express confidence that this measure will enable a rapid response to contain any future blowout or spill that may affect the Gulf region. They expressed optimism that it will also restore the government and the citizens' confidence in the oil industry to operate with the proper safety precautions in place.<sup>197</sup> Unfortunately, BOEMRE's policies do not recognize the necessary and important contributions that industry has made.

### Conclusion

In dealing with the enormous and dynamic challenge of helping gulf communities recover from the BP Oil Spill, the Obama Administration had a choice of two paths: federalize the response or leave the management and leadership of recovery efforts to BP. Although BP would have still been held financially responsible under either scenario, the Obama Administration chose the latter option and placed BP at the frontline of responsibility and decision making. While BP is unquestionably and admittedly responsible for the oil spill, the government's decision to place the perpetrator of a reckless and unnecessary tragedy at the helm of recovery operations was clearly controversial. To many spill victims it was also outright offensive and frustrating. Regardless of whether placing BP in such a role was the correct decision, the legacy of BP's recovery efforts was, at root, a choice of the Obama Administration. The many problems – from slow responses to waste and abuse – that arose in the recovery effort managed by BP nonetheless occurred under a framework chosen by federal officials up to and including the President of the United States. The merits and consequences of putting BP in this position of authority and responsibility are important topics for Congress to consider.

Beyond the most immediate task of addressing an unfolding disaster, the Obama Administration also faced two additional choices where outsourcing responsibility to BP was not an option. The first involved the future of the long troubled government agency, the Minerals Management Service (MMS) of the Department of Interior, which had primary responsibility for regulating the safety of offshore drilling. While the Obama Administration had long talked about the need for reform, change at MMS had been slow to arrive until the unknown agency was suddenly thrust into a bright and scrutinizing public spotlight following the explosion aboard the *Deepwater Horizon*. Less than a month after the explosion, Interior Secretary Ken Salazar had announced an ambitious reorganization of MMS that split the agency into three components. While the announcement played well in the media, the basic reorganization plan ran counter to recommendations made by the Government Accountability Office, the Department of Interior Inspector General, and a staff report prepared by this committee in 2009. Significant questions remain about the effectiveness of Secretary Salazar's basic reorganization strategy and the wisdom of concocting such a significant long-term effort in the midst of a crisis and under the restrictions of an artificial timeline that seemingly precluded input from entities that had studied systemic problems at MMS for years.

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<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

The final choice involved the decision to implement a broad moratorium on deep water drilling in the Gulf of Mexico. Documents indicated that the Administration clearly understood the moratorium would have negative consequences for workers, communities, the price of oil, and the future of energy production in the region. The decision to impose a moratorium, however, was not supported by scientists or industry experts who had otherwise been cooperating with the Administration. Another document also shows that the Administration made false assumptions about the economic effects of a moratorium. The Administration underestimated the length of time a moratorium would delay energy projects after it was lifted, misjudged the willingness and ability of businesses to retain employees, and misinterpreted the readiness of oil rigs to leave the Gulf of Mexico for foreign destinations. Dismissing more dire predictions, officials even embraced a self-described “conservative approach” to estimating job losses. The effects of the moratorium and its de facto successor, the “permitium” (a period where drilling was technically allowed but practically disallowed by a slow and belabored permitting process), continue to draw the ire of oil spill victims who also identify as victims of the federal government’s heavy handed approach against an industry and many small businesses that had – with the exception of BP and its involved partners – done nothing wrong.

The BP oil spill clearly demonstrated that when companies like BP create massive environmental damage they will be held accountable. This is not only just, but also gives the private sector powerful incentives to achieve the highest standards of safety and good operating practices in order to avoid billions in liabilities and loss of reputation. As the United States struggles to create jobs in an economic downturn and improve energy independence, there are important lessons to learn, criticisms to discuss, and decisions that Congress and the Administration will ultimately have to make. This report, and the committee’s overall investigation into the federal government’s response to the oil spill, are intended to advance this necessary process and bring to light the perspectives of oil spill victims. A perspective that many feel has been shut out from the discussion over energy and environmental policies written in the name of “recovery.”

**About the Committee**

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The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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Committee on Oversight and Government Reform  
Chairman, Darrell Issa (CA-49)  

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Chairman ISSA. I would also note for the minority that after the break, it's my intention to have a committee vote to make this a committee report. So during this intervening period, if the minority has comments, questions, anything to add, the final report will reflect comments by the minority so that it is in fact a bipartisan report.

The gentleman is recognized.

Mr. CUMMINGS. It is my understanding that, according to the committee rules, we have to have 3 days before a committee vote.

Chairman ISSA. That is correct. I am giving you more than 10 days' notice.

Mr. CUMMINGS. I thought you said today.

Chairman ISSA. No, no. What I'm doing is I am—I asked and got permission to enter this in the record. It's a staff report. I am going to elevate it to a committee report after the minority has entered their comments and any adjustments are made. Right now, it's the basis for a committee report. The intention is to make sure that your staff that has been working on the same set of facts edit, make changes—suggest changes, make any other comments, so that it becomes a joint report. And I wanted it to reflect both majority and minority opinion and—

Mr. CUMMINGS. So when will that vote be?

Chairman ISSA. It will be after the break at the earliest, so more than 10 days.

Mr. CUMMINGS. Go ahead. I misunderstood you.

Chairman ISSA. I am just noticing it for the future. And with that, I'd like to recognize the former chairman of the full committee, the gentleman from Indiana, Mr. Burton, for his 5-minute opening—or 5-minute questions.

Mr. BURTON. Welcome, Governor Barbour. It's great to see you again.

Governor BARBOUR. Thank you.

Mr. BURTON. Looks like you elected a pretty good-looking, articulate young man to serve in the Congress, so congratulations.

Governor BARBOUR. Won't take him long to get grey hair.

Mr. BURTON. That will come in time if he sticks around this place.

First of all, let me say I have been to the Gulf Coast—not Mississippi, but I will come—and I walked on the beaches down there and also on beaches I believe on the east coast of Florida, and I saw these tar balls. This was when there was no oil well problem, and so when you just said that 1.4 million barrel of oils leak out naturally each year, I hope everybody in the country knows that; because that amount coming out naturally doesn't cause any kind of a problem and that ought to be included in the discussion when we talk about deepwater drilling in the gulf.

You also said that 85 percent, there has been 85 percent in loss in drilling permits. That is tragic, especially in view of the fact that we just sent \$2 billion down to Brazil so that they can drill in deep-water; and we can't, and it really surprised me. I think you said there were 31,000 wells in the last 50 years down there? And it's been done—drilled without any real big problems. And yet right now, this administration is stopping us from drilling here, and we are sending billions and billions and billions of dollars over to the

Middle East to countries that don't like us very much, and that really really bothers me.

And I hope that you are able to in effect go on a crusade to tell the story that you told us today, because I think the American people need to know that. We have the ability to move rapidly toward energy independence over the next decade if we use natural gas and oil and shale coal that can be converted into oil, and we are not doing any of that. And as a result, this country is really suffering. And I really sympathize with you on the impact, the fiscal impact that was going on that took place down there in the gulf during the terrible crisis.

And I want to say one more thing about the media. I really sympathize with you in this drum beat that went on and on and on over a month or 2 months, showing the problems that were created down there, which obviously had a devastating impact on you and your economy. And I hope that in the future when these kinds of tragedies occur, the media will not sensationalize it to the degree that it hurts economies like that in the Gulf States.

I just have a couple of questions. You said that the Stafford Act could have been handled—or it could have been handled much better under the Stafford Act. Can you elaborate—you may have mentioned this in your opening remarks, but what could have been done that would have been better in helping to manage the problem in the gulf if you as Governor, and the Governor of Louisiana, did have the control that you wanted?

Governor BARBOUR. The two big reasons of the Stafford Act being preferable to State and local governments, we're used to it. We deal with it all the time. I think when you have some of the local officials later today, we have all had to work under the Stafford Act because that's what we do, hurricanes, tornadoes, floods, etc.

For me specifically as Governor, the Stafford Act expressly says that the efforts of the Federal Government under the Stafford Act are to supplement State efforts. Under the Oil Pollution Act, there was an impression that the Federal Government was in charge under the unified command and they told everybody what to do, and that not only is contrary to the U.S. Constitution and bad law, but it also didn't work. I mean, our people were much better able to do things than the Federal people were able to do. The Stafford Act isn't perfect, though, as I said.

Mr. BURTON. I know. But had the Federal Government recognized your jurisdiction under the Stafford Act, tell me how that would have been more of a positive situation or solution for you.

Governor BARBOUR. Where it really became very apparent, we had a defense plan to defend our shores from oil—different from Louisiana because we were 100 miles away. We recruited 1,100, "vessels of opportunity." Those were people who were willing to rent their boats, paid for by BP. BP never flinched at paying for this, put them out to essentially form picket lines to try to spot the oil south of the barrier islands, between the barrier islands, in the sound, OK, so we had actually a five-layered defense. We found out weeks into that, the Coast Guard had no way of managing that. They had approved the plan; they had no way of managing that.

We literally sent people to Wal-Mart to buy radios. We had a situation where our Air National Guard, starting 4 o'clock every

morning, flew and did infrared photography of the whole Sound and south of the Sound to find the oil. The Coast Guard had no way to tell the vessels of opportunity where to go. We had to set up a whole communications system and a command-and-control system, which we did not do for weeks because we thought the Coast Guard knew more about this than we did. But it turned out that we had to set up the communications system. We had to set up the command-and-control system; and frankly, they were cooperative when it got to it, but it should have never come to that. We were lucky that this disaster was manageable enough that you could make those kinds of mistakes and still clean them up.

Mr. BURTON. Thank you, Mr. Chairman. Thank you, Governor.

Chairman ISSA. Would the gentleman yield the remaining time?

Mr. BURTON. Be happy to.

Chairman ISSA. Oh, I am sorry, you were over it.

Mr. BURTON. I was over it, but I will be glad to yield.

Chairman ISSA. No, no. We do not yield the other side the remaining time.

With that, I recognize the gentlelady from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. I thank the chairman for recognizing me. And welcome, Governor. Welcome, Representative. It's very good to see you again.

Governor BARBOUR. Thank you, ma'am.

Mrs. MALONEY. Thank you for being here.

Governor, the Government Accountability Office, the non-partisan, bipartisan unit issued—and I believe they are going to be testifying later on today on a panel—they issued several reports warning that taxpayers are not receiving a just or fair return for oil and gas leases in the Gulf of Mexico. Specifically, the GAO report faulted these so-called royalty reliefs granted by Congress in the mid-1990's when gas and oil companies were not doing as well as they are today, but they encouraged additional exploration at the time when oil and gas were lower. And under some of these leases, oil companies pay absolutely no royalties at all to the American people when they drill on Federal lands, and this is oil that is owned by the American people. It is on Federal lands. Usually there is a royalty paid back to the government, to the taxpayers, but here they are paid absolutely nothing back. And I would like to quote from their report, "Special lower royalty rates, referred to as royalty relief, granted on leases issued in the deepwater areas of the Gulf of Mexico from 1996 to 2000, a period in which oil and gas prices and industry profits were much lower than they are today, could result in between \$21 billion and \$53 billion in lost revenues to the American people—to the Federal Government compared with what it would have received without these provisions."

Our chairman, in a rare expression of bipartisan support, I want to compliment you, Mr. Issa, for the significant work that you have done in this area and on this issue. And you had called for an end to these leases.

On October 7, 2009, Chairman Issa issued a staff report warning that actual shortfalls to U.S. taxpayers could be much much larger. And this is what his report said, "Depending upon the market price of oil and natural gas, the total cost of foregone royalties could total

nearly \$80 billion. Oil and gas royalty payments represent one of the country's largest, nontax sources of revenue. Taxpayers must get every cent that is owed to them." And I agree completely with Chairman Issa.

And Governor, do you agree with Chairman Issa on this statement?

Governor BARBOUR. Ma'am, I can tell you that we are very familiar with this, in that for more than 50 years the rest of the country has been sucking the gulf dry and we get nothing. At the period of time you are talking about in the late nineties, all this production out of the Gulf of Mexico, and the States were paid nothing, zero, nothing. When you drill on government land in Wyoming, Wyoming gets some of the money.

But fortunately, in the last administration, this was changed and we are going to start on a little stair-step basis, getting a little bit of the royalty and ultimately maybe about 2017 or something, the States will get a legitimate fair share of the royalties. So I am very sympathetic to the royalty owner because we feel like we are—we should be considered royalty owners, too, and that the Federal taxpayer and the taxpayer in Mississippi both ought to be getting a fair royalty for the production of oil and gas, or if it's coal on land, or whatever, I think that is absolutely the case.

But I hope y'all will please understand, when there are only five States in the country that allow offshore drilling, the other 45 ought to let us five who allow it, they ought to let us participate as royalty owners, too.

Mrs. MALONEY. The real royalty owner is the American taxpayer. So do you believe that the taxpayer has a right to every cent that is owed to them under these leases and that they should be completely corrected, as the chairman said?

Governor BARBOUR. And that I believe the Mississippi taxpayer should share in that when we are dealing in the waters that are Mississippi waters and are part of the Outer Continental Shelf that's recognized as Mississippi. So, ma'am, I am not arguing with your point about the Federal taxpayers; I just want to make sure the State taxpayers get treated as royalty owners in the five States that allow this. It's not fair for the other 45 States to burn the oil that we have taken out of the Outer Continental Shelf, and they get treated the same way we do.

Mrs. MALONEY. Well, I must—

Governor BARBOUR. That was a "yes."

Mrs. MALONEY. I must state for the record, though, that Chairman Markey, or Ranking Member Markey, has a bill on this that would correct it. And when it came before Congress early this year as an amendment, and several other amendments, regrettably, Chairman Issa, you voted against it. And I feel the same as Governor Barbour, that this should be directed—that the American taxpayer is entitled to the royalties for oil extracted from taxpayer-owned Federal and State-owned property, and I hope that you will join with us in a bipartisan way to correct this going forward, so that there is fair treatment to the States and to government and basically to the American taxpayer. So I hope you will join us in that.

Chairman ISSA. I thank the gentlelady. We now recognize the gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Mr. Chairman, I'd like to yield my time back to the chairman.

Chairman ISSA. I'd like to take it. I thank the gentleman.

Congressman, you don't have to remain, since we didn't swear you in, but you are welcome to stay. You look good with the Governor. You always look good next to the Governor. That will look good. I thank you.

Governor, Congresswoman Maloney did make a valid point but I think I want to followup on your point, too. Today you are going to have an economic loss that will be unreimbursed as a result of the BP oil spill, correct?

Governor BARBOUR. There's no question of that as it currently stands.

Chairman ISSA. And so for the foreseeable future, if there were to be another one, you would potentially have another oil loss in which the Federal Government was able to get fines. The Federal Government would—I don't think we actually collect royalties on what's spilled into the gulf, but short of that we would continue from that particular rig; that's not a relief one, it's not covered by the Clinton-era contract failures. The fact is you stand at risk without an ability to get any premium on that risk in the gulf—

Governor BARBOUR. That's correct.

Chairman ISSA [continuing]. If it's outside the period.

Governor BARBOUR. We are not compensated for what we do.

Chairman ISSA. So let me ask a straightforward question. Do you believe that from this side of the dais, that we should look at legislation that provides sooner and more specific revenue-sharing based on the potential risk; in other words, effectively insurance policy, where you would have revenue not for current expenditure, but for contingent expenditure if you have another economic event like this.

Governor BARBOUR. Well, two things. There is legislation that was passed, I think in 2006, that is going to stair-step up, that's going to give the States a share and stair-step it up—and maybe by 2017.

Chairman ISSA. Gets 10 percent of the royalties or something.

Governor BARBOUR. And maybe go up to 35 percent or something. But until that goes into effect—and I would urge y'all, put it in effect immediately, you know, that's what we would like to see, put it in effect immediately—then we would have some compensation for the risk we take. Right now, the only way that I see that we can reasonably be compensated for the damage done to us is if you take the Clean Water Act fines and they are going to be Clean Water Act fines here potentially in the billions, and that the States that were affected be given a share of that, with enough flexibility that they can spend it to help their economy; that they not have to get the money and say, We are going to use all this money to clean up from the BP oil spill. BP's already paid the cleanup for the BP oil spill. Our damage is economic damage to tourism, to the seafood industry; not that the seafood was hurt, just that nobody would buy it. They wouldn't let us fish for it. And then to the people that work in the oil and gas industry.

Somebody mentioned a very sad thing, that 11 people died on this oil rig. Four of them were from Mississippi. Now this well wasn't in Mississippi waters, but that gives you an idea, sort of reference, that we have a lot of people that work in this industry; and right now you know where they are? I went and visited the Leviathan oil rigs 80 miles west of Haifa, Israel. I met two guys from Mississippi who were working that oil well in Israel, who had been working in the Gulf of Mexico the year before, and they had to leave because of the moratorium.

Chairman ISSA. Well, there you go. We certainly have seen a lot of those rigs sail off.

Let me ask you a followup question. You mentioned the immediate following, the too much control by the Federal Government and BP. But, Governor, doesn't that continue till today? Isn't BP still in the driver's seat on a lot of things, including compensation? Aren't you sort of in a back-end ability to help your people?

Governor BARBOUR. Regardless, you know, I am not—I am a recovering lawyer, so I know that a judge has ruled that the Gulf Coast Compensation Facility, whatever it's called, that is not truly independent of BP and that may legally, technically be right. I think they are trying to do a good job. We don't get many complaints in Mississippi.

They are doing something that's complicated, and I will say this about it. It is sure better than having to litigate all this, where people wouldn't get their money for years and years and years, and the trial lawyers would get half the money. So it is a long way from perfect, just like what I do is a long way from perfect, but I think it is better than the alternative of litigation. And as I say, we have cases that are difficult cases where people are not satisfied, but we really don't get many complaints. And we have been paid. Mississippi companies, people have been paid about \$340, \$350 million.

Chairman ISSA. And the gentlelady from New York has left, but I might note for the record that I still am trying to find a constitutional way to adjust for those flawed contracts that were signed. This committee held hearings much earlier on it, found that the oil companies thought they were going to be paying royalties and were actually surprised when they found out that the defect in the contract allowed them not to.

With that, I recognize the gentleman from Maryland, the ranking member, for 5 minutes.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Governor Barbour, in the Animal Kingdom down in Disney World, there's a saying over at Animal Kingdom that says this. It says, "We do not inherit our environment from our ancestors, we borrow it from our children."

And in that light, you know, I was reading your written statement and it said, "The other major economic impact resulted from the moratorium on drilling." And I want to shift away from broad generalities and focus on specific measures to prevent this kind of massive oil spill from ever happening again.

Everyone remembers BP's repeated failures to cap the well. It became clear immediately that BP had no idea how to end this disaster. Every week they would try a new strategy, but it was a com-

plete trial-and-error fiasco. They tried the top hat. By the way, I was down there when they were trying to build the top hat, and I actually watched them do it. This was a massive steel containment dome lowered into the well. Of course, that failed.

They also tried the junk shot. They injected golf balls and shredded tires and drilled floor into the blowout preventer, but that too failed. They tried several more times until finally they tried the static kill. They basically injected mud into the blowout preventer to start regulating the flow of oil. But that all took 87 days, and it was crystal clear to everyone watching that BP simply did not have the technology to handle a deepwater blowout, which I think is atrocious.

Governor, I want to ask you about a specific requirement issued by the Department of the Interior to require all companies to prove that they can cap a well before receiving a drilling permit. It was called NTL 2010-N10. Are you familiar with that requirement?

Governor BARBOUR. I am not familiar with that specific requirement, Congressman.

Mr. CUMMINGS. All right. Let me read exactly what it says. Each oil company must demonstrate, "that it has access to and can deploy surface and subsea containment resources that would be adequate to promptly respond to a blowout."

Is that—and so, Governor, here is my question. Do you think this specific safety measure should be repealed?

Governor BARBOUR. Congressman, superficially that's a reasonable statement that you have just made. How it's enforced and regulated is something of which I am ignorant, but what I do know is we have had more than 31,000 wells drilled in the Gulf of Mexico in my life. This is the only time anything like this, anything vaguely like this has ever happened. And when you consider the amount of our domestic oil production that comes out of the gulf and comes from offshore drilling elsewhere, when you consider the fact that we have an energy security, a military security, and a national security issue in this country because we import way too much foreign oil, including a lot from people who are not our friends, then I would not be in favor of anything that reduces the production of domestic oil.

I think the risks are way too small compared to what you'd give up.

Mr. CUMMINGS. So in other words, if this were to happen again, if we had 87 days of oil spewing out into our waters, you're saying that the risk of that far outweighs the economic situation; is that—I'm not trying to put words in your mouth, I'm trying to make sure I understand you.

I will tell you, I saw a lot of what you're talking about. I saw the pelicans. I saw—I talked to the fishermen. I talked to the tourism people. I even talked to the industry people, a lot of them. And you know what they said? They said, you know what—this is before we knew the full impact of it—they said, you know what, we agree we ought to have some kind—we should have the ability, and it should be proven ability to cap something like this before we even continue.

Governor BARBOUR. I think beyond that, Congressman, it is very clear that this well blew out because normal, standard procedures

and protocols weren't followed. I don't think there's any question that corners were cut. I don't know whose fault it was. I don't know who the specific responsible party is, but I don't think there's any question that was the cause of all this. And this is why I say the risk, 1 out of 31,000, is worth taking when you're talking about something that is so important to the economy and the United States of America. That's why I have that view.

Mr. CUMMINGS. I understand. Thank you.

Chairman ISSA. I thank the gentleman. The gentleman from Tennessee, Mr. DesJarlais, is recognized for 5 minutes.

Mr. DESJARLAIS. Thank you, Mr. Chairman. Thank you, Governor Barbour, for being here.

Along the lines of the negative effects of stricter drilling regulations on the offshore industry, why don't we take a minute and have you expound on the effects that the Bureau of Ocean Energy Management, Revenue and Enforcement has been issuing. Let me back up. The Bureau of Ocean Energy Management, Revenue and Enforcement has been issuing a great deal of new regulations affecting offshore drilling. Have your constituents been in touch with you about these new rules.

Governor BARBOUR. Yes.

Mr. DESJARLAIS. Do they find them problematic?

Governor BARBOUR. Well, the people that talk to us don't know all the details of the rules. All they know is that the regulatory efforts of the government are shutting down the gulf, have shutdown the gulf. I mentioned earlier I was in Israel this winter, like in February; went on an offshore drilling rig and two of the guys working on the rig were from Mississippi. Almost every American on that rig had been working in the Gulf of Mexico the year before. They had got run out of the gulf because of the moratorium and because of the belief, the perception, that it was going to be a long time before there was going to be drilling again in the Gulf of Mexico.

That's what we get, people who've lost their jobs, whose kids have lost their jobs, who are worried about—who are worried about this.

The service—we have people who work offshore, but we also have significant service industries in our State that repair rigs, that build service boats, that work on boats and that, so it's a big industry in the gulf South.

Mr. DESJARLAIS. OK. How about let's talk a little bit about BP's actions during the spill and recovery. There were many officials and citizens that felt BP played too large a role in the spill response and the Federal Government should not have let them play this large of a role, and that was a common criticism we heard in the media at the time of the spill as well. At any point, either during the disaster or during the recovery phase, did BP have too much of a say in the response?

Governor BARBOUR. No question, BP had a big say in the response and they were paying for it. But I have to tell you, Congressman, sometimes BP was easier to deal with than the government. That's just a fact of life that we learn that sometimes the Federal Government is not the easiest group to do business with.

In fairness to BP, for us, everything that we asked them to do—and of course everything we were asking for they had to pay for—everything that we asked them to do they considered, and almost every time they did it; where many times we would ask the Federal Government for something like skimmers—when we were trying to get skimmers, we thought the Federal Government was supposed to have skimmers for us when the oil got close enough. Turns out we had to go get BP to give us the money to get some shipyards in Mississippi to build the skimmers so we'd have enough skimmers. So I'm not going berate that part of the Oil Pollution Act. What we didn't like was the usurpation of State sovereignty by the Federal Government.

