

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

July 19, 2010

To: Members of the Subcommittee on Oversight and Investigations and Subcommittee on Energy and Environment

Fr: Majority Staff, Committee on Energy and Commerce

Re: Supplemental Information Regarding Federal Regulation of Deepwater Drilling

The Committee has held seven hearings on the Deepwater Horizon explosion at BP's Macondo well on April 20, 2010. These hearings have been focused on the actions of BP and the other companies involved in drilling the well or responding to the spill. They showed that the companies made a series of mistakes that contributed to the fatal explosion and environmental disaster now occurring in the Gulf.

The joint hearing of the Subcommittee on Energy and Environment and the Subcommittee on Oversight and Investigations on Tuesday, July 20, 2010, provides an opportunity for the Committee to investigate what role federal regulators played in the incident. At the hearing, two former Secretaries of the Interior, Gale Norton and Dirk Kempthorne, and the current Secretary of the Interior, Ken Salazar, will testify. Secretaries Norton and Kempthorne were appointed by President George W. Bush and Secretary Salazar by President Barack Obama.

This supplemental memorandum provides background on the relevant policies of the Bush and Obama Administrations relating to oil and gas drilling on the Outer Continental Shelf.

I. EXECUTIVE SUMMARY

During his second week in office, President Bush asked Vice President Cheney to chair a task force to develop an energy policy for the new Administration. The Vice President's energy task force met privately with oil and gas executives and other energy industry officials, whose identity the Administration steadfastly refused to disclose. In May 2001, the Vice President released a report describing the Administration's new energy strategy. The report stated that "exploration and production from the OCS [Outer Continental Shelf] has an impressive environmental record." It stated that existing federal and state environmental and permitting

laws and regulations were creating “delays and uncertainties [that] can hinder proper energy exploration and production projects.” The report concluded that “substantial economic risks remain to investment in deep water” and directed the Interior Department to “consider economic incentives for environmentally sound offshore oil and gas development.” As recommended in the national energy policy report, the President immediately issued an executive order to “expedite projects that will increase the production ... of energy.”

Interior Secretary Gale Norton was appointed by President Bush in January 2001 and was the federal official initially responsible for implementing many of the oil and gas provisions of Vice President Cheney’s energy policy. Secretary Norton incentivized oil and gas companies in the Gulf with new royalty relief programs but imposed few new safety standards on offshore drilling operations. On multiple occasions, reports prepared for the Minerals Management Service (MMS) warned that the blowout preventers (BOPs) used on offshore wells were unreliable. The Department never acted on these warnings. The Department also rejected efforts begun in the Clinton Administration to strengthen federal regulation of offshore well cementing practices.

Interior Secretary Dirk Kempthorne took office in June 2006 and served until January 2009. He generally continued the practices of his predecessor. In 2008, Secretary Kempthorne presided over Lease Sale 206, which included the site of BP’s Macondo well and the Deepwater Horizon explosion. After companies bid a record \$3.7 billion for Lease Sale 206, including \$34 million for the block containing the Macondo well, Secretary Kempthorne said that the agency had “won the championship.” The environmental assessments prepared by the Department for the lease area found that the most likely size of a large spill would be just 4,600 barrels, less than 1% of the amount of oil that has been spilled from the Macondo well since April 20, 2010.

In September 2008, the Inspector General for the Department released a report finding that MMS officials responsible for implementing the royalty in kind program had accepted gifts from, socialized and used drugs with, and on occasion had affairs with oil industry officials. The Inspector General’s investigation revealed an “organizational culture lacking acceptance of government ethical standards, inappropriate personal behaviors, and a program without the necessary internal controls ... to prevent future unethical and unlawful behavior.”

Interior Secretary Ken Salazar took office in January 2009. He has implemented some reforms, including establishing a new code of conduct for MMS officials and phasing out the troubled royalty in kind program. But these reforms apparently did little to change the permit procedures at MMS. During Secretary Salazar’s tenure, MMS approved BP’s Exploration Plan for the Macondo well and the company’s drilling permit application without requiring a thorough environmental review. MMS also approved several changes to the Macondo well’s design, including modifications that the Committee’s investigation has identified as potentially increasing the risk of a blowout.

