AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

LEGISLATION TO RESPOND TO THE BP OIL SPILL AND TO PREVENT FUTURE OIL WELL BLOWOUTS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND ENVIRONMENT

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JUNE 30, 2010

Serial No. 111–140



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

77–917 WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND COMMERCE

HENRY A. WAXMAN, California, *Chairman*

JOHN D. DINGELL, Michigan
Chairman Emeritus
EDWARD J. MARKEY, Massachusetts
RICK BOUCHER, Virginia
FRANK PALLONE, JR., New Jersey
BART GORDON, Tennessee
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
BART STUPAK, Michigan
ELIOT L. ENGEL, New York
GENE GREEN, Texas
DIANA DEGETTE, Colorado
Vice Chairman
LOIS CAPPS, California
MICHAEL F. DOYLE, Pennsylvania
JANE HARMAN, California
TOM ALLEN, Maine
JANICE D. SCHAKOWSKY, Illinois
CHARLES A. GONZALEZ, Texas
JAY INSLEE, Washington
TAMMY BALDWIN, Wisconsin
MIKE ROSS, Arkansas
ANTHONY D. WEINER, New York
JIM MATHESON, Utah
G.K. BUTTERFIELD, North Carolina
CHARLIE MELANCON, Louisiana
JOHN BARROW, Georgia
BARON P. HILL, Indiana
DORIS O. MATSUI, California
DONNA M. CHRISTENSEN, Virgin Islands
KATHY CASTOR, Florida
JOHN P. SARBANES, Maryland
CHRISTOPHER S. MURPHY, Connecticut
ZACHARY T. SPACE, Ohio
JERRY MCNERNEY, California
BETTY SUTTON, Ohio
BRUCE L. BRALEY, Iowa
PETER WELCH, Vermont

JOE BARTON, Texas
Ranking Member
RALPH M. HALL, Texas
FRED UPTON, Michigan
CLIFF STEARNS, Florida
NATHAN DEAL, Georgia
ED WHITFIELD, Kentucky
JOHN SHIMKUS, Illinois
JOHN B. SHADEGG, Arizona
ROY BLUNT, Missouri
STEVE BUYER, Indiana
GEORGE RADANOVICH, California
JOSEPH R. PITTS, Pennsylvania
MARY BONO MACK, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
MIKE ROGERS, Michigan
SUE WILKINS MYRICK, North Carolina
JOHN SULLIVAN, Oklahoma
TIM MURPHY, Pennsylvania
MICHAEL C. BURGESS, Texas
MARSHA BLACKBURN, Tennessee
PHIL GINGREY, Georgia
STEVE SCALISE, Louisiana
PARKER GRIFFITH, Alabama
ROBERT E. LATTA, Ohio

SUBCOMMITTEE ON ENERGY AND ENVIRONMENT

EDWARD J. MARKEY, Massachusetts, *Chairman*

MICHAEL F. DOYLE, Pennsylvania
JAY INSLEE, Washington
G.K. BUTTERFIELD, North Carolina
CHARLIE MELANCON, Louisiana
BARON P. HILL, Indiana
DORIS O. MATSUI, California
JERRY MCNERNEY, California
PETER WELCH, Vermont
JOHN D. DINGELL, Michigan
RICK BOUCHER, Virginia
FRANK PALLONE, JR., New Jersey
ELIOT ENGEL, New York
GENE GREEN, Texas
LOIS CAPPS, California
JANE HARMAN, California
CHARLES A. GONZALEZ, Texas
TAMMY BALDWIN, Wisconsin
MIKE ROSS, Arkansas
JIM MATHESON, Utah
JOHN BARROW, Georgia

RALPH M. HALL, Texas
FRED UPTON, Michigan
ED WHITFIELD, Kentucky
JOHN SHIMKUS, Illinois
JOHN B. SHADEGG, Arizona
STEVE BUYER, Indiana
GREG WALDEN, Oregon
SUE WILKINS MYRICK, North Carolina
JOHN SULLIVAN, Oklahoma
MICHAEL C. BURGESS, Texas

CONTENTS

Page

Hon. Edward J. Markey, a Representative in Congress from the Commonwealth of Massachussetts, opening statement 1
Hon. Fred Upton, a Representative in Congress from the State of Michigan, opening statement 3
Hon. Henry A. Waxman, a Representative in Congress from the State of California, opening statement 4
Prepared statement 6
Hon. Joe Barton, a Representative in Congress from the State of Texas, opening statement 8
Hon. Jay Inslee, a Representative in Congress from the State of Washington, opening statement 9
Hon. Joseph R. Pitts, a Representative in Congress from the Commonwealth of Pennsylvania, opening statement 9
Hon. G.K. Butterfield, a Representative in Congress from the State of North Carolina, opening statement 10
Hon. Steve Scalise, a Representative in Congress from the State of Louisiana, opening statement 10
Hon. John D. Dingell, a Representative in Congress from the State of Michigan, prepared statement 11
Hon. Parker Griffith, a Representative in Congress from the State of Alabama, opening statement 13
Hon. Roy Blunt, a Representative in Congress from the State of Missouri, opening statement 14
Hon. Lois Capps, a Representative in Congress from the State of California, opening statement 14
Hon. Cliff Stearns, a Representative in Congress from the State of Florida, opening statement 15
Hon. Gene Green, a Representative in Congress from the State of Texas, opening statement 16
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement 17
Hon. Jim Matheson, a Representative in Congress from the State of Utah, opening statement 18
Hon. Ed Whitfield, a Representative in Congress from the Commonwealth of Kentucky, opening statement 19
Hon. Jane Harman, a Representative in Congress from the State of California, opening statement 19
Hon. Charlie Melancon, a Representative in Congress from the State of Louisiana, opening statement 20
Hon. Peter Welch, a Representative in Congress from the State of Vermont, opening statement 21
Hon. Eliot L. Engel, a Representative in Congress from the State of New York, opening statement 22
Hon. John Sullivan, a Representative in Congress from the State of Oklahoma, prepared statement 83

WITNESSES

David Hayes, Deputy Secretary, Department of the Interior; Accompanied by Steve Black, Counselor to the Secretary 22
Prepared statement 25
John Martinez, Consulting Production Engineer, Production Associates 60
Prepared statement 63

Page

Elgie Holstein, Senior Director For Strategic Planning, Environmental Defense Fund 67
Prepared statement 69

SUBMITTED MATERIAL

Summary of Blowout Prevention Act of 2010 86

LEGISLATION TO RESPOND TO THE BP OIL SPILL AND TO PREVENT FUTURE OIL WELL BLOWOUTS

WEDNESDAY, JUNE 30, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:34 a.m., in Room 2322, Rayburn House Office Building, Hon. Edward J. Markey [chairman of the subcommittee] presiding.

Present: Representatives Markey, Inslee, Butterfield, Melancon, McNerney, Welch, Dingell, Engel, Green, Capps, Harman, Gonzalez, Matheson, Barrow, Waxman (Ex Officio), Upton, Hall, Stearns, Whitfield, Shimkus, Blunt, Pitts, Bono Mack, Sullivan, Burgess, Scalise, Griffith, and Barton (Ex Officio).

Also Present: Representative Stupak.

Staff Present: Bruce Wolpe, Senior Advisor; Brian Cohen, Senior Investigator and Policy Advisor; Greg Dotson, Chief Counsel, Energy and Environment; Jeff Baran, Counsel; Michal Freedhoff; Alex Barron, Professional Staff Member; Melissa Cheatham, Professional Staff Member; Robb Cobbs, Policy Analyst; Caitlin Haberman, Special Assistant; Peter Ketcham-Colwill, Special Assistant; Karen Lightfoot, Communications Director, Senior Policy Advisor; Lindsay Vidal, Special Assistant; Mary Neumayr, Minority Counsel; Aaron Cutler, Minority Counsel; Andrea Spring, Minority Professional Staff Member; Peter Spencer, Minority Professional Staff Member; and Garrett Golding, Minority Legislative Analyst.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. Welcome. Welcome to the legislative hearing on the Legislation to Respond to the BP Oil Spill and to Prevent Future Oil Well Blowouts. 5,000 feet below the Gulf of Mexico in dark frigid waters lies an ineffectual inert steel structure five stories high. A few hundred miles from the spill's source, a hurricane is barreling through the Gulf disrupting the response to the disaster. These two events are emblematic of BP and the oil industry's lack of attention to safety and inadequate response capabilities for a catastrophic spill.

The Gulf of Mexico response plan for BP includes walruses which haven't called the region home for 3 million years, yet if you look for the word "hurricane" in their response plan, you won't find it in BP's contingency plans.

Over the course of the past 2 months, the Energy and Commerce Committee has conducted a vigorous investigation of the causes of the BP Deepwater horizon disaster. We have held numerous hearings in this subcommittee and in the Oversight and Investigations Subcommittee. We have worked hard to uncover the truth about the causes of the disaster, in part to ensure that the responsible parties are held fully accountable. But it is equally important, if not more so, that we use the knowledge we have gained about the BP Deepwater horizon disaster to ensure that such a thing will never happen again. That is what today's hearing is all about. The committee's investigation has raised serious concerns about the adequacy of industry practices and regulatory standards with regard to oil and gas drilling. As the ongoing catastrophe in the Gulf of Mexico makes clear, the stakes could hardly be higher, nor is this an isolated incident.

In 1979 the IXTOC blowout in the Gulf of Mexico and the 2009 blowout in Australia both involve shallow water wells and caused massive environmental damage. This subcommittee, because of its jurisdiction over energy, exploration and production, has a responsibility to address this critical issue. That is why full committee chairman, Henry Waxman, Chairman Bart Stupak, and I yesterday introduced the Blowout Prevention Act or BP Act of 2010. Historically regulation of offshore drilling has required the use of best available safest technologies taking costs into account. But regulators have had little or no congressional guidance on what this standard requires. And current regulations plainly are not adequate.

The bill, now before the subcommittee, responds to this gap by establishing minimum standards for well drilling technologies and practices for offshore and other high risk wells. The legislation is based on the basic concept of defense in depth, it requires multiple lines of defense against a blowout and ensures that these defenses aren't redundant so the failure of one does not lead to cascading failures of the entire system as occurred with BP's Macondo well. First, the legislation sets minimum standards for blowout preventers, the last line of defense against the blowout like the one that occurred on April 20th. These standards require that blowout preventer mechanisms to seal wells in the event of an emergency are effective and redundant. The legislation also requires new standards governing well design and cementing to ensure multiple redundant barriers within the well against uncontrolled oil or gas flow that could lead to a blowout.

The BP Act also includes a number of provisions to improve regulatory oversight of high risk wells. It requires periodic updating of regulatory standards and establishes an independent technical advisory committee to help ensure that safety standards are adequate. The legislation also requires independent third-party certification of blowout preventers and well designs and establishes whistleblower protections for rig workers.

And finally, it requires periodic and unannounced inspections and establishes strict civil and criminal penalties. This bill is not written in stone. It is the beginning of a process. We look forward to the input of our witnesses today and to working with our colleagues on both sides of the aisle to improve this legislation and

move it forward through the legislative process. I now turn to recognize the ranking member of the subcommittee, the gentleman from Michigan, Mr. Upton, for his opening statement.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman. The BP spill is an environmental and economic disaster on a scale that we have never seen before. We need to ensure to the best of our ability that such a disaster cannot and does not happen again. Our domestic energy resources power our economy and keeps America working. The oil industry is under the microscope now for sure, and they should be. We need to learn from this accident, make any needed changes and then move forward.

Clearly in light of what happened on Deepwater Horizon rig, new safety and oversight regulations are needed, but the question still remains what actions are necessary to approve safety without blocking our much needed domestic reserves. I look forward to working on a bipartisan piece of legislation that ensures the safety and effectiveness of offshore drilling. The joint investigation into the cause of the Deepwater Horizon blowout, explosion and spill are currently being conducted by the Coast Guard and MMS. In addition, President Obama announced the Presidential Commission that will investigate those relevant facts and circumstances concerning the root causes of the Deepwater Horizon's explosion fire and oil spill and develop options to guard against and mitigate the impact of any oil spills associated with offshore drilling in the future.

I agree that we need to investigate, get to the bottom of what really happened and develop standards, new standards, based on the lessons learned. However, the Coast Guard investigation is not complete. The President's Commission has yet to meet. I am all for improving the safety of offshore drilling, but we should wait for the investigations to be concluded before we prematurely pass legislation that may not improve safety and could possibly make matters worse. We should call a hearing when they have completed the investigation to hear what they have discovered. Legislation—legislating Deepwater drilling safety must be a bipartisan basis and we must develop sound science and actual evidence and conclusions from that ongoing investigation.

In addition to any—to my practical concerns about legislating before the Presidential Commission has even met, there are a few troubling provisions in the draft legislation that we are looking at today that I fear will serve as a de facto drilling ban for both offshore and onshore wells, oil and natural gas. Legislation that prevents this from safely developing our domestic oil and gas resources would be catastrophic to our economy, destroying potentially tens of thousands of jobs almost overnight and would severely weaken our national security as we import more and more oil and gas from abroad. Specifically, the legislation defines a high risk well so broadly that it covers nearly every offshore and onshore oil and natural gas well.

Clearly we should be using a scientific definition that relies on sound engineering principles. Not every well is high risk. Addition-

ally, the legislation requires a standard certification that equals a 100 percent standard. Nothing in our lives is up to 100 percent certainty standards. Risks are everywhere. Crossing the street to get into a car, flying on a plane, installing a windmill off the shore of Nantucket, even riding in an elevator. If we are going to require an unattainable list of certification before we allow otherwise safe drilling to occur, let's at least be honest with the American people and call the legislation what it really is, a ban on American made energy. I do have some other comments with the content of the draft but I will end here so we can hear from our witnesses. We have a lot at stake. I yield back.

Mr. MARKEY. I thank the gentleman. The chair recognizes the chairman of the full committee, the gentleman from California, Mr. Waxman.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Chairman Markey, I want to thank you for today's hearing on the Blowout Prevent Act of 2010. We are now more than 2 months into this largest environmental disaster in U.S. history. 11 workers are dead, the Macondo well continues to pour thousands of barrels of oil into the Gulf of Mexico each day, BP's clean-up effort continues to be inadequate and an entire way of life along the Gulf of Mexico is being threatened. It is time for Congress to act, investigations are ongoing and will continue to tell us more about the causes of this accident, but we know enough already to begin crafting legislative solutions.

And I want to disagree with my colleague from Michigan. If we don't know enough to start fashioning legislative solutions, then I don't think we know enough to start drilling, which I hear many of our colleagues on the other side of the aisle insist that we do. Why should we allow more drilling if we can't assure that the drilling is going to be done safely, and there is a plan in place that can clean up any oil spill should that happen.

Thanks to this subcommittee and Chairman Stupak's Subcommittee on Oversight, this disaster, as we have seen in our investigation, could have been prevented. BP made a series of risky decisions before the explosion that destroyed the Deepwater Horizon. These decisions save time and money for BP, but increase the risks of a catastrophic blowout. When BP CEO Tony Hayward appeared before the Subcommittee on Oversight and Investigations, we asked him to explain these decisions. He tried to dodge responsibility telling us repeatedly he was not involved in the decisions, and he tried to shift blame to others. BP chose a risky well design on the Macondo well that provided minimal barriers to prevent dangerous gases from flowing to the wellhead. They ignored their contractor's advice about how to properly cement the well.

They failed to conduct a critical cement test. And they failed to properly circulate well fluids. The legislation we are considering would set strict new requirements to ensure that these basic well controlled guidelines cannot be ignored at any high risk well. BP says it relied on the well's blowout preventer as the last line of defense. But we know that blowout preventers are not foolproof, not

even close. They can't shear pipe to seal the well if there is not a tool joint—if there is a tool joint or other obstruction preventing blind shear rams from closing. They don't have appropriate redundancy built in.

Too often, a single problem can cause systematic blowout preventer failure. And blowout preventers and their emergency control systems are not adequately tested once they are put in place. This proposed law would fix these problems. It requires redundant systems to shut down runaway wells, it requires third-party testing to make sure blowout preventers will work when needed, and it establishes a new aggressive oversight and testing regime with unannounced site visits by Federal regulators.

BP took advantage of a lack of resources and a failure in the regulatory culture at the minerals management service. The Agency handed over too much authority relying on the industry to police itself. This self-policing approach could work only if everybody behaves responsibly. All it takes is one bad actor, one well that falls behind schedule and one too many corners cut before the disaster results. The legislation before the committee sets out to change this culture of complacency. It requires the appropriate regulator to set tough standards and create a committee of independent experts to check their work and make sure they do their jobs.

The independent committee must review available technologies, assess industry practices and regulations and provide the best most up-to-date technical and regulatory advice so that we have the best possible set of rules for drilling high risk wells. It is too late to stop the explosion and blowout on the Deepwater Horizon, but we can continue our work to determine what happened and hold the appropriate parties accountable and make sure that this type of catastrophe blowout—catastrophic blowout never happens again.

This legislation is an important first step to ensuring drilling safety at high risk wells, and I look forward to hearing our witnesses' views on the matter and to working on a bipartisan basis on this legislation. We need to make sure that we act decisively and rapidly in response to the disaster in the Gulf. Thank you, Mr. Chairman.

[The prepared statement of Mr. Waxman follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

Statement of Rep. Henry A. Waxman
Chairman, Committee on Energy and Commerce
Legislation to Respond to the BP Oil Spill and to Prevent Future Oil Well Blowouts
Subcommittee on Energy and Environment
June 30, 2010

Chairman Markey, I want to thank you for holding today's hearing on the Blowout Prevention Act of 2010.

We are now more than two months into the largest environmental disaster in U.S. history. Eleven workers are dead. The Macondo well continues to pour thousands of barrels of oil into the Gulf of Mexico each day. BP's cleanup effort continues to be inadequate. And an entire way of life along the Gulf Coast is being threatened.

It is time for Congress to act. Investigations are ongoing and will continue to tell us more about the causes of this accident. But we know enough already to begin crafting legislative solutions.

We know – thanks to the work of this Subcommittee and Chairman Stupak's Subcommittee on Oversight and Investigations – that this disaster could have been prevented. BP made a series of risky decisions before the explosion that destroyed the Deepwater Horizon. These decisions saved time and money for BP, but increased the risks of a catastrophic blowout.

When BP CEO Tony Hayward appeared before the Subcommittee on Oversight and Investigations, we asked him to explain these decisions. He tried to dodge responsibility, telling us repeatedly that he was not involved in the critical decisions. And he tried to shift blame to others.

BP chose a risky well design on the Macondo well that provided minimal barriers to prevent dangerous gases from flowing to the wellhead. They ignored their contractor's advice about how to properly cement the well. They failed to conduct a critical cement test. And they failed to properly circulate well fluids.

The legislation we are considering would set strict new requirements to ensure that these basic well control guidelines cannot be ignored at any high-risk well.

BP says it relied on the well's blowout preventer as the last line of defense. But we know blowout preventers are not foolproof – not even close. They can't shear pipe to seal the well if there is a tool joint or other obstruction preventing blind shear rams from closing. They do not have appropriate redundancy built in. Too often, a single problem can cause systematic blowout preventer failure. And blowout preventers and their emergency control systems are not adequately tested once they are put in place.

The Blowout Prevention Act of 2010 would fix these problems. It requires redundant systems to shut down runaway wells. It requires third-party testing to make sure blowout preventers will work when needed. And it establishes a new aggressive oversight and testing regime, with unannounced site visits by federal regulators.

BP also took advantage of a lack of resources and a failure in the regulatory culture at the Minerals Management Service. The agency has handed over too much authority, relying on industry to police itself instead of aggressively stepping in to make sure that drilling operations were safe. This self-policing approach can only work if everybody behaves responsibly. All it takes is one bad actor, one well that falls behind schedule, and one too many corners cut before disaster results.

The legislation before the Committee sets out to change this culture of complacency. It requires the appropriate regulator to set tough standards and creates a committee of independent experts to check their work and make sure they do their jobs. This independent committee must review available technologies, assess industry practices and regulations, and provide the best, most up-to-date technical and regulatory advice so that we have the best possible set of rules for drilling high-risk wells.

It's too late to stop the explosion and blowout on the Deepwater Horizon. But we can continue our work to determine what happened, hold the appropriate parties accountable, and make sure that this type of catastrophic blowout never happens again.

This legislation is a good first step to ensuring drilling safety at high-risk wells, and I am looking forward to hearing from our witnesses about how we can make it even better.

I look forward to working with my colleagues on both sides of the aisle to make sure we can act decisively and rapidly in response to the disaster in the Gulf.

Mr. MARKEY. I thank the gentleman. The chair recognizes the ranking member of the full committee, the gentleman from the State of Texas, Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman. Before I give my opening statement, I do want to congratulate my friends on the Democratic side for their victory last night in the congressional baseball game. In spite of the best efforts of Mr. Scalise and Mr. Shimkus and several others on this committee on our side, the D side one, it was 4 to 4 going into the top of the seventh, and then we had our own spill of errors and malfunctions and our blowout preventer didn't work very well.

The final score was 13 to 5. So my hats are off to my friends on the Democratic side. And my heart goes out to all of the folks on my side who worked so hard for the game.

Mr. GREEN. Will the chairman yield?

Mr. BARTON. I would be happy to.

Mr. GREEN. Could we get a new battery for that blowout preventer?

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. We will work on it.

Anyway, Mr. Chairman, I have a formal opening statement I am going to submit for the record. I just want to summarize to say that we have had a strong offshore drilling safety record in the Gulf of Mexico. This is the first major spill. Unfortunately, since it is a very catastrophic spill, both in terms of loss of life, in terms of amount of environmental damage and also economic damage, so no one is happy about that. I think the bipartisan investigation that this committee is conducting is uncovering the facts. I would agree with what I think Chairman Waxman said just now, that this was probably a preventible accident. I would also agree that it doesn't appear that BP followed best practices in terms of industry. And I would also agree that those best practices need to be updated and improved so that if at all possible, we don't let this happen again.

I would point out that while it is important for Congress to act, and I think myself and all Republicans are prepared to work in a bipartisan basis on this bill, it is better to do it right than to do it fast. This draft bill is a work in progress. There are some things in it that I think are very positive. The third-party testing idea I think is a good idea.