Mr. DESJARLAIS. If you want to put on your teacher's hat for a moment and grade response efforts of BP, the Coast Guard and the Obama administration, what grade would you give each of them?

Governor BARBOUR. You know, when you have been through the worst natural disaster in American history as Governor of Mississippi, its—you learn not to criticize people too harshly for unprecedented, unforeseen disasters, natural disasters or otherwise. They had a hard time, they seemed slow to try to get in charge. We had the problems I'm talking about with command and control, but I don't want to be overly critical, because when stuff like this happens you make mistakes. And so that's why I try not to assess blame. Let's just figure out how to do it better.

Mr. DESJARLAIS. I think that's very diplomatic and reasonable. No one can fully prepare for this. We always learn and we try to make improvements. And I think that I agree with your statement.

One last thing on the seafood, you said in your opening statement the seafood is safe to eat. What about the reproduction, and are the seafood stocks where they should be, or is it too early to tell?

Governor BARBOUR. Well, we have had no evidence whatsoever or finding of anything from the oil spill that got into the reproductive chain. We're not seeing fish with four eyes or anything like that. But for a variety of reasons we had a really great fall, but with the fresh water that's being allowed into the Mississippi Sound because of flood control on the river and the opening of the Bonnet Carre floodway through Lake Pontchartrain, we're getting an enormous amount of fresh water in the Sound that is going to kill all the oysters. It's got nothing to do with BP, literally, but it is going to kill all our oysters. We'll have to rebuild. The oysters can get away. The shrimp and fin fish, they all run away from the fresh water. It shouldn't affect them. We have had some losses in dolphins, sea turtles, that are more than normal. The peculiar thing about it is we started seeing it before the oil spill. Just a little bit before the oil spill this started happening. So nobody has been able to tie it. But that is something we got an antenna up about is that we have seen mortality rates among sea mammals and sea turtles for some reason have been rising since last March or so.

Mr. DESJARLAIS. Thank you, Governor.

Governor BARBOUR. Thank you, sir.

Chairman ISSA. The gentleman's time has expired. We now go to the gentlelady from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. Thank you very much, Mr. Chairman.

Governor, I appreciate your coming. I've listened to what you had to say; much of it is reasonable. For example, you say it is a lot better than having to litigate. If you litigate, that means everybody is messed up. You have to have some impartial person.

I also agree that you have blessings and curses in your part of the economy. The United States depends on much of your economy with the oil advocacy through there and they are sometimes at odds with one another. So there are certain of risks that have to be taken.

I take it you would agree, therefore, that the best way to handle those risks is to prevent them.

Governor BARBOUR. Well, ma'am, if you mean——

Ms. NORTON. I mean——

Governor BARBOUR. Drilling oil.

Ms. NORTON. I mean preventing oil spills.

Governor BARBOUR. No, ma'am, I don't think that's the best way.

Ms. NORTON. Well, obviously, Governor, I mean preventing an oil spill.

Governor BARBOUR. I'm sorry.

Ms. NORTON. I mean preventing an oil spill.

Governor BARBOUR. That's right. Follow the right protocols and procedures, because you don't have one to start with.

Ms. NORTON. Yes, sir, that's what this hearing is about is the oil spill.

Now the administration has focused on how to prevent it from happening again. But it has been severely criticized for regulations that would apparently accomplish that. It's been criticized for these regulations; it's too burdensome. It has been criticized because these regulations would cost jobs. Therefore, I was intrigued by what some of the—from the very top of the oil industry is saying, and I'd like your view on this.

Let's take John Watson who is the chairman and CEO of Chevron. He indicates that he himself—they themselves have a burden here. But he says, and I'm quoting now, "Far from resisting those rules"—he means the regulations that are coming out—"our industry is helping to strengthen them. The proactive, uncompromising approach to safety is the test we should all apply to any company, starting with our own. In an industry that is always edging up against the frontiers of geology and engineering"—here goes your risk point—"the best practices should be the only practices. Corporate responsibility does not end with meeting market demand."

Would you agree with Mr. Watson, the chairman, the CEO, with his statement?

Governor BARBOUR. As I understand the statement I would, because I think what he's saying is as the chairman of a big oil company, his incentive, among others, is he doesn't want his stockholders to be out \$20 billion like the BP stockholders are, and that he's going to make sure they do it right the first time.

Ms. NORTON. And he is saying, and what is—what is—what is really interesting in what he's saying is that the company not only

supports the administration's new safety measures, but they are working with the administration to make them stronger. He does not appear to be fighting the regulations for which the administration has been criticized.

I want to give you another example from the top of the industry, the President of Shell, Marvin Odum, again shouldering his own responsibility, but he says additional safeguards, beyond what he himself would do, must be strengthened across the industry to develop the capacity to quickly respond and resolve a deepwater well blowout in the Gulf of Mexico regardless of how unlikely it is that this situation will occur.

That doesn't come from Members of Congress or from environmentalists; that comes from the top of the oil industry. I just want to know if you would agree with Mr. Odum as well?

Governor BARBOUR. Well, I certainly don't take any issue with what you said.

Ms. NORTON. Because I agree with you about the importance of preventing, rather than litigating, as you said. The only way to do that is to hold the industry accountable. Here you have another oil executive arguing for more robust requirements to demonstrate the capacity to cap a well if there's a blowout. I just think it's important to bring out how the industry, instead of fighting regulations, now is working with the administration for tougher regulations.

I think their concern, Governor, is that these regulations be across the board, so some of them are not engaged in spending more money to be more safe than others. So if there are regulations saying, all of you are held now to the highest standard given this blowout, then everybody, it seems to me, in the marketplace will be on an even playing field.

Chairman ISSA. The gentlelady's time has expired.

Governor BARBOUR. I would simply say, ma'am, these companies have huge incentives to self-regulate. We went from 50 years with one—no occasions in 31,000 wells before BP. It's the only time it's ever happened. And I think what the CEO of Chevron is saying and the CEO of Shell are saying, is yes, we want to work with the government, we want to make sure there's rational regulation. That's not saying every regulation everybody can think of is something that we're for. In fact, Mr. Watson has been very, very public in saying that the moratorium was terrible and was a huge mistake.

Ms. NORTON. There is a difference between a moratorium and new regulations.

Governor BARBOUR. Well, it is a form of regulation; we're going to shut you down while we write new regulations. So while everything that you said I am very comfortable with, there are connotations there that I don't think we should take too far. If the idea is that no risk is too small and no cost is too high, I don't think any of—in any company in any industry would agree with that. Balance risk with costs—

Ms. NORTON. Of course, Governor, that's a straw man.

Chairman ISSA. The gentleman from Pennsylvania is recognized, Mr. Kelly.

Mr. KELLY. Thank you, Mr. Chairman. I would like to yield my time back to the chair.

Chairman ISSA. I thank the gentleman. Governor, that means he's given me the time.

Governor BARBOUR. I couldn't see him, I'm sorry.

Chairman ISSA. I have no shortage of questions and responses. Governor, are you familiar with the Marine Well Containment Co?

Governor BARBOUR. No, ma'am—no, sir. Sorry, I was thinking about Ms. Norton.

Chairman ISSA. A different line of questioning. They are the group basically overseeing a billion dollars' worth of funds that were put together by the various oil companies so that if this happens again, that 1 in 31,000 times, they would have a whole different category of response. Does that refresh your memory?

Governor BARBOUR. I didn't know it by that name. But it is the industry effort for post oil spill. Yeah, I'm familiar with the program, not with the name.

Chairman ISSA. And wasn't that billion dollars spent by the companies who had never had a significant spill in the gulf?

Governor BARBOUR. I think exclusively.

Chairman ISSA. Right. Exxon, Mobil, Shell, Chevron, and Conoco.

Another thing I want to get into the record. As you know, Governor, when you and I first met, I was a businessman and you were a recovering lawyer then, too. That was a long time ago.

Governor BARBOUR. A long time.

Chairman ISSA. It takes a long time to recover. But the number you gave earlier was meaningful enough to repeat it; 1.4 million barrels per year seep into the gulf approximately, automatically. Right?

Governor BARBOUR. Yes, sir. That is what the U.S. GIS says.

Chairman ISSA. And for eons, the gulf has absorbed that. It defuses it, things eat it eventually. It ultimately is part of the ecosystem.

Well, let's go through the numbers here. As a businessman, one always wants to figure out the P&L as quickly as possible. The Federal Government estimates that approximately 25 percent of that 4.—or the Federal Government estimates 4.9 million barrels seeped in, or came out of the well into the gulf. Approximately 25 percent, or a little over 1.2 million, were recovered. That leaves us about 3.7 million barrels that got into the gulf in this disaster.

I'm not reducing this for a minute, but let's just do the numbers. So of that, approximately another 25 percent was burned off, and another 25 percent was estimated to be dispersed, using dispersement. And we all understand there is some controversy about whether to use dispersement.

So if you take the amount that was evaporated and burned off, you're now down to about half; you're down into the 2.-some million, nearly 3 million barrels. No matter how you look at it, whether you take the whole amount or the reduced amounts, you've got less than 3 years of oil in one short quarter of a year period. You have about 2 years if you would give credit for these efforts to mitigate.

Is it any surprise to you that the gulf fish, shellfish and so on, are doing just fine when in fact this is essentially, including the natural amount that's still coming into the gulf—this about 3 year's worth, maybe total, that went into the gulf in 1 year—that

this is not such a big thing, even though it is a big thing to us individually and a big thing when it gets to your shores?

Governor BARBOUR. Congressman, right after the oil spill happened—when I say right after, the first month or so—we had professors and experts who told us that the gulf would over a period of time, for lack of a better term, digest this; that there are micro-organisms in the Gulf of Mexico, and I think in other places where you have oil seeps, that eat the oil—

Chairman ISSA. Including Santa Barbara, California, where it has come ashore for years.

Governor BARBOUR. I think probably the first place in the country that it was ever talked about was Santa Barbara, that they have oil that seeps through the floor there. But there were signs that predicted that the gulf would essentially eat this up, that these little organisms, that's what they do, and that there are a lot of them and that they would multiply.

Now if you're in the job of disaster management, you don't assume that's true. So we never assumed it was true. But it looks like to the laymen from afar, that is in fact what happened; that the micro-organisms were able to manage this, and maybe that wasn't totally unforeseeable because they do eat up so much oil every year.

Two or things I would mention. Unlike Exxon Valdez, this was light oil. And second, the water was warm. Exxon Valdez, the water was very, very cold. Here the water was pretty dang warm, and the light cuts, the benzenes, the toluene, the xylenes, they all evaporate faster in that warm water.

Chairman ISSA. I thank the gentleman. The time has expired. I recognize Mr. Clay for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman. And thank you, Governor, for coming today to the hearing.

Governor BARBOUR. Thank you, sir.

Mr. CLAY. The National Commission Report noted something that may seem obvious, which is that the offshore oil and gas industry is inherently dangerous. But the Commission also reported that accidents are surprisingly common that involve loss of well control.

Here is what the report said: Drilling rigs are themselves dangerous places to work, dense with heavy equipment, hazardous chemicals, and flammable oil and gas, all surrounded by the open sea environment, far from shore, where weather and water conditions can change rapidly and dramatically. The seriousness of these risks to worker safety and the environment are underscored by the sheer number of accidents.

Governor, the Commission report then says that there have been 76 accidents in the gulf, between 1996 and 2009, that involve loss of well- control accidents. And many of these accidents occur very close to your Sate. Were you aware of these figures, 76 accidents?

Governor BARBOUR. Of course. My State is an oil and gas State, not just offshore. And a drilling rig is dangerous. I mean, you see a lot of people who worked in the oil fields that have lost fingers, got hurt, got hurt one way or another, got burned. It's—it's a dangerous thing.

The accidents you're talking about, though, all turned out to be—were managed; they were manageable and managed. This, the BP Macon well spill is unique. But yes, sir, it's a dangerous industry, and there are accidents that happen on shore and off.

Mr. CLAY. Do you think these numbers indicate that new safety measures were long overdue well before the deepwater oil spills?

Governor BARBOUR. I think the industry tries very hard to protect their people, because it is very expensive when they don't. So rational regulation is something we ought to all be for. We need to be careful of the excessive, unnecessary, harmful regulation is my point.

Mr. CLAY. OK, fair enough. Governor, some have suggested that new safety measures should apply only to deepwater wells because that's where BP's rig was when it exploded. Do you believe that shallow water drilling should be exempt from new safety measures the administration is implementing?

Governor BARBOUR. Well, again, if you're talking about safety measures to try to prevent injuries—I don't think that's what you're talking about—I think you're talking about treating shallow water wells the same as—my only view is I would treat deepwater wells in the Gulf of Mexico the same way as deepwater wells off the shore of Brazil.

Mr. CLAY. Thank you for that answer.

Governor, Dr. Harriet Perry of the University of Southern Mississippi Gulf Coast research lab, identified oil droplets in blue crab larvae last summer. This was the first time she had seen anything like that in 42 years of studying the species. Do you think those oil droplets were due to the moratorium or the BP disaster?

Governor BARBOUR. If they had showed up in any samples that we ever took out of the gulf, I would have been concerned about it, seafood samples. We're very proud of the Gulf Coast laboratory of UM, but that finding was never replicated, or we didn't have any similar findings in any samples that came out of the catch. And that's why it hasn't—that hasn't bothered me. We just have had no seafood sample—neither has the Federal Government, according to what they reported to us—that had any kind of evidence or oil pollution on it.

Mr. CLAY. Well, Governor, there are a number of reports of red snapper showing up with lesions in the gulf. A Louisiana State University professor is fairly confident that these lesions are consistent with the toxic oil exposure.

I can share it with you, but here is a photo of the lesion on the red snapper. Do you think that was a result of the spill?

Governor BARBOUR. Again, Congressman, if this were showing up in any samples of seafood taken by the government, Federal Government or State government, I would be more concerned about it than when a college professor finds it in some anomalous place.

Mr. CLAY. But would you be concerned about digesting this?

Governor BARBOUR. If it was showing up in seafood samples that we're sampling by the thousands between the Federal Government and State government, then that would give me real pause. But we're not. The fact that we're not finding it means that I'm really not—I don't know what the professors are finding or purporting to the news media.

Chairman ISSA. The gentleman's time has expired. The question has been asked and answered.

We go to the gentleman from Texas. And please, Mr. Foretold, do not get into this Texas versus Mississippi oil. You are recognized for 5 minutes.

Mr. FARENTHOLD. Absolutely not. Texas and Mississippi share a common bond. Both border the Gulf of Mexico and are both deeply affected by what happens in the Gulf of Mexico, both environmentally and economically.

I think you alluded in the answer to one of your answers to the previous questions, Governor, there are other countries that are drilling in the Gulf of Mexico, and whose oil and gas rigs, if there were to be an accident similar to BP or even smaller, would affect our coast; is that not correct?

Governor BARBOUR. Particularly Florida. Texas too, sure. Sorry.

Mr. FARENTHOLD. You have Brazilians looking at drilling, Cuba offering leases, just immediately nearby to Florida. Mexico for a long time has been exploring the Gulf of Mexico. I realize you're only a recovering attorney. I'm a recovering attorney, too.

Your recollection of lawsuit—United States doesn't have any jurisdiction over any of those drilling operations. We can enact every imaginable regulation. Cuba or Mexico or Brazil can say, eh, no.

Governor BARBOUR. That's correct as I understand.

Mr. FARENTHOLD. So don't you think it might be a better use of our resources, rather than crippling our domestic companies and our domestic exploration and 25 percent of our domestic oil supply, that we might be focusing on how to respond in the event one of these accidents or any sort of accident occurs again?

Governor BARBOUR. I do think it's more—I think it is appropriate that the oil industry is doing it itself, paying for it. They know more about it than anybody else. It looks to me we ought to be using our resources to have more American energy, that we need to get ourselves off of foreign energy. And the best way to do that is it to increase supply and production of American energy.

This has hurt that, because this is a big source of domestic oil and the number of permits for new deepwater wells which produce 80 percent of the 30 percent, about a fourth of all our oil, is down 85 percent the first year. And whether its coal or oil or gas or hydraulic fracturing, we need to produce more American energy.

Mr. FARENTHOLD. And in your opinion, no amount of government regulation can protect us from what other countries—

Governor BARBOUR. If we have rational regulation, that is good. But to have excessive regulation, unnecessary regulation, that's bad.

Mr. FARENTHOLD. And regulations like—and slowdowns in issuing permits I think you would consider to be falling under—to be a problem, too.

Governor BARBOUR. Of course it is.

Mr. FARENTHOLD. And like Texas, I assume Mississippi has seen significant job loss as a result of this.

Governor BARBOUR. We have. Most of the guys have just left.

Mr. FARENTHOLD. Are y'all seeing assets that have been based in your State moving into other areas of the world, drilling platforms?

Governor BARBOUR. What we saw happen after the moratorium, some of the big rigs came in for maintenance. Good time for maintenance because you can't work. But after the maintenance was done, they left. And, you know, the way the industry works, those big rigs, they work on big jobs. They are very expensive to move, not only in cost of moving, but opportunity costs. They get paid huge amounts of money a day to operate them. Whether they will come back, how soon they will come back, is a very serious issues.

So we saw not only the jobs move, but we saw the drilling rigs that produce the jobs go to Australia, go to Angola, Brazil. So that's a big damage to us, not just in jobs on the platforms, but jobs in the service industry.

Mr. FARENTHOLD. I appreciate your coming up and taking time to share your experiences with us. I know your time is valuable so I'll yield back.

Chairman ISSA. Would the gentleman yield?

Mr. FARENTHOLD. Yes, sir.

Governor BARBOUR. Thank you, sir.

Chairman ISSA. Governor, 250,000 barrels a day less are going to be taken out of the gulf. If more than a quarter of that is Mississippi related—economic related, what does that do to your economy relative to oil in the foreseeable future? That's the estimate. It is undenied for the next 2 years.

Governor BARBOUR. We get so little of it—

Chairman ISSA. I'm not talking about the royalty revenues, I'm talking about the jobs.

Governor BARBOUR. Well, it does have an effect on jobs. We have a lot of people who work offshore. As I said, I don't mean this as precision, but 4 of the 11 people killed on the rig were from Mississippi, which gives you a sense of the number of people that we have working in the industry on rigs, in the service industries. We have companies in my State that manufacture drilling rigs, that build service boats. So it ripples all through the economy.

Chairman ISSA. Governor, last question. Isn't it really a question of do we get it in America or do we get it somewhere else? Isn't that really the gulf question today?

Governor BARBOUR. Well, if you look at when has the United States had reduced use of oil, it is every time there's been a recession. And so I don't want a recession. If we're going to keep a strong economy, we've got to produce more energy in the United States, including oil. And to go shoot the best goose we've got laying golden eggs, the Gulf of Mexico where we're getting 30 percent of our oil—or we were—and that production is going down now, and it's going to keep going down.

Remember, oil production today is based on decisions that were made in the past, normally several years in the past. A moratorium is one of the few things that has an immediate impact. When we see what we're seeing right now with high energy prices, the speculators are speculating the United States is going to be producing less and less oil, because they think the administration's policies will result in that. So they are betting the price of oil is going to go up.

And then you take that with the value of a dollar, which oil prices are denominated in dollars, since the value of a dollar goes

down, then that's a double-whammy for the people who are paying \$4 for gasoline. And for the people who think you're going to deal with that by raising taxes on oil companies, forget that; they won't pay those taxes. They are just going to pass it along to the guy who pumps gas and his pickup truck. The best thing is produce more oil, and at the end of the day—not next week or next month—that's the best thing to keep oil prices reasonable.

Chairman ISSA. Thank you, Governor. Mr. Davis is recognized for 5 minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman. And thank you, Governor, for being here.

Governor BARBOUR. Thank you, sir.

Mr. DAVIS. I've listened intently to your testimony. Of course, I grew up in the Mississippi Delta on the other side of the river, near Greenville, Mississippi, just a few miles. And as Dick Gregory knows, in Chicago we fondly say that the only place where you will find more African Americans from Mississippi is in Mississippi than in Chicago.

Governor BARBOUR. Amen.

Mr. DAVIS. And so we have a tremendous relationship with the State itself, and we watch very closely what takes place and what goes on.

I know we're talking about the worst environmental disaster in the history of our country, but as you indicated in your testimony it also had a massive economic impact, particularly the fishing and tourism industries. And I want to focus a little bit there.

According to the NOAA, the total amount of shrimp caught commercially in the gulf decreased 27 percent from 2009 to 2010. The amount of shrimp caught commercially in Mississippi was down 60 percent last year from the year before.

Could you share—and you've done it eloquently—a bit more of the economic impact that has occurred in the State as a result of the oil spill?

Governor BARBOUR. The fishing industry hurts very badly because waters were closed. Federal waters were closed first. Mississippi waters were closed once we had encroachment. Louisiana, because they were closer to the well, their waters were closed very early as well. And this is fisheries for us for shrimp. We have big shrimp boats that will go all the way down to Texas coast and come all the way back around the Florida coast, but there are not that many of them that are that big that go that far. So we have a lot of fishermen in the shrimp industry whose waters were closed to them.

Their losses were mitigated by the fact BP was willing to hire their boats to be part of this Vessels of Opportunity program. About 1,100 boats participated, and most days we would have 500, 600, 700 boats out there. And they would be getting paid, some of them more than they made fishing. But the processors got clobbered. And so the fishermen are nowhere if they don't have processors. And so while they were getting a chance to be helped, there was nobody who was helping the processors. And without the processors, there's no fishermen. And so fishing was hurt that way.

Recreational fishing, which is a real industry in my State. There are people from Chicago who come down there and pay boat cap-

tains to take them out fishing. Shut out, shut down. Again they got some relief from the VOO, but hurt very badly, just in that little small segment.

If we ever talk about motels, restaurants—Louisiana, to their great credit, they have New Orleans. And if there is oil on the beach in Venice, tourists will come to New Orleans.

Mr. DAVIS. Are you confident that our Food & Drug Administration and Environmental Protection Agency, that the agencies that we rely upon to determine the safety in many instances of especially the things we consume, that they are equipped to really give us the information that we need to know to feel comfortable and secure?

Governor BARBOUR. I have no reason not to be, Congressman, so I am. It's a team, State and Federal. But yes, sir.

Mr. DAVIS. Let me ask you, other than perhaps the listing of any moratorium, what else can the Federal Government do that might assist with the economy? We know that the economy obviously was hurt badly. We know what the economy was even before the spill. What can the Federal Government do to add further assistance?

Governor BARBOUR. The Federal Government is able to collect enormous fines under the Clean Water Act. The Federal Government can assess through fines and through whatever process, either through agreement or by litigation—say BP's going to pay X billions—the Federal Government could take that and just put it in a general Treasury and move on, use it to reduce the debt. It might cover a day or two worth of deficit.

But we think the best thing the Federal Government can do is let some of the fine money—and there's legislation in the Senate, I believe, to let most of the fine money go to the States. Let the States use the money with flexibility for economic growth there. Maybe it has to be related to the gulf and the gulf economy. We are going to have people who were fishermen 2 years ago, who are not fishermen today, and they will never be fishermen because of the capital investment and the cost. We need to create jobs for them on the coast, maybe at the port; maybe in Alabama they've got something totally different; or maybe in Florida there is a whole different concept. But we would like to see a significant part of the fine money be given to the States and the States allow the flexibility to use the money to produce the maximum economic growth in the coastal areas for that state.

Mr. DAVIS. Thank you very much.

Governor BARBOUR. Thank you, Congressman, for asking.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Idaho, Mr. Labrador, for 5 minutes.

Mr. LABRADOR. Hello, Governor.

In Idaho, obviously, we don't have an oil industry, so I don't spend a lot of time thinking about this, but I think about common sense. It seems like there is a lot of common sense just lacking here. And I'm going to just give you an example. You've had a colloquy with several people here on the panel, I mean on this side, and sometimes common sense just seems to lack in Washington, DC.

A couple weeks ago, or maybe a month ago, the First Lady, her plane was close to—they claim that there was close to an accident.

