

OIL AND GAS DEVELOPMENT

HEARING
BEFORE THE
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ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION
ON
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S. 916 **S. 917**

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OIL AND GAS DEVELOPMENT

TUESDAY, MAY 17, 2011

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

The committee met, pursuant to notice, at 10:03 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

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

The CHAIRMAN. OK. Good morning. Welcome to the hearing.

Today, we continue the committee's work on domestic oil and gas production and the safety and environmental protection that are essential elements of responsible production.

In the last Congress, the committee did diligent, bipartisan work on these issues, made considerable progress. I am hopeful that we will continue today down that path that will lead us to effective legislation in this Congress.

In the last Congress, we had 5 hearings on offshore production and issues related to the Deepwater Horizon disaster. We unanimously reported legislation intended to ensure that such accidents would not happen again and to move toward a culture of excellence for the agency and the industry. That same legislation is one of the subjects of our hearing today.

In this Congress, we held a hearing with the co-chairs of the National Oil Spill Commission on their excellent report and the lessons learned from their work.

Today, we will hear testimony on 4 bills related to domestic oil and gas that have been referred to our committee. The sponsors of 2 of the bills are with us today. Senator Hutchison is here right now. Senator Landrieu, I believe, is also a cosponsor on these bills. Senator Begich is on his way, I am advised, and will give us his views when he arrives.

I have introduced the other 2 bills. Those are S. 916 and S. 917, and I will take just a minute to describe them. They are intended to separately address 2 aspects of the issue of responsible domestic production based on bipartisan, consensus-based work.

S. 916, the Oil and Gas Facilitation Act, is intended to enhance efficient and appropriate domestic production of oil and gas. The last 2 years have been a time of real success in increasing domestic production and reducing our reliance on imported oil.

We are currently the largest producer of natural gas and the third-largest producer of oil in the world. The percentage of the oil

that we use that is imported has declined from 60 percent in 2008 to 51 percent in 2009, to 49 percent in 2010.

Unfortunately, this is not the cure for high gas prices, or we would have seen gas prices decline consistently over these years instead of increasing. But this progress is important for many other reasons, and we want to be sure that it continues.

The provisions of S. 916 are drawn from a bill reported by the committee in the last Congress. Among other things, the bill would provide for a thorough inventory of oil and gas resources on areas of the Outer Continental Shelf and ensure that permitting processes for oil and gas development on public lands and waters are efficient and well coordinated among the agencies.

S. 917, the Outer Continental Shelf Reform Act, is identical to a bill unanimously reported by the committee last year following the Deepwater Horizon accident. It would reform the management of the Outer Continental Shelf in several ways, including agency reorganization; stronger planning, safety, and environmental requirements; enhanced research capacity and third-party oversight; increased financial responsibility requirements for industry operators; and more effective enforcement.

I believe that starting from this consensus vehicle will be helpful in working quickly through the issue this year. This bill will need some updating. Senator Murkowski and I have spent considerable time working together to do that.

Our work will continue. I hope to be able to consider both bills in the committee before the Memorial Day recess.

I would note that I have introduced these bills as separate bills for a reason. I want to give our work the best possible chance of being enacted into law. I believe we do that by dealing with these issues in parallel.

There is not much disagreement in the Senate about the need for responsible domestic production, but there is considerable disagreement about how best to address that issue, and we will work hard to find productive areas of consensus.

However, ensuring the safety and viability of our operations on the Outer Continental Shelf is a separate matter that deserves attention on its own. The question of how we undertake oil and gas development appropriately stands apart from questions of where we undertake those activities.

Congress should set an appropriate level of safety and environmental compliance, regardless of where oil and gas exploration is occurring. Our commitment to responsible offshore operations and protection of our citizens and communities is widely shared. The fact that oil is no longer gushing into the Gulf, as it was last year, does not diminish the importance of this work.

Today's hearing is the next step on these parallel tracks that I have described. I look forward to hearing the testimony and to continuing our efforts on these important issues.

[The prepared statement of Senator Heller follows:]

PREPARED STATEMENT OF HON. DEAN HELLER, U.S. SENATOR FROM NEVADA

Chairman Bingaman and Ranking Member Murkowski, I want to thank you for holding this hearing today. I think there are few more pressing issues facing our constituents today than high gas prices.

The bills we are discussing today directly impact our ability to increase domestic production—whether it is by insuring the safety of operation in the Gulf or providing a way for effective permitting. It is my hope that the testimony presented today and the issues brought to light will bring us closer to increased safe and responsible domestic development.

Today in Nevada, the average price of a gallon of gasoline is \$3.89. That is nearly a dollar higher than the average price of gas one year ago. As you know, the price of fuel is directly related to the cost of the goods and services we rely to sustain our standard of living. When the price of fuel increases the cost of driving to work and feeding your family also increases. These inflated costs hit the most vulnerable in our society particularly hard. Senior citizens, struggling families and small businesses cannot continue to bear the brunt of an unwillingness to develop domestic energy.

The United States is blessed with abundant, recoverable domestic energy resources. Underutilizing responsible use of these resources is ill-advised—especially when it is born on the backs of hardworking Americans struggling in these difficult economic times. I believe that it is our duty to see that these resources are responsibly deployed. Put simply, our actions need to address the issue in a manner that respects the main cause of the problem—supply and demand.

We are all committed to developing the energy sources of the future. In my home state of Nevada, we are proud to be one of the leading states in development and ability to generate renewable energy using our vast geothermal, solar and wind resources. While we are working to develop cost-competitive energy resources for the future, we need to be realistic about the needs of our economy today. Currently, there is no reliable and affordable way to replace petroleum as a transportation fuel. So, while we look towards the future we need to provide for our immediate needs.

Nevada has the unfortunate distinction of having the nation's highest unemployment rate of 13.2%. Increasing fuel prices exacerbate the problems associated with high unemployment—especially in Nevada's heavily tourism dependent economy. When the price of fuel to power an airplane, drive your car, grow crops and deliver goods goes up that increased cost is passed on to consumers—and it greatly diminishes economic productivity.

Additionally, given that oil and gas activities account for 4% of our GDP, the development of our domestic resources will not only bring relief to the pocketbooks of consumers, it will create desperately needed jobs. In closing, I hope that we can work together to enact provisions that will improve safety and increase production of our domestic resources.

Let me call on Senator Murkowski for her opening comments.

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

Senator MURKOWSKI. Thank you, Mr. Chairman, and good morning.

Today's hearing comes at an opportune time, based on the announcements that the President made over the weekend. I commend his decision to increase leasing and to extend the leases that have been delayed. I certainly welcome his attention to my home State of Alaska because we have, of course, tremendous untapped oil and gas resources.

But our problems have not only been related to leasing, but to the permitting side as well. So I am hopeful that this is just a start and that the administration will also quickly issue permits to projects that are stalled all across the country right now.

Likewise, I believe the work of our committee can simultaneously increase energy production and the safety of those operations. I think we all recognize that certain events and perhaps certain non-events should lead us to alter last summer's spill response bill significantly, whether that means removing the provision for a new bipartisan spill commission or reacting to litigation that the Interior Department, and specifically BOEMRE, has been in over its moratorium and its so-called "permatorium."

We have also seen that the OCS Lands Act really does have some teeth, very real teeth. Whether or not all those actions were legal is still under review. But as a practical matter, the OCS Lands Act obviously provided sufficient authority to implement a moratorium and, even after that, to hold off on drilling permits until there was a much, much greater degree of comfort with safety and spill prevention systems.

Now, as we consider these bills on oil and gas, I am grateful to you, Mr. Chairman, for advancing this legislation in an open and a transparent committee process. So I will also reiterate my comments from a year ago that the Senate should follow the example that you set here.

Should we pass another bill from our committee, it will still be a work in progress, subject to further refinement on the Senate floor. But if, like last year, our committee's bill is ultimately attached to a handful of unworkable liability provisions or any other poison pills, my prediction is that it will, again, fail.

Likewise, if the bill goes to the floor and is closed off to amendment, again, my prediction is that it will fail. Given some of the findings and the sense of the Senate provisions we saw in the bill to raise taxes on 5 energy companies, it should be no surprise that many of us are wary about what could be tacked into an otherwise reasonable bill.

I emphasize that our oil and gas policy requires us to walk and chew gum at the same time. It should be our goal to ensure our offshore industry is working safely, but that requires that it be working. We are still only about a third of the way to the pre-moratorium levels of operation, and the EIA continues to forecast serious production shortfalls as a result.

Meanwhile, oil prices are hovering near \$100 a barrel. We are importing 50 percent of our supply, and the headlines over the past few months have been advertising to all of us why a stable domestic oil supply is so very important. There should be no doubt, and today, it seems that there is little disagreement, that supply really does matter.

Yet offshore projects in Alaska have been delayed a minimum of 2 additional years. This kind of delay is economically unsustainable and simply unacceptable. I know that members on both sides of the committee have similar stories to relate about delays in all sorts of energy projects.

I would like to close, Mr. Chairman, by suggesting that we should pass legislation that simultaneously advances safety, production, and a fair return of revenue to coastal States. I mention these priorities in the same sentence because I believe that they can and must be part of the same policy.

I think we need to address them together. If we don't, I am concerned that they will fail to reach the President's desk.

Mr. Chairman, I look forward to working with you and the rest of the committee on the policies that will accomplish these goals, and I thank the witnesses for their testimony this morning.

The CHAIRMAN. Thank you very much.

Senator Hutchison and Senator Begich have joined us to make statements on their bills. We welcome both of you to the committee.

Senator Hutchison, why don't you go ahead and give us your views? Then, Senator Begich.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

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

I want to thank you and the ranking member, Senator Murkowski, and the members of this committee for pushing legislation that will, hopefully, open up our ability to get our energy resources from our own country to alleviate the high prices of gasoline at the pump right now. So thank you for having this hearing.

I am here today to speak on behalf of my bill with Senator Landrieu, S. 516. We call it the Lease Act because it extends the leases that have really had the delays of the moratorium while they have maintained their expenses. Senator Landrieu and I drew up this bill because we know the financial commitments that are made and how expensive it is.

The Lease Act fairly restores time lost as a result of the offshore moratoria by extending the impacted leases by 1 year. So everyone who has had a lease approved, has gone through all of the effort to do that, would have their leases extended for the period of the moratorium so that they would be able to come back and continue to explore.

The common-sense legislation does have bipartisan support. Recently, President Obama stated that his administration is extending drilling leases in areas of the Gulf that were impacted by the temporary moratorium. I am pleased that the President recognizes that these energy producers need relief. However, the administration has not said that he will make them whole.

The President's statement leaves a lot of questions unanswered. Which leases will be extended? That wasn't in his statement at all. How long will the selected leases be extended?

Senator Landrieu's and my bill makes it very clear, answers those questions, and leaves no room for confusion. By passing this legislation, we will ensure that all moratorium-impacted leases are extended.

The Gulf of Mexico is one of the most important regions in the country for exploration and development. It accounts for 30 percent of the oil produced in America and 13 percent of the gas produced in our country.

Just over a year ago, the President imposed a sweeping offshore moratorium. When the moratorium was put in place, thousands of leases sat idle in the Gulf while the lessees continued to pay the expenses of the lease and the payroll of their employees.

Since the moratorium was lifted in October, operators have seen a very slow permit process for approval to go back into exploration. The Department of the Interior has issued 53 shallow water and 14 deepwater permits since last October. The monthly approval rate before the moratorium was approximately 10 shallow water and 8 deepwater every month. This year alone, over 350 offshore leases are due to expire, many of which have not had the opportunity to be developed because of the moratorium.

I received a letter from Stephen Heitzman, the president and CEO of Phoenix Exploration, a small, Houston-based exploration

company. He wrote, "The Lease Act is vital to Phoenix Exploration and other small offshore oil and gas companies that were prevented by the administration's de facto drilling moratorium from fully evaluating many of its Gulf of Mexico leases acquired and fully paid through the Federal OCS competitive bidding process."

He says, "It is very difficult for shallow water independent operators to put together the required business partnerships and attract sufficient capital resources needed to develop leases when the moratorium is in place, and you can't use it, but you are still paying for it."

The Lease Act, of course, will give these offshore energy producers the certainty they need.

Let me give you another example of how this can impact the economy, the case of Houston-based Seahawk Drilling. This is another smaller company that had leases. Seahawk used to be the second-largest shallow water drilling contractor in the United States. The company provided high-paying jobs to men and women in Texas and across the Gulf of Mexico.

The moratorium and the delays in shallow water permitting forced Seahawk Drilling to declare bankruptcy. This bankruptcy not only destroyed a Texas company, it destroyed 1,000 high-paying jobs. This is one example of the economic devastation the moratorium has caused.

The moratorium was a one-size-fits-all shutdown. In fact, I have to say that even though the spill was in deep water, the shallow water has never been an issue for spill. Yet shallow water was also put under the moratorium. That is one of the problems that we have faced. It was a one-size-fits-all shutdown.

Our legislation, Senator Landrieu's and mine, is a one-size-fits-all resolution. It says that no one will have to pay for those leases without getting the full term of that lease by having this lease extension.

The House passed a version of our bill last week. I hope that this committee will insert our legislation into the bills that will go to the floor so that we can assure these companies that they can get the capital resources and the partnerships to continue the exploration and try to bring down the cost of gasoline at the pump for all of our citizens.

Thank you.

The CHAIRMAN. Thank you very much.

Senator Begich, go right ahead.

**STATEMENT OF HON. MARK BEGICH, U.S. SENATOR
FROM ALASKA**

Senator BEGICH. Thank you very much, Chairman Bingaman and Ranking Member Murkowski.

I appreciate this opportunity to appear before you to talk about the Outer Continental Shelf Permit Processing Coordination Act. Arctic OCS coordinator language has been introduced before, including in the S. 1462, which passed this committee unanimously before.

I thought it was a good idea, and I wanted to do what I can to advance this legislation with a few changes. The past year has been evidence that it is needed now more than ever.

I was glad to hear the President talk about on Saturday the need for coordinating work between the many different Federal agencies. I know later in your next panel Secretary Salazar will probably speak more about the President's comments on Saturday.

As you know, Shell has been trying to develop its Beaufort leases since 2005. In addition to Shell, ConocoPhillips and Statoil purchased Chukchi leases in February 2008. Six years later, no exploration wells have been drilled due to delay and litigation. Best-case scenario, production in the Chukchi is post 2020. Beaufort perhaps a little sooner.

There are 6 Federal agencies that govern aspects of OCS development and administer 10 major acts of legislation. BOEMRE estimates Beaufort and Chukchi Sea alone holds 27 billion barrels of oil and nearly 100 tcf of clean-burning natural gas. The Beaufort resources are closer to shore and existing infrastructure. However, the lion's share is thought to be in the Chukchi Sea.

We have to decide is this a national priority? If it is, as I believe it is, we need to get serious about the work ahead of us. The Trans-Alaska Pipeline—or TAPS, as it is called—throughput is about 650,000 barrels a day at this point, between 12 and 13 percent of domestic production, declining at a rate of 6 to 7 percent a year.

Sooner than we want, we will reach a point where it is technically and economically impractical to operate the line. If that point is at half of today's production, a switch will be flipped, and the U.S. will lose 6 percent of its domestic production and dramatically increase cost to access future Alaska resources. There are some resources available to slow the decline onshore, but the best chances are in the OCS offshore.

Critical to the economy of my State and energy security of this Nation, we see we can develop this resource responsibly and produce this resource for our country's needs. The bill requires the Secretary of Interior to enter into a cooperative arrangement with the Federal agencies, Governor of Alaska, and the borough governments adjacent to lease areas. It doesn't change any environmental standards, just forces agencies to actually work together.

Oil and gas industries have grown up in the Gulf. Industry and Government relations evolved along with it. While all Federal agencies exist and work together in Alaska, they do not necessarily have the resources or the relationships or the experience as described by Senator Hutchison in the Gulf.

EPA, for example, air permits are the clearest example. They built the program from scratch with minimal resources. The bill would also create coordinators in the Atlantic and Pacific when and if the lease sales happen in these regions.

Finally, we all recognize these are contentious issues. Plenty of fights in our Alaska family and with outside groups, lots of litigation to date, and there will probably be more down the road. Litigation prioritizes and speeds resolution of these differences but doesn't deny access to courts.

With short drilling seasons, complicated logistics, and long lead times, easy to see why our seasons slip away. We have watched the 2010 season, the 2011 season just do that, disappear from the ability for us to explore.

I want to thank the committee for allowing the hearing on the bill. Again, the goal here is to speed up the process but not deny anyone their rights of litigation and appeals if they see fit, but get the process moving and more coordinated in the Arctic.

Thank you, Mr. Chairman and ranking member.

The CHAIRMAN. Thank you both for your excellent testimony and your leadership with these particular bills and these issues. As Senator Begich indicated, I think Secretary Salazar is also a witness today, and we will have a chance to ask him his reaction on some of these very items that you are advocating for.

But thank you all, and we will dismiss you at this point, unless some member had a particular question they wanted to pose?

Senator Landrieu, did you want to make a statement?

**STATEMENT OF HON. MARY L. LANDRIEU, U.S. SENATOR
FROM LOUISIANA**

Senator LANDRIEU. I just wanted to say—yes, just a brief word. I want to associate myself with the remarks of Senator Hutchison. I am proud to cosponsor the Lease Act with her, and we will be looking forward to getting some more detail from Secretary Salazar about the details of the President's proposal.

Senator Begich, I can most certainly appreciate and thank you for your leadership because it is very important, even if you open up drilling in areas, to have it coordinated so that permits can, in fact, be issued. We know that some of the Federal agencies in charge of this have been under resourced and under supported.

But I do want to submit to the record to bolster Senator Hutchison's fine testimony the actual numbers of permits, Mr. Chairman, because it is quite alarming that, to date, not one single new deepwater well permit for drilling in the Gulf has been issued. The shallow water is off by 50 percent.

As Senator Hutchison said, it shouldn't have been. It wasn't under—technically, it wasn't under the moratorium. But it found itself under a moratorium. So I want to submit that for the record.

Senator LANDRIEU. Then, finally, to also submit for the record the billions of dollars that are outstanding today in bonuses and annual rental payments on leases that are unusable as we speak. I don't know if people realize how significant these numbers are, Mr. Chairman.

But, for instance, in one of the lease sales a few years ago, \$3.8 billion was paid in bonuses to secure leases that are going unused. Now those numbers will range from a low of \$48 million to a high of \$3.8 billion. The annual payments by this industry can go from a low of a few hundred thousand to it looks like \$28 million to \$32 million a year.

So there is a tremendous amount of money, Mr. Chairman, being invested by companies. There is oil and gas in the ground. We need to find a way as soon as possible to get it out. I hope that both Senators will also express—if not now, later—their views on revenue-sharing for Alaska and for Texas.

I just want to thank them for their testimony and submit this to the record, if there is no opposition.

The CHAIRMAN. We are glad to include that in the record.

Senator HUTCHISON. Thank you very much, Senator Landrieu, for adding to the other knowledge.

The CHAIRMAN. Senator Manchin, did you have a—

Senator MANCHIN. Very quickly. Very quickly, and it might not be directly what you all are talking about. But I know the time—you all would be much more involved in the timing process of getting a permit. Do you have any comments on that?

I mean, a proper period of time is 90 days. Should the Federal Government say yea or nay? Do they have time to review it, the process? Are you getting much pushback from your companies saying the time period is so long that—

Senator HUTCHISON. Yes. Oh, yes. I mean, I wish—

Senator MANCHIN. I mean, even if they are opened up, even if your bills pass.

Senator HUTCHISON. [continuing]. Ninety days. We are talking 9 months.

Senator BEGICH. Or years.

Senator MANCHIN. What would be a timetable? Do you all have one that you have worked with your local companies?

Senator HUTCHISON. Do you know an average—you know, the thing that is—

Senator LANDRIEU. It used to be, basically, you submitted your permit and within 30 or 60 days, you got a yes or a no. The problem is now that not only are you not able to submit your permits, and I am hoping Senator Salazar can explain this a little bit better. But when you even ask how many permits are pending right now, we are not able to really get that number because permits are presented, and then they are rejected. We don't know if they are in the permitting or they are in the rejection pile.

So, a lot of this has become a lot less transparent, Mr. Chairman. I thank you for your latitude here, but the Senator from Virginia is right to try to press for what is the real number that we are looking for.

Senator MANCHIN. Senator Begich.

Senator BEGICH. Senator Manchin, I can't give you a specific time, but I will tell you this. That the years that we have delayed the process is way too long.

We recognize the Arctic is different territory than the Gulf that has a long history. But what is critical for us, and I think the ranking member would echo this, is our companies want certainty. They want to know here is when the timetable occurs. Here is when the review will occur. Yea or nay and/or what mitigation they have to do and then respond.

But this ongoing year after year or, in some cases, not even knowing when a decision might even be forthcoming because, as Senator Landrieu said, we are not sure which pile we are on is the biggest problem. One of the reasons the legislation I brought forward is the coordination of all these agencies so at least, first, they are talking to each other, and then maybe we can set some time schedules that they have to respond.

But right now, it is so uncertain that we are talking now for Alaska, because of our seasonal activities, 2012 cycle because we can't even talk about 2011 because that is kind of over for us. Because our season is now because of the way it works in the Arctic.

So, we want some certainty, some time schedules, and I think we would be happy to work with the Interior Department to figure this out. But right now, they submit, and then we just wait, and we wait. Then something kind of comes out, and then we say, "Oh, you need more information because you believe we didn't have it. Why didn't you ask that at the beginning?"

Senator HUTCHISON. I think the interesting thing, too, to point out is that to get the lease, you have already gone through all of the environmental concerns and the safety, and you have gotten the permit. A lease lasts about 10 years because there is so much you have to do to explore the whole area, to do the seismic testing and see what looks the best. Then you have to go to the bottom of the Gulf, and that is a hugely expensive process.

You are paying people and the lease, as Senator Landrieu pointed out, billions in collective amounts. You are doing all this over a 10-year period with no return, and then you may get a dry well.

So we do need the certainty in the permitting process. But for sure, once you have gone through all of the lease requirements and you have been approved, you ought to have the full extent of that lease so that you can get the return on that huge investment. That is why Seahawk went bankrupt.

Senator BEGICH. If I can just say one—keep in mind, Senator Manchin, we are just talking about Alaska to explore. We are not even drilling yet.

Senator HUTCHISON. Right.

Senator BEGICH. We can't even get to the table to figure out, as Senator Hutchison just described, how to map out what we have there, and we have hundreds and hundreds of thousands of acres. We can't even get to it because they won't allow us to explore to determine what is there.

The CHAIRMAN. We thank you both for your excellent testimony.

Senator HOEVEN. Mr. Chairman? Mr. Chairman, could I ask a quick question?

The CHAIRMAN. Sure.

Senator HOEVEN. I am going to ask the Secretary the same question, but I just wanted to give both of you a chance. Why is it taking so long?

In your opinion, why is it taking so long? What is the fix? What needs to happen? Obviously, I will ask the Secretary the same thing, but I just wanted to give you a chance to address that if you wanted to.

Senator HUTCHISON. I can't tell you why it is taking so long, but I do think that there was not enough common sense put into the equation to say shallow water has never been a problem. If you had a spill in the shallow water, which we haven't, you could clean it up quickly.

Deep water was a bigger issue. Putting shallow water in the effective moratorium has cost jobs. It has cost the economy, and it has cost the production that would allow these prices in gasoline to be lower.

So where I would fault the administration the most is putting shallow water ever in a de facto moratorium because there has never been a problem. Yet we are losing hundreds of capabilities

of adding to the amount of gasoline that we produce because they put shallow water in the moratorium, effectively.

Senator BEGICH. Senator Hoeven, Alaska is kind of different because the Arctic is new area for development. But it is multifaceted. As a matter of fact, one of the pieces of the legislation that I know is somewhat controversial is judicial review.

You think about oil and gas in Alaska, you get sued. You don't even spend the time to start the project. You just get sued. So you end up going through this whole process that, at the end of the day, we know it is going to end up in a higher court.