The number of federal inspectors working for MMS has not kept pace with the growing number and complexity of the wells drilled in the Gulf of Mexico’s deepest waters. The number of producing wells located in Gulf waters deeper than 1,000 feet increased from 65 in 1985 to

602 in 2009. Overall, deepwater oil production increased by 2,000 percent and deepwater gas production by more than 3,000 percent between 1985 and 2009. At the time of the Deepwater Horizon explosion, MMS had just 60 inspectors in the Gulf of Mexico region to inspect almost 4,000 facilities, which is nearly the same number of inspectors employed by MMS in 1985. In February 2010, just a few months before the explosion, the Department requested funding for six additional inspectors.

II. THE BUSH ADMINISTRATION'S RECORD

A. The Bush-Cheney Energy Plan

Just two weeks after taking office, President Bush directed Vice President Cheney to establish a task force to develop an energy plan for the Bush Administration. This task force was controversial from the beginning. Both members of Congress and the Government Accountability Office sought information about the task force's meetings with outside interest groups, but these requests were consistently rebuffed. News articles later disclosed that the task force consulted on numerous occasions with members of the energy industry. Task force members and staff met with approximately 300 groups and individuals, including 20 oil and gas companies and three dozen trade associations representing the energy industry.¹ On April 4, 2001, representatives from 13 environmental groups met with the energy task force's staff director for the first and only time before the national energy policy was finalized.²

On May 16, 2001, Vice President Dick Cheney sent the President the task force's final report, which described the Bush Administration's approach to all forms of energy development and production.³ With regard to offshore oil and gas drilling, the report stated that "exploration and production from the OCS [Outer Continental Shelf] has an impressive environmental record."⁴ It stated that existing federal and state environmental and permitting laws and regulations were creating "delays and uncertainties [that] can hinder proper energy exploration and production projects."⁵ The report noted that "substantial economic risks remain to investment in deep water."⁶ The report recommended that the President direct the Secretary of the Interior to "consider economic incentives for environmentally sound offshore oil and gas development where warranted," including opportunities for royalty reductions.⁷ The report also

¹ *Papers Detail Industry's Role in Cheney's Energy Report*, The Washington Post (July 18, 2007).

² *Id.*

³ National Energy Policy Development Group, *National Energy Policy Report* (May 2001).

⁴ *Id.* at 5-7.

⁵ *Id.*

⁶ *Id.* at 5-8.

⁷ *Id.* at 5-7.

recommended that the President direct the Secretaries of Commerce and Interior to “re-examine the current federal legal and policy regime” related to energy-related activities and siting of energy facilities on the Outer Continental Shelf.⁸

The Vice President’s task force recommended that the President issue two executive orders to expedite and increase energy development and production.⁹ The President issued these executive orders two days after the Vice President released the report. The first executive order stated that there is “too little information regarding the effects that governmental regulatory action can have on energy.”¹⁰ Therefore, the President required agencies to prepare, for any rulemaking or other significant agency action, a “Statement of Energy Effects” describing all potential adverse impacts on energy supply.¹¹ The American Petroleum Institute (API) provided the Department of Energy with draft language for this executive order, according to an e-mail obtained by the Natural Resources Defense Council pursuant to the Freedom of Information Act.¹²

The second executive order expressed the intent of the administration to “expedite projects that will increase the production, transmission, or conservation of energy.”¹³ On August 22, 2001, J. Steven Griles, Deputy Secretary of the Interior, wrote a memo to the Council on Environmental Quality affirming the Department is “fully committed to playing a role in this effort.”¹⁴ He noted the Department’s “special interest and expertise” and expressed an interest in coordinating the effort to expedite the permitting and regulatory processes.¹⁵

The Bush Administration offered the oil and gas industry new financial incentives to drill offshore. In 2002, the Department finalized a rule allowing lease operators to apply for additional discretionary royalty relief when the available relief is deemed insufficient.¹⁶ In 2004, the Department finalized a rule reducing the royalties on deep gas from wells located in waters

⁸ *Id.* at 5-8.

⁹ *Id.* at 1-3 and 3-13.

¹⁰ Exec. Order No. 13211, 66 Fed. Reg. 28355 (May 22, 2001).

¹¹ *Id.*

¹² E-mail from Jim Ford, Government Affairs, American Petroleum Institute, to Joseph Kelliher, U.S. Department of Energy (Mar. 20, 2001).