And apparently she was within 3 miles of another plane. And the regulations said that all planes should be within 5 miles of each other, and apparently the First Lady was within 3 miles. I'll get to my point, and I think you'll get it in just a second.

So the response in Washington, DC, was not hey, geez, somebody screwed up and they failed to comply with the regulation; it should have been 5 miles instead of 3 miles. The response in Washington was, we need new regulations. It seems like that's all I ever hear about in Washington, DC. When somebody screws up, when somebody makes a mistake, we don't say, hey, that idiot didn't follow the regulations. What we say is, we need new regulations. And it's just to me incomprehensible that all we can ever think about is adding regulation upon regulation when the regulators are not doing their job. They already have regulations that should actually be enforced. And instead, all we ever talk about is making it more difficult for industries, for private enterprise, and for individuals to live to survive.

So can you explain to me, and I think you mentioned this earlier, I think you mentioned that the Macondo incident occurred because regulations were not followed. In fact, I think your word was that some corners were cut.

Can you explain that a little more to me, what you meant by that?

Governor BARBOUR. I can't slight the regulatory regime, but in the normal standards and protocols of shutting in a well, it was clear from the reports at the time, and nobody has denied it, that they didn't follow the standards and protocols that the industry had been using, settled on, and had worked with great results for a long, long, long, long time. This was widely reported.

And so it always seemed to me pretty clear why the well blew out. And this was reportedly, again with nobody arguing, this was a pretty tough well. They had trouble with this well. It had hiccups, it had belches of natural gas that they had trouble with. They had to shut the well down at least once during this. So this wasn't a well to cut corners on. This was a big elephant well, but they did cut corners. And you're right when you say the issue is following the regulations we got now. I can't improve on your statement.

Mr. LABRADOR. So why is it that here in Washington we don't seem to understand this? Why is it that we can't understand that we have regulations? I think you used the number, we've done this in the gulf over 30,000 times and this is the first time something like this happened. Can you repeat that again? You said—

Governor BARBOUR. Yeah. There have been more than 31,000 oil wells drilled in the Gulf of Mexico in the last 50 years—or since they opened the gulf—in our four States and there has never been anything vaguely like this to happen.

Mr. LABRADOR. I think I will yield the rest of my time to the chairman. For the life of me, I cannot understand why we cannot in Washington, DC. Just understand that if we enforce the regulations that are in place, we will actually be able to have a good environment, we will be able to have good water, and we will be able to have jobs and the economy will improve. Thank you very much.

Governor BARBOUR. Thank you.

Chairman ISSA. I'm going to followup on the gentleman's line of questioning because I think it was excellent.

Governor, on the day that the oil well blew 100 miles off your shore, there were two MMS officials, a father and son team. They came on, reviewed, passed and left; isn't that so, as far as you know?

Governor BARBOUR. I don't know that, but I——

Chairman ISSA. It wouldn't surprise you.

Governor BARBOUR. I assume it is true.

Chairman ISSA. We're going to have the administrator of the successor organization, MMS, next. That's going to be one of our questions, is why is it that what failed before won't fail again? And that's going to be a line of questioning is not just other new regulations, but an agency that failed to ensure safety; what has changed there? So hopefully they will be as candid as you've been.

Governor BARBOUR. Well, I have to say to you, I accept that because the 31,000 wells I actually go from Janet Napolitano, so I accept people in authority's statement of fact. So I accept the fact that those two guys were there.

Chairman ISSA. I thank you, Governor. The gentleman from Virginia, Mr. Connolly.

And by the way I didn't have to look up what chutzpah was in your opening statement, but it was interesting to see you using imported words.

Mr. CONNOLLY. Thank you. Where I come from, chutzpah is a very common word.

I want to welcome Governor Haley Barbour to this committee. And I was just thinking to myself, I regret very much you're not running for President. I think you would have added some good, common, political sense and a lot of good humor, and would have humanized the process. It desperately needs it, so we're sorry we are not going to see your candidacy.

Governor BARBOUR. Thank you very much, Congressman, that is very gracious.

Mr. CONNOLLY. And thank you for your service.

Governor, I was listening to your exchange with Congressman Burton and complaining about the negative media attention. As somebody who ran a very large county with 1.1 million people, I can sympathize. But on the other hand, was it the bad media that caused a hit to the Mississippi economy, or was it the devastation of the oil spill itself?

Governor BARBOUR. Congressman, we didn't have devastation. The problem was, the news media took the very, very, very worst areas in Louisiana and they repeatedly showed that over and over and over. And it gave people the impression that's the way it was all the way over the Gulf Coast. They would actually have stories about Mississippi and pictures from Louisiana.

Mr. CONNOLLY. Hmm.

Governor BARBOUR. And you may not have been in here—literally, on our 80-mile shoreline, we never closed 1 foot of beach for 1 day except on one occasion. We had a high tide either right before or right after a hurricane missed us, and it pushed some water over the highway and through a culvert, and it pushed some oil

patties up there. And we closed that beach for more than—we actually closed that beach overnight. That is the only time.

But if you watched TV in Virginia, you saw Louisiana and you thought Mississippi and Florida and Alabama, for that matter, and Texas were all the same way. And that's what killed our tourist season.

Mr. CONNOLLY. Yes. Common problem with the media sometimes.

Governor BARBOUR. Amen. That's a bipartisan.

Mr. CONNOLLY. Absolutely.

When you look back now, and if someone gave you a truth serum, do you think in retrospect that the process for permitting and improving the Deepwater Horizon oil rig was flawed? For example, it got a categorical exclusion under the process because the process allowed for that. In retrospect was that a mistake?

The NEPA—and then one other aspect, Governor, and then please respond—the NEPA process predicted under the NEPA review, which was truncated, that under the worst-case scenario we were looking at 4,300 barrels of oil spilled and it would never reach the shore.

Governor BARBOUR. Congressman, in answer to your question, I think that what we have done for 50 years, with more than 31,000 oil wells, with very positive results—in fact, nothing like this ever having happened—I would not take issue with that. I mean regardless of what we do, occasionally you're going to have the bad outcome. But we're not going to make people quit taking left-hand turns, we're not going to outlaw left-hand turns because they are a little bit more dangerous than regular driving. And I really see this, that rational regulation of this had resulted in 31,000 times, nothing like this—now this has happened one time. Does that mean we have to turn the world upside down? And I think the answer is no.

Mr. CONNOLLY. Governor, I would agree with you. I don't think we have to turn the world upside down. But really my question, isn't that—that's not our only choice. The question is: Could we in retrospect have tightened up regulation and been more rigorous in the review process, such that—and the enforcement, for example—get the blowout protection equipment that might have stemmed the spill or contained it?

I mean, I take your point that the devastation wasn't what was presented visually on television. I fully respect and understand that. But on the other hand, at one point the extent of the spill on the surface of the water would have gone from my district in Northern Virginia, Dale City, all the way to New York City, if it were superimposed on the map here. That's eye-popping and that's of deep concern to all of us.

All I'm asking, don't turn the world upside down, but could we not on a bipartisan basis agree that in light of that experience, it only requires one to create such environmental havoc. This isn't the category it seems to me of a nuclear disaster, it only requires one. Turning left hand and having an accident, God forbid, is a terrible thing if someone is hurt, but it is a very contained thing.

Governor BARBOUR. If the chairman is correct that there were two government regulators on the rig that day, and if the reports

that have been written over and over and over, without contradiction, they did not follow the normal protocols and they did not follow the standards, and these two regulators were on the well that day, I think the Congressman from Idaho's point is the right point. It's not that we need more regulation, it's that we need to actually enforce the regulations in real life, if, that is factually accurate. I have no reason to think it's not.

Mr. CONNOLLY. Mr. Chairman, will you indulge me just one—

Chairman ISSA. The gentleman is recognized for one more question.

Mr. CONNOLLY. Just a clarification, Mr. Chairman, thank you.

Do you mean by that, let's have the full regulatory process that's on the books right now, no more exclusions?

Governor BARBOUR. I couldn't go that far because of my lack of information. There may be some exclusions that are well-founded, that are like we see in many, many other processes, regulatory and otherwise. You fill out the form, if the answer to C is no, skip down to F. I just don't know if those exclusions are of that type.

Mr. CONNOLLY. Thank you, Governor.

Chairman ISSA. I thank the gentleman.

Governor, this may come as a surprise to you, but I haven't had my round of questioning yet, and I'm going last. There may be another minority member coming, but I'm going now and recognizing myself for 5 minutes.

Governor, I'm going to put up on the board a quote from Secretary Salazar for your comment. I'll read it. "There is no question that the suspension of deepwater drilling will have a significant, negative, economic impact on direct and indirect employment in the oil and gas industry, as well as other secondary economic consequences.

Governor BARBOUR. That's correct.

Chairman ISSA. But he did it anyway.

Governor BARBOUR. That's correct.

Chairman ISSA. Can you explain why somebody would know that it was going to hurt economically—and by the way, he follows that up, which isn't on this quote—he follows this up by noting that there's an extremely good history of safety in the oil and gas industry.

Governor BARBOUR. Mr. Chairman, my own view is that the policy of the administration is to increase the cost of energy so that people will use less of it and, therefore, there will be less pollution and alternative forms of energy will become more economically competitive. I have said that publicly a thousand times. I might as well say it here.

When they did the moratorium, that was my assumption, that this was consistent with that policy. And, look, it's one policy that works. I mean, we have \$4 gasoline; and gasoline in January 2009 was a dollar eighty something. But that's what I took to be the rationale for that is. To make these other alternatives economically competitive, you had to increase the price of oil and other traditional.

Chairman ISSA. Well, it's certainly done that.

By the way, the quote that wasn't on the screen is, I am also aware that, as a general matter, the safety record for deepwater drilling has been good.

I am going to go to one more very interesting quote, because the next panel's going to be dealing with this.

Last week or 2 weeks ago, I guess it was, Secretary Hayes was here and told us there was no connection between high oil prices and domestic production, meaning he was quite sure that if we drilled more here it wouldn't change the global price.

I'm going to take you to page 23 of an MMS report, titled MMS Economic Impact Assessment. At the time, they were assessing—and I will just read it because it's a little hard to read that one—they were assessing that at \$75 a barrel—which is where we were, not where we are, unfortunately—that if production went down by 84,000 barrels a day, .84 million barrels a day, that we would have an increase of about 47 cents a barrel. Now, it went down by three times that.

Now, you're not an oil speculator, neither am I, but it would not surprise you that if you got a half dollar increase for such a minor one and if you decrease by three times that amount, wouldn't you guess it would go up a whole lot more than that; \$10, \$15 a barrel could certainly happen if you took that much out of the limited economy?

Governor BARBOUR. And potentially, if the market believes that this is going to be policy for a while, that you are going to have a moratorium in the Gulf, that you're going to reduce production in the Gulf, that you're going to issue 85 percent fewer new deep-water drilling permits, that the market sees that as there's going to be less U.S. oil production. And while whoever said you can't affect the price of oil overnight, well, of course, that is absolutely true, but if there is a belief that the United States is going to produce less and less oil going forward, particularly because of government policy, then the price of oil is going to go up.

Chairman ISSA. One more thing I wanted to get into the record. Governor, you are one of the many States that are Right to Work States, aren't you?

Governor BARBOUR. Yes, sir.

Chairman ISSA. In fact, every State in the Gulf of Mexico—every oil State is a Right to Work State.

Governor BARBOUR. I think all the States in the Gulf of Mexico. I don't know if every oil State—

Chairman ISSA. I'm sorry. California is an oil State. We're not Right to Work. But every Gulf oil State is, in fact, a right to work State.

Governor BARBOUR. My belief.

Chairman ISSA. Does it surprise you that the policies of this administration seem to be targeting the economic well-being of your area—and I'm not trying to say it's a big plot or anything else—but it does seem like if 9/11 aircraft fly into the Pentagon, fly into the Twin Towers, the next day we are figuring out how to get airplanes back in the air. And yet the economy, the seafood economy, the tourism economy, and the oil economy of your State, when you're suffering, it seems like there's no limit to how long this administration will take to have a moratorium to think about wheth-

er or not they can let you do something that's so vital to your economy.

Governor BARBOUR. Well, the moratorium was a mistake. It was very harmful not only to our State but I think, more importantly, very harmful to the country. And I can't read what's in people's hearts or what's inside their heads, but I have noted—and I hadn't said it here, but I think it is appropriate to say—there has been an effort to raise taxes on the oil industry because it's a very profitable industry.

Chairman ISSA. Every day here, Governor.

Governor BARBOUR. It's interesting, in the Senate bill to raise taxes on the oil industry, the idea was deficit reduction to raise the taxes \$2 billion a day—I mean, \$2 billion in a year. The problem is that's half of 1 day's deficit. You know, you would have to raise the taxes on the oil industry by a factor of 700 times more than that, because a \$2 billion tax increase on the oil industry is equal to one-half of 1 day's deficit.

I mention that because it says to me that can't be the real reason. I mean, the real reason can't be to touch the deficit, because it doesn't even touch the deficit. And of course, as we know, the guy who's going to pay it is the one who pumps gas in his truck.

So do I think there are some people who don't like the oil industry or think it's a good whipping boy politically, I suspect that. But I can't say what's inside people's hearts or minds and don't pretend to, but I do know it wouldn't do anything about the deficit.

Chairman ISSA. Well, Governor, I couldn't agree with you more that we can't be sure of somebody's motives. Although, I can be sure that if Wall Street were to cause an economic meltdown that this administration would allow it to be up and running the next day. Because they did. The last administration did. This administration did. We have had great disasters and great impacts in other areas of the economy, but, amazingly, the reforms came after everyone was back up and running, not before they were allowed to go back up and run.

Governor, you have been very kind with your time. We appreciate your being here. You're probably the most welcome relief to us in Congress, to see somebody who's doing the right things, who's making the right decisions, who's steering a course for your State, and we appreciate you taking your valuable time to be up here today.

Governor BARBOUR. Thank you, Mr. Chairman. Thank you, Congressman Cummings.

Chairman ISSA. We will now take a 5-minute recess to set up the next panel.

[Recess.]

Chairman ISSA. We now recognize the second panel.

We have Mr. Craig Taffaro, who is president of St. Bernard's Parish in the State of Louisiana. Mr. Bill Williams is commissioner of Gulf County District 3 in the State of Florida. Mr. Frank Rusco is the director of Energy and Science Issues at the Government Accountability Office—GAO was prominently mentioned in the first panel. Mr. Cory Kief is president of Offshore Towing, Inc. And Mr. Michael Bromwich is—and is very welcome—director of the Bureau

of Ocean Energy Management, Regulation, and Enforcement, previously referred to as MMS but now reformed.

With that, as you saw in the first panel, I'd ask all the witnesses to rise and take the oath.

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative.

Gentlemen, the first panel was one; you are five. I will ask you to please summarize your opening statements and stay within the 5 minutes for each others and our side, and I apologize for the first panel going long, but, hopefully, it's set up questions and answers for all of you in the second panel.

Mr. Taffaro.

**STATEMENTS OF CRAIG TAFFARO, PRESIDENT, ST. BERNARD'S PARISH, LOUISIANA; BILL WILLIAMS, COMMISSIONER, GULF COUNTRY, FLORIDA; CORY KIEF, PRESIDENT, OFFSHORE TOWING, INC.; FRANK RUSCO, DIRECTOR, ENERGY AND SCIENCE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE; AND MICHAEL BROMWICH, DIRECTOR, BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION, AND ENFORCEMENT, U.S. DEPARTMENT OF INTERIOR**

**STATEMENT OF CRAIG TAFFARO**

Mr. TAFFARO. Thank you, Mr. Chairman, committee members, Ranking Member Cummings. Appreciate the opportunity to speak with you today.

While there have been numerous reviews, reports, and studies completed in relation to the BP oil spill disaster, the reality of the impact continues to unfold, and the intermediate and long-term obstacles and effects are just coming into focus.

The experiences and lessons learned through the first year of the oil spill response must be used to guide us through the remaining years of the oil spill recovery. These insights, while certainly fueled by the passionate experiences of those directly and indirectly impacted by this spill, are offered as just that, insights.

My hope is that the message delivered is not lost in the corporate world of spin marketing or in the spin-off media exposes designed to sensationalize the event and leave the victims and the coast without the attention it is warranted.

Insight one. Hold the responsible party accountable. There are few axioms of our society more basic than the one we learned in some of our earliest social development. If you make a mess, clean it up. As simple as this axiom sounds, there has been an ever-present allowance in this disaster that has allowed BP to make it right on their own terms and not based on the terms of the impacted States, communities, businesses, and individuals.

Unlike the natural disasters that we continue to respond to as a Nation, this disaster has an identified responsible party. There is no value in talking about the disaster in terms of responsibility if there are loopholes and justifications that allow the agent that created the mess to define the terms of the response.

Added to this axiom referenced here is the understood message about the mess versus the mess maker. Somehow we seem to be

routed into an ongoing focus of is BP good or bad or is deepwater drilling good or bad, instead of a consistent focus of who is responsible for the mess and has it been cleaned up quickly, comprehensively, and in a way that does not create another mess. The reality is that the value in cleaning up a mess that was created offers as much immunity and positive spin to the mess maker as any spin marketing campaign could accomplish.

The second insight I offer is to remove the response and restoration authority from the responsible party. This insight must not confuse the terms “authority” and “responsibility.” The responsible party being responsible should translate into doing what is deemed to be required to complete the actions involved in addressing the environmental, coastal, social, economic, medical, and emotional impacts of the given disaster. Removing the authority to decide what those interventions that shall be required from the responsible party protects the impacted States, communities, businesses, and individuals from further victimization. In an oversimplification illustration, when we are involved in a car accident, the person who caused the accident doesn’t get to dictate how and what treatment or repair is dictated.

Insight No. 3. Legislate for the disaster that will happen versus one that has already happened. A critical lesson that continues to face us is the need to address current legislation in a way that transcends the most recent disaster. While the need to know causal information in any disaster is important, the framework of legislation that allows flexibility in accomplishing the overarching mission of effective and expedient response and the ability to require action by a responsible party must be examined.

While new legislation will not correct any of the ills of the BP Deepwater Horizon spill, we can implement language that authorizes broader oversight and intervention authority, stiffer penalties for a lack of cooperation, including language that revokes a company’s ability to operate under other permits if it has not been compliant, while in all terms making sure that production is not mutually exclusive with safety.

Unfortunately, we as a collective unit of citizens, government officials, and industry leaders cannot predict the next disaster, but we can predict the next response. We can predict the next worst-case scenario and ensure that legislation with the appropriate flexibility and force is enacted to protect the interests of all citizens.

And, finally, the last insight is to localize the response process to better serve the impacted victims. The shortest distance between two lines is a straight line—or the shortest distance between two points is a straight line. No one argues that, but we continue to set aside this scientific law as we develop and address local needs at a nationalized approach.

While impacted citizens of St. Bernard Parish continue to have less than 25 percent of their claims settled, the monthly payment to Mr. Feinberg continues unfettered. While I have no problem with an honest day’s pay for an honest day’s work, I do question an assignment of claims processing and the payment thereof without a performance clause in favor of the victims.

We were told that claims processed through the Feinberg plan was independent. It’s not true.

We were told that the claims would be easier to process at the local level in the Feinberg plan. It's not true.

We were told that the Feinberg plan had greater flexibility and was implemented to address the victims, regardless of the impact to BP. We have found that this is also not true.

I have met Mr. Feinberg and have no personal problem with him as an individual. I do not claim to know his business, but I do know that, because of the lack of ability to resolve claims at the local level, his program and process has been ineffective. St. Bernard has offered at no cost to the Feinberg plan to assist him in identifying claimants that are likely to be questionable versus those whose local work history supports their need for assistance.

A common tenet in the disaster response industry is that disasters are local. This is supported because the impact of disaster is most real for the individuals living or mourning through it. We would ask that the local government and local involvement continue to be involved not only in the compensation process but equally in the response and restoration phase of all disasters.

Thank you for allowing me to share my thoughts, and thank you for keeping this issue at the forefront of your agenda.

[The prepared statement of Mr. Taffaro follows:]

### **A Local Perspective Update on the Deepwater Horizon Oil Spill**

As far back as the war of 1812, the tenacious spirit of our community became legendary with the defeat of the British at the Chalmette Battlefield, better known as the Battle of New Orleans. Today, the rebuilding of a physical and emotional infrastructure for a community brought face to face with its very existence represents a resiliency and determination of a people whose commitment to home has become legendary in its own right. In fact, including the BP Oil Spill, we, as a community, possess the distinction of participating in five Type I Incidents over the past 6 years. This has taught us that character of a community is not developed or defined during crisis, it is merely revealed. It is ironic that we face conflict with the British, albeit through BP. As with the subsequent almost 200 years, we again look to a long lasting mutually beneficial partnership with BP. But this is only possible with the balance of need and response to that need.

I believe that philosopher George Santayana is correct in his assertion that those who do not learn from history are doomed to repeat it. The history has now been written on the multiple failures which lead to the BP-leased Deepwater Horizon drilling rig explosion on April 20, 2010, killing eleven workers and initiating the worst environmental disaster in U.S. history, with an estimated 5 million barrels of oil leaked into the fishing waters, estuaries, wildlife habitat, and ecosystem of the Gulf Coast. The failures were broken down into multiple findings from technical to managerial. The executive summary of the Chief Counsel to the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling identified the following managerial failures:

1. BP did not fully appreciate the risks
2. BP did not adequately supervise operations
3. BP did not properly train or support their personnel
4. BP did not properly communicate
  - a. BP changed its plans repeatedly and up to the very last minute, sometimes causing confusion and frustration.
  - b. When communication was sent it was often inadequate in detail and guidance.

As a result of these failures, the Gulf Coast and the nation were forced to embark on oil spill response activities of monumental proportions. In St. Bernard Parish alone, over 1300 personnel, many of whom were previously commercial fisherman, became trained Hazmat Technicians and participated in the development and implementation of response and recovery operations conducted within our boundaries, marshes and barrier islands. A Branch Unified Command was established with the Coast Guard, British Petroleum and St. Bernard Parish in which all plans and operations were reviewed and submitted for approval to the Incident Command at Houma. This Unified Command and structure was acknowledged both by BP and the Coast Guard as a model Branch and remained operational until the closing of the Branch in December 2010.

After nearly 5 Million barrels of spilled oil entered the Gulf and resulted in hundreds of miles of impacted and "disappearing" coastline, tainted fishing waters, debilitated wildlife, and closed beaches, no clear direction to a comprehensive resolution emerged. Additionally, even interventions designed to assist have become destined to destroy. Case in point: thousands of anchors placed as part of the boom blitz to contain the oil, have been abandoned and left to wreak further havoc upon our boaters, marshes, and nesting grounds and are poised to resurface

during hurricane season. On a personal level, our residents continue to face countless lost jobs and revenue, a declining seafood market and an unknown number of unpaid claims for damages and response costs associated with this disaster. In the face of the opportunity to act on over a year's worth of review and evaluation, what will the historians memorialize about the measures taken to ensure the managerial failures which led to the greatest man-made environmental disaster to occur in American History were not repeated during the response or restoration?

If Katrina should have taught us any lesson, it is that the regulations, statutes and laws that govern our response and recovery activities are written to process the typical, not the catastrophic disaster. The Stafford Act was never written to be able to respond to the requirements of a Katrina. The Oil Spill Response Act was not written to respond for a Deepwater Horizon. As a result, the processes followed by the responsible party during a typical release, as well as the oversight provided by the United States Coast Guard were insufficient to ensure the integrity of a mission of this magnitude and importance.

As I experienced the response activities from the position as a member of the Incident Command for the Hopedale Branch, my assessment of the managerial effectiveness of the Responsible Party does not deviate from the previously aforementioned assessment.