So, what we have tried to do in this legislation is streamline that, giving still everyone the right to appeal, but you get a window of opportunity. You get that 60 days you get to appeal for whatever reason, move forward. At the end of the day, you end up at the District of Columbia Circuit Court for final decision because we think it is a national issue.

By passing some of the judicial process, but still not denying anyone the right, anyone the right to appeal and to have their say in court. That is one side.

In Alaska, and I think Senator Murkowski would echo this, we have groups that kind of visit Alaska that have their views about how Alaska should be run and maybe have no interest other than to fight this environmental battle. So we end up with that.

We also have a lot of—as Alaskans, and we were both born and raised in Alaska, we have a lot of concern to make sure the development is done right. So we have tribal issues. We have regional issues. But at the end of the day, from the bureaucratic side, is this lack of one agency moves forward, does some things. Another agency comes along and says, well, we are going to have our own process, which may be very similar to what we just went through.

So that is why this coordination is critical and how judicial review is done in a proper way. That is kind of the Alaska experience, and if that helps you a little bit?

Senator HOEVEN. That is the objective of your legislation is to try to bring them together?

Senator BEGICH. Yes. Yes. Try to create that. Again, not deny anyone opportunities on either side if they disagree with the decision of an agency to appeal that process, but really have some boxes around it, some certainty and coordination. So everyone is talking to everyone rather than we talk through litigation and never get anything done. That is why, for years, we can't even touch the area to explore.

Senator HOEVEN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Again, thank you all. We appreciate your testimony.

Let me invite Secretary Salazar to come ahead. He is our next panel, and we appreciate his willingness to testify today.

[Pause.]

The CHAIRMAN. Mr. Secretary, we welcome you back to the committee you used to serve on. We always are glad to see you here, and your written testimony will be placed in the record in full.

We would like you to take whatever time you need here to summarize that for us, make the main points that we need to understand, and I am sure there will be questions.

Why don't you go right ahead and introduce your colleagues, if you would like? But we are familiar with both of them, but we always like to have them introduced.

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

Secretary SALAZAR. Thank you very much, Senator Bingaman.

As the chairman of the committee, it has always been an honor working with you and also working with the ranking member, Senator Murkowski, and the great work that we have done in the years past out of this committee. So thank you for giving us the opportunity to come and present in front of all of you today.

Joining me here today are David Hayes, who is the Deputy Secretary of the Interior. He has been working on the oil and gas issues and the subject of your legislation here for the last several years.

To my left is Mike Bromwich. Mike is the director of the Bureau of Ocean Energy Management and Regulation, and he is overseeing the reforms at what was then MMS, now BOEMRE, over the last year and has been working very closely as we move forward with oil and gas production in the oceans of America.

Let me first say that from the President's point of view and the administration's point of view, we have been working hard now for over 2 years to move forward with developing a secure energy future for America. We have enjoyed the work that we have been able to do with the Congress as we have made strides in what we believe is the right direction to get us to that secure energy future.

When you hear the President or you hear me or you hear any of my colleagues on the Cabinet speak to that secure energy future, we really are talking about a secure energy future that is based in 3 buckets.

The first is moving forward with a robust production of oil and gas resources and other resources in our country. I think when you look back at the last 2 1/2 years, you will see that there has been a robust level of oil and gas production in our country. In fact, more oil is being produced now than in past times in our history and record levels of natural gas.

Second, moving forward with alternative fuels. We recognize that oil and gas are not going to be the panacea for our secure energy future. So we have put significant time and energy and resources behind trying to develop the world of alternative fuels and renewable energy.

Third, efficiency. How we can power our economy using less energy resources. So it is around those 3 buckets that the President's energy blueprint has created the framework for us moving forward with America's energy future.

The President recently made an announcement about some major initiatives that we have underway, and I want to just quickly review them. First, with respect to Alaska, at the conversations with Senator Murkowski and others who are very interested in what we are doing in Alaska all of the time, we are moving forward with

holding annual lease sales in the National Petroleum Reserve in Alaska. We are trying to deal with some of the difficult permitting issues there, and the Deputy Secretary and myself and others have personally been involved in dealing with the issues at NPRA.

Second, the President announced that we would be holding 3 lease sales in the Gulf of Mexico by June 30th of next year. That is when the 2007–2012 plan expires. We expect to have one of those lease sales completed by the end of this year and moving forward with 2 additional lease sales in the Gulf of Mexico in the following year.

Third, we want to create new incentives to move forward with oil and gas production. We look forward to working with this committee on ideas that we have, ideas that you have. For example, under the Mineral Leasing Act today on the onshore areas of oil and gas production, those leases are given out under a mandatory 10-year term.

We believe that with flexibility and the way that we have the flexibility in the Outer Continental Shelf that we could reduce lease terms and, therefore, incentivize a more rapid development of oil and gas in the onshore.

Fourth, lease extensions. We recognize that there were impacts to the oil and gas lessees, both in the Gulf of Mexico as well as in Alaska, as we have moved forward to develop safe oil and gas regulations and oversight in the Government. So, the President voiced his support for a lease extension with respect to Gulf of Mexico wells that were directly impacted by the events of the Deepwater Horizon last year.

Fifth, we are of the belief that there is a need to do better coordination in terms of what we deal with in terms of Alaska oil and gas resources, and we are taking those actions within our administrative authority at this point in time.

Let me move quickly to just review a few things from the lessons of the Deepwater Horizon. The Deepwater Horizon and the Macondo oil spill was a national crisis. In my view, those of us who were here in Washington, DC, and who were working on the issues in Gulf must not forget the lessons from the Deepwater Horizon.

In some ways, that national crisis, which, for some us, had us working on an emergency basis for over 140 days dealing with that particular issue, it doesn't seem like it was that long ago. April 20th now was not even 13 months ago.

So, as we move forward the events of the Macondo well oil spill and approximately 5 million barrels of oil that were spilled out into the Gulf of Mexico ought to be a stark reminder to all of us that we need to move forward with safe oil and gas production in America's oceans. That is exactly what we have been doing in the Department of Interior with the reform efforts that we have been leading with the support of the President to initiate the safe oil and gas drilling that is necessary.

Now, even as we have gone forward and dealt with all of the reform efforts in America's oceans for oil and gas drilling, it is important to recognize that our policy in terms of supporting oil and gas development, including in the deep water, is a policy that has not changed. We move forward with development and authorization of oil and gas drilling in the deep waters of the Gulf of Mexico and

are looking at other places where we can develop oil and gas resources safely in America's oceans.

The reforms that we have made have been simply led by one north star, and that is we want to make sure that the lessons of the Deepwater Horizon lead us to develop a regulatory regime in the United States that does everything possible to prevent another Deepwater Horizon/Macondo oil spill like the one that we saw last year.

In that vein, Deputy Secretary Hayes and Director Bromwich have led the effort with respect to new rules and a regime on drilling safety, workplace safety, and the creation of a new organization to oversee oil and gas drilling in America's oceans. We also are cognizant of the fact that what we do here in the United States and the lessons of the Gulf of Mexico will have an impact around the world.

In the Gulf of Mexico, for example, it is one pond, and we largely share that with the Nation of Mexico. So, we worked very hard to put together what, hopefully, will become one standard, one set of protocols with the Gulf of Mexico in the development of oil and gas in the Gulf and, hopefully, reach some agreements with respect to transboundary issues that are very important for the United States as well as for Mexico as we deal with the Gulf.

With respect to the Arctic, as Senator Murkowski witnessed last week in Nuuk, Greenland, we have taken the initiative to make sure that all of the Arctic nations—including Russia, Canada, Norway, the United States, and other countries that share the Arctic—are sharing the best practices and resources and the best science. So that as opportunities arise with respect to oil and gas, that we are doing the best as one world to deal with the opportunities in the Arctic.

Finally, in other places around the world, I have been in Brazil, where we are working with the Brazilians to learn from their experiences in terms of moving into their pre-salt reserves where they expect to have some of the most significant findings in the Western Hemisphere, where they already have made some of the most significant findings in the Western Hemisphere, and hope to be able to develop those oil and gas resources in the future. That is all part of an effort to make sure that we are diversifying the sources for oil and gas that we have here in this country.

We hosted an international forum, where we had 11 countries and the European Union participate at the Department of Interior now about 2 months ago. What we were doing is to begin a dialog with the other countries around the world to make sure that they, too, are moving forward with the development of the gold standard with respect to oil and gas development.

The oil and gas industry is a global industry. The same companies that operate in the Gulf of Mexico operate in places like Angola and Russia and a whole host of other places. So, our effort has been to take the lessons of the Deepwater Horizon and make sure that we are sharing those with the rest of the world.

In our testimony today, we have outlined in the written testimony some legislative principles on behalf of the administration that I want to just very quickly review. The first is that we ask the support and help of Congress with respect to incentivizing more

prompt development for oil and gas, and there are several examples that are laid out in the testimony.

One that I will just quickly note is the Mineral Leasing Act now requires a 10-year term for all onshore leases. We have a different flexibility with respect to offshore leases. That 10-year term has been in place since the 1920 Mineral Leasing Act was passed. We believe that it is time to revisit that and to shorten the lease terms to further incentivize prompt development of oil and gas resources so that those lands are simply not being leased and then not developed.

Second, we need the tools to continue to push forward with respect to the reform efforts that we have worked so hard over the last year. Those tools include the creation of organic legislation by the U.S. Congress for this agency, as Senator Wyden and others have spoken about frequently over the last several years.

An agency that has this Herculean mission on behalf of the United States of America should not have existed just by virtue of secretarial order, but having organic legislation that essentially codifies the important missions of this particular agency is something that we are very much supportive of.

In addition, tools that we need include the creation of an institute for ocean energy safety. We have created an Ocean Energy Safety Advisory Committee, led by Dr. Tom Hunter, the former Director of Sandia Labs. We have a good effort underway, but it exists by virtue of a FACA Committee, not by virtue of legislation. So we request the Congress also to act in the creation of that institute for ocean energy safety.

Finally, I know there has been debate here about the timelines for the exploration plans and requirements now that BOEMRE has to approve exploration plans within 30 days. Frankly, that time is too short. It does not give the agency the time to develop the environmental information and analysis and assessment to make sound decisions. So, our request also is one of the tools that we need is to extend that time, as the President articulated last year and reiterated again.

Third, we ask the Congress to work with us in continuing to look at ways of making sure that there is a fair return to the American taxpayer from these oil and gas resources that are owned by the American public.

We do not believe, for example, that the royalty relief programs that we currently have for offshore drilling are necessary in the context of oil and gas prices at \$100 a barrel and oil and gas companies making the record profits that they have been making. It is not an incentive that is actually needed, and there are other needs that we have, including deficit reduction, which are important for us as we deal with those particular subsidies.

Last, with respect to the fair return to the American taxpayer and protection of the American taxpayers as well, we hope to be able to work with all of you to address liability limitations concerning oil spills.

Let me, in conclusion, Mr. Chairman and ranking member and members of the committee, simply say to all of you that we still have a lot of work ahead of us. There is no doubt that the Deep-water Horizon awakened the country and awakened the Congress

to do things differently in the oceans of America and how we deal with oil and gas. I am proud of the work that we have done.

I know there are critics of how fast we have moved and critics that would want us to do different things. But for us to be at a point where we have issued 14 deepwater permits in the Gulf of Mexico, where we have more than 50 now in the shallow waters where the industry is working, and where we essentially have dealt with a national crisis and yet continued to produce oil and gas and to move forward with a robust program is something that I am very proud of. We could not have done that if we did not have the support of this committee and the leadership within the Department of Interior.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Salazar follows:]

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

Chairman Bingaman, Ranking Member Murkowski, and members of the committee, I am happy to appear before you today to discuss legislation intended to promote the Department of the Interior's reform of the offshore energy program and facilitate the development of oil and gas resources from our public lands and waters.

I am joined here today by Deputy Secretary David J. Hayes and Bureau of Ocean Energy Management, Regulation and Enforcement Director Michael R. Bromwich. Both Deputy Secretary Hayes and Director Bromwich have contributed critical hard work and played key roles in the Department's work to identify and implement key reforms that are advancing the Administration's commitment to safe and responsible domestic production.

As the President has stressed, the Administration is committed to promoting safe and responsible domestic oil and gas production as part of a broad energy strategy that will protect consumers and reduce our dependence on foreign oil. When President Obama took office, America imported 11 million barrels of oil a day. The President has put forward a plan to cut that by one-third by 2025. We are already making progress towards that goal. Last year, America produced more oil than at any time since 2003. To encourage production, the Administration is taking a series of steps to leverage existing authorities. These initiatives are part of the Administration's overall Blueprint for a Secure Energy Future, a broad effort to secure America's energy future and protect consumers by producing more oil at home and reducing our dependence on oil by using cleaner, alternative fuels and improving our energy efficiency.

As President Obama has said, "we cannot keep going from shock to trance on the issue of energy security, rushing to propose action when gas prices rise, then hitting the snooze button when they fall again." We are working to expand cleaner sources of energy, including renewables like wind, solar, and geothermal, as well as clean coal and natural gas on public lands. But domestic oil and gas production remain critical to our nation's energy supply and to reducing our dependence on foreign oil.

In his radio address just this past Saturday, the President laid out the next steps of this strategy, highlighting some of the actions that the Administration is taking using existing authorities to expand responsible and safe domestic oil production. But we also need to go further, which is why the Administration is also calling on Congress to act on a series of legislative principles, which I will outline today.

Much of the content of these proposals overlaps with the legislative proposals that we are here today to discuss. We generally support S. 916, the Oil and Gas Facilitation Act of 2011, and S. 917, the Outer Continental Shelf Reform Act of 2011, and, as we will discuss, have begun to address a number of the provisions in these bills administratively. We support much of the intent of S. 843, the Outer Continental Shelf Permit Processing Coordination Act, and S. 516, the Lease Extension and Energy Security Act of 2011, and agree that facilitating the efficient, responsible development of our oil and gas resources is a necessary component of energy security. Other involved agencies may have additional views.

Administrative reforms

Let me begin by explaining some of the measures that the Administration is taking using the authorities that we already have.

First, we have devoted considerable effort over the past year—in the wake of the tragic Deepwater Horizon oil spill—to putting in place a new set of rigorous standards for safety and responsibility. Our aggressive reforms to offshore oil and gas regulation and oversight are the most extensive in U.S. history. The reforms 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.

And consistent with these rigorous standards, the Department continues to facilitate domestic production 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, 53 new shallow water wells have been permitted since the implementation of new safety and environmental standards on June 8, 2010. Permits have averaged 6 per month since October 2010. Since mid-February when industry first demonstrated subsea containment, we have permitted 14 deepwater wells.

Building on these important steps, the President's recent remarks highlight a series of additional measures that the Administration is taking using existing authorities. These include:

- Conducting annual lease sales in Alaska's National Petroleum Reserve, while respecting sensitive areas, and speeding up the evaluation of oil and gas resources in the mid-and south Atlantic Ocean;
- Holding Western and Central Gulf lease sales by mid-2012—including the Western and Central Gulf of Mexico lease sales that were postponed last year—consistent with the strengthened environmental review in light of lessons learned from the Deepwater Horizon oil spill;
- Creating new incentives for industry to develop their unused leases both on and offshore. Today, more than 70 percent of the tens of millions of offshore acres under lease are inactive, including almost 24 million inactive leased acres in the Gulf of Mexico, where an estimated 11.6 billion barrels of oil and 59.2 trillion cubic feet of natural gas of technically recoverable resources are going unused. Onshore, about 57 percent of leased acres—almost 22 million acres in total—are neither being explored nor developed;
- Extending drilling leases in the Gulf of Mexico that were affected by the temporary moratorium, as well as certain leases off the coast of Alaska. These measures will give companies more time to meet the rigorous standards that we have set in place for safe and responsible exploration and development;
- Coordinating an Alaska permitting process with a new, high-level interagency working group. A number of agencies within the federal government have mandates to ensure that Arctic development projects meet health, safety, and environmental standards. Using executive action, the Administration will formalize ongoing interagency collaboration and establish a high-level, cross-agency team to facilitate a more efficient permitting process in Alaska while ensuring that all standards are fully met.

Calling on Congress to Act

As described above, we are already taking extensive measures using our existing authorities. But we need Congress to help us do even more.

Let me start here by reiterating an important point that you have heard the President state consistently. At a time when oil companies are making near-record profits, with the biggest oil companies reporting profits in the range of \$4 billion each week, the President has called for an end to the taxpayer subsidies the federal government gives to oil and gas companies. As he noted in his address, at a time when many Americans are struggling to fill up their tanks and we are sacrificing to reduce our deficit, it just makes sense. The Administration strongly supports efforts in Congress to eliminate these unnecessary tax subsidies.

And today I'm announcing on behalf of the Administration a series of legislative principles intended to provide a framework for the efficient and responsible development of our domestic resources. These include measures to advance three primary objectives: Remove Outdated Disincentives to the Prompt Development of Oil and Gas Leases; Provide the Tools for the Federal Government to Oversee Offshore Oil and Gas Development Activities on a Timely and Effective Basis; and Ensure a Fair Return for American Taxpayers and Accountability for Safety Violations and Oil Spills. Specifically, this framework would:

- Provide incentives for the Prompt Development of Oil and Gas Leases:
 - Amend the Mineral Leasing Act of 1920 to allow for oil and gas leases that are less than 10 years in length. Current law requires that all onshore

oil and gas leases extend for a full 10 years. This removes the Secretary's flexibility to encourage more prompt investment in domestic oil and gas development by issuing leases with shorter terms.

- Establish incentives for lessees with nonproducing oil and gas leases that will encourage companies to either get their leases into production in a timely manner or relinquish them.
- Provide the Tools for the Federal Government to Oversee Offshore Oil and Gas Development Activities on a Timely and Effective Basis;
 - Codifying new safety and environmental standards for offshore oil and gas development that have been established through administrative procedures by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE);
 - Statutorily extend exploration plan approval time under the Outer Continental Shelf Lands Act to allow for appropriate environmental review;
 - Formalize existing research collaboration by authorizing an Ocean Energy Safety Institute to connect government, industry, academia, and outside experts devoted to developing cutting-edge safety, containment, and response capabilities;
 - Formalize the reorganization of the Bureau of Ocean Energy Management, Regulation and Enforcement and authorize BOEMRE to hire and maintain an expert workforce by:
 - Statutorily splitting BOEMRE into three entities: (1) Bureau of Ocean Energy Management responsible for managing offshore development; (2) Bureau of Safety and Environmental Enforcement charged with enforcing safety and environmental regulations; and (3) Office of Natural Resource Revenue (ONRR) responsible for collecting and disbursing revenues from energy production; and
 - Authorizing special hiring authorities for BOEMRE that allow the agency to address hiring for critical positions during times of need and at competitive salaries.
- Ensure a Fair Return for American Taxpayers and Accountability for Safety Violations and Oil Spills
 - Repeal portions of the Energy Policy Act of 2005 that expanded a now-outdated royalty relief program for offshore drilling operators thereby providing a better return to the American taxpayer;
 - Raise or eliminate the per-incident limit on access to the Oil Spill Liability Trust Fund to ensure that the Federal government can access the resources it needs to clean up an oil spill. The \$1 billion per-incident cap on expenditures out of the Fund is insufficient and could constrain the federal government's ability to respond to oil spills;
 - Repeal arbitrary limits on liability for damages resulting from offshore drilling, which have served as an implicit subsidy for the oil and gas industry for two decades; and
 - Increase civil and criminal penalties for companies that fail to comply with the requirements of the Outer Continental Shelf Lands Act and the Department of the Interior's implementing regulations, which include safety and environmental standards.

Some of these principles are being further developed as legislative proposals within the Administration; others were proposed by the Administration last year in the wake of the Deepwater Horizon spill. For example, the Administration has proposed that a portion of the civil CWA penalties from the DWH return to the Gulf. A number of these principles have been included in the several pieces of legislation you have introduced, Mr. Chairman.

Outer Continental Shelf Program Reforms

Mr. Chairman, you recently introduced S. 917, legislation that would address reform of the Department's offshore oil and gas program.

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 indicating 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 indicated 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 an accident 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. As described briefly above, the Department, through the Bureau of Ocean Energy Management, Regulation and Enforcement, has promulgated necessary new regulations, including prescriptive regulations to bolster safety and to enhance the evaluation and mitigation of environmental risks. The Drilling Safety Rule is an emergency rule prompted by the Deepwater Horizon event. This rule has 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 accidents and 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 accident 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 operators on complying 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 clarifies that operators provide the assumptions and calculations behind these scenarios. NTL-10, issued in December of 2010, clarifies informational requirements, including a corporate statement 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.

Once industry was able to demonstrate the ability to fully comply with these new requirements, BOEMRE was able to resume issuing deepwater drilling permits. Since February 28, we have permitted 14 deepwater drilling wells and, in each case the applications complied fully with these more rigorous safety and environmental requirements, and each had demonstrated the ability to contain a subsea spill.

But one of the keystones of our reforms is 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 I 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, 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 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.

The Outer Continental Shelf Reform Act of 2011 is nearly identical to S. 3516 from the 111th Congress, which the administration supported at a hearing before your committee. Many of the provisions in this bill are consistent with the legislation principles I have announced today.

The legislation would provide general organic authority for the restructuring of the offshore energy and minerals program in the Department and would make additional changes reforming some of the underlying laws governing management of these resources.

We support organic legislation for the functions performed by these programs. It is our view that such important responsibilities should be governed by a thoughtfully considered organic act. However, it is also important for organic legislation to provide the Secretary with the discretion to implement the details of a reorganization as complicated as this. The administration would like to continue discussion with the committee regarding the specifics in this legislation, such as the appointment and confirmation of the new bureau and office directors.

A number of the changes contained in this bill highlight the need for increased safety of operations and consideration of the marine and coastal environment, including the need for integrated programs for both environmental research and technological research and development. A focus on strengthened safety and oversight and the environmental impacts of offshore oil and gas operations are priorities of the administration. These issues, and several others in the bills before you today, will require the department to work closely with the committee and other relevant federal agencies to ensure a coordinated approach to attaining these important objectives.

S. 917 also includes new planning requirements, including a requirement for detailed descriptions of equipment and plans to address potential well blowouts. Consistent with this requirement, NTL-06, discussed above, clarifies that current regulations require that new filings for drilling permits, exploration plans, or development plans contain information specifically addressing the possibility of a blowout and the detailed steps that lessees or operators would take to prevent blowouts.

The legislation would also extend the deadline for the Department to review and approve exploration plans; require that lessees obtain a drilling permit after approval of an exploration plan; and require that, prior to approval of such a permit, an engineering review of the well system be completed and reviewed. The Administration supports authority to provide for longer review time and for stronger reviews of exploration plans prior to drilling.

Finally, we are also supportive of the changes in S. 917 that would strengthen civil and criminal penalties contained in the Outer Continental Shelf Lands Act. These provisions are generally consistent with the support for increasing these penalties that the Administration has expressed in the past. It is also important to provide the Department with the tools necessary to appropriately staff critical and hard-to-fill positions in these new entities.

We look forward to continuing the dialog on this and other issues in the legislation.

Legislation to Facilitate Development of Resources

The Oil and Gas Facilitation Act of 2011, S. 916, is intended to facilitate the responsible development of oil and gas on Federal land and waters and reduce our dependence on energy developed by foreign sources through increasing our understanding of domestic oil and gas resources, coordinating interagency activity on permitting for oil and gas development, and facilitate transportation of Alaskan oil and natural gas.

The President and I are in complete agreement with you regarding the principles embodied in this legislation, and we support many of the provisions that are con-

sistent with the principles discussed above. We agree that a better understanding of the oil and gas resources on the OCS is critical to ensuring that development takes place in the right ways and the right places. In response to the President's call for action, the Department is taking steps to expedite the evaluation of resource potential in the mid-and south Atlantic, including moving forward with the environmental analysis necessary to allow industry to proceed with seismic testing in the region as soon as possible.