¹³ Exec. Order No. 13212, 66 Fed. Reg. 28357 (May 22, 2001).

¹⁴ Memorandum from J. Steven Griles, Deputy Secretary of the Interior, to the Chairman of the Council on Environmental Quality (Aug. 22, 2001). Obtained by the Natural Resources Defense Council pursuant to FOIA.

¹⁵ *Id.*

¹⁶ U.S. Minerals Management Service, *Relief or Reduction in Royalty Rates—Deep Water Royalty Relief for OCS Oil and Gas Leases Issued After 2000*, 67 Fed. Reg. 1862 (Jan. 15, 2002) (final rule).

less than 200 meters deep in the central and western Gulf of Mexico. According to the final rule, the new relief program “implements one part of MMS’s responsibilities under the [National Energy Policy] to promote environmentally sound production of our Nation’s energy resources, using royalty suspensions to reduce financial risks associated with production of OCS deep gas formations.”¹⁷ The Energy Policy Act of 2005, which reflected many recommendations of the Cheney energy task force’s report, included additional offshore royalty relief programs for oil and gas companies and deepwater research and development spending.

B. Regulation of Offshore Drilling under Secretary Norton

1. Regulation of Blowout Preventers

In the first four years of the Bush administration, MMS received a series of reports that identified serious concerns about the reliability of subsea BOPs and the effectiveness of blind shear rams. A July 2001 report concluded that “all subsea BOP stacks used for deepwater drilling should be equipped with two blind-shear rams.”¹⁸ A December 2002 report painted a “grim picture” of the probability of success when using blind shear rams to secure a well during a well control event.¹⁹ A similar report finalized in September 2004 concluded that “at least some of the rigs currently in operation have not considered critical issues necessary to ensure that their shear rams will shear the drill pipe and seal the wellbore.”²⁰

MMS had the opportunity to address these problems as part of a broad rulemaking in 2003. Despite the warnings it had received, MMS did not require a second blind shear ram on subsea BOP stacks. Instead, MMS required each well operator to provide information in its permit application showing that the BOP’s blind shear ram is capable of shearing the drill pipe.²¹ It is unclear to what extent this information is reviewed or verified by MMS after it is provided. Frank Patton, the New Orleans District Drilling Engineer for MMS, testified before the Marine Board of Investigation and said that he never was told to look for this information when reviewing drilling applications.²² Moreover, reports about efforts to cut the oil flow in the first

¹⁷ U.S. Minerals Management Service, *Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions*, 69 Fed. Reg. 3492 (Jan. 26, 2004) (final rule).

¹⁸ SINTEF Industrial Management, *Deepwater Kicks and BOP Performance* (July 24, 2001).

¹⁹ West Engineering Services, *Mini Shear Study* (Dec. 2002).

²⁰ West Engineering Services, *Shear Ram Capabilities Study* (Sept. 2004).

²¹ U.S. Minerals Management Service, *Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations*, 68 Fed. Reg. 8402 (Feb. 20, 2003) (final rule).

few days after the Macondo well explosion suggest that the blind shear ram did not do what it was supposed to do. This Committee's investigation has determined that well operators do not typically test the blind shear rams at subsea depths.

In March 2003, MMS received another report raising concerns about the reliability of critical backup systems, such as deadman switches and remotely operated vehicles (ROVs).²³ The report stated that the "ability to deliver the pressure required to shear the pipe...is most critical" and recommended that an ROV "should be capable of generating this amount of pressure plus a suitable safety factor."²⁴ MMS did not make any regulatory changes to address the concerns raised in this report. As the Committee's investigation has shown, on the Deepwater Horizon rig, the backup shut-off systems and ROV actuation efforts failed.

2. *Regulation of Cementing of Offshore Wells*

On June 21, 2000, in the last year of the Clinton Administration, MMS issued a proposed rule on oil and gas drilling operations in the Outer Continental Shelf. As part of that rulemaking, MMS noted that current drilling requirements do not address the methods lessees use to cement casing strings. Instead, MMS had "allowed lessees to use their judgment in selecting the proper method of cementing casing and liners."²⁵ MMS questioned whether this approach has been successful, given problems with sustained casing pressure over the lifetime of producing wells. MMS requested comments on the "use of improved cementing practices to address some of the problems associated with sustained casing pressures."²⁶

In its comments on the proposed rule, the Offshore Operators Committee, representing 70 operating companies that conduct most of the exploration and production activities in the Gulf of Mexico, said they "support the MMS's efforts to review and define guidance regarding best cementing practices, but will oppose the inclusion of prescriptive cementing practice requirements, over the current performance based requirements."²⁷

²² Testimony of Frank Patton, New Orleans District Drilling Engineer, U.S. Minerals Management Service, before the U.S Coast Guard/MMS Marine Board of Investigation (May 11, 2010).