#### ***BP Did Not Fully Appreciate the Risk***

Whether BP fully appreciated the risk associated with the spill can only be evaluated and measured by the effectiveness of their response, or lack thereof. As a community, St. Bernard Parish understood the effects of oil impacting our marsh; the dying coastline, the dead oysters, the missing shrimp and shrimp market, the depressed families, the physical illnesses, all of these were real and all of these continued while a world waited for the leak to stop. All of these continue today. We knew the risks of accepting Sediment Treatment Recommendations that would limit recovery activities to natural attenuation, as the effects of manual removal would create even more damage to the delicate ecosystem of the marsh. For Louisiana, the only viable course of action to protect the marsh was to prevent the oil from reaching our interior coast. Debates about berms and boom, skimmers and schedules, and pollution and policy all took precedent over decisive and consistent action. And when a decision was made, the ability to execute that decision presented another series of delay. An illustration of this included the procurement of containment boom to fill the operational requirements to cut off the flow of oil into the interior coastal areas of St. Bernard Parish. Once a decision to lay boom was made which involved breaking through secret and separate meetings of BP personnel, the acquisition of the boom became yet another story. BP communicated to all Branches that they had canvassed the entire globe and had secured all available sources of boom and that we needed to only be patient and await our supply. Using lessons learned and spurred on by encroaching oil mass, the St. Bernard Branch conducted an independent search for containment boom and located a source outside the established BP Logistics chain. After BP rejected the concept of such a resource based on concerns that the source may not meet their high standard of quality or that the containment boom might be defective or used, an examination of the boom was completed by both BP and the Coast Guard, St. Bernard Branch was authorized to procure the containment boom for operational commitments. The Branch procured enough boom that we were able to advance it to other branches within the region as requested to maintain their operational commitments as well. BP even negotiated the purchase directly and then issued a

directive that only BP could secure boom for future operations. Equally telling of what appears to be a lack of concern for the risk was the approach used to obtain and deliver appropriate storage tanks and skimmer equipment in a timely manner. Suffice it to say, had the initial forecasts for inundation by oil been accurate or had any of the potential tropical activity actually materialized to the Louisiana coast, there would have been insufficient resources to conduct the necessary logistical support or maintain operations. If the risk associated with the impact was truly understood, the necessary equipment required to respond would have been pre-staged on site. There is no doubt that hindsight offers great ability to second guess any disaster response, but these patterns of disregard or an inability to assess the risks only serve to cast greater doubt about the motives of BP or the insufficient authority in the current legislation to hold the responsible party responsible for not only the disaster but the response as well. The logical conclusion in understanding this pattern leads to the belief that the costs associated with prevention and response, if delayed or denied, would provide relief with respect to restoration. Regardless, to have the responsible party so intrinsically entrenched within the logistical and planning aspect of the response so as to be able to control the operational tempo via financial veto authority can be mistaken, or revealed, as a failure to appreciate the risk. Passive or bureaucratic resistance to fund operational requirements can often be mistaken for failure to fully appreciate a risk.

#### ***BP Did Not Adequately Supervise Operations***

The effects of inadequate supervision of operations led to numerous operational concerns. The term inadequate in this scenario is easily synonymous with uncoordinated. While the presence of BP at the local level was clearly evident, the coordination of the role, authority, and mission of the local BP representation in regard to being consistent with the Houma management or beyond was clearly non-existent. Whether by design or ineptitude, the lack of coordination within the BP structure from one branch to another and from BP executives to the branch management served to delay the delivery of assistance, bifurcate the response mission, and paralyze the role of the US Coast Guard as an authority to oversee needed operational decisions.

Consistently, local BP representation was cautioned about “going native” and this concern began to bleed into the US Coast Guard. “Going native” was discovered to mean that the responsible party representative or the assigned US Coast Guard representation lost their respective ability to tow the BP line and that the wishes, desires, and requests from a local community were being attended to without proper objectivity in relation to the unstated boundaries. The most obvious of this situation was when BP representatives who had 10 million dollar signature authority in non-spill roles were reduced to no signature authority at the Hopedale Branch. Supervision within the scope of the branch regularly resulted in productive partnerships with a focus on the mission at hand but that often met with resistance from outside the branch. However, the longer the response activities continued, the more the local BP representation was stripped of any ability to contribute to a decision making process and in turn, the less defined the local US Coast Guard representation’s role became. Eventually, the process of US Coast Guard intervention became shifted to assert its “authority” to protect the integrity of the operations of the spill response. Again, this undefined and inconsistent dynamic of who was being protected and who was in authority resulted in, at the least, an ineffective response tempo and, at most, additional damage to the Louisiana coast, its wildlife, and its fisheries. Inadequate and uncoordinated supervision added to the current poor planning and performance during this incident.

***BP Did Not Properly Train or Support Their Personnel***

During the period prior to final “Top Kill” BP provided at least 6 Branch Commanders that “rotated” into the command structure. Several brought on from retirement. None had experience with oil spill response or Incident Command. Most underwent National Incident Management Training during their limited tenure. Two were removed quickly for “going native”. Despite having multiple commanders, operations personnel and logistics staff, BP failed to provide the necessary financial staff to properly procure the assets and equipment utilized to respond to the incident despite numerous pleas and promises to do so.

During the first week of the release, BP requested that all requests for support be logged into the Governor’s Office of Homeland Security and Emergency Preparedness for processing. This was modified after the flow of requests became overwhelming to manage in this manner. The branches and Parishes were then instructed by BP to provide the request directly to the BP Branch Commander on the ground for authorization. When this proved unsustainable, written instructions regarding the limits of authority for each BP position within the command structure were implemented. These instructions were then further modified and eventually rescinded, following additional written guidance, contrary to the previous agreements. Despite numerous pleas to BP to provide the necessary staff and training to uphold their fiduciary and operational responsibilities, at one point the BP Branch Commanders were instructed to NOT SIGN ANYTHING with respect to operations or finances as it related to the spill. We consulted with the Coast Guard who informed us that they could not engage BP with respect to their financial obligations, their responsibility rested at directing operations and not payments. In short, the failure to pay contractors, property owners, and suppliers was a result of a failure to provide the necessary training and support to understand the Incident Command Structure and process in order to facilitate effective operations.

The lack of appropriate training and personnel was further underscored as the disaster response continued past the initial three months where the duty assignments called for untrained USCG personnel to fill billets that local experts were more qualified to fill but not supported as a matter of conflict created by BP. More specifically, Coastal Environments, Inc. was a company with 40 plus years of experience in coastal management and restoration. This company was originally brought on to assist in the early development of strategies and assessment, coordinated with local BP representatives, then they were subsequently hired by BP directly to continue to provide the same service that they have been denied payment for during their early and approved involvement. The history of CEI goes back to the initial days immediately following the response. After all, Dr. Gagliano is a renowned expert in the field of marsh restoration and has over 40 years of experience operating within our marsh area. In fact, he has provided guidance to St. Bernard Parish and the state of Louisiana long enough to see what has worked and what has ruined our fragile ecosystem- what restores and what wastes time, money, and energy. It was important to us that we engaged an expert who could not only advise us as to the topography, tidal activity, current and depth of water and passages, but more importantly, someone who could guide our actions to ensure we didn’t create more harm as a result of our response. Although initially approved, BP logistics requested that the Parish utilize its advance payment to cover these costs. During a meeting with BP the Parish acknowledged that the advance payment was to be utilized for administrative costs and requested that BP pay for these expenses through the operational channels. BP then requested that we sign and submit a “213” requisition form for approval to authorize payments. As recently as the week of May 25, 2011 we received correspondence that indicated the Parish Director of Homeland Security did not

possess the authority to sign a 213 requisition, provided to him by BP for signature, and therefore the invoice was being denied for payment. The fact that a 213 requisition form had been submitted to Houma and after 6 months was not denied, rejected and returned was not surprising. The fact that these individuals met with Coast Guard and BP personnel everyday at the numerous staff and planning meetings without any indication that the services being rendered were not authorized also is not surprising. After all, the BP Branch Finance Section Chief acknowledged in the after action report submitted to BP Incident Command in Houma following the first 100 days of operation that he had yet to receive a single authorization to any of the 213's he had submitted to date with respect to these items. Clearly, the lack of support, understanding of operational tempo and commitments of the command has led to BP's lack of managerial awareness. After all, who denies payment to a renowned expert for services rendered while they are still performing such support directly without discussion with the vendor. BP had no knowledge that CEI was still working for them and CEI had no knowledge that BP had denied their request for payment.

#### ***BP Did Not Properly Communicate***

BP's communication changed repeatedly causing confusion and frustration and was inadequate in detail and guidance. The rotation of BP personnel occurred with a lack of clear communication of who would be stepping in, for how long, and if there would be a return of the exiting personnel remained a mystery. The rotation of the USCG personnel at least had a mission assignment date of duty and release. Throughout the operational period, the mode of operation included segregated discussions, some within a BP circle, some within a BP/USCG circle, and some, albeit limited, within a Branch command circle. It was common that communications within the BP/USCG circle took place without proper notice to the local command and the information that was shared was often veiled and non-committal. If an attempt was made to further address a lack of information and communication was attempted at a higher branch command, the vagueness of information just intensified.

Even in the sense of a proper logistical plan being implemented, communication of resources, activities, testing results, anticipated outcomes, or proposed interventions were systematically left out of communication notices to the local level. This common occurrence typically involved vessels or other resources travelling into St. Bernard waters and operational areas with no advance notice or coordination. The communication breakdown was daily in the sense that daily operational plans were required to be forwarded to Houma, the BP Headquarters, only to be placed in a cyber hole that never produced a response to the operational plan submitted or the request for appropriate assets to support the plan embedded within it.

Poor communication disrupted even the most basic needs of the response. In an effort to keep information sharing to a minimum, often times, and information was lost in communication from one level of management to another.

Our community will shortly cross the threshold where our Branch of operations has now been closed as long as it was open. We still have landowners who have yet to be paid, Marinas waiting to receive payments for boat launches that occurred 6 months earlier, Fishermen whose boats were damaged waiting reimbursement while unable to return to commercial fishing without an operational boat, only resulting in further damages and lost income. Vendors awaiting payment and last week we received our first notification that BP is now denying payment to vendors utilized in the response.

Here is yet another example of training and support. During the initial days of the response, BP's contractors trained our commercial fisherman on the techniques of properly positioning boom in the water to collect the weathered oil. Our fisherman explained that the technique of tying the anchor to the boom without chain would be self defeating and would result in lost anchors. We requested chain and modifications to the installation process. BP never produced the chain. As a result, 35000 anchors are now resting on the bottom of our marsh, waiting for the next tropical storm to have them rip through our unprotected marsh. Unlike other branches, we ensured that Global positioning to mark the location of each anchor placed in the water was utilized. At the completion of the response we requested that BP remove what they ultimately were responsible for placing in our marsh. To date they have spent more time and energy validating that the anchors pose no threat then time spent removing them. Yet last week, my office received still more calls from fishermen who have stated that their nets, and propellers have been ripped or damaged as a result of their contact with these anchors.

What has changed? The same lack of supervision and clear guidance that created the catastrophic spill has plagued and racked the response. BP's ability for passive resistance and delay and defer have been more the motto of the response then their promise to make it right.

So where do we go from here. The final stage of any catastrophe is restoration and recovery. The first step of the recovery must be to make it right with those whose lives have been impacted by this catastrophic event. In short, Mr. Feinberg's process of paying claims has become wracked with as much dysfunction, inequity and failures as the response. Of the over 4100 active claims that have been filed in St. Bernard Parish, one of the most impacted parish's with respect to contamination from oil and near ground zero with respect to its effects on our economy and markets, only 1800 have been addressed in some fashion. According to the paperwork provided by the Gulf Coast Claims Office, they have handled approx 150 cases in the last 4 weeks. At this rate, the Gulf Coast Claims Office should be able to resolve all interim payments within the next 2 years. Understand that interim payments are those payments necessary for an impacted family to survive until final settlement can be reached.

This is where my community stands after reaching out to BP and offering our boats and our services to help protect the very life of our community that their failures created. To be balanced, BP certainly has forwarded funding for some response activities and interventions for the seafood industry and tourism. It has been stated throughout this incident that what BP has done well, they have done very well but what they have done poorly, they have done very poorly.

As I look to restoration, my only hope is that the Natural Restoration and Damage Assessment process will be the phase of this disaster where as a nation we awake and say no more. It is time for the trustees to step up and tell BP that the only assistance and support required is for them to deposit the resources necessary to cover the costs associated with the recovery. The recently and

highly publicized agreement of a 1 Billion dollar down payment to the five coastal states for early restoration activities seems to be following the same path as the preceding "agreements". Announce a plan and then figure out how to make the plan fit the hype that was part of the press release that celebrated it. To date, there is still no signed agreement for the use of the 1 Billion dollars, still no clear delineation of projects that will be approved, and still no sense of urgency to support the claims necessary to salvage an entire industry. In fact, the only clarity about the early restoration dollars is that BP maintains when or if it ever gets released outside of a court order.

Honorable Members of Congress, there is an undeniable pattern of one sided gesturing and posturing over this Oil Spill. We seem to lose the fact that this incident dwarfed other similar incidents in our history as a world, but we seem to point to and celebrate the advertising snippets and sound bites from the evening news hours. While there is certainly a balance, this process is far from level. As long as the current legislation is allowed to exist and responsible parties are given the role of ultimate authority in response and recovery decisions with little potential for negative consequence, the outcome for disasters of this magnitude will likely not be very different.

Hold the responsible party accountable.

Remove response and restoration authority from the responsible party.

Legislate for the disaster that will happened verses the one that happened last.

Localize the resolution process to better serve the impacted victims.

Establish a response forum of oil spill experts that evaluates and estimates legitimate response funding, resource supply, disaster magnitude, the organizational structure of state and local oil spill response teams, and compliance with all applicable local, state, and federal regulations for the disaster response.

Thank you for your continued diligence in addressing the issues that our energy industry must get right. Let's hope that if and when BP Makes It Right, that the industry will also get it right so that production and safety do not have to be mutually exclusive and oil spill disasters are responded to based on environmental protection and not accounting spreadsheets.

Respectfully,  
Craig P. Taffaro, Jr.  
Parish President  
St. Bernard Parish, Louisiana

As an illustration of what the reality is of the impact of this ongoing disaster, I would like to share a few stories with you.

Marty Melerine Jr. is an oyster fisherman out of Hopedale, LA. Mr. Melerine's family settled in St. Bernard Parish in 1778, coming from the Canary Islands as fishermen. His family has been in St. Bernard fishing ever since.

"I started when I was little kid, I was six years old. My daddy brought us on the boat. It was part of life. I brought my kids on the boat when they were four. You take your kids to park; we take them on the boat.

"I started really making money trawling when I was a teenager. When I was in high school I had vehicles paid for, cash. After Katrina we had just about recovered, now we're spending our life savings on crushed concrete to rebuild our reefs that the oil spill destroyed. Our reefs are getting covered up with silt because we haven't been able to work them. We have to get that off and then put the crushed concrete to rebuild. Everything we've worked for is going into this. If this doesn't work we're done. Try to sleep at night if you think about it that way.

"If we don't do this what do we do? We can't do anything else. Even if we can, we don't want to. BP is offering final settlements to us that we could earn in a month at the right time of the year. We make most of our money in a 3 month period, the rest of the time we're planting and working on boats. It's a seasonal business. BP is trying to lowball and stall so we settle. Fishermen are settling for peanuts. The settlements that BP is offering we can't even rebuild our businesses with.

"We're not going to let this keep us down. We're not sitting on our hands asking for a handout. We're asking them to make us whole again. I've been working more now than I was when I was fishing, trying to rebuild my business. Everybody is trying to rebuild their life, and we don't have a lot of faith in the Feinberg camp. Bona fide Louisiana fishermen who work hard and pay their taxes are the ones being hit hardest. We may not have a college degree but we can do whatever we want with our hands. We're going to make it and we're going to survive this."

Meet George Barisich, a Lifetime St. Bernard Parish Fishermen and  
President of the United Commercial Fishermen's Association

"In the 1930s my grandfathers on both sides came from Croatia. They settled in New Orleans in a fishing village. My grandfather George Vujinovich is one of the founding fathers of our oyster industry. I had the fishing blood from both sides. My daddy came from Croatia when he was 11 and my mom came from Croatia when she was 9.

"My daddy loved shrimping and grew up on the boat with his daddy. When he was 12, his daddy went back to Croatia and left him on a boat with a bunch of men. My daddy was a good fisherman, so in 1948 he bought his own boat. He did so well he had the "FJG" built, named after his first three children.

"Every summer, starting when I was 9, I went on the boat. I didn't go to summer camp I went on the boat. I excelled in school so I went to college and I got a degree in Social Welfare and one in Psychology. I went to law school at Loyola for a year and a half. I didn't like it though, and I

went back to shrimping when I was 22. So 9 or 10 months out the year I fished, and the other couple of months I hunted and played.

"In the early 70's we had no government support and my daddy was dying. He told me I could've had an easy life, he was always upset I didn't finish law school. I promised him before he died that I would use everything I learned in school to preserve what the government was trying to kill, and that's what I've been doing ever since. In 1993 I started the United Commercial Fishermen's Association.

"The shrimping industry started to change because of imports. I became more diversified and started oyster farming. Before Katrina I was barely hanging on, and after Katrina I was in survival mode. Those of us who stayed with it came back, but it was incremental. Then the oil spill hit.

"I've had no oyster production for over a year, and I lost half the shrimp season. Once the areas were open I was still crippled because the dockside shrimp prices were 50% less than pre-spill. I'm still out of business with my oysters, which is further complicated due to the oyster spat is not catching.

"I'm still waiting for my interim payment from BP. I haven't received a determination letter. From the fishermen that I've been talking with, some of them have been getting \$25,000 final offers when they were making \$25,000 a week before the oil spill.

"Those of us that hang on in the shrimp industry are going to survive if it stays as it is now, only a few people shrimping. We could survive at this price. But we're not in this business to survive, we like to put money away and make money. We're also not going to have a rebound until we get consumer confidence back again and nobody can predict that. As far as oysters go, the jury is still out on how long that is going to take. Those of us who are "lifers", the consensus is to hang on as long as we can."

Chairman ISSA. Thank you.  
Mr. Williams.

#### **STATEMENT OF BILL WILLIAMS**

Mr. WILLIAMS. Thank you, Mr. Chairman.

On behalf of Florida's 67 counties, and more specifically our coastal communities and counties of northwest Florida, I would like to thank Chairman Issa and the committee members for the opportunity to address the House Oversight and Government Reform Committee this morning.

Before I begin my presentation to the committee, I would also like to take the opportunity and tell the Chairman thank you for sending down two great staff members that saw firsthand the things within my community and the State of Florida, Mr. Tyler Grimm and Mr. Ryan Hambleton. Their presence provided a special opportunity for our entire community to share their experiences and tell their stories firsthand to Members of this committee.

I am here today to speak to you about the struggle that the Florida counties and our constituents faced in the days and months following the Deepwater Horizon oil spill. It is clear in hindsight that even in the face of these struggles we cannot ignore the good intentions and Herculean efforts by the Federal and State response teams. Even though the response—and even the responsible party tried to do their best while facing this unique and global tragedy.

However, as a lifelong Florida resident and survivor of more than 20 hurricanes, best efforts and good intentions are not enough. We must learn from our mistakes so that the disaster response is not just swift but clear, organized and collaborative for the communities impacted.

There is no question that Florida has the foremost disaster response team in our country and arguably the world. With a hurricane season that lasts 6 months and can boast up to 20 named storms, Florida can ill-afford anything but to be the best. Yet in the immediate aftermath of the Deepwater Horizon oil spill, our expert response teams were forced under Oil Pollution Act of 1990, rather than the tried and true Federal Stafford Act.

Our traditional emergency management system was turned upside down and on its head, leaving the Florida counties at the mercy of a unified command structure that was established outside of Florida altogether. For example, during the first critical weeks of the oil spill, individuals based in Alabama who had never stepped foot in Gulf County or other Panhandle counties of Florida that were using 10-year old ACP, or area contingency plan maps were making final decisions regarding how Gulf beaches and all of Florida's beaches would be protected. Local expertise and resources were ignored as strangers decided whether to place oil protection booms near county beaches, inland water bodies, and sensitive environmental resources.

To compound matters, communications from unified command was limited and rarely consistent from day-to-day, leaving my county and all of Florida counties in the dark and concerned that any preparation and response effort would be too little, too late. With little information coming from unified command, local communities were forced to expend significant financial resources gear-

ing up and preparing for potential events that could be quantified or predicted. These financial commitments came, as you well know, at a time when Florida counties and most governments were laying off employees and facing extreme budget shortfalls due to the economy. Yet it took more than 4 months to begin seeing reimbursement for the emergency expenditures.

Faced with these challenges, our coastal counties organized themselves under the umbrella of the Florida Association of Counties to address a range of concern as we evolved from response to recovery. And while counties consistently met with State and Federal officials, in most instances the role of the local community was minimized. More importantly, in spite of our efforts, recommendations regarding what type of recovery structure would meet our needs and the communities directly impacted were never specifically sought.

This story and the experiences have produced a short list of priorities that I would like to call lessons learned. I share this with you in hopes that Congress will take these concepts, review them, and develop proposals so that any future disasters are operated with clear organization, collaboration, strong communication, focused on the local community, individuals and the businesses directly impacted.

We strongly encourage Congress to review and evaluate OPA. Florida's emergency response system, which operates under the Stafford Act, doesn't just work. It is an example to be followed. Why not take the best response plans and teams in the world and use them as the foundation of our disaster. The Stafford Act works because local communities are the first responders, the State Government responding to our local needs and the Federal Government responding to the State needs.

OPA failed because it was a top-down approach that looked to the responsible party rather than to utilize local expertise and resource. This lack of collaboration created duplication and triplication of all efforts.

In regards to the claims in general, it would be our recommendation that Congress provide greater clarity and direction to the process. Probably the greatest frustration for everyone involved, both private and public, were constant changes in the claims process. There were eight different policies, procedures, processes and applications within the first 2 months. The summer was almost over before our businesses and individuals finally had a solid process.

As for our public or government claims, it would be our recommendation that costs associated with first responder expenses such as protection, prevention strategies, mitigation strategies, and cleanup should be clearly laid out similarly to the Stafford Act and not held hostage by the responsible party. In preparation for the next potential event, a separate funding process should be established so State emergency operations and local first responder plans are not abrogated or delayed because of questions of financial capacity or whether the responsible party will approve the specific cost.

In addition, loss of revenue claims by public entities should be included in a process that incorporates an independent third-party review. The parties should not have leverage over the States and

local communities concerning economic issues, determining methodologies for measurement, and potential veto over certain claims. Any independent, unbiased process should be established, almost a year before it was completed as instituted by the loss revenue claims.

We also ask Congress to establish and approve a Gulf Coast Recovery Fund, with 80 percent going directly to the environmental restoration and economic recovery of the Gulf Coast region. I personally support and ask Congress to support the recommendations of the Secretary of the Navy's report published in September of last year.

Mr. Chairman, like you, we are committed to working with our Federal and State partners, and we appreciate the opportunity to be before you today.

[The prepared statement of Mr. Williams follows:]

**Statement by Bill Williams  
Gulf County Commissioner (Florida)**

**House Oversight & Government Reform Committee  
Thursday, June 2, 2011  
Rayburn Building, Room 2154**

**Chair, Congressman Darrell Issa (CA)**

On behalf of Florida's 67 counties, and more specifically the coastal counties, I would like to thank Chairman Issa and the committee members for the opportunity to address the House Oversight & Government Reform Committee this morning. Before I begin my presentation for the committee, I would also like to take this opportunity to publicly thank the Chairman for allowing his committee staff, Mr. Tyler Grimm and Mr. Ryan Hamilton, to spend two days in March in our Gulf coast communities. Their presence provided a special opportunity for our entire community to share their experiences and tell their stories.

I am here today to speak to you about the struggle Florida's counties and our constituents faced in the days following the Deepwater Horizon Oil Spill. It is clear in hindsight that even in the face of these struggles we cannot ignore the good intentions and herculean efforts by federal and state response teams, even the responsible party, to do the best they could while facing a unique and global tragedy.

However, as a lifelong Florida resident and survivor of close to 20 tropical storms and hurricanes, best efforts and good intentions are not enough. We must learn from our mistakes so that disaster response is not just swift, but clear, organized and collaborative of the communities impacted.