S. 916 also contains provisions that would create an Outer Continental Shelf Permit Processing Coordination office in Alaska. S. 843, the Outer Continental Shelf Permit Processing Coordination Act, also being heard today, is nearly identical to these provisions but would broaden the authorization to include the establishment of regional OCS permit processing coordination offices to the Atlantic and Pacific regions, to be established at the point that lease sales are held there. These provisions are similar to a pilot program that has been in place in the Bureau of Land Management for several years that addresses onshore oil and gas permitting.

Interagency coordination is important for the efficient processing of permits throughout the OCS. As the Administration's Blueprint specifically notes, interagency coordination is necessary and important to facilitate responsible oil and gas development in Alaska. As mentioned above, the President has requested that a high level, cross-agency team be assembled in order to facilitate a more efficient permitting process in Alaska while ensuring that all standards are fully met. We believe that this specifically tailored approach will result in a better coordinated, more efficient, safe, and environmentally responsible offshore permitting process.

We also strongly support the repeal in section 203 of the deepwater royalty relief provisions of the Energy Policy Act of 2005, which is consistent with the President's 2012 Budget. We note that the Budget also proposes to terminate the Permit Processing Improvement Fund.

Finally, S. 516, the Lease Extension and Secure Energy Act of 2011, would require a one-year extension of leases in the Gulf of Mexico that were either not producing as of April 30, 2010, or were suspended from operations or other action in accordance with the May 30, 2010, NTL No. 2010-N04 issued by the Minerals Management Service or the suspension notice issued on July 12, 2010. As the president said Saturday, the Administration fully supports extensions for Gulf of Mexico leaseholders directly impacted by the drilling moratorium, and ten such suspensions have already been granted using administrative procedures to leaseholders who have demonstrated that they were affected by the moratoria.

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. The changes we have made will provide industry with the tools to help prevent an accident like this from happening again. Consistent with the framework presented by the Blueprint for a Secure Energy Future, we are working to secure our energy future by ensuring the potential for renewable energy development on our public lands and waters is realized. And we are pursuing the safe and responsible development of our conventional energy resources here at home.

Mr. Chairman, Senator Murkowski, this concludes my statement and I am happy to answer any questions you or other members of the committee may have.

The CHAIRMAN. Thank you very much.

Let me start with 5 minutes of questions, and then we will just go around the dais here.

Let me just ask for a little more elaboration, Mr. Secretary, from you or Director Bromwich about the current status of permitting in the Outer Continental Shelf. I know this is a subject that many people have expressed criticism about, how slow the department has been to issue permits and how there is a great desire to get additional permits issued more quickly.

If you could elaborate on what the circumstance is as you see it and what the prospects are for additional permits in the coming weeks and months, that would be useful.

Secretary SALAZAR. Thank you, Mr. Chairman. Let me make a quick comment and turn it over to Director Bromwich.

It was not until the last several months that both the Helix Corporation and the Marine Well Containment Corporation had their subsea containment caps in place and had been tested for us to have a level of assurance that they could move forward in the deep water and do it in a safer way than had been done before April 20th.

Director Bromwich and myself and other leaders of the department actually went to Houston to inspect and review the subsea containment mechanisms that had been built by those 2 corporations. What we have done is based on those assurances, we have moved forward with the issuance of permits.

I will have Director Bromwich give you a status report on that, as well as with respect to where we intend to go.

Mr. BROMWICH. Thank you, Mr. Secretary.

Thank you, Senator Bingaman.

We have approved—given permits to 14 unique wells in deep water. Now there may be multiple permits for each well. For example, when a BOP is inspected, it gets an additional permit. But I think everyone is interested in new drilling that is done in unique wells. So the number on that is 14.

As the Secretary points out, we couldn't really grant deepwater drilling permits until there was containment capabilities. That didn't happen until the latter part of February.

So if you do the math, we have actually given—we have permitted unique deepwater wells on the average of about once every 4 to 5 business days since containment capabilities were available. That is not a significantly slower pace than has historically been the case. So the notion that it has taken us a very long time to permit deepwater applications is really not true.

There are currently 14 deepwater permit applications that are pending. There are 25 that have been returned for various reasons, usually quite incomplete applications.

They may not have certified that they have met all the safety requirements that are now required. They may not have submitted any information relating to containment. So those are among the main reasons why permit applications may be returned.

In terms of shallow water, 53 have been approved since last June when tougher requirements were put into effect. There are only 5 shallow water permits that are currently pending. There are 6 that have been returned.

So since October when our new, tougher safety rules went into effect, the pace of shallow water permitting has been roughly 6 per month. The historical level has been roughly 8 per month.

So that is not a huge difference. If you think about the additional safety requirements that are required of the operators and the additional reviews that are required of our people, it is not a major discrepancy.

The CHAIRMAN. Let me just be clear that you say there are 5 applications in the shallow waters that are currently pending?

Mr. BROMWICH. Correct.

The CHAIRMAN. There are 14 applications in the deep water that are currently pending?

Mr. BROMWICH. Correct.

The CHAIRMAN. Then there are others that have been returned to the companies, asking them to provide additional assurances or additional information?

Mr. BROMWICH. That is right.

The CHAIRMAN. OK. All right. Let me ask about API's role in this. As I understand it, they develop consensus safety rules or they are a standard-setting body that does that. To what extent is your department and your agency relying on those consensus standards? Is it appropriate that we do it that way? Maybe you could elaborate on that?

Secretary SALAZAR. Chairman Bingaman, let me first say that we have a constructive relationship and a very good relationship with industry and with API as well. But that does not mean that we should be dictated at the Department of Interior and with BOEMRE with respect to what these standards are.

So, that is why we—obviously, there is tremendous expertise there that we listen to. But at the end of the day, it is our independent judgment that has to come to bear on these regulations. I will ask Director Bromwich to elaborate on that as well.

Mr. BROMWICH. Historically, Senator, we have relied to a significant degree on consensus recommendations that have been developed by API. In a different world, in a perfect world, when we had our own technical resources, we would not do that. But we haven't been in that position. So, we have, in fact, as the Secretary suggests, looked at the consensus recommendations that API has put together and selectively incorporated those by reference. I think that is the best and maybe the only way to proceed at this time.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Secretary, thank you for being here.

Mr. Bromwich, Mr. Hayes, thank you.

I thank you for the efforts that you have made. I think the President's announcement this week, as it related to Alaska and the efforts on the annual lease sales up in the NPRA, the permitting, I think these are positive signals. Obviously, we want to make sure that they translate into action and reality. So we will be working with you on that.

But Mr. Hayes, I want to single you out here and thank you for your efforts to try to reach a resolve on CD-5 in the NPRA. I think we recognize that this is critically important, and it speaks to some of what Senator Hutchison and Senator Begich were discussing earlier in response to Senator Manchin's question about the coordination within agencies.

I think we recognize that we have got a lot to do, but we have got to find a path forward there. So I want to continue working with you on that.

Secretary, I want to ask you just for a little bit of clarification here. Because you have discussed the various incentives that you wish to put in place to advance increased oil and gas production. When I think of incentives, I think of positive things that would encourage you. In your comments, you suggest amending the Mineral Leasing Act to allow for basically a shorter period of time than the 10 years in order to prompt the producers to move more quickly.

As we have discussed in Alaska, we have got some pretty specific issues there that don't allow for prompt—prompting is not going to get us any further any faster. We have got on average about a 60-day exploration period per year. Sixty days is it. So, if what this does is it restricts the abilities of the producers in terms of gaining any certainty in terms of what their lease might be, that might concerns me.

I understand that what your proposal is, is you want the discretion—the Secretary wants the discretion to shorten that lease period. I guess the question would be would you also seek to give the Secretary discretion to lengthen that in a situation, as we are talking in Alaska, where you have not only the environment that limits your opportunities to get in there and explore and produce, but you also have regulatory issues, as we have been dealing with, with Shell's permit, for instance?

So can you speak just very quickly to whether the incentives could go to lengthen that proposed lease, as well as what you are seeking to do, which is to shorten it?

Secretary SALAZAR. Thank you, Senator Murkowski.

First of all, with respect to the OCS, we already have those authorities and have been implementing those authorities in terms of shorter lease terms, as well as graduated royalty rates within the OCS. Our proposal on the Mineral Leasing Act will address the onshore areas of oil and gas leasing. I think the statistics themselves are very important for all of us to keep in mind.

We have 41 million acres of your land, of America's lands that have been leased for oil and gas production, and yet only 12 million of those acres are currently producing. So 41 million acres leased, only 12 million acres producing, and we continue to hold lease sales, both 2009, 2010, 2011. We have more planned for 2012.

So, if we—in our view, if we were able to shorten the lease term from 10 years to a lesser amount of time, some of this area that is just being held out there that is leased, there would be a greater incentive from the companies to know that they would have to move forward and do exploration and development.

Senator MURKOWSKI. But would you agree that the facts on the ground in Alaska are somewhat different than we have in the lower 48, in terms of advancing those leases?

Secretary SALAZAR. Indeed. I think Alaska, as you and I have often spoken, Senator Murkowski, is a world unto itself, and we need to recognize that the realities, whether it is in the Arctic offshore or on the onshore, are realities that require us not to impose, if you will, some of the same requirements that we might, say, if we are talking about the onshore in the State of New Mexico.

Senator MURKOWSKI. Very, very briefly, and I think my colleagues will pick up on this as well, but there has been great discussion about the length of time and why it takes as long as it does for the permit. Your proposal—or the proposal in S. 917 is to allow for additional time for these drilling permits, increasing from 90—excuse me, from 30 days to 90 days with the ability of the Secretary to expand to an additional 180 days.

In view of the concern that has clearly been expressed, at least in this committee, about the length of time that it takes to issue these permits, by allowing for even more additional time, does this

not just add to the uncertainty and a continuation in the delay of advancing the permits?

I am over my time. In respect to my colleagues that I know all want to ask questions, I would ask you to address that, try to be brief about it, but I know that other colleagues have raised the same concern.

Secretary SALAZAR. If I may, Mr. Chairman, Senator Murkowski, the reality is that 30 days is simply not enough. Right now, under the statute, you either up it or down it in terms of an exploration plan that comes in within that 30-day time period.

Part of the reality that should be one of the lessons learned from the Deepwater Horizon and that national crisis is that the agency didn't have the capacity, the resources, or really the time to do the effective job that it should be doing. So, when we are talking about having a 90-day timeframe to review an exploration plan, it seems to me that that is the kind of time that is required to be able to make sure that the best of the science and safety measures are being brought into play to review the exploration plan.

I don't think it will have an impact in terms of having inordinate delays ultimately to oil and gas production in the Nation's oceans.

Senator MURKOWSKI. Thank you.

The CHAIRMAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

It is good to have my old seatmate from this committee here, and I am going to ask you a couple of questions about offshore practices. But I want to start with a matter that involves energy production onshore because, as you know, Mr. Secretary, there is enormous interest today in more natural gas production. Certainly, the events in Japan, a whole host of issues have generated tremendous interest there.

Clearly, what we always face in these kinds of issues is how you go about striking a balance. A balance between natural gas production, and as you know, there is enormous and growing concern about the environmental practice of fracking.

So, my question to you is, you would have a real opportunity, using the BLM leasing and development process, to work through these kinds of issues and help us come up with some very sensible models, models that can allow us to strike that balance between producing more natural gas and dealing with these legitimate environmental concerns. I have come to the conclusion they are legitimate.

You all would have a chance to have us come up with a model and perhaps get out in front of what could otherwise be years and years of litigation. I mean, as you know from serving on this committee, that is what we deal with all the time is we find these polarized kinds of debates.

Here, there is something very exciting, natural gas production. What are you all doing at the Department of Interior, particularly with the BLM leasing and development process, to give us a chance to get out in front of this issue, strike the balance I am talking about?

Secretary SALAZAR. Senator Wyden, you are spot-on on the issue. The President's energy future very much envisions natural gas being a significant part of what we do.

I have often said that unless we deal with the fracking issue in the right way that it can become the Achilles heel to that huge potential for the United States. So, we have held a fracking forum with industry and others, other stakeholders at the Department of Interior. You have the BLM holding hearings, and I would ask the Deputy Secretary, David Hayes, to respond very briefly on what it is that we are doing with the BLM at this point.

Senator WYDEN. Mr. Hayes, do it briefly because I want to get into one other issue, and you can do additional comments in writing. But, yes, sure. Your thoughts on the leasing and development process?

Mr. HAYES. I will be very brief, Senator.

Within the last 3 weeks, we had 3 public forums in Arkansas, Colorado, and Wyoming on the fracking issue and whether BLM—how BLM should address it because we do hydraulic fracking on public lands.

We are scheduled to be meeting with Secretary Chu's subcommittee, which the President has asked for recommendations on hydraulic fracturing. So we will be in a dialog with them, and they, under the President's plan, will be coming out with recommendations in the short-term. So we are fully engaged.

Senator WYDEN. I hope that you will do more than work with just the President's task force because I think that is constructive. I think you all have an opportunity because we know that public lands, that there is activity going on there. It is a perfect place for us to see if we can get some real models.

What the President's task force is doing, I am for it. It is constructive. I would like us to go further by literally going to the real world, where we are going to see production and we have a chance to address environmental issues. Secretary, let us hold the record open for any other thoughts you have on it.

One issue I want to talk with you about with respect to the markup that we are going to have involves the drilling contractors. As you know, Mr. Secretary, BP has largely been the public face of the oil spill, but as the joint Interior/Coast Guard investigation and the spill commission investigation made clear, there certainly were problems with respect to the BP contractors.

We are talking about Transocean and Halliburton. Halliburton, for example, never reported that its cement for the Deepwater Horizon well was faulty, even as it was being pumped into the well. Transocean even went to Federal court to claim indemnity under the U.S. admiralty laws that went back to the 1800s, gave themselves bonuses.

What are your recommendations—because we are going to be dealing with this, I think, starting tomorrow and over this week. What are your recommendations, Mr. Secretary, for holding the drilling contractors, not just the lease holders, responsible so that we don't get into another one of these finger-pointing routines? What would be your recommendations with respect to holding the drilling contractors responsible?

Secretary SALAZAR. Director Bromwich and I have had a series of conversations, and he has had a series of meetings and some public pronouncements on this. So I will have Director Bromwich deal with the contractor accountability issue.

Mr. BROMWICH. Yes, Senator. Traditionally, we have held the operator responsible—

Senator WYDEN. Correct.

Mr. BROMWICH [continuing]. Not held contractors responsible.

Senator WYDEN. That hasn't worked.

Mr. BROMWICH. As for clarity and simplicity, it hasn't work as well as it should have, which is why following discussions with the Secretary, I announced recently that we were going to extend our regulatory authority to include contractors, the Transoceans and the Halliburtons of this world. We have the legal authority to do it. Certainly in certain egregious cases, we ought to exercise that regulatory authority.

It has been a dormant power that we have had. I am not saying that we are going to exercise it in every case because there is a virtue to the clarity of going against the operator. But I think in certain cases, we have it, and we should use it.

Senator WYDEN. My time is up, Mr. Chairman.

The alternative, Mr. Bromwich, and I am not prepared to go there yet, but if we don't have a way to hold the contractors accountable, clearly people are going to start talking about separate Federal certification and bonding requirements and the like. So the ball is in your court to do this in a hurry.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hoeven.

Senator HOEVEN. Thank you, Mr. Chairman.

Secretary, good to see you again. Thank you for being here today.

My first question relates to how do you explain the difference in terms of the perception that the companies that are drilling have, as far as the regulatory process and their ability to get permitted and move forward, and the perception that you perhaps within the agency have relative to expediting these permits and getting them done?

Maybe specifically address the shallow water versus deep water that Senator Hutchison bought up that issue. I think you were here for her comment.

The other is if you can reject a permit application in 30 days and continue to do that, is there really any de facto timeline on this process for getting approval?

Secretary SALAZAR. Senator Hoeven, thank you. Thank you very much for the question.

First, on the perception, Washington and these issues are an interesting place. We have tried to move forward with upholding the policy, which the President and I have articulated, and that is we are supportive of oil and gas development in the Gulf of Mexico and in other places in America's oceans. We also have said, and we will not retrench this position, that we will do it in way that is safe and in a way that protects the environment.

I think Director Bromwich's statistics in terms of how we have moved forward with both the shallow water and the deep water will indicate to you that we are not just about talk, but we are walking the walk that we are saying in terms of drilling and production in our country.

Now I will tell you that in multiple meetings with oil and gas executives, including those of the very top companies, they under-

stand what we are doing. They understand that they did not have the subsea containment capability available until February of this last year.

They understand that there is still a lot of work to go because it is a dynamic kind of issue in terms of getting us to the safe position that we want to be with respect to oil and gas drilling. So, I account for the noise that goes around this issue as simply the kind of noise that you end up seeing here in Washington, DC.

With respect to the shallow water, with respect to the timelines from 30 to 90 days, I don't think that is a significant amount of time extension because we do need to have that kind of time to adequately review these exploration plans and to make sure that the decisions that are being made are, in fact, sound.

Senator HOEVEN. Is there another piece to that equation that we need, though? If that approval process is 30 or 90 days, but you can continue to reject the applications, is there another piece we need in there to make sure this process is done in a timely and fair manner? If so, what would that be? What would work there, in your opinion?

Obviously, that is some of the things we are trying to get at with legislation. What is your recommendation?

Secretary SALAZAR. You know, Senator Hoeven, I think that there may be some—well, we would be happy to work with you on the language. I mean, it seems to me that one of the things you don't want to have a company do is to enter into a endless process that doesn't get anywhere.

Senator HOEVEN. Right.

Secretary SALAZAR. So, I think the timelines are, in fact, important. Many of the times when the permits are returned or exploration plans are returned, it is because they are incomplete. So, I think having those—having a timeline, as is set forth in the legislation, of 90 days is correct.

Having clarity from us in terms of what it is that is required, which is part of what Director Bromwich has been doing with all the regulations that have been issued, is important. But I understand your point that we ought not to have industry essentially coming in with applications that are held in endless abeyance and endless extensions.

Senator HOEVEN. I think it is an analysis that we should try to do between Interior, between the Congress, between the private sector and say, OK, how do we do this in a way where you have perhaps a certain period—and obviously, you have that opportunity to reject an incomplete application—but we still need to find some way to make sure there is some reasonable timeline for these permits.

Because I think what is happening is a lot of them are getting rejected, and so then they don't sit in the queue, but this permitting process goes on for a very lengthy period. I think that is what we are trying to get at. So that it is fair process that certainly protects the environment, but that empowers private investment and empowers more energy production for this country.

Secretary SALAZAR. I agree with you, and I do think that, right now, the 30-day timeframe doesn't work to advance that particular objective because applications, exploration plans end up getting re-

turned because there is not enough time to work through them. I think if we had the 90-day timeframe, it would, frankly, allow us to streamline the process and to have a better product coming out of industry.

If I may, let me just comment as well, just, you know, one of the things that has happened over the last year, Senator Hoeven and members of the committee, is that templates are being developed. Yes, there are now 14 deepwater wells that are being drilled. Yes, there are now over 50 shallow water wells that are being drilled. But we have changed the world. We have changed the regulatory regime.

So, what is happening is that industry, as well as our agency, is understanding what the new template is, moving forward. We will always be looking at ways in which we can improve what it is that we do.

Senator HOEVEN. Mr. Chairman, I understand my time is up. But I think that is where Senator Begich's legislation is trying to go. I think if we can be interactive with you in developing those concepts that that might be helpful.

I do hope there is a second round. I have some other issues to bring up, but I certainly understand I am out of time.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Thank you, Mr. Secretary.

The House passed a bill last week, and we are considering a bill with a similar provision this week in the Senate that would set a 60-day limit for processing offshore drilling permit approvals. After that, the permit would be deemed automatically approved. To me, this seems like just a bad policy on a number of grounds.

First and foremost, it completely ignores, I think, the number-one lesson from the Gulf oil spill, that you can't assume that drilling operations have adequate safety measures in place.

Also, if you can't get it done in 60 days, I guess instead of automatically being approved, you just say no. That is probably also a bad idea. Can you talk about the possible impacts of such a policy on your agency's ability to ensure safety of offshore drilling operations?

Secretary SALAZAR. I think what it would do, Senator Franken, is to basically pull out the rug from what it is that we are trying to do here, and that is to have safe development of oil and gas in America's oceans. You can't do that when you are essentially in a position where you are forced to do approvals in a 60-day timeframe.

That wouldn't work, and I think it would be good for Director Bromwich to talk just a little bit about the permit process so that we can understand the 60-day period and how that would work.

Mr. BROMWICH. Yes. I agree with the Secretary and with you, Senator, that it would be a profoundly bad idea to have arbitrary time limits within which you would have to approve permits or they would be deemed to be approved.

An operator—and I am not saying there are many of these, or maybe even any of these—could simply submit a permit that they

knew was deficient, that didn't have containment resources specified, that didn't meet all of the new enhanced safety requirements that we put in place and that I think has significantly raised the bar on safety, and then they could just run out the clock and have their permit application deemed approved.

So it would be a substandard application. It would not satisfy various of the requirements that we put in place, and we would be all at greater risk if we had that kind of a system.

Senator FRANKEN. The purpose of the measure supposedly is to expedite your permitting process. But we have the numbers. You have issued 66 deepwater permits since the temporary moratorium was lifted in October 2010.

What, in your mind, are better options to streamline and expedite permit approval process without compromising due diligence on safety?

Mr. BROMWICH. We can do several things, and we are doing several things. We are actually looking at our permitting process to see whether there are improvements in clarity, simplicity, and transparency.

One of the things we do hear from operators from time to time is they don't know where their permit sits in the system. So, we are working ways to be more transparent about communicating to them where their permit application sits in the system.

We are also looking to develop templates and checklists so operators know exactly what is expected of them in advance. So we eliminate some of those questions up front. We are working on templates and checklists and forms, again, to expedite that process. So I think those are the ways that we can do that.

One of our historical problems has been simply a lack of resources, which includes not only a lack of an adequate work force to do inspections, but a lack of an adequate work force to process and review permits. We finally recently, last month, got additional money, which we are allocating across the board to bring onboard more personnel.

Some of those will be permitting personnel. So I hope that will expedite the process as well.

Senator FRANKEN. Thank you.

One of the most concerning findings in the National Oil Spill Commission's report was that some oil well operators would "shop around" for someone within the Interior Department who would eventually approve a permit for the project. I know most people here agree that the Minerals Management Service was in dire need of reform, and we are glad to see the reforms that the administration has taken in response to the oil spill.

In restructuring of the agency into 3 separate entities, the new Bureau of Ocean Energy Management is in charge of leasing activities in "an environmentally and economically responsible way." In evaluating lease applications, how will this office balance these 2 often competing priorities and environmental concerns versus keeping costs down?

Mr. BROMWICH. We have focused on it not only because of the report of the President's commission, but because of other reviews and studies as well, which have identified a failure to take environment concerns adequately into account. So, we have now focused on

it, and we are working on some specific structural steps to make sure that there is balance between the development of the resource and environmental considerations.

One of the specific things we are doing is we are creating the position of chief environmental officer in the Resource Development Agency to make sure that the voices of our environmental personnel are heard and are factored into the balance of leasing decisions and plan decisions.

Senator FRANKEN. Thank you. My time is up.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Portman.

Senator PORTMAN. Thank you, Mr. Chairman.

Mr. Secretary, good to have you back before the committee again and appreciate the testimony today.

You were last here I think it was on March 2nd, which was a couple months ago. We talked about these same issues. At that time, you and I had a conversation about my concern that these claims were out there, that rigs were actually leaving the Gulf, and had left the Gulf in the context of the moratorium, to go to other countries and other offshore drilling.

At that time, you said that you did not believe that it happened and that you would provide information about it. We have since followed up with your office twice, and I have yet to receive that data.

So I would like to reiterate my request that you provide us the data on the rigs. I think it is important, at least to have it historically now, to see what the impact was of the moratorium.

In your testimony today, you state that last year America produced more oil than any time since 2003. You also talked about in your oral testimony today, you said we are producing more. I guess I would ask there where in the United States were these increases in oil production?

Were these onshore or offshore? What data do you have today to tell us about where this has occurred since 2003?