²³ West Engineering Services, *Evaluation of Secondary Intervention Methods in Well Control* (Mar. 2003).

²⁴ *Id.* at 20, 23.

²⁵ U.S. Minerals Management Service, *Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations*, 65 Fed. Reg. 38453 (June 21, 2000) (proposed rule).

²⁶ *Id.*

²⁷ Letter from Allen Verret, Executive Director, Offshore Operators Committee, to the U.S. Minerals Management Service (Oct. 17, 2000).

MMS accepted this argument and decided not to impose any prescriptive cementing requirements in the final rule, issued on February 20, 2003. MMS acknowledged “opportunities to improve cements and cementing practices” and committed to participating in the ongoing work of the American Petroleum Institute’s cementing committee to develop industry guidelines for cementing practices. MMS said it would consider further regulatory action after the API cementing committee completed its work.²⁸ As the Committee’s investigation has shown, BP made several decisions during the cementing process, such as using only six centralizers and opting not to conduct a cement bond log, which may have increased the likelihood of a blowout at the Macondo well.

3. Regulation of Blowout Scenarios and Oil Spill Risk Analysis

MMS regulations require lessees to develop an oil spill response plan that includes a trajectory analysis identifying onshore and offshore areas that a spill could affect.²⁹ In 2000, during the Clinton Administration, MMS in the Gulf region issued a Notice to Lessees (NTL) stating that the models used to identify the trajectory of spills “are not adequate to predict the behavior of spills in deepwater.” According to the NTL, MMS would begin requiring that trajectory analyses be based on a “model developed and calibrated for the deepwater environment.”³⁰ This never occurred.

The trajectory analysis for the Gulf of Mexico, last updated in 2004, still focuses exclusively on surface spills and does not predict the behavior of a subsea spill.³¹ In 2006, MMS reiterated that lessees in the Gulf have to use this inadequate trajectory model to identify the onshore areas that could be affected by a worst case discharge.³² Without an updated model, the trajectory analysis supporting BP’s drilling operations at the Macondo well offered little predictive value for the impact of the subsea blowout that occurred.

MMS regulations also require each lessee to submit a blowout scenario as part of its exploration plan. The blowout scenario must outline the estimated flow rate, total volume, and maximum duration of a potential well blowout.³³ In 2003, MMS exempted all lessees in the Gulf of Mexico from these requirements unless they specifically fall in one of four categories

²⁸ U.S. Minerals Management Service, *Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations*, 68 Fed. Reg. 8402 (Feb. 20, 2003) (final rule).

²⁹ 30 CFR 254.26(b).

³⁰ U.S. Minerals Management Service, NTL No. 2000-G02 (Jan. 25, 2000).

³¹ U.S. Minerals Management Service, *Oil-Spill Risk Analysis: Contingency Planning Statistics for Gulf of Mexico OCS Activities* (Apr. 2004); Briefing by the Bureau of Ocean Energy Management to House Committee on Energy and Commerce staff (July 8, 2010).

³² U.S. Minerals Management Service, NTL No. 2006-G21 (Oct. 26, 2006).

³³ 30 CFR 250.213(g).

(expanded to five in 2006).³⁴ BP's exploration plan for the Macondo well did not include a blowout scenario.

C. Secretary Dirk Kempthorne's Tenure

Secretary Kempthorne led the Department of the Interior between June 2006 and January 2009. Secretary Kempthorne continued Secretary Norton's emphasis on promoting oil and gas development. During his tenure, Secretary Kempthorne and MMS held Lease Sale 206, the most lucrative sale in history. As part of this sale, BP acquired the right to explore and develop the site of the future Macondo well. Secretary Kempthorne also oversaw the assessment of potential environmental impacts associated with this lease sale, an assessment that did not anticipate the possibility or impacts of a catastrophic subsea blowout.