There is no question that Florida has the foremost disaster response team in our country and arguably the world. With a hurricane season that lasts six months and can boast upwards of 20 named storms a year, Florida can ill afford to be anything less than the best.

Yet in the immediate aftermath of the Deepwater Horizon Oil Spill our expert response teams were forced to operate under the Oil Pollution Act of 1990, rather than the tried and true federal Stafford Act.

Our traditional emergency management system was turned on its head, leaving Florida's counties at the mercy of a unified command structure that was established outside of Florida all together! For example, during the first critical weeks of the oil spill, individuals based in Alabama, who had never stepped foot in Gulf County and were using 10 year old maps were making final decisions regarding how Gulf County's beaches and all of Florida's beaches would be protected. Local expertise and resources were ignored as strangers decided whether to place oil protection booms near county beaches, inland water bodies and sensitive environmental resources.

To compound matters, communication from Unified Command was limited and rarely consistent from day to day. Leaving my county and all of Florida's counties in the dark and concerned that any preparation and response efforts would be too little too late. With little information coming from Unified Command, local communities were forced to expend significant financial resources gearing up and preparing for a potential event that couldn't be quantified or predicted. These financial commitments came, as you well know, at a time when Florida's counties and most governments were laying off employees and facing extreme budget

shortfalls due to the economy. Yet, it took more than four months for taxpayers to begin to see reimbursement for emergency expenditures.

Faced with these challenges, our coastal counties organized themselves under the umbrella of the Florida Association of Counties to address a range of concerns as we evolved from response to recovery. And while counties consistently met with state and federal officials, in most instances the role of local communities was minimized. More importantly in spite of our efforts, recommendations regarding what type of recovery structure would best meet the needs of the communities directly impacted were never specifically sought.

This story and these experiences have produced a short list of priorities that I would call "Lessons Learned". I share these with you in hopes that Congress will take these concepts, review them and develop proposals so that any future disasters are operated with clear organization and collaboration, strong communications and focused on the local communities, individuals and businesses directly impacted.

We strongly encourage Congress to review and evaluate the OPA. Florida's emergency response system, which operates under the Stafford Act, doesn't just work - it is an example to be followed. Why not take the best response plans and teams in the world and use them as the foundation for other disasters. The Stafford Act works because local communities are the first responders, with the state government responding to local needs and the federal government responding to state needs. OPA failed because it was a top down approach that looked to the responsible party rather than utilize local expertise and resources. This lack of collaboration allowed for the duplication and even triplicate of efforts wasting precious resources.

In regards to claims in general, it would be our recommendation that Congress provide greater clarity and direction to this process. Probably the greatest frustration for everyone involved, both private and public, were constant changes in the claims process. There were eight different policies, procedures, processes and applications within the first two months. The summer was almost over before our businesses and individuals finally had a solid process.

As for public or government claims, it would be our recommendation that costs associated with first responder expenses, such as protection and preservation strategies, mitigation strategies and clean up should be clearly laid out similarly to the Stafford Act and not held hostage by the responsible party. In preparation for the next potential event a separate funding process should be established so state emergency operations and local first responder plans are not abrogated or delayed because of questions of financial capacity or whether the responsible party will approve specific costs.

In addition, loss of revenue claims by public entities should be included in a process that incorporates an independent third party review. The responsible party should not have leverage over states and local communities concerning economic issues, determining methodologies for measurement and potential veto authority over certain claims. An independent and unbiased process should be established. Almost a year had passed before a final and completed policy was approved and instituted for loss revenue claims.

We also ask that Congress establish and approve a Gulf Coast Recovery Fund with 80 percent going directly to environmental restoration and economic recovery of the Gulf Coast region. I personally support and ask Congress to support the

recommendations of the Secretary of the Navy's Report, published in September of last year.

Mr. Chairman, like you, we are committed to working with our federal and state partners to take these and other lessons learned to provide our citizens with the response and recovery efforts they deserve.

We are here to help and assist your committee in any way possible and hope you will continue to use us a resource. On behalf of Florida, I thank you for this opportunity to be here.

I am happy to answer any questions or provide additional information.

Chairman ISSA. Thank you.  
Mr. Kief.

#### STATEMENT OF CORY KIEF

Mr. KIEF. Good morning and thank you for the opportunity to testify on behalf of Offshore Towing and how we have been impacted in the Gulf of Mexico as a result of the BP disaster, the moratorium, and related issues.

Offshore Towing is a partnership with three smaller marine towing companies who collectively operate a fleet of seagoing tugboats in the Gulf of Mexico, providing services in the oil and gas sector, primarily towing drilling rigs to and from various locations in shallow water. We are located along the Gulf Coast in Larose, LA, and collectively employ approximately 110 people.

Although the moratorium has been lifted and the shallow water sector was not to be impacted as the deepwater sector, substantially negative economic impacts have been felt and economic recovery is more distant now than ever before. This company used to move 25 to 30 rigs a month, and now we move 10 or less due to the lack of drilling permits being issued. On top of that, other rigs are leaving the Gulf as well due to the challenges with issuance of drilling permits.

We do not have term contracts and work on the job to job on the spot market. BP will not compensate companies like ours because they claim that our economic losses are a result of the moratorium, not the spill.

I was present at Mr. Bromwich's testimony in March before the House Natural Resources Committee and heard his testimony. He testified that he felt as though the government was responsible as well for the blowout, but this administration continues to reflect as much light as they can on BP or anyone else that they can blame. \$20 billion sounds good but grants us no relief, and unforgiving governmental agencies, such as the BOEMRE, do not provide much hope for us when it comes to addressing our economic issues.

We have had few layoffs because of this crisis because we maintained an optimistic view relative to the industry rebounding in a timely fashion. We have used capital blended with lines of credit to offset the shortcomings that normal earnings would support, but even that exercise has its thresholds. The beginning of the tolerance levels that have been established have been met now. Expectations for a timely recovery are lower than ever. Our confidence in this administration, government, and its agencies are not what they used to be, and we do not believe in any reasonable solutions are in our near future. We have recently reduced wages on employees and have started a plan to begin reducing employees. We can no longer afford to subsidize unemployment and must enforce these unpopular but necessary exercises.

Our maintenance schedules have also been modified and changed to later dates because the necessity to replace and/or overhaul machinery will no longer be necessary due to the lack of use. Factories such as Caterpillar, General Motors, and John Deere, who produce our engines and replacement parts, will begin to be impacted as well. Therefore, States such as Michigan and Illinois will be feeling this slowdown along with the rest of us. There are a variety of dif-

ferent items that could be identified, but this is the biggest example that I could describe.

We understand that precious lives were lost and that an environmental disaster that was some years in the making should not be ignored. However, there was a governmental agency that had a hand to play in this along with the others. Environmentally, the American government and several administrations over the past 60 years have ignored our environmental needs in this region. The Louisiana coast, marshes, and wetlands are disappearing at astonishing rates. So our government has ignored more environmental issues, including Macondo, than anyone else.

Mr. Bromwich claims to be offended by the term “permitorium”, but he doesn’t understand that millions of people are offended by the actions or lack of actions of this administration, the government, and its agencies.

The administration, the government, the agencies, the media, and the press have done a good job of separating the American people by creating political boundaries to satisfy political agendas. When the truth of the matter is that America is more interwoven than what it is being given credit for. We need our brothers and sisters in Michigan and Illinois, and they need us. Americans all over this country depend on one another for a variety of different resources. Our leaders should focus on that.

This government is so broken and is beginning to virally infect the American people who deserve better. It is your duty as stewards of the public to fix this. Please do your best for the American people. Put this Nation back to work.

Thank you again for the opportunity to be heard.

[The prepared statement of Mr. Kief follows:]

Testimony of Cory Kief – President of Offshore Towing, Inc.  
Larose Louisiana  
Committee on Oversight and Governmental Reform  
June 2, 2011

Good morning and thank you for the opportunity to testify on behalf of Offshore Towing, and how we have been impacted in the Gulf of Mexico as the result of the B.P. disaster, the moratorium, and related issues. Offshore Towing is a partnership of three smaller marine towing companies who collectively operate a fleet of sea going tug boats in the Gulf of Mexico, providing services in the Oil and Gas sector, primarily towing drilling rigs to and from various locations in shallower water. We are located along the Gulf Coast in Larose, Louisiana, and collectively employ approximately 110 people.

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We do not have term contracts, and work job to job on the spot market. B.P. will not compensate companies like ours because they claim that our economic losses are a result of the moratorium, not the spill. I was present for Mr. Bromwich's testimony in March before the House Natural Resources Committee, and heard his testimony. He testified that he felt as though the government was responsible as well for the blow out, but this Administration continues to reflect as much light as they can on B.P., or anyone else that they can blame. \$20 billion sounds good, but grants us no relief, and unforgiving governmental

agencies, such as BOEMRE, do not provide much hope for us when it comes to addressing our economic issues.

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Our maintenance schedules have also been modified and changed to later dates because the necessity to replace and/or overhaul machinery will no longer be necessary due to the lack of use. Factories such as Caterpillar, General Motors, and John Deere, who produce our engines and replacement parts, will begin to be impacted as well. Therefore, states such as Michigan and Illinois will be feeling this slow down along with the rest of us. There are a variety of different items that could be identified, but this is the biggest example that I can describe.

We understand that precious lives were lost, and that an environmental disaster, that was some 60 years in the making, should not be ignored. However, there was a governmental agency that had a hand to play in this along with the others. Environmentally, the American government and several administrations over the past 60 years have ignored OUR environmental needs in this region. The Louisiana coast, marshes, and wet lands are disappearing at astonishing rates. So, our government

has ignored more environmental issues, including Macondo, than anyone else.

Mr. Bromwich claims to be offended by the term “perditorium”, but HE doesn’t understand that MILLIONS of people are offended by the actions, or LACK of actions, by this administration, the government, and its agencies.

The Administration, the government, the agencies, the media and the press have done a good job of separating the American people by creating political boundaries to satisfy political agendas. When the truth of the matter is that America is more interwoven than what it’s being given credit for. We need our brothers and sisters in Michigan and Illinois, and they need us. Americans all over this country depend on one another for a variety of different resources. Our leaders should focus on that. This government is so broken, and is beginning to virally infect the American people who deserve better. It is your duty, as stewards of the people, to fix this.

Please do your best for the American People, and put this nation back to work.

Thank you again for the opportunity to be heard.

Chairman ISSA. Thank you.  
Mr. Rusco.

#### STATEMENT OF FRANK RUSCO

Mr. RUSCO. Thank you.

Chairman Issa, Ranking Member Cummings, and members of the committee, I'm pleased to speak with you today about the Department of the Interior's challenges associated with managing Federal oil and gas in the aftermath of the Macondo oil spill.

Interior leases Federal lands and waters for oil and gas exploration, development, and production. These activities provide a domestic source of energy, create jobs, and raise revenues that are shared between Federal, State, and tribal governments. Revenue generated from oil and gas on Federal lands and waters is one of the largest non-taxed sources of Federal Government funds, totaling billions of dollars annually.

The deadly explosion onboard the Deepwater Horizon and resulting oil spill emphasize the importance of Interior's permitting and inspection processes to ensure operational and environmental safety. As found by the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, this disaster was the product of several individual missteps and oversights by BP, Halliburton, and TransOcean which government regulators lacked the authority, the necessary resources, and the technical expertise to prevent.

In recent years, GAO has evaluated many aspects of Interior's management of Federal oil and gas resources. We have found material weaknesses in three broad areas; and, as a result, in 2011, GAO placed Interior's management of Federal oil and gas on the high-risk list.

First, Interior has been unable to complete production inspections, maintain reliable royalty and production data, and provide reasonable assurance that the public is receiving its fair share of oil and gas revenues. In recent years, Interior has not consistently met its statutory or agency goals for verifying that companies accurately report volumes of oil and gas produced on Federal leases. Interior has also lacked consistent and reliable data on the production and sale of oil and gas from Federal lands and has been unable to provide reasonable assurance that it was appropriately assessing and collecting royalties.

Second, Interior faces longstanding challenges in hiring, training, and retaining staff in key oil and gas inspection and engineering positions. In addition to hampering production verification efforts, these human capital challenges have resulted in delays in issuing leases and caused Interior to be unable to meet its statutory and agency goals for performing safety and environmental inspections of oil and gas facilities.

Finally, in May 2010, Secretary Salazar announced plans to reorganize the Minerals Management Service into three bureaus. Under this reorganization, offshore leasing, planning, and permitting will be done in the Bureau of Ocean Energy Management; offshore inspections and enforcement by the Bureau of Safety and Environmental Enforcement; and revenue collection by the newly created Office of Natural Resources Revenue.

Organizational transformations are complex endeavors, requiring concerted and sustained efforts of management and staff. Interior's reorganization will be challenging, because it is happening at a time when the agency is working to implement dozens of recommendations made by GAO, Interior's Inspector General, and other entities and because Interior is still responding to the aftereffects of the Macondo oil spill. These efforts include implementing new practices and procedures for planning, permitting, inspections, and enforcement. In addition, Interior has stated that its reorganization will require increased levels of funding, and this will be very difficult to achieve in this time of tight budgets.

It is essential that Interior gets this reorganization right. The agency must provide Congress and the public with reasonable assurance that billions of dollars of revenues owed the public are properly assessed and collected and that oversight of oil and gas activities on Federal lands and waters maintains an appropriate balance between efficiency and timeliness on one hand and protection of the environment and operational safety on the other.

While Interior has already come a long way toward implementing organizational change and has responded to many recommendations, it may require congressional attention to fully accomplish its goal of restructuring and improving the management of public oil and gas resources.

This ends my oral statement. Thank you. I will be happy to respond to any questions you may have.

[The prepared statement of Mr. Rusco follows:]

United States Government Accountability Office

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**GAO**

Testimony  
Before the Committee on Oversight and  
Government Reform, House of  
Representatives

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For Release on Delivery  
Expected at 9:30 a.m. EDT  
June 2, 2011

## OIL AND GAS

# Interior's Restructuring Challenges in the Aftermath of the Gulf Oil Spill

Statement of Frank Rusco, Director  
Natural Resources and Environment





Highlights of GAO-11-734T, a testimony before the Committee on Oversight and Government Reform, House of Representatives

### Why GAO Did This Study

The Department of the Interior oversees oil and gas activities on leased federal lands and waters. Revenue generated from federal oil and gas production is one of the largest nontax sources of federal government funds, accounting for about \$9 billion in fiscal year 2009.

Since the April 2010 explosion on board the Deepwater Horizon, Interior has been in the midst of restructuring the bureaus that oversee oil and gas development. Specifically, Interior's Bureau of Land Management (BLM) oversees onshore federal oil and gas activities; the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE)—created in May 2010—oversees offshore oil and gas activities; and the newly established Office of Natural Resources Revenue (ONRR) is responsible for collecting royalties on oil and gas produced from both onshore and offshore federal leases. Prior to BOEMRE, the Minerals Management Service's (MMS) Offshore Energy and Minerals Management Office oversaw offshore oil and gas activities and revenue collection.

In 2011, GAO identified Interior's management of oil and gas resources as a high risk issue. GAO's work in this area identified challenges in five areas: (1) reorganization, (2) balancing responsibilities, (3) human capital, (4) revenue collection, and (5) development of existing leases.

View GAO-11-734T for key components. For more information, contact Frank Rusco at (202) 512-3841, or ruscof@gao.gov

June 2, 2011

## OIL AND GAS

### Interior's Restructuring Challenges in the Aftermath of the Gulf Oil Spill

#### What GAO Found

**Reorganization:** Interior's reorganization of activities previously overseen by MMS, which Interior expects to be completed in October 2011, will require time and resources and may pose new challenges. While this reorganization may eventually lead to more effective operations, GAO has reported that organizational transformations are not simple endeavors. GAO is concerned with Interior's ability to undertake this reorganization while meeting its revenue collection and oil and gas oversight responsibilities.

**Balancing Responsibilities:** GAO has reported that Interior has experienced several challenges with meeting its responsibilities for providing for the development of oil and gas resources while managing public lands for other uses, including wildlife habitat. For example, in September 2009, GAO reported that BLM's use of categorical exclusions under Section 390 of the Energy Policy Act of 2005 was frequently out of compliance with the law and BLM's internal guidance. As a result, GAO recommended that BLM take steps to improve the implementation of Section 390. BLM has taken steps to address these recommendations, but it has not yet implemented all of them.

**Human Capital:** GAO has reported that BLM and MMS have encountered persistent problems in hiring, training, and retaining sufficient staff to meet their oversight and management responsibilities for oil and gas operations. For example, in March 2010, GAO reported that BLM and MMS experienced high turnover rates in key oil and gas inspection and engineering positions responsible for production verification activities. As a result, Interior faces challenges meeting its responsibilities to oversee oil and gas development on federal leases, potentially placing both the environment and royalties at risk.

**Revenue Collection:** While federal oil and gas resources generate billions of dollars in annual revenues, past GAO work has found that Interior may not be properly assessing and collecting these revenues. In September 2008, GAO reported that Interior collected lower levels of revenues for oil and gas production in the deep water of the U.S. Gulf of Mexico than all but 11 of 104 oil and gas resource owners whose revenue collection systems were evaluated in a comprehensive industry study. As GAO recommended, Interior is undertaking a comprehensive assessment of its revenue collection policies and processes—the first in over 25 years. Interior expects to complete this study later this year.

**Development of Existing Leases:** In October 2008, GAO reported that Interior could do more to encourage the development of existing oil and gas leases. Federal leases contain one provision—increasing rental rates over time for offshore 5-year leases and onshore leases—to encourage development. In addition to escalating rental rates, states undertake additional efforts to encourage lessees to develop oil and gas leases more quickly, including shorter lease terms and graduated royalty rates. Recently, Interior has stated its intent to pursue legislation establishing a per acre fee on non-producing leases to encourage development of federal leases.

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Chairman Issa, Ranking Member Cummings, and Members of the Committee:

We appreciate the opportunity to participate in this hearing to discuss the restructuring of oil and gas management at the Department of the Interior. The U.S. Department of the Interior plays an important role in managing and providing oversight of offshore and onshore federal oil and gas resources.

Currently, oil produced from federal offshore leases accounts for approximately 30 percent of all domestic production, while oil produced from federal onshore leases accounts for approximately 6 percent of such production. Oil and gas produced from federal leases is also an important source of revenue for the federal government. In fiscal year 2009, the federal government collected more than \$9 billion in revenues from oil and gas produced from federal lands and waters, purchase bids for new oil and gas leases, and annual rents on existing leases. This makes revenues from federal oil and gas one of the largest nontax sources of federal government funds. As we have previously reported, improvements in management of federal oil and gas resources could provide an important source of potential revenue enhancements as the government faces fiscal challenges.<sup>1</sup>

Interior's bureaus are responsible for regulating the processes that oil and gas companies must follow when leasing, drilling, and producing oil and gas from federal leases. The bureaus are also responsible for ensuring that companies comply with all applicable requirements. The explosion onboard the Deepwater Horizon drilling rig and subsequent fire and catastrophic oil spill in the Gulf of Mexico in April 2010 raised questions about Interior's permitting and inspection processes to ensure operational and environmental safety. In the aftermath of this tragic event, Interior undertook a substantial reorganization of the entities that oversee federal oil and gas development and those that collect the revenues produced by this development. Historically, Interior's Bureau of Land Management (BLM) managed onshore federal oil and gas activities, while the Minerals Management Service's (MMS) managed offshore activities and collected

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<sup>1</sup>GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-518SP (Washington, D.C.: March 2011).

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royalties for all leases.<sup>7</sup> In May 2010, the Secretary of the Interior announced plans to reorganize MMS. The Secretary stated that dividing MMS's responsibilities among separate bureaus would help ensure that each of the newly established bureaus have a distinct and independent mission. Since the reorganization, BLM continues to oversee onshore federal oil and gas activities; the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE)—created in May 2010—oversees offshore oil and gas activities; and the newly established Office of Natural Resources Revenue (ONRR) is responsible for collecting royalties on oil and gas produced from both onshore and offshore federal leases.

Interior's management of federal oil and gas activities has been a focus of a large body of our work over the past several years. In these past reports, we noted numerous weaknesses and challenges that need to be addressed and specific recommendations for Interior. Interior has taken steps to address material weaknesses and modify its practices for managing oil and gas resources, but as of December 2010, many recommendations remained unimplemented.

In February 2011, we added Interior's management of federal oil and gas resources to our list of federal programs and operations at "high risk" for waste, fraud, abuse, and mismanagement or needing broad-based transformation.<sup>8</sup> We added the department to the list because we believe that Interior (1) does not have reasonable assurance that it is collecting its share of revenue from oil and gas produced on federal lands; (2) continues to experience problems in hiring, training, and retaining sufficient staff to provide oversight and management of oil and gas operations on federal lands and waters; and (3) is currently engaged in a broad reorganization of both its offshore oil and gas management and revenue collection functions.

In this context, my testimony today discusses findings from our past work on five broad areas: (1) the ongoing reorganization of Interior's bureaus dealing with oil and gas functions, (2) the challenges Interior faces balancing timely and efficient oil and gas development with environmental stewardship responsibilities, (3) Interior's management of human capital,

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<sup>7</sup>MMS's Offshore Energy and Minerals Management oversaw offshore oil and gas activities, while its Minerals Revenue Management was responsible for royalty collections from both onshore and offshore federal leases.

<sup>8</sup>GAO, *High-Risk Series: An Update*, GAO-11-278 (Washington, D.C.: February 2011).

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(4) Interior's collection of oil and gas revenues, and (5) Interior's role in the development of existing leases. This statement is based on our extensive body of work on Interior's oil and gas leasing and royalty collection programs issued from September 2008 through March 2011. We conducted the performance audit work that supports this statement in accordance with generally accepted government auditing standards. Additional information on our scope and methodology is available in each issued product.

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### Potential Challenges with Reorganization of Oil and Gas Functions

Interior's ongoing reorganization of bureaus with oil and gas functions will require time and resources, and undertaking such an endeavor while continuing to meet ongoing responsibilities may pose new challenges. Interior has begun implementing its restructuring effort, transferring offshore oversight responsibilities to the newly created BOEMRE and revenue collection to ONRR. Interior plans to continue restructuring BOEMRE to establish two additional separate bureaus—the Bureau of Ocean Energy Management, which will focus on leasing and environmental reviews, and the Bureau of Safety and Environmental Enforcement, which will focus on permitting and inspection functions.

While this reorganization may eventually lead to more effective operations, we have reported that organizational transformations are not simple endeavors and require the concentrated efforts of both leaders and employees to realize intended synergies and accomplish new organizational goals.<sup>1</sup> In that report, we stated that for effective organizational transformation, top leaders must balance continued delivery of services with transformational activities. Given that as of December 2010 Interior had not implemented many recommendations we made to address numerous weaknesses and challenges, we are concerned about Interior's ability to undertake this reorganization while (1) providing reasonable assurance that billions of dollars of revenues owed to the public are being properly assessed and collected and (2) maintaining focus on its oil and gas oversight responsibilities.

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<sup>1</sup>GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003).

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## Challenges of Balancing Oil and Gas Development with Environmental Stewardship

We have reported that Interior has experienced several challenges in meeting its obligations to make federal oil and gas resources available for leasing and development while simultaneously meeting its responsibilities for managing public lands for other uses, including wildlife habitat, recreation, and wilderness. In January 2010, we reported that while BLM requires oil and gas operators to reclaim the land they disturb and post a bond to help ensure they do so, not all operators perform such reclamation.<sup>5</sup> In general, the goal is to plug the well and reclaim the site so that it matches the surrounding natural environment to the extent possible, allowing the land to be used for purposes other than oil and gas production, such as wildlife habitat. If the bond is not sufficient to cover well plugging and surface reclamation, and there are no responsible or liable parties, the well is considered “orphaned,” and BLM uses federal dollars to fund reclamation. For fiscal years 1988 through 2009, BLM spent about \$3.8 million to reclaim 295 orphaned wells, and BLM has identified another 144 wells yet to be reclaimed.