Secretary SALAZAR. Senator Portman, thank you for your question, and I will direct my department to get that information to you on the number of rigs.

On the question of where we are in terms of increased production, in the last 2 years, just from the Outer Continental Shelf, the increase has been from 446 million barrels to over 600 million barrels. That is an increase about a third, just from the Outer Continental Shelf.

On the onshore, where we have 41 million acres under lease, the increase has been 5 percent during that same time period.

Senator PORTMAN. So it is mostly Outer Continental Shelf. We are going to hear from Senator Landrieu in a minute here. I think in her comments, she indicated that shallow drilling is off by about 50 percent since the moratorium. I think she even said that there is not any deepwater permits that are currently producing.

You indicated you have approved some of those permits now, and I know we will hear more from her on that. But I guess what you are hearing today, both from Senator Hutchison and Senator Begich and others who are concerned, as I am, about our energy independence and our need to produce more oil and gas is that we do need to work on this permitting process. That in the context of

the moratorium, we need to look back and see what the impacts were to avoid, in my view, some of these steps backward.

I think the President made some good comments over the weekend. I was somewhat encouraged by what he said about extending leases in the Gulf. He also called for annual lease sales in the National Petroleum Reserve in Alaska. I would hope that we will continue to see some of these expedited processes to get moving both on the Alaska front, but also in the Outer Continental Shelf.

I will say that, to Senator Franken's question, you know, there is frustration out there, and that is where this limitation comes from. The notion that the bureaucracy should be given a certain amount of time, an appropriate amount of time, but at that point, that the companies that have submitted legitimate applications need to know one way or the other. The burden, in a sense, should be on the Government at that point to say why aren't we moving forward?

I know that the Begich and the Hutchison bill would help in terms of the streamlining and transparency you talked about. I think Senator Bingaman's legislation—he has 2 bills that we are looking at today—would help. I hope you would work with us on that.

But let me just switch, if I could, for a second to another comment you made in your opening statement. You indicated that there were sort of 3 buckets that the administration was looking at. I believe it was oil, gas, renewables and alternative energy, and then efficiency.

As you may know, last week, legislation was introduced by Senator Shaheen and myself, Energy Savings and Industrial Competitiveness Act, it is S. 1000. It basically leverages deployment of energy efficiency technologies in the home building space, commercial space, and the industrial space, and also with regard to the Federal Government. We would love to get your input on that legislation, and we would hope to get your support on it. I wonder if you had any thoughts on that legislation today?

Secretary SALAZAR. Senator Portman, I have not reviewed the legislation, S. 1000. But I would be happy to do it. Along with my colleague Secretary Chu and the administration, energy efficiency obviously is a huge part of that bucket to get us to that energy future.

In fact, part of the reason that we are using—importing only less than 50 percent of our oil from foreign countries today, as opposed to 60 percent just a few years ago, is because of the fact that we are becoming much more fuel efficient. So, the energy efficiency obviously goes beyond cars, and it goes to buildings and appliances and a whole host of things.

So, those are addressed in the President's energy blueprint. We would be happy to take the legislation and let us get back to you on it.

Senator PORTMAN. That would be terrific. We are working with DOE on it. Given, again, your interest in this area, as you say, the relationship it has to your responsibilities, we would love to get your input.

My time is up, but I would appreciate getting back to us on the Outer Continental Shelf issues, the Gulf issues we had from the last hearing, and also on S. 1000.

Thank you, Mr. Secretary.

Secretary SALAZAR. Thank you.

The CHAIRMAN. Senator Landrieu.

Senator LANDRIEU. Thank you.

Mr. Secretary, let me begin by commending you and the President for getting back to where we were before the Deepwater Horizon spill in terms of at least having a vision for opening up more domestic drilling. I really appreciate that, and it was the right step to take. Now it is just the details of how we actually accomplish what the President laid out.

I can only say that, you know, using words, actions speak louder than words. So, that is where we are right now. It is not about just saying we want to expand drilling, but actually doing it.

So I want to just clarify just a couple of things that I think are very important for this hearing, Mr. Chairman, as we try to push a bill through—or several bills—to actually accomplish opening up drilling.

I want to clear for the record that—and this is from the EIA Short-Term Energy Outlook—this is not Mary Landrieu's chart. It is not a Democratic chart. It is not a Republican chart. This clearly says that today production of oil is at the highest level it has been. But you can clearly see on the trajectory that we are on that it is going down.

If we don't start issuing permits more quickly for new drilling, if we don't start exploring in areas that really deserve to be explored, this is not going to be reversed. Even if we made those changes today, I am not sure that we can reverse this chart.

So I want the record to be clear. We may be at high levels today, but we are not going up. We are going down.

No. 2, Mr. Bromwich, I need to clarify for the record. You said that you have 14 deepwater wells. Are any of those new, or are all of those revised?

Mr. BROMWICH. I believe all of them had been previously permitted.

Senator LANDRIEU. That is correct. So, I just want to say for the record, these 14 deepwater wells that have received permits are not new wells. They are revised. They had been drilling prior to the Deepwater Horizon.

I understand that not all 14 of these are actually drilling. Some of them are water injection wells. Do you know how many?

Mr. BROMWICH. No, that is not correct.

Senator LANDRIEU. OK.

Mr. BROMWICH. That is in a category—

Senator LANDRIEU. They are all drilling?

Mr. BROMWICH. Yes.

Senator LANDRIEU. OK. They are all drilling, but they are all revised permits. There is not a new deepwater permit. Is that correct?

Mr. BROMWICH. That is my understanding.

Senator LANDRIEU. Your staff is—OK, let us get this clear. Because there might be a lot of noise around Washington, but it is

necessary for this to be clear in order for us to move forward. So while your staff is getting that, because it is my understanding, based on a chart I got from your Web site—this is not my Web site—it has zero, zero, zero, zero, zero for deep water in 2011.

It doesn't say 1. It doesn't say 2. It doesn't say 14. It says zero, from your Web site. This is new wells approved in 2009, 2010, and 2011. So, Mr. Chairman and ranking member, the facts are that despite our efforts, the moratorium has been lifted, there is not a deep-water, you know, drilling permit—

Mr. BROMWICH. Senator, if I may, there is one.

Senator LANDRIEU. OK. There is one.

Mr. BROMWICH. Right.

Senator LANDRIEU. OK. We have one new—

Mr. BROMWICH. Out of 14.

Senator LANDRIEU [continuing]. Deepwater drilling out of 14. But let me ask you this. My information is, is that there are 100 exploration plans that are pending at BOEM. Is that your understanding? That before you can get a drilling permit, you need to have your exploration plans approved.

How many do you think are pending now? Is it 100? Do you know?

Mr. BROMWICH. No. It is far less than that.

Senator LANDRIEU. Can the staff tell us how much it is?

Mr. BROMWICH. My understanding is it is approximately 36 deep-water plans.

Senator LANDRIEU. OK, 36 deepwater plans. The others may be shallow water, but I would like you to submit that for the committee, OK?

Mr. BROMWICH. Sure, happy to do that.

Senator LANDRIEU. OK. Because we need to understand how many plans, both deep and shallow, are pending, how many permits then for drilling are pending. But the bottom line is we need to step it up, or these numbers are going to get worse, not better.

No. 2—

Secretary SALAZAR. Let me, if I may, Senator Landrieu?

Senator LANDRIEU. Go ahead, Mr. Secretary.

Secretary SALAZAR. Because, frankly, at the end of the day, I will call these shots within my authority as—

Senator LANDRIEU. I realize that.

Secretary SALAZAR [continuing]. Secretary of Interior. What I will say is that with respect to your chart, the fact is that we are doing a lot to try to move forward with deepwater oil and gas production, as well as shallow water. You lived through the nightmare, just like I lived through the nightmare of the Deepwater Horizon.

But I will remind the members of the committee that we have 38 million acres of oil and gas leased acreage in the Outer Continental Shelf, and only 6.5 million of those acres are producing. So we want to figure out a way—we want to figure out a way of moving forward with the production of oil and gas in these areas.

Now, when we talk about 14 deepwater wells, those are rigs where you actually have the people who are out there on those rigs working. I was actually on one of those rigs, the Ensco rig, visiting them as they started moving forward. So you have 14 rigs that are

now working under permits that have been approved under the new regulatory regime.

Senator LANDRIEU. Right. But they were working before they got shut down, Mr. Secretary. I know my time has expired, but it is very important for us to recognize that unless we get some new exploration plans approved and new deepwater plans. So, you can understand the reaction by some of us when you are asking to expand the time for review. The time for 30 days, as I understand, could be actually be 50 days, Mr. Chairman. Under the new proposal, it could be up to 270 days under the technical review of the proposal on the table.

So, again, and I just want to conclude, if you will bear with me, with one chart, and then I will close. Because I have 100 other questions and comments, but 5 minutes.

Mr. Secretary, this is what the Gulf of Mexico looks like. I wish that you all could see what I just saw yesterday when I got back from Morgan City, which has flood waters now lapping up at these communities. This is what the Gulf of Mexico looks like. These are pipelines. This is what our State does to support this industry. You can see Texas, Louisiana, the coast of Mississippi, and Alabama.

We do not today get one single, solitary penny from a lease, a bonus, or a severance from any of these wells, except 3 miles off of our shore. No matter what law we pass, this Senator will not vote for anything unless there is some recognition of the platform that our State, you know, serves for this industry, or nobody would be getting any money, any energy, any oil, any gas.

So I am going to end there, but I have 100 other questions and comments I will submit for the record, Mr. Chairman.

Secretary SALAZAR. If I may, Mr. Chairman—

The CHAIRMAN. Go right ahead.

Secretary SALAZAR [continuing]. May I make a comment in response to Senator Landrieu?

I think for the last 2 1/2 years—and you know me well, Senator Landrieu, from my time in the U.S. Senate working on this committee and working on so many issues—I have a jurisdiction that takes me from sea to shining sea and out into the oceans, all of Alaska, and many other places. I have probably been in Louisiana and the Gulf of Mexico more than any single other State.

Our efforts, that you rightly point out, need to focus in on the restoration of the Gulf Coast. I know there are bills that you are working on to try to get that done. I am pleased, as I know you are pleased, with the billion-dollar early restoration on the Gulf of Mexico from BP that we are moving ahead with.

Senator LANDRIEU [continuing]. Louisiana.

Secretary SALAZAR. It will be at least 200, probably more, OK?

But here is what I wanted to say is I think you raise a very legitimate question, and that is that we extract all of this oil and gas from the Gulf of Mexico, about a third of the Nation's supply. Yet, because of the hand of man over the last 100 years, you have what is one of the most degraded ecosystems and degraded Mississippi Delta, which you and I and Senator Bingaman and Senator Murkowski have flown over many times.

So I think this is a very important issue that I hope we can find some common way of moving forward to restoring the Gulf of Mexico.

Senator LANDRIEU. Thank you.

The CHAIRMAN. We have 2 Senators who have not asked questions yet, Senator Manchin and then Senator Shaheen. So Senator Manchin?

Senator MANCHIN. Thank you, Mr. Chairman.

Thank you, Secretary, and your staff for being here.

The thing I want to ask is you can tell the frustration. I am sure you are hearing it loud and clear. The timing—we are going to be voting on a bill, they said 60 days—an amendment, 60 days. Did I hear you saying that it should be 90 days, not 60 days?

Mr. BROMWICH. Can I clarify? We are talking about 2 different things.

Senator MANCHIN. We are?

Mr. BROMWICH. I think people are a little confused.

Senator MANCHIN. OK.

Mr. BROMWICH. There are permits, and there are plans. Plans are broader authority that an operator seeks to do a variety of things. There are a number of individual permits under the plans. Right now, there is a statutory 30-day limit on the time within which my agency has to review an exploration plan. There is currently no time limit with respect to reviewing individual permit applications. That is the difference.

Senator MANCHIN. The permits are what they are wanting a 60-day—I think that is the amendment that we will have.

Mr. BROMWICH. Right. That is—I don't know if you were here. That is the question that Senator Franken asked.

Senator MANCHIN. Right.

Mr. BROMWICH. Where even if an operator submitted a permit application that totally failed to comply with all of our new safety requirements and failed to show the ability to contain a subsea blowout, the statute would require, if it were passed, that we would approve that permit.

Senator MANCHIN. Not approve. No, I don't think that is the way I understand it. Basically, you will have the right to either approve it or disapprove it, but you have to act on it. The frustration is, is that the bureaucracy is it is not getting acted on. It is not just in the gas and oil. It is in coal.

Every permit that we do natural resources, people are so frustrated because the time element is so long there is no—they have no certainty whatsoever, and they can't plan anything. Just a year or a day would even help them get off the bubble, if you would. That is the frustration I think you are feeling from all of us.

I am just trying to say what timetable do you believe it would take to evaluate that and give an up-or-down?

Mr. BROMWICH. With respect to a permit?

Senator MANCHIN. The permit.

Mr. BROMWICH. I don't know that there is a specific timetable.

Senator MANCHIN. So it could be whatever you all—somebody could say, "Well, it will be 6 months. Could be 12 months. Could be a year?"

Mr. BROMWICH. The fact is our people have absolutely no incentive to slow down the processing of permits. Most of our people who review and approve permits are residents of Louisiana. So, it is their neighbors whose livelihoods are at stake.

So I think that giving us adequate resources so that we have the personnel to do it, being transparent about where permits are in the process and, therefore, how long it is taking, I think those are major steps forward.

But I am worried that a legislative solution—and I know the House version of the bill would deem a permit application approved after a certain period of time. That is what I am responding to. I think that would be very bad public policy.

Senator MANCHIN. OK. The other question I would have is coal, coming from a coal State, as you know, and gas—and we have a little bit of everything, and I know that the Secretary understands that—what we are asking is the development and the amount of coal that we have, and we have been using coal plants for quite some time. I know some people have different options of that, but it is the most reliable of our baseload fuels.

With that being said, the CO₂. We know the technology is there for carbon capture and storage. What is your opinion, Mr. Secretary, as far as where are you on the pipeline, a national CO₂ pipeline, that could really help the enhancement and development of oil? Because we know it is probably one of the best uses that we have right now other than just storing it is to use it for oil enhancement to make us less dependent on foreign oil.

Secretary SALAZAR. We have always been supporters of carbon capture and sequestration, and particularly using the templates that have already been developed and used for many decades with enhanced oil recovery. You know, in my State of Colorado, frankly, we drill wells to extract CO₂ that is then piped into the oil fields for enhanced oil recovery.

So I think those kinds of efforts are a way in which we can move forward to the kind of clean energy technology that we want to have. We support having clean coal technologies, and I think that those kinds of concepts are ones that we all need to explore.

Senator MANCHIN. But I am saying right now they are telling me that there is not—we don't have the infrastructure to deliver the CO₂ to the drilling areas that would really enhance the oil production. I don't think any private concern is going to be able to do that without kind of a quasi public-private. Are you all looking at that seriously, or have you looked at it?

Secretary SALAZAR. I have not, per se, looked at it. But I think it is a concept that is very worthwhile exploring.

Senator MANCHIN. Because we have the ability to retrofit the existing coal fire plants that take the clear stream of carbon off. If we can do that, there has to be a market for it, which there is, but there has to be delivery.

Secretary SALAZAR. We will look at it. It is a concept very worthwhile exploring.

Senator MANCHIN. Again, the frustration that Senator Landrieu had is that, basically, we are just concerned about our dependency on foreign oil. The high price is killing is all of us. In West Virginia, a day doesn't go by that I don't have phone calls and letters.

It is over \$4. It was \$4.19 on average where I was in the State this past weekend.

Something has to be done. In order to do that, we have to be more certain of what we can do in this country and less dependent on the foreign oil that I think they are holding us hostage with. So we are just asking for your all's help as much as humanly possible.

Thank you.

Secretary SALAZAR. Senator Manchin, I recognize the issue of the day in terms of the concern that the American public has with the pain at the pump. I think as the President has said, we can look back at history from the price spikes that started in the late 1940s and through the 1970s and the 1980s and the 1990s, and there is no quick fix.

So there is no quick fix to the high price of gas for us now because of the fact that it is set on the global market and the fact you have countries like China that are using much more oil and gas than they ever have in the past.

So, it is important for us to have the long view in mind as we move forward to develop the energy policy of this country. This committee obviously has tremendous expertise with the Senators and its staff to help us make sure that we can find those places in which this energy future can be secured.

Senator MANCHIN. I just think—and I will finish with this—is that, as you said, it has been going on for quite some time. In my lifetime, basically, it came to a head in the 1970s with the oil embargo.

We learned nothing. We have no energy policy. We are still more dependent than ever. We grow more dependent, it seems to. We don't seem to learn from our mistakes.

Until we have an energy policy that uses the energy that we can produce, that has more certainty and more dependability within this Nation or this continent, we are going to continue to go down this for the next 30 to 40 years. We are hoping to break that cycle, sir.

Secretary SALAZAR. I agree.

The CHAIRMAN. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

Thank you for calling the hearing today on what is obviously a very hot topic that people feel strongly about.

Thank you, Secretary Salazar, for being here and for your patience in responding to all of the questions and concerns that we are raising.

I actually have a little bit different question, I think, than the ones I have heard anyway. As we are looking at legislation to address concerns about permitting and drilling, one concern I have is that we not repeat the mistakes of the past.

I know that I was quite surprised, as I think many of us were last year during the BP oil spill, to find out that the technologies for cleaning up that spill hadn't changed much over the decades preceding. That while after the Exxon Valdez spill, there was supposedly a process, and someone—people put in place to try and address oil spill R&D, that it really had not been effective, and that the funding had not been there.

My concern is that as we go forward and look at how we improve the processes for permitting and look at our drilling in the future that we are able to develop the technology to make sure that if there are deepwater spills that we have technology to clean those up.

I know that the President in his 2012 budget includes an increase in funds for oil spill R&D, but it is not at all clear to me that we have yet in place a process for how we raise those funds on a regular basis and how they are going to be spent and who is going to supervise that.

So I wonder if you could speak to that and to whether you are comfortable that we have in place the process to address oil spill R&D or whether we have more work to do?

Secretary SALAZAR. Thank you very much, Senator Shaheen, for that question.

The fact of the matter is that I think when one looks back at the Exxon Valdez report that came out of the Presidential commission on the Deepwater Horizon, that national crisis and environmental catastrophe, which caused so much damage, was not one that really created much change in this country. Things continued much the same way without those lessons being learned.

The President and his administration are absolutely committed to make sure that those same mistakes are not repeated now in the wake of the Deepwater Horizon oil spill. That is why there has been the robustness of the effort to try to move forward with the creation of the best standards and the best organization to oversee drilling in America's oceans and actually to help develop those same kinds of protocols around the world.

In terms of the funding questions and what we are doing with respect to oil spill response, we do need funding to be able to have an agency conduct responsibly the important missions that have been assigned to the Bureau of Ocean Energy Management and Regulation.

So, the continuing resolution did give additional resources to Director Bromwich's agency to move forward in that direction. They are not sufficient, frankly. There are more resources that are needed for the director to be able to hire the kind of personnel that will have the expertise in petroleum and to have the ability to do the kinds of inspections and oversight that are necessary.

He can speak more about this. But just in the last several weeks, he has spent a great deal of his time looking at the control centers, the remote data centers, that industry has in all the big companies where they are able to monitor what is happening in the production and in the drilling activities of their oil and gas wells. We need to have our agency move forward to having some of those same capabilities.

But it is not going to happen unless the resources are there. That comes back to the question which many of the members of the committee were asking, and that is how can you make sure that you are moving forward with permitting in an expeditious way? A large part of that answer is that you need to have the personnel onboard to be able to do the work.

Mr. BROMWICH. Senator, I share your concern about there being insufficient advances in oil spill R&D. I think we have not pro-

gressed very much in the last 20 years, and the truth is I don't see much going on right now that would improve things. I completely agree with the Secretary that we need more governmental involvement in research and development, but we need more private sector involvement in developing new technology.

I think one of the consensus conclusions that people have come to as a result of Deepwater Horizon is that there was insufficient R&D by the private sector in every area implicated by Deepwater Horizon to R&D in safety, R&D in containment, and certainly R&D with respect to oil spill and oil spill technology. That was true then, and unfortunately, it remains the case today.

Senator SHAHEEN. Thank you.

Thank you Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Secretary, thank you very much for your generous time. We do have some additional questions that will be submitted for the record, but we appreciate your being here.

The CHAIRMAN. Did you have something final you would like to say? Go ahead.

Secretary SALAZAR. Just very quickly because through Tom Hunter, we have been working on this Ocean Energy Safety Advisory Committee, which is really doing some great work to answer many of the questions that were asked here. But we also have a proposal in front of the U.S. Senate and this committee for the creation of an Ocean Energy Safety Institute.

I would like Deputy Secretary David Hayes, if you would allow us, Mr. Chairman, just to give us a quick 2-minute summary of what it is that we are seeking there because it is partially responsive to Senator Shaheen's question.

The CHAIRMAN. Why don't you go ahead?

Mr. HAYES. I will be quick, Mr. Chairman. Thank you.

This is responsive to Senator Shaheen's question. The Ocean Energy Safety Advisory Committee, chaired by Dr. Hunter, former director of the Sandia National Lab, and populated by folks from academia, other governmental agencies, and industry, has a task ahead of it of trying to do a survey of what R&D is going on in the areas of well control, containment, and spill response.

But there is no central place, a center of excellence that they can turn to administratively to help the Secretary and Director Bromwich then implement R&D that is needed and also to have the regulatory agency keep up to speed on what is going on in terms of advances in all of these areas.

That is the genesis of the proposal that we have an Ocean Energy Safety Institute that can respond to what Secretary Chu has also suggested that in order to be a good regulator, our folks at the Interior Department need to have the same expertise as the top folks in the industry. Having a collaborative institute would meet that goal and help organize the effort.

The CHAIRMAN. Again, thank you very much for your time and your testimony. We appreciate it very much and wish you well.

We have 2 additional panels. First, Admiral Thad Allen, who, of course, was the National Incident Commander with the Deepwater Horizon disaster, and then 2 other distinguished witnesses. We would ask Admiral Allen if he would come forward?

[Pause.]

The CHAIRMAN. Admiral Allen, it is very good to see you again, and we welcome you back to the committee. We, of course, will include your full statement in the record as if read, but we would like you to make any points you think we particularly need to understand.

So, go right ahead.

STATEMENT OF ADMIRAL THAD W. ALLEN, RET., U.S. COAST GUARD, NATIONAL INCIDENT COMMANDER, UNIFIED COMMAND, BURKE, VA

Mr. ALLEN. Thank you, Mr. Chairman, Senator Murkowski. Great to see you. Senator Shaheen.

I am going to focus on a couple of issues that I think are relevant to my experience and the experience we all took part in, in responding to the Deepwater oil spill last year. Specifically, I would like to talk this morning about the regulation of mobile offshore drilling units, the drilling systems and the certification and the regulation of those. Some of that was alluded to in the prior testimony, oil spill response plan review.

I would also like, if there is time, to talk about some of the extra doctrinal entities. I say that it is kind of a geeky term, but we had a science team. We had an interagency solutions group, and we had a flow-rate technical group. Some of that relates to what Secretary Salazar and Deputy Secretary Hayes were talking about in terms of trying to bring intellectual capital to these things. I think we need to figure out how to institutionalize that in the ongoing process of spill response planning.

Finally, I included in my statement for the record just a couple of comments about the Oil Spill Liability Trust Fund and liability issues. As was stated earlier, this is a very large, complex problem, but I testified before the Commerce, Science, and Technology Committee almost a year ago to the day on these issues. I took excerpts from that testimony, included them in my statement for the record. So you have them just as a placeholder, understanding that if you put too much into one bill, as the Senator said, you are going to have trouble moving forward on these very, very significant safety issues moving forward.

So, with that very brief statement, I would be glad to go into any questions you might have for me, sir?