I do believe, though, that the citizen suit provision in the bill is problematic. I am not sure that we want to do a citizen suit for this type of an activity. And I think, as Mr. Upton pointed out in his opening statement, we need to work on the definition of what a high risk well is. As currently drafted, the high risk could be construed to be every well that is potentially drilled in the United States both onshore and offshore.

And having said that, we want to improve safety procedures, we want to make it possible to continue drilling both in an environmentally safe and an economically positive way in the Gulf of Mexico and the other OCS areas. So we stand ready to work in a bipartisan basis to see if the draft before us can be improved so that it can be supported. And with that, Mr. Chairman, I yield back.

I do want to point out that Mr. Waxman has scheduled a markup downstairs, so some of us are going to have to be running back and forth to the other subcommittee markup, but we look forward to hearing from our witnesses and hearing the testimony. Thank you, Mr. Chairman.

Mr. MARKEY. I thank the gentleman.

The chair recognizes the gentleman from Washington State—I am sorry, the chair recognizes the gentleman from Washington State, Mr. Inslee.

OPENING STATEMENT OF HON. JAY INSLEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. INSLEE. Thank you. I just want to reiterate Mr. Waxman's comments that while we may not know the exact mechanism of this failure, we do know that there were multiple, multiple stop signs that BP ran through that could have resulted in this failure, so we are prepared to legislate in this regard and should do in a prompt and reasonable manner. I just want to say there are three things I hope we will consider in this draft. Number one, I hope that we will consider bringing to this industry the same level of safety and engineering expertise that we enjoy in the aviation industry. The FAA provides us a template about how to insist on using engineering to achieve statistical probabilities of success.

And I believe in this draft we should add a provision that will make sure that we have an engineering system analysis of every system involved in deep shore drilling that will reach statistical probability of success. We don't have that now, and I hope that we will consider adding that to this draft.

Second, I hope we will consider beefing up the provisions on what the requirements are for using the best available technology. We simply need to use the best available technology in this industry given the enormous risks entailed in deepwater drilling. We should make a requirement. We will be offering amendments in that regard. The third is we have got to make sure we use remote triggering devices for these blowout preventers. Other nations do this. It is a requirement that we should have, and look forward to working on this legislation.

Mr. GREEN. [Presiding.] The chair recognizes Mr. Shimkus—oh, Mr. Pitts for two minutes.

OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. PITTS. Thank you, Mr. Chairman. Thank you for holding this hearing on legislation written in response to the BP oil spill. The oil spill was a tragic event in the history of our country. Not only have lives been lost, but massive amounts of oil have been leaked into the ocean causing horrible effects, some of which we know now and some of which will take years to discover. First and foremost, the leakage of the oil must be stopped, the environmental damage must be repaired. And, in addition, it is imperative that we thoroughly understand what happened aboard Deepwater Horizon before, during and after the explosion. We must know what caused this horrific event so that it will never happen again. It is of ut-

most importance that due diligence is done by those investigating the root causes of the Deepwater Horizon blowout explosion.

While we acknowledge the need to focus on drilling safety and ensuring the response of blowout preventers, I am concerned that we are considering the bill before us today before the joint investigation has been completed. While we are in the process of finding out what exactly happened, I think it would be wise for this body to use caution from trying to come up with a solution that may or may not fix safety concerns.

As we move forward, I hope that the approach of this committee is prudent and measured. We want to, we need to promote drilling safety, yet at the same time we want to do this with knowing all the facts with the thorough knowledge of what is broken and the expertise on how to fix it. I look forward to hearing from our witnesses today, and I yield back.

Mr. GREEN. The Chair recognizes Mr. Butterfield for two minutes.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman. Let me start by thanking Chairman Markey for his relentless pursuit of the truth during this great tragedy. I say it is not premature for us to begin the process of legislating and addressing this terrible tragedy. From the beginning Chairman Markey has asked tough questions, he has demanded transparency and exercised his fall authority to investigate the blowout on the Deepwater Horizon rig. His work has produced tremendous insight into BP's failure to exercise due care. The American people deserve oil and gas companies that self-regulate out of respect for the safety of their employees and the environmental sustainability of their surroundings. Unfortunately, as the facts continue to come into clear view it appears that the financial bottom line, not the safety or the concern over environmental risk, was the primary concern. This is an enormous tragedy, all of us agree on that, but it necessitates a thorough review, and yes an overhaul of our regulatory strategy. The draft under discussion today begins the conversation, it is not an end point, it begins that conversation. We begin knowing that Federal officials lack the needed power to require the best technologies and practices, and knowing that the technology of high risk drilling has far outpaced the rule making to provide the public with security and certainty. We begin by playing catchup today. Thank you, Mr. Chairman. I yield back.

Mr. GREEN. Mr. Scalise for two minutes.

OPENING STATEMENT OF HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. SCALISE. Thank you, Mr. Chairman. Over 2 months after the onset of the Deepwater Horizon disaster, oil continues to pour into the Gulf and invade our coastal wetlands. If this catastrophe has taught us anything, it is that we must focus on offshore drilling safety. We must bring together engineers and scientists to develop

safety improvement strategies so that a disaster like the Horizon never happens again. I think it is worth noting that the President and his administration discarded the advice and safety recommendations of their own panel of experts and engineers in the initial 30-day safety report in order to pursue a 6-month drilling ban that those same experts say will actually jeopardize the long-term safety of offshore energy exploration.

Instead of focusing on safety, some in Congress are more interested in pursuing their own political agendas than addressing the issues we are battling in the Gulf. This takes our focus away from where it should be, on improving the safety of our domestic energy production. The Oil Pollution Act of 1990 states that the president shall ensure effective and immediate removal of a discharge. On numerous occasions the President has said that from day one, he has been on the ground and in charge. But if that is the case where was the President when State and local officials waited nearly a month for approval of a plan to construct sand berms and protect our valuable marsh.

And after approving only a small portion of the plan, why did the administration's bureaucrats recently halt construction of these critical berms for nearly a week while oil continued to pour in our wetlands? If Congress really was interested in helping us, pass legislation that actually helps us. If there is anything we should all agree on it is that our first priority and our focus needs to be on capping the well and protecting the Gulf Coast from the oil. And to be clear, this bill does absolutely nothing to stop the oil or solve the problems we are battling.

Of course, we all want to improve the safety of offshore energy production, but this bill, as it stands now, seems like a Trojan horse to shut down domestic energy production both offshore and on. And make no mistake, shutting down domestic energy production will shift millions of American jobs overseas and will leave our country more vulnerable to oil spills from even more imported oil. We need to continue the investigations into the explosion and sinking of the Horizon and make sure that this type of tragedy doesn't happen again.

But some people in this town seem determined to exploit our disaster and the tragic consequences of this event to pursue their own political agenda. And that is not only unfortunate, Mr. Chairman, it is also disgraceful and a slap in the face to the people of the Gulf Coast who are battling the effects of this disaster every single day. The oil is moving faster than the Federal response. We need answers and we need leadership by the President. Unfortunately, we have neither, and Louisiana's people and ecosystem are paying the price. Thank you, and I yield back.

Mr. GREEN. The chair recognizes Chairman Dingell.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, I thank you. I was very impressed. I have an admirable statement which I will insert in the record in the hope that everyone will find it useful reading. I was very impressed with the comments of my colleague. He is telling us the

story of a tale of two presidents. He is only telling us the tale of one president, but he has got the two mixed. We are harvesting here a situation which is created by a long series of deregulatory actions taken by the prior administration.

I had not intended to make a partisan comment today, because I don't think this is a partisan matter, but it appears other members seek to do so, and I think there needs to be some correction. The reason for this mess in the Gulf is the fact that for a long period of time, we were drill baby drill, and we had that as part of our national policy. We also had deregulatory actions. And we have found out the blessing of these deregulatory actions brought about an economic collapse in securities and in the national economy, and now we are finding that it works also on natural resources.

And we are harvesting a policy of making it easy to do the drilling and other things without seeing to it that they are properly scrutinized or taken care of. This administration had little, if anything, to do with it. And they are proceeding as fast as they can, because political pressures will tolerate no less. But the harsh fact of the matter is that we ought not be making a partisan fight out of this matter and rather seek to figure out how it is we are going to address the problem. I take offense at the comments just made, and I think it is time that we understand that we have to address this as a problem and not to run around and make a lot of pointless partisan criticisms of the current administration. The BP cut corners, the record will show. The climate was set where that could be done by the prior administration. And we are seeing a situation where not only could that occur, but that important statutes like NEPA, of which I just happen to be the author, were in good part disregarded.

NEPA says whenever an action which has major impact upon the environment is taken, that there must be an environmental impact statement filed. The practice of the prior administration was to waive NEPA whenever it could. NEPA does happen to be onerous, but the reason it is onerous is it requires that you take care to avoid things that are going to be hurtful and bad with regard to the environment. So you have got to go out and identify them and you have to go out and find out how you can best address them or minimize the hostile and adverse impact.

So they went ahead and hurried the process where it became no longer a practice to apply that to all components of a government action like leasing. They had a big environmental impact statement, but they never went into the specifics of the particular drilling. And now we are finding that this has a major impact on the human environment, just that one hole that they are drilling.

Now, having said these things, again I repeat, that what we should be doing is addressing the problem before us, not making a lot of partisan statements. BP is supposed to do the clean-up, and the government is screwing around to see to it that it be done. The minerals service at the Interior Department did a poor job. Quite frankly, it has become almost as corrupt as Sodom & Gomorrah, and it had to be cleaned out. The President did appoint a new head, and regrettably, the new head had to be disposed of because she did not do the job needed doing.

Now our attention is gotten and we intend to do something about these matters. But again, it is time to address what went wrong and understand that major problems exist, like the fact that BP doesn't have the capability to do what it is they should do, and they cut corners and saved money instead of looking to the public wellbeing. I think we should now concentrate on cleaning up the mess and to see to it that it doesn't occur again, and not to engage in a massive partisan finger pointing. Thank you, Mr. Chairman.

Mr. GREEN. Thank you, Chairman. The chair recognizes Mr. Griffith for two minutes.

OPENING STATEMENT OF HON. PARKER GRIFFITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. GRIFFITH. I would like to thank the chairman for calling this important hearing today. My nephew leaves from a little small city in Louisiana and flies 90 miles by helicopter onto a big rig every month to work, and I grew up fishing the Gulf and traveling the oil canals of south Louisiana. I might say that one of the provisions of the bill to have unannounced site visits is going to be very difficult, as most helicopters are noisy and will have to land on the rigs with the crew in an announced flight plan. So this bill certainly needs a lot of revision and a lot of thoughtfulness that it does not have as yet. I do not understand why we are here to discuss legislation to respond to a spill that is still in the progress of being investigated. The April 20th explosion left us all wanting answers, especially the families of the 11 who died in the accident. But just because we want answers and want to prevent this from happening does not mean that we should rush to pass sweeping policies.

I might point out that BP is mentioned over and over again, and yet we have aimed a regulatory shotgun at the entire industry, even those with great safety records. This is a punishment for those who have been doing their work well. It is the duty of Congress to find out exactly what happened so that we can most effectively craft policy to prevent future incidents like this and protect the people that we are sent to Washington to represent.

Our number one priority must be stopping the flow of oil, bringing the well under control and being able to finish the investigation is the most important step toward being able to ensure safety when producing our valuable resources. This is a time for engineering and action, not for knee jerk policy capitalizing on this crisis. I appreciate you coming today to testify, I look forward to your testimony and I yield back the balance of my time.

Mr. GREEN. The chair recognizes Mr. McNerney for 2 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman, for calling this important hearing. I spent some of my career in the energy industry, and when a device is supposed to be a fail safe device it is supposed to fail safety. What happened in the Deepwater Horizon was a tragedy, but an avoidable tragedy. While I agree the investigation may be ongoing, it is clear that the blowout preventer did not prevent a blowout. We need to put the provisions in place as soon as possible to make absolutely sure that insulation standards, testing procedures and device requirements are met and followed

which will truly prevent this kind of failure in the future. I yield back.

Mr. MARKEY [presiding]. The chair recognizes the gentleman from Missouri, Mr. Blunt.

OPENING STATEMENT OF HON. ROY BLUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. BLUNT. Thank you, Mr. Chairman, and thank you for holding this hearing on the Blowout Prevention Act of 2010. It has been 10 weeks since the Deepwater Horizon rig exploded and soon after sank into the Gulf of Mexico. While the main priority is clearly to stop the leak and focus on the clean-up we can, I believe, simultaneously look for effective ways to prevent this type of catastrophe from happening, and frankly, to determine how this problem could have been prevented as it appears to have been preventible. We need to learn the right lessons from the disaster to ensure that we respond appropriately.

Weeks ago, Mr. Chairman, I introduced legislation that would better prepare us in the future, doesn't turn over production of the Gulf to only the big oil companies and still holds private companies responsible for the clean-up cost and responsible for the economic damages. The bill before us today is not without concern. Many of those have been mentioned already. I am hopeful that we will be able to address what seems to be an overly broad definition of a high risk well and the citizen suit provision.

Within the context of our national energy policy, we have the opportunity to examine and implement plans that strengthen our ability to produce domestic oil and gas in an environmentally safe manner, continuing in our pursuit of energy independence from foreign oil. We should be looking at what steps energy explorers and producers should be taking to ensure that American energy can be safely found and efficiently used in the future. I am hopeful that this subcommittee can find ways to protect the environment and safely produce American energy, considering both the environmental and economic challenges we face along the Gulf today.

To that end, Mr. Chairman, I look forward to working with you, the ranking member and the chairman and members of the full committee as we try to move forward and find these solutions. Thank you, Mr. Chairman.

Mr. MARKEY. We thank the gentleman. The chair recognizes the gentlelady from California, Mrs. Capps.

OPENING STATEMENT OF HON. LOIS CAPPS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. CAPPS. Thank you, Mr. Chairman, for calling this morning's hearing. As the chairman said previously, the errors that led to the BP oil spill were identifiable and preventible. BP centered the well pipe for cementing with six braces rather than the 21 braces recommended by its own cement contractor. BP used a method of constructing the well that has been criticized for being substandard. And when BP activated its blowout preventer, it failed to properly deploy. These and other facts point to a systemic breakdown by BP and the safety and management of its offshore drilling activities.

But it is not just BP, Mr. Chairman. Time and time again, the entire industry has assured us that oil and gas drilling are safe. They said the technology had become so advanced that a blowout was highly unlikely, if not impossible, and they would be prepared in case it happened. Cozy relationships between the industry and its Federal regulators were undoubtedly a part of the problem as well.

So it is clear, the system regulating offshore drilling is broken, and if we don't do something about it, it could lead to additional failure. And that is why I support the bill before us this morning. It makes technological fixes to prevent another catastrophic oil spill. It raises safety requirements for BOPs and other safety equipment and practices during offshore drilling.

In order to ensure the accountability of these regulations the bill establishes an independent technical advisory committee, a very valuable resource, which will be useful.

Finally, the bill includes language that I authored to increase the civil and criminal penalties to those who violate the law. This is a good bill that will set us on a new and constructive path. But I think it is worth pointing out that at the end of the day, no matter what changes we make offshore drilling will remain a risky business. Accidents do happen, and the environmental and economic consequences of these accidents is very massive. And the more—the deeper we drill and the more complex ways the more massive consequences result.

The country deserves a better policy, a comprehensive policy, to prevent oil spill disasters from happening again. So thank you, Mr. Chairman, for holding this hearing and for advancing a bill to reduce the risks from offshore drilling. I yield back.

Mr. MARKEY. We thank the gentlelady. The chair recognizes the gentlelady from California, Mrs. Bono Mack.

Mrs. BONO MACK. Thank you, Mr. Chairman. I will waive.

Mr. MARKEY. The Chair recognizes the gentleman from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning. And thank you, Mr. Chairman, and thank you Mr. Upton for having this hearing, the Blowout Prevention Act. I think, like many members, I applaud many of the provisions that are contained in this legislation, such as requiring a more thorough response plan, increasing the civil and criminal penalties for those individuals who knowingly violate the law, implementing more stringent safety standards and requiring the applicant to certify that they can drill a relief well in a timely manner.

But I am also concerned that some provisions of this legislation are too broad or even unattainable and may have been designed to simply prevent oil and gas development in the United States. For example, because it would be nearly impossible for a drill operator to determine whether a potential blowout would lead to substantial harm, the high risk well designation would not only encompass all offshore oil and gas rigs, but could potentially encompass all onshore oil and gas rigs as well.

Perhaps, Mr. Chairman, we should wait to see what the Commission, the results of their investigation, before we pass legislation. And as we have seen before in the cap and trade bill and the chemical security bill, this legislation contains a citizen suit provision that would allow anyone to commence a civil action if they believe a company is in violation of this Act. And because attorney fees are enumerated as a potential remedy, it would incentivize trial attorneys to pursue litigation against anyone regulated against this regulation.

I welcome the witnesses, I look forward to their testimony and I hope in the future that we will have regular order on this bill so we can work together to address some of the concerns that I have expressed and ensure that limited Federal resources are used effectively to address the increased safety concerns with those wells that are truly at high risk. Thank you, Mr. Chairman.

Mr. MARKEY. We thank the gentleman. The chair recognizes the gentleman from Texas, Mr. Green.

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Thank you, Mr. Chairman, for holding this hearing on the Blowout Prevention Act of 2010. I appreciate both our panels for being here today and discuss our committee's proposed legislative response to the Deepwater Horizon disaster, and I look forward to your testimony. The legislation we have here to discuss is important, and I appreciate the chairman's effort to ensure our natural resources are safely produced and that the workers tied to this production are safe at all times and we eliminate potential environmental risk.

However, I have some concerns about how this will be accomplished in the bill and how reasonable some of the requirements and procedures established in this bill would be. It is important that we keep in mind that when our own Subcommittee on Oversight and Investigations revealed numerous existing key safety precautions were neglected by BP prior to the Deepwater Horizon disaster and didn't even meet the standards of the American petroleum institute, the API.

So again, I support the safety regulations being put in place where they are warranted, and certainly enforcement ones on the books. There are numerous provisions that may be impossible to implement unless your goal is to eliminate drilling in our country, and that is my concern. One example in the bill, on page 31, page 31 right at the top, it is, and I will quote, an appropriate Federal official. The term appropriate Federal official means the Secretary of Energy, Secretary of Interior, the administrator of the Environmental Protection Agency is designated a significant responsible provided in this Act by the President of the United States. You need to have one agency. You don't have to have a revolving agency depending on who is the president.

And I suggest we change that to the Department of Interior in consultation with the EPA and the Department of Energy, because the Department of Interior is reforming what they need to do. Although, I guess since we have three agencies, we can even say the President can name a future draft choice. There are concerns I

have. We need a balanced approach of this issue that ensures the safety of our workers and our environment while ensuring that our domestic producers, including the hundreds of small businesses tied to productions remain viable.

And again, Mr. Chairman, I hope to work with you before we go to markup, and even before the full committee so we can actually get a bill that allows for production safely and responsibly of our natural resources. And if we don't produce them in the Gulf of Mexico, we are going to easily have to import them from other parts of the world. And I yield back my time.

Mr. MARKEY. The gentleman's time has expired. The chair recognizes the gentleman from Texas, Dr. Burgess.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. Thank you, Mr. Chairman. You know, I never thought I would see the day when you don't want a good crisis to go to waste to become a governing philosophy, but it certainly seems to have now. I do question why the need for the haste with the hearing and the markup tomorrow when we haven't got all the facts in front of us. I am particularly disturbed that yesterday, our Committee of Oversight and Investigations was to have Secretary Salazar testify, but for whatever reason that testimony was pulled and the hearing postponed. You have to ask yourself why is Secretary Salazar being kept out of the Committee of Oversight and Investigations. It sort of seems like a crude attempt at a witness protection program.

Mr. Hayes, I look forward to hearing from you today. We didn't get your testimony until late last night. I was grateful to receive it. Some of the words literally leapt off the page of the third paragraph: Overall, given the level of detail contained in this draft the administration will require additional time and analysis to fully address and assess the policy and the legal implications of its provisions before we can provide the subcommittee with a detailed position on this bill. I think that is well stated, and I only wish the committee had the foresight to comply with your request. You know, we heard from two women down in Shalmet, Louisiana, on a field hearing about this very issue. They were very concerned that what this committee might do would further cripple the economy of their communities. They said over and over again in ways that were extremely clear that they don't need to be crippled with new regulations, but someone, someone needs to enforce the existing regulation.

So why isn't the Department of Interior and whatever we are calling MMS today, why are they not enforcing the regulations as they should be or they should have been? Where were they? So far the answers received can only suggest one answer, they were asleep at the switch.

Today we are going to look at this legislation, we are going to open the door for additional suits. As Mr. Green says, really our own purpose is to regulate an industry that this Congress has been anxious to regulate for a long time. I only hope the damage that we do in the next several days is minimum. I will yield back the balance of my time.

Mr. MARKEY. I thank the gentleman very much. And just for the record, we invited Secretary Norton and Secretary Kempthorne of the Department of Interior, plus Secretary Salazar to testify. Secretary Norton and Secretary Kempthorne could not be here this week. And so it is our intention to have all three them testify before the committee, but we did not, in fact, have that hearing because those two Secretaries could not be here.

Mr. BURGESS. Would the gentleman yield for just one moment? Secretary Salazar has been testifying in front of other committees without a buffer from the previous administration with no difficulty. I see no reason why he can't testify in front of our Committee on Oversight and Investigations.

Mr. MARKEY. It was our judgment that historical perspective is necessary in order to understand the totality of this issue. And again, our intention is to have that hearing, and we will do so, hopefully as soon as we come back from the 4th of July break. The Chair recognizes the gentleman from Utah, Mr. Matheson.

OPENING STATEMENT OF HON. JIM MATHESON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. MATHESON. Thank you, Mr. Chairman. The goals of this draft legislation, the Blowout Prevention Act, are commendable. And I agree that all evidence points to the need for additional actions to prevent future oil well blowouts that led to the catastrophe we are seeing in the Gulf. However, I do have some concerns that the Blowout Prevention Act is moving very quickly through the legislative process without ample time to thoroughly understand the effects the requirements might have on future drilling operations both onshore and offshore. There are a number of questions that have been raised about this bill, which I hope can be addressed, or we can begin to address them during this hearing. Among the concerns or questions I have would be what constitutes a high risk well and how many oil and gas exploration or production wells would be categorized as high risk? How will the requirements in this bill affect the permitting and leasing process for onshore activities on Federal lands? How would the new Federal requirements affect current state regulation of well construction? What Federal agencies would be responsible for writing these rules?