In addition, in a July 2010 report on federal oil and gas lease sale decisions in the Mountain West, we found that the extent to which BLM tracked and made available to the public information related to protests filed during the leasing process varied by state and was generally limited in scope.<sup>6</sup> We also found that stakeholders—including environmental and hunting interests, and state and local governments protesting BLM lease offerings—wanted additional time to participate in the leasing process and more information from BLM about its leasing decisions. Moreover, we found that BLM had been unable to manage an increased workload associated with public protests and had missed deadlines for issuing leases. In May 2010, the Secretary of the Interior announced several departmentwide leasing reforms that are to take place at BLM that may address these concerns, such as providing additional public review and comment opportunity during the leasing process.

Further, in March 2010, we reported that Interior faced challenges in ensuring consistent implementation of environmental requirements, both within and across MMS’s regional offices, leaving it vulnerable with regard

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<sup>5</sup>GAO, *Oil and Gas Bonds: Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells*, GAO-10-245 (Washington, D.C.: Jan. 27, 2010).

<sup>6</sup>GAO, *Onshore Oil and Gas: BLM’s Management of Public Protests to Its Lease Sales Needs Improvement*, GAO-10-670 (Washington, D.C.: July 30, 2010).

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to litigation and allegations of scientific misconduct.<sup>7</sup> We recommended that Interior develop comprehensive environmental guidance materials for MMS staff. Interior concurred with this recommendation and is currently developing such guidance.

Finally, in September 2009, we reported that BLM's use of categorical exclusions under Section 390 of the Energy Policy Act of 2005—which authorized BLM, for certain oil and gas activities, to approve projects without preparing new environmental analyses that would normally be required in accordance with the National Environmental Policy Act—was frequently out of compliance with the law and BLM's internal guidance.<sup>8</sup> As a result, we recommended that BLM take steps to improve the implementation of Section 390 categorical exclusions through clarification of its guidance, standardizing decision documents, and increasing oversight. Since 2009, BLM has taken steps to address our recommendations, but it has not yet completed implementing all of our recommendations.

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## Human Capital Challenges

We have reported that BLM and MMS have encountered persistent problems in hiring, training, and retaining sufficient staff to meet Interior's oversight and management responsibilities for oil and gas operations on federal lands and waters. For example, in March 2010, we reported that BLM and MMS experienced high turnover rates in key oil and gas inspection and engineering positions responsible for production verification activities.<sup>9</sup> As a result, Interior faces challenges meeting its responsibilities to oversee oil and gas development on federal leases, potentially placing both the environment and royalties at risk. We made a number of recommendations to address these issues. While Interior's reorganization of MMS includes plans to hire additional staff with expertise in oil and gas inspections and engineering, these plans have not been fully implemented, and it remains unclear whether Interior will be

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<sup>7</sup>GAO, *Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin*, GAO-10-276 (Washington, D.C.: Mar. 8, 2010).

<sup>8</sup>GAO, *Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act*, GAO-09-872 (Washington, D.C.: Sept. 16, 2009).

<sup>9</sup>GAO, *Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes*, GAO-10-313 (Washington, D.C.: Mar. 15, 2010).

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fully successful in hiring, training, and retaining these additional staff. Moreover, the human capital issues we identified with BLM's management of onshore oil and gas continue, and these issues have not yet been addressed in Interior's reorganization plans.

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### Concerns over Revenue Collection

Federal oil and gas resources generate billions of dollars annually in revenues that are shared among federal, state, and tribal governments; however, we found Interior may not be properly assessing and collecting these revenues. In September 2008, we reported that Interior collected lower levels of revenues for oil and gas production in the deep water of the U.S. Gulf of Mexico than all but 11 of 104 oil and gas resource owners whose revenue collection systems were evaluated in a comprehensive industry study—these resource owners included other countries as well as some states.<sup>10</sup> However, despite significant changes in the oil and gas industry over the past several decades, we found that Interior had not systematically re-examined how the U.S. government is compensated for extraction of oil and gas for over 25 years. GAO recommended Interior conduct a comprehensive review of the federal oil and gas system using an independent panel. After Interior initially disagreed with our recommendations, we recommended that Congress consider directing the Secretary of the Interior to convene an independent panel to perform a comprehensive review of the federal system for collecting oil and gas revenue. More recently, in response to our recommendation, Interior has commissioned a study that will include such a reassessment, which, according to Interior officials, the department expects will be complete in 2011. The results of the study may reveal the potential for greater revenues to the federal government.

We also reported in March 2010 that Interior was not taking the steps needed to ensure that oil and gas produced from federal lands was accurately measured.<sup>11</sup> For example, we found that neither BLM nor MMS had consistently met their agency goals for oil and gas production verification inspections. Without such verification, Interior cannot provide reasonable assurance that the public is collecting its share of revenue from oil and gas development on federal lands and waters. As a result of this work, we identified 19 recommendations for specific improvements to

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<sup>10</sup>GAO, *Oil and Gas Royalties: The Federal System for Collecting Oil and Gas Revenues Needs Comprehensive Reassessment*, GAO-08-091 (Washington, D.C.: Sept. 3, 2008).

<sup>11</sup>GAO-10-313.

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oversight of production verification activities. Interior generally agreed with our recommendations and has begun implementing some of them.

Additionally, we reported in October 2010 that Interior's data likely underestimated the amount of natural gas produced on federal leases, because some unquantified amount of gas is released directly to the atmosphere (vented) or is burned (flared).<sup>12</sup> This vented and flared gas contributes to greenhouse gases and represents lost royalties. We recommended that Interior improve its data and address limitations in its regulations and guidance to reduce this lost gas. Interior generally agreed with our recommendations and is taking initial steps to implement these recommendations.

Furthermore, we reported in July 2009 on numerous problems with Interior's efforts to collect data on oil and gas produced on federal lands, including missing data, errors in company-reported data on oil and gas production, and sales data that did not reflect prevailing market prices for oil and gas.<sup>13</sup> As a result of Interior's lack of consistent and reliable data on the production and sale of oil and gas from federal lands, Interior could not provide reasonable assurance that it was assessing and collecting the appropriate amount of royalties on this production. We made a number of recommendations to Interior to improve controls on the accuracy and reliability of royalty data. Interior generally agreed with our recommendations and is working to implement many of them, but these efforts are not complete, and it is uncertain at this time if the efforts will fully address our concerns.

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<sup>12</sup>GAO, *Federal Oil and Gas Leases: Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases*, GAO-11-34 (Washington, D.C.: Oct. 29, 2010).

<sup>13</sup>GAO, *Mineral Revenues: MMS Could Do More to Improve the Accuracy of Key Data Used to Collect and Verify Oil and Gas Royalties*, GAO-09-549 (Washington, D.C.: July 15, 2009).

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## Development of Existing Leases

In October 2008, we reported that Interior could do more to encourage the development of existing oil and gas leases and proposed a recommendation.<sup>14</sup> Our review of Interior oil and gas leasing data from 1987 through 2006 found that the number of leases issued had generally increased toward the end of this period but that offshore and onshore leasing had followed different historical patterns. Offshore leases issued peaked in 1988 and in 1997 and generally rose from 1999 through 2006. Onshore leases issued peaked in 1988, then rapidly declined until about 1992, and remained at a consistently low level until about 2003, when they began to increase moderately. We also analyzed 55,000 offshore and onshore leases issued from 1987 through 1996 to determine how development occurred on leases that had expired or been extended beyond their primary terms. Our analysis identified three key findings. First, a majority of leases expired without being drilled or reaching production. Second, shorter leases were generally developed more quickly than longer leases but not necessarily at comparable rates. Third, a substantial percentage of leases were drilled after the initial primary term following a lease extension or suspension.

We also compared Interior's efforts to encourage development of federal oil and gas leases to states' and private landowners' efforts. We found that Interior does less to encourage development of federal leases than some states and private landowners. Federal leases contain one provision—increasing rental rates over time for offshore 5-year leases and onshore leases—to encourage development. In addition to using increasing rental rates, some states undertake additional efforts to encourage lessees to develop oil and gas leases more quickly, including shorter lease terms and graduated royalty rates—royalty rates that rise over the life of the lease. In addition, compared to limited federal efforts, some states do more to structure leases to reflect the likelihood of oil and gas production, which may also encourage faster development. Based on the limited information available on private leases, private landowners also use tools similar to states to encourage development. Accordingly, we recommended that the Secretary of the Interior develop a strategy to evaluate options to encourage faster development of oil and gas leases on federal lands. Recently, Interior has stated its intent to pursue legislation establishing a per acre fee on non-producing leases to encourage development of federal leases.

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<sup>14</sup>GAO, *Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development*, GAO-09-74 (Washington, D.C.: Oct. 3, 2008).

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In conclusion, Interior's oversight of federal oil and gas resources is in transition. Our past work has found a wide range of material weaknesses in Interior's oversight of federal oil and gas resources. These findings and related recommendations were the results of years of intensive evaluation of how Interior oversaw the oil and gas development functions. While Interior may shift responsibilities around, many of these weaknesses remain key challenges to address as Interior works through the implementation of its reorganization. For the reorganization to be most effective, it is important that Interior remains focused on efforts to implement our past recommendations and incorporate them into the new oversight bureaus. We remain hopeful that the structural changes made to Interior's bureaus, coupled with a concerted effort to implement the many recommendations we have made should provide greater assurance of effective oversight of federal oil and gas resources.

Chairman Issa, Ranking Member Cummings, and Members of the Committee, this concludes our prepared statement. We would be pleased to answer any questions that you or other Members of the Committee may have at this time.

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### Contact and Staff Acknowledgements

For further information on this statement, please contact Frank Rusco at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov). Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement. Other staff that made key contributions to this testimony include, Glenn C. Fischer, Jon Ludwigson, Kristen Massey, Alison O'Neill, Kiki Theodoropoulos, and Barbara Timmerman.

Chairman ISSA. Thank you.  
Mr. Bromwich.

#### **STATEMENT OF MICHAEL BROMWICH**

Mr. BROMWICH. Thank you, Chairman Issa, Ranking Member Cummings, and members of the committee. I'm happy to be here in response to your invitation and to discuss the activities of the Bureau of Ocean Energy Management, Regulation, and Enforcement following the Deepwater Horizon oil spill in the Gulf of Mexico.

These activities include putting in place strengthened safety measures and regulatory reforms relating to reviewing and approving exploration and development plans and applications for permits to drill. Those measures and the many other steps we have taken over the past year have been part of our response to Deepwater Horizon and its aftermath. But, as you know, aside from one grant program, my agency is not directly involved in Gulf Coast recovery efforts, nor do we work with BP on its recovery efforts. To the extent that the issues the committee is exploring today extend beyond my agency's jurisdiction I will take those questions back to the Department of the Interior to other agencies.

At BOEMRE, we have devoted enormous efforts over the past year to put in place a new and necessary set of rigorous standards for safety and responsibility in our offshore development program. Our aggressive reforms to offshore oil and gas regulation and oversight are the most extensive in U.S. history. These reforms strengthen requirements for everything from well design and workplace safety to corporate accountability and are helping to ensure that the United States can safely and responsibly expand development of our energy resources.

Over the past year, multiple reviews and investigations have produced reports advocating the need for change in our agency. The President's Commission on Deepwater Horizon, the Department of the Interior's Inspector General, the Department's own Safety Oversight Board, and multiple committees of the House and Senate, including this one, all have highlighted the need for reform in the way the Department does business and in the way oil and gas operations are carried out offshore.

Many of the recommendations presented in these reports have validated the administrative actions and reforms we have been undertaking at the Department to promote safety and science in offshore oil and gas operations. These changes were necessary to ensure that industry and government worked to help prevent an accident like Deepwater Horizon from happening again.

We have issued new regulations to bolster safety and to enhance the evaluation and mitigation of environmental risks. Our new drilling safety rule put in place tough new standards for well design, casing, cementing, and blowout preventers, including the requirement that the drilling process be certified by a professional engineer. Our performance-based SEMS rule requires operators to develop a comprehensive safety and environmental management program that identifies the potential hazards and risk reduction strategies for all places of activity.

BOEMRE has also issued notices to lessees that provide additional guidance to clarify how operators must comply with existing regulations. We have clarified that operators must have a well-specific blowout and worst-case discharge scenario that provides the assumptions and calculations behind those scenarios. We have clarified that operators must certify that they will conduct their drilling operations in compliance with all applicable agency regulations, including the new drilling safety rule, and we have clarified that we will assess whether each operator has submitted adequate information to demonstrate that it has access to, and can deploy, subsea containment resources sufficient to respond to a deepwater blowout.

In addition to our enhancing drilling and workplace safety, we have focused much of our attention on the reorganization of the former MMS into independent entities with distinct missions. These missions are leasing and energy development, the regulation of offshore drilling, and the collection of revenues from Federal energy development. Having these three conflicting functions reside within the same bureau enhanced the potential for internal conflicts of interest among the objectives of the agency. Instead of one agency with multiple and conflicting missions, we will have three new entities, as Mr. Rusco has just described. They are BOEM, BSEE, and ONR. We are on track to complete the reorganization by October 1st of this year.

BOEMRE continues to facilitate domestic exploration by issuing permits. We have continued to issue shallow water permits in every case where the application complies with the heightened standards that apply to shallow water operations. To date, 55 new shallow water well permits have been issued since last June when new safety and environmental standards went into effect. Just seven of these permits are currently pending, with seven having been returned to the operator for more information.

Deepwater drilling applications fall into two categories. First, there are deepwater permits that involve activities that were barred by the deepwater drilling moratorium. We have approved 40 of these permits for 15 unique wells since industry demonstrated in mid-February that it had developed subsea containment capability. Twenty-five permits are pending, and 20 permits have been returned to the operator.

Second, there is a category that is frequently ignored in discussions, deepwater activity not barred under the moratorium, including water injunction wells, completions, and workovers. Since the implementation of these safety and environmental standards, 40 of these permits have been approved. Only one is currently pending.

Although our permitting of drilling activity has been moving ahead steadily over the past 3 months, there are good reasons why the pace is somewhat slower than in the past. Our new regulations have required operators to make sure their applications fully comply with the new requirements. In addition, our drilling engineers have had to work to ensure compliance with the expanded set of requirements. This process may have proved frustrating to some in the industry, but the additional rules and heightened scrutiny are completely appropriate and in the best interests of this Nation.

In closing, Mr. Chairman, we have made significant strides in reforming the way offshore oil and gas programs are carried out at the Department of the Interior and on the Outer Continental Shelf. We have raised standards and promoted safety and science in offshore oil and gas operations; and because of the hard work of industry and people in BOEMRE, we have been approving and issuing plans and permits and getting people back to work.

That concludes my statement, and I'm happy to answer any questions you or the other Members may have.

[The prepared statement of Mr. Bromwich follows:]

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

BEFORE THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

MAKING THE GULF COAST WHOLE AGAIN: ASSESSING THE RECOVERY  
EFFORTS OF BP AND THE OBAMA ADMINISTRATION

June 2, 2011

Chairman Issa, Ranking Member Cummings, and Members of the Committee, I am happy to be here in response to your invitation and to discuss the activities of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) following the Deepwater Horizon oil spill in the Gulf of Mexico. In response to the *Deepwater Horizon* explosion and resulting oil spill in the Gulf of Mexico, the Obama Administration launched the most aggressive and comprehensive reforms to offshore oil and gas regulation and oversight in U.S. history. The reforms, which strengthen requirements in areas ranging from well design and workplace safety to corporate accountability, are helping ensure that the United States can safely and responsibly expand development of its energy resources. We are also reforming and strengthening offshore energy oversight by re-organizing the former Minerals Management Service in order to eliminate conflicts and to assure accountability and safety in how our nation's resources are developed. Since important new safeguards were put in place, BOEMRE has continued its timely review of shallow and deepwater permits as well as exploration and development plans in the Gulf of Mexico, ensuring that safe and responsible oil and gas production continues.

But while we do ensure those seeking permits to explore and produce offshore have appropriate response plans before they receive a permit, the Federal government's direct activities to support oil spill response fall outside the jurisdiction of my agency. In addition, although my agency is not directly involved in the Gulf Coast recovery efforts beyond Coastal Impact Assistance Program grants, and we do not work with BP on its recovery efforts, I note that earlier this year the Natural Resource Trustees for the Deepwater Horizon oil spill – which include DOI – announced that BP has agreed to provide \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the spill. To the extent that the issues the Committee is exploring today extends beyond my agency's jurisdiction, I will take those questions back to the Department of the Interior and refer you to the appropriate agency.

**Offshore Development: Necessary Reforms**

At BOEMRE, we have devoted considerable effort over the past year to putting in place a new – and necessary – set of rigorous standards for safety and responsibility in

our offshore development program. Our aggressive reforms to offshore oil and gas regulation and oversight are the most extensive in U.S. history.

These reforms, which are discussed in more detail below, strengthen requirements for everything from well design and workplace safety to corporate accountability, and are helping ensure that the United States can safely and responsibly expand development of its energy resources consistent with our stewardship responsibilities. It is a program with a focus on worker and environmental safety. We are determined to hold industry to the highest standards in oil and gas operations.

Over the months during and since containment of the spill associated with the *Deepwater Horizon* explosion, multiple reviews and investigations – some still ongoing – have resulted in reports advocating the need for change. Bodies ranging from the President’s Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, the Department of the Interior’s Inspector General, the Department’s own Safety Oversight Board, to multiple Committees of the House and Senate, have highlighted the need for reform not only of the way the Department does business but of the way oil and gas operations are carried out on the Outer Continental Shelf.

Many of the recommendations presented in these reports have validated the administrative actions and reforms we have been undertaking here at the Department to promote safety and science in offshore oil and gas operations. These changes were necessary to ensure that industry has the tools available to help prevent a spill like this from happening again.

We have put industry on notice that they will be held to the highest standards in safety and environmental responsibility in their oil and gas operations. We have promulgated necessary new regulations to bolster safety and to enhance the evaluation and mitigation of environmental risks. For example, the Drilling Safety Rule, prompted by the *Deepwater Horizon* event, put in place tough new standards for well design, casing and cementing, and well control equipment, including blowout preventers. Under it, operators are required, for the first time, to obtain independent third-party inspection and certification of each stage of the proposed drilling process. In addition, an engineer must certify that blowout preventers meet new standards for testing and maintenance and are capable of severing the drill pipe under anticipated well pressures.

In order to reduce the human and organizational errors that lie at the heart of many oil spills, BOEMRE has also introduced, for the first time, performance-based standards similar to those used by regulators in the North Sea. The Workplace Safety Rule was in process well before Deepwater Horizon, but as described in the Commission’s report, it took a major spill to provide the impetus necessary for these standards to be imposed.

As a result of these new regulations, operators are now required to develop a comprehensive safety and environmental management program that identifies the potential hazards and risk-reduction strategies for all phases of activity, from well design

and construction, to operation and maintenance, and finally to the decommissioning of platforms.

BOEMRE has also issued Notices to Lessees (NTLs) that provide additional guidance to clarify how operators must comply with existing regulations. NTL-06, issued in June of 2010, clarifies that current regulations require an operator's oil spill response plan to include a well-specific blowout and worst-case discharge scenario. NTL-06 also requires that operators provide the assumptions and calculations behind these scenarios. NTL-10, issued in December of 2010, clarifies informational requirements, including a statement of compliance from the operator that it will conduct the applied-for drilling operation in compliance with all applicable agency regulations, including the new Drilling Safety Rule. This notice also confirms that BOEMRE will be evaluating whether each operator has submitted adequate information to demonstrate that it has access to, and can deploy, subsea containment resources that would be sufficient to promptly respond to a deepwater blowout or other loss of well control.

In addition to our enhancing drilling and workplace safety, we have focused much of our attention on the reorganization of the former Minerals Management Service into independent entities with distinct missions to oversee the leasing and energy development process, to regulate offshore drilling, and to collect the revenues from federal energy development. Having these three conflicting functions reside within the same bureau (MMS) enhanced the potential for internal conflicts of interest among the objectives of the agency. The process of reorganization began on May 19, 2010, when Secretary Salazar issued Secretarial Order 3299, which dissolved the MMS and called for the establishment of three new entities, including:

- The Bureau of Ocean Energy Management (BOEM), responsible for managing development of the Nation's offshore resources in an environmentally and economically responsible way. Functions carried out by BOEM will include leasing, plan administration, environmental studies, National Environmental Policy Act (NEPA) analysis, resource evaluation, economic analysis and the Renewable Energy Program;
- The Bureau of Safety and Environmental Enforcement (BSEE), which will enforce safety and environmental regulations. Functions to be carried out by BSEE will include Offshore Regulatory Programs, research, oil spill response, and all field operations including permitting and inspections, which will include newly formed training and environmental compliance functions; and
- The Office of Natural Resources Revenue, the revenue collection arm of the former MMS and which has already become a separate entity within the Office of the Secretary.

By October 1 of this year, the offshore resource management function will be separated from the safety and enforcement function and thus, in BOEMRE's place, we will have the two brand new agencies mentioned above.

These reforms are also supported by the President's fiscal year 2012 budget, which has requested additional resources essential to effectively protect our natural resources as well as to address the need for an efficient, effective, transparent, and stable offshore regulatory environment. Most critically, the budget request will provide for an increase in inspection capability, partially funded through higher user fees that will enable BOEMRE to conduct additional inspections and oversee high risk activities, as well as an investment in permitting to sustain efficient review, processing and approval of permits.

### **Getting Industry Back to Work**

BOEMRE continues to facilitate domestic exploration by issuing permits. We have continued to issue shallow water permits in every case where the application complies with all of our heightened standards that apply to shallow water operations. To date, 55 new shallow water well permits have been issued since the implementation of new safety and environmental standards on June 8, 2010. Permits have averaged 6 per month since October 2010, compared to an average of 8 per month in 2009. Just 7 of these permits are currently pending; with 7 having been returned to the operator for more information.

Deepwater drilling applications fall into two categories for the implementation of our new regulations. The deepwater moratorium was lifted on October 12, 2010. When we refer to deepwater drilling applications, there are two distinct categories:

- Deepwater permits requiring subsea containment: Since industry demonstrated in mid-February that it had developed subsea containment capabilities, we have approved 40 of these permits for 15 unique wells, with 25 permits pending, and 20 permits returned to the operator with requests for additional information, particularly information regarding containment.
- Deepwater activities not requiring subsea containment: Since the implementation of new safety and environmental standards, 40 of these permits have been approved, with 1 currently pending. These activities include water injection wells and procedures using surface blowout preventers.

It is important to note that there was never a moratorium on drilling in shallow water, and the suspension of drilling in deepwater ended on October 12, 2010. Still, critics argue that the pace of permitting over the past months lags far behind the pace of several years ago. They ignore two central facts. First, drilling in the Gulf of Mexico was declining for several years prior to the *Deepwater Horizon* event – in 2009, there were only one third as many shallow water drilling permits as in 2006, and the number of deepwater permits dropped 20% over the same period.

Second, our new regulations to strengthen drilling safety and protect the environment have required operators to work to make sure they drill safely, and our drilling engineers have to work to ensure compliance with the expanded set of requirements. That takes more time than the process that existed previously, when the

rules were inadequate and some of our reviews were insufficiently exacting. This may be frustrating to some in the industry, but the additional rules and heightened scrutiny are completely appropriate and in the best interests of the nation.

These requirements are calculated to meaningfully raise the level of safety in drilling operations, and they make a difference. Indeed, these new standards reflect a broad consensus on ways in which the rules governing offshore drilling needed to be improved. In countless meetings with industry participants over the past several months, I have asked whether any of these new rules were viewed as unnecessary, overly burdensome, or ill-advised. Not a single company executive or technical expert has responded that the new standards were anything other than appropriate. And the claim that the regulatory environment is uncertain, because additional new rules may be around the corner, is simply wrong. Since putting in place emergency rules last summer, we have made considerable effort to make clear that any future standards will be developed through the transparency of the normal notice and comment rulemaking process after careful consideration of public input.

The time it takes to issue new post-*Deepwater Horizon* deepwater drilling permits is attributable to the need to comply with the new drilling safety requirements, as well as our existing regulations relating to subsea containment. Operators must demonstrate that they are capable of deploying adequate resources to deal with a well blowout for each well they propose to drill, which industry did not do until mid-February. Following *Deepwater Horizon*, it would be unforgivable not to require operators to make this demonstration.