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF ADMIRAL THAD W. ALLEN, RET., U.S. COAST GUARD, NATIONAL INCIDENT COMMANDER, UNIFIED COMMAND, BURKE, VA

Mr. Chairman, thank you for the opportunity to testify before the committee today. It is noteworthy that today's hearing comes exactly one year after my final testimony before the Congress as Commandant of the Coast Guard and National Incident Commander for the Deepwater Horizon oil spill response. To that end, I have included where appropriate excerpts from the testimony I provided to the Committee on Science, Technology, and Commerce chaired by Senator Rockefeller on May 18, 2011.

In regard to the legislation being considered today there are two specific portions of that testimony that are relevant to today's hearing. They are regulation of mobile offshore drilling units (MODU) and regulation of drilling systems used on the continental shelf. Not addressed in the legislation being considered today but equally important is the need for legislation that requires review of oil spill response plans

for offshore drilling operations by the United States Coast Guard. I appreciate the concurrent jurisdiction of this committee and the Committee on Science, Technology, and Commerce over the various federal activities associated with the Deepwater Horizon explosion and subsequent spill and I urge the Congress to work to integrate and align legislative efforts.

Excerpt of Oral Testimony of 18 May 2010 Before the Senate Committee on Commerce, Science, and Technology

Provided below is a pertinent excerpt of testimony I provided before the Commerce, Science, and Technology Committee chaired by Senator Rockefeller.

In response to a question by Senator Begich regarding needed regulatory changes I responded,

“Senator, I’d like to address three areas, if I could. The first one is an inspection issue, the second one is a Coast Guard regulatory issue and the third one is a response plan issue, if I could.

As it relates to the regulatory responsibilities, MMS has responsibility for the drilling apparatus itself. And in this case, the Coast Guard issues what’s called a certificate of compliance for the mobile drilling unit, which is actually a floating ship, connected by the riser pipe.

Regarding the mobile drilling unit itself, we regulate that under Title 46 of the U.S. Code. We have taken a look at the current set of regulations, and we think there are five areas where we might be able to do a better job, with regulatory reform inside the Coast Guard.

I would submit that they are taking a look at the current electrical standards on-board the mobile drilling units, the machinery standards.

Probably a real important one is dynamic positioning reliability. This is the system by which the ship is held in place while the operations are going on. That technology has probably gotten out farther—ahead of the regulations. We probably need to take a look at certifying the reliability, give a set of standards for dynamic positioning.

And we need to look at the difference between floating production units and mobile drilling units. Floating production units are basically vessels or ships that are involved in production, as mobile drilling units actually are pontoon based, and looking at the standards related to that.

And, finally, lifesaving and firefighting equipment. And we’d like to engage in a conversation about those areas, if we could.

Regarding the actual drilling equipment itself, the blowout preventers that are down there right now are not under any regulatory regime. They’re actually built to American Petroleum Institute specifications. There are three that are out there for industry to use. One is the ram operations in the blowout preventer, the choke-and-kill lines, and the control system to control all of that.”

API kind of goes out and issues a license to the manufacturers. They do testing. MMS accepts those licenses in lieu of an inspection. I think there’s an opportunity, moving forward, to take a look at whether or not we need a regulatory regime for the blowout preventers and the control systems associated with that, sir.”

Excerpt of Written Testimony of 18 May 2010 Regarding MODU Regulatory Compliance Requirements

In my testimony for the record on 18 May 2010 I stated,

“43 U.S.C. 1331, et seq mandates that MODUs documented under the laws of a foreign nation, such as the DEEPWATER HORIZON, be examined by the Coast Guard. These MODUs are required to obtain a U.S. Coast Guard Certificate of Compliance (COC) prior to operating on the U.S. Outer Continental Shelf (OCS).

In order for the Coast Guard to issue a COC, one of three conditions must be met:

1. The MODU must be constructed to meet the design and equipment standards of 46 CFR part 108.
2. The MODU must be constructed to meet the design and equipment standards of the documenting nation (flag state) if the standards provide a level of safety generally equivalent to or greater than that provided under 46 CFR part 108.
3. The MODU must be constructed to meet the design and equipment standards for MODUs contained in the International Maritime Organization Code for the Construction and Equipment of MODUs.

The DEEPWATER HORIZON had a valid COC at the time of the incident, which was renewed July 29, 2009 with no deficiencies noted. The COC was issued based

on compliance with number three, stated above. COCs are valid for a period of two years.

In addition to Coast Guard safety and design standards, MMS and the Occupational Safety and Health Administration (OSHA) also have safety requirements for MODUs. MMS governs safety and health regulations in regard to drilling and production operations in accordance 30 CFR part 250, and OSHA maintains responsibility for certain hazardous working conditions not covered by either the Coast Guard or MMS, as per 29 U.S.C. 653 (a) and (b)(1)."

Implications of the Recently Released Preliminary Findings of the Coast Guard Portion of the Joint Investigative Team Report

Under an agreement between the Department of Interior and Department of Homeland Security, a Joint Investigative Team (JIT) was established to determine the facts associated with the incident and make recommendations. On April 22, 2011 the Coast Guard released a preliminary report of the findings in Volume One.

The findings in Volume One cover five aspects of the disaster—including the explosions on the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon; the resulting fire; evacuations; the flooding and sinking of the Deepwater Horizon; and the safety systems of the MODU and its owner, Transocean. The findings released did not include an analysis of what led to the loss of well control or other aspects of the investigation that fall under BOEMRE jurisdiction. Those findings will be released separately.

A logical next step, in my view, would be a review and revision of current procedures regarding the inspection and certification of MODUs. Specifically, I would recommend a combination of two procedures that are currently used by the Coast Guard to mitigate the risk posed by foreign flagged vessels operating in waters under the jurisdiction of the United States. The current procedure whereby Certificates of Compliance (COC) are issued for MODUs is clearly inadequate to address the recommendations of the JIT.

The first would be a program similar to what is called the Control Verification Examination for cruise ships. For a number of years the Coast Guard has established additional inspection requirements on foreign flagged cruised ships operating from United States ports. This regime involves plan review and inspections of ship under construction and annual and quarterly inspections after that.

The second would be a program similar to what is called the Port State Control program for foreign flagged cargo ships and tank vessels. Under this program foreign flagged vessel calling in the United States are evaluated on a range of factors including prior safety discrepancies, the history of the flag state, the history of the classification society, and the history of the company involved. These and other facets of vessel performance are used in matrix to identify higher risk vessel and then subject them to more stringent controls up to and including denial of entry or boarding and inspection prior to entry into port.

I believe these two successful practices can form the basis for a framework to implement the various recommendations contained in the preliminary findings of the JIT.

Regulation of Offshore Drilling Operations

As the committee is aware, regulation of offshore drilling operations falls under the statutory authority of the Department of Interior and is the primary focus of the legislation being considered today. Accordingly, my comments reflect my personal opinions based on my experience with the Deepwater Horizon response and do not infer any statutory or regulatory role for the Coast Guard or Department of Homeland Security.

That said, I believe at some point it will be necessary to integrate the two separate regimes that regulate shipping and activities on the outer continental shelf. The two regimes have evolved separately under different statutes and committee jurisdictions. We are now managing offshore drilling operations where vessels regulated by the U.S. Coast Guard under domestic law and international treaty are physically attached to drilling systems regulated under laws governing the outer continental shelf by the Department of Interior and Bureau of Ocean Energy Management and Regulatory Enforcement (BOEMRE).

With these comments in mind, it is clear to me personally that, at a minimum, any regulatory scheme for offshore drilling systems should include the following.

1. A hybrid framework of mandatory third party inspection of drilling systems and a "safety case" based process that requires a systemic method to describe the risks associated with a particular drilling proposal and a clear plan to mitigate those risks.

2. Third party inspections should at a minimum include the blow out preventer, control pods, choke and kill lines, and associated alarms and controls.

3. A framework to unify the regulatory regimes for MODUs and drillings systems including clear role definition for the United States Coast Guard and the BOEMRE. A key issue here is role definition between the master operating the MODU and the individual responsible for drilling operations and well control.

4. Integration of oil spill response plan review of all parties involved in oil spill response, most specifically the United States Coast Guard which has the statutory responsibility to direct the response.

Role of the Oil Spill Liability Trust Fund

While not the subject of today's hearing, it is worthwhile to note the pending issue of limits of liability of responsible parties involved in a pollution incident and the role of the Oil Spill Liability Trust Fund (OSLTF). To that end I am providing the following excerpt from my testimony of May 18, 2011.

I stated in my written testimony,

The Oil Spill Liability Trust Fund (OSLTF), established in the Treasury, is available to pay the expenses of federal response to oil pollution under the Federal Water Pollution Control Act (FWPCA)(33 USC §1321(c)) and to compensate claims for oil removal costs and certain damages caused by oil pollution as authorized by the Oil Pollution Act of 1990(OPA) (33 USC §2701 et seq). These OSLTF uses will be recovered from responsible parties liable under OPA when there is a discharge of oil to navigable waters, adjoining shorelines or the Exclusive Economic Zone (EEZ).

The OSLTF is established under Revenue Code section 9509 (26 USC §9509), which also describes the authorized revenue streams and certain broad limits on its use. The principal revenue stream is an 8 cent per barrel tax on oil produced or entered into the United States(see the tax provision at 26 USC §4611). The barrel tax increases to 9 cents for one year beginning on January 1, 2017. The tax expires at the end of 2017. Other revenue streams include oil pollution-related penalties under 33 USC §1319 and §1321, interest earned through Treasury investments, and recoveries from liable responsible parties under OPA. The current OSLTF balance is approximately \$1.6 billion. There is no cap on the fund balance but there are limits on its use per oil pollution incident. The maximum amount that may be paid from the OSLTF for any one incident is \$1 billion. Of that amount, no more than \$500 million may be paid for natural resource damages. 26 USC §9509(c)(2).

OPA further provides that the OSLTF is available to the President for certain purposes (33 USC §2712(a)). These include:

Payment of federal removal costs consistent with the NCP. This use is subject to further appropriation, except the President may make available up to \$50 million annually to carry out 33 USC §1321(c) (federal response authority) and to initiate the assessment of natural resource damages. This so-called "emergency fund" amount is available until expended. If funding in the emergency fund is deemed inadequate to fund federal response efforts, an additional \$100 million may be advanced from the OSLTF when the emergency fund is inadequate subject to notification of Congress no later than 30 days after the advance. See 33 USC §2752(b). Additional amounts from the OSLTF for Federal removal are subject to further appropriation.

Payment of claims for uncompensated removal costs and damages. Payments are not subject to further appropriation from the OSLTF. 33 USC §2752(b).

Payment of federal administrative, operating and personnel costs to implement and enforce the broad range of oil pollution prevention, response and compensation provisions addressed by the OPA. This use is subject to further appropriation to various responsible federal agencies.

National Pollution Funds Center (NPFC) Funding and Cost Recovery

The NPFC is a Coast Guard unit that manages use of the emergency fund for federal removal and trustee costs to initiate natural resource damage assessment. The NPFC also pays qualifying claims against the OSLTF that are not compensated by the responsible party. Damages include real and personal property damages, natural resource damages, loss of subsistence use of natural resources, lost profits and earnings of businesses and individuals, lost government revenues, and net costs of increased or additional public services that may be recovered by a State or political subdivision of a state.

In a typical scenario, the FOSC, Coast Guard or EPA accesses the emergency fund to carry out 33 USC §1321(c), i.e., to remove an oil discharge or prevent or mitigate a substantial threat of discharge of oil to navigable waters, the adjoining shoreline or the EEZ. Costs are documented and provided to NPFC for reconciliation and eventual cost recovery against liable responsible parties. Federal trustees may request funds to initiate an assessment of natural resource damages and the NPFC will provide those funds from the emergency fund as well.

Claims for OPA removal costs and damages that have been denied or not settled by the responsible party after 90 days may be presented to the NPFC for payment from the OSLTF. State claims for removal costs can be presented directly to the NPFC against the OSLTF. General claims provisions are delineated in 33 USC §2713 and the implementing claims regulations for claims against the OSLTF in 33 CFR 136.

OPA provides that all claims for removal costs or damages shall be presented first to the responsible party. Any person or government may be a claimant. If the responsible party denies liability for the claim, or the claim is not settled within 90 days after it is presented, a claimant may elect to commence an action in court against the responsible party or to present the claim to the NPFC for payment from the OSLTF. OPA provides an express exception to this order of presentment in respect to State removal cost claims. Such claims are not required to be presented first to the responsible party and may be presented direct to the NPFC for payment from the OSLTF. These and other general claims provisions are delineated in 33 USC section 2713 and the implementing regulations for claims against the OSLTF in 33 CFR Part 136. NPFC maintains information to assist claimants on its website at www.uscg.mil/npfc.

NPFC pursues cost recovery for all OSLTF expenses for removal costs and damages against liable responsible parties pursuant to federal claims collection law including the Debt Collection Act, implementing regulations at 31 CFR parts 901-904 and DHS regulations in 6 CFR part 11.

Aggressive collection efforts are consistent with the “polluter pays” public policy underlying the OPA. Nevertheless, the OSLTF is intended to pay even when a responsible party does not pay.

CONCLUSION

Mr. Chairman, I appreciate the leadership demonstrated by the committee in moving to improve the safety of offshore drilling and address the hard lessons learned in the explosion of the Deepwater Horizon.

The CHAIRMAN. Let me just ask one question. Obviously, on these offshore drilling units, these mobile offshore drilling units, what is the main point there? Lack of requirements that we have for third-party review of the key drilling equipment involved with those? Is that the issue?

Mr. ALLEN. Yes, sir. Let me take both of those statements apart, if I could?

First of all on mobile drilling units, the Deepwater Horizon was registered in the Marshall Islands. It is a foreign flag. It doesn't touch U.S. soil. So, therefore, it is not required to be regulated under what we would call the Jones Act.

We issued what is called—the Coast Guard issues what is called a “certificate of compliance.” That means they are in compliance with U.S. code or in compliance with international code, or the code of that country is in substantial compliance with international code. In other words, there is a certification process that their country is adhering to international standards.

There are 2 other areas where we deal with foreign flag vessels in this country, and I think we need to take a look at both of those in response—I mean in relation to mobile drilling units. The first one on how we treat cruise ships. They carry a large number of U.S. passengers. They don't go port to port, but they go in and out of a single port.

There is such a high concern about the safety of life that we actually inspect these vessels while they are being constructed and conduct annual and quarterly exams. We call them control verification exams. I think that is instructive on how we need to deal with foreign-flagged offshore mobile drilling units.

The second is what we call Port State Control Programs, and these are foreign-flagged ships carrying commodities, cargo or oil, that call in this port in the United States. We actually develop a matrix based on the performance of the vessel, the owner of the classification society, and the flag that they fly.

Based on that matrix, if we think there is enough risk, we can hold them offshore and board them before they come in to make sure they are conforming to international safety standards, or if the situation is bad enough, we can deny them entry. I think we need to take a look at those 2 regimes, how they relate to the certification of mobile offshore drilling units in this country, and significantly raise the safety standards.

I know those conversations are going on inside the Coast Guard right now. But my recommendation would be to take a look at those 2 frameworks and apply that to mobile offshore drilling units, sir.

The second issue is on the drilling systems themselves. You talked earlier about API and consensus specifications. They are pretty much accepted as a way to move that equipment actually into operation.

I think we are all in agreement. I think Secretary Salazar would support it and everybody that was involved in the spill that an independent, third-party technical entity would inspect those against a set of standards, promulgated by regulations pursuant to legislation you would pass, entirely in order, sir.

The CHAIRMAN. Thank you very much.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Admiral, it is good to see you. A couple questions for you this morning. First of all, I would like to focus on the issue of dispersants. As you recall, about this time last year, there was a great deal of back and forth about the use of dispersants and what was a safe level.

The whole issue of we know how it works and better understanding at the surface. But when we are making application subsurface, it is different. It seemed like there was a lot of just back and forth and just some internal issues with regard to the decisions that were being made with the use of dispersants coming from EPA, working with Coast Guard.

The question to you today is kind of knowing where we are and lessons learned from Macondo, does the legislation that we have before us, does this adequately address some of the concerns that were raised in terms of when, where, and how to apply dispersants? Is it really good policy to require our deepwater operators to prove access to subsea dispersants? Just kind of a range of questions about dispersants here.

Mr. ALLEN. Yes, ma'am, and very, very timely as well. It actually relates to Senator Shaheen's question.

We have not demonstrably done any further R&D on dispersant use or the impact of dispersants, other than certifying what their impact is and putting them on a national schedule, which oil spill response organizations then can use to source those if preapproved protocols are met.

That, in addition to the fact that when we got into the spill, that was one of the tools in the toolbox that was authorized under a schedule that was approved by EPA. We started using them in such large quantities that we moved into an area we had never been before. The second was a subsea application at the well head, which proved extremely effective in mixing the dispersants and using the energy of the oil rising to the surface to break that into smaller particles, which biodegrade more quickly.

We ventured into 2 areas where we have never been before, by extending a regulation that had been issued after the oil spill—the Oil Pollution Act of 1990, without any significant, in my view, research being done in between now and then.

I think we have to, moving forward, given the concerns that were raised on the amount of dispersants and the application at the well head, put a focus on the interaction of dispersants in the water column, the interaction of dispersants with the oil, the implications for toxicity in the water, and learn more about what that means.

Everything we did during the spill response was in conformance with existing law and regulation. So, therefore, nothing was done that was legally wrong.

But there was so much concern raised that, as the National Incident Commander, I think it behooves us and the American public to take a good close look at this, and if we think where we are at is OK, we need to affirm that. If we think we need more research or to take a second look at how these chemicals are tested and brought on schedule, we need to do that, ma'am.

Senator MURKOWSKI. Let us take this conversation up north then to the Arctic. It is my understanding that in Alaska, the use of dispersants has not been preauthorized. Is that correct?

Mr. ALLEN. Yes, ma'am, and I am going to go on memory here because, as you know, I have not been in the service for a while now. There was a discussion, as I was departing the service, about preapproval locally.

The way the law is set up, you can use dispersants or conduct an in-situ burn if certain conditions are met. You can have preapproval to do that if the local team, the Federal team that is working on this has gained a consensus and approves it.

Most places in the country, those preapprovals exist. At the time I left as Commandant, that preapproval did not exist in Alaska, and I believe there were objections by the Fish and Wildlife Service on some uses of the dispersant.

Senator MURKOWSKI. It is my understanding that it is not preauthorized at this point. Of course, as we are trying to advance oil and gas exploration offshore and we look to the proposals and the plans that are out there, I think this is one of those areas that we need to know and understand how dispersants work in the colder waters.

This is not a first. Norway, as an Arctic Nation, has been operating successfully offshore for decades and looking to move further north from the southern areas.

How do we make sure that we have appropriately and adequately done the research, done the testing that we need for oil spill cleanup in the event that we need it? We don't want to be sitting in the—if something horrible happens, we don't want to be sitting in a situation where we are held off from using a tool in the toolbox because we haven't done the background or the research that we need on this.

Mr. ALLEN. Let me talk about dispersants first. I think in relation to dispersants, we need an affirmation that the existing schedule of chemicals, including COREXIT, which was the dispersant used in the Gulf, remains approved. It does, nothing has changed.

So if that is the case, a very public affirmation, I think, would be in order so we can move on in places like Alaska and form a collective consensus on preapprovals, should we need to use that.

Beyond that, it gets back to Senator Shaheen's call for R&D. It goes well beyond just looking at well control and capping systems. We need to look at modern technologies. There are new biodegradable agents out there. There are other things that we need to look at, as far as their effectiveness goes.

But I can tell you, the worst time to do R&D is during an oil spill. We got deluged with thousands and thousands of offers, requests, and suggestions that we just could not vet and then bring them to market, if you will, to apply in the spill at the time.

There was an interagency committee on R&D that was set up pursuant to the Oil Pollution Act in 1990. In fact, as a midgrade officer, I helped establish that inside the Coast Guard. The funding tailed off in the first 2 or 3 years, and you can't do much with a couple hundred thousand dollars a year in that interagency committee.

I would submit when you move beyond the well containment and capping processes related to drilling systems under the purview of the Department of the Interior, the right place to go at this, in my view, is in an interagency committee on R&D with a set of priorities that are shared by EPA, NOAA, and the other agencies that have a stake in this, and then a robust schedule to go out and actually bring the questions that were raised during the spill up, get them researched, and come up with a public policy decision on how to move forward.

Senator MURKOWSKI. I would certainly concur. You know, one of the great disappointments following the Exxon Valdez tragedy was a lot of lessons learned there. In fact, we really haven't made much progress in terms of the technology and the advancements when it comes to cleanup in the water from the time of the Exxon Valdez 20 years ago to what we saw with Macondo.

Again, it is kind of one of these wakeup calls, you know, who was doing the research? Who was doing all of this? We cannot be in a situation where the technologies for the cleanup have just kind of been at a standstill, while the technologies that allow us to produce in different places under different conditions, they are allowing us to leapfrog forward, good for us.

But what also has to leapfrog with that are the technologies and the advancements that give us that protection, if you will, or that assurance that in the event of a disaster, that we are prepared. I would like to think that when it comes to the use of the dispersants or other spill containment measures, we are spending the same amount of time and energy to introduce them and to keep them current as we are facilitating the technologies to access the resource.

Mr. ALLEN. Complete agreement, ma'am, and I would support any legislation that does that.

Senator MURKOWSKI. We will work. Thank you.

The CHAIRMAN. Senator Shaheen.

Senator SHAHEEN. Yes, thank you, Mr. Chairman.

I want to get back to the R&D question that Senator Murkowski has raised. But I want to just clarify what I think I heard you say when you were talking foreign-flagged mobile drilling units.

Do I understand from your comments that, right now, we do not inspect those foreign-flagged mobile drilling units?

Mr. ALLEN. We do, but included in that is an audit of paperwork that demonstrates they are in compliance with international standards or substantially in compliance with the code that we would use for a U.S.-flagged vessel. It does not include, in my view, a more robust inspection that we would do under those 2 other regimes that I discussed, the Port State Control regime for tankers and cargo ships and the control verification exam for cruise ships.

I think mobile drilling units have moved into a risk area that requires a higher level of due diligence to ascertain they are in compliance with international standards. That is what I would recommend.

Senator SHAHEEN. Great. Thank you for that clarification.

I want to go back to the R&D question because I think we all now agree that that is something that is important to do, and we are not doing it enough or well enough, and we don't have the private sector involved.

Last year, following the oil spill, Chairman Bingaman, Senator Udall, and I introduced legislation that would have set aside \$25 million a year from oil and gas royalties to fund oil spill R&D activities. Because one of the issues we discovered, as you point out, is that under the Oil Pollution Act, while there was funding several years after the act was passed, that that funding trailed off pretty dramatically. So, in your experience, is a dedicated funding source one of the requirements for ensuring that we get adequate R&D done?

Mr. ALLEN. Ma'am, as an old budget director in the Coast Guard, in this town, you don't make policy until you spend money. But I would say this. There is a mechanism created under the Oil Spill Liability Trust Fund, which is funded through a per barrel tax on crude oil coming into this country.

There is a mechanism by using that as a—I don't think a new source of funds has to be sought. I think there is probably statutory authority right now to use the Oil Spill Liability Trust Fund to fund a modest amount of R&D every year. And \$25 million is a modest amount, given the nature of research and development, but

will completely dwarf—completely dwarfed by our magnitude of the current effort.

Senator SHAHEEN. One of the things that amazed me when I questioned the CEOs who were part of the oil spill last year at the hearing about this issue was that none of their companies were doing any research at all around oil spill R&D.

Do you have any thoughts about how we could encourage those companies who are doing the drilling, as Senator Murkowski said, to spend the same amount of money researching how to clean up as they are researching effective drilling practices?

Mr. ALLEN. I think, ultimately, there are 2 drivers of behaviors for the oil companies. The first one are the response plans and the requirement to identify resources in the response plans. We may have an opportunity when we go back and look at plan review, which is something we need to do, and have the Coast Guard involved because they are responsible for directing the cleanup in plan review for the oil platforms.

But how you create the requirement for the response plans and what you tell them they have to have available can drive them to create those resources. So if you want to create an incentive, my recommendation would be to take a look at how you want to structure the requirements and the response plans.