As you know, drilling a well in deep water is different from drilling one in shallow water, which is different from drilling in the Marcellus shell formation in Pennsylvania, which is different from a well in the Uinta basin in Utah? How will this legislation provide flexibility for well construction design and safety requirements based on these distinctions and avoid an inflexible one-size-fits-all requirement?

Again, those are a few questions I would like to, if we could, have answered. But I do want to express my appreciation that we have the chance to review this legislation, I do think we need to take appropriate steps, and I look forward to continuing working with the committee to make sure we get this right. I yield back.

Mr. MARKEY. The gentleman's time is expired. The chair recognizes the gentleman from Kentucky, Mr. Whitfield.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Mr. Chairman, thank you very much. And certainly we look forward to the testimony today. I think one of the themes that continues to occur in the Federal Government is that frequently we overreact, and particularly when we are dealing with complex issues as this is. And I agree with Mr. Matheson's comment about what is a high risk well. We need to know that. And when you start delegating to giving the Federal officials the authority to delegate their responsibility to the state to approve the commencement of drilling, that appears to me an effort made to simply start making extremely difficult to drill for our oil within our territorial waters.

And someone else raised the question, is our goal here to stop all offshore drilling? So I really think it is premature to move a bill this complex so quickly. We need expert testimony. We need to really develop into the impact of this kind of legislation. And then I—we certainly want these wells to be drilled safely with precaution maximizing the opportunity that there will not be a blowout, but I also notice in here we have a $10 million criminal fine, we have ten years in prison criminal penalties, so we don't need to be putting an unnecessary damper on the exploration for oil to help make our country less dependent upon foreign oil. We need to be doing things to maximize safety, but also encourage development.

So I think we need to move with great caution on this legislation, and I look forward to the testimony and the questions that are asked.

Mr. MARKEY. We thank the gentleman. The chair recognizes the gentlelady from California, Ms. Harman.

OPENING STATEMENT OF HON. JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. HARMAN. Thank you, Mr. Chairman. This committee is doing what it does best, regulating dangerous activity to protect the public. We have a recent history with toy safety, drug safety, auto safety and now we are going to try to improve deep water drilling safety. I think that the draft bill is very good. Improvements, I am sure, can be made. We are not rushing it out of here in 10 minutes. We have a discussion draft and tomorrow we will have a serious markup. But we will have additional witnesses, and the legislative process is the regular order. And the bill I am sure once it passes or when it passes will be better.

I personally would prefer no deep water drilling because I think it is inherently unsafe, but I recognize that there are regional differences among us. They are not partisan differences, they are regional differences. And I also feel a bit sheepish that I hail from the land of one person, one car.

Let me just mention that at the markup tomorrow I will offer an amendment, or hopefully it may be included in the manager's amendment, if we have one, to study whether drilling a relief well or—relief well simultaneously with drilling the main well makes sense. One of my constituents suggested this idea, and it seems to

me to make sense, and I would like us to probe whether as a matter of legislative policy it makes sense.

So I appreciate what you are doing, what we are doing, think it is consistent with the glorious history of this committee, and yield back the balance of my time.

Mr. MARKEY. I thank the gentlelady. The chair recognizes the gentleman from Texas, Mr. Hall.

Mr. HALL. Mr. Chairman, I will not use my time except to say that I have dealt with desperate situations like this before for all the years that I have been in politics, and I find that members of each party want to support their party's push or their party's thrust. Sometimes the penalty for not doing it is losing their committee or whatever. But I think—and the way we used to handle things like this in the Texas Senate when anything this outrageous comes up that they are going to give a civil penalty of $10,000, a civil penalty is oK, but 10 years in jail.

We set up an amendment, and I may do just that, an amendment to add on the death penalty for the second time they do it or add on for every person who is an employee of that company gets 10 years or the—that is how outrageous it can be. I yield back my time.

Mr. MARKEY. The gentleman's time has expired. The chair recognizes the gentleman from Louisiana, Mr. Melancon.

OPENING STATEMENT OF HON. CHARLIE MELANCON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. MELANCON. Thank you, Mr. Chairman. Mr. Dingell, thank you for your comments. The Gentlelady Bono Mack at the opening of the hearing, thank you for your comments about keeping this thing from being bipartisan. Let us work together. I have problems with the bill. We need to work through it. But as always, I appreciate the work of my colleagues on this committee as well as the rest of the body. I want to thank the Judiciary Committee for the fine work that they have done on the Spill Act, which will come to the floor today and I hope that you will all join me in supporting this great legislation that will give the 11 victims families the right to recover some measure of compensation for the losses they have suffered.

Today is the 72nd day of oil leaking into the Gulf of Mexico and there is no defense or excuse for BP's inability to cap the oil well and stop this manmade disaster. But the panic you see from my constituents is because the damage doesn't stop when the well stops. The environmental impact of this leak will decimate our wetlands, leaving us even more vulnerable to summer storms and hurricanes which threaten to arrive in a week. And we may never see our fisheries recovery. As you have heard me say many times before, our livelihood and our way of life are slipping away from each of us each day this well will continue to pollute our waters. I believe this is a time that demands action. I want to see BP throwing everything they have got at the problem.

There will be times for PR and commercials later. I want to see the rest of the industry continuing to give unfettered support and resources to this disaster. After this leak is contained, this country

will continue to demand affordable energy, and we intend in Louisiana to work hard and provide it for them. But we as a State and as a Nation can never let this happen again.

As has been mentioned in this committee before, it seems that the speed of expiration and innovation, great strengths in our country, left behind comparable research and development in the field of response and recovery. We are drilling with 21st century technology but still using 20th century methods to contain and clean up the spill. Because our State and our people have committed to give so much to power the rest of this country, I think it is fair to ask that every company and every agency involved in offshore energy production to cooperate and determine a safer path forward. I hope this hearing today plays a part in that discussion.

We need to find a middle ground between drill baby drill and a moratorium to keep the committee going in our area and it is a difficult task for me to stand in oil up top my ankle asking for more oil, but it is important to our lives and our livelihoods. I yield back my time.

Mr. MARKEY. I thank the gentleman. And we thank the gentleman for his incredible work in Louisiana and the Gulf and the Congress on behalf of his people. The chair recognizes the gentleman from Georgia, Mr. Barrow. The chair recognizes the gentleman from Vermont, Mr. Welch.

OPENING STATEMENT OF HON. PETER WELCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. WELCH. Thank you, Mr. Chairman. It is often said that Congress does two things: One, it does nothing and, two, it overreacts. This is a time when I hope we get it right. This committee has provided some real leadership, the chairman took a bipartisan delegation to the Gulf shortly after this catastrophe occurred. And as the information has unfolded in significant part because of the diligence of this committee, including the spill cam that made visible to all Americans what was spewing from the floor of the Gulf.

It has allowed us to get more and more information about what happened. And, in fact, when you get that information, it is clear that BP cut every corner possible when it came to a choice between safety and saving money. And it is also clear that the government agency, the mining and mineral services did not do its job and the whole point of the inquiry and the investigation was to find out what happened and what we can do to prevent this both with better regulation that works on behalf of the environment and the people and also safety standards that BP cut short. So this is timely and I look forward to working with you, Mr. Chairman and my colleagues on both sides of aisle for Congress to get this right.

Mr. MARKEY. We thank the gentleman very much. The chair recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman. I will waive my opening statement.

Mr. MARKEY. And the chair recognizes the gentleman from New York, Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman. In the wake of this tragedy, serious questions have been raised about the cause of the ex-

plosion and the adequacy of industry practices and regulatory standards relating to oil and gas drilling.

Mr. MARKEY. Is the gentleman's microphone on?

OPENING STATEMENT OF HON. ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ENGEL. Sorry. Thank you. In the wake of the tragedy, serious questions have been raised about the causes of the explosion and the adequacy of industry practices and regulatory standards relating to oil and gas drilling. We must take action to improving industry practices and strengthen regulatory standards to try to ensure that this never happens again. Before us today is the Blowout Prevention Act of 2010, the legislation establishes a number of standards and procedures to help ensure that the use of appropriate safety equipment and practices during high risk oil and gas and drilling activities. It is good legislation. I think it can be improved.

In particular, I would like to discuss with witnesses the addition of acoustic backup control systems and other emergency backup control systems. What really frustrates all of us is that we had been told time and time again that things of this magnitude really could never happen; and that if it did happen, there would be all kinds of safeguards in place. And we see now that was really not the case. So I have a hard time believing oil executives when they give us reassurances that this is a ones in a lifetime thing and it can't happen again. I thank you, Mr. Chairman. I thank you for pushing this bill.

I thank you for the hearings we have had. I think the American people want to get to the bottom of this. I am very, very upset with this. And obviously this is a catastrophe of monumental proportions for our lifetime and generations to come. I yield back.

Mr. MARKEY. We thank the gentleman very much. All time for opening statements from the members has expired.

We now turn to our witness, David Hayes. He is the Deputy Secretary of the Department of Interior. Deputy Secretary Hayes has played a leading role in organizing the administration's response to the BP oil spill in the Gulf of Mexico and is an expert on energy and natural resources policy. This is his second tour of duty at Interior. He also served as Deputy Secretary during the Clinton administration. Welcome back to the committee. Mr. Hayes, whenever you are ready. Please begin.

STATEMENT OF DAVID HAYES, DEPUTY SECRETARY, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY STEVE BLACK, COUNSELOR TO THE SECRETARY

Mr. HAYES. Thank you, Mr. Chairman and Ranking Member Upton and members of the subcommittee. Let me apologize for being a few minutes late. We had a fender bender on the way, but no serious injuries to be sure. I am accompanied here by Steve Black, counselor to the Secretary. Steve is the primary author of the 30-day report that I will talk about a little bit that we provided to the President on May 27th. And that mirrors a lot of the points made in your proposed legislation. Let me just also say, Mr. Chair-

man, at the outset, that we appreciate your leadership in this matter. We also appreciate the leadership of Chairwoman Waxman and the full committee. We want to continue to work with all committee members as we deal with this horrific problem. And it is in that spirit that we are here today. We endorse the aim behind the Blowout Prevention Act of 2010. In fact, many of its provisions are right in line with recommendations that we are now implementing administratively under the ample authority of the Outer Continental Lands Act. And I will go through that briefly in a moment. I would like to just take a couple of minutes, if I can, to give a little bit of context here in terms of how we are approaching these issues and then return to your legislation, and I look forward to questions and answers with the committee.

Just to step back and provide a little bit of context. Secretary Salazar recognized when he came in the door on January 20th with me and a small group that there were serious issues with the Minerals Management Service. At that time, the issues were associated with the revenue side of the organization and the scandal in Lakewood, Colorado. The Secretary took immediate action on the ethics side and on the prosecution side and then in the succeeding months, also looked at the regulatory underpinnings of the problem of revenue collection and, in fact, proposed to and we are now implementing the abolishment of the royalty in kind program because structurally it provided the impetus and the opportunity if you will for inappropriate relations between regulators and the regulated industry.

And the Secretary also looked very hard at the outer continental shelf and issues a writ large as the Secretary looked at a proposed new 5-year plan for the outer continental shelf. We had four public hearings, a half a million comments on all issues dealing with the outer continental shelf. It led to a conservative approach that the Secretary and the President implemented in canceling lease sales in the Arctic because of concerns about spill response capability, and in taking some areas completely off the possibility of outer continental shelf drilling, including Bristol Bay in Alaska because of environmental concerns.

As to deep water, the National Academy of Sciences was commissioned in the late fall to review the inspection program by the Minerals Management Service because we were concerned about the adequacy of that program. We also in the two budgets, we had prior to the accident asked for substantial budget increases for the Mineral Management Service and in particular the inspection capacity of the Minerals Management Service.

After the accident, of course, we have redoubled, tripled and quadrupled our efforts to deal with the obvious problems that led to the accident, even as we continue to explore the root cause of it. In particular, the President asked the Secretary to deliver within 30 days a report that would suggest safety improvements that could be taken and should be taken immediately and also in the medium and long term to increase the safety of offshore drilling. That report was submitted on May 27th. It is a comprehensive report and it is clear that your committee staff and you have reviewed it carefully because many of the concepts appear in the draft bill that you are reviewing today.

Also as you know, the Secretary and the President, within the last 10 days, announced a new head of the Minerals Management Service, Mike Bromwich, and the Minerals Management Service reorganization is proceeding. It is now the Bureau of Ocean Energy Management, Regulatory and Enforcement, and it is being divided into three parts that separate out the regulatory and enforcement and also the revenue sections.

With regard to the bill before you, we look forward to working with you and members of the committee on the bill. The 30-day report that we put out and that Mr. Black, in particular, led, has many of the same concepts, certification of equipment, third party review of equipment, new inspection reporting requirement, new casing and cement design requirements, new fluid displacement procedures.

These already are being implemented, but we had a notice to lessees on June 8th that laid out immediate requirements. We are also doing emergency rulemakings. We have a 6-month process of rulemakings that will generate new rules under our current authority for secondary control system requirements, ROV interventions, new emergency back-up control system and inspection and implementation requirements, including line shear rams, new testing requirements, new cementing well control requirements.

We are working very, very hard along these lines. We see many of the same things in your legislation. We are proceeding under current authority and believe that we can and will implement many of the aims of your legislation, but we look forward to working with you as you proceed to markup and through consideration of the bill. We would be delighted to sit down with your staffs and review in detail where we are in our regulatory processes and help identify and have a dialogue with you with regard to any gaps you see or any complementary actions you think would be useful to pursue.

With that, Mr. Chairman, I will close. And I look forward to answering any questions from the subcommittee.

[The prepared statement of Mr. Hayes follows:]

STATEMENT OF DAVID J. HAYES
DEPUTY SECRETARY OF THE INTERIOR
BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT
UNITED STATES HOUSE OF REPRESENATIVES

JUNE 30, 2010

Thank you, Chairman Markey, Ranking Member Upton, and Members of the subcommittee for the opportunity to discuss with you today the ongoing efforts within the Department of the Interior and the Administration related to offshore energy development safety and regulatory reforms. I am accompanied today by Steve Black, Counselor to the Secretary, who helped develop and draft the Department's Report on Increased Safety Measures for Energy Development on the Outer Continental Shelf, also known as the "30-day Report," which was delivered to the President on May 27, 2010.

Introduction

Although this unprecedented disaster, which resulted in the tragic loss of life and many injuries, is commanding our time and resources, it has also strengthened our resolve to continue reforming the Outer Continental Shelf program. Before I detail the many reforms of this program that Secretary Salazar and his team have implemented over the past 17 months, let me provide a few general comments on the discussion draft of legislation, the "Blowout Prevention Act of 2010", that the subcommittee made public at the end of last week.

Overall, given the level of detail contained in this draft, the Administration will require additional time and analysis to fully understand and assess the policy and legal implications of its provisions before we can provide the subcommittee with a detailed position on this bill.

However, a number of the provisions in the legislation appear to tier off recommendations made in the 30-day Report to the President, and would codify those recommendations, many of which are already underway. With this in mind, we recognize that existing statutory authority and regulations may provide a sufficient legal pathway to develop the technologies and practices needed to raise drilling operation and safety requirements to a higher standard.

Continued Reform

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

Specifically, these reforms have included the following:

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

- upgraded and strengthened ethics standards throughout MMS and for all political and career employees;
- terminated the Royalty-in-Kind program to reduce the likelihood of fraud or collusion with industry in connection with the collection of royalties; and

- aggressively pursued continued implementation of the recommendations to improve the royalty collection program that came from the Department's Inspector General, the Government Accountability Office, and a committee chaired by former Senators Bob Kerrey and Jake Garn.

Second, we reformed the offshore oil and gas regulatory program, which included the following:

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

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

Third, we laid the groundwork for expanding the mission of MMS beyond conventional oil and gas by devoting significant attention and infusing new resources into the renewable energy

program, thereby providing for a more balanced energy portfolio that reflects the President's priorities for clean energy. Toward that end, we:

- finalized long-stalled regulations that define a permitting process for off-shore wind – cutting through jurisdictional disputes with FERC in the process and ultimately approving the Cape Wind project;
- announced the establishment of a regional renewable energy office, located in Virginia, which will coordinate and expedite, as appropriate, the development of wind, solar, and other renewable energy resources on the Atlantic Outer Continental Shelf; and
- entered into an MOU with governors of East Coast states, which formally established an Atlantic Offshore Wind Energy Consortium to promote the efficient, orderly, and responsible development of wind resources on the Outer Continental Shelf through increased Federal-State cooperation.

Offshore Energy Reforms and Related Activities Underway

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

- inspecting all deepwater oil and gas drilling operations in the Gulf of Mexico and issuance of a safety notice to all rig operators;
- relevant to the subcommittee's legislative effort, implementing the 30 day safety report to the President, including issuing notices to lessees on new safety requirements, and developing new rules for safety and environmental protection; defending the suspensions on new deepwater drilling, which is currently the subject of litigation; and

- implementing new requirements that operators submit information regarding blowout scenarios in their exploration plans – reversing a long standing exemption that resulted from too much reliance on industry to self-regulate.

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

On June 18, 2010, the Department issued a Notice to Lessees (NTL) requiring 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. This reverses a 2003 policy and a 2008 NTL that exempted many offshore oil and gas operations in the Gulf from submitting certain information about such a scenario and is consistent with the requirements contained in these bills.

Additional reforms will be influenced by several ongoing investigations and reviews, including the Deepwater Horizon Joint Investigation currently underway by the Bureau of Ocean Energy Management, Regulation and Enforcement, and the United States Coast Guard. In addition, at Secretary Salazar's request, a separate investigation is being undertaken by the National Academy of Engineering to conduct an independent, science-based analysis of the root causes of the oil spill. We also requested that the Inspector General's Office undertake an investigation to

determine whether there was a failure of MMS personnel to adequately enforce standards or inspect the Deepwater Horizon.

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

Supplemental Legislation

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

As part of our reforms, we are also building on the efforts we undertook in the last 17 months to strengthen the OCS budget. As I already mentioned, the President's 2011 budget includes a ten percent increase in the number of inspectors. Our restructuring of the OCS program will require additional resources to aggressively pursue the reforms outlined above, to implement the 30 day report to the President, and to potentially address the results of ongoing investigations and the President's Commission. We are currently hiring an additional twelve inspectors, six more than we proposed in the 2011 budget, and we are taking other actions that are outlined in the 30 day report to the President. Over the course of the next several years, our restructuring of a more

robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff.

The President's supplemental request of May 12, 2010, includes $29 million that will fund the near term resources we need for these activities. It is critically needed to support our full and relentless reforms – to bolster inspections of offshore oil and gas platforms, draft enforcement and safety regulations, and carry out environmental and engineering studies. The President's request included a proposal to extend the time allowed by statute for review and approval of oil and gas exploration plans from 30 to 90 days.

Reorganization of the Minerals Management Service

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

Director Bromwich joins the team that has been working out the details of the reorganization – Rhea Suh, the Assistant Secretary for Policy, Management and Budget, Wilma Lewis, the Assistant Secretary for Land and Minerals Management, and Chris Henderson, one of the Secretary's senior advisors, who have been tasked with developing a reorganization plan in consultation with others within the Administration and with Congress. The report will provide

the plan to restructure the Bureau of Ocean Energy Management, Regulation and Enforcement in order to responsibly address sustained development of the Outer Continent Shelf's conventional and renewable energy resources, including resource evaluation, planning, and other activities related to leasing; comprehensive oversight, safety, and environmental protection in all offshore energy activities; and royalty and revenue management including the collection and distribution of revenue, auditing and compliance, and asset management.

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

The restructuring will also address any concerns about the incentives related to revenue collections. The OCS currently provides nearly 30 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production and is one of the largest sources of non-tax and non-trust revenue for the Treasury. The MMS collected an average of more than $13 billion annually for the past 5 years. There will be clear separation between the entities that collect and manage revenue and those that are responsible for the management of the OCS exploration and leasing activities.

Sustained Response Efforts in the Gulf

Of utmost importance to us is the oil spill containment and clean up of the Gulf. Secretary Salazar has returned to the Gulf Region numerous times to help the Administration's effort to

protect the coasts, wetlands, and wildlife threatened by this spill. The Department has deployed approximately 1,000 employees to the Gulf and they are directing actions to contain the spill; cleaning up affected coastal and marine areas under our jurisdiction; and assisting Gulf Coast residents with information related to the claims process, health and safety information, volunteer opportunities, and general information on the efforts being carried out in the region.

Under the direction of National Incident Commander Admiral Thad Allen and an effort co-led by the Secretary and Energy Secretary Steven Chu, we recently announced an improved estimate of how much oil is flowing from the leaking well. That estimate, suggests that the flow rate is at least 35,000 barrels per day, based on the improved quality and quantity of data that are now available.

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

Representatives from the FWS also participated with the U.S. Coast Guard, the Environmental Protection Agency, and state and local governments in a series of public meetings with local

residents to answer questions and offer information on a variety of topics related to the spill and response activities.

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

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

Conclusion

We have spent much time at the Department working to promote reform of prior practices in the MMS and to advance the President's vision of a new energy future that will help us to move toward clean energy sources and away from spending hundreds of billions of dollars each year on oil. We are also involved in a multi-agency process to develop a new national ocean policy that is intended to look ahead in the long term to help the United States think comprehensively about how we make better informed management decisions regarding the use and conservation of ocean, coastal, and Great Lakes resources.

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

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

Mr. MARKEY. We thank you very much, Mr. Hayes. The chair will recognize himself for a round of questions. Would you like Mr. Black to be able to make any comments, or is he there just to answer questions?

Mr. HAYES. He is here to bail me out, Mr. Chairman, if necessary. Thank you.

Mr. UPTON. We don't use bailouts here anymore in this Congress.