The Secretary hired a chief ethics officer and created a new Conduct Accountability Board to ensure consistency and fairness in the management of conduct and discipline cases. In June 2007, Secretary Kempthorne circulated to all Interior employees a "10-Point Plan to Make the Department of the Interior a Model of an Ethical Workplace."³⁵

1. The Five-Year Oil and Gas Leasing Program

Soon after assuming office, Secretary Kempthorne gave a speech before the U.S. Chamber of Commerce. He commended President Bush and Vice President Cheney, "who understand what it takes to produce energy."³⁶ He also acknowledged the major role the Department of the Interior would play in continuing to implement the administration's national energy policy and the 2005 Energy Policy Act.³⁷

One of Secretary Kempthorne's first priorities was to finalize the Outer Continental Shelf Oil and Gas Leasing Program for 2007-2012, which included 21 lease sales in the Gulf of Mexico, Alaska, and the Atlantic. This program included Lease Sale 206, which would become the site of the Deepwater Horizon explosion.

2. Assessment of Potential Environmental Risks

A key component of the oil and gas leasing process is the preparation of an environmental impact statement (EIS) and environmental assessment (EA) under the National

³⁴ U.S. Minerals Management Service, NTL No. 2003-G17, Appendix F at 22 (Aug. 27, 2003); U.S. Minerals Management Service, NTL No. 2006-G14 (July 2006).

³⁵ Memorandum from Secretary Dirk Kempthorne to all Interior employees (June 27, 2007) (online at http://www.peer.org/docs/doi/07_03_07_doi_ethics_directive.pdf).

³⁶ Prepared remarks of Secretary Dirk Kempthorne before the U.S. Chamber of Commerce (July 19, 2006).

³⁷ *Id.*

Environmental Policy Act (NEPA). In April 2007, MMS issued a final EIS for 11 planned lease sales in the Gulf of Mexico, including Lease Sale 206.³⁸ In this multi-sale EIS, MMS noted that since loss of well control events and blowouts are “rare events and of short duration,” the potential impacts to marine water quality “are not expected to be significant.”³⁹ The EIS stated that “a subsurface blowout would have a negligible effect on Gulf of Mexico fish resources or commercial fishing.”⁴⁰ MMS also projected that the most likely size of a large spill (greater than 1,000 barrels) from the proposed activity would be 4,600 barrels.⁴¹ MMS estimated that no more than 26,500 barrels of oil would be spilled in offshore waters over the entire 40-year life of six of the proposed leases, including Lease Sale 206.⁴² In contrast, scientists estimate that more than 3 million barrels of oil have spilled into the Gulf from the Macondo well since the explosion.⁴³

In October 2007, MMS issued an EA and a “Finding of No New Significant Impact” under NEPA for Lease Sale 206 in the Gulf of Mexico.⁴⁴ This finding allowed Lease Sale 206 to proceed without a more comprehensive EIS. The EA did not contemplate the potential impact of a catastrophic blowout. For example, the EA posited that impacts to wetland habitats from an oil spill would be “low and temporary” and that there would be “little interaction” between oil spills from Lease Sale 206 and coastal and marine birds.⁴⁵ The assessment also predicted that “the resultant influence on commercial fishing activities from proposed Lease Sale 206 would be negligible and indistinguishable from variations due to natural causes.”⁴⁶

3. Lease Sale 206 in the Gulf of Mexico

On October 30, 2007, MMS announced Lease Sale 206, which included 29.8 million acres in the Central Gulf of Mexico. On March 19, 2008, Secretary Kempthorne presided over Lease Sale 206. MMS accepted high bids valued at \$3.7 billion, the most in the Department’s

³⁸ U.S. Minerals Management Service, *Gulf of Mexico OCS Oil and Gas Lease Sales: 2007-2012; Western Planning Area Sales 204, 207, 210, 215, and 218 Central Planning Area Sales 205, 206, 208, 213, 216, and 222; Final Environmental Impact Statement* (Apr. 2007).

³⁹ *Id.* at 4-260.

⁴⁰ *Id.* at 4-295.

⁴¹ *Id.* at 4-232.

⁴² *Id.* at 4-238.

⁴³ *Tallying BP’s Bill on the Gulf Coast*, *The New York Times* (July 13, 2010).