It would create an incentive for them to go out and do research and development that would apply to the oil spill response organizations—or the OSROs, as we would say—to get more involved with that moving forward. I think that would be one way to do it.

Senator SHAHEEN. OK. That is a helpful suggestion.

One of the other things we heard, looking at how the Oil Pollution Act had worked, was that the interagency committee that was set up to develop and direct the oil spill R&D plan had not been as effective as it might have been. Suggestions to us were that the challenge was that it wasn't clear who was in charge, and that created a real issue around getting things done. Do you have a perspective on that?

Mr. ALLEN. I do. There is an existing standing body called the National Response Team. This is identified in the national contingency plan under statute and regulation that is the ultimate body that we would go to, to adjudicate a policy issue on dispersants during an actual spill.

They exist. They meet regularly. They are in panel. They represent the principles of all of the department agencies that are involved. I see that body as a perfect mechanism to be given the oversight responsibility for the interagency R&D Committee.

I would say this, though, when you have a committee that only has several hundred thousand dollars to spend year, they are not going to be a very robust committee to begin with.

Senator SHAHEEN. Right. Who chairs that committee?

Mr. ALLEN. I think it rotates. I can check and answer for the record. I would take a guess it might be co-chaired by Coast Guard and EPA, as the NRT is. But I would have to check and get back to you on that, ma'am.

Senator SHAHEEN. OK. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Admiral, thank you very much for your excellent testimony and your suggestions, and we will try to take them to heart.

Mr. ALLEN. Thank you very much.

The CHAIRMAN. Thanks for your great service to the country last year. We greatly appreciate it.

Mr. ALLEN. Thank you.

The CHAIRMAN. Our final panel today is Dr. Nancy Leveson, who is a professor of aeronautics, astronautics, and engineering systems at MIT; and Mr. Jack Coleman, who is managing partner and general counsel with EnergyNorthAmerica.

Thank you both for waiting and being here to testify.

Dr. Leveson, why don't you start and give us about 5 minutes of the main points you think we need to understand? Your full statement will be included in the record, as will Mr. Coleman's.

Again, we appreciate your being here. Go right ahead.

STATEMENT OF NANCY G. LEVESON, PROFESSOR, AERONAUTICS, AND ASTRONAUTICS, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, CAMBRIDGE, MA

Mr. LEVESON. OK. Thank you.

Legislation to improve safety in the offshore oil and gas industry will require not only creating tasks for Government, but even more important, Government providing incentives for the industry to take appropriate steps for themselves, such as creating an INPO-like organization as recommended in the oil spill commission report.

One of the surprises that emerged in the investigation of the accident was a lack of standards in the industry. Having the API lead standard efforts is a mistake and has not worked at all. We might consider what they do in commercial aviation. There is an independent group called the RTCA, which performs this role.

The RTCA is a private, not-for-profit corporation that develops consensus-based recommendations and standards. It essentially functions as a Federal advisory Committee. It has been extremely effective in getting the industry players to work together to produce strong aviation industry standards.

Another recommendation I agree with in the oil spill commission report was that Safety, Environment, and Management Systems, the SEMS, should be required by BOEMRE as a prerequisite for issuing licenses and permits for exploration and drilling activities. It may be inappropriate or infeasible for BOEMRE to get deeply involved in many of the activities needed to improve safety in this industry, such as certification and training, better learning from events, compliance with maintenance, and management of change procedures and real-time advice to decisionmakers as they are making critical decisions.

I was personally very surprised that there was no mention of any operational safety group advising decision-makers on the platform as they were making the decisions on Deepwater Horizon. These are the important functions of a company safety management system, and they clearly didn't have good ones.

A third issue is the whole issue of third-party certification. Oversight of complex activities is difficult for any regulatory agency.

The FAA has even a more difficult problem. They can't possibly provide detailed oversight of the design and manufacturing all the millions of parts on a commercial aircraft, just one commercial aircraft, or the 10 million commercial flights in the U.S. each year.

The FAA solves this problem by using what are called designated engineering representatives. I believe that BOEMRE could consider employing a similar type of third-party certification process.

Now there is one recommendation in the oil spill commission report and in your legislation that I have serious reservations about, and that is the use of safety cases. The common definition of a safety case is an argument for why the system will be safe, but there is surprisingly little evidence for the effectiveness of the safety case approach to regulation.

In fact, the use of safety cases has been highlighted in accident reports as a major cause of the accident. Most notably, the loss of the UK Nimrod aircraft in Afghanistan in 2006.

A major problem with safety cases is what psychologists call confirmation bias. In plain language, what this means is that people look for evidence that supports the goal they are trying to achieve.

So when you make a safety case, you focus on the evidence that argues for the safety of the system. People don't usually look for evidence that suggests that the system is not unsafe and often even ignore such contradictory evidence when it presents itself.

The result can be a paperwork, compliance-oriented culture where safety efforts focus on proving the system is safe, rather than designing it and operating it to be safe.

Thank you.

[The prepared statement of Mr. Leveson follows:]

PREPARED STATEMENT OF NANCY G. LEVESON, PROFESSOR, AERONAUTICS AND
ASTRONAUTICS, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, CAMBRIDGE, MA

I thank you for inviting me here today to speak on risk management in the offshore oil and gas industry. To provide some background, I have been practicing, teaching, and doing research in system safety engineering for over 30 years. Although I am a professor of aerospace engineering, I have experience in almost all industries including aerospace, defense, transportation (automobiles, trains, air traffic control), oil and gas, chemicals, nuclear power, medical devices, and healthcare. I have been involved in the investigation of many major accidents, most recently I was on the Baker Panel investigation of the BP safety culture after the 2005 Texas City Oil Refinery explosion and a consultant to both the Columbia Accident Investigation Board and the Presidential Oil Spill Commission. I am also a co-owner of a 20-year old company that provides safety engineering services.

System safety engineering (which should not be confused with occupational safety) has been in existence as a system engineering discipline for at least 50 years. In the process industry, this engineering discipline is called process safety engineering. Much is known about how to engineer and operate safer systems and to manage safety risks successfully. The low accident rates in industries that apply these principles, such as commercial aviation, nuclear power, and defense systems, is a testament to their effectiveness. The recent accidents and subsequent investigations in the offshore oil industry makes it clear that at least some players in this industry are not using basic and appropriate safety engineering technologies and practices.

Commercial aviation is an example of an industry that decided early that safety paid. After World War II, Boeing wanted to create a commercial airline industry but, because of the high accident rate (there were 18 airplane crashes in 1955 despite a relatively small number of flights), only 20 percent of the public was willing to fly. Today the commercial aircraft accident rate is astoundingly low, particularly considering that there are about 10 million commercial airplane flights per year in the U.S. and over 18 million world-wide. In 2010, for example, U.S. Air Carriers flew 17.5 million miles with only one major accident.

Another surprisingly safe industry is defense. We have never, for example, accidentally detonated a nuclear weapon in the 60 years they have been in existence. The nuclear Navy, which prior to 1963 suffered the loss of a submarine on average every two to three years, instituted a wildly successful safety program (called SUBSAFE) after the loss of the Thresher nuclear submarine in 1963. No U.S. submarine has been lost in the 48 years since that program was created. Nuclear power in the U.S., after the wakeup call of Three Mile Island, has also had an extremely successful safety record.

These success stories show that even inherently very dangerous technologies can be designed, operated, and managed in ways that result in very low accident rates. Accidents are not inevitable nor are they the price of productivity. Risk can be managed successfully without reducing profits long-term, but some effort must be expended to do so. We know how to do this and the costs are surprisingly low when done right.

Common Factors in Major Accidents

Major accidents share some common factors:

- Flaws in the safety culture of the organization and sometimes the whole industry—Organizational culture is the set of shared values and norms upon which decisions are based. Safety culture is simply that subset of the overall culture that reflects the general attitude and approaches to safety and risk management. Safety culture is primarily set by the leaders of the organization as they establish the basic values upon which decisions will be based. Some common types of dysfunctional safety cultures can be identified. For example, Hopkins coined the term Culture of Denial to describe industries or organizations where risk assessment is unrealistic and credible warnings are dismissed without appropriate actions. In a culture of denial, accidents are assumed to be inevitable. Management only wants to hear good news and may ensure that is what they hear in subtle or not so subtle ways. Often arguments are made in these industries that the conditions are inherently more dangerous than others and therefore little can be done about improving safety or that accidents are the price of productivity and cannot be eliminated. Many of these features of a culture of denial are displayed by at least some companies engaged in off-shore oil drilling. The president of the American Petroleum Institute, for example, was quoted as saying after both the Washington State Tesoro Oil Refinery explosion and after Deepwater Horizon that the oil and gas industry is just more risky than others. Note, however, that there is nothing very safe about flying in a metal tube 30,000 feet in the air in an unsurvivable outside environment and kept aloft by two engines or being a mile below the surface of the ocean in a submarine with a nuclear power plant. Yet these very dangerous industries are able to operate with very few or no accidents.

A second type of dysfunctional safety culture might be termed a Paperwork Culture, where employees spend all their time writing elaborate arguments that the system is safe but little time actually doing the things necessary to make it so. After the U.K. Nimrod aircraft loss in Afghanistan in 2006, the accident report cited the use of safety cases as a major contributor to the accident and noted the use of such cases had created a “culture of paper safety” at the expense of real safety [Haddon-Cave, 2009].

- Lack of real commitment to safety by leaders—Management commitment to safety has been found to be the most important factor in distinguishing between organizations with high and low accident rates [Leveson, 1995].
- Nonexistent or not followed management of change procedures—A large percentage of major accidents occur after some change in the system or in the way it is operated. While most companies have management of change procedures on their books, these procedures are not always followed.
- Inadequate hazard analysis and design for safety— Instead of putting the emphasis on designing safety into the system from the beginning, the major emphasis is instead placed on recovery from adverse events or investigating them after they occur.
- Flawed communication and reporting systems—In a surprisingly large number of accidents, unsafe conditions were detected prior to the actual loss events or precursor events occurred but were not adequately reported or investigated so that the loss event could be prevented.
- Inadequate learning from prior events—Prior incidents and accidents are very often only superficially investigated. The symptoms of the underlying systemic causes of the accident or incident are identified as the cause of the events but not the underlying flawed processes or culture that led to those symptoms. This

behavior leads to a sophisticated game of “whack-a-mole” where changes are frequently made but accidents continue to occur. Such organizations are in continual fire-fighting mode after multiple accidents caused by the same underlying causes. In the “whack-a-mole” safety culture, accident investigation usually focuses on operator error or on technical failures and ignores management and systemic factors.

Human error is a symptom of a safety problem, not a cause. All behavior is influenced by the context or system in which it occurs. Reducing operator error requires looking at such things as the design of the equipment, the usefulness of the operating procedures provided, and the existence of goal conflicts and production pressures [Dekker, 2006]. Telling people not to make mistakes, firing operators who make them, or trying to train people not to make mistakes that arise from the design of the system is futile. Human error can be thought of as a symptom of a system that needs to be redesigned. In addition, technical failures also need to be investigated for the flaws in the process that allowed them to be introduced and not to be identified during reviews and testing.

A basic flaw in accident and incident investigation is the search for a root cause. Finding one or two so-called root causes of an accident provides management with the illusion of control, a phenomenon John Carroll labeled “root cause seduction.” Accidents are complex processes and oversimplifying causation leads to future accidents caused by those problems that were never identified or fixed after the previous losses.

Sometimes important causes of accidents are identified or problems detected during performance audits, but the information is never effectively used to redesign the social and physical components of the system. Why was the safety control structure (see below) ineffective in preventing the loss events? How can it be strengthened? A program of continual safety improvement needs to be created.

Two additional common factors in accidents are primarily found only in the process (chemical, oil, and gas) industry:

- Confusion between occupational and system safety—Most industries separate these very different problems. Occupational safety focuses on controlling injuries to employees at work by changing individual behavior. System safety puts an emphasis on designing the system, including the engineered and operational components, to prevent hazardous system states and thus losses. Confusion between these two very different problems and solutions can lead to overemphasis on only one type of safety, usually occupational or personal safety, while thinking that the other types of accidents or losses will also be prevented—which they will not. Because personal safety metrics (such as days away from work) can more easily be defined and collected than process or system safety metrics, management is fooled into thinking system safety is improving when it is not and may even be deteriorating.
- Belief that process accidents are low probability—Referring to accidents as “low-probability, high consequence” events is rampant and unique to this industry. The implication is that accidents are low probability no matter how the system is designed or operated. Labeling is used to prove that accidents are rare. While process accidents may be low frequency, they are not necessarily low probability. The number of reported oil spills in the Gulf of Mexico alone cited in the Presidential Oil Spill Commission report between 2006 and 2009 was 79, not a low number considering that translates to 6 oil spills a year or one every two months in a relatively small part of the industry and other unreported smaller spills may have also occurred. The fact that the consequences of the events may differ often depends on factors in the environment over which the engineers and operators have no control and are often a matter of luck. The way that the Macondo well was designed and operated made an accident quite high probability. It was not a low probability event. This mislabeling leads to the belief that nothing can be done about such events nor does anything in particular need to be done to reduce their probability—they are by definition already low probability.

Safety as a Control Problem

Traditionally, safety has been considered to be a system component failure problem. Preventing accidents then simply requires making each individual component very reliable. This approach, however, oversimplifies the accident process and cannot prevent accidents created by interactions among components that have not failed. A new, systems approach to accidents instead considers safety to be a control problem [Leveson, 2011]. In this conception, accidents result from a lack of enforcement of constraints on safe behavior. For example, the O-ring did not control the

release of propellant gas by sealing the gap in the field joint of the Challenger Space Shuttle. The design and operation of Deepwater Horizon did not adequately control the release of hydrocarbons (high-pressure gas) from the Macondo well. The financial system did not adequately control the use of dangerous financial instruments in our recent financial crisis.

Behavioral safety constraints are enforced by the safety control structure of the organization or industry. Figure 1* shows the control structure for operations at the Macondo well in particular and offshore oil drilling in general. The system-level hazard is uncontrolled methane gas surging up the well. Similar control structures, not shown, exist for engineering development and licensing of the well equipment and for emergency response.

Each of the components in this structure plays different roles and has different responsibilities for ensuring safe behavior of the physical process and the organizational components of the structure. Between components there are feedback control loops where control actions are used to achieve the system and component goals (see Figure 2*). Feedback provides information about how successful the control actions have been. For example, the cementer pours cement and receives feedback about how the process is proceeding.

Decisions about providing control actions is partly based on a model the controller has of the controlled process. Every controller must contain a model of the process it is controlling. For human controllers, this model is usually called a mental model. Accidents often result from the process models being inconsistent with the actual state of the process. For example, managers use occupational safety data to make decisions about the state of process safety or an engineering manager believes the cementing process was effective and provides a command to remove the mud.

Control decisions are also influenced by the social and environmental context in which the controller operates. To understand individual behavior requires understanding the pressures and influences of the environment in which that behavior occurs as well as the model of the process that was used.

Losses occur when this control structure does not enforce appropriate behavioral safety constraints to prevent the hazard. In Figure 1, there are physical controls on the well such as the blowout preventer, mud, and cement. Each of the other components of the safety control structure has assigned responsibilities related to the overall system hazard and controls they can exercise to implement those responsibilities. These controls may involve physical design, technical processes, social (cultural, regulatory, industry, company) processes, or individual self interest. For example, part of the responsibility of the MMS was to approve plans and issue drilling permits. Partial control over the safety of operations in the GOM could, at least theoretically, be implemented by appropriate use of the approval and permitting processes.

Determining why an accident occurred requires understanding what role each part of the safety control structure played in the events. Accidents can result from poor design of the control structure, individual components not implementing their responsibilities (which may involve oversight of the behavior of other components), communication flaws, conflicts between multiple controllers controlling the same component, systemic environmental factors influencing the behavior of the individual components, etc. Major accidents, such as the Deepwater Horizon explosion and oil spill, usually result from flawed behavior of most of the system components.

Preventing accidents requires designing an effective safety control structure that eliminates or reduces such adverse events.

An important consideration in preventing accidents is that the control structure itself and the individual behavior of the components is very likely to change over time, often in ways that weaken the safety controls. For example, a common occurrence is for people to assume that risk is decreasing after a period of time in which nothing unsafe occurs. As a result, they may change their behavior to respond to other conflicting goals. Migration toward states of higher risk may also occur due to financial and competitive pressures. Controls must be established to prevent or at least to detect when such migration has occurred.

There is not just one correct or best safety control structure. Responsibilities may be assigned to different components depending on the culture of the industry, history, or even politics. It is important to note that all responsibility for safety should not necessarily rest in the government or a regulatory authority. Because the lower levels of the structure can more directly impact the behavior of the controlled process, it is much more effective for primary safety responsibility to be assigned to the companies with the regulatory authorities providing oversight to ensure that the proper safety practices are being used. In some industries, however, the companies

* Figures 1–2 have been retained in committee files.

are unable or unwilling to shoulder the bulk of the safety control responsibilities and the regulatory authorities must provide more control.

The safety control structure as defined here is often called the safety management system.

Establishing Controls to Prevent Future Oil Spills

Given this system and control view of safety, we can identify the flaws in the safety control structure that allowed the Deepwater Horizon accident to occur and what can be done to strengthen the overall offshore oil and gas industry safety control structure. Many of the recommendations below appear in the Presidential Oil Spill Commission report, which is not surprising as I played a role in writing it, particularly Chapter 8. The general key to preventing such occurrences in the future is to provide better information for decision making, not just for the government regulators but for those operating the oil rigs.

There are many changes that would be useful in strengthening the safety control structure and preventing future oil spills. Focus should not just be on BOEMRE but on all the components of the control structure. Some general recommendations follow.

- Providing appropriate incentives to change the safety culture—Participants in industries like commercial aviation understand the direct relationship between safety and their profits and future viability. The relationship is not so clear in the off-shore oil industry. The moratorium on GOM drilling was a very strong signal to the industry that those companies with strong safety cultures and practices can be hurt by those without them and that they need to participate in industry initiatives for self-policing and cooperation in improving safety. There also need to be incentives to update safety technology. The standard BOP design was less effective as exploration moved into deeper water and other technology changes occurred, but the industry ignored the many previous BOP failures and insisted that the design could not be improved. A similar example occurred with the Refrigerator Safety Act of 1956, which was passed because children were being trapped and suffocated while playing in unused refrigerators. Manufacturers insisted that they could not afford to design safer latches, but when forced to do so, they substituted magnetic latches for the old mechanical latches. The magnetic latches permit the door to be opened from the inside without major effort. The new latches not only eliminate the hazard, but are cheaper and more reliable than the older type [Martin and Schinzinger, 1989]. A similar example occurred when an improved BOP was designed quickly after the Macondo well blowout. BOEMRE needs to keep on top of needed technical incentives as oil exploration and extraction conditions change and ensure that incentives exist to update safety technology that has become less effective.
- Industry standards—One of the surprises that emerged in the investigation of the accident was the lack of standards in the industry, for example standards for cementing operations. Even weak guidelines, like API Recommended Practice 75 (Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities), have been unable to get consensus. Having the API lead standards efforts may be a mistake. In commercial aviation, an independent group called the RTCA performs this role. RTCA, Inc. is a private, not-for-profit corporation that develops consensus-based recommendations regarding communications, navigation, surveillance, and air traffic management (CNS/ATM) system issues. RTCA functions as a Federal Advisory Committee. Its recommendations are used by the Federal Aviation Administration (FAA) as the basis for policy, program, and regulatory decisions and by the private sector as the basis for development, investment and other business decisions. RTCA acts as the honest broker and has been very effective in producing strong aviation industry standards.
- Industry self-policing—Any government regulatory agency is limited in what it can accomplish. After Three Mile Island, the nuclear power industry created an industry organization, called INPO, to provide shared oversight of safety in nuclear power plants. INPO is described in the Presidential Oil Spill Commission report and recommended as a model for the oil and gas industry to help ensure that the best technologies and practices are used. The tie of INPO reviews to insurance coverage adds extra incentive.
- Safety management systems—The industry safety control structure in Figure 1 is an example of a safety management system at the industry level. Safety management systems (safety control structures) also exist within each company although some are not well designed. For example, one of the findings of the Baker Panel was that the BP safety management system for oil refineries needed improvement. The FAA has recently decided that more responsibility for

safety needs to be assumed by the airlines and others in the industry and is requiring safety management systems in the companies for which they provide oversight. Safety management systems are also being created for internal FAA activities, such as air traffic control. The Presidential Oil Spill Commission Report recommended that SEMS (Safety and Environment Management Systems) be required by BOEMRE as a prerequisite for issuing licenses and permits for exploration and drilling activities.

- Integration of safety engineers into operational decision making—One of the surprises to me personally in the Deepwater Horizon investigations was the lack of any operational safety group advising the decision makers on the platforms. If such a group existed, it did not play an important enough role to be mentioned in the description of the events that occurred. Industries with strong safety programs include a person or group that is responsible for advising management at all levels of the organization on both long-term decisions during engineering design and development of new platforms and on the safety implications of decisions during operations. In most other industries, a safety engineer would have been resident on the platform and involved in all the real time safety-related decision making. This change needs to be put in place by any companies that do not already have such a process safety engineering group.
- Certification and training—Another lesson learned from the investigation of the Deepwater Horizon accident is that some workers have minimal training and little certification is required. The changes needed here are obvious.
- Learning from events—A systems approach to accident and incident investigation needs to be implemented by everyone in the industry in order to improve the learning and continual improvement process [Leveson, 2011].
- Hazard analysis—While the process industry has a very powerful hazard analysis technique, called HAZOP, the use of this technique is not as prevalent as it should be. The results from HAZOP need to be used to improve technological design and also passed to operations to guide maintenance and performance audits.
- Maintenance—For the Macondo well, maintenance of safety-critical equipment, for example on the BOP, was not performed as required for safety and as specified in the equipment standards. Regulatory agencies can only spot-check compliance. Ensuring that proper maintenance activities are performed is an important activity for the company Safety Management System.
- Third Party Certification—Oversight of complex activities is difficult for any regulatory agency. The Designated Engineering Representative (DER) model used by the FAA may be appropriate for BOEMRE. The FAA cannot possibly provide detailed oversight of the design and manufacturing of all the millions of parts on a commercial aircraft. The problem is solved by the use of DERs, who may be independent experts or may actually work for the company in which oversight is being applied. DERs exist for individual technical engineering specialties, such as propulsion, structures, for general system engineering, and for manufacturing. The DER works under the oversight of an FAA employee and has the power to approve technical data and activities in companies. Various types of mechanisms are used to ensure that DERs are technically well-qualified and execute their responsibilities with appropriate care, diligence, and independence from conflicts of interest. The details of how this program works are beyond the scope of this testimony, but the DER program could provide a model for devising something similar for BOEMRE.
- Management of change—As noted earlier, accidents often occur after changes. Any change that has safety implications should be carefully evaluated, including performing a hazard analysis, before it is allowed. Most companies have policies for management of change, but the implementation and enforcement of these policies can vary greatly. One of the unique aspects of the off-shore oil and gas industry is the need for changes to procedures quickly based on information uncovered about the particular geological conditions encountered. It may be impractical for BOEMRE to approve all these changes in a timely enough manner. The importance of the safety engineering function within the companies enters here. BP used a decision tree to make real-time decisions about activities on the platform. Such decision trees can and should be analyzed prior to use for the safety of each of the branches. In addition, the consultation with a safety engineering expert during operations can also improve decisions about required changes, which is another reason why a strong process safety engineering group needs to be tightly integrated into operations and operational decision making.