Mr. MARKEY. It is a lifeline. Mr. Hayes, in the past 2 months, we have learned just how unprepared the oil and gas industry is to deal with blowout, especially those that occur deep beneath the surface of the ocean. We have learned that top hats, junk shots and riser cuts can't stop the oil from flowing. We have learned that skimmer, boom and fire can't stop the oil from washing ashore. We have learned that dispersants are themselves toxic. We have learned that hurricanes can completely disrupt even the overwhelmingly response efforts currently underway. We have learned that even the relief wells are not certain to work. In fact, when we had the 5 largest oil company CEOs in front of the committee a couple of weeks ago, they all agreed that when faced with a blowout like this, they really had no good solutions.

Clearly relying on the industry's ability to respond to a spill like this in the future would be an enormous mistake. Don't you agree that when we need to—what we need to do is to take all necessary steps to prevent a blowout from occurring in the first place?

Mr. HAYES. Absolutely, Mr. Chairman.

Mr. MARKEY. So what that means is basically the blowout preventers must be able to prevent blowouts, the wells must be able to be sealed so that oil and gas can't just gush into the ocean. The well design and operation must have the best and safest technology. Do you agree with that?

Mr. HAYES. I do.

Mr. MARKEY. Mr. Hayes, do you agree that the Department should be required to periodically update its regulations to ensure that safety requirements keep pace with any expansion of drilling and related risks?

Mr. HAYES. I do, Mr. Chairman.

Mr. MARKEY. How do you propose that we would do that, Mr. Hayes?

Mr. HAYES. Well, I think it is the kind of examination that we are proceeding with right now where we take a comprehensive look at the status of the regulations and update them. One of the truths that we have seen from this incident is that the technology has advanced more quickly than the regulatory system and the regulatory system has to keep up certainly, if not lead the technology. So I am not sure exactly what the appropriate time frame is, but there certainly has to be vigorous periodic updating of regulatory requirements.

Mr. MARKEY. Mr. Hayes, your testimony raises the question whether the Interior Department already has the legal authority to impose some of the requirements in the legislation now before us. It is true that current law requires the use of best available and safety technology that is economically feasible and cost justified. That is a very broad, open-ended standard that leaves the Department with a lot of discretion. But from the congressional perspec-

tive, the critical questions are what the Interior Department has done with its broad discretionary authority and what the Department may do with it in the future. Perhaps not under this administration, perhaps under an administration that looks more like the previous administration, which took an attitude of complacency towards safety.

Mr. Hayes, isn't it true that not withstanding the Department's current legal authority, its safety regulations for offshore drilling prior to the Macondo well blowout were clearly inadequate?

Mr. HAYES. I would say, Mr. Chairman, that the combination of the regulatory framework and the enforcement structure was inadequate. In terms of the regulatory approach, there are broad—the current regulations are actually quite comprehensive, both in terms of having performance standard, which are the approach that many other countries are taking, such as Norway, the U.K., et cetera that have had major accidents and a blending of prescriptive standards. What has been lacking, I think, is strong enforcement of those. But also clearly the kind of periodic review that you were referring to in your previous question and updating of the regulations. And that is underway.

Mr. MARKEY. So that authority was not used?

Mr. HAYES. The authority certainly was not used to the extent that the law allows.

Mr. MARKEY. Isn't it true, Mr. Hayes, if Congress does not establish adequate minimum standards for safety there is a real risk that a future administration will again slide into complacency because there would be no minimum standard?

Mr. HAYES. Well, I think some minimum standards certainly make sense, Mr. Chairman. And we are in the process of implementing the same through our regulatory process.

Mr. MARKEY. Thank you, Mr. Hayes. My time has expired. The chair recognizes the ranking member, the gentleman from Michigan, Mr. Upton.

Mr. BARTON. Mr. Chairman, what is the situation with votes on the floor?

Mr. MARKEY. The second bells about have already rung? Well, I would leave to the discretion of the gentleman. If he would like to begin and end his questions in 5 minutes, I think we can do that or we can adjourn right now and come back. That is the gentleman's wish. The committee will stand in recess until the completion of roll call.

[Recess.]

Mr. MARKEY. The Subcommittee on Energy and Environment reconvenes. And the chair will recognize the ranking member of the committee, the gentleman from Michigan, Mr. Upton.

Mr. UPTON. Thank you, Mr. Chairman. So, Mr. Hayes, I was not able to read your testimony before I left last night and even though I started early this morning, 6:30, I didn't see it so I heard your oral testimony. You did say in the written testimony but not in your oral testimony that the administration was not prepared to give their support for the bill; is that right? So that is as it would be cleared by OMB?

Mr. HAYES. That is correct, Congressman. That we do not have clearance from OMB to have an administration position on this bill at this time.

Mr. UPTON. OK. Now, there are a good number of things—there are a number of things in the bill that I support. I support the blowout preventer and the requirements that include the independent third-party. And you all have the ability to require that now by regulation, right?

Mr. HAYES. That is correct.

Mr. UPTON. What are the current regulations as it relates to the blowout preventer? Are there any regulations along this line?

Mr. HAYES. There are some. There is a general regulation and then some specifics in terms of types of for example systems that need to be in place in BOPs, for example. But it is more of a menu as opposed to much of a prescription. For example, there need to be under the regulations some redundancies, two types of redundancy, but there is not a prescription that it has to be a certain type of blowout prevention mechanism like for example acoustic devices can be used but aren't prescribed to be used and what we are doing right now, Congressman, is essentially filling in what we think are gaps in those regulations under the 30-day report that we are now implementing.

Mr. UPTON. It talks about, and of course, we had a number of hearings here, not only oversight, but as well as this subcommittee. And I read the detailed report by the oversight subcommittee, which I thought was very good. One of the things that came out in our hearing a week or 2 ago was that when we had the five CEOs come, that four of them indicated that they had the stop-work requirements on their rigs and pointed out probably that BP did not take advantage of that. Is the Department of Interior looking in the absence of this bill, where are we on stop work provisions?

Mr. HAYES. We are very interested in that point. We think it is an essential ingredient of any regulatory system that there be an understanding that if there is a risky situation that develops, that there is an obligation to take a conservative route and shut down. We are looking at that from a couple of different perspectives. We are finalizing some safety system regulations that have a similar type of effect. But quite honestly, we are going to look at what you all have put here in this bill and see whether we are—we have a strong enough regulation underway to deal with it because we certainly agree with the point. So we will examine that further.

Mr. UPTON. I have two questions I want to get to before my time expires. Have you all done what we call a side-by-side of what the rules and regulations are for offshore drilling in this country as compared to what U.K. and other countries overseas have done? Pluses and minuses.

Mr. HAYES. We started that process in connection with a 30-day report and have a discussion in the 30-day report that provides essentially a fairly high level analysis of that.

Mr. UPTON. Could we get a copy of that? Can that be made available?

Mr. HAYES. Certainly, we will be happy to get that to you. We want to do more than that. We want to have world class standards

here and we want to lead the world. But Norway, and the U.K. in particular, both had some very serious accidents and as a result of that, revamped their regulatory systems. And, in fact, our separation of the regulatory side from the enforcement side is something that both countries have done and did after their accidents. So we want to learn from them. We are in that process and we need to continue it.

Mr. UPTON. The last question I have, the staff—we have looked at the language that makes the definition of the high risk well. Their thoughts are that it would, in fact, the definition would capture all offshore oil and gas rigs and could potentially capture all onshore oil and gas rigs as well. Is that your understanding of the definition?

Mr. HAYES. We would want to study the definition more. That is the kind of thing we need more time to study. There certainly is a differentiation among risks in terms of well with pressures and temperatures and that sort of thing. But we don't have a view on the definition in your bill at this point.

Mr. UPTON. How long might you take to come up with a conclusion on that?

Mr. HAYES. We would be happy to follow up informally at the staff level in terms of getting—and are available to do that at any time.

Mr. MARKEY. The gentleman's time has expired. The chair recognizes the chairman of the full committee, the gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. On April 30th, the President directed the Secretary of Interior to conduct a review of the Deepwater Explosion disaster and provide recommendations on additional precautions and technologies that should be required to improve the safety of offshore oil and gas operations. This 30-day report was delivered to the President on May 27th. We are working to craft legislation with the same goal of improving safety and the 30-day report has helped inform our efforts as you know. The report has several recommendations related to ensuring the effectiveness of the blowout preventer. These devices are supposed to be a fail safe way of preventing blowouts from occurring. Mr. Hayes, one of the recommendations in the report was that blowout preventers should be required to have 2 sets of blind shear ram spaced at least 4 feet apart. Why is that important?

Mr. HAYES. That is important, Congressman, because the blind shear rams which are designed to cut through a pipe and through the drill pipe in an emergency where you have to just get complete closure have the potential to hit the joint between the casing strings, and if they hit the joint, they won't be able to shear through. If you have them separated by 4 feet, you are sure to get an area of the pipe that is outside of the joint interval.

Mr. WAXMAN. We agreed with that provision and we thought we needed to make sure at least one set of blind shear rams could cut through and seal the pipe. So we included that as a minimum requirement in our bill. The 30-day report also includes recommendations that embrace the concept of third-party certification of blowout preventers. Why does the Department think this is a good approach?

Mr. HAYES. Well, it is an approach, Congressman, that actually has been taken in other jurisdictions, Norway, U.K., for example, take that approach. We think it helps ensure that the industry is not simply self-regulating and/or dependent upon government inspectors, that there is an additional enforcement mechanism. And interestingly, we are already imposing some of that under the notice to lessees—that we sent out the safety notice to the lessees that we sent out earlier this month. And there is a lot of activity and it seems the industry folks recognize the significance of it or so they have told us. So we think it is an important step.

Mr. WAXMAN. We agreed with all the things you said, and we also thought that it will help ensure break out preventers are properly designed for the well and that it is properly maintained. So we had that requirement that they be certified by an independent third-party before drilling begins and every 6 months after that. Another key issue is well design and cementing procedures. The 30-day report emphasizes the need for new rules for casing installation and cementing. What do you see as the weaknesses of the current regulation of well design and cementing?

Mr. HAYES. Well, on the cementing side, I am not yet a petroleum engineer, but there are a variety of question marks regarding the type of cement that is used, the time of the curing of the cement, the expectation of how far up and down the annulus the cement job has to fall. There are views there could be weaknesses in all of those aspects. And we are doing an emergency rule making to help develop standards in that regard. Similar with regard to the well design. There are concerns about single string casing for certain types of wells. The same type of issues, Congressman, that your bill is addressing.

Mr. WAXMAN. Well, we took that recommendation and provided that there be a third-party certification of an oil company's casing designs and cementing procedures in order to maintain well control. We also require cement bond log tests to ensure the defective cement jobs are detected before it is too late. Something we wish BP had done and they could have done and they didn't. We appreciate all of your efforts to improve the safety of offshore drilling and we look forward to working with you and our colleagues to be sure that we do the best we can to learn from the experience, prevent it from ever happening again and leave enough flexibility so as new technologies are designed, you have the flexibility to accommodate those concerns. But not just delegate the authority to the companies to make the decisions on their own, which could lead to them cutting costs and cutting corners at the same time. Thank you. I yield back my time.

Mr. INSLEE [presiding]. The chair recognizes Mr. Barton for 5 minutes.

Mr. BARTON. I thank the distinguished subcommittee chairman there. It is good to see you on the chair as opposed to on the baseball field last nights. Chairman Markey asked some questions about existing authority versus new authority. What authority that you don't have do you need statutorily in this bill?

Mr. HAYES. Congressman, we think we have the authority we need to develop a more robust regulatory system, but we are happy

to work with the committee as Chairman Markey suggested to help identify minimum standards.

Mr. BARTON. And I think the Republicans are open to giving new authority where necessary. I want to clarify. You could to use your phrase develop new robust standards without existing new statutory authority, is that not true?

Mr. HAYES. That is true. I will say that another aspect of the bill is to increase the penalties for failure to meet the regulatory standards. And we have testified elsewhere that we are open to increasing those penalties.

Mr. BARTON. Mr. Upton asked some questions about the definition of high risk. As currently drafted, it could be interpreted to apply to almost any well drilled on shore or offshore, is that not true?

Mr. HAYES. I unfortunately don't—can't comment on that. But we understand the importance of having a solid definition of high risk. There are differentiations among wells and we would be happy to work with the committee——

Mr. BARTON. For example, would the current definition of high risk or the lack of definition of high risk in the pending draft, could it apply to wells that are on private land or State land on shore?

Mr. HAYES. I cannot comment, Congressman.

Mr. BARTON. You can't comment that it could or it couldn't or you just won't comment?

Mr. HAYES. No, I would be—I need to review that. I am not trying to be evasive, Congressman. I need to review the language more closely.

Mr. BARTON. Do you agree that before we legitimate we should have a definition that is clear and precise and easily understood?

Mr. HAYES. I do.

Mr. BARTON. That is a good answer. That is a good answer. Does the Department of Interior have a position on drilling in the OCS?

Mr. HAYES. In terms of a moratorium?

Mr. BARTON. Not to the moratorium yet. Is there an official position on generic drilling in the OCS? And if so, what is it?

Mr. HAYES. We support drilling in the OCS in accordance with the Outer Continental Shelf Lands Act, yes.

Mr. BARTON. If that is the position, do you or the administration agree that legislation that is passed to deal with the oil spill should still make it possible to drill in the OCS?

Mr. HAYES. Well, the predicate, of course, to our statement is that the drilling can proceed in a safe and environmentally sound manner. And we are open to legislative improvement that would help assure that result.

Mr. BARTON. But I think it is clarifying for the administration and the committee to understand that everybody wants to drill safely, environmentally, protectively. But if you set the standards and the regulations so strenuously or tightly, it is at least conceivable that you can end up not getting any drilling, and that means we would be even more dependent on foreign choices of energy.

So the key for the committee and the administration is to tighten up where necessary, clarify where necessary, do everything necessary to prevent if possible a recurrence of what happened ever again, but still make it possible to generate the domestic energy

that is beneath the waters of the OCS that helps our citizenry on shore. Do you agree with that?

Mr. HAYES. As a general matter, yes.

Mr. BARTON. Thank you, Mr. Chairman.

Mr. INSLEE. Thank you. I recognize Mr. Dingell for 5 minutes.

Mr. DINGELL. Thank you, Mr. Chairman. As one of the two authors of NEPA, which I cosponsored back with my old friend, Scoop Jackson. I am troubled about the fact that here, the agency appears to have required a full EIS with regard to the overall leasing but not with regard to the particular well. Am I correct in that?

Mr. HAYES. Yes.

Mr. DINGELL. Is that going to be a continuing practice or are you going to see to it now that you have environmental impact statements issued on each well?

Mr. HAYES. We are in the midst of a very intense evaluation of that issue with the counsel.

Mr. DINGELL. I will tell you that that statute requires you to do this whether it is going to be an impact upon the environment and I think as you look about you it has had an enormous impact on the environment and a political impact on everybody concerned. And I want you to know I will make that political impact considerably worse if you don't engage in the practice of seeing to it that you have environmental impact statements following each one of these deep-water wells because the consequences are quite frankly horrific. Now, if you did not do so, on the Macondo well, will you please submit the rationale for the record?

Mr. HAYES. Certainly.

Mr. DINGELL. And also submit for the record statutory authority under which categorical exclusions were granted. Were there any statutory bases for the exclusion or not?

Mr. HAYES. There was a regulatory basis, the counsel on environmental quality has a rule that applies here.

Mr. DINGELL. Please submit that.

Mr. HAYES. We will.

Mr. DINGELL. Now, how many categorical exclusions under NEPA were granted for drilling projects in the OCS? You can submit that for the record.

Mr. HAYES. We will.

Mr. DINGELL. That is a substantial number. Now, section 3 of the discussion draft before us requires redundant sets of shear rams on the wells. I happen to think that is a good idea, but I have a great apprehension and that is that this may, in some way, stall, slow or prevent development of even better and newer technology. How are we to address that concern?

Mr. HAYES. I think you raise a very important point, Congressman. We are interested in triggering a complete reevaluation of the technology for blowout preventers and certainly with today's blowout preventer, a duplication of the shear rams makes great sense, but query whether there isn't better technology that can be brought to the table and we are very open to and expect to be evaluating that.

And we—to your point, we hope that legislation will not inhibit the ability to move with technology and move beyond the current approach.

Mr. DINGELL. Any regulations you issue pursuant to that I hope will encourage rather than inhibit that process. Now, as I see the way you ought to do this, first of all, you need to gather full information for the proper decision-making process then you need to ensure that the development of the well is done safely including safe development. Then I see that you need to engage rather specifically here in prevention of failures because prevention is a lot easier to do than cleaning up some damnable mess that is created. Then I see you have to have on hand an adequate and quick response to failure. I note here that there was no adequate quick response. And I note that there were no cleanup plans, and I note that there does not appear to have been constant review of practices and developments and new technologies as you went forward. Do you agree or disagree with that statement?

Mr. HAYES. I agree that there is a 3-legged stool. There is the safety and prevention aspect of this that we are working on. There is the containment issue. If a spill curse that has not traditionally gotten enough attention and there is the spill cleanup requirement that clearly needs attention.

Mr. DINGELL. In your regulations, are you going to make an effort to see to it that the regulations do reflect those concerns? And if you will, please, tell us what—in what fashion this legislation does not ensure that those steps are taken? Because if we want to see to it that if we do this, it is done well.

Mr. HAYES. Well, I do note that your section 2 has performance standards in your legislation that deal with all three of these issues and that strikes us—strikes me as a very appropriate approach. In terms of what we are doing on the containment side, it is part of our 30-day report is a suggestion that we are following through on on evaluating how to be much more prepared for this eventuality which despite hopeful thinking that this cannot occur, it obviously can occur and we need to be better prepared.

Mr. DINGELL. My time is ending, so I have to get this question in. You did not have a quick and adequate response to the failure which occurred, and I do not believe that you had adequate cleanup plans which placed proper burdens upon the company that did the drilling. Are you making steps to change that and see to it that proper actions are taken in that regard, both with regard to existing leases and coming up leases?

Mr. HAYES. Yes, sir.

Mr. DINGELL. Would you give us a statement as to what you are doing there and how it is progressing so that the committee can have a look at that, please?

Mr. HAYES. Yes, sir.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. MARKEY. We would recognize Mr. Scalise for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. Mr. Hayes, are you familiar with the 30-day report that was conducted by the Department of Interior to come up with recommendations? And they would come up with a number of specific safety recommendations. Have you looked at those safety recommendations and implemented any of those?

Mr. HAYES. Yes, sir.

Mr. SCALISE. Which ones?

Mr. HAYES. We implemented five specific safety recommendations in the June 8 notice to lessees. I am sorry, it was more than five. More like 8 or 10.

Mr. SCALISE. Are you familiar with their concerns about the moratorium issued by Secretary Salazar? Specifically, I know a majority of that panel that was put together, those scientists, those engineers, a majority of them actually said this moratorium implemented by the Secretary would reduce safety. Are you familiar with those concerns that they expressed?

Mr. HAYES. There were concerns expressed by some of the reviewers.

Mr. SCALISE. A majority of them.

Mr. HAYES. The question of the proposed—the concept that there was a higher risk associated with the drilling moratorium was not endorsed by a number of those folks.

Mr. SCALISE. But a majority did say that? A majority actually said that this moratorium would decrease safety. Are you aware of that first of all? A majority of the panel put together by the Secretary.

Mr. HAYES. We had a number of these folks in the office with the Secretary. There was not unanimity on that point by the folks who were visiting with us.

Mr. SCALISE. But a majority signed a letter and I don't know if you saw the letter, but a majority of the scientific panel you put together, the actual experts that you assembled said that the moratorium would decrease safety. Are you aware of that?

Mr. HAYES. I am aware of the letter.

Mr. SCALISE. I would hope you all would go back and look at that because many of us are concerned that not only does it hurt economically to have this moratorium, but it will actually reduce safety. And there are very specific reasons that they cited for those reductions in safety. And if we are as concerned as I am about increasing safety, then the Secretary should be very concerned that his own moratorium actually would decrease safety on offshore drilling as recommended by his own panel that he put together, a majority of those members.

So I would hope you would go back and look at that. But going back to the actual report on safety, but specifically about the bill we have before us. Can you tell me in the bill which provisions would actually help us cap the well right now? Which provisions in the bill right now will help us cap the well that is leaking?

Mr. HAYES. I think this committee is more familiar with the bill than we are.

Mr. SCALISE. Have you read the bill?

Mr. HAYES. Yes, I have read the bill, Congressman.

Mr. SCALISE. Do you know of any sections that would increase our likelihood of capping the well?

Mr. HAYES. Section 2 has a performance standard that requires containment.

Mr. SCALISE. That requires containment not related to this well, though. Can you tell me, then, in the bill where does it actually have any provisions that help us battle the oil and keep it off of our coast today which we are battling with every day we have been battling with for over 2 months.

Mr. HAYES. Well, Section 2 says that the oil response plans need to be revised. There has to be an assurance that BOP will work.

Mr. SCALISE. That is nice down the road but that doesn't help us today. I am pointing out, the title of this hearing is legislation to respond to the BP oil spill and yet I don't see anything in this bill that actually helps us address the problems we are dealing with today. Now, I know some members are scrambling around to try to defend this administration's failures, but if you actually go and talk to the leaders on the ground, the people who are battling that oil every day, they will tell you that they are spending more time fighting the Federal Government's incompetence than they are battling the oil. That is inexcusable, yet that is still happening today. We are not talking about something that happened in the first couple of weeks it has been resolved.

Just last week, we had two more very clear examples of efforts where our leaders were trying to battle the oil and they were being blocked not by BP, but by the Federal Government. So maybe some people that want to defend the administration would be better served to actually go down to the Gulf and go meet with those leaders and help us. We want to help solve the problems on the ground, and I know this bill has got all kind of things, and I would like to ask you about some of the specific things that are very undefined that literally would allow complete elimination of drilling not just offshore but also on shore.

But we want to be focused on actually solving the problems that we are battling with that are holding back our leaders today from dealing with this crisis, the worst national disaster this—this worst national environmental disaster probably in the country's history. And we are spending more time fighting the Federal Government. I don't see anything in this bill that helps us give our local leaders the tools we need to fight the battles today. Now, we also need to be focused on fighting battles tomorrow.

If this hearing is titled Legislation to Respond to the BP Oil Spill, you would think we would spend some time focusing on that problem that we are battling every day right now, and unfortunately, so many times against the Federal Government which there is no excuse for. And hopefully in the second round we will have had a chance to get into that. I know I am out of time, so I yield back.