⁴⁴ U.S. Minerals Management Service, *Proposed Gulf of Mexico OCS Oil and Gas Lease Sale 206; Central Planning Area; Environmental Assessment* (Oct. 2007).

⁴⁵ *Id.* at 27, 43.

⁴⁶ *Id.* at 48.

leasing history, and awarded 603 leases to the successful high bidders.⁴⁷ At this sale, BP acquired block 252 in the Mississippi Canyon area of the Gulf for \$34 million.⁴⁸ This would become the site of the Macondo well and the Deepwater Horizon explosion.

After the sale, Secretary Kempthorne told reporters that MMS had “won the championship.”⁴⁹

4. *The Inspector General’s 2008 Report*

In 2008, the Inspector General released the results of an investigation into alleged ethical violations at the royalty in kind program office in Lakewood, Colorado.⁵⁰ The royalty in kind program, by nature, demands that MMS work closely with the oil and gas industry. MMS collects royalties on crude oil and natural gas production “in kind” from the lessee rather than as a cash payment. MMS then sells that crude oil or natural gas on the open market. The Inspector General found that between January 2002 and July 2006, approximately one-third of the program staff had socialized with and received gifts from oil and gas company employees with whom they had official business. The report even identified instances of illicit drug use and sexual relationships between MMS staff and industry employees. Overall, the investigation revealed an “organizational culture lacking acceptance of government ethical standards, inappropriate personal behaviors, and a program without the necessary internal controls in place to prevent future unethical or unlawful behavior.”⁵¹

⁴⁷ U.S. Minerals Management Service, *Oil and Gas Lease Sales in Gulf of Mexico Attract \$3.7 Billion* (Mar. 19, 2008); U.S. Minerals Management Service, *Central Gulf of Mexico Sale 206 Nets \$ 3.67 Billion in High Bids* (Aug. 4, 2008).

⁴⁸ U.S. Minerals Management Service, *Central Gulf of Mexico Lease Sale 206: Final Phase II Decision Matrix* (July 17, 2008).

⁴⁹ *Louisiana to see profits after Gulf oil lease sale*, New Orleans Times-Picayune (Mar. 20, 2008).

⁵⁰ Office of Inspector General, U.S. Department of the Interior, *Investigative Report: MMS Oil Marketing Group – Lakewood* (Sept. 10, 2008).

⁵¹ *Id.* at 1. Another report by the Interior Department Inspector General, dated March 31, 2010, described ethical problems prior to 2007 at the MMS Lake Charles office, where “a culture of accepting gifts from oil and gas companies was prevalent.” Office of Inspector General, U.S. Department of the Interior, *Investigative Report: Island Operating Company et al.* (Mar. 31, 2010).

III. THE OBAMA ADMINISTRATION'S RECORD

A. In General

Secretary Ken Salazar assumed the helm of the Department in January 2009. Soon after taking office, Secretary Salazar also announced a new ethics reform initiative. Secretary Salazar stated:

The President has made it clear that the type of ethical transgressions, blatant conflicts of interest, wastes and abuses that we have seen over the past eight years will no longer be tolerated.⁵²

Secretary Salazar published a new code of conduct for MMS employees and announced plans to conduct a thorough review of the entire Department's ethics regulations, policies, and guidance.⁵³ As part of the Department's investigation into the events leading up to the Deepwater Horizon explosion, the Inspector General is surveying MMS employees to determine to what extent recent initiatives have addressed the ethics problems documented over the last several years.⁵⁴

Secretary Salazar also has taken action to eliminate some of the inherent conflicts of interest within MMS. In September 2009, Secretary Salazar announced a phased-in termination of the troubled royalty in kind program.⁵⁵ On May 19, 2010, in the wake of the Deepwater Horizon explosion, Secretary Salazar signed a secretarial order dividing MMS into three separate entities with independent missions.⁵⁶

The Interior Department also initiated some modest efforts to strengthen regulation of oil and gas drilling. In June 2009, MMS issued a Notice to Lessees for the Gulf of Mexico region about the accidental disconnect of marine drilling risers. In this notice, MMS reminded lessees that it "considers a backup BOP actuation system to be an essential component of a deepwater drilling system and, therefore, expects [lessees] to have reliable back-up systems in place for actuating the BOP in the event that the marine riser is damaged or accidentally disconnected."⁵⁷

⁵² U.S. Department of the Interior, *Secretary Salazar Launches Ethics Reform Initiative in Meeting with Minerals Management Service Employees* (Jan. 29, 2009).