There is one recommendation in the Presidential Oil Spill Commission report about which I have some reservations and that is the use of safety cases. While what is in a safety case will determine its efficacy, the common definition of a safety case as an argument for why the system will be safe has some serious drawbacks. There is surprisingly little evidence for the efficacy of the safety case approach to regulation. In fact, the use of safety cases has been highlighted in accident reports as a major causal factor, most notably the Nimrod accident mentioned earlier. A major problem with safety cases is what psychologists call "confirmation bias." In simple terms, people look for evidence that supports the goal they are trying to achieve. So when making a safety case, focus is on evidence that supports that goal and the safety of the system. People do not usually look for evidence that contradicts the goal and often ignore such contradictory evidence when it presents itself. A paperwork, compliance-oriented culture can be created where safety efforts focus on proving the system is safe rather than designing it to be safe. Safety must be designed into a system from the beginning, it cannot be argued in after the fact.

The CHAIRMAN. Thank you very much.
Mr. Coleman.

**STATEMENT OF W. JACKSON COLEMAN, MANAGING PARTNER
AND GENERAL COUNSEL, ENERGY NORTH AMERICA, LLC**

Mr. COLEMAN. Thank you, Mr. Chairman and Ranking Member Murkowski and members of the committee. I appreciate the invitation to testify here today.

It is good to see many people in the room who I have known a long time, and including one former supervisor. I am managing partner and general counsel of EnergyNorthAmerica, as you mentioned. I have worked—and next year, it will be 30 years that I have been working on offshore oil and gas issues.

I retired from the Federal Government after 27 years 2 years ago. The last 6 years had been as, first, energy and minerals counsel for the House Resources Committee, and then Republican general counsel. Prior to that, I worked as senior attorney for the—with my client, the Minerals Management Service, for 11 years.

I am very familiar with the offshore oil and gas program. While I was representing the Minerals Management Service, I had the responsibility as a trial lawyer for the Interior Department for 3 major breach of contract cases, including one, Mobil v. U.S., which went to the Supreme Court.

I also, for quite a number of years, Senator Murkowski, was the lawyer responsible for offshore—oil and gas offshore Alaska for legal issues. In that role, I was the lawyer for the North Star litigation dealing with the North Star development and for the McCovey litigation, where we had 4 lawsuits dealing with one well exploration plan, 4 different lawsuits.

This is—certainly in Alaska, it has been highly litigious dealing with the offshore. I am afraid that I see that moving to the Gulf of Mexico.

Let me just say this. I started my work in the offshore as a special assistant to the Associate Administrator of NOAA back in 1982 for 3 1/2 years. So I have worked it from all angles—environmental agencies and the Minerals Management Service.

I am very concerned—and I want to compliment the proponents of the bills that you are considering today. They all have many very fine provisions in it.

The smaller bills dealing with the extension of the leases in the Gulf of Mexico, I think that is absolutely essential. You have heard testimony today that the Interior Department was not prepared to

even consider permits for leases in the deep water until the end of February of this year.

Unfortunately, I heard—I think I heard Secretary Salazar say they were going to address only extending the leases for Gulf of Mexico wells that were directly impacted last year. That would only be the ones that were stopped from drilling.

That would not be fair, frankly, because everyone was told to stop. Everyone was told do not submit any permits to us, permit applications, we are not going to consider them. So every lease in the deep water was put on hold, not just those that were told to stop drilling at that time.

This is a matter of fundamental equity. Normally under the regulations, and certainly during the 11 years that I was at the Interior Department representing the Minerals Management Service, had we told someone to stop work on a lease, we would have issued a directed suspension under the regulations. That would have said you don't lose your lease time, and you don't pay rent during this time.

This legislation that is before you only says you don't lose your lease time. It doesn't make them not pay rent. So had this been handled in accordance with the regulations, they would not have been paying rent during this time, either. That would have been a significant amount of money, I think more than \$100 million in the Gulf of Mexico, just for these leases.

I want to address, because it has been central in all of the panels that you have had, this lengthy—this period of time for permit approvals. I think there is a lot of confusion about this.

As I mentioned in my testimony, it is not really—we will start with the exploration plans. The Outer Continental Shelf Land Act Amendments of 1978 put a statutory 30-day time period on acting on exploration plans. That has been the law. We have followed it since 1978.

Frankly, until complaints of recent vintage, there have not been any problems with meeting that standard. One of the reasons is, is because we don't take action on an exploration plan and that 30-day clock doesn't start running until the administration has an opportunity to take a look at that exploration plan, according to regulations, up to 15 working days, which is about 3 weeks, 20 days. Twenty to 21 days they have, calendar days, to look at an exploration—a submitted exploration plan and deem it complete.

If they don't deem it complete, then they send it back, and they tell why it is not complete. They tell a complete review. So, then the lessee has an opportunity to come back and fix those shortfalls, whatever the administration said should have been in there that wasn't. Then, if it is deemed complete—they go through that 15 working day period again. If it is deemed complete, then they have the 30 days to review.

So they have had much longer than 30 days to look at this proposal, much longer. I think I heard the Secretary say, well, we have got to have a longer period of time so we can do environmental assessments.

Frankly, No. 1, they have done environmental assessments within 30 days, but this is not necessarily the way that you would comply with NEPA. There are other ways to comply with NEPA.

Before I started working on offshore oil and gas, I was the senior attorney for environmental protection for the department for 3 1/2 years. You can bunch, as MMS used to do, do grid for a whole area, do an environmental assessment for that, see what the issues are for that group of tracks, that group of leases, and you have done it in advance. So, when you have an exploration plan request, you can then take action on it quickly.

As I said in my testimony, written testimony, you can either work smart, or you can work hard. You can make it hard and difficult, or you can be more efficient and smarter. You have the flexibility under NEPA to do that.

I also am happy to hear when Senator Manchin was asking questions about the House bill on permitting. Let us talk about that. In historic terms, the Minerals——

The CHAIRMAN. Could you sort of wrap up your comments here? We are about out of time, and we have started a vote.

Mr. COLEMAN. I am sorry, sir.

The CHAIRMAN. So go right ahead.

Mr. COLEMAN. All right. I will.

Historically, 10 days has been the time to once you submit your permit request to when it got approved, 10 days to 2 weeks. The House bill says you get up to 60 days, and you have to take a decision, make a decision. If you don't make a decision, then it is deemed approved. That does not mandate that you say yes. It just says you have to make a decision. I think it is only fair from a contract point of view.

I appreciate the opportunity to testify and would be happy to answer any questions.

[The prepared statement of Mr. Coleman follows:]

PREPARED STATEMENT OF W. JACKSON COLEMAN, MANAGING PARTNER AND GENERAL COUNSEL, ENERGY NORTH AMERICA, LLC

I. Introduction

Chairman Bingaman, Ranking Member Murkowski and members of the committee, my name is Jack Coleman and I am Managing Partner and General Counsel of EnergyNorthAmerica, LLC, a energy consulting firm with offices in Washington, DC, and Houston, TX. I appreciate the committee's invitation to present my views at this hearing on these four bills primarily dealing with offshore oil and gas. Early in 2009 I retired after a career of almost 27 years in the federal government—the last six of which were spent working in the House of Representatives. From February 2007 until March 2009, I was the Republican General Counsel of the House Committee on Natural Resources, and prior to that I served from May 2003 until late 2006 as the Energy and Minerals Counsel for the House Committee on Resources. While working in the House, I drafted many bills, including the Deep Ocean Energy Resources Act passed by the House in 2006, and significant parts of the Energy Policy Act of 2005.

My work in the House followed my previous fourteen years as a senior attorney at the Department of the Interior. From September 1992 until May 2003, I served as a senior attorney in the Office of the Solicitor with the Minerals Management Service (MMS) as my primary client, and prior to that, from January 1989 until September 1992, I served as Senior Attorney for Environmental Protection and legal advisor to the Department's Office of Environmental Affairs. My first work on offshore oil and gas issues began during the period from March 1982 until August 1985 when I was Special Assistant to the Associate Administrator of the National Oceanic and Atmospheric Administration.

Prior to my service at NOAA, I served on active military duty as an Army Judge Advocate General's Corps Captain from June 1978 until March 1982. My post-secondary education was completely at the University of Mississippi, except for graduate work in legislative affairs at the George Washington University. I received a

Juris Doctor degree from the University of Mississippi School of Law in 1978 and a Bachelor of Business Administration in Accountancy degree from the University of Mississippi in 1975. I am a member of the Mississippi Bar.

The focus of this hearing is on a number of bills related to offshore oil and gas. While all of these bills have provisions which I either recommend or find to be harmless, I will focus my testimony primarily on the aspects of these bills that cause concern, including some provisions that I believe could breach existing federal offshore oil and gas lease contracts and create substantial claims to be paid by US taxpayers. First, however, I will present a few facts about offshore oil and gas and our national debt and second, I will discuss the governing law related to federal oil and gas lease contracts.

II. Offshore Oil and Gas and our National Debt

The approximate daily oil consumption in the United States is 19 million barrels, with about 58%, or 11 million barrels per day, imported. Our largest source of foreign oil is Canada, but the majority of our imported oil comes from other nations. Our yearly amount of imported oil totals more than 4.2 billion barrels. As of the time of the last Department of the Interior Offshore Oil and Gas National Assessment of offshore oil and gas resources in 2006, just over 14 billion barrels of oil had been produced from the federal offshore and more than 15 billion barrels of already discovered oil reserves were available to be produced. Further, the National Assessment estimated that exploration and production activities in the federal offshore would, in the mean case, eventually produce an additional 86 billion barrels of currently undiscovered oil—assuming the offshore lands containing this oil are reasonably made available for leasing and production. These two amounts combine to an expected future production from the federal offshore of 101 billion barrels—sufficient to eliminate all oil imports by the United States, at current levels, for almost 25 years.

Similarly, the National Assessment estimated that just over 153 trillion cubic feet of natural gas have been produced from the federal offshore and that more than 60 trillion cubic feet of already discovered natural gas were available to be produced. Further, the National Assessment estimated that exploration and production activities in the federal offshore would, in the mean case, eventually produce an additional 420 trillion cubic feet of currently undiscovered natural gas—assuming the offshore lands containing the natural gas are reasonably made available for leasing and production. These two amounts combine to an expected future production from the federal offshore of 480 trillion cubic feet of conventional natural gas—sufficient to totally provide for the United States' current annual consumption of natural gas for more than 20 years.

One might ask, "What is the value of these reserves and resources to the American people?" This can be measured in many ways. The direct value of receipts to the Treasury from producing these reserves and resources, at \$75/barrel of oil and \$5 per thousand cubic feet of natural gas, is approximately \$1.8 trillion dollars in royalties (assuming an 18% royalty) and \$2.7 trillion in corporate income tax receipts from producers, for a total of \$4.5 trillion. This sum does not include any up-front sums paid to obtain the leases, nor the tax revenues derived from the jobs that will be created to directly produce these resources, nor the indirect and induced economic impacts of producing these American energy resources owned by the American people. Even without those additional benefits and others, the direct corporate taxes and oil and gas royalties will pay off one-third of our current national debt without raising taxes on the American people. However, these vast offshore resources will never pay off any of the national debt if they are not made available for leasing, drilling and production.

Additionally, it is important to note that these offshore resource numbers do not include natural gas hydrates which international public and private research has now proven will be able to be commercially produced in the near future. More than 99% of America's 320,000 trillion cubic feet of natural gas hydrates are located in the deepwater federal offshore. If even only 1% of this resource is eventually producible, it would add 3,200 trillion cubic feet of natural gas. Production of this 1%, or 3,200 trillion cubic feet, of our natural gas hydrate resources would generate approximately \$3 trillion in royalties and about \$4.5 trillion in corporate income tax on this production from the lessees, for a total of approximately \$7.5 trillion. When combined with the prior \$4.5 trillion, a total of \$12 trillion will result from production of offshore oil and natural gas, including natural gas hydrates. This sum is sufficient to pay off approximately 90% of the current national debt without raising taxes. Further, this amount could easily be 50 to 100 percent higher because it is based on decades old seismic surveys in moratoria areas which are expected to significantly underestimate recoverable resources. As the Department of the Interior

stated in its February 2006 OCS Inventory Report to Congress mandated by Section 357 of the Energy Policy Act of 2005, “True knowledge of the extent of oil and natural gas resources can only come through the actual drilling of wells. Estimating undiscovered resources, no matter how sophisticated the models and statistical techniques employed, is an inherently uncertain exercise that is based on hypotheses and assumptions, with the results limited by the quality of the underlying geologic data.” (emphasis added). The Department also stated, “Frontier areas such as parts of the Eastern Gulf of Mexico and other offshore areas under congressional or executive withdrawal offer the potential of larger field-size discoveries . . . the risk-based estimates in frontier areas ordinarily will have been seen as far too conservative if later exploration demonstrates that the area is hydrocarbon-prone.”

Some have said that the oil and gas industry is trying to produce oil in water that is just too deep. First, the offshore drilling industry is capable of drilling in deeper than 12,000 feet of water, and more than 80% of the oil production in the Gulf is from leases in more than 1,000 feet of water. Second, oil must be produced where it is found. According to the 2006 National Assessment, of the 45 billion barrels of oil left to be discovered in the Gulf of Mexico, all except 3.5 billion barrels, or 92% is located in water deeper than 650 feet. Last year’s 500 foot drilling moratoria in the Gulf of Mexico temporarily made those 41.5 billion barrels unavailable for exploration and future production. Finally, we can all agree that the nation needs to continue to push the development of even better and safer technology and implement procedures that will help ensure that an accident of this type never happens again, and in the outside chance that it does that we have in place more aggressive and effective oil spill response mechanisms that shut down the well and clean it up much quicker.

This \$12 trillion plus is only the U.S. federal taxpayers’ share from the production of America’s offshore oil and natural gas resources. Much more wealth will redound to our citizens through high paying jobs, economic development, state and local taxes, and the economic benefit of the turnover of trillions of dollars that would have been sent to foreign countries. Our onshore resources are also abundant. In fact, the Congressional Research Service recently issued a report showing that instead of being an energy resource deprived nation as many would have us believe, the United States has a larger endowment of oil, natural gas, and coal than any other country in the world. As large as the reserves and resources discussed in the CRS report are, they still do not include the 83 to 128 billion barrels of oil stranded in older American oil fields that the National Energy Technology Laboratory Report (DOE/NETL-2010/1417) documented in 2010 could be produced using “best practices” and “next generation” technology enhanced oil recovery by sequestering CO₂. Nor do they include the 800 billion barrels of oil that the Rand Corporation has estimated can be recoverable from western oil shale.

Yet, we continue to hear the old dogma that this nation cannot drill its way to energy self-sufficiency. The facts show that we could do just that, given adequate time to develop the resources, if we had the national will to do it, but I don’t know of anyone proposing that this nation rely only on our hydrocarbon resources. But, as the Energy Information Administration recently reiterated, the United States will rely on oil, natural gas, and coal for the vast majority of its energy resources for as far into the distance as EIA projects.

III. Mobil v. U.S. and its Progeny

Since 1992, my career has predominantly focused on offshore oil and gas law and it has frequently included significant responsibilities related to breach of contract liability issues. Beginning in 1992, I was the lead Department of the Interior attorney for *Conoco v. U.S.*, 35 Fed. Cl. 306, later *Marathon v. U.S.*, 177 F. 3d 1331, and finally *Mobil Exploration and Producing Southeast, Inc., v. U.S.*, 530 U.S. 604, 120 S.Ct. 2423 (2000). *Mobil* is a landmark case establishing the governing law applicable to federal offshore oil and gas lease contracts. The *Mobil* opinion, delivered by Mr. Justice Breyer, resulted from a breach of contract action by seventeen oil and gas lessees involving claims exceeding \$700 million resulting from Acts of Congress that restricted the rights of lessees to explore for and develop oil and gas resources on existing leases off Alaska, Florida, and North Carolina. Discovery exceeded several hundred thousand pages. I personally conducted eleven depositions totaling more than 2,500 pages in length. All except two of the seventeen plaintiffs settled with the government prior to the case reaching the Supreme Court.

At issue in that Court was the passage of the Outer Banks Protection Act (OBPA) as a part of Oil Pollution Act of 1990 (OPA 90) and whether the leases incorporated the OBPA into their terms and were “subject to” the OBPA. The OBPA established an Environmental Sciences Review Panel (ESRP) and prohibited the Secretary of the Interior from issuing any permit to drill on existing leases offshore North Caro-

lina for at least thirteen months, but for a longer period if the ESRP had not completed its work of determining whether the Secretary possessed sufficient environmental information with which to make decisions on drilling permit requests for the affected leases. Among other things, the Department of the Interior had taken the position that the provisions of the leases incorporated the later-enacted OBPA into them and made them “subject to” it. This position was based on the terms of the leases which provided in relevant part that the leases are “subject to all other applicable laws and regulations.” The Court addressed this issue by stating that “the lease contracts say that they are subject to then-existing regulations and to certain future regulations This explicit reference to future regulations makes it clear that the catchall provision that references ‘all other applicable . . . regulations,’ . . . must include only statutes and regulations already existing at the time of the contract, see 35 Fed. Cl., at 322-323, a conclusion not questioned here by the Government. Hence, these provisions mean that the contracts are not subject to future regulations under other statutes, such as new statutes like OBPA. Without some such contractual provision limiting the Government’s power to impose new and different requirements, the companies would have spent \$158 million to buy next to nothing.” The Court found that when Congress enacted the OBPA and the Department of the Interior announced that it would apply its provisions to the leases offshore North Carolina, the government had repudiated the contracts and committed a material breach. In the Court’s words,

As applied to this case, these principles amount to the following: If the Government said it would break, or did break, an important contractual promise, thereby “substantially impair[ing] the value of the contract[s]” to the companies, *ibid.*, then (unless the companies waived their rights to restitution) the Government must give the companies their money back. And it must do so whether the contracts would, or would not, ultimately have proved financially beneficial to the companies.

The Court noted that the leases stated that they would be subject to “all regulations issued pursuant to” the Outer Continental Shelf Lands Act (OCSLA) “in the future which provide for the prevention of waste and the conservation” of outer Continental Shelf resources. The Court found as a general matter of law that federal mineral leases are governed by the commercial law of contracts. The Court further noted that “the Court of Claims concluded . . . that timely and fair consideration of a submitted Exploration Plan was a ‘necessary reciprocal obligation,’ indeed, that any ‘contrary interpretation would render the bargain illusory.’ We agree.” Of note, but not decisive, is that the OCSLA required in 43 USC 1340(c)(1) that the government act within 30 calendar days to approve exploration requests. The government argued that the OBPA-required delays of at least thirteen months were not substantial and therefore did amount to a material breach of the leases. The Court rejected that argument by noting, “if the companies did not at least buy a promise that the Government would not deviate significantly from those procedures and standards, then what did they buy? The Government’s modification of the contract-incorporated processes was not technical or insubstantial. It did not announce an (OBPA-required) approval delay of a few days or weeks, but of 13 months minimum, and likely much longer. And lengthy delays matter, particularly where several successive agency approvals are at stake.” Finally, the Court wrote, “Contract law expresses no view about the wisdom of OBPA. We have examined only that statute’s consistency with the promises that the earlier contracts contained. We find that the oil companies gave the United States \$158 million in return for a contractual promise to follow the terms of pre-existing statutes and regulations. The new statute prevented the Government from keeping that promise. The breach ‘substantially impair[ed] the value of the contract[s].’ And therefore the Government must give the companies their money back.”

I later became the lead Interior attorney for another major offshore oil and gas breach of contract action, *Amber Resources Co. et al v. United States*, 538 F. 3d 1538 (Fed. Cir. 2008). This case was factually very similar to *Mobil* in that it involved a statute enacted after the issuance of the leases, the Coastal Zone Management Act Amendments Act of 1990, which was determined in other litigation for which I was the lead Interior attorney, *California et al. v. Norton*, 150 F. Supp. 2d 1046 (N.D. Cal. 2001), to apply to the operation of the leases. The lessees filed *Amber* citing *Mobil*’s holding that the application of a later-enacted statute to the leases in such a way that materially changed the process through which the lessee must pass in order to explore and develop the oil and gas resources on the leased tracts amounted to a material breach of the leases entitling the lessees to compensation. The Court of Federal Claims granted judgment for the lessees and the Court of Appeals for the Federal Circuit affirmed the judgment but decreased the measure

of compensation to restitution of the \$1.1 billion paid to the federal government on the leases.

IV. Application of the Mobil and Amber Decisions to S. 917

I will address the following in turn—(1) legislative provisions in S. 917 to change the OCSLA statutory exploration plan approval deadline for existing leases (Section 6(e)); (2) provisions to substantially change exploration plan disapproval standards that apply to existing leases (Section 6(e)); (3) provisions to eliminate existing economic feasibility provisions related to the use of best available and safest technology and apply these to existing leases (Section 6(h)); (4) provisions to impose new lease inspections fees on existing leases (Section 6(i)); and, (5) provisions to impose extraordinary increases in civil and criminal penalties on existing leases (Section 6(j)). Unfortunately, all of these provisions are included in S. 917, and each is likely to be a material breach of all existing 6,336 federal OCS leases (number as of 10/01/2010 per BOEMRE website).

S. 917 would retroactively apply all of these provisions to existing leases. Such a substantial change to the conditions under which companies have acquired their leases would likely be a material breach of contract, based on Mobil. As stated earlier, the Supreme Court held that companies that acquire leases do so in return for a contractual promise that the Government will follow the terms of pre-existing statutes and regulations. To apply substantial changes to those pre-existing statutes and regulations, except within narrow limits, would likely be a repudiation of the contracts and entitle leaseholders to compensation for ALL existing federal offshore leases, including those already in production. In the Gulf of Mexico alone, there are currently over 6000 oil and gas leases covering 35 million acres that were bought for an average of about \$300 per acre in recent years. By committing a breach of contract on its Gulf of Mexico leases, the federal government would expose the American public to far more than \$10 billion in claims from current leaseholders, not counting likely claims for lost profits. In excess of an additional \$3 billion would be at risk for leases bought offshore Alaska.

First—Provisions to change the OCSLA statutory exploration plan approval deadline for existing leases (Section 6(e)). The 30 calendar day exploration plan approval requirement (OCSLA section 11(c)(1)) has been the law since 1978. Meeting this statutory requirement has not been a significant problem until recent complaints. In practice, this 30 calendar day requirement is actually closer to 50 calendar days. 30 CFR 250.231 related to exploration plans says that once a “proposed” EP (exploration plan) is received, the Regional Supervisor has 15 “working” days (3 weeks) to determine if the proposed EP is “deemed” submitted. If he finds deficiencies, then the EP is not “deemed” submitted until the deficiencies are corrected. The purpose of this is to provide the lessee with the information of all deficiencies needed to allow the EP to be approved or denied. In my experience, plan and permit approval work can be done in one of two ways—either smart or hard. The smart way is to learn from prior experience with operators and have the discretion to apply the greatest resources to the ones which have had greater safety and compliance problems in the past. The hard way is to turn staff into glorified paper shufflers not empowered to think, but merely to process paper and take a long time to do that. S. 917 imposes a new requirement of a “safety case” on all operators. Together with the stronger safety and environmental regulations already in place, I do not see why processing of exploration plans cannot be accomplished within existing statutory requirement. S. 917 changes that 30 day approval period to up to an amazing 270 days for new leases and allows the Secretary an unlimited amount of time for existing leases if the Secretary can convince the lessee to allow him to take longer than 30 days. In my opinion this change of law will constitute a material breach of the leases. The contract provision is 30 calendar days, which as implemented by regulations is really approximately 50 calendar days. The proposed provision is a material unilateral change by one party (the government) to a contract and destroys the bargained for contractual negotiating positions of the parties to the contract. Unfortunately, the Secretary is in a position of great power over a lessee and can use, if desired, coercion to achieve the Secretary’s objectives against an unequal bargaining entity (a lessee). Even if the potential breach of contract issues did not exist, this provision invites politics and coercion into the nation’s offshore energy production program and should be avoided from a policy point of view. I recommend that current law remain unchanged.

Second—Provisions to substantially change exploration plan disapproval standards that apply to existing leases (Section 6(e)). This provision, a new section 11(e) of the OCSLA, would establish new standards for disapproval of exploration plans. Not only would these new standards breach existing lease contracts, they would conflict with existing law which is not amended by S. 917, OCSLA section 11(c)(1)(A)

and (B). These standards are not identical and the duplicate set of standards will be highly confusing to lessees and DOI employees alike, not to mention creating a myriad of legal issues including breach of contract and APA issues. I recommend that current law remain unchanged.