Mr. INSLEE. The witness, if you would like to respond to that at all, you have a reasonable period to do so, Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman. The Federal response working with the States is unprecedented in scope. Throughout the administration, we are working every hour of every day, incredibly intensely to try to deal with this problem. There are daily calls to the governors, there is—I have been to the Gulf multiple times as has every senior administration official in every affected agency. One would not expect this bill to have anything to do with the current response. We are proceeding with the current response under current authority and throwing everything we have at it. And I resent the implication that we are not.

Mr. SCALISE. You need to talk to the local leaders then because they will tell you exactly what is going wrong that is not being addressed to this day.

Mr. INSLEE. Mr. Scalise, thank you for your interruption of the witness, but we need to move on.

Mr. SCALISE. He made some statements that were not accurate.

Mr. INSLEE. Are you done, Mr. Scalise? We would like to proceed with the hearing. Is that OK with you? Thank you very much. We appreciate your courtesy so we can get on with this. Mr. Green, are you prepared?

Mr. GREEN. Thank you, Mr. Chairman. And I think your answers to some of the questions earlier from some of the other members, department interior feels like they have the authority right now under current law to do the best you can in not only dealing with what is going on now, but also into the future. Do you think the Department of Interior has the ability to provide regulations on redundancy, on blowout preventers on inspection systems? Is there anything stopping the Department of Interior from right now going and investigating every well in the Gulf of Mexico? If you have the staff to do it, that is.

Mr. HAYES. There is nothing stopping us, and we are redoubling and tripling our efforts along those lines, Congressman.

Mr. GREEN. And I understand the nature of this bill is to give additional authority and something we can look at and so—I know the draft we have is still a working in progress and it is going to take a lot of work and I appreciate any suggestions from interior because I have been working on legislation for a while on a separate issue and we submit it to agencies for their response and it is really helpful. So if you would—I also want to comment, and I don't expect you to respond to it, but—because I know the Department of Interior should be the lead agency in dealing with offshore development. And whether it is in consultation with the EPA or in consultation with any other agency, the Department of Interior should be the agency. And if we can beef it up on any way reasonable, I want to help and I think anyone who represents areas along the Gulf Coast want to do that because that is our jobs and our tax base.

And one of the issues I have—and I don't know if you have the information. We have been working with both the Department of Interior and the new subagency I guess and in the 6-month moratorium did not cover shallow wells. And I know we have been meeting on a weekly basis with conference calls with both industry and Members of Congress. And I was just told—and I was going to see—have there been any—since a shallow well is 500 feet or less, up until last week, there were no permits issued. I understand in the last week there have been.

If you don't have it, if you could get it back to the committee on what is happening. Because my fear is that not only are we having a 6-month moratorium on deep-water wells, but a de facto moratorium on shallow wells where we do produce a lot of our natural gas. Do you have any personal information about any permits of issue since Horizon for shallow water drilling permits?

Mr. HAYES. I know there is—I don't have the exact information, but I know that there are a number of permits now that are mature and that we are looking to process. We had a notice to lessees about 10 days ago requiring some additional information from folks on blowout scenarios and that information has been coming in and

ones that information is in, the APD decisions can be made, and so we talked about this with a group of industry folks at the Department just a couple of days ago. We expect more shallow water drilling, APDs to be granted in the near future. There is no moratorium on shallow water and we want to move it through. But we were requiring that operators meet the new safety requirements that are laid out in the 30-day report. That has been broadly supported by industry and we had folks in, as I say, a couple of days ago to confirm that and then there was this important gap in terms of the expiration plans of having a description of the blowout scenarios, and that is being built now and that will database the combination of those two things will enable those permits to continue to be granted.

Mr. GREEN. My next question would be I know the bill talks about a high risk well. And with the thousands of wells that have been drilled without any problems, I would hope that—do you have a suggestion on what a high risk well would be? Obviously from what happened in Horizon, it would be a deep-water well, 5,000 feet or more. But again, shallow water wells or land side wells seem like they have a pretty good safety record. Is that the experience with the Department of Interior?

Mr. HAYES. The historic record in terms of blowouts has been generally good. But obviously, the implications of an uncontrolled blowout are horrendous as we are seeing now. We are happy to work with the committee to help define relative risk among wells. There certainly are some criteria that could be utilized and we have a lot of expertise in the agency that might be useful as you proceed.

Mr. GREEN. Mr. Chairman, just one more.

I know in Texas and Oklahoma there are lots of wells that are called stripper wells. They are very low-producing wells, maybe 10 or 12 barrels a day. And, of course, when it is $150 a barrel, it is really great, but there are times at $8 and $10 it wasn't hardly worth the electricity to produce it. I would surely hope that there would be some reasonableness in those type of wells that produce a great deal for our country would not be considered high-risk.

So, Mr. Chairman, thank you for your patience.

Mr. MARKEY. Thank you.

The chair recognizes the gentleman from Alabama, Mr. Griffith.

Mr. GRIFFITH. Thank you, Mr. Chairman.

I want to talk about third-party verification. Where we mention that we have lifted the moratorium on shallow water, that is dependent on that third-party verification of the safety requirements.

What is the approximate cost for a third-party verification? Do we have a number that would be applicable to the cost for this independent contractor to do a verification?

Mr. HAYES. I am not sure.

Steve, do you know?

Mr. BLACK. I don't know the cost.

Mr. GRIFFITH. If you could find that, we would appreciate having that.

The second thing is, is this independent contractor immune from any liability should something happen after the certification is given? Is there a liability to this independent contractor? And I

would appreciate knowing that, as well. And are they bonded? And what are the limits of their liability after they verify?

The second thing is, how many of these independent contractors are out there? And if we are going to require an independent contractor to verify the safety to allow drilling to go forward, the number of those, the cost to the industry, their liability, are they bonded, that is an important concept.

Because, in fact, if there are not enough independent contractors that are willing to verify, that are willing to inspect, sign their signature, put their company at risk, then, in fact, that moratorium is still in place if there are not enough out there. So I would appreciate knowing that, as well.

Mr. BLACK. Congressman, I will attempt to answer that now, to the extent I can, and we would be happy to follow up with additional information.

As you point out, the first safety NTL does require certain third-party verification. The Minerals Management Agency, now the Bureau of Offshore Energy, has provided clarification with respect to each of the points you raise, has made clear that the third party must have adequate bonding or insurance and must have the requisite engineering experience to review whatever it is that is being verified.

So far, the industry has not expressed any concern or problem finding those third-party validators. They are contractors, consultants that do this on a routine basis. So they are available, and, to my knowledge at least, this has not been a problem so far.

Mr. GRIFFITH. So it wouldn't be an impediment to the moratorium? It would be something that would be—we are ready to take that on, we have plenty of independent contractors, and the cost is not prohibitive. Or we will check into that.

Mr. BLACK. Yes, sir.

Mr. GRIFFITH. The other thing that I persistently hear is that Norway and the United Kingdom, that have had similar problems, have developed techniques for removing oil from water that are far superior to the ones that we might be using in the gulf.

Is there any truth to that? And are we making an effort to get their equipment into the gulf that they say is superior to ours, or BP's, that are being used now? Is that a rumor? Is there any factual information about that?

Mr. BLACK. Mr. Griffith, I am not aware of the technology that you are referring to. I know, obviously, Kevin Costner has offered some solutions along those lines. I am not an expert or a petroleum engineer on that, and so I don't have an answer to your question.

Mr. GRIFFITH. So the rumor continues. OK, I hear you.

The other thing is that it sounds like to me, from the questions that have been asked and some proposals that have been made, that it would be in our best interest, as far as the United States is concerned and its energy resources, that we have a greater amount of information before we finalize a bill. Would that be fair? Would you be more comfortable with more information and more investigation since it is an ongoing investigation?

And you have mentioned that you have the regulatory authority to do pretty much what you want to do now without a bill. So is

there really a hurry for us to do a bill without completing the investigation?

Mr. HAYES. Congressman, we will leave it to the Congress to decide what is appropriate. What we are doing is, even before we get the final root cause figured out, we are moving to shore up safety issues that we think do need some attention.

Mr. GRIFFITH. OK.

I yield back, Mr. Chairman.

Mr. MARKEY. Great. The gentleman's time has expired.

The chair recognizes the gentleman from Washington State, Mr. Inslee.

Mr. INSLEE. Mr. Hayes, Mr. Scalise took some political shots at the administration. I guess that comes with the territory. But I want to ask you about the response that is going on. Because we all, across the country, want to be as vigorous as humanly possible, given the suffering of the folks in the gulf right now.

I am told that, as of the beginning of this week, the Obama administration has mobilized over 40,000 people to fight the spill. There are 7,200 vessels today that are fighting the spill.

I am told that the administration has also authorized the deployment of 17,500 National Guard troops to respond to the disaster in four affected States: Louisiana, Mississippi, Alabama, and Florida. However, I am told that only the Governors of the respective States can actually deploy them. And, thus far, although the President has authorized the use of 17,500 National Guard troops, those Governors have only deployed 1,675 troops.

Is, in fact, that the situation? And, in fact, is it the Governors who have the ability to deploy those troops?

Mr. HAYES. Congressman, that is my understanding. Although, I will caveat that the Department of Interior is not the lead in terms of that issue.

Mr. INSLEE. So, given the needs, shouldn't these Governors deploy these troops that the Federal administration has authorized to be used? If, in fact, Mr. Scalise is right, there is not an adequate response, why don't the Governors authorize the deployment of these troops?

Mr. SCALISE. Would the gentleman yield?

Mr. INSLEE. No. And the reason I won't yield is because you didn't respect the witnesses and the time that we had.

So, Mr. Hayes, go ahead and answer.

Mr. SCALISE. That is not accurate.

Mr. HAYES. I am not comfortable speaking to the question of the potential benefit of the National Guard in terms of the Governors' requests. I do know that the administration has been supportive of requests to employ the National Guard. As to why they are not being utilized, I am not sure.

I do know, per your general point, that the Governors, the parish presidents, the other local folks in Alabama, Mississippi, and Florida, and the Federal folks have a massive joint response effort under way under the framework law that this Congress passed in 1990 to respond to this oil spill. It is an enormous challenge because this oil has continued to leak into the gulf at a huge rate for now a very long time——

Mr. INSLEE. Well, I appreciate that. And I think it would be helpful if we had bipartisan teamwork to try to figure out how to force the oil industries to have adequate spill response plans so we wouldn't be behind the curve, as we have been in this situation, trying to play catch-up.

And if we had a little more teamwork from the other side of the aisle to figure out how to pass a law to prevent this from happening, of people trying to make things up as they go along because the industry didn't have an adequate spill response plan, then maybe we could be in a better position if this were to happen again. I hope we have that kind of teamwork.

I want to ask you about, going forward, to try to prevent the next tragedy. My view is that we ought to have the same level of assurance to prevent this tragedy as we do in the aviation industry. And I think the FAA is a pretty good template to look at to try to design a regulatory system to prevent that.

I have been talking to some folks in the FAA, and what they tell me they do is they set a standard of performance that you have to have. You can't expect, for instance, a loss of control of your airplane to happen more than one in a billion instances of takeoffs. And the industry then is expected to propose and provide an engineering analysis to say that that expectation will be met.

Shouldn't we have something similar in this situation as to each and every critical system of offshore drilling? Shouldn't we design in this third-party mechanism an expectation in something in that regard?

Mr. HAYES. I think an expectation of a very high standard of safety is necessary and appropriate.

Mr. INSLEE. So, in this third-party mechanism, should we have an expectation that they set a level of statistical performance that the engineers have to show will be met? Shouldn't that be something we put in the statute?

Mr. HAYES. I think potentially we are open to working with you on that, Congressman.

Mr. INSLEE. Next question: Should we be using the best available technology? And it is probably an amendment I will be offering, to require the best available technology to be used. Is that something you think would be a good idea?

Mr. HAYES. Certainly for this deepwater drilling operation, yes, Congressman.

Mr. INSLEE. Thank you. I appreciate it.

I yield back the balance of my time.

Mr. MARKEY. Great. The gentleman's time has expired.

The chair recognizes the gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

And welcome to the panelists. I am sorry I haven't been here, as many of us filter in and out. But let me first yield some time to my colleague from Louisiana, Mr. Scalise.

Mr. SCALISE. I thank the gentleman from Illinois for yielding.

And, you know, one of our other members listed off, and we hear too often all this, you know, litany of things that are being done when they try to defend the failed response on the ground by the Federal Government, and we have this deployed and that deployed.

I will just give you an opportunity, Mr. Hayes, to address one of the issues that we battled last week with the sand barrier plan. This is a plan that the President, just a week and a half ago, bragged about in his national address, bragged about approving—he only approved 25 percent of the Governor's plan to build a sand barrier protection that we had wanted to protect the marsh. Of course, we had submitted that plan 3 weeks prior to the approval when there was no oil in the marsh, and now there is.

But, last week, an agency in your department shut that plan down for almost a week. Why these kind of bureaucratic delays?

Mr. HAYES. Well, that specific situation was because the State and its contractor was violating the permit agreement that had been provided the basis for it. And we are happy to supply record information about this.

But there was an agreement as to where the sand could be taken from. Because if it was taken from the wrong spot, we would not have the Chandeleur Islands, and it would take away the ability to maintain that island system. There was a——

Mr. SCALISE. That is not accurate. According to our State's coastal protection authority, which runs this, they had a permit from the Corps of Engineers to go and get that borrowed sand. They actually had——

Mr. HAYES. But not from the location. What the contractor requested on a temporary basis, waiting for piping to take sand from a location that was not permitted, the Federal Government said, "We will let you do this for 4 or 5 days, no more, because, at that point, the integrity of the island system will be affected." They did that for 4 or 5 days and then asked for another 10 days of taking sand from an area that was not allowed in the permit.

At that point, the Fish and Wildlife Service, backed up by the Corps of Engineers, said, "No, you have to agree to the permit conditions that you agreed to at the outset of this project." And that is what happened.

Mr. SCALISE. Well, unfortunately, they had the permit from the Corps, it took them over 3 weeks to get the permit. This comes in, shuts the project down for almost a week, I think it was 5 or 6 days, shut the project down. They had to go back and forth and fight with you all.

And, you know, you can have all your reasons about what you are concerned about. They are concerned about protecting the coast, from stopping these pelican nests from being destroyed, which they are being destroyed. But you can have your bureaucrat haggling back and forth.

Mr. HAYES. It is more than a bureaucratic issue, Mr. Congressman.

Mr. SCALISE. Well, then let me ask you this, because we just heard all this bragging about all these vessels deployed. Just a few weeks ago, the vessels that were supposed to be out skimming for oil were sitting idle at the dock, not skimming for oil, again, as oil was coming into the marsh. I don't know if you have any explanation for that.

But, I mean, just over and over, we get—and I am sure you have reasons why you think you should hold on to and pull back permits that were issued or want to change plans, but——

Mr. HAYES. If I can please——

Mr. SHADEGG. If I could reclaim my time.

Mr. SCALISE. And I will yield to the gentleman from Illinois.

Mr. SHADEGG. I did want to give my colleague and friend time to rebut.

I think part of the frustration is, I mean, we are all frustrated about this whole mess that we are in. And I think the executive branch would have done itself well if they would have went to the locals and said, "Locals, what do you need," and deployed.

In fact, I have told my friend from Louisiana, I probably would have done it without Federal permits. If the locals said these marshes had to be protected, do that. And I think public opinion in their States, they would have scored sky-high.

But that is the emotion involved.

Let me just put my comments on the record, on the mark, so the chairman understands concerns. Two hundred miles means everything. Getting a good definition for "high-risk well," what is a high-risk well. Is every well a high-risk well? I don't think so.

Onshore and offshore—we have onshore instances. I have marginal oil wells. Does that mean they are going to go into my cornfield now and deal with—marginal oil wells that produce, you know, a barrel a day that people get royalties on.

And the civil action—if we had the civil action aspect that is in this mark, we probably, Mr. Chairman, would not have the $20 billion BP settlement, because they would have had to hold their money to be prepared to fight these lawsuits.

So I put that on the record, Mr. Chairman. We look forward to working with you, and I yield back my time.

Mr. MARKEY. We thank the gentleman very much.

Just for the record, the citizen suit provision exists under existing law. So it is not anything that we are adding; it is existing law.

The chair recognizes the gentlelady from California.

Mrs. CAPPS. Thank you, Mr. Chairman.

Mr. Hayes, thank you for being here and for your daily efforts to stop the leak, to contain the spill, and to deal with the aftermath.

I just want to make a real quick comment before I turn to you to substantiate what my colleague from Washington said earlier. And that was that, in the early days of the spill, the Defense Department did approve the State of Louisiana's request for 6,000 National Guard troops. But according to a CBS News report, the Governor of Louisiana has only, to this date, deployed 1,053 of the National Guard to fight the spill. And the national incident commander, Thad Allen, has said, and this is a quote, "There is nothing standing in the Governor's way from using more National Guard troops."

Now, Mr. Hayes, one of the main functions of our government is to make sure that activities that pose a high risk to the health and safety of Americans and to our environment comply with basic requirements. If a company is building a skyscraper, there is an engineering and construction requirement in place to protect the people who work in that building and who walk on the streets below. We don't let an airplane fly without meeting numerous safety and security regulations. So it is no surprise that drilling for oil and gas

off our shores carries with it the responsibility to meet some basic requirements.

The Blowout Prevention Act starts with a basic commonsense requirement. To get a Federal permit to drill a high-risk well, an oil company has to demonstrate three things. And the first one is that they have to show that its blowout preventer and well control equipment will actually prevent a blowout from occurring.

Mr. Hayes, would you agree that companies drilling in U.S. waters should have effective blowout preventers that are going to work when they are needed?

Mr. HAYES. Absolutely.

Mrs. CAPPS. And do you want to explain or do you want to say a sentence about that?

Mr. HAYES. Well, I think that we are seeing the horrific result of not having adequate oversight and regulatory requirements in place with the BP oil spill. And we must not let that happen again.

I fully endorse your proposition that there are some activities that folks look to and expect the government to address. And this is the type of activity that, without oversight, one cannot count on self-regulation to deal with such a dangerous situation in an acceptable way.

Mrs. CAPPS. So, for the government to require a demonstration that the equipment works, that is number one?

Mr. HAYES. Yes. Yes. Yes. Demonstration of design, appropriate design, and then appropriate operation and continued inspection and testing throughout the life of the equipment.

Mrs. CAPPS. Second, the company needs an oil spill response plan that demonstrates the capacity to promptly stop a blowout if the blowout preventer fails. In other words, what is the back-up mechanism.

This clearly hasn't happened in the gulf. BP just wasn't prepared to stop a runaway well. And when the BOP didn't function, they had no backup plan. The last 2 months has been a series of improvised—I mean, we have all watched it daily—long-shot responses, I mean, just ranging to the absurd.

Rex Tillerson, the CEO of ExxonMobil, admitted to a congressional panel that the oil industry is not well-equipped to deal with a blowout.

So, Mr. Hayes, would you agree that companies drilling in U.S. waters have a basic obligation to be ready to stop a blowout if the blowout preventer fails, that this is the second level of a requirement that should be in place for all industries?

Mr. HAYES. I absolutely agree. And as someone who lives this day-in and day-out and is tracking and engaged in the continued efforts of containment, I agree with an exclamation point.

Mrs. CAPPS. OK. We will note the exclamation point.

The third requirement for getting a permit to drill is that the company must be able—and this is part of the legislation that is before us—that the company must be able to show it has the capacity to begin drilling a relief well within 15 days of a blowout and to complete a relief well within 90 days.

Three months is a long time to have a well spewing oil into the sea. If an oil company is not able to demonstrate that it has the

capacity to drill a relief well in that time frame, I don't see how they can claim that their operations are safe.

I would like to have you comment on this. What do you think about this, Mr. Hayes? Do you think it makes sense to require a company seeking to drill an offshore well to show that it can drill a relief well in a timely manner? And this would be that third backup as a last resort.

Mr. HAYES. I think, certainly, in a timely manner there needs to be that capability. And it is, of course, what we are relying on right now for the BP oil spill.

Mrs. CAPPS. We really have no guarantee, do we, that this well that is being dug is actually even going to function?

Mr. HAYES. There is no guarantee. I will say the best minds in the world are working on this to make sure this relief well does, in fact, plug the well.

Mrs. CAPPS. Thank you, Mr. Chairman.

Mr. MARKEY. Great. I thank the gentlelady.

There are roll-calls which apparently are going to go off at approximately 12:45. So I think we might be able to get all three remaining Members in and their questions.

The chair recognizes the gentleman from Texas, Mr. Burgess.

Mr. BURGESS. Thank you, Mr. Chairman.

And, Secretary Hayes, thank you for being here with us.

Let me just clarify when you were answering the gentlelady from California's questions, her first requirement to you was that the blowout preventers work. Is that not a requirement today?

Mr. HAYES. It is.

Mr. BURGESS. So you are not just asking that someone put down a sham blowout protector that we never expect to work, is that correct?

Mr. HAYES. No, that is right. I mean, there is a performance standard in the regulations today for blowout preventers, but we think the regulations can be improved and enforcement can be improved.

Mr. BURGESS. Let me ask you a question. This whole bill that we have before us is the Blowout Prevention Act. And the one piece of information, of course, that this committee and no committee can get right now is the detailed description of what went wrong with the blowout protector that is down 5,000 feet below the ocean surface. I recommended to the chairman that we subpoena the blowout protector, and he said it wouldn't fit in the room.

So we are going to make recommendations—or we are actually going to legislate to prevent something from happening to a blowout preventer, which we don't know what happened, and so we can't possibly know how to prevent the preventer from misfiring in the future. I mean, that is a very difficult task.

Do you have any particular insight from your position within the Department that would allow you to help us craft that legislation without knowing what is wrong with the one that is down there?

Mr. HAYES. Well, you certainly have a good point, Congressman, in that we don't know exactly what happened with this particular blowout preventer. We do know, though, however, as part of our follow-up from this incident, that there are some weaknesses in the regulatory structure, some of which are addressed in your bill.