We have a responsibility to enforce the new drilling rules, conduct broader environmental reviews, and require individualized demonstrations of well containment capabilities. That is our responsibility as regulators of an inherently risky business. It is a responsibility we take very seriously.

### **Coastal Restoration**

The Coastal Impact Assistance Program (CIAP) was created by Congress in 2005 to allow coastal states to provide for ecosystem restoration, and to help mitigate the impacts of oil and gas production on the Outer Continental Shelf. Under CIAP, the Secretary of the Interior is authorized to distribute \$250 million for each of the fiscal years 2007 through 2010 to oil and gas producing states and coastal political subdivisions. To enable BOEM and BSEE to focus on programs more directly aligned with their missions, CIAP is currently being transferred to the U.S. Fish and Wildlife Service, with full transfer to be completed by FY2012.

On July 29, 2010, President Obama signed Public Law 111-212, which includes an amendment to the Energy Policy Act of 2005 (EPAAct). Under the Amendment, projects specifically designed to respond to a spill of national significance may be funded on an emergency basis by CIAP. This emergency funding provision has the potential to

assist state and local governments in the Gulf as they work to restore their coasts from the impacts of the *Deepwater Horizon* spill.

In September 2010, Secretary of the Navy, Ray Mabus, issued a report titled, *America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill*. The report recommends that CIAP be utilized as another potential funding source to further the recovery of the Gulf Coast.

In October 2010, BOEMRE issued expedited funding guidelines for projects that specifically respond to the *Deepwater Horizon* spill. Amended projects types included:

- Oil recovery operations in wetlands or coastal areas;
- Fish and wildlife rehabilitation services for animals impacted by the spill;
- Wetlands and coastal area restoration projects, such as replanting native grasses or buffers that were destroyed by oil; or
- Creation of riparian buffers to prevent the infiltration of oil further into wetlands or coastal areas.

**Conclusion**

Mr. Chairman, we have made significant strides in reforming the way the offshore oil and gas program is carried out here at the Department of the Interior and on the Outer Continental Shelf. We have raised standards and promoted safety and science in offshore oil and gas operations. And because of the hard work of industry and people in BOEMRE, we have been approving and issuing plans and permits, and getting people back to work.

This concludes my statement and I am happy to answer any questions you or other Members of the Committee may have.

Chairman ISSA. Thank you, sir. Thank all of you.

I now go to the gentleman from Texas, Mr. Farenthold, for 5 minutes.

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

And I'd like to first, the members from industry on our panel, I'd like to thank you guys for coming up and sharing your thoughts and concerns. I hope you will excuse me if I ignore you and talk to the government regulator that I think may be giving you some of the problems.

So if I could ask a couple—Mr. Bromwich, you went through a lot of numbers here pretty quick, and I just want to make sure I got an adequate handle on those and talk to you a little bit about the pace that we are looking at. So you said there have been permits on 15 projects that have been issued since the moratorium was ended; is that correct?

Mr. BROMWICH. For deepwater wells, for activities that were prohibited under the moratorium, we have permitted 15 unique wells. The 15th was yesterday.

Now there are multiple permits frequently for individual unique wells which leads to the larger number.

Mr. FARENTHOLD. And of that 15, how many of them were in the process before the moratorium went into effect?

Mr. BROMWICH. It depends what you mean by "in the process." Can you clarify what you mean?

Mr. FARENTHOLD. That have filed the application, that y'all have been working on and just, you know, stuck on the shelf.

Mr. BROMWICH. Well, we haven't stuck any on the shelf. A number of the projects were ongoing. They were stopped by the moratorium, and then applications had to be resubmitted to make sure that they complied with new enhanced safety regulations.

Mr. FARENTHOLD. Right. So the number I have—and you can correct me if I am wrong—is there have been about four or five that are actually new ones that weren't resubmitted or however you want to—they weren't already in the works prior to the moratorium.

Mr. BROMWICH. That's about right. I think the number actually may be slower, but those are still projects that are ongoing to put people back to work. So the distinction between projects that had been previously submitted and new projects is really quite irrelevant.

Mr. FARENTHOLD. So how long are we looking at—if I had gotten a lease and wanted to drill a well, how long under the current process would it typically take, assuming I'm reasonable about my paperwork?

Mr. BROMWICH. Well, that's a big assumption. One of the challenges that we have seen that industry has faced—and they fully acknowledge this—is that they have frequently submitted both plans that are incomplete and noncompliant—and let me finish—and permit applications that are incomplete and noncompliant. We are working with industry every day to try to eliminate the number of times that we have to return either plans or permits so that we can process them straight on through and approve them.

Mr. FARENTHOLD. But is this a result of the fact there's so many new regulations that y'all aren't even completely sure what needs

to be done? The complaint I'm hearing from my friends in the industry—I'm from Corpus Christi, TX. It's pretty big in Gulf drilling—is that they don't even know what they need to do to satisfy your criteria. I mean, I understand there's some growing pains, but these things were getting out in 2 weeks prior to the Deepwater Horizon.

Mr. BROMWICH. Before the new enhanced safety environmental regulations. That's right. They were being churned out quickly, and the new safety and environmental rules makes the process move a little more slowly.

Mr. FARENTHOLD. So are we talking now 2 months, 6 months? I mean, if we have only got four new ones since February, that seems like we are looking at much longer.

Mr. BROMWICH. Well, I can tell you, Congressman Farenthold, that if a fully compliant exploration plan was submitted and then a fully compliant ATD, application to drill, was submitted, we're talking about a few weeks, not a large number of months. That has not so far been our experience so far.

But I take issue with your suggestion that industry doesn't understand what the requirements are, because I think they do. I think they didn't fully understand them at the beginning. I think they do now, and if you talk to them today, I think they would acknowledge that.

Chairman ISSA. Would the gentleman yield?

Mr. FARENTHOLD. I will. Yes, Mr. Chairman.

Chairman ISSA. Would you say that months ago when the moratorium officially was lifted that you had full and complete guidance available to those oil companies on that day?

Mr. BROMWICH. No, I don't think we had full and complete guidance. But let me make something clear—

Chairman ISSA. That's all I really wanted.

Mr. BROMWICH. But the new rules that I focused on in my opening statement were issued October 15th, so 3 days after the moratorium was lifted, and that's what began the adjustment time and cost both for industry and, to some extent, for us. So I just wanted to clarify the timeline.

Mr. FARENTHOLD. What's happening with the 33 previously permitted deepwater wells?

Mr. BROMWICH. Well, we don't track them that way, Congressman. A number of them have not resubmitted their applications. We obviously can't do anything about that. We can only act on the applications that we have.

Mr. FARENTHOLD. So they were permitted, the rules changed, you moved the goalpost, and they have to start over again?

Mr. BROMWICH. No, that's not the way I'd put it at all.

One of the main obstacles to companies getting their permits approved is the fact that they now have to demonstrate access to and ability to deploy containment. I don't think you or I want anybody drilling in deepwater that can't show that.

Mr. FARENTHOLD. I am out of time. So if we get to another round of questions, I do have a couple more. So thank you very much.

Chairman ISSA. I thank the gentleman.

The gentleman from Maryland, ranking member, for 5 minutes.

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

Director, first, thank all of you for your testimony. It's been extremely helpful.

One of the things that I say to my constituents is that this is our watch. We are on the Earth now, and we have a duty to pass on a better environment than the one we found when we came upon this Earth. And I truly believe that.

And, Director Bromwich, you know, I was listening to Governor Barbour; and he said something that was very interesting. When I asked him about the Department of Interior drilling permit requirement—and it's called NTL 2010-N10—and what it says, and it was talking about the moratorium, and it said that these companies they have to show it has access to and can deploy surface and subsea containment resources that will be adequate to promptly respond to a blowout.

And, you know, it's interesting and it kind of surprised me when Governor Barbour said that he felt that the risk—the risk of what happened with Deepwater Horizon was worth it when he considered the cost. And I understand—believe me, I sympathize with people being out of work. As a matter of fact, I have done everything I know how to try to make sure they get compensated. But tell me, do you have an opinion on that based upon what you have been doing in the administration?

Mr. BROMWICH. Yes, I do. I actually would like to take issue with something else Governor Barbour said, which was that the Deepwater Horizon blowout was the first event of its kind or anything close to it in the history of deepwater drilling. The President's Commission says that's not so. They cite 79 incidents of loss of well control, which is what Macondo was, loss of well control, between 1996 and 2009. So another way to describe that is 79 near misses, 79 almost Deepwater Horizons. So, without going into the details of each one, that's what the President's Commission found.

So to say that the risk is one in a million or one in X thousand of deepwater wells drilled is not accurate. Now we will never be able to reduce the risk to zero. We know that, and you know that. But we have to work constructively to try to diminish those risks in a balanced way so that we don't impose inappropriately high costs on industry and yet we do raise the bar on safety.

We have done that. So I think we have lowered the risk, and my risk threshold may be different from Governor Barbour's because I would not have been comfortable going forward without the strengthening of the safety rules that we put into place.

Mr. CUMMINGS. Let me ask you, the administration also put in place a requirement that all companies have a formal contract to call on that service if service is needed.

Let me quote the new requirement. It says, BOEMRE will evaluate whether each operator has submitted adequate information demonstrating that it has access to and can deploy surface and subsea containment resources that will be adequate to promptly deal with the blowout.

Let me ask you this. Can you explain in laymen's terms why you now require oil companies to demonstrate that they can respond to deepwater blowouts before new permits are issued?

Mr. BROMWICH. For the very reason that I think you and other Members said in the questioning of Governor Barbour. I think we

were all sickened by the fact that for 87 days the oil flowed into the Gulf with the trial-and-error process that was used to try to cap the well. And, finally, after 87 days, it was capped.

We don't want that to ever happen again. We want industry to be prepared. And, in a way, talking about the period of the moratorium is a false issue, because the fact is the containment requirement is critically important, and industry admits it was not ready with containment until the middle of February of this year.

Mr. CUMMINGS. Now, you say in your testimony that the temporary moratorium on deepwater drilling was lifted in October of last year, but you didn't issue the first deepwater drilling permit until February. Why is that?

Mr. BROMWICH. Because there were not the containment systems and resources that were ready until the middle of February. In the first panel, we talked about the Marine Well Containment Co. There's another group, the Helix Well Containment Group, but neither of those groups was ready, had its equipment, had tested its equipment, until the middle of February this year.

Mr. CUMMINGS. I see my time has expired. Thank you.

Chairman ISSA. I thank the gentleman.

The gentleman from New Hampshire for 5 minutes, Mr. Guinta.

Mr. GUINTA. Thank you, Mr. Chairman.

Mr. Bromwich, I just have one question for you. Then I want to get to some of the other panelists.

In considering the plans or permits, how much do you look at the economic impact and the loss of economic activity in considering the process by which your agency goes through?

Mr. BROMWICH. Well, the individual plans and permits are reviewed by our field personnel in the Gulf of Mexico. I have absolutely no role in that. And I don't think it would be appropriate for them to scrutinize the plan applications or permit applications for any other reason other than to determine whether they are complying with all applicable regulations. So they do not, and they should not.

Mr. GUINTA. So they do not consider the economic impact.

Mr. BROMWICH. They do not, and they shouldn't.

Mr. GUINTA. OK.

Mr. BROMWICH. Somebody who is inspecting plans and permits should not do that.

Mr. GUINTA. I want to move to Mr. Kief. Thank you as well for coming.

Can you just describe to me very, very quickly the type of company you have and then the average employee that you have, the kind of individual that you represent?

Mr. KIEF. We are in the tugboat business, so we move drilling rigs for a living. And I would say 80 percent of our employees are sailors, ordinary seamen, engineers, captains, mates; and the rest of the 20 percent are staff, from maintenance people to personnel and administration.

Mr. GUINTA. How many people are employed?

Mr. KIEF. Approximately 110.

Mr. GUINTA. And has that number changed since the moratorium?

Mr. KIEF. Well, as I stated, we have had few layoffs, but we have had to adjust wages on our employees. And, you know, we have thresholds that we are meeting where we know that we are going to have to lay off people and tie up equipment.

Mr. GUINTA. So not only are you going to have to lay off people in the future but you have reduced salaries?

Mr. KIEF. Yes, sir.

Mr. GUINTA. For almost everyone in the company?

Mr. KIEF. For about 50 percent of—

Mr. GUINTA. About 50 percent. These are families that are depend on that source of income?

Mr. KIEF. Yes. As a matter of fact, three of the companies we have—this company, Offshore Towing, is a partnership of three companies. One of them was actually founded by my grandfather, and my aunt actually owns it now and her daughters, and I run that company as well.

Mr. GUINTA. I assume it's safe to say you'd like to see the economy grow, come back as quick as possible, and you'd like to see the government participate in a positive way to make that happen?

Mr. KIEF. Yes, I would.

Mr. GUINTA. Thank you very much.

Mr. Taffaro, thank you for being here.

I also wanted to ask you a little bit about economic impact. It seems to me here in Washington we are so focused on the regulatory side of this, and there's good reason to be concerned about the regulatory environment. I don't think anybody disagrees that we want to have safety. We want to make sure that this never happens again. I don't think that's a partisan issue. I think that makes sense, good public policy.

My concern is with the thousands of people who are negatively impacted for the long term in the decisions that have been made by this administration. My heart goes out to each and every individual who no longer has a job, who is waiting desperately to have the possibility of getting back to work. And I believe that we ought to consider that as we move forward in just about every public policy decision that we do.

Now, it doesn't mean that you provide a permit if it's not appropriate. It doesn't mean that you provide a permit to someone who's not capable of handling it. But I do think that we have a responsibility to consider the negative impacts that have occurred to regular, everyday people who are desperately looking for employment.

Can you just talk a little bit about how that's impacting the people that you're representing.

Mr. TAFFARO. Well, the main issue I think is that we have to keep in mind that part of what happens is there's a trickle-down effect. A rig not being permitted or a drill operation not being permitted doesn't just affect those men and women who work the rig. It affects every other spin-off company and agency that provides support for those businesses or for that operation. That's where we really feel the effects in St. Bernard Parish and along the entire coastal Louisiana and beyond, as you heard.

The main issue that we want to make sure is that the comprehensive impact is reviewed. While we want safety, and certainly we don't want to have another impact or another disaster such as

the one that we experienced just over a year ago, we definitely don't want to exacerbate that call to safety by undermining the economics of our region.

Mr. GUINTA. Thank you. Thank you, Mr. Chairman.

Chairman ISSA. I thank you.

Mr. Clay for 5 minutes.

Mr. CLAY. Thank you so much, Mr. Chairman; and let me thank the witnesses for being here.

People who have long been concerned about the public welfare have raised some important questions about the aftermath of the BP oil spill disaster. Some disturbing information has come to light regarding money spent during efforts to recover from the spill.

For example, from my hometown, Mr. Dick Gregory, who is here today, he and others have brought to my attention some investigative articles written by ProPublica and the Washington Post. These articles are worrying. They allege that there are some who profited from the BP oil spill disaster. These people apparently gamed the system to take so much money inappropriately that they earned the nickname "spillionaires". Two of those who were named in these investigative articles are here testifying today on this panel.

Now, as a politician, I know what it is like to read a newspaper article about issues with which I am involved. I have had the experience of reading articles where I cannot recognize the events as they have been described by the reporters. So I know how it can be sometimes for others in similar circumstances, and we don't always have an opportunity to respond to those articles and perhaps set the record straight.

Therefore, I feel duty bound, Mr. Taffaro and Mr. Williams, to give you the opportunity here today to respond to those articles and to what they have alleged about your conduct in the wake of the BP oil spill disaster.

Mr. Taffaro, would you like to take a stab at it.

Mr. TAFFARO. Sure, Congressman. I will be glad to. If you could give me a specific question, I'll be glad to answer it.

Mr. CLAY. Sure. In both articles, the Washington Post and ProPublica, they talk about hand-picked contractors. They talk about you implementing a 30-day emergency, which allowed you to pick contractors outside of normal government procedure.

One contractor was leasing land at \$1,700 a month and happened to lease the land back to BP for \$1.1 million a month. Is that accurate?

Mr. TAFFARO. Well, I would be glad to respond to that, Mr. Congressman—

Chairman ISSA. The gentleman will suspend.

You're under oath. You're not—you're required to speak truthfully. You are not required to answer questions outside the scope of this hearing. You may choose to answer. But that would be true of any of our witnesses, is that if something is outside the scope and the meaning of this hearing, including, quite frankly, any impugning of individuals who came here to testify, there is no obligation to respond. But the gentleman—

Mr. TAFFARO. I would be glad to.

Unfortunately, this is exactly the concern that has been raised and is raised again, that—excuse my frankness—a hatchet job by

Ms. Barker, who had no—I think if your staff researches that information—has no factual data to compensate or substantiate your comments.

The idea is we were under a state of emergency. I did declare a disaster. I think everyone who had any involvement in the process would certainly see that as justifiable.

As far as handing out contracts, St. Bernard Parish government, me as the elected—chief elected official, signed one contract regarding the operations of the BP oil spill disaster.

Mr. CLAY. And that was the company owned by the Saint Bernard Parish Sheriff—

Mr. TAFFARO. That's not accurate, Mr. Congressman.

Mr. CLAY [continuing]. Who charged more than \$1 million a month for land it had been leasing—

Mr. TAFFARO. I think what you point out is exactly the problem with the way the operations were run. BP executives authorized representatives on the ground with BP to initiate and negotiate land deals, vendor agreements, use of resources, and then changed those personnel out and then didn't pay them what they were owed. That is a true economic impact of what we have going on.

Mr. CLAY. How about the selection of certain fishermen to help with the cleanup and then some getting picked and some didn't get picked? What was the criteria there?

Mr. TAFFARO. Every selection process that we used to employ the exact individuals who were impacted by the spill, whose livelihoods overnight were ripped from them, whose generational, cultural identity overnight was ripped from them, every selection process that was implemented was done in a public forum and was continuously reviewed and modified to make sure that those individuals who were most impacted were those people who were being put to work, to respond to the disaster of no doing of their own.

Mr. CLAY. Thank you for your response.

Mr. Chairman, may I ask Mr. Williams?

Chairman ISSA. Yes, your time has expired.

Mr. Williams, you may respond.

Mr. WILLIAMS. Congressman, I appreciate that question; and I think it is very critical, as Mr. Taffaro indicated.

I come from a county in northwest Florida that has less than 20,000 people. We're a very small county. We have an operating budget on a millage based on \$9 million. You're going to run into family folks.

I felt like—and certainly I'm glad that we're here in an office of oversight and reform, because personally—not that I take offense. I appreciate the question. But I feel like it is a red hearing for the issues that we are here to address today.

We were under a tremendous amount of pressure. I have two people in my emergency management department, two. We had no resources from the State. We had no guidance from the Federal Government. We were put under tremendous strain.

And the article that you're referring to, the author of that never came to my county, never stepped foot in our county. What you're indicating there is that a girlfriend worked as a public information officer, and she had volunteered through that period of time tremendously through that process.

So I think, with all due respect, sir, my scenario would be you have to understand that I'm proud of what we did, trying to put people to work together, amassing what we had, basically a militia of people who were trying to fight what was coming on our shores. And so I appreciate the question, but I think it is very misleading to the ultimate goal that I would like to do and present from the Federal Government what you can do to help me at the local level.

Mr. CLAY. And I'm glad that you both have responded in the way you have.

Chairman ISSA. Thank you.

For the record, did your ethics board clear that action?

Mr. WILLIAMS. Yes, Mr. Chairman. I appreciate you giving me the opportunity.

Actually, before that was done, the board of county commissioners did not approve any of the contracts, as my colleague indicated. This was done primarily through our county administrator. However, we went through our legal counsel. We went to the State of Florida's ethics commission. We also went to the Governor's task force that was guiding that and asked for permission ahead of time to make sure it was there.

So I feel like the media certainly exploited this scenario to make it look bad for a lot of folks who were doing the best they could and being proud to work for their communities.

But, yes, sir. Mr. Chairman, I appreciate you giving me the opportunity. Because I was ahead of time—we did it right. We stopped profiteering. I served on the Governor's task force. We went through, and we saw companies coming in and asking for several hundred thousands of dollars to man some of these small counties. We refused to do that. We turned and asked the Governor for assistance; and, through the Department of Emergency Management, we worked under the guidelines and under the premises; and we did the best we could under the circumstances.

Mr. CLAY. Thank you for your response.

I yield back. Thank you.

Chairman ISSA. I thank the gentleman.

I now recognize myself for 5 minutes.

I'm just old enough to remember, I guess, the 1960's in some cases, but Mark McCormack, who was a prolific writer, wrote, among other things, the terrible truth about lawyers and what they don't teach you at the Harvard Business School. And I don't take away every quote from all of those books, but I take away one, which is that a problem is something money can't solve.

Mr. Bromwich, if money was not the problem—and I presume money was available, whether it is the \$20 billion from BP, the billion dollars from the industry to form a quick response for future potential spills, etc.—why did it take you not just the 6 months of the moratorium but essentially another many, many months of permissiorium before you had guidance so that we could begin having oil wells—new oil wells drilled again and permitted?

Mr. BROMWICH. Mr. Chairman, I think it is fair to say that Deepwater Horizon was an earthquake through the industry—they acknowledged that—and through the government.

Chairman ISSA. Please answer my question.

Mr. BROMWICH. I am answering your question.

Chairman ISSA. Well, no. Let's put it in perspective. Your agency's inspectors went on a rig that had not one but two battery packs not active, an oil well that—you mentioned the 79—this thing had had repeated missteps. This oil well was like a drunken driver swerving, crossing the line repeatedly, and MMS did nothing to do it. MMS had a study back in 2003 that questioned the bypass blowout preventers but did nothing but say pick one. All of these things had occurred prior to that date.

So was it an earthquake in your organization or was it an earthquake to the oil industry? The oil industry has made it pretty clear that BP was a bad actor on this well and a bad actor in the Gulf, but that in fact there was a reason that their actions were not consistent with other drillers in the Gulf. So which earthquake was it? Was it an earthquake within the oil drilling industry or an earthquake within your agency?

Mr. BROMWICH. Both. And as the President's Commission notes, it is inappropriate to single out BP as the only bad actor here. That report, which is based on a thorough investigation, pointed out that Halliburton was at fault and Transocean was at fault. As you know, Halliburton and Transocean do work and are involved in providing services in a huge percentage of deepwater—

Chairman ISSA. I hear you, Mr. Bromwich. But isn't it true—actually, I'll go to Mr. Rusco. Isn't it true that the reorganization is as much at fault for the delay in the ability to get America working again in the Gulf? Isn't that what the GAO study finds, is that this is a distracted agency because it is reorganizing?

Mr. RUSCO. I think it's a complicating factor. I can't say that it caused the delays. I take Mr. Bromwich's point that, once they decided that companies needed to demonstrate the ability to contain a blowout, that was the binding constraint until—

Chairman ISSA. And when was that request made? When was the starting date for that?

Mr. RUSCO. I'm going to have to defer to Mr. Bromwich.

Chairman ISSA. Mr. Bromwich, when was the starting date for the blowout preventer's demonstration requirement that they could contain if the blowout—

Mr. BROMWICH. Two different things, Mr. Chairman, blowout preventer, additional—

Chairman ISSA. If it failed, if the blowout preventer failed containment, when did you say they must prove they can contain?

Mr. BROMWICH. We clarified what we think had been clear to many, but we clarified it in writing on November 8th.

Chairman ISSA. November 8th?

Mr. BROMWICH. Yes.

Chairman ISSA. How long was that after the moratorium began?

Mr. BROMWICH. Less than a month—after it began?

Chairman ISSA. Yes.

Mr. BROMWICH. The first moratorium was put in place, I believe, in May, so several months after.

Chairman ISSA. So you have a 6-month moratorium, and a month after that moratorium is over, basically, then you say you have to do that. Isn't this a second—isn't this taking 6, 7 months to decide that you're going to add one more way to stop the oil industry from starting again? Wasn't that reckless to go 7 months

and discover—6 months and discover that you had missed something as basic as that?