Third—Provisions to eliminate existing economic feasibility provisions related to the use of best available and safest technology and apply these to existing leases (Section 6(h)). Current law, OCSLA Section 21, requires lessees to use “best available and safest economically feasible technologies.” S. 917, in section 6(h) eliminates all consideration of economic feasibility when determining regulatory requirements for use of technology. This change would allow the government to require uneconomic technologies on all offshore oil and gas leases. The obvious result could be a large reduction in oil and natural gas production, a significant reduction in the number of energy jobs, lower government revenues, and more imported oil. Current law requires best available and safest technology unless the Secretary determines that is not economically feasible. This standard is fair and promotes the extension of new technologies into the offshore as they become economic. Existing lease contracts incorporate current law into their provisions. Enactment of the proposed revision is likely to result in a material breach of existing OCS lease contracts. I recommend that current law remain unchanged.

Fourth—Provisions to impose new lease inspections fees on existing leases (Section 6(i)). Current law, OCSLA Section 18(b)(4), anticipates that appropriated funds will be used to “supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.” The Supreme Court has held that lessees are entitled to the use of existing law as it was at time of lease issuance, with few exceptions. In fact, the OCSLA as it exists at time of lease issuance, is incorporated into the terms of each lease. Enactment of a lease inspection fee would not fall within any of the allowed exceptions. Therefore, enactment of this lease inspection fee is likely to constitute a material breach of all existing OCS leases. I recommend that current law remain unchanged.

Fifth—Provisions to impose extraordinary increases in civil and criminal penalties on existing leases (Section 6(j)). Current law, OCSLA section 24(b) provides for civil penalties for failure to comply with the provisions of the OCSLA, the lease, permits, and regulations. However, under current law, a lessee is entitled to notice and an opportunity to make corrective action prior to a penalty being assessed. The proposed language in section 6(j) eliminates the opportunity for notice and corrective action. The new language makes the lessee liable for any failure to comply. In addition, the civil penalty for each failure to comply is increased from \$20,000 per day under current law to \$75,000 per day. Once again, this is a material unilateral change of existing contracts and is likely to be a material breach of all existing contracts. Even if it is made applicable to only future lease contracts, I recommend that fundamental fairness requires the retention of current law which allows for notice and the opportunity for corrective action prior to imposition of a civil penalty.

Current law, OCSLA section 24(c) provides for criminal penalties for “any person who knowingly and willfully” commits any number of acts, including, among other things, violating a provision of the lease, regulations, etc., designed to protect health, safety, or the environment, or conserve natural resources; making false statements or reports; tampering with monitoring equipment, etc. Current law provides for, upon conviction, punishment by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. S. 917 proposes to raise the fine to \$10,000,000. Further, S. 917 proposes to make corporate officers and agents guilty of a crime if they “with reckless disregard” authorized, ordered or carried out the proscribed activity. Current law requires the officers and agents to “knowingly and willfully” take those actions. Both of these criminal provision changes are likely to constitute material breaches of all existing leases.

V. Views on other provisions of S. 917

Section 4. Amendments to Section 3 of the OCSLA are unnecessary. Current law already provides for environmental safeguards and for development to be “consistent with other national needs.” I am also concerned that the new standard laid out in (6) that exploration and production on the OCS should “be allowed only when those activities can be accomplished in a manner that provides ‘reasonable assurance’ of adequate protection against harm” I don’t know what this means, but it is far too prescriptive. This will be used against offshore oil and gas production in litigation.

Section 6 (c). A provision is included (g) for periodic fiscal reviews and reports, including a review of royalty rates (g)(1) and comparative fiscal systems (g)(2). The

royalty rate reviews will be done independently of the fiscal system reviews. I do not see that an adequate royalty rate review to determine if the taxpayers are receiving a fair return on royalties can be done until after the comparative fiscal system reviews so that fiscal information may be used in the royalty reviews.

Section 6 (e) provides for deepwater operations plans in addition to exploration plans. Further, this section requires new statutory engineering reviews. All of these have new statutory requirements for approval, but no deadlines for approval. It is very unclear how these will work together. They appear to me to be new statutory requirements which, in the final analysis, mean that a lessee really has very little when it receives approval of an exploration plan. This bill adds significant, unnecessary statutory hurdles to a lessee obtaining approval to drill oil and natural gas well. These, too, are likely to be material breach of existing leases.

Section 6 (e) contains wording that is problematic in many provisions, including a requirement that exploration plans include provisions for resources that, in the event of a blowout, will be used to “avoid harm to the environment . . . hydrocarbons.” I believe that this would be impossible and I recommend that the word “minimize” be substituted for the word “avoid”.

Section 6 (e) in (B)(ii) imposes requirements which are redundant, but not identical, to existing statutory requirements in OCSLA section 11(c)(3)(A)(ii)(IV). This will cause significant confusion, not to mention legal issues. Why are they necessary to be imposed twice?

One provision related to Section 18, leasing program of the OCS, provide significant concern. Instead of current law which requires the Secretary to “consider” various matters when determining the leasing program, the problematic provision requires that the Secretary “give equal consideration to” these matters. Once again, this presents the Secretary with an impossible duty and provides new grounds for challenge of an oil and gas leasing program.

VI. Views on S. 516, S. 843, and S. 916

S. 516—This is an excellent bill which should have been unnecessary. OCS regulations provide that the DOI will direct a suspension of a lease when a lessee is told not to use its lease and that the government will not consider permit requests. S. 516 makes things right. I believe that the one year extension for all Gulf of Mexico leases is appropriate. However, I recommend that the bill be amended to provide for extension of all Alaska OCS leases by two years. Those leases were affected by the moratorium last year, but they have also been adversely affected for a much longer period of time because of failure of government agencies, including the EPA and NOAA, to timely consider permit requests in the Alaska OCS Region.

S. 843—This is also an excellent bill, with a few caveats. However, the Gulf of Mexico OCS Region would also benefit from a regional permit processing coordination office and I recommend that the bill be amended to provide for one. In addition, I recommend that the Coast Guard be added to the list of agencies that will participate in the coordination offices. While I understand the apparent need for Section 4 on Judicial Review, I believe that it needs to be reworded. I am concerned that the word “claim” could provide that monetary claims stemming from Alaska that under the Tucker Act would be heard in the Court of Federal Claims will now be heard by the DC Circuit.

S. 916—This is also an excellent bill, but also with a few caveats. I am uncertain what is meant in Section 201 by the term “otherwise facilitating seismic studies of resources.” Other than permitting seismic surveys or contracting for them directly, I am unaware of any authority of the Secretary to “facilitate seismic studies of resources.” I do believe that this is an area of policy where the Secretary should be granted more authority. In addition, I am curious as to the reason that the Pacific Region, with vast oil and natural gas resources and reserves and the potential of much more to find, would not be included in a “comprehensive inventory” of OCS oil and natural gas resources. Section 203 repeals “mandatory outer Continental Shelf deep water and deep gas royalty relief for future leases.” As someone who drafted these provisions which were enacted in the Energy Policy Act of 2005, these provisions are not mandatory because the statute specifically allows the Secretary to condition any royalty relief based on the price of the commodity. Hence, royalty relief is discretionary with the Secretary because the Secretary can set a price so high that royalty relief will not take place. I believed then, and I still believe now, that these provisions are valuable tools for the Secretary to make use of to stimulate production in the event of low resource prices.

VII. Closing

It is clear that our nation benefits from developing oil and gas resources here at home. Domestic energy development reduces our reliance on imported oil, directly

supports over 9 million jobs, creates billions in new wealth every year, and generates over \$13 billion for the federal Treasury on an annual basis. And we can produce so much more oil and gas in the United States than we do now, creating millions of more jobs, billions of more wealth, and yes, billions more in receipts to the U.S. Treasury.

I urge the committee to go beyond the bills being considered today and act broadly and boldly to unlock the bountiful natural hydrocarbon and renewable energy resources that this nation has been blessed with. Permit reform, opening the entire outer Continental Shelf to leasing, policy changes to make greater use of CO2 enhanced oil recovery, commercial lease sales for oil shale and tar sands, use of commonsense NEPA categorical exclusions, eliminating frivolous litigation, and other actions must be taken to achieve the nation's energy independence.

Thank you for the opportunity to testify and I would be pleased to answer any questions.

The CHAIRMAN. Thank you very much for your testimony.

Dr. Leveson, thank you for your testimony.

I didn't have any questions at this point.

Senator Murkowski, go right ahead.

Senator MURKOWSKI. Mr. Chairman, recognizing that the vote has started 6 or 7 minutes ago, I do think we need to wrap up here. I thank both of you for the testimony.

Mr. Coleman, you have raised some points. I was going to ask you about whether or not the 30 days is sufficient. I think it is important to understand that when that 30 days begins to toll, and I think that is an important part of what goes into the process.

I think we are all struggling to find that right number here, the right time period within which the agency needs to do the job, but without adding to what is already a lengthy and cumbersome and very costly process. So we are trying to get it right. Your comments have helped.

I do have some additional questions I will submit for the record. But Mr. Chairman, I thank you for the hearing this afternoon.

The CHAIRMAN. Again, thank you both very much, and particularly for waiting so long to get to testify here.

But that will conclude our hearing.

[Whereupon, at 12:23 p.m., the hearing was adjourned.]

[The following statement was received for the record.]

THE WILDERNESS SOCIETY,
May 17, 2011.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN: The following comments are submitted on behalf of The Wilderness Society for the May 17, 2011, hearing record regarding S. 916, the "Oil and Gas Facilitation Act of 2011." The Wilderness Society is the leading public-lands conservation organization working to protect wilderness and inspire Americans to care for our wild places. Founded in 1935, and now with more than 500,000 members and supporters, TWS has led the effort to permanently protect 110 million acres of wilderness and to ensure sound management of our shared national lands. We have a longstanding interest in assuring that oil and gas development on our federal public lands and waters is done in an environmentally safe manner and only in appropriate places. Our comments on S. 916 are confined to Sec. 101 of the bill.

Section 101 of S. 916 extends to 2020 the Bureau of Land Management's (BLM) pilot permitting offices authorized by Section 365 of the Energy Policy Act of 2005 (EPACT) and set to expire in 2015. We agree with the Administration that this program should not be extended, but instead should be terminated (See, for example, page INI-129 of the BLM's FY 2011 budget justifications). This program, established to expedite the issuance of BLM drilling permits, is clearly not needed. According to BLM data, thousands of drilling permits have been issued in recent years by the agency which are not being utilized by permit holders, so clearly there is no need

to dedicate receipts from BLM drilling revenues to support the continued expeditious issuance of BLM drilling permits. Instead, we support the Department of the Interior's proposal to authorize the BLM to collect cost recovery fees from permit applicants to cover the BLM's administrative costs in processing APDs. The Department claims that doing this—eliminating the pilot permitting program in Sec. 365 of EPCA and allowing the BLM to assess cost recovery fees from APD applicants—will save \$84 million over a five year period:

Repeal Permit Processing Improvement Fund and Prohibition on Oil and Gas Cost Recovery—The Administration will submit legislation to repeal portions of Section 365 of the Energy Policy Act, beginning in 2012. Section 365 diverted mineral leasing receipts from the Treasury to a BLM Permit Processing Improvement Fund and also prohibited BLM from establishing cost recovery fees for processing applications for oil and gas permits to drill. Congress has effectively overridden the fee prohibition and implemented permit fees through appropriations language for the last several years. The budget proposes to continue the permit fees through appropriations language in 2011. Upon elimination of the fee prohibition, BLM will promulgate regulations to establish fees for applications for permits to drill administratively, starting in 2012. In combination with normal discretionary appropriations, these fees will then replace the mandatory permit funds, which would also be repealed starting in 2012. Savings from terminating this mandatory funding are estimated at \$20.0 million in 2012 and \$84.0 million over five years.

Also, we support the Administration's proposal that Congress provide to it the authority to assess fees on operators to help defray the costs of the BLM's inspection and enforcement program (p. IV-130 of the FY 2011 BLM budget justification), described as follows:

The 2011 budget proposes to establish a new inspection fee. The budget proposes the same inspection fee collection authority as Congress imposed through appropriations language in 2010 for the Minerals Management Service. The proposed inspection fee would partially offset the cost of conducting inspections. Proposed appropriations language to implement the fee is included in the General Provisions for the Department of the Interior:

SEC. 111. (a) In fiscal year 2011, the Bureau of Land Management (BLM) shall collect a nonrefundable inspection fee, which shall be deposited in the "Management of Lands and Resources" account, from the designated operator of each Federal and Indian lease or agreement subject to inspection by BLM under 30 U.S.C. 1718(b) that is in place at the start of fiscal year 2011.

(b) Fees for 2011 shall be:

- (1) \$150 for each lease or agreement with no active or inactive wells, but with surface use, disturbance or reclamation;
- (2) \$300 for each lease or agreement with one to ten wells, with any combination of active or inactive wells;
- (3) \$750 for each lease or agreement with 11 to 50 wells, with any combination of active or inactive wells; and
- (4) \$1,500 for each lease or agreement with more than 50 wells, with any combination of active or inactive wells.

(c) BLM will bill designated operators within 60 days of enactment of this Act, with payment required within 30 days of billing

By providing the BLM with the additional financial resources it needs to develop a more effective inspection and enforcement program, Congress can better assure that oil and gas activities on the public lands are carried out in an environmentally safe manner and in compliance with the requirements that apply to such operations.

Finally we also support the Administration's proposal to assess a new "non-producing lease fee", as follows:

. . . A \$4.00 per acre fee on nonproducing Federal leases on lands and waters would provide a financial incentive for oil and gas companies to either get their leases into production or relinquish them so that the tracts can be re-leased to and developed by new parties. The proposed fee would apply to all new leases and would be indexed annually. In October 2008, the Government Accountability Office issued a report critical of past efforts by Interior to ensure that companies diligently develop their Federal leases. Although the GAO report focused on administrative actions that the De-

partment could undertake, this proposal requires legislative action. This proposal is similar to other nonproducing fee proposals considered by the Congress in the last several years. The proposal is projected to result in savings to the Treasury of \$760.0 million over ten years, of which \$340 million would come from onshore leases managed by BLM.

Adoption of this proposal will enhance the revenues produced by the BLM's oil and gas program and discourage the speculative holding of federal onshore oil and gas leases.

In conclusion, we propose that Sec. 101 of S. 916 be amended as follows: repeal rather than extend Sec. 365 of EPACT; substitute language that would authorize the BLM to assess fees to cover the full administrative costs of processing applications for permits to drill; authorize the BLM to assess fees for a more effective inspection and enforcement program to assure that oil and gas operations on federal lands are carried out in an environmentally safe manner; and authorize a new "non-producing lease fee" to discourage the speculative holding of federal onshore oil and gas leases.

Thank you for the opportunity to share our views with the Committee.

Sincerely,

DAVID ALBERSWERTH,
Senior Policy Advisor.

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF W. JACKSON COLEMAN TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Mr. Coleman, focusing specifically on the Outer Continental Shelf Lands Act, can you describe some of the legal hooks that already exist under current law which require the Interior Department to properly balance the various uses and sensitivities of the Outer Continental Shelf?

Answer. The OCSLA is replete with provisions which either require the balancing of the various uses, interests, and resources of the outer Continental Shelf, or authorize the President or the Secretary of the Interior to exercise authority to balance these uses, interests, and resources. A few of these are, cited by provision of the United States Code, Title 43:

- a. 1332 (2) which provides for the protection of the rights to navigation and fishing;
- b. 1332 (3) which provides that energy development on the OCS shall be subject to environmental safeguards and “in a manner which is consistent with the maintenance of competition and other national needs”.
- c. 1332 (5) which provides “the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized”.
- d. 1334(a)(1) which provides “The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein”.
- e. 1337(p)(4) which provides “The Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for—
 - (A) safety;
 - (B) protection of the environment;
 - (C) prevention of waste;
 - (D) conservation of the natural resources of the outer Continental Shelf;
 - (E) coordination with relevant Federal agencies;
 - (F) protection of national security interests of the United States;
 - (G) protection of correlative rights in the outer Continental Shelf;
 - (H) a fair return to the United States for any lease, easement, or right-of-way under this subsection;
 - (I) prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;
 - (J) consideration of—
 - (i) the location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and
 - (ii) any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;
 - (K) public notice and comment on any proposal submitted for a lease, easement, or right-of way under this subsection; and
 - (L) oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.
- f. 1340 which provides that exploration plans for oil and natural gas must be consistent with state coastal zone management plans;

- g. 1341 which authorizes the President to withdraw from leasing any area of the outer Continental Shelf;
 - h. 1344 which establishes the OCS oil and gas leasing program provides for consideration of the environment and multiple uses of the OCS, including:
 - (a)(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.
 - (2) Timing and location of exploration, development, and production of oil and gas among the oil and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—
 - (A) existing information concerning the geographical, geological, and ecological characteristics of such regions;
 - (B) an equitable sharing of developmental benefits and environmental risks among the various regions;
 - (C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;
 - (D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deep-water ports, and other anticipated uses of the resources and space of the outer Continental Shelf;
 - (E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;
 - (F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;
 - (G) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and
 - (H) relevant environmental and predictive information for different areas of the outer Continental Shelf.
 - (3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.
 - (4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government. Subsections (c) and (d) provide for consultation with potentially affected states, local governments, and other federal agencies on the development of a leasing program.
- Subsection (f) provides "The Secretary shall, by regulation, establish procedures for—
- (1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;
 - (2) public notice of and participation in development of the leasing program;
 - (3) review by State and local governments which may be impacted by the proposed leasing;
 - (4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and
 - (5) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 1454 or section 1455 of title 16. Such procedures shall be applicable to any significant revision or reapproval of the leasing program.
- i. 1345(c) provides "The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

Question 2. Mr. Coleman, your testimony goes deeply into the consequences of changing the law for existing leaseholders, to the point where their operations are materially frustrated, and it describes how this can invite litigation and even risk the US Treasury losing bidding and royalty revenue. Do you advise against the pro-

posed changes to the statute so that we are making subsea containment equipment a requirement, and requiring approvals for major changes in well designs?

Answer. As a preliminary matter prior to answering your specific question, I believe that I should mention a portion of my written testimony. As I stated in that testimony, *Mobil Exploration and Producing Southeast, Inc., v. U.S.*, 530 U.S. 604, 120 S.Ct. 2423 (2000), is the landmark case establishing the governing law applicable to federal offshore oil and gas lease contracts. The Mobil opinion, delivered by Mr. Justice Breyer, resulted from a breach of contract action by seventeen oil and gas lessees involving claims exceeding \$700 million resulting from Acts of Congress that restricted the rights of lessees to explore for and develop oil and gas resources on existing leases off Alaska, Florida, and North Carolina.

At issue in that Court was the passage of the Outer Banks Protection Act (OBPA) as a part of Oil Pollution Act of 1990 (OPA 90) and whether the lease contracts incorporated the OBPA into their terms and were "subject to" the OBPA. The OBPA established an Environmental Sciences Review Panel (ESRP) and prohibited the Secretary of the Interior from issuing any permit to drill on existing leases offshore North Carolina for at least thirteen months, but for a longer period if the ESRP had not completed its work of determining whether the Secretary possessed sufficient environmental information with which to make decisions on drilling permit requests for the affected leases. Among other things, the Department of the Interior had taken the position that the provisions of the leases incorporated the later-enacted OBPA into them and made them "subject to" it. This position was based on the terms of the leases which provided in relevant part that the leases are "subject to all other applicable laws and regulations." The Court addressed this issue by stating that "the lease contracts say that they are subject to then-existing regulations and to certain future regulations . . . This explicit reference to future regulations makes it clear that the catchall provision that references "all other applicable . . . regulations," . . . must include only statutes and regulations already existing at the time of the contract, see 35 Fed. Cl., at 322-323, a conclusion not questioned here by the Government. Hence, these provisions mean that the contracts are not subject to future regulations under other statutes, such as new statutes like OBPA. Without some such contractual provision limiting the Government's power to impose new and different requirements, the companies would have spent \$158 million to buy next to nothing." The Court found that when Congress enacted the OBPA and the Department of the Interior announced that it would apply its provisions to the leases offshore North Carolina, the government had repudiated the contracts and committed a material breach. In the Court's words,

As applied to this case, these principles amount to the following: If the Government said it would break, or did break, an important contractual promise, thereby "substantially impair[ing] the value of the contract[s]" to the companies, *ibid.*, then (unless the companies waived their rights to restitution) the Government must give the companies their money back. And it must do so whether the contracts would, or would not, ultimately have proved financially beneficial to the companies.

The Court noted that the leases stated that they would be subject to "all regulations issued pursuant to" the Outer Continental Shelf Lands Act (OCSLA) "in the future which provide for the prevention of waste and the conservation" of outer Continental Shelf resources. The Court found as a general matter of law that federal mineral leases are governed by the commercial law of contracts.

Now, to answer your question, it is my opinion that the Secretary may impose a new requirement that existing lessees have the capacity to implement subsea containment equipment and methods, as long as these equipment and method requirements are reasonably related to the potential worst case discharges from the lease. These requirements would reasonably fall into ability of the Secretary to impose on existing leases future regulations pursuant to the OCSLA which provide for the prevention of waste and conservation of OCS resources. Regarding approvals of major changes to well design, the Secretary already has this authority and is currently implementing it through regulations related to exploration plans and development and production plans. However, new procedures which require permits and lengthy delays, even if couched in terms of the environment and/or conservation of resources, will receive close scrutiny for possible breach of contract. Congress had couched the new requirements of the Outer Banks Protection Act in environmental terms, but the Supreme Court in *Mobil* found them to be merely new procedural hurdles having the purpose of denying to the lessees their bargained-for contractual rights to reasonably explore and develop their leases.

Question 3. Mr. Coleman, do you see the absence of revenue sharing from these bills as a problem for coastal states, due to its affect on the ability to host an off-

shore industry, specifically with regard to critical support infrastructure, spill response, safety, coastal protection and restoration?

Answer. In my opinion, the United States will not achieve the vast potential of the OCS to provide the energy supplies to the nation, both oil and natural gas and renewable energy, without major changes to the existing provisions for revenue sharing. The Gulf of Mexico Energy Security Act of 2006 (GOMESA) established the precedent for revenue sharing, in addition to the prior limited OCSLA Section 8(g) provision which limited revenue sharing to the first 3 nautical miles of the OCS from the coastline.

However, GOMESA was inadequate in a number of ways. First, it only immediately applied to new leases in areas of the Gulf of Mexico that had not been leased for a significant period of time. Second, after 10 years, it applied to new leases issued after enactment in the Central and Western Gulf of Mexico planning areas. This meant that revenues from approximately 6,000 existing leases in the Gulf of Mexico would never share revenues with states. Third, GOMESA did not provide for revenue sharing outside the Gulf of Mexico in other OCS areas. This created an inherent unfairness in the OCSLA, which inferred that the needs of the Gulf of Mexico states were greater than the needs of other states like Alaska, California, and other states which might have leasing off their coasts in the future. This inequity and unfairness should not be allowed to continue.

The states which have OCS exploration and production activities off their coastlines incur significant expenses and impacts, both socioeconomic and environmental, of the type listed in the question. The federal onshore leasing law, the Mineral Leasing Act, recognizes these expenses and impacts and specifically provides for a 50% share of all lease revenues to be shared with the states. Some have made the argument that this disparity in treatment is fair because the onshore leases are WITHIN the state that receives the revenues and the offshore leases are not within the boundaries of any state. While I recognize that the level of expenses and impacts may be greater for the onshore states that contain the leases within their borders as opposed to the coastal states that do not, this possible difference in levels of relative impacts does not justify the current law which shares almost nothing with coastal states from OCS revenues. Surely the Congress can come up with a revenue sharing law for coastal states, based on, but adjusted from, the shares that states currently receive from onshore federal oil and gas leasing. The GOMESA sharing rate of 37.5% of OCS revenues to the coastal states seems appropriate.