Mr. BURGESS. And there is no question, through the multiple hearings we have had—and unfortunately we don't get many chances to talk to the regulators, but through the multiple hearings we have had, there was a mistake made with just the human direction on the platform and not calling a cessation of activities when they realized that this well was very dangerous. And, certainly, that could have even happened several hours before the final scenes played out. There is a problem with the blowout protector, which we don't know what it is.

Now, when they went down to do the infamous kill shot, they had to stop. And we have not really gotten good information on why they had to stop, but you keep hearing things about thief channels and cracked casings. And, of course, there were problems, we believe, with the cementing that occurred on the well, such that if you actually were successful with a kill shot, you might blow a blowout preventer. Is that correct?

Mr. HAYES. The concern—yes, in terms of the concern was that there may not be well integrity down below the surface so that——

Mr. BURGESS. Let me ask you this. If we had a functioning blowout protector on that day that fired and stopped the flow of oil at the wellhead, would we still have had the problems beneath the surface, potentially, that could have led to a much more serious problem?

Mr. HAYES. That is a very important open question that——

Mr. BURGESS. Well, then let me ask you this. We are writing legislation to alter the way you do things, and we don't even know if the legislation we are writing might create a greater problem than we have to deal with today—that is, an open crater on the bottom of the sea floor discharging oil until the reservoir is depleted.

Mr. HAYES. Well, I would just say that part of the legislation and part of what we are doing also deals with well design. And to the extent there may have been a loss of integrity below the surface, it may well have been due to a poor well design.

Mr. BURGESS. Now, let me ask you a question about that, because the interruption of the cement bond log that was to be carried out, they were there, the people who do that sort of work were there at the rig. Why did they leave?

Mr. HAYES. I don't know, sir.

Mr. BURGESS. Did they leave because of concerns for their safety?

Mr. HAYES. I truly don't know. I do know that that and every other fact around it are part of the ongoing investigation.

Mr. BURGESS. You know, there are so many things that have come up as a result of the questions today. I do hope we have other opportunities to visit, and I do hope we have a chance to have the Secretary here.

You worked in a previous administration?

Mr. HAYES. I did.

Mr. BURGESS. And what was your capacity in the previous administration?

Mr. HAYES. For the last year and a half of the Clinton administration, I was the Deputy Secretary.

Mr. BURGESS. So this sort of activity would have come under your purview at that time?

Mr. HAYES. Yes.

Mr. BURGESS. Was there any point where you felt you did not have the tools you needed to manage what you were asked to manage? Was there any point at which you said, boy, I wish I had "this" so that a Deepwater Horizon-type accident wouldn't occur?

Mr. HAYES. I think, back then, much like I think all of us, we were—I certainly was unaware that there was a potential serious issue here. I will note that deepwater drilling really just started in the late 1990s and that the——

Mr. BURGESS. Under your watch.

Mr. HAYES. Yes, yes. With the encouragement of the Congress and incentives, deepwater drilling began, really, in the late 1990s and then accelerated as the technology accelerated through the last decade.

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

I am told that the roll-calls are going off in the next 3 to 8 minutes. So I think we can recognize the two Members.

And I recognize the gentleman from Utah, Mr. Matheson.

Mr. MATHESON. Thank you, Chairman Markey.

Mr. Hayes, we are here today talking about this proposed legislation to look at enhancing or changing our existing set of rules and regulations to better prevent something like this from happening in the future.

One question that I seem to anecdotally get different answers to is, if we look at our existing set of rules and regulations, are there other countries in the world that have sets of rules or regulations that are different from the ones of the United States that, perhaps, are stronger? Are you familiar with other countries' deepwater well regulations?

Mr. HAYES. Generally speaking, yes, I am familiar with them. And I think it is hard to compare systems one against the other.

Ironically, some of the systems that folks look at for guidance and potential emulation, like the UK and Norway, tend to not have as much prescriptive requirements in them. They tend to be performance-standard-based, but with systems in place to ensure those performance standards will be met.

I think we can learn from each other. And we need to both have better performance standards but also prescriptive standards, where appropriate.

Mr. MATHESON. To the extent there are different standards, do you think that they are stronger than what we have in this country? Weaker? Or is it apples and oranges?

Mr. HAYES. Well, personally, the sense I have is that, for example, the UK and Norway have put in place, perhaps, better systems at this point than we have. And that is unacceptable. We need to be leading the world here, in terms of safety.

Mr. MATHESON. This is very interesting. I was in a Science Committee hearing some time this month, maybe late May, but I think it was this month, and someone from MMS didn't think there was any difference with others around the world. But I had heard there was, so that is why I wanted to get this question from you.

And it seems to me that it would be prudent for us to take a look at these other systems that are used around the world. If we are talking about changing what we do in this country, I think we ought to consider that. I think this committee ought to look at that.

And so, again, I am all for doing something to make our regulations better. I said that in my opening statement. But I am concerned about—we are talking about marking this up tomorrow, and there may be a lot of good ideas out there from around the world that have not necessarily been considered. And I would just offer that for everyone's consideration.

Mr. Hayes, just a couple of specific things about the proposed legislation. The legislation does not specify a specific regulator, but instead refers to an appropriate Federal regulator.

Do you believe that the Department of the Interior would be best suited to oversee the implementation of the requirements of this bill? Or what other agencies would you foresee being involved?

Mr. HAYES. I think the Department of the Interior is the appropriate agency, in that we have a workforce of about 1,700 people with substantial expertise in this area.

Mr. MATHESON. OK.

You have heard a lot of discussion from others about the concern about how this applies onshore, offshore. Have you been able to evaluate the legislation to determine, as it is written, what the impact would be on onshore oil and gas development? Or the process the Department of the Interior undertakes to permit onshore——

Mr. HAYES. Right. I think they are really separate animals, if I can, Congressman. This legislation is focused on offshore well development. And we certainly look at—I will say, at the Department of the Interior, there are different—as you know, FLPMA applies to onshore, and the Outer Continental Shelf Land Act applies to offshore. So there are certainly commonalities in terms of technology and that sort of thing, but we are focused on the offshore.

Mr. MATHESON. As you should be——

Mr. HAYES. Yes.

Mr. MATHESON [continuing]. And as I think we should be.

But my concern is, as an unintended consequence, this legislation is going to affect onshore in ways that we haven't thought through, because we are all thinking offshore right now.

Mr. HAYES. Sure.

Mr. MATHESON. And I would submit that we ought to consider what those implications would be.

Mr. SHADEGG. Would the gentleman yield?

Mr. MATHESON. Yes, I will yield to my friend from Illinois.

Mr. SHADEGG. The issue on the onshore issue is it is on private property.

Mr. HAYES. Right.

Mr. MATHESON. One of many issues.

Mr. SHADEGG. Right.

Mr. MATHESON. Public lands, too. But thank you.

Mr. Chairman, I will yield back and give my colleague from Texas some time.

Mr. MARKEY. We thank the gentleman.

The gentleman from Texas, Mr. Gonzalez, is recognized.

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

Quickly, let's see. And I am not sure if someone already asked this, and I apologize if they did, because there are Members of Congress that have written to the Department of Interior regarding the blanket nature of the moratorium in assessing what really is the

riskiest ones that are out there at a certain stage as opposed to others that should be going forward. So when the moratorium is lifted, with all the safeguards and procedures, they will not be so handicapped in going forward in what they need to do.

Are you proceeding in that fashion? And can we expect that you are going to be making a distinction among different levels of operation?

Mr. HAYES. The Secretary is in the midst of considering the moratorium issue, because the court enjoined the moratorium that had been entered about a week ago. And so the Secretary is looking at all aspects of it, including relative risks associated with various types of activities.

Mr. GONZALEZ. Any idea when you may arrive at some determination so that we just don't have—and I understand the courts are involved, and who knows where all that goes.

Mr. HAYES. Right. Well, I know that we have appealed, and the circuit court has established an aggressive, and appropriately aggressive, briefing schedule. But, independently, the Secretary is looking at this, and on a very time-sensitive basis. We understand the importance of clarity on the issue.

Mr. GONZALEZ. And then I believe Mr. Black may give me some guidance here. And this is really old information. But this is a presentation way back, June 18, 2003, regarding "Deepwater Drilling: Where Are We Headed?" and regarding the lack of proper equipment, testing, anticipation and such, and then capping a blowout.

What is a blowout, exactly? Because they indicate, "Blowouts have been occurring regularly throughout the petroleum history," and then they go into the percentages. But, in essence, what we had out there with Deepwater Horizon was a blowout? Would that be an accurate description?

Mr. BLACK. Yes, sir. Although the investigations are not concluded, we know two things: There was a failure to control the well, and that happened as a result of a number of things, potentially. And then the hydrocarbons from the field below that well obviously escaped into the environment. That is the blowout. So the blowout preventer is designed to prevent that blowout in the event of loss of well control.

Mr. GONZALEZ. So we have had other blowouts in deepwater drilling, have we not?

Mr. BLACK. Yes, sir.

Mr. GONZALEZ. And they were somehow obviously capped, contained, and so on. So something worked in those other instances. Would that be accurate?

Mr. BLACK. Yes. I mean, we do review in the report the history of loss-of-well-control events throughout the world. And to varying degrees, those have been controlled, some with a relief well, many weeks after the original blowout.

Mr. GONZALEZ. Well, let's get to the blowout preventers, because in this presentation it was very interesting. It seems that the authors of this report seem to indicate that there was no way to really simulate the conditions when it comes to deepwater, at those depths and such.

So we can have blowout preventers, but how do we assure that they actually work? How do we simulate real conditions? Is that available today?

Mr. BLACK. Congressman, that is a very important question. And as Mr. Hayes has already testified, one of the things the Secretary wants to do and that we suggest through this report is reexamine the technologies available for preventing a blowout or stopping a blowout if it occurs. Those technologies do continue to evolve, and there are a number of companies looking at that question.

But, as you point out, this blowout occurred at great water depth, high pressure. And, obviously, our experience in dealing with a blowout of this type is very limited.

Mr. GONZALEZ. Way back in 2003—and my fear is that we haven't really moved forward since 2003 as to how we prevent, how we cap, how we contain. But this is one of the remarks. And maybe this is not applicable, but I believe that it is. "There are many dynamic kill simulators on the market."

Is that what we are talking about? Dynamic kill simulators?

Mr. BLACK. I don't know the answer to that question. And I believe you are referring to the MMS study that was contracted in 2003. But I would have to go back and double-check.

Mr. GONZALEZ. "There are many dynamic kill simulators on the market." Maybe I am misinterpreting this, but I am just figuring, how do you simulate something, and that is what they are talking about.

The next sentence is, "None of them fits our need." None of them fits our need. That was 2003. So I am hoping that we have made some progress. Because what you are telling me is we are not even sure we are going to be able to test these blowout preventers under real conditions. I mean, do we have the technology to even do that?

So we will never be able to really tell the American public that whatever we have in place would avoid a recurrence of what we have with Deepwater Horizon, Mr. Hayes?

Mr. HAYES. There are some—in fact, we are already requiring more testing for the BP relief well for the blowout prevention mechanism.

There have never been tests required for the secondary systems that come into play once you have a failure. We are now requiring those secondary systems to be tested, both on the deck and subsea. And it is a very, very important addition to the regulatory arsenal that already has identified some potential issues and provides a much higher margin of safety.

So, to your point, I think, in fact, there are some inspection, certification, and testing requirements that can substantially increase our level of assurance that a blowout protector will work. That is not to say we don't also have to improve in the containment and spill response capability.

Mr. GONZALEZ. Mr. Chairman, I am going to use my last 30 seconds real quick.

One of the great concerns out there is the industries having multiple regulators. It doesn't matter what industry it is, by the way. We are talking about that in the financial world. But there is a reason for that.

And I am not sure, and I have to look at it very carefully, as to—we know that most of the responsibility would be with Interior. Mr. Hayes, you already indicated in response to Mr. Matheson's question that you believe that would be the proper place to have the authority. But there also may be, in certain instances, my understanding, where the Department of Energy and EPA would be in some sort of a default position. And I will be talking with the chairman of the subcommittee and others on that.

Any concerns regarding having multiple layers, multiple regulators?

Mr. HAYES. We implement the laws that Congress requires, and we will implement whatever you all require. We are committed, simply, at the Department of the Interior to upgrade and implement better safety standards for this industry. We think we have the capability to do it, and we look forward to working with you to demonstrate that.

Mr. GONZALEZ. Thank you.

Thank you, Mr. Chairman.

Mr. MARKEY. We thank the gentleman. The gentleman's time has expired.

All time for questioning of this panel has been completed, with the thanks of the subcommittee. We thank you, Mr. Hayes and Mr. Black.

We will take a recess for as long as it takes for each Member to cast three votes on the House floor, and then we will reconvene to hear the testimony from the second panel.

The subcommittee stands in recess.

[Recess.]

Mr. MARKEY. Ladies and gentlemen, we welcome everyone back. We apologize for the delay, but we have two very distinguished witnesses that I think will really help the committee to flesh out the record.

And we will begin by recognizing John Martinez, who is consulting production engineer of Production Associates. Then we will go to Elgie Holstein, who is the senior director for strategic planning of the Environmental Defense Fund.

Mr. Martinez, whenever you are ready, please begin.

STATEMENTS OF JOHN MARTINEZ, CONSULTING PRODUCTION ENGINEER, PRODUCTION ASSOCIATES; ELGIE HOLSTEIN, SENIOR DIRECTOR FOR STRATEGIC PLANNING, ENVIRONMENTAL DEFENSE FUND

STATEMENT OF JOHN MARTINEZ

Mr. MARTINEZ. Thank you, Mr. Chairman.

Well, I would like to claim we brought this great weather from Texas for you, but I would say we are just enjoying your great weather here.

Likewise, I would like to take a moment to recognize my wife, Lupe, and my brother, David, who lives and works here in the D.C. Area, sitting in the back as visitors.

Mr. GONZALEZ. What high school did you guys go to?

Mr. MARTINEZ. I was in San Antonio and went to Harlandale High School on the south side.

Mr. GONZALEZ. Beautiful.

Mr. MARTINEZ. And Lupe, my wife, is also from San Antonio. She went to Tech High School, now called Fox Tech High School, in San Antonio. So, long-term residents in Houston, though.

Mr. MARKEY. Well, thank you for bringing your expertise to this.

Mr. MARTINEZ. Yes, exactly.

Mr. Chairman, members of the committee, I am John Martinez, independent consultant and advisor to the major international and national oil and gas companies. I am honored to be before your committee to testify in support of your proposed bill to protect health and safety and the environment by applying the oil and gas industry's best practices and technology to well control and drilling/completion of high-risk oil and gas wells.

Just as the Piper Alpha platform accident in our sea led to numerous industry improvements in piping design and safety devices at platforms, this unfortunate Gulf of Mexico blowout can lead us to improve the blowout preventers and the drilling/casing/cementing designs used in wells.

I have been working for 42 years in oil and gas operations technology, 11 of those as an employee of a major international operator, the remaining 31 years as an independent consultant, serving as an advisor, project engineer, teacher, mentor of young engineers and operators for the large, integrated oil and gas companies and for the national companies in various countries.

With the expertise gained over these years, I have dedicated efforts to writing standards and recommended practices within my industry's production technology with the American Petroleum Institute and the International Standards Organization.

Drilling and completing a complex high-risk well requires a project plan for the wellbore design, well control safety systems, casing and associated cementing programs, and the contractor rig and personnel needed to implement the project. We use industry-developed best practices based on shared experiences, but the current blowout in the Gulf of Mexico also indicates the need for additional and mandatory checks of the plan at various times prior to and during the drilling of the well.

I support a more thorough functioning and pressure test program of blowout preventers, the safety devices used in well controls that are enabled when the drilling mud is compromised and is not able to control the well. I also support redundant shear rams that can completely shut in a blowout preventer when loss of well control is imminent, and the control systems to independently activate these shear rams.

I favor independent, third-party certification of blowout preventer function and pressure testing, as well as other certifications proposed in this bill. I expect that many experienced drilling and production people, recently retired and living in these oil field communities, not only are available but also would see this as their duty to serve, not as a full-time job, necessarily, as these periodic assignments to witness and certify tests or drilling plans would permit these individuals to continue to serve the oil industry while also contributing further to the benefit of the general public.

I am a production specialist in wellbore construction, completions, fluid flow, and artificial lift. Based on my knowledge and ex-

perience with the blowout well, I suggest it will be difficult to control when the relief wells intersect its wellbore due to the very high rate of gas, oil, and water flowing from the reservoir zone.

I offer this observation relative to designing a wellbore that is at lower risk of loss of control to a blowout. That is, because it is difficult, we want to make sure that the designs and the barriers we put in will lead us from having that problem in the first place.

Section 4 of the proposed bill addresses well design, cementing, casing, and prevention of ignition explosion. The first section, or the first part of that section, well design requires three barriers, which could consist of: one, cement; two, casing; and three, the casing liner hanger or a casing hanger at the surface.

The cement will qualify as a barrier if it completely fills the casing-borehole annulus and extends up into the casing-casing annulus above. In addition to increasing safety, the cement will reduce external casing corrosion. When we use this approach, the wellhead valves at the surface must be designed to accommodate thermal expansion of liquids that might be trapped in the casing-casing annulus.

Cementing and casing calls for regulations that require adequate cement volume and cement bond logs. My prior sentence defines "adequate" as requiring cement fill into the borehole annulus and into the casing-casing annulus above. Also, this section above, which is 4.a.1.D, should include a requirement for centralizer design that promotes fill of the casing-borehole annulus. Cement bond logs or newer technology should be required in the production liner or production casing to ensure fill of the casing-borehole annulus.

Prevention of ignition and explosion should mention a diverter just below the rig floor that should be connected to a flare or vent line designed to handle the capacity of gas that could flow from an uncontrolled well, thus minimizing the risk of explosion.

In summary, the industry, of which I have long been a part, has largely been self-regulating on design and safety issues. By reaching consensus among operators and regulators, this approach, for the most part, has served us well.

But the more recent deepwater, high-risk wells have a complexity and cost to rival that of NASA in relation to space travel. Like NASA, we as an industry must ensure safety and quality and not settle for or take shortcuts in an attempt to save some millions of dollars, which could cost lives and billions of dollars in damage instead.

We need to have a quality design in the wellbore that will result in——

Mr. MARKEY. If you could summarize, please, Mr. Martinez. I apologize.

Mr. MARTINEZ. Yes—improved safety, as well as lessen casing corrosion that is associated with remedial maintenance costs. We also need to follow proven safety procedures for well control that can prevent a blowout.

Good design, maintenance of all the equipment, certified testing can greatly reduce our risk of an accident, as well as the total cost of wells and development projects.

Thank you for the privilege to testify before you.

[The prepared statement of Mr. Martinez follows:]

Testimony by John Martinez to the US House of Representatives
House Committee on Energy and Commerce
Subcommittee on Energy and Environment

Mr. Chairman and Members of the Committee, I am John Martinez, an independent consultant and advisor to major international and national oil and gas companies. I am honored to come before your Committee to testify in support of your proposed bill to protect health and safety and the environment by applying the oil and gas industries' best practices and technology to well control and drilling/completion of high-risk oil and gas wells. Just as the Piper Alpha platform accident in the North Sea led to numerous industry improvements in piping design and safety devices at platforms, this unfortunate Gulf of Mexico blowout can lead us to improve the blowout preventers and the drilling/casing/cementing designs used in wells.

I have been working for forty two years in oil and gas operations technology, eleven of those years as an employee of a major international operator, and the remaining thirty one years as an independent consultant serving as an advisor, project engineer, and teacher/mentor of young engineers and operators for the large, integrated major oil and gas companies, and for the national companies in various countries. With the expertise gained over these years, I have dedicated my efforts to writing standards and recommended practices within my industry's production technology with the American Petroleum Institute and International Standards Organization.

Drilling and completing a complex high-risk well requires a project plan for the wellbore design, well control safety systems, casing and associated cementing programs, and the

contractor rig and personnel needed to implement the project. We use industry developed best practices based on shared experiences, but the current blowout in the Gulf of Mexico also indicates the need for additional, and mandatory, checks of the plan at various times prior to and during the drilling of the well.

I support a more thorough function and pressure test program of blowout preventers, the safety devices used in well control that are enabled when the drilling mud is compromised and is not able to control the well. I also support redundant shear rams that can completely shut in a blowout preventer when loss of well control is imminent, and the control systems to independently activate these shear rams.

I favor independent third-party certification of blowout preventer function and pressure testing as well as the other certifications proposed in the bill. I expect that many experienced drilling and production people, recently retired and living in oilfield communities, not only are available but also would see this as their duty to serve. Not as a full-time job, necessarily, as these periodic assignments to witness and certify tests or drilling plans would permit these individuals to continue to serve the oil industry while also contributing further to the benefit of the general public.

I am a production specialist in wellbore construction, completions, fluid flow, and artificial lift. Based on my knowledge and experience with the blowout well, I suggest it will be difficult to control when the relief wells intersect its wellbore due to the very high

rate of gas, oil, and water flowing from the reservoir zone. I offer this observation relative to designing a wellbore that is at lower risk of loss of control leading to a blowout.

Section 4 of the proposed bill addresses well design, cementing and casing, and prevention of ignition and explosion.

Well design requires three barriers, which could consist of (1) cement, (2) casing, and (3) casing liner hanger or casing hanger at the surface. The cement will qualify as a barrier if it completely fills the casing-borehole annulus and extends up into the casing-casing annulus above. In addition to increasing safety, the cement will reduce external casing corrosion. The wellhead valves at the surface must be designed to accommodate thermal expansion of liquids trapped in the casing-casing annulus.

Cementing and casing calls for regulations that require "adequate cement volume and cement bond logs". My prior sentence defines "adequate" as requiring cement fill in the borehole annulus and into the casing-casing annulus above. Also this section or the section above (4.a.1.D) should include a requirement for centralizer design that promotes cement fill of the casing-borehole annulus. Cement bond logs, or newer technology, should be required on the production liner or production casing to insure fill of the casing-borehole annulus.

Testimony by John Martinez to the US House of Representatives
House Committee on Energy and Commerce
Subcommittee on Energy and Environment

Prevention of ignition and explosion should mention a diverter just below the rig floor that should be connected to a flare or vent line designed to handle the capacity of gas that could flow from an uncontrolled well, thus minimizing the risk of explosion.