⁵³ *Id.*

⁵⁴ Briefing by Mary Kendall, Acting Inspector General, U.S. Department of the Interior, to House Committee on Energy and Commerce staff (July 15, 2010).

⁵⁵ U.S. Department of the Interior, *Salazar Ends Controversial Royalty in Kind Program, Launches Reforms to Management of Energy Resources on Public Lands, Outer Continental Shelf* (Sept. 16, 2009).

⁵⁶ U.S. Department of the Interior, Secretarial Order No. 3299 (May 19, 2010).

⁵⁷ U.S. Minerals Management Service, NTL No. 2009-G11 (June 1, 2009).

Also in June 2009, MMS issued a proposed rule to require operators to develop and implement a Safety and Environmental Management System to reduce the risk and number of accidents, injuries, and spills during Outer Continental Shelf activities. The proposed rule would require each offshore facility to conduct a hazard analysis to identify and reduce the likelihood of a safety-related accident or release of hydrocarbons. It also would require lessees or operators to apply a “management of change” process to analyze potential risks associated with significant changes to equipment, procedures, and personnel. In addition, the rule would require operators to maintain up-to-date operating and mechanical integrity procedures.⁵⁸

The Offshore Operators Committee and API submitted comments opposing this rule, writing that “voluntary programs that have enough flexibility to suit the corporate culture of each company are the best way to actually achieve the goals of this proposal.”⁵⁹ This rulemaking is not yet complete.

On March 31, 2010, just 20 days before the explosion of the Deepwater Horizon rig, President Obama proposed an expansion of oil and gas drilling on the Outer Continental Shelf, including new areas in the eastern Gulf of Mexico and off the coast of Virginia.⁶⁰

B. Actions Related to BP’s Macondo Well

On April 6, 2009, MMS approved BP’s Exploration Plan for Mississippi Canyon Block 252, the site of the Macondo well. In approving BP’s Exploration Plan, MMS granted the plan a “categorical exclusion” from NEPA, eliminating the need for thorough site-specific environmental review. The Exploration Plan included a 13-page “environmental impact analysis” that, as with the assessments conducted in 2007 for the multi-lease sale and Lease Sale 206, understated the potential impact of an oil spill. For example, the plan said in the event of an oil spill, water quality “would be temporarily affected by the dissolved components and small droplets.”⁶¹ The plan acknowledged that an accidental oil spill could cause impacts to shore birds and coastal nesting birds but discounted the likelihood of significant adverse impacts “due to the distance to shore (48 miles) and the response capabilities that would be implemented.”⁶²

⁵⁸ U.S. Minerals Management Service, *Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations*, 74 Fed. Reg. 28639 (June 17, 2009) (proposed rule).

⁵⁹ Letter from Allen Verret, Offshore Operators Committee, and Tim Sampson, American Petroleum Institute, to the U.S. Minerals Management Service (Sept. 15, 2009).

⁶⁰ White House, Remarks by the President on Energy Security at Andrews Air Force Base (Mar. 31, 2010); U.S. Department of the Interior, *Preliminary Revised Program Outer Continental Shelf Oil and Gas Leasing Program 2007-2012* (Mar. 2010).

⁶¹ BP Exploration & Production, *Initial Exploration Plan, Mississippi Canyon Block 252* (Feb. 2009) at 14-3.

⁶² *Id.* at 14-6.

The plan used similar language to minimize the anticipated impacts of a spill to beaches, wetlands, coastal wildlife refuges, and wilderness areas.