Mr. BROMWICH. No, I don't think it was reckless; and I don't think we—

Chairman ISSA. How did it get missed for 6 months?

Mr. BROMWICH. Nobody said it was missed, other than you. It wasn't missed—

Chairman ISSA. Why wasn't it asked—

Mr. BROMWICH. The industry, as you know, Mr. Chairman, formed the Marine Well Containment Co. in July. So they knew at that point that was going to be an obstacle to getting deepwater permits until they could put together the resources. So it took them, and then it took later Helix, a number of months, close to 7 months, from the time they recognized that it needed to be done and they announced it until they were ready to go. The mere fact that we clarified what was required in November didn't start any clock and doesn't reflect any recklessness at all.

Chairman ISSA. Mr. Bromwich, are you still clarifying various things for the industry?

Mr. BROMWICH. Of course. That's what a regulator does.

Chairman ISSA. So when will it be clear?

Mr. BROMWICH. I think it's clear to 95 percent of the operators now. The other 5 percent come forward and ask questions of us, we'll clarify it for them.

We meet all the time, Mr. Chairman, with operators. We met this week with a group of Gulf area operators, a delegation headed by Director of Natural Resources for Louisiana, Scott Angelle. They have been a forum for asking questions, asking for clarification and getting them.

Chairman ISSA. Mr. Kief, I'm sorry that we really can't do more for you today, but we are not going to give up on this, on any of your testimony here today.

Mr. Bromwich, you said you would take something back if it was outside of the mainstream. I want to make sure you take this back today. There's pending litigation or there is current litigation in the Eastern District of Louisiana challenging seismic surveys in the Gulf of Mexico by the infamous NRDC vs. Salazar. Our information is that the Secretary has in fact worked out to stay that case and is discussing settlements.

The question for Department of Interior is, if you settle one more time with a radical environmental group that sues and then gets settlements leading to regulatory changes or areas off limits, don't you have a conflict of interest? In fact, shouldn't this case be a case in which those with a vested interest, the States and the oil companies, should have a seat at the table, rather than having a settlement issued around what they would call their interest, along with the gentlemen here today?

Mr. BROMWICH. I don't need to take that one back, because I'm involved in that matter.

First of all, I think the characterization of NRDC as a radical environmental organization is not accurate—

Chairman ISSA. They sue and bill endlessly.

Mr. BROMWICH. But, second, we have to make litigation judgments. The solicitor's office has to make litigation judgments about whether to settle cases or not.

Without going into the details of settlement discussions, there are settlement discussions ongoing; and I will tell you that one of the goals of such settlement discussions is to prevent more radical injunctions or actions being taken by a court.

With respect to the involvement of the oil companies, they are interveners in that case, so they have a seat at the table.

Chairman ISSA. But they are locked out if you settle.

In fact, the NRDC has on their Web site their litigation motive and method as part of their fundamental way of doing business. So you may not consider them radical, but an organization that basically litigates in order to legislate and an agency that settles in order to effectively create legislation is exactly what this committee is concerned about. So you may not consider them radical, you may not consider your settlement around the intervenors as in fact somehow unAmerican or that you have a conflict, but this organization here is finding that conflict more and more consistent.

I want to thank you all for your—oops, I want to thank you all for your continued testimony. We now recognize the gentleman from North Carolina, Mr. McHenry, for 5 minutes.

Mr. MCHENRY. I thank the chairman, and I thank the witnesses for being here today.

Mr. Bromwich, I've got a question about the Marine archeologist rule, the new rule that your organization's promulgated. So is it true that operators will have to employ a Marine archeologist in order to comply with this?

Mr. BROMWICH. Do they have to what?

Mr. MCHENRY. Pardon me?

Mr. BROMWICH. Is it true they have to what? I didn't hear what you said.

Mr. MCHENRY. Oh, OK, I'll repeat.

In context of the new archeological assessment report, is it true that operators will have to employ a Marine archeologist to comply with this rule?

Mr. BROMWICH. They will have to have a survey conducted, whether its by hiring somebody, contracting with someone or whatever. We don't mandate that, but they will have to do an archeological survey, yes.

Mr. MCHENRY. And why is that necessary?

Mr. BROMWICH. Why is that necessary? It's because a number of discoveries have been made in recent years of shipwrecks and other structures that are protected by various Federal laws, including the National Environmental Policy Act.

And as we've eliminated the categorical exclusions with which we used to do exploration plans and now are doing environmental assessment, site-specific environmental assessments, the way the process works is we have different subject matter experts who have to look at the issues and our archeologists subject matter experts will simply not sign off on an exploration plan without that kind of a survey. So that's the reason.

Mr. MCHENRY. OK. Well, so in terms of what your organization does, does that have anything to do with safety?

Mr. BROMWICH. It has to do with protecting the environment, which is part of our mandate.

Mr. MCHENRY. OK, all right. Was there a cost benefit analysis in context with this regulation?

Mr. BROMWICH. I'm not—I'm not sure whether there was or there wasn't.

Mr. MCHENRY. Would you be willing to followup with the committee and give us your assessment of the cost and benefits of this regulation?

Mr. BROMWICH. Sure, I'd be happy to.

Mr. MCHENRY. Thank you.

[The information referred to follows:]



## United States Department of the Interior

BUREAU OF OCEAN ENERGY  
MANAGEMENT, REGULATION AND ENFORCEMENT

Washington, DC 20240  
June 17, 2011

The Honorable Darryl Issa  
Chairman, Committee on Oversight and Government Reform  
House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

At the Committee hearing on June 2, you asked me whether a decrease in oil production in the Gulf of Mexico related to last year's temporary moratorium on deepwater drilling has resulted in an increase in the price of oil. During the hearing, you referred to page 21 of the June 2, 2011 report prepared by your staff, which claims that "Secretary Salazar and Director Bromwich were on notice that the moratorium could increase oil prices in the short term by \$.47 a barrel" based on an "Economic Impact Analysis" prepared by the former Minerals Management Service (MMS) in June 2010.<sup>1</sup> You also asked me to review the MMS Economic Impact Analysis, which in a section entitled "Possible Oil and Gas Price Effects from a 6 Month Pause in Drilling," estimated that a reduction of 84,000 barrels per day in oil production during fiscal year 2011 may result in an increase in a base \$75.01 per barrel price of oil in the range of between \$0.05, according to a MMS market simulation, and \$0.47 per barrel, according to the Energy Information Administration's (EIA) short term energy outlook model.<sup>2</sup> Finally, you suggested that the MMS Economic Impact Analysis contradicted my testimony, as well as the earlier testimony of Deputy Secretary David J. Hayes, that the temporary deepwater drilling moratorium has not had a significant effect on current oil prices.

I have reviewed the MMS Economic Analysis, and it fully supports my testimony, and the prior testimony of Deputy Secretary Hayes, that last year's temporary moratorium on deepwater drilling in response to the *Deepwater Horizon* oil spill has not caused any significant increase in the current price of oil.

As I discussed during my testimony, last year's deepwater drilling moratorium did not apply to production – oil production in the Gulf of Mexico has continued uninterrupted. Moreover, although EIA has projected that oil production in the Gulf of Mexico may decrease somewhat in 2011 and 2012 – which is as I testified before the Committee – EIA also estimates

<sup>1</sup> U S House of Representatives Committee on Oversight and Government Reform Staff Report, *The BP Oil Spill Recovery Effort: The Legacy of Choices Made by the Obama Administration*, at 21 (June 2, 2011)

<sup>2</sup> MMS Economic Impact Assessment, at 11 (June 10, 2010)

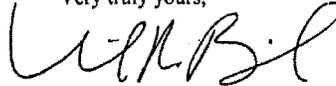
that any such decreases would likely be offset by increases in non-Gulf of Mexico domestic oil production.

Even if, at some point in the future, the MMS Economic Impact Assessment's projections regarding the potential effects of the moratorium on the price of oil prove to have been accurate, the 5 to 47 cents per barrel impact referred to in the Assessment – and that you cite – is very small compared to the other, much more significant factors underlying increases in the price of oil over the past year. Last June, a barrel of oil cost approximately \$80. Oil currently sells for slightly less than \$100 per barrel, having peaked at around \$115 per barrel in April. A potential price impact from the deepwater moratorium of less than 50 cents per barrel, as suggested by the MMS Economic Impact Assessment, does very little to explain the \$20 to \$30 per barrel increase in the price of oil since last April.

Economists and industry experts agree that the price of oil is set by the global market. In its Short Term Energy Outlook report last month, EIA listed the following key factors affecting the variability in oil prices today: continued unrest in producing countries, decision-making by key producers in response to global increases in oil demand, the rate of domestic and global economic growth, fiscal issues facing governments around the world, and China's efforts to address concerns related to its growth and inflation rates.<sup>3</sup> Finally, some industry participants and observers have pointed to speculation in commodity markets as playing a significant role in setting the current price of oil.<sup>4</sup> These factors, not last year's temporary deepwater drilling moratorium, are the real reasons for the higher price of oil.

I hope this response answers your questions about the effect that last year's deepwater drilling moratorium has had on the price of oil. I agree with you that domestic energy development and the cost of energy for American consumers are critical issues facing the country. My agency is committed to overseeing the safe and responsible development of the nation's offshore energy resources, including oil and natural gas production in the Gulf of Mexico.

Very truly yours,



Michael R. Bromwich  
Director

<sup>3</sup> *Id.*, at 2

<sup>4</sup> For example, last month, the chief executive officer of ExxonMobil testified in the Senate that if the price of oil today were based solely on the economic principles of supply and demand, oil would cost between \$60 and \$70 per barrel. Testimony of Rex Tillerson, Senate Finance Committee Hearing on Oil and Natural Gas Tax Incentives and Energy prices (May 12, 2011)

Mr. MCHENRY. Mr. Williams, thank you for being here today. It is certainly an interesting process to testify before Congress.

But, in context with your experience, there's a difference between the OPA and the Stafford Act in terms of responsibilities and everything else. Do you think that operating under OPA was reasonable, proper, good? Was it a better outcome than operating under Stafford?

Mr. WILLIAMS. No, sir.

Mr. MCHENRY. Would you turn on your mic?

Mr. WILLIAMS. I'm sorry. No, sir, it actually paralyzed us at the local level.

I think components of OPA—we're not trying to basically supplant OPA with the Stafford Act, but we are trained, particularly in the State of Florida. We have test modeled. We have put everything through, over and over, case studies. And because we are so impacted by our storms, we were unable at the local level to make decisions firsthand. It has always been at the local level and work that up.

Under the unified command, the responsible party high-jacked the entire process. We were basically at their mercy, their decision-making. We were disconnected from our State partners and I believe from our Federal partners in the process.

We actually called it unidentified command. We would wait for weeks and weeks trying to get things done. We wasted incredible amounts of time looking at boom strategies and national contingency plans and area contingency plans that were extremely dysfunctional. They were antiquated. There was no span of control. There was no unified command.

The State of Florida in my area in the Panhandle was being controlled from Mobile. It was a breakdown, as the Governor indicated earlier, from communications and processes, the methodologies. It was completely broken.

So to answer your question, emphatically no. OPA did not work on the ground level, it did not work at the State level, and I think it failed the folks in our country.

Mr. MCHENRY. So this was a management problem.

Mr. WILLIAMS. Yes, sir.

Mr. MCHENRY. Clearly.

Mr. WILLIAMS. Yes, sir.

Mr. MCHENRY. And your experience with storms is what?

Mr. WILLIAMS. Primarily living in Florida, and I guess growing up originally it started, I guess, when I was 4 in Camille, MS. But, with Florida, I've been elected since 2004, 2005. You know the history where we crisscrossed our State with four hurricanes in 1 year, heavy, heavy damage. And as an elected official I have watched a masterful process.

And, obviously, Florida has mastered—Mr. Fugate now being head of FEMA coming from Florida. We know how to do it at the ground level. We make good decisions. We work with our emergency management partners. We work with our State partners to make those critical on-line decisions. This process was dysfunctional and broken.

Mr. MCHENRY. And Stafford was clearly better?

Mr. WILLIAMS. Yes, sir. It gives the local government the ability to pull on the resources as necessary, but to make on-the-ground field decisions that we can implement immediately. We had to go through an approval process. To give you a very poor analogy, it is like go ask your mom, go ask your dad; and I could never get a straight answer.

It is a system that I think this group particularly in Congress has to look at. There are lessons in Homeland Security. There are lessons—as the Governor indicated earlier, if we drill off of Cuba, China, etc., as bad as the responsible party scenario was, without a responsible party, where would we be? Multijurisdictional lines and centralized command has to be charged.

One point I would like to make, I came a few months ago during the National Association of Counties and met with Intergovernmental Affairs and requested the ability for Intergovernmental Affairs from the administration to work with the directors of emergency management within the five affected States so that we could go back and look at case examples and studies and what could we do better. That I think is very critical. And I would ask that the chairman and this commission review that so we can get down to our emergency management people at the State level and to our county level so this never happens again.

Mr. MCHENRY. Thank you again.

Chairman ISSA. We are not going to do a second round, but there will be just a couple of quick comments, one from the gentleman from Texas and one from the ranking member.

Please go ahead.

Mr. FARENTHOLD. Thank you very much.

To Mr. Bromwich, do you think that what's going on now—the increased permitting process and the time involved—is driving up the price of gasoline at the pump?

Mr. BROMWICH. No, I don't.

Mr. FARENTHOLD. You don't think there is a concerted effort going on to do that with the slowdown in the Gulf of Mexico, which is a quarter of our domestic supply?

Mr. BROMWICH. Concerted effort by whom?

Mr. FARENTHOLD. I think this administration.

I'm typically not a black helicopters guy, but if you look at what's going on, if I were a speculator, I would be buying oil futures.

We've got the slowdown in the Gulf. We've got a slowdown of land leases. We've got the EPA talking about fracking regulations. We've got the sage lizard, which is another quarter of the production, in the Permian Basin of Texas. It is like we're trying to run these gas prices up.

Mr. BROMWICH. Well, I can speak for the issues that I'm aware of, which is offshore. There is no such effort. There has never been any such effort.

Chairman ISSA. Would the gentleman yield for just a second?

Mr. FARENTHOLD. Yes, please.

Chairman ISSA. If the gentleman could respond to the MMS finding up on the board which we cited earlier, that might clarify it, since MMS found that there was a correlation between a reduction in the Gulf and increase in price. That's your own study.

Mr. BROMWICH. Chairman, I'd never seen that before. I don't like to comment on things that I've just been introduced to.

I have read in recent weeks a lot of very knowledgeable commentators, including economists, who say it is a world market. And a relatively minor slowdown in permitting here has virtually no impact on prices.

In addition to that, as you know—

Chairman ISSA. The gentleman's time—

Mr. BROMWICH [continuing]. There has been no cessation or delays in production. Production has continued all along. There was never a moratorium on production.

Mr. FARENTHOLD. I do want to just reclaim my time for a second.

Historically speaking, you actually see a spike in the price of oil, whether it is driven by speculators or the market, even when there's a hurricane that's delaying production in the Gulf just over a couple of days. How can you rationally say that a long-term slowdown in the permitting process isn't going to affect the price of oil?

Mr. BROMWICH. Because I don't—well, you asked me whether it was causing a rise in the price of oil now. My understanding of world market conditions is that production has continued at pace, that the projections for declining production are not for the present, they are for the future. And, therefore, I thought the question was about the present; and I don't think it is having an effect at present.

Mr. FARENTHOLD. Just real quickly, there have been reports—you know, we've had record oil production in 2010—domestic production. Do you think that record is going to continue through 2012 as we start to see the results of some of these changes in policies?

Mr. BROMWICH. Well, the EIA, which is considered the most reliable sources of energy production, does predict a decline in 2011 and in 2012. I don't have a crystal ball, but I'm not in a position to dispute that.

Mr. FARENTHOLD. So a decrease in production typical under supply and demand would probably result in an increase in price of oil and corollary price of gasoline at the pump?

Mr. BROMWICH. Well, but that presumes that we only have a domestic market, which we don't.

Chairman ISSA. We've been joined—I thank the gentleman.

We've been joined by—wait a second, would the gentleman yield for just a second from his time?

Mr. FARENTHOLD. Yes, sir.

Chairman ISSA. Mr. Bromwich, I would just like you to—we will give you a copy of it, but since that study that said there would be a rise based on a lesser reduction in the Gulf than actually occurred or is occurring, that was delivered under our discovery request from your organization. You gave it to us. So, hopefully, you'll take it back, look at the information that we received pursuant to our request from you, and figure out whether or not you should have seen that document before your agency allowed you to come here.

Mr. BROMWICH. Just to be clear, Mr. Chairman, I don't review every document that you ask for and receive. Just to be clear.

Chairman ISSA. I understand. But since this one said just the opposite of what Mr. Hayes said and what you're saying, I think it's

a good one for to you review. And you can comment back about whether you think it was accurate, since it was an internal document.

Mr. BROMWICH. Happy to do it.

Chairman ISSA. And we've been joined again by the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman. I have another hearing at Foreign Affairs, so that's why I'm going back and forth, and I think the Chair's indulgence.

Mr. Bromwich, during the first panel you probably heard what I heard Governor Barbour state, that simply enforcing existing rules would prevent future oil spills. When the National Commission of the Gulf Oil Spill issued its report, did it say that simply enforcing existing regulations would be sufficient?

Mr. BROMWICH. No.

Mr. CONNOLLY. What did it say?

Mr. BROMWICH. It pointed to a series of contributing causes to the oil spill, a variety of primarily human errors committed by personnel from BP, Transocean, Halliburton, and so forth. And it specifically said that, I believe, as I recall, that enforcement of existing regulations would not have prevented it.

Mr. CONNOLLY. Would not?

Mr. BROMWICH. Would not have prevented the oil spill.

Mr. CONNOLLY. Are there improvements in the enforcement or in the regulatory framework itself that could be helpful?

Mr. BROMWICH. Yes, and we have already taken many of those steps. Our drilling safety rule, which is addressed to well design, well casing, cementing, and blowup preventers, we think substantially reduces the risks of another spill like Deepwater Horizon.

As I said before—I'm not sure you were here—we will never be able to reduce it to zero. We won't. But we have reduced it already substantially. And I think over time, as industry wants to go into deeper and deeper water and the regulatory process needs to keep up, I hope that we can further reduce that risk. But it will never be reduced to zero.

Mr. CONNOLLY. One of the arguments made by Governor Barbour and others is that you have 31,000 oil rigs, the safety record is fine. You know, once in a while one bad apple shouldn't cause us to turn everything on its head.

My point to Governor Barbour was, well, but one blowout of this magnitude is pretty significant, and shouldn't we be doing everything on our part to try to minimize that ever happening? And the fact that this happens once is once too many, given the severity and magnitude of the disaster.

What is the view of the administration with respect to sort of rolling the dice and taking our chances on a blowout?

Mr. BROMWICH. Well, we don't want to roll the dice and take a chance on a major blowout.

Again, the risk will never be reduced to zero. But we think we can do and have already done many commonsense things to reduce that risk.

And, further—I'm not sure whether you were here at the time—but this is not unprecedented in the sense of losses of well control that nearly led to blowouts. This was the only actual blowout, but

the President's Commission found that there were 79 instances of loss of well control between 1996 and 2009. So another way to put it is 79 almost Deepwater Horizons.

Mr. CONNOLLY. So the idea that this is a unique event and really apparently an act of God or something like that is misleading.

Mr. BROMWICH. Well, thankfully, it was unique in terms of the fact that the well totally blew and you had 4.9 million barrels of oil spill into the Gulf. But in terms of the problems that arise particularly in deepwater with high pressures and so on, no, it's not so far out of the norm that it begs to be dismissed.

Mr. CONNOLLY. One of the things that the Obama administration did that some might view as prudent after such a high-magnitude accident was a temporary moratorium on additional permitting until we had our arms around the causes and the prevention and so forth. In listening to some of the rhetoric and even reading some signs we seem to favor around here, one would have the impression that that moratorium has led to a significant plummet in domestic production. Is that the case?

Mr. BROMWICH. No, it's had no impact on production, because production was never stopped or delayed.

Mr. CONNOLLY. It is not true, as a matter of fact, that domestic oil production in the Obama administration is actually higher than that of the Bush administration?

Mr. BROMWICH. Yes. As of the end of 2010 that's exactly right.

Mr. CONNOLLY. And is it also true that applications for permits to drill actually increased in the Obama administration over the Bush administration?

Mr. BROMWICH. I believe that's right.

Mr. CONNOLLY. And is it also true that production on the Outer Continental Shelf actually also increased under the Obama administration over the Bush administration?

Mr. BROMWICH. It has.

Mr. CONNOLLY. Thank you very much.

Chairman ISSA. I thank the gentleman.

We have had a vote called on the floor; and so, with that, I want to thank all of our witnesses for your generosity of your time. The record will remain open for an additional week to allow you to add additional information, plus opening statements of Members on the dais who were not able to be here.

With that, we stand adjourned.

[Whereupon, at 1 p.m., the committee was adjourned.]

[The prepared statements of Hon. Edolphus Towns and Hon. Bruce L. Braley follow:]

**Committee on Oversight and Government Reform  
Hearing on June 2, 2011, at 9:30 a.m.  
“Making the Gulf Whole Again:  
Assessing the Recovery Efforts of BP and the Obama  
Administration after the Oil Spill”**

**Statement of Mr. Towns**

Just over a year ago, the *Deepwater Horizon* oil rig exploded killing 11 workers. For the next several months, crude oil spilled into the Gulf of Mexico unabated, causing one of the worse economic and ecological disasters in the country’s history. The Gulf States of Louisiana, Mississippi and Florida suffered the brunt of the economic loss and it is clear that those states are still slowly recovering. Today’s hearing will assess the Administrations and BP’s recovery efforts after the oil spill. This is a very important and timely hearing and I thank the Chairman for holding it.

In response to the BP oil spill, the Obama Administration launched an aggressive and wide reaching set of reforms to help ensure that disasters of the magnitude and effect of *Deepwater* do not occur again. The Administration re-organized the former Minerals Management Service in order to assure accountability and safety in how oil resources are developed. Other reforms put the lives of the American people first by strengthening workplace safety, requiring improvements in oil well design and ensuring that corporations develop adequate oil spill response plans.

Our witnesses have no doubt observed the devastating personal and economic effect of the *Deepwater Horizon* spill first hand. Many have actively participated in all phases of the disaster and recovery efforts and bring unique perspectives to this issue. I want to thank our witnesses for their testimony and looking forward to working through any solutions that will enhance the recovery efforts in the Gulf.

**Rep. Bruce Braley**  
**Oversight and Government Reform Committee**  
**Making the Gulf Coast Whole Again: Assessing the Recovery Efforts**  
**of BP and the Obama Administration After the Oil Spill**  
**June 2, 2011**

Mr. Chairman, thank you for holding this hearing, but I'm extremely disappointed that you did not invite anyone from BP to testify. As you know, it was a BP Oil Rig that exploded leading to this catastrophic oil spill in the Gulf.

Last year, I witnessed the impact of this disaster first hand. I met with some of the victims of the spill, including the widows of workers killed on the rig. Like so many Americans last year, I was outraged see evidence of multiple critical and careless decisions by BP, apparently designed to save time and money at the cost of safety, which likely caused the well blowout and oil spill that continues to spread through the Gulf. Any hearing that is being held regarding this oil spill should have a representative from BP present, in order to continue to hold that company accountable.

Furthermore, the report released by the Oversight Committee on Thursday specifically says that BP did not meet its obligations in adequately cleaning up the spill. The report said that many local leaders and Gulf residents felt that BP had failed to adequately fund removal of clean-up equipment debris. There was also some uncertainty surrounding mental health services and frustration associated with the compensation process for residents and businesses. It is clear from this report that more questions need to be answered regarding BP's involvement in the cleanup process.

BP still has serious questions to answer regarding this oil spill and I urge Chairman Issa to require the presence of BP witnesses at any hearing on the Gulf Oil Spill.