In summary, the industry, of which I have long been a part, has largely been self-regulating on design and safety issues, by reaching consensus among operators and regulators. This approach, for the most part, has served us well, but the more recent deepwater high-risk wells have a complexity and cost to rival that of NASA in relation to space travel. Like NASA, we as an industry must insure safety and quality, and not settle for or take short cuts in an attempt to save some millions of dollars, which could cost lives and billions of dollars in damages instead. We need to have a quality design in the wellbore that will result in improved safety as well as lessen casing corrosion and its associated remedial maintenance cost. We also need to follow proven safety procedures for well control that can prevent a blowout.

Good design, maintenance of all the equipment, and certified testing can greatly reduce our risk of an accident as well as total cost of wells and development projects. Thank you for the privilege of providing these remarks to the Committee.



John Martinez, P.E.

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

Our second witness for this panel is Elgie Holstein, senior director of Federal strategy at the Environmental Defense Fund.

Mr. Holstein has had a distinguished career in energy and natural resources, serving as chief of staff at the United States Department of Energy, Assistant Secretary for National Oceanic and Atmospheric Administration, and associate director for Natural Resources, Energy, and Science at the White House Office of Management and Budget.

Mr. Holstein currently coordinates the Environmental Defense Fund's response to the gulf oil spill.

We welcome you, sir. And we welcome you back, as a former staffer here, well-remembered and respected from a time so long ago that only I remember it.

Mr. HOLSTEIN. Very long ago.

Mr. MARKEY. What year did you start as a staffer on our committee?

Mr. HOLSTEIN. Oh, my goodness, 1975.

Mr. MARKEY. 1975. So welcome back.

Mr. HOLSTEIN. Thank you very much.

STATEMENT OF ELGIE HOLSTEIN

Mr. HOLSTEIN. Mr. Chairman, I will summarize my testimony. I appreciate the opportunity to appear before you and the other members of the subcommittee.

It is sobering, however, to think that, while we are sitting at this subcommittee hearing today, as much as a half a million gallons of oil are spewing into the Gulf of Mexico.

This disaster, the exact causes of which are still not fully understood, is emblematic of the fact that our government's system for regulating offshore drilling simply did not keep pace with the growing complexity of deepwater frontier drilling. As Chairman Waxman said at the beginning of the hearing, we have had a culture of complacency on the part of both government and industry.

In the long term, of course, we do need to move the country and accelerate our movement in the direction of a clean-energy future, one that will create jobs we can't export and one that will reduce the likelihood of these kinds of disasters. Nonetheless, we understand that oil will continue to play—as will gas—will continue to play a part in our Nation's energy mix for some time to come.

So the work of this subcommittee comes at a critical time. The oil and gas industry must rebuild public trust and confidence in their ability to produce the public's resources without causing catastrophic harm to the environment and to the economy. And the government, for its part, must demonstrate its willingness to be a tough cop on the beat and that it has the expertise necessary to protect the public interest.

So the legislation begins an essential effort to govern the development of future high-risk wells. In my testimony, I present a number of principles, and I am not going to go through all of them, but just identify three or four of them very briefly, principles that I believe should represent the underpinnings of any legislation in this arena and that are, I am happy to say, largely reflected in the excellent legislation that is before the subcommittee today.

The first principle would be that technology and regulation must evolve, because the industry is evolving. Just a few years ago, as Deputy Secretary Hayes was explaining, wells at this depth were largely unheard of, and they are rapidly becoming commonplace. We need a system for ensuring the safety of these wells and the workers who work on them that evolves with the industry.

Second, safety systems must be redundant and integrated into all key systems and processes. Defense in depth is a critical way to ensure robust defense against future blowouts. And this is a principle enshrined in most major complex industrial environments.

Third, safety must come before oil company budgets. And I would simply direct you to this morning's front page of The Wall Street Journal that describes in some detail this conflict between oil company budgets on the one hand and the need to ensure safety on drilling platforms on the other. And lastly, I would mention the principle that oil spill cap containment and response equipment must be available in sufficient quantity in order to deal with the consequences of the low probability but still high consequence events such as we are experiencing now. And this equipment must be prepositioned. I think it is an insult to the American people and dismaying to the extreme that we have to rely on other countries to help bring in some of the equipment necessary to contain this spill. I will conclude with just 2 or 3 additional recommendations in which I would like to place some emphasis, Mr. Chairman.

One, an issue that was raised very, very briefly, but I think very importantly raised by Mr. Inslee this morning, and that is communication systems must be designed so that emergency equipment can be triggered remotely. And I would expand on that principle just a bit by suggesting that modern communications should make it possible for wells to be monitored as necessary by inspectors and regulators off the premise, off the site of the well.

Secondly, I would recommend that technology deployment which is critical for blowout prevention and is a centerpiece of this legislation become part of the Department of Energy's assignment. The Department of Energy has a very robust fossil energy department. I think it would be a good thing to do to assign to them a cost shared industry and government program for developing jointly the R&D necessary to accomplish the objectives of the legislation.

And finally, Mr. Chairman, with respect to the stop-work requirements of Section 5, I think it would be helpful to make clear that the government inspectors would be authorized to issue stop-work orders should they find a basis for concern that there is imminent danger and risks to the workers on board the drilling platforms or to the integrity of the well itself. And with that, Mr. Chairman, I will welcome any questions you may have.

[The prepared statement of Mr. Holstein follows:]

Testimony of Elgie Holstein
Senior Director for Federal Strategy
Environmental Defense Fund
Before the
Subcommittee on Energy and Environment
of the House Committee on Energy and Commerce

June 30, 2010

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to join you in a discussion about how to prevent a recurrence of the ongoing oil spill tragedy in the Gulf of Mexico.

Environmental Defense Fund is a national environmental organization that searches for solutions that maximize economic incentives for solving environmental problems. While we do not oppose offshore drilling -- we understand that oil will remain part of our energy mix for some time to come – we do believe that America must accelerate its movement toward a clean energy future.

Domestic oil and gas exploration and production will undoubtedly continue. But the industry must act now to rebuild public trust and confidence in its ability to conduct its activities safely and responsibly. In turn, the government must demonstrate a renewed commitment to safeguarding the public's natural resources and our economy. The draft legislation before this subcommittee is a good start in moving that agenda forward with respect to the high-risk wells that are an increasing part of our domestic energy development.

Introduction

The current crisis in the Gulf is an ongoing nightmare – a daily worsening of an environmental and economic crisis of staggering proportion. Wetlands, wildlife, and fish are paying a terrible price along the Gulf Coast. But the disaster is also precipitating an economic crisis, which, a mere five years after Katrina, once again threatens the livelihoods of coastal communities, businesses, and workers.

Therefore, it is entirely appropriate that even before the blown out well is finally brought under control, Congress should begin to consider the kinds of changes we need to ensure that something like this never happens again. As you undertake that effort, it is important to note that the Deepwater Horizon was operating on the frontier of modern offshore drilling, at depths deeper than humans can go. Yet wells in far deeper water have been drilled and will become commonplace in years to come. Even wells that are not drilled in deep water may, depending on the geologic, geographic and environmental setting, present a risk to public and worker safety, the environment, and the economy.

Before I address specific provisions of the draft legislation you have before you, I would like to take a few moments to suggest a set of principles that I believe should form a framework for guiding government regulatory requirements and industry practice. I am happy to see many of those principles reflected in the draft legislation.

Principles

1. Technology, procedures and regulations must evolve to meet changing requirements. The technical complexity of high-risk drilling, and the high-pressure producing zones they often seek, underscore the necessity for continuous improvement in the performance and safety-related characteristics of the equipment used. The federal government should co-sponsor with industry research and development efforts designed to ensure continuous improvement in equipment and procedures used in high-risk drilling, as well as in emergency response to any accidents that may occur.

2. Safety systems must be redundant, integrated into key equipment and processes, and designed to be accessible from multiple pathways. Redundancy and defense-in depth are core safety principles in industrial environments. Safety equipment must be designed for placement at key process points, and it should be capable of automatic triggering. Communications and control systems supporting such equipment must be accessible remotely and mechanical equipment must be capable of both remote and local activation.

3. Safety systems should be designed to protect workers and the environment first, not exploration and production budgets. The loss of eleven lives on the Deepwater Horizon was the tragic beginning of a series of losses that continue to mount, including the accelerated loss of wildlife and wetlands, the impacts on sport and commercial fishermen and their associated industries, the loss of tourism, etc. Accordingly, commitments made to the development and deployment of high-risk well safety systems are investments in economic, environmental and legal protection.

4. Rapid-response capabilities should be developed to ensure that in the event of low-probability/high consequence events, there will be sufficient and appropriate equipment and other resources available to respond quickly with oil containment and clean-up equipment. Key repair and response equipment should be pre-positioned so that it can be transported promptly to well sites.

5. New high-risk drilling regulations should require the use of realistic estimates of the amount of oil that could spill in the event of a worst-case scenario. Permit applicants should be required to provide robust and defensible models that offer realistic assessments of the risk and the consequences of the loss of well control and of other failures.

6. Oversight, enforcement, and compliance activities should be funded primarily by industry, including the cost of inspections, oil capture and clean-up vessels and equipment, well control and disaster-response specialists, etc.

7. Regulations should ensure that future permitting decisions and the regulatory requirements upon which they are based, entail realistic estimates of the risk associated with proposed new drilling projects. A new regulatory philosophy should be developed to ensure that the public interest in worker, environmental, and economic protection is fully protected.

8. Communications equipment and protocols used in high-risk drilling should permit off-site monitoring by qualified and authorized third-party experts and inspectors, including those representing federal and state governments.

Draft Legislation

The draft legislation under review by this subcommittee meets many of the standards suggested by the principles above, as discussed further below.

Demonstrated Ability to Prevent and Contain Leaks. (Section 2) This section emphasizes a critical ingredient of high-risk drilling reform, namely, ensuring accountability on the part of both industry and government. The draft leaves to the President the discretion to assign the performance of the government's obligations and responsibilities under the bill. This is an appropriate reflection of the ongoing discussions about the appropriate allocation of responsibilities for high-risk drilling. However, EDF supports the need to ensure that enforcement and oversight work are carried out independently of the government's leasing functions. .

In addition, the required demonstration and determination provisions of section 2 ensure that both senior industry representatives and government regulators have a formal role in – and clear accountability for -- confirming the adequacy, performance, condition, and capabilities of well control equipment, as well as the necessary response and intervention plans and other emergency back-up equipment, personnel and protocols should a spill occur. The requirement to demonstrate the capability to begin promptly the drilling of emergency relief well is an especially important feature of the draft.

Blowout Preventer Requirements. (Section 3) This section prescribes some important, minimum technical requirements and standards for high-risk wells, and, importantly, embraces the principle of redundancy in the design and deployment of intervention and back-up systems. However, the section also usefully allows for the substitution of alternate mechanisms if, in the opinion of the appropriate federal official, they would be more effective. In this way, the

draft in effect allows the government to create a performance-based standard, which can evolve as needed in response to technology change, new exploration challenges, risk analyses, changing regulatory requirements, etc.

The reporting, certification and re-certification requirements of subsection (b) are tied to physical inspections of blowout preventers. They represent another welcome check on the appropriateness, functionality, and effectiveness of critical hardware used in high-risk drilling. We believe that such requirements should be extended to any other equipment that, in the federal official's judgment, may be critical to preventing or containing loss of well control.

Ensuring Safe Wells and Cementing. (Section 4) The additional certification requirements in this section, as well as the protocols to prevent fires and explosion, will help establish public confidence in well planning, design, and execution, as well as in the protection of rig workers. The pre-drilling, third-party certification requirements will help ensure that best practices will be applied in all high-risk drilling operations. The provision reflects the principle that the bar should be set high with respect to equipment and procedural standards and that opportunistic cost-cutting should never become part of the design safety equation.

Stop-Work Requirements. (Section 5) In establishing a firm safety basis for stop-work requirements applicable to operators and their contractors, this section correctly adopts one of the most basic and effective approaches to industrial worker and operational safety. We especially support the incentives for safe industry operation called for in the draft. This section might usefully be expanded, however, to ensure that government inspectors retain the right to issue stop-work orders based on any inspections or other monitoring that they perform, or in response to new information about the threats posed by certain design or operational conditions. Such orders would be based on findings that regulations were being violated or that operational conditions were posing, or had the potential to pose, unacceptable risks to safety and well control.

Independent Technical Advice and Certification. (Section 6) Because the draft legislation correctly puts so much emphasis on third-party verification and high technical standards, the formation of an independent technical advisory committee ensures that regulators will receive high-quality professional advice regarding regulations, standards, equipment, and – very important – high-risk well practices in use outside the United States.

Assuming that the advisory committee will operate under the provisions of the Advisory Committee Act, the draft ensures that there will be transparency and opportunities for public engagement. However, the legislation should probably also specify that occupational and environmental health and safety experts be included on the committee, as well as on the expert review panels.

In addition, the fee assessment structure proposed in the draft appropriately ensures that the cost of the third-party certifiers performing reviews, inspections, etc. be recoverable from operators.

Regulations and Orders. (Section 7) Of particular note is the draft's provision allowing the issuance of interim orders prior to the issuance and effective date of initial regulations. The provision allows high-priority technical improvements to be implemented as soon as possible, for example, those that may identified as a result of the investigations into the causes of the Deepwater Horizon blowout.

Well Control and Blowout Prevention Inspectors. (Section 8) Unannounced agency inspections and observations are, again, a standard feature of environmental, occupational and industrial safety regimes. In addition, the assessment of fees on operators is an appropriate means of paying for such inspections and observations. The Subcommittee should consider, however, expanding the inspections section. For example, in the case of an operator or contractor with a history of problems or violations, the appropriate federal official should have the authority to place inspectors on platforms and ships as often as necessary, and for as long as necessary, to ensure compliance with applicable regulations.

Citizen suits, penalties, whistleblower protections, and Chemical Safety Board. (Sections 9-14) These provisions are useful additions to the protective framework established by the draft legislation. They also underscore the broader public's interest in ensuring that high-risk wells are drilled safely and professionally, as well as the government's need to obtain sound information in the wake of any accidents.

I appreciate this opportunity to appear before you today, and I look forward to any questions you may have.

Mr. MARKEY. Thank you, Mr. Holstein, very much. Mr. Martinez, a recent press article indicated that blowout preventers on Alaska's north slope have been used a staggering 12 times in the first half of 2010 and 10 of those incidents were BP wells. It seems to me that blowout preventers are sort of like air bag, you want them to be there in the event of an accident, but you don't want to have to use them every day. Would you agree with that.

Mr. MARTINEZ. I agree. That is correct.

Mr. MARKEY. But up on the north slope they seem to be used every 2 weeks. One thing we have learned in our investigation into the BP spill is that the blowout preventer is the last thing that went wrong in the Gulf of Mexico. The problems with the cement job, the drill mud circulation, the choice of casing BP used to line the well bore are likely reasons the blowout began in the first place. Would you agree that mandatory standards for all of these very important well design elements are necessary to ensure the safety of offshore drilling operations?

Mr. MARTINEZ. I think that is a step in the right direction, yes.

Mr. MARKEY. Thank you. Mr. Martinez, blowout preventers and well design and cementing procedures are used for all offshore drilling, are they not?

Mr. MARTINEZ. They are.

Mr. MARKEY. This applies to the drilling phase of both exploratory and production wells; is that correct?

Mr. MARTINEZ. That is correct.

Mr. MARKEY. It applies to both shallow water and deep water drilling; is that correct?

Mr. MARTINEZ. Correct.

Mr. MARKEY. Mr. Holstein, in our first panel, a number of members asked whether the Interior Department's existing authority it adequate. What is your response to that?

Mr. HOLSTEIN. Mr. Chairman, I think that for several reasons it is important for Congress to legislate and not defer to the Department of Interior to simply go about a process of trying to update its regulations. And I say this first because the scope, the scale of the current disaster in the Gulf I think really cries out for additional congressional statements of purpose and direction to Federal agencies.

The current focus on this disaster and on high-risk drilling won't continue indefinitely and the culture of complacency could easily return absent the kind of framework that the legislation you have before us would put in place. In particular, the third party assessments for example, the inspectors and importantly, the advisory committee approach that would bring to the government the very best expertise available worldwide in this industry. But I would also add that another important reason for the legislation would be the opportunity for continuous improvement. And Federal agencies are particularly not good at that just as a regulation writing bureaucratic approach. I think one of the important elements of this bill, easy to overlook, but very clear, nonetheless, is the fact that it does lay the groundwork for a continuous improvement in the technology and the quality and also the quality of the government's oversight. Those are important things and they should be in the legislation.

Mr. MARKEY. Thank you, Mr. Holstein. My time has expired. The chair recognizes the ranking member, the gentleman from Michigan.

Mr. UPTON. Thank you, Mr. Chairman. Mr. Martinez, how would you define a high-risk well?

Mr. MARTINEZ. Well, that is a very difficult decision to make because we can have high-risk wells on land because of pressure and temperature constraints or possibilities. We could have in shallow water, as we are going to more and more subsea development to reduce platform costs. So that is a difficult one to define because it has more to do with pressures, potential flow rates, temperatures and location, not just arbitrarily some generic class.

Mr. UPTON. Is it easier to define a low-risk well?

Mr. MARTINEZ. No, no easier.

Mr. UPTON. That is one of the concerns that we have. Let me just read you a couple of things that the staff prepared as relates to Section 3. Section 3 proposes that regulations later be proposed will require the use of blowout preventers in all high risk well drilling operations, will set forth safety standards for such blowout preventers. The prescriptive requirement for two sets of blind shear rams will require the loss of test rams on subsea stacks and will result in the potential loss of managed pressure drilling system capability on tension leg surface stacks. The requirements proposed in this section for independent redundant hydraulic inactivation systems for each blind shear ram and casing shear ram would seem achievable, but it would require a second bank of accumulator bottles being deployed on the sea floor and a foundation pile.

Time to design, manufacture and determine a deployment method could take a year or 2 if possible on some of the rigs. Would you agree with that time frame?

Mr. MARTINEZ. You would really have to talk to the manufacturer, such at Cameron, the manufacturer of this particular BOP and others who are going to be much more familiar with the various details of design. It is possible to have all these pieces of equipment, but we, as users of the equipment, we always take into consultation the manufacturers whenever we are developing some new piece of equipment because we are going to manufacture it for us. So it is really both from the users perspective and what we are trying to accomplish in terms of safety. But likewise, including the manufacturers in the process of developing acceptable equipment, but that is safe is our objective here.

Mr. UPTON. Mr. Holstein, would you agree with that?

Mr. HOLSTEIN. I would, Mr. Upton, although I will defer a great deal to Mr. Martinez's expertise here as a person with actual oil field operating experience.

Mr. UPTON. So in other words, as we think about this, it wouldn't necessarily be practical for all the offshore rigs that are out there and then you have got to make—you have to differentiate between what might be a high risk and low risk as to whether these regs would apply to that; is that right?

Mr. MARTINEZ. I think you are going to have to come up with that definition of what is high risk and where it will apply. And the reason is that you want to the define it so that the manufacturers and the oil companies and the contractors such as Transocean

all have the same bases for starting. And then jointly as we always work our problems, we can, in turn, with the manufacturers develop equipment that is indeed going to serve the purpose. We are always trying to make our equipment serve the purpose, match the fit, the risk, et cetera. And we don't want to put into place equipment that is vastly overpriced and over capacity for the given wells. So we do need to define those things and then proceed forward.

Mr. HOLSTEIN. I think, Mr. Upton, in response to your question, I would simply summarize my agreement with Mr. Martinez by saying that while deep water and the pressures that it typically entails and the operational challenges it imposes are certainly likely candidates for consideration as being high risk, but they are not the only circumstances in which one could imagine the geographic location or the particular well conditions of the kind of that Mr. Martinez has described that might well call for an extraordinary level of caution and care in the drilling of any wells.

Mr. UPTON. Thank you.

Mr. MARKEY. The gentleman's time has expired. The chair recognizes the chairman of the full committee, the gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. I want to thank both of our witnesses for being here today. My understanding, Mr. Martinez, if I can start with you, is that you have over 40 years of experience in the industry that at various times in the last several weeks, my staff has sought your expert views and you bring a real insider's perspective to the problems we are trying to solve. Let me ask you a very general question to start with. The regulatory structure that has grown up around well drilling in the last several decades has relied heavily on voluntary industry standards and best practices. Do you believe that we need to establish a regulatory system that goes beyond this voluntary industry approach?

Mr. MARTINEZ. I think that we need to by regulation, be it mandatory or by legislation, be it mandatory, that we require certain testing to go on and certain design that we approve of as experts in the field. And likewise, by being mandatory, then the operating companies as well as the manufacturers and the contractors all have an incentive to develop these equipment to meet the performances we are requiring. When it is voluntary in many cases, you will have some who will not adhere to the volunteer regulations or self-regulating best practices. When it is mandatory, obviously you have to.

Mr. WAXMAN. Let me ask you some specific questions. We identified numerous shortcomings with the blowout preventer. To fix these problems we have a series of new requirement, for example we focus on redundancy in shear rams and in the activation systems for these rams. We also addressed the design, testing and maintenance of blowout preventers. Do you think these new requirements are appropriate and will they—will they reduce the risk of blowouts? One, I think they will, if indeed we adhere to the redundancy both in the equipment, as well as in the activation systems. It is critically important here, as well as working with the manufacturers to ensure that we can develop any new equipment as well as the activation systems necessary.

So it is really a combination of us from the operator's side along with the contractor personnel like Transocean or others working with the manufacturers to ensure we can do those things.

Mr. WAXMAN. We also have well designs, a minimum of three barriers to prevent the flow of dangerous gases. We have new requirements for safe cementing and we require regulators to establish new standards for diversion of dangerous gases and explosion prevention. Can you tell us if you think these new provisions will reduce the risk of blowouts and are there provisions where you think we need to be more specific or more stringent?

Mr. MARTINEZ. I have advocated in my testimony perhaps a bit more stringent standard, which is sufficient volume of cement in the bore hole casing annulus to totally fill that space and thus not prevent any possibility of leakage of any kind of hydrocarbon or saltwater or anything else back on the backside. For both safety purposes as well as for me, a person that works in the production industry, casing corrosion issues which are likewise as important.

So I do advocate a more stringent standard. And actually, I am advocating in testimony that we adhere to this more stringent regulation whether internal or by legislation are passed.

Mr. WAXMAN. Finally, we establish a new independent expert advisory committee to provide the best and most up to date advice the Federal regulators in order to prevent blowouts and to ensure safe drilling. People with your level of expertise are likely to serve on this advisory committee. Can you tell us about the role you think that this independent panel can play?

Mr. MARTINEZ. Well, we all have good experience. We need to have a number of personnel involved because we all have different experiences in different parts of the world. And so the combination of folks like myself, regulators, manufacturer, if they can come to some consensus relative to what are good practices that can be incorporated into regulation and legislation.

Mr. WAXMAN. Thank you very much for your help. I appreciate it.

Mr. MARKEY. I thank the chairman. The chair recognizes the gentleman from Texas, Mr. Burgess.

Mr. BURGESS. Thank you, Mr. Chairman. Mr. Martinez. Two weeks ago we had before this subcommittee CEOs from, I think it was five major oil companies and BP. BP was the only one that did the well, the way the Deep Water Explosion was done. Every other CEO who was there on the panel said we wouldn't have drilled the well that way, we wouldn't have used those procedures. So what was it about the oversight in your opinion, what was it about the oversight of the drilling of that well that allowed BP to proceed in a manner that the other five gentlemen felt was unsafe?

Mr. MARTINEZ. Well, from what I have read of documents provided to me and newspaper reports, I would say part of the failing is that there wasn't this independent third party advisory person or panel to review some of these——

Mr. BURGESS. Correct. But there was a regulatory agency that was presumably excerpting oversight over these activity; is that right?

Mr. MARTINEZ. I believe that is correct, but——

Mr. BURGESS. Was there anything preventing them from asking for the same best practices that the other five companies adhere to?

Mr. MARTINEZ. That is the reason I am advocating that we have some of these improved standards and make them mandatory because it is totally up to the operating company whether they are going to follow best practices or not.

Mr. BURGESS. What was it about MMS or the agency previously known as MMS—I don't know what it is known as now—but what was it about that agency that allowed them to approve a well of a design where every other—maybe it was just—they were—the benefit of 20/20 hindsight to say, no, we wouldn't have done it that way. But I have got to believe—I mean, we heard from one of the CEOs—I asked the gentlemen who were arrayed in front of us had anyone ever worked on a deep-water well. Well, it turns out deep-water wells weren't drilled when they were of the age where they could have worked. But one had worked on offshore rigs. It wasn't deep water, but he had worked on an offshore rig.

I asked the CEOs in front of us if any of them had ever shut in a well, because of it—feeling that they were not going to be able to control it. That same individual raised his hand. And later on in response to another question he said look, you go too fast on these things, you are going to get someone killed. I think that was the voice of experience speaking. What I am saying is that it is not always wrong to rely upon the expertise of the industry.

I just wish somebody had been comparing the practices between the various companies and saying look, this long string design with very few centralizers and not paying attention to the cement bonding this is a problem. And of course, the blowout preventer that ultimately failed aisle still not certain if the blowout preventer failure didn't prevent a bigger problem. You heard me ask the other question to the Secretary about the thief channels and cracked casings and things that were talked about when the top kill was stopped. Had the blowout preventer worked, at least in my mind, it is possible if those conditions existed deeper down in the well bore, there might have been a very serious problem had the blowout preventer actually worked.

Mr. MARTINEZ. Correct. Well, Congressman, what I would say is that in large measure, that is the difference between regulations that exist right now that allowed BP to design the well, the way they did and with the practices that they did.

Mr. BURGESS. How are we going to ensure that our regulatory agency actually functions. Of course we won't call them in here and take testimony from them so that makes it very, very difficult. This could go on forever. Mr. Holstein, I wanted to get a couple of questions into you if I could. And you are here as a representative of the environmental defense fund; is that correct?

Mr. HOLSTEIN. Yes, sir.

Mr. BURGESS. Under what conditions does the Environmental Defense Fund support offshore exploration and drilling?

Mr. HOLSTEIN. As I mentioned in my testimony, we understand that offshore drilling and oil and gas production in general are going to be part of America's energy mix for sometime to come. And subject to the appropriate safety and environmental protections of the kind discussed here in the subcommittee today, we continue to

support domestic production, though we certainly empathize with the need to develop renewable and alternative energy technologies so that we can move to a cleaner energy future and more efficient one.

Mr. BURGESS. You heard the Assistant Secretary's testimony that in the previous administration, he felt he had all the tools that he needed and presumably earlier this year before this accident happened he felt he had all the tools that he needed. Would Environmental Defense Fund's position have been the same prior to the accident, not knowing what we know now?

Mr. HOLSTEIN. Well, I think it is safe to say we know quite a bit more now about not only the failings of the agency——

Mr. BURGESS. That is the point. Let me just ask you this before I run out of time. You have talked about shipping jobs overseas. Solar panels and wind mills can be shipped overseas as we have seen with some of the money we put forward in the stimulus that went to China through the Department of Energy. But the oil is our oil. The natural gas is our gas. Those are jobs that really cannot be shipped overseas; is that correct?

Mr. HOLSTEIN. I don't think this is a contest between different types of energy sources and America. I think——

Mr. BURGESS. You referenced clean energy.

Mr. HOLSTEIN. I think we recognize that oil and gas, as a representative of an environmental group, I am here being as constructive as possible in saying that if we are to have oil and gas as part of our energy mix, we need to do it responsibly. And the problem that we have today, not before the spill, but today the problem that we face is that this industry and this government must reestablish public trust and confidence in the ability of the industry to carry out these activities safely and in the ability of the government to be a tough cop on the beat.

Mr. BURGESS. On that we agree. The problem is that the cop on the beat for the last 18 months really has been asleep at the switch. I yield back, Mr. Chairman.

Mr. MARKEY. I thank the gentleman. The chair recognizes by unanimous consent the chairman of the Oversight and Investigation Subcommittee who is leading the investigation into the blowout disaster, the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. Thank you for allowing me to sit, as you always sit on the Oversight investigations. Together we are trying to get to the bottom of this. One of the things that Mr. Burgess just said about the last 18 months, the cop on the beat was sort of asleep at the switch here. But, Mr. Martinez, I guess I will take issue with what Mr. Burgess said because the design that BP put out on this well, there was no authority for MMS to say, no, you can't do that. The design is still up to them and how they did it. There was nothing that said you can't do it, right?

Mr. MARTINEZ. That is correct.

Mr. STUPAK. So they weren't asleep at the switch. If I am the driller and I want to try a new design, unless I can prove there would be horrendous circumstances, I can go ahead and do it as a driller; isn't that correct?

Mr. MARTINEZ. That is correct.

Mr. STUPAK. Let me ask you this: We focus a lot on deep-water drilling and rightfully so because of what has happened in the Gulf and tragically people died. Is there something we are missing in this legislation? We are talking about high-risk wells. Is there something else we should be doing in this legislation? How about the shallow wells? There is hundreds of them in the Gulf. How about on-land drilling? Is there something else we should be doing in this? Our focus has been deep water in all of this. Are we missing something here?

Mr. MARTINEZ. You need to make sure that you incorporate pressures that we could potentially be drilling into, temperatures, the location. Because what may be shallow water for a platform well could be still a risky situation when it is a subsea well. And we are going that direction in technology because is cheaper for us; and as a result, this so-called high risk is not just a matter of being deep water high risk. It could be a number of situations that are high risk. So that has to be evaluated. And that is why it is a little tough to give just an easy answer of what is high risk.

Mr. STUPAK. Let me ask you this: You had 40 years of experience and we have called upon you, our committee, to help us out every now and then to get your advice. One of the questions that members constantly ask is we have developed technology to go deeper and deeper and go into these high-risk areas. Where has the technology been to be developed in case there is a spill? It seems to us it has been lax. Shouldn't we have an independent advisory panel? Is that part of their responsibility? Should we have a separate panel just to do that, to look at that?

Mr. MARTINEZ. I think that when you have some of these advisory panels with a little bit of teeth in whatever you judge them or give them the ability to do that can advise both on offshore containment, as well as the drilling, as well as completion, we do need to use our expertise. We have lots. Obviously we were not prepared in this particular case. But we still need these advisory panels to help us go in the right direction and not just reinvent wheels.

Mr. STUPAK. What about technology on a spill? We haven't really developed that. It seems like we are doing the same stuff. Boom, burning it off, the same things we did back in the 1920s and 1930s.

Mr. MARTINEZ. I am not an expert on that, but I would agree that it appears that we are doing the same thing.

Mr. HOLSTEIN. Mr. Stupak, we need absolutely to improve the quality and the functionality of the containment and cleanup systems that we have. Once this oil reaches the marshes, for example, there is really very little that you can do after that point. The damage is horrible and it is done. But I think there is no more stark demonstration of the challenges we face that is implicit in your question than the report that was issued by State Department yesterday that indicated that 30 foreign countries have offered their assistance to the United States.

We have accepted some of that assistance. For example, boom equipment and skimmers have come from Mexico, Norway, Brazil, Canada and Japan. That tells me anyway that we are not ready to respond even with the substandard equipment that we have now that does a fairly poor job of capturing the oil if the seas are rough or the winds are high. We need to get working on that, and one

of my recommendations in my testimony is that this would be an appropriate area for the Department of Energy to work in a cost shared research and development with industry to vastly improve and maybe the Department of Transportation and interior, whomever. But this could be a government and industry joint research effort.

Mr. STUPAK. Let me ask you both this question if I may. It appears that BP, whoever, no matter what their track record is on drilling, whether they have safety violations or environmental problems, BP, and from where I sit as chairman of Oversight for the last 5 years, we have been constantly doing investigations. But if I am BP and I want to lease land in the outer continental shelf to drill on, so long as I pay my lease, there is nothing the government can do that can prevent me from doing that, right?

Mr. MARTINEZ. Providing that they are adhering to regulations at MMS or the successor has in operation.

Mr. STUPAK. The Secretary or MMS, no one has the right to say you are a bad actor, and we are not going to allow you to drill in our country until you clean up your act, is there?

Mr. MARTINEZ. Not to my knowledge.

Mr. STUPAK. Do you know of anything, Mr. Holstein?

Mr. HOLSTEIN. If they have a bad track record, no. And for that reason, I have suggested in my testimony, in addition to the legislation, that the inspector's program, the on sight inspection program, be modified a bit to ensure that the problematic companies receive more attention. This would be more efficient, it would be fairer and it would also—it would be less costly. And it would be an important incentive for the oil industry and operators to do the right thing even when as the Wall Street Journal outlines today companies find themselves under cost and budget versus calendar or time line pressures.

Mr. STUPAK. My opinion is, if they are a bad actor of the last 5 years, why are they even drilling? Why are we even allowing them to drill in our country, so you don't have to worry about inspectors trying to get a stop order?

Mr. HOLSTEIN. It is a reasonable point.

Mr. STUPAK. Thank you, Madam Chair.

Mrs. CAPPS [presiding]. Thank you. The gentleman yields back. We are expecting votes shortly, and I am the last person to ask questions. So maybe just brief answer. I have a question to ask each of you that doesn't have to be long. Mr. Martinez, because you have already been on the witness stand for a while, Mr. Martinez, your testimony highlights the difficulty of successfully using a relief well to kill a well under blowout conditions a topic of expertise for yourself. You point to this as a reason we need to redouble our efforts to ensure that blowouts are prevented in the first place. Of course, we are all eagerly looking towards the success of the relief wells in finally stopping this disastrous spill in the Gulf. But many are kind of holding their breath about the difficulties we may encounter in killing the well. Can you just talk about that for a couple of minutes?

Mr. MARTINEZ. Well, Congresswoman, I am a specialist in the fluid flow and reservoir delivery that occurs from wells. And the more capable they are, the higher the flow rates, particularly of

gas. It is more difficult to circulate that mud into position to replace these lighter hydrocarbon densities with a heavy hydrocarbon heavy density mud and kill the well. That is the process that we are going to undergo. It means that we have to have high capability of pumping and thus replace that column of flow density material with high density material. So it is difficult. It is one in which that is our standard approach when we can't shut in the BOPs and we can't control the flow at the surface. But it is not—I don't want to mislead you and make you think it is just an easy thing to do.

Mrs. CAPPS. Thank you. Thank you very much. Mr. Holstein, let me lead up to the question for you. I believe the appropriate Federal regulators should be required to assess the response and spill capability for various spill scenarios in the environmental review process. Unfortunately, most cleanup efforts as we are painfully discovering, are only 10 to 15 percent effective. Requiring an analysis is critical to ensure that the public and decision makers are not misled into believing that spills can be effectively cleaned up.

The British Petroleum Act says a company needs an oil spill response plan. Do you agree that these impacts must be addressed up front and not after a spill occurs? In other words, are we correct in requiring this ahead of time so that not only those methods that will avoid exacerbating spill impacts are allowed?

Mr. HOLSTEIN. We would emphatically agree with that. And we believe that the capability to accomplish those objectives is readily available in the form of better modeling and better expertise of the kind that this legislation contemplates. I would point out that we have in our organization's possession copies of internal memorandum that make clear just—and the subcommittee, particularly in oversight investigations, has developed additional evidence that shows the gross inadequacy of the probability—risk probability determinations and the response capabilities or necessities, requirements that would be required if the unthinkable were to happen. And that set in motion, then, a train of errors then by other parts of the Federal Government.

For example, the Fish and Wildlife Service simply accepting the risk calculations and the projections of impacts that were being developed by MMS. That is not the way it should work. Doing the work up front, as you suggest, and requiring that, as Mr. Dingell I think was getting at in his questioning, would be a valuable addition, I think, to the process. And give both the lessee and the government the confidence that a set—that there is an agreed upon set of assumptions going forward.

Mrs. CAPPS. Thank you very much. And I believe that the questions have been asked and they have been answered well. So the hearing now comes to a conclusion. Thank you very much both of you.

[Whereupon, at 2:28 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

June 30, 2010

Opening statement of Congressman John Sullivan
Hearing on Legislation to respond to the BP oil spill
House Energy and Commerce Committee- Subcommittee on Energy and Environment
2123 RHOB

Chairman Markey, thank you for holding this hearing today to examine legislation to respond to the BP oil spill, the Blowout Prevention Act of 2010.

Like all Americans, I believe BP should be held accountable for the full cost of this disaster – the taxpayers shouldn't pay one dime and I believe Congress should work towards implementing rigorous safety inspection standards for all offshore rigs, which is why I think it is important that we have this hearing today.

There is no question that the BP oil spill is a tragedy – in fact it is the worst environmental disaster in our nation's history. I believe we must do everything in our power to cap the leak, find out what caused the explosion and to ensure nothing like this ever happens again.

However, it is important to remember that we are still conducting a bipartisan investigation into the root causes of the Deepwater Horizon blowout, explosion and oil spill, so it is important that we don't prematurely act on this from a legislative angle while the investigation into this tragedy is not complete.

While the draft legislation takes important steps to implement blowout preventer, well design and cementing safety standards, I have concerns that the definition of "high-risk" well **is overly broad** and could arguably capture every well in the United States, both onshore and offshore. To me, this definition raises concerns that this bill could be used to prevent responsible oil and gas development on U.S. soil and waters further increasing our reliance on foreign oil. Moving forward, I hope that this definition will be more narrowly focused to **exclude onshore drilling.**

I am pleased to see that the Deputy Assistant Secretary of the Interior, David Hayes before us today. Given the integral role of federal oversight in offshore drilling operations, it is critically important to hear Interior's

point of view this proposed draft legislation and whether or not they will be able to handle the new regulatory responsibilities responding from this tragedy.

During this hearing and the continuing investigation, it is important that we do not lose sight of the fact 30% of total U.S. production of crude oil comes from offshore. While some may want us to stop drilling offshore all together, this would be a terrible mistake. If we were to ban or restrict offshore drilling we would simply increase our national dependence on foreign oil, which makes our nation less secure in the short term and long term and increases the cost of energy. We should not use this tragedy as an excuse to rollback the gains we have made in finding new ways to develop our own energy resources as we will need more oil and natural gas, and alternatives to help meet growing demand for energy in the coming decades.

I look forward to hearing the testimony of our witnesses and I yield back the balance of my time

BLOWOUT PREVENTION ACT OF 2010
DISCUSSION DRAFT
Section-by-section Summary

Section 2 – No Drilling Without Demonstrated Ability to Prevent and Contain Leaks
Subsection (a) provides that, effective one year after the date of enactment, a federal permit to drill a high-risk well shall not be issued unless the applicant demonstrates, the CEO of applicant attests, and the appropriate federal official (the Secretary of Interior, Secretary of Energy, or Administrator of the Environmental Protection Agency, as determined by the President) determines that (1) the blowout preventer and other well control equipment will prevent a blowout from occurring, (2) the applicant has an oil spill response plan that ensures the applicant has the capacity to promptly stop a blowout if the blowout preventer fails, and (3) the applicant has the capacity to begin drilling a relief well within 15 days of a blowout and complete drilling a relief well within 90 days of a blowout. "High-risk well" is defined as all offshore oil and gas wells and the subset of onshore wells that, under criteria established by the appropriate federal official, could lead to substantial harm to public health and safety and the environment in the event of a blowout.

Subsection (b) requires an operator to meet the same requirements in order to obtain federal approval to drill a high-risk well that does not currently require a federal permit. This approval function can be delegated to states.

Section 3 – Blowout Preventer Requirements
Subsection (a) requires the appropriate federal official to issue regulations to require the use of blowout preventers for high-risk wells and to prescribe safety standards for blowout preventers that ensure that the designs will operate at the location they will be deployed. At a minimum, the designs must include: (1) two sets of blind shear rams appropriately spaced; (2) two sets of casing shear rams appropriately spaced; (3) independent and redundant hydraulic and activation systems for each blind shear ram and casing shear ram; (4) one or more emergency backup control systems; and (5) remotely operated vehicle intervention capabilities for secondary control. If the appropriate federal official determines that one of these minimum component requirements would be less effective than an alternate mechanism, the alternate mechanism may be required instead.

Subsection (b) requires independent third-party certification of a blowout preventer prior to drilling a high-risk well. The certification is based on a detailed physical inspection, design review, system integration test, and function and pressure testing. The certification ensures that the blowout preventer is properly designed for the circumstances, will operate effectively, includes blind shear rams and casing shear rams that will function effectively and cut the drill pipe or casing, includes emergency control systems that will function effectively, and has not been compromised or damaged from prior service. Recertification is required every 180 days or after any material modification to the blowout preventer or design of the well.

Subsection (c) requires prompt function and pressure testing of a blowout preventer after a significant well control event.

Subsection (d) includes reporting requirements for blowout preventer maintenance and repair, electronic logs, design specifications, changes to design specifications, and failure during a well control event.

Section 4 – Ensuring Safe Wells and Cementing
Subsection (a) requires regulations to ensure the appropriate and safe design of high-risk wells. The regulations shall require at least three independent tested barriers, including at lease two mechanical barriers, and well control guidelines and fluid circulation and displacement procedures. Third-party certification of the well design is required prior to the commencement of drilling and after any material modification of the well design.

Subsection (b) requires regulations of well casing designs and cementing programs of high-risk wells to ensure that well control will be maintained and there will be no unintended flow of hydrocarbons. At a minimum, the regulations shall require adequate cement volume and cement bond logs for all cementing programs. Third party certification of well casing designs and cementing programs and procedures is required prior to commencement of drilling.

Subsection (c) requires regulations to establish procedures and technologies to be used to minimize the risk of ignition and explosion of hydrocarbons discharged from the well during a well control event.

Section 5 – Stop-Work Requirements
This section requires regulations to establish requirements (1) for operators and contractors to stop work when there are conditions indicating an immediate risk of a blowout at a high-risk well and (2) that operators adopt policies, procedures, and incentives to ensure that work stop in such circumstances.

Section 6 – Independent Technical Advice and Certification
Subsection (a) provides for the establishment of an independent Well Control Technical Advisory Committee to review and comment on proposed regulations, respond to requests for advice from the appropriate federal official, and provide periodic reports (1) assessing available blowout preventer and well control technologies, practices, voluntary standards, and regulations in the United States and elsewhere, (2) assessing whether existing regulations are adequate, and (3) recommending modifications to the regulations.

Subsection (b) requires the appropriate federal official to establish standards for the approval of independent third-party certifiers. The appropriate federal official will contract directly with the third-party certifiers and randomly assign third-party certifiers to individual certifications and recertifications. Operators shall pay fees to cover the costs of these activities. It shall be a violation of this Act for any third-party certifier to knowingly or recklessly make any false statement in any document submitted in connection with a certification or recertification.

Subsection (c) allows for the establishment of a panel of independent technical experts to provide technical advice to the appropriate federal official with regard to any well-specific regulatory decision under this Act.

Section 7 – Regulations and Orders
Subsection (a) requires the appropriate federal official to issue the regulations required by this Act not later than 1 year after the date of enactment. At least once every 5 years, the appropriate federal official shall review the regulations and the recommendations of the Advisory Committee and revise the regulations if they are not adequate.

Subsection (b) authorizes the appropriate federal official, prior to the effective date of the initial regulations required by this Act, to issue interim orders applicable to one or more operators to ensure that blowouts are prevented including requirements to use safe and effective blowout preventers, well designs, casing designs, and cementing programs and procedures.

Section 8 – Well Control and Blowout Prevention Inspectors
This section requires periodic unannounced inspections and in-person observation of tests by federal inspectors, as well as the charging of fees from operators to cover the associated expenses.

Sections 9 through 13
These sections provide for the judicial review of regulations, investigation of alleged or suspected violations of this Act, citizen suits to compel compliance with this Act, civil and criminal penalties for violations of this Act, and prohibitions on retaliating against whistleblowers.

Section 14 – Chemical Safety Board Investigation
This section amends the Clean Air Act to facilitate the investigation of the Chemical Safety and Hazard Investigation Board into the facts, circumstances, and causes of a marine oil spill resulting from an accidental fire, explosion, or release involving an offshore oil exploration or production facility.

Section 15 – Savings Clause
This section provides that nothing in this Act shall be construed to preempt State or local regulation of oil and gas exploration and productions wells drilled in State waters, on State lands, or on private lands.

Section 16 – Definitions
This section provides definitions of key terms in the Act.