BP's Exploration Plan did not include an oil spill response discussion, a site-specific oil spill response plan, or a blowout scenario, as the project fell under certain exemptions offered by MMS.⁶³ Instead, the plan referenced BP's regional oil spill response plan and certified that it had the capacity to respond to a worst case discharge—estimated to be 162,000 gallons per day from this well. The plan also cited the “industry wide standards for using proven equipment and technology” for oil spill response as assurance that a blowout would have little impact.⁶⁴

On May 22, 2009, MMS approved BP's application for a permit to drill the Macondo well. Over the course of the next year, MMS also approved several revisions to the initial permit. Most notably, MMS approved critical changes to the Macondo well design in the week leading up to the April 20 explosion. In a June 14, 2010, letter to Tony Hayward, BP's CEO, the Committee identified five key BP decisions, including the final changes to the well's design, that may have made a loss of well control more likely. As detailed in the letter, MMS approved BP's request on April 15 to install a single string of casing, a well design choice that left fewer barriers to gas flow but potentially saved BP time and money.⁶⁵

IV. RESOURCE ISSUES WITHIN THE MINERALS MANAGEMENT SERVICE

Offshore drilling in the deep water of the Gulf of Mexico has skyrocketed over the last 25 years due in large part to economic incentives offered to the oil and gas industry and advancements in drilling technology. The number of producing wells located in Gulf waters deeper than 1,000 feet increased from 65 in 1985 to 602 in 2009.⁶⁶ In 1985, six percent of offshore oil production and less than one percent of natural gas production occurred in water depths greater than 1,000 feet. By 2009, those numbers had increased to 80 percent and 45 percent, respectively.⁶⁷ Overall, deepwater oil production increased by 2,000 percent and gas production by more than 3,000 percent between 1985 and 2009.⁶⁸

⁶³ U.S. Minerals Management Service, NTL No. 2008-G04 (Apr. 1, 2008).

⁶⁴ BP Exploration & Production, *Initial Exploration Plan, Mississippi Canyon Block 252* (Feb. 2009) at 14-4.

⁶⁵ Letter to Tony Hayward from Henry Waxman, Chairman, Committee Energy and Commerce, and Bart Stupak, Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce (June 14, 2010).

⁶⁶ U.S. Minerals Management Service, Gulf of Mexico Region, *Offshore Statistics by Water Depth* (online at www.gomr.mms.gov/homepg/fastfacts/WaterDepth/WaterDepth.html).

⁶⁷ U.S. Minerals Management Service, Gulf of Mexico Region, *Deepwater Production Summary by Year* (online at www.gomr.mms.gov/homepg/offshore/deepwatr/summary.asp).

⁶⁸ *Id.*

The number of federal inspectors working for MMS has not kept pace with the number and complexity of deepwater wells and the distance inspectors must travel to reach the deepwater drilling rigs. In the Gulf of Mexico, MMS inspects all offshore facilities at least once a year and each drilling rig at least once a month while it is drilling.⁶⁹ MMS had 55 inspectors in 1985 and 58 in 2006.⁷⁰ Currently, MMS has approximately 60 inspectors in the Gulf of Mexico region to inspect nearly 4,000 facilities.⁷¹

In its FY2011 budget request, MMS asked for \$900,000 for six additional inspectors to “address the current and anticipated increase in deepwater fixed and floating facilities and the number of components that must be inspected offshore.”⁷² MMS described new challenges as industry moves into deeper waters, including the “need to ensure that exploration and development is conducted in a safe and environmentally responsible manner while regulating cutting edge technology in distant areas under increasingly difficult conditions.”⁷³

Secretary Salazar has directed MMS to contract with the Marine Board, part of the Transportation Research Board of the National Academies, to review the effectiveness of the MMS inspection program and identify opportunities for improvement. This study began in September 2009.⁷⁴

⁶⁹ 43 U.S.C. 1348(c)(1); U.S. Minerals Management Service, Gulf of Mexico OCS Region, *Offshore Inspection Program Ensures Safe Operations* (Apr. 1996) (online at <http://www.gomr.mms.gov/homepg/offshore/egom/special.html>).

⁷⁰ *Increase in Inspectors Hasn't Kept Pace with Boom in Offshore U.S. Oil Rigs and Projects*, The Washington Post (June 10, 2010); U.S. Minerals Management Service, *FY2001-2011 Account Level Detail—Appropriated*.

⁷¹ Testimony of Secretary Ken Salazar, U.S. Department of the Interior, before the Senate Committee on Energy and Natural Resources (June 24, 2010).

⁷² U.S. Department of the Interior, Minerals Management Service, *Budget Justifications and Performance Information Fiscal Year 2011* at 111.

⁷³ *Id* at 9.

⁷⁴ U.S. Department of the Interior, *Reforming MMS (January 1999-present)* (online at <http://www.doi.gov/deepwaterhorizon/upload/05-07-10-reform-fact-sheet.pdf